



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11(1704)/DERC/2019-20

Petition No. 38/2019

Under section 142 of the Electricity Act, 2003

In the matter of:

M/s Big Jo's estates Ltd.

Through its Authorized representative

Shri Laxman Singh,

.....Petitioner

Versus

Tata Power Delhi Distribution Ltd.

Through its: M.D

.....Respondent

CORAM:

Hon'ble Sh. Justice S S Chauhan, Chairperson

Hon'ble Sh. A.K. Singhal, Member

Hon'ble Dr. A.K. Ambasht, Member

Appearance:

- 1. Shri V.K. Goel, Counsel for the petitioner;**
- 2. Shri Manish Srivastava, Counsel for the Respondent;**

ORDER

(Date of Order: 30.12.2020)

1. The Instant Petition has been filed by M/s Big Jo's Estates Ltd., under Section 142 of the Electricity Act, 2003 against Tata Power Delhi Distribution Limited (TPDDL) for violation of the provision laid down under Section 47(4) of the Electricity Act, 2003.

2. PETITIONER'S SUBMISSIONS:

- a) the Petitioner has alleged it is entitled to get interest on security deposit in terms of Section 47(4) of the Electricity Act, 2003 and the Orders/Regulations of DERC. However, no interest is being paid on the

security deposit made by the Petitioner. In fact, the amount of security deposit is also not being reflected in the bills of the Petitioner.

b) that vide Order dated 23.04.2007 in Petition No's 78/2004, 79/2004 and 80/2004, this Commission held that "the Commission is of the opinion that as a matter of equity and fairness, the benefit of interest accrued on the security deposit should be given to all consumers irrespective of whether such consumers have become consumers before or after the Electricity Act, 2003 and such sum is held with DPCL or the Discoms. The provisions of Section 47 (4) call upon the payment of interest on consumer deposits paid by the consumers for the purpose of procuring supply of energy. All the consumers, therefore, are entitled to interest on such security deposits."

c) that vide notification dated 23.03.2015, this Commission made amendments to "Delhi Electricity Supply Code and Performance Standards Regulations, 2007".

"(5) Interest on security Deposit

a) *The amount of security deposit shall be as per the Regulation 29 or as approved by the Commission from time to time. The licensee shall pay interest to the Consumer at the rate of 6% per annum, or any other rate prescribed by the Commission payable annually on such deposit w.e.f. date of such deposit in cases of new connections energized after the date of this notification or in other cases, from the date of notification of these regulations. The interest during the year shall be adjusted in the bill for the first billing cycle of the ensuing financial year."*

d) that Regulation 20 (Security Deposit) of Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017, states as under: -

"(3) The Licensee shall pay to the consumer interest on the security deposit at the rate and as per the procedure notified in the Commission's Orders:

Provided that no interest shall be paid to the consumer who has furnished security deposit in the form of bank guarantee.

(4) The interest accrued during the year shall be adjusted in the bill for the first billing cycle of the ensuing financial year."

- e) that it is amply clear that interest at least at the rate of 6% per annum is to be paid/credited in the bills of the consumer. This is being done in most of the cases of the consumers and the amount of security deposit is being reflected in the bills of the consumers. However, no interest is being paid on the security deposit made by the complainant. In fact, the amount of security deposit is also not being reflected in the bills of the complainant.
- f) that it has deposited the amount of security deposit to a tune of Rs. 16 Lakh at the time of sanction of the electricity connection, however, the Respondent is not paying interest on the security deposit amount of Rs. 16 Lakh rather it is paying interest on security deposit of a lesser amount of Rs. 3.7 Lakh.

3. The petitioner through this petition has prayed for the following reliefs:

- a) That that Respondent may kindly be penalized in terms of Section 142 of the Electricity Act, 2003 for violation of Section 47(4) of the Electricity Act, 2003 and DERC Orders and Regulations in not making payment of interest on security deposit.
- b) They may also kindly be directed to pay suitable compensation to the complainant
- c) Any other relief/(s) which the Commission may deem fit and proper in the circumstances of the case.

4. **RESPONDENT'S SUBMISSION:**

- a. that as such by operation of law, GoNCTD/DPCL is liable to pay interest on the proportion of consumer security deposit apportioned. In the alternative, if the Respondent has to pay interest thereon in terms of Section 47(4) of the Electricity Act, 2003 over and above the funds allocated to the Respondent, it would result in burden on the cash flow of the Respondent and the Respondent's functioning would be adversely affected to the detriment of its consumers.
- b. the present Petition is liable to be dismissed on the ground that there has been no contravention on the part of the Respondent of any of the

provisions of the Act or the rules or regulations made thereunder, or any directions issued by the Commission as the subject matter of the present complaint is pending for adjudication by the High court of Delhi.

- c. that the Respondent did not inherit the entire amount of consumer security deposit from DPCL related to the consumers of the Respondent. Since the entire consumer security deposit is not available with the Respondent, the Respondent is liable to pay interest only on the proportion of consumer security deposit apportioned to the Respondent. However, while an amount of Rs. 10 crores were transferred to the respondent towards the consumption security deposit, in spite of repeated requests, GoNCTD/DPCL failed to give any details regarding such amount transferred. In the absence of details to this effect from GNCTD/DPCL, the Respondent is unable to comply with the orders and regulations of the Commission.
- d. that the complainant as a consumer of the Respondent belongs to the period prior to the unbundling of DVB, inherited by the Respondent. It is hereby reiterated that none of the details regarding the consumer security amount transferred to the respondent is available with the Respondent. Therefore, no security deposits is being to the consumers belonging to DVB and inherited by the Respondent post unbundling.
- e. Response on violations as alleged by the Petitioner are summarized as under:
 - i. That the present complaint filed by the complainant as well as initiation of the proceedings under Section 142 of the Electricity Act, 2003 including issuance of Show Cause notice is barred by law of limitation/delay and laches. It has submitted that the complainant is seeking to take advantage of the passage of time of approx. more than approx. 17 years since the actual cause of action arose. Even as per admission of the complainant allegedly deposited the dispute relates to year 2001.
 - ii. It is also important to mention that till 2014 i.e. in last 13 years prior, not a single communication is issued by the complainant raising any

grievance relating to non-reflection of the alleged security deposit or any interest thereon.

- iii. In response to the main allegation of Petitioner without prejudice it is submitted that even today, if Original conclusive proof of realisation of the alleged amount of Rs. 16,00,000/- (Rupees Sixteen Lacs) deposited by the Complainant towards the security deposit in favour of erstwhile DVB/DESU is provided, the Respondent undertakes to consider to give appropriate adjustment for the same. It is submitted that there is bonafide dispute relating to the alleged deposit of the security deposit and realisation of the said amount in accounts of erstwhile DVB/DESU prior to privatization in year 2002. Neither any such details, documents of receipt of said amount was provided by erstwhile DVB at the time of transfer to the Respondent nor such amount is reflected in accounts provided by erstwhile DVB at the time of transfer. Hence, there is no violation of Section 47(4) of Electricity, Act, 2003.
- iv. that for alleging violation of Section 47 (4) of EA, 2003, it has to be proved that whether the complainant has actually deposited the amount with DVB and same is matter of trial and incidentally the petitioner has filed a civil suit with similar prayer. Therefore, in garb of complaint for violation of Electricity act, complainant cannot be allowed to file a complaint to assert a fact, specific to his own case, which could be subject matter of trial, but same cannot be made an issue to be decided under Section 142 of the Electricity, Act, 2003.
- v. It remains unanswered that whether security deposit of 525 KW stand refunded before unbundling of DVB as the CA account was reflected nil security deposit. Further, it is not clear, why balance security deposit against sanctioned load of 275 KW was not reflecting in the CA, account. Why the Petitioner waited for so long and approached respondent in 2014 i.e. after 13 years, to assert for alleged security deposit and interest thereon.
- vi. In the event a consumer submits conclusive proof of payment with the Respondent, the Respondent can process the refund. However,

in the present case the Petitioner has failed to produce any conclusive proof of payment towards the alleged security deposit.

5. COMMISSION'S ANALYSIS:

The Commission, after careful consideration of the issue raised by the Petitioner, reply filed by the Respondent, rejoinder filed by the Petitioner and after perusal of the provisions in the Electricity Act, 2003 and Regulation in force as well as the oral submissions made by the parties during the hearing, observes as under:

a) Maintainability: The Respondent in its reply to the Show Cause notice has submitted that the present complaint filed by the complainant as well as initiation of the proceeding under Section 142 of the Electricity Act, 2003 including issuance of Show Cause notice is barred by law of limitation/delay and laches. It has submitted that the complainant is seeking to take advantage of the passage of time of approx. more than approx. 17 years since the actual cause of action arose. Even as per admission of the complainant allegedly deposited the dispute relates to year 2001. It has also submitted that till 2014 i.e. in last 13 years prior, not a single communication is issued by the complainant raising any grievance relating to non-reflection of the alleged security deposit or any interest thereon.

b) On the Issue of maintainability of the Petition on the ground of limitation, it is pointed out that the Electricity Act, 2003 is a special Act and does not provide for any period of limitation for filing of the application before the Commission. The Limitation Act, 1963 (the Limitation Act) consolidates the law for limitation of suits and other proceedings. The Hon'ble Supreme Court has consistently held the view that the provisions of the Limitation Act are not applicable to the proceedings before the quasi-judicial bodies and tribunals.

In *Sakuru Vs Tanaji* [(1985) 3 SCC 590] the Hon'ble Supreme Court held that the Limitation Act does not apply to the appeals or applications before quasi judicial Tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under Code of Civil Procedure or Criminal Procedure Code, as per the observations extracted below:

“...the provisions of the Limitation Act, 1963 apply only to proceedings in “courts” and not to appeals or applications before bodies other than courts such as quasijudicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under the Codes of Civil or Criminal Procedure. The Collector before whom the appeal was preferred by the appellant herein under Section 90 of the Act not being a court, the Limitation Act, as such, had no applicability to the proceedings before him...”

c) The Electricity Act, 2003 is an exhaustive code and the provisions of Civil Procedure Code do not strictly apply to the proceedings before the Commission. The Commission is well within its right to decide on its own procedure which satisfies the principles of natural justice and transparency. Accordingly, the Commission in the present case admitted the Petition by issuing Show Cause notice vide its Interim Order dated 05.12.2019 since it was observed that the Respondent is in violation of Section 47(4) of the Electricity act, 2003 by not paying interest on the entire amount of Security deposit. Hence, the issue of maintainability of the Petition cannot be raised at this juncture.

d) Notwithstanding the fact that the Limitation Act does not govern the proceedings before the quasi-judicial authorities like the Commission, it is to be examined whether there has been an unreasonable delay on the part of the petitioner approaching the Commission for adjudication of dispute. The dispute pertains to the claim of getting interest on security deposit for the period from 2002, admittedly, the Petition before the Commission was filed on 25th May 2019. However, this issue of security deposit was raised by the Respondent for the first time in the year 2009, when it was informed to the complainant that there is no security deposit reflecting in its account and the electricity is liable to be disconnected. It is then that the complainant approached the Respondent and submitted the documents and paid an additional amount of security deposit amounting to Rs. 3,09,000/-. As regards the amount of Rs. 16 Lakh already submitted by the Petitioner, no reply was given by the Respondent when enquired about the same. Thereafter, a suit was filed in the year 2016 by the Petitioner. Hence, it cannot be said that the Petition is barred by limitation.

- e) The basic defence of the Respondent is that it has not received any documentary evidence from the predecessor entity, DVB about security deposit of 16 lakh by the Petitioner, nor the same amount as such in the name of the Petitioner was transferred to the Respondent by DVB. Unless a conclusive proof for deposit of Rs. 16 lakh is provided by the Petitioner, it would not be possible to pay interest on the amount. On this issue raised by the Respondent that if original conclusive proof of realisation of the alleged amount of Rs. 16,00,000/- (Rupees Sixteen Lakh) deposited by the Complainant towards the security deposit in favour of erstwhile DVB/DESU is provided, the Respondent undertakes to consider to give appropriate adjustment for the same, the Commission observes that from the available documents, as submitted by the Petitioner i.e. the copies of the Demand Note and pay order of Rs. 16 lakh, it prima-facie appears that the Petitioner has deposited a sum of Rs. 16 lakh to DVB through a pay order No. 211326 dated 23.05.2001 and not through cheque and therefore, it is for the Respondent Discom to establish that the sum was not received by it. It is required to pay interest on the amount of Rs. 16 lakh also being a successor entity.
- f) The Commission has also considered the argument of the Respondent that it did not inherit the entire amount of consumer security deposit from DPCL related to the consumers of the Respondent; and since the entire consumer security deposit is not available with the Respondent, the Respondent is liable to pay interest only on the proportion of consumer security deposit apportioned to the Respondent. It has further argued that while an amount of Rs. 10 crores were transferred to the Respondent towards the consumer security deposit, in spite of repeated requests, GoNCTD/DPCL failed to give any details regarding such amount transferred. In the absence of details to this effect from GNCTD/DPCL, the Respondent is unable to comply with the orders and regulations of the Commission. The aforesaid argument may indicate administrative difficulty of the Respondent and may require financial reconciliation between successor and predecessor but in no way it is affecting the right of the consumer to get interest on the Security Deposit made to its predecessor entity DVB. Financial reconciliation is not in the hands of consumers.

g) Considering all the facts as stated above, it is for the Respondent to pay interest on the security deposit made by the Consumer, irrespective of the fact whether the same amount of security deposit has been received from its predecessor or not. It is also for the Respondent to establish that the security deposit as claimed by the consumer was not actually paid. In a way the Respondent may be held liable for violation of the provisions of Regulation 20 of the SoP Regulations. However, it is also observed that the Petitioner has also filed a civil suit relating to the issue of alleged deposit of the amount of Security deposit with erstwhile DVB/DESU prior to privatisation and the same is pending adjudication before the ADJ, Rohini Court Delhi. (Civil Suit bearing no. 62056/2016). Since the issue in question is already engaging attention of the Civil Court, therefore let the matter be decided by the Civil Court, so as to precipitate the amount of security deposit on which interest is payable. Once it happens, the Respondent is supposed to adhere to the provisions of Regulation 20 of SOP Regulation, and in case the Respondent fails to do so, the Petitioner shall be at liberty to approach this Commission.

6. With the observations in the preceding paragraphs, the Petition is disposed of accordingly.

Sd/-
(A.K. Ambasht)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Justice S S Chauhan)
Chairperson