

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

No. F. 11(437)/DERC/2007-08

Petition No. 55/2008

In the matter of: Complaint under Section 142 of the Electricity Act, 2003 for violation of the Provisions of Electricity Act read with Rules & Regulations framed by the Commission.

And

In the matter of:

G.D. Tiwari
A-137 Wazirpur
Industrial Area
New Delhi

...Complainant

VERSUS

North Delhi Power Limited
Through its: CEO
Hudson Lines, Kindgsway Camp,
Delhi - 110009

...Respondent

Coram:

**Sh. P.D. Sudhakar, Chairperson, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member**

Appearance:

1. Sh. K.L. Bhayana, Advisor, NDPL
2. Sh. D.P. Singh, Manager NDPL
3. Sh. Anurag Bansal, HOG Legal, NDPL
4. Sh. V.K. Goel, Advocate of Petitioner
5. Sh. O.P. Madan, Advocate of Petitioner
6. Sh. Jai Prakash Garg, Authority Signatory
7. Sh. S.N. Dass
8. Sh. K. Datta, Advocate
9. Sh. R.P. Yadav
10. Sh. V.K. Manghani

(Date of Hearing: 10.05.2011)

(Date of Order: 16.06.2011)

1. The Complainant is a registered consumer of electricity having connection K. No. 32200906555Z (for industrial purpose) with address A-137 Wazirpur Industrial Area New Delhi.
2. The Complainant previously also filed a complaint before this Commission, which was dismissed as withdrawn on 20.09.2006 by the Commission in

view of the amicable settlement made in between the Complainant and the Respondent.

3. At that time a memorandum of agreement was also filed by both the parties before the Commission. The relevant paras of the same are reproduced herein below:
 - (i) On the settlement reached between the parties, all the disputes in respect of K. No. 32200906555 & 32200906556 stand settled on 29.05.2006 and, therefore, the Complainant undertakes to withdraw the complaint pending before the Hon'ble Commission.
 - (ii) The current demand also includes an amount of about Rs. 20,000/- debited during assessment period 12.05.2005 to 20.05.2005 which is under dispute as the DAE case booked on 12.05.2005 has not been settled. Hence, the Complainant has assured to pay Rs.1,32,230/-.
4. The Complainant has alleged that despite the orders of the Commission passed on 20.09.2006 wherein, the settlement made in memorandum of settlement was recorded, has not yet been complied with and the dispute is thus still unsettled.
5. The Complainant has submitted that the dispute pertain to assessment period 12.05.2005 to 20.05.2005 wherein, a DAE was alleged on the basis of inspection conducted on 12.05.2005. The Complainant has further submitted that he has received a letter on 31.05.2008 whereby he was asked to avail the Amnesty Scheme for settlement of bill. The Complainant has been continuously depositing the current demand. The electricity connection installed at the premises of the Complainant has also been disconnected on 31.05.2007 on account of the non deposition of disputed amount.
6. The Complainant has approached this Commission for imposition of penalty upon the Respondent in terms of Section 142 of the Electricity Act, 2003 and has sought issuing of direction to the Respondent to withdraw the demand of assessment for the period 12.05.2008 to 20.05.2008.

During the hearing held on 11.9.2008, the Advocate for the Respondent stated that he needs some more time to verify the details from his client.

He further submitted that the possibility of mutual settlement would also be explored in view of the earlier order of this Commission.

The Petitioner vide letter dated 2.12.2009 submitted that NDPL instead of resolving the matter is continuously harassing the petitioner.

Reply filed by the Respondent NDPL:

In its reply the NDPL submitted that :-

7. The complainant has filed the instant complaint for violation of Regulation 25, 26 of Meter and Billing Regulations, 2002.
8. It has sought dismissal of the above complaint on the ground that the complainant has already filed a writ petition bearing number WP(C), 729 of 2010 in the name of Sh. J.P. Garg Vs. NDPL on the same facts and circumstances, which is pending for adjudication.
9. In the said petition it has been shown that Sh. J. P. Garg is the user of the above connection, who has filed the instant petition on behalf of G. D. Tiwari.
10. In the said case the last hearing was held on 04.05.2011 wherein the distribution licensee has been asked to file reply immediately and matter is now listed for hearing in the month of July.
11. It has been alleged that by not informing the Commission about the above writ petition the complainant is resorting to forum shopping in total disregard to process of law.
12. It has invited attention of the Commission on section 86 of EA, 2003 which deals with the functions of the Commission and stated that the Commission has no jurisdiction to hear cases relating to theft of electricity.

Points for consideration:

13. The Respondent has submitted that the Commission should not hear the case of theft under the provisions laid down in chapter XIV and XV of EA, 2003. In support of his claim he has cited various orders passed by the Commission wherein the Commission has decided not to hear such cases.
 1. ViKas Road Line Vs. NDPL
 2. Jain Atta Chakki Vs. NDPL

3. Rajendra Vs. NDPL
14. The Respondent submitted that the Commission has no jurisdiction to decide cases of dispute in between the DISCOM and Consumer which legitimately fall with the jurisdiction of the CGRF with appeals lying to the Ombudsman.
15. It was further submitted that the Commission cannot hear without giving reasonable opportunity to the respondent by conducting a detailed inquiry purportedly under section 142 of the Act, into the respective contentions of an individual consumer, the defense of the Respondent licensee and the merits of each case. The present proceedings take the nature of a quasi-judicial adjudication of disputes between an individual consumer and the licensee, which is beyond the purview of the powers vested in this Hon'ble Commission under the said Act. In support of his claim, he has given following citations :-
1. Board of High School and intermediate education, U.P. Vs. Kumari Chitra Srivastava at (1970) 1 SCC 121
 2. Karnataka Rare Earth Vs. Senior Geologist, Dept. Of Mines & Geology at (2004) 2 SCC 783
16. While analyzing the power of the Commission it has cited the case of MERC Vs. REL & Ors. Wherein Supreme Court has decided that the Commission cannot adjudicate disputes relating to grievances of individual consumers. The adjudicatory function of the Commission is thus limited to the matter prescribed in Section 86(1)(f).
17. According to the Respondent, the consumers can approach the appropriate forum constituted under section 42 (5), if they are not satisfied with the order of the licensee and subsequently against the order of Forum they may approach Ombudsman under section 42(6).

It has also cited other cases namely:-

1. Madayanchal Vidyut Vitram Nigam Ltd. Vs. UPERC
2. Dakshin Haryana Biji Vitran Biji Vitran Nigam Ltd. Vs. DLF Services Ltd. & Ors.
3. Himachnal Pradesh State Electricity Board Vs. M/s EMM Tex Synthetics P. Ltd (Appeal 117/07).

Hearing in the Commission on 10.05.2011

18. Both parties present.
19. At the outset of hearing the Counsel of the petitioner again reiterated that The current demand also includes an amount of Rs.20,000/- debited during assessment period 12.05.2005 to 20.05.2005 which is under dispute as the DAE case was booked on 12.05.2005 has not been settled. Hence, the complainant has assured to pay Rs.1,32,230/-. On this, the counsel of the Respondent could not reply for which the Commission directed the Respondent to file the details on the particular issue whether the statement given by the complainant is true or not.
20. The counsel of the Respondent raised the issue of jurisdiction of the Commission for entertaining the above case of theft filed under Section 135 of the Act, and the details of his arguments are the same which they have has submitted in the reply filed by it.
21. The Counsel of the Respondent also objected to the hearing with the plea that the above matter/dispute is pending before the Hon'ble High Court. Therefore, the Hon'ble Commission ought not to entertain the present complaint.
22. On the issue of jurisdiction the Commission observed that the Commission is only hearing the case of violation of any Rule and Regulations or direction of the Commission under the powers under section 142 of EA, 2003. And it has not encroaching the power of the Special Court conferred to them under Section 153 of the above Act.
23. On the direction issued by this Commission at the time of hearing dated 10.05.2011 the Respondent filed reply vide letter no. NDPL/CCM/110 dated 30th May, 2011 which has been taken on record. In its submission Respondent has submitted stating therein that it has not assessed / raised any such amount i.e. Rs. 20,000/- as has been alleged by the Complainant, being debited to his account during the assessment period 12.05.2005 to 20.05.2005 (8 days the period under dispute).
24. In support of his claim the Respondent has also enclosed a copy of the detailed bill of statement of account of the above consumer meter no. 32200906555, which shows no such debit of Rs. 20,000/- in the said period. However, it also shows an adjustment of Rs. 18,872/- in July, 2005.

The Commission's findings:

25. After taking into account the statement submitted by the Respondent and the evidence produced, the Commission has reached the conclusion that there is no validity in the claim of the complainant for raising of excess bill of Rs. 20,000/- in the disputed period, therefore the Respondent is absolved of the above allegation.
26. The Commission has not found any violation of any provisions of act, rules and regulations and directions of the Commission for which penal proceedings under section 142 can be initiated against the Respondent or penalty can be imposed. Therefore, in the light of the above findings the instant petition is dismissed.
27. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON