



## Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017

F.11 (1532)/DERC/2017-18

### **Petition No. 57/2017**

Under section 142 of the Electricity Act, 2003

**In the matter of:**

**Mohd Isa**

..... **Petitioner**

**VERSUS**

**BSES Yamuna Power Ltd.  
Through its: CEO**

.....**Respondent**

**Coram:**

**Hon'ble Sh. Justice Shabihul Hasnain 'Shastri', Chairperson  
Hon'ble Dr. A.K. Ambasht, Member**

### **Appearance:**

1. Shri Vinod Kumar Pandey, Advocate for the Petitioner
2. Shri Manish Kumar Srivastava, Advocate for the Respondent

### **ORDER**

(Date of Order: 28.02.2022)

1. The Petitioner, Mohd. Isa has filed the present Petition under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for imposing penalty upon the Respondent for contravention of various provisions and procedure laid down in Delhi Electricity Supply Code and Performance Standards Regulations, 2007.
2. The Petitioner in its petition has prayed for imposing the penalty to the Respondent Company for contravention of violation of the procedure laid down in the Regulations 52 (ix), 38 (c), 52(viii), 52 (vii), & Annexe – XIII of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 (hereinafter in short referred to as DERC Supply Code, 2007).

3. The Respondent in its reply against the notice issued by the Commission dealt with each violation under the DERC Supply Code, 2007, as alleged by the Petitioner.
4. On the last date of hearing i.e. on 02.12.2021, both the parties had made their submissions and completed their arguments. It is also observed that the instant petition is pending for disposal for more than four years. Both parties have also filed their respective pleadings and concluded their arguments.
5. The Hon'ble Appellate Tribunal for Electricity in Judgment dated 19/04/2011 in Appeal No 183 of 2010 BRPL Vs. DERC has laid down the procedure to be followed u/s 142 of electricity act 2003 including issuance of show cause notice containing specific allegations.
6. However, in the instant Petition the Commission observed that the Petition is pending for disposal for more than four years. The Parties have completed their pleadings as well as their submissions. Respondent has dealt with each and every averment of the Petition. On the last hearing both parties agreed to conclude their submission.
7. The Hon'ble Supreme Court of India on 20.11.2008 in the matter of Sambhaji & Othes vs Gangabai & Others, (MANU/SC/8299/2008) held that

*".....A procedural law should not ordinarily be construed as mandatory, the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed."*

In another judgement the Hon'ble Supreme Court of India in State of Guajrat Vs Rampraksh P. Puri (1970 (2) SCR 875 stated that;

*"procedure has been described to be handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rule of procedure, this rule demands a construction which promote this cause."*

8. The Commission referred to Black's Law Dictionary (6th edition) where "adjudication" has been defined as here under: -

*"Adjudication. - The legal process of resolving a dispute. The formal giving or pronouncing a judgment or decree in a court proceeding; also the judgment or decision given. The entry of a decree by a court in respect to the parties in a case. It implies a hearing by a court, after notice, of legal evidence on the factual issue(s) involved."*

9. Accordingly, for the above reasons the Commission decided that the instant petition may be decided without issuing any formal show cause notice to the Respondent. The findings of the Commission are as follows:

**(a) Violation of Regulation 52 (ix) DERC Supply Code, 2007.**

*Regulation 52 (ix) stipulates as under;  
"The report shall be signed by the Authorized Officer and each member of the inspection team and the same must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post:"*

The Petitioner has alleged that neither the inspection report nor the Seizure memo was prepared at site nor a copy of the inspection report was pasted at a conspicuous place in/outside the premises nor photographed.

The Respondent has denied that he has contravened Regulation 52(ix) DERC Supply Code, 2007.

On perusal of inspection report and seizure memo, it is found that consumer has refused to sign on these documents. The Regulation stipulates that in case of refusal to sign by the consumer or his/her representative to either accept or give a receipt, a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. However, Respondent has not produced any document to counter the allegation in this regard nor has produced any documentary evidence to show that the reports were ever dispatched. Therefore, the Respondent is held liable for violation of Regulation 52 (ix) DERC Supply Code, 2007.

**(b) Violation of Regulation 38 (c) of DERC Supply Code, 2007;**

Regulation 38(c) stipulates as under:

“38. Testing of meters

(c).....The consumer shall be informed of proposed date and time of testing at least two days in advance.”

The Petitioner has alleged that on 13.02.2017 the officer of the Respondent company had removed the old meter No. 17012750 and due to suspected case of meter tampering and also installed the new meter No. 17482223; but meter replacement particulars and meter lab testing date was not provided by the Respondent company with malafide intention.

The Respondent has submitted that the petitioner was intimated the date of meter test in the lab to be 22.02.2017 and the Petitioner duly signed on the letter and provided their telephone number on the intimation letter.

The Commission observed that the regulation provides a prior intimation should be given to the Consumer informing about the date and time of testing so that the Consumer or his authorized representative could be present during meter testing. On perusal of letter dated 13.02.2017, it transpired that defective meter bag No. 701379 was sealed and a new meter bearing no. 17482223 was installed in presence of the petitioner. The Petitioner was also informed that the meter was sent to Meter Testing Laboratory located at Savita Vihar Sub station, Near LSC Main Market, Savita Vihar, New Delhi -110092 and will be de-sealed in the presence of Petitioner on 22.02.2017 at 04.00 PM and he can be a witness to the investigation/testing process either in person or through authorized representative. The Petitioner has not given any reason for his absence on the date given in the letter. The letter also bears the signature of the Petitioner and also a telephone number to contact for further assistance. The content of the letter was also explained to the Petitioner. But the Petitioner did not explain in the Petition the reason for not contacting the number given in the letter and also the reason for his absence.

In this regard reliance is placed on the judgement of the Hon'ble Supreme Court of India on 11.09.2019 in Civil Appeal No. 2896 of 2009 Raja Ram Vs

Jai Prakash Singh & Others, (AIR 2019/SC/4374). The Hon'ble Supreme Court held that

*"16. .... The primary ingredients of the law need to be first established by Proper pleading supported by relevant evidence. Cases cannot be decided on assumption or presumption. ...."*

Therefore, it is clear that the Petitioner was well informed in advance, of the date and time of meter testing, however, he chose not to contact on the number given in the letter nor he attended the Meter Testing laboratory on 22.02.2017. Therefore, the Respondent cannot be held liable for violation of 38 (c) of DERC Supply Code, 2007.

**(c) Violation of Regulation 52 (viii) DERC Supply Code, 2007**

Regulation 52 (viii) stipulates as under:

*"..... The old meter shall be tested in a NABL accredited laboratory and the laboratory shall give a test report, in writing, which alongwith photographs/ videographs shall constitute evidence thereof. The list of NABL accredited laboratories shall be notified by the Commission. The Authorised Officer shall record reasons to suspect theft in the premises in his report."*

The grievance of the Petitioner is that the suspected meter was tested in the Respondent Company in its own laboratory and not in the NABL accredited laboratory. He also submitted that Regulation 52 (viii) of DERC Supply Code, 2007 and Order No. F17(243)/Engg./DERC/2014-15/4773/474, dated 21.05.2015 of the Commission which stipulates that the old meter shall be tested in a NABL accredited laboratory. He further submitted that Order bearing No. GNCTD/PGC/Power (225)/1849 dated 08.12.2015 of GoNCTD states that the old meter shall be tested in Electronic Regional Test Laboratory which is recognized by GONCTD.

The Respondent submitted that DERC approved Electronic Regional Test Laboratory (ERTL) as NABL accredited laboratory for testing of meter on 07.09.2018. He further submitted that he wrote several letters to the Commission that ERTL is not accepting meters and require some more time as some clarifications are yet to be addressed by Public Grievance Cell. They had no other option but to get test the meters tested in NABL, accredited BYPL laboratory till the time ERTL agreed to accept the meters of the Respondent.

Admittedly, in the present case, the investigation was carried out on 13.02.2017. The NABL accredited laboratory for testing the meter for tampering had been notified by the Commission on 08.12.2015. It is a fact that NABL accredited laboratory i.e. ERTL was not accepting the meter to test due to pendency of finalization of the terms and conditions. The Commission thereafter on 07.09.2018 again notified ERTL to test old meter under new DERC Supply Code, 2017. Hence, the said violation cannot be attributed to the Respondent for not sending the meter to the notified NABL accredited laboratory in terms of Regulations 52 (viii) DERC Supply Code, 2007 as it could not be complied with for the reasons mentioned above.

In view of the above, the Respondent cannot be found guilty for the failure to send the meter to Commission's approved NABL accredited Laboratory which was not available.

**(d) Violation of Regulation 52 (vii) DERC Supply Code, 2007**

The Regulation 52 (vii) stipulates as under;

*"In case sufficient evidence is found to establish direct theft of electricity, Licensee shall disconnect the supply and seize all material evidence including wires/cables, meter, service line etc., from the premises and within two days from date of inspection, file a case against the consumer in designated Special Court as per the provisions of section 135 of the Act. Copy of filing shall be served on the consumer under proper receipt within two days of such filing."*

The Petitioner has alleged that the Respondent has failed to consider that neither a case of theft of electricity was filed in the Special Court by the Respondent company nor any FIR was registered by the Respondent within two days from the date of inspection of the case.

The Respondent submitted that complaint had been duly lodged in police station Sadar bazar on 07.07.2017 vide DD No. 46-B and on 15.02.2018.

On perusal of the enforcement inspection report it is observed that the inspection of the premises has been carried out on 03.04.2017. As per the submission of Respondent, it is established that the Respondent has not filed complaint within two days from date of inspection against the consumer in

designated Special Court, as stipulated under the Regulation 52 (vii) of DERC Supply Code 2007, thereby committed a violation of Regulation 52(vii). Therefore, the Respondent is held liable for violation of 52 (vii) of DERC Supply Code Regulation 2007.

**(e) Violation of Regulation 52 (vii) read with of Annexe – XIII of DERC Supply Code, 2007**

*Regulations 52(vii) read with Annexe-XIII stipulates as under:  
“The Licensee shall also assess the energy consumption for past twelve (12) months as per the assessment formula prescribed in ANNEXE-XIII and prepare final assessment bill on two times the rates as per applicable tariff and serve on the consumer under proper receipt.”*

With regard to allegation for contravention of Annexe XIII of DERC Supply Code 2007, the Petitioner submitted that while passing the theft assessment bill, the Assessing Officer of the Respondent Company has failed to consider that the assessment of energy in this case has not been done correctly on the formula of L x D x H x F as provided in the Annexe – XIII of DERC Supply Code, 2007. The Petitioner was using the supply through meter and also indicating MDI and consumption in regular bill and as per own speaking order of the Respondent Company that the average recorded consumption is found as 81.91% of the assessed consumption but the theft assessment (DAE) bill has been issued illegally.

Per contra, the Respondent submitted that the Respondent has clarified that the final assessment bills dated 02.05.2017 as well as the revised final assessment bill dated 17.11.2017 were prepared as per the assessment formula prescribed in Annexe XIII. It is admitted by the Respondent that as per the first speaking order, the average recorded consumption was erroneously mentioned as 81.91%, however, the speaking order was revised on 16.11.2017, and the bill was revised on 17.11.2017. The revised average recorded consumption was found to be 39.91% of the alleged consumption and therefore a revised bill for Rs. 10,51,741/- was issued.

The Commission is of the view that consequent to revision of the erroneous average consumption of the first speaking order in subsequent speaking order dated 16.11.2017 and the bill was accordingly revised on 17.11.2017 and since the Respondent has corrected his previous speaking order,

therefore, the Respondent cannot be held liable for the contravention of the provision of Annexe – XIII of DERC Supply Code, 2007.

**(f) Violation of Proviso to Regulation 52 (ix) of DERC Supply Code, 2007**

The proviso to Regulation 52 (ix) of DERC Supply Code, 2007, stipulates as under:

*“Provided that in case of suspected theft, if the consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption, no further proceedings shall be taken .....*”

The Petitioner has submitted that consumption in this present case is more than 84% and in such circumstances by virtue of Sub-Regulation 52(ix) of DERC Supply Code, 2007 prima facie, no case of DAE is made out and the Respondent company has contravened of the DERC Regulations 52 (ix) of DERC Supply Code, 2007.

The Respondent has submitted that the revised average recorded consumption was found to be 39.91% of the alleged consumption, and therefore, a revised bill for Rs. 10,51,741/- was issued.

On perusal of documents it is observed that the revised speaking order dated 16.11.2017, the average recorded consumption was found to be 39.91% and the bill was revised to Rs. 10,51,741/-. Therefore, the Respondent cannot be held liable for violation.

10. For the reasons recorded above, the Commission imposes a penalty of Rs. 20000/- (Twenty thousand only) in respect of violation of Regulation 52 (vii) and 52(ix) DERC Supply Code, 2007. The amount of penalty to be paid within 30 days from the date of receipt of certified copy of the Order.
11. The Petition is disposed of and ordered accordingly.

**Sd/-**  
**(Dr. A.K. Ambasht)**  
**Member**

**Sd/-**  
**(Justice Shabihul Hasnain 'Shastri')**  
**Chairperson**