



Delhi Electricity Regulatory Commission

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

F.11(1801)/DERC/2020-21

Petition No. 33/2020

Under section 142 of the Electricity Act, 2003

Parmod Kumar Gahlawat

..... **Petitioner**

Versus

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

.....**Respondent**

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson

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

Appearance:

1. Mr. Vinay Gupta, Advocate for the Petitioner
2. Mr. Imran Khan, Advocate for the Petitioner
3. Mr. Manish Kumar Srivastava, Advocate for the Respondent

ORDER

(Date of Order: 21.07.2022)

1. The Petitioner, Mr. Pramod Kumar Gahlawat has filed the present Petition under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd., for violation of the procedure as laid down in the Regulations of Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 (hereinafter in short referred to as DERC Supply Code,2017) while booking a case of meter tampering against the Petitioner.
2. The Petitioner in the Petition has prayed for imposing penalty on the Respondent Company for contravention of various provisions of the DERC Supply Code,2017 and to give directions to the Respondent to pay adequate and proper compensation to the Petitioner against harassment, loss and mental agony caused thereto in the matter.

WEAR FACE MASK

WASH HAND REGULARLY

MAINTAIN SOCIAL DISTANCING

3. The Respondent in its reply against the notice issued by the Commission refuted the allegations made by the Petitioner.

4. On the last date of hearing on 07.06.2022, both the parties had made their submissions and completed their arguments. Considering the submissions and arguments put forth by the parties, the findings of the Commission are as follows:

a. With regard to allegation for violation of Regulations 32(8)(i), (ii) (iii), (v), 56 (4), 57 (1), (2,) (3,) (4), (5) and (6) of DERC Supply Code, 2017,

Petitioner has alleged that meter was not tested in an accredited lab notified by the Commission. He further stated that during inspection at site the meter testing report has not been prepared at site as per standard format and not handed over to consumer and no lab testing notice was served to the Petitioner. His contention is that the meter in question was neither seized nor tested in presence of consumer.

Per contra, the Respondent has submitted that an advance notice for testing of Removed meter in NABL accredited lab was served on the Petitioner. Meter testing report of CA No. 103278439 was prepared as per the Regulation and necessary videography was done by m/s Arora Photo Studio at site and the Petitioner duly acknowledged the report by signing on it. However, the Petitioner had refused to sign on the Enforcement Inspection Report. Subsequently, the inspection report was sent by speed post vide speed post. Inspection of Petitioner's premises is done by the authorized inspection team and meter testing report is prepared as per the Regulations and same was duly acknowledged by the Petitioner or his representative.

The relevant provisions of the Regulation 32(8)(ii, (iii) and 56 (4) of DERC Supply Code, 2017 are given below;

Regulation 32 (8) (ii)

"The Licensee shall remove the meter from site/consumer's premises and seal it in the presence of the consumer or his representative in a container affixing thereon paper seals which shall be signed by both the parties. In case the consumer refuses to sign the paper seal, the same shall be photographed and videographed."

Regulation 32 (8) (iii)

"The Licensee shall schedule a date and time for the testing of meters with the accredited laboratory notified by the Commission and shall give at-least 3 (three) days prior notice to the consumer, intimating the date

and time of testing so that the consumer or his authorized representative, if so desires, can be present during such testing.”

Regulation 56(4)

“The Assessing officer shall prepare an inspection/site report as per the provisions under these Regulations.”

The contention of Respondent that the meter got tested in Yadav Measurements Private Limited Lab, which is an accredited Lab, but not notified by the Commission, which in the circumstances due to lack of labs notified by the Commission and due to lack of resources at ERTL laboratory, the Respondent had been constrained and had to forward the suspected meter for testing to the Yadav Measurements Private Limited. We agree to the contention of the Respondent. The meter testing report shows that the Petitioner had signed on the meter testing reports whereas on inspection report the Petitioner had refused to sign. In such cases, the Respondent has to do the photography and Videography. The Petitioner also in its Petition admitted that photography & videography was done by the Respondent during the inspection of site.

On perusal of Lab testing notice of removed meter dated 06.11.2019, it is seen that the lab testing notice bears the signature of the Petitioner. In the above notice it is recorded that meter got sealed in a gunny bag in presence of the Petitioner on 06.11.2019 and kept in safe custody. Further, in the above notice it is also mentioned that the meter will be de-sealed and tested in the laboratory in the presence of the Petitioner or his authorized representative on 19.11.2019 during 10.30 AM to 01.00 PM or 02:00 pm to 03:00 pm. He could be a witness to the investigation/testing process either in person or through authorized representative. A telephone number is also given to contact for further assistance. In the Lab testing notice the name of laboratory is mentioned as MMG laboratory energy meter located at Sub Station No. 15, Sector No. 7, Pusa Vihar, New Delhi – 110017 whereas as per Energy Meter Testing Report the name and address of Laboratory is mentioned as Yadav Measurements Private Limited, 49-B, Ground Floor, Pocket – K, Near Vocational College, Sheikh Sarai, Phase-II, New Delhi – 110017 and the meter was tested on 09.12.2019 in Yadav Measurements Pvt. Ltd, a NABL accredited laboratory. During arguments the Respondent admitted that

the notice has not been served in the manner it should be with respect to the date of meter testing & name and address of the Lab Testing laboratory. The Commission, therefore, found discrepancies in the notice in terms of DERC Supply Code, 2017. Hence, the violations of the Regulation 56(4) as mentioned at Para 4 (a) above is attributable to the Respondent.

- b. With regard to the violation of Regulation 58(1) (ii) of DERC Supply Code,2017,** the Petitioner has alleged that no show cause notice was issued to the Petitioner. The Respondent has submitted that DERC Supply Code 2017, does not mandate to send Show Cause Notice in the cases booked under section 135/138 of the Electricity Act, 2003.

Regulation 58(1) (ii) provides as under:

“(ii) Serve a notice along-with a provisional assessment bill and copy of videography of inspection, within 7 (seven) days from the date of inspection or date of receipt of meter testing report, if required, whichever is later, to the consumer giving reasons as to why a case of unauthorised use of electricity is being initiated against him. The notice should clearly state the time, date and place at which the reply has to be submitted and the designation of the person to whom it should be addressed.”

As stipulated under Regulation 58(1)(ii) a notice along with provisional assessment bill and a copy of videography of inspection is to be served upon the Petitioner within 7 days from the date of inspection or date receipt of meter testing report in case of unauthorized use of Electricity U/s 126 of the Act. While perusing speaking order dated 23.12.2019 filed by the Respondent, it reveals that a theft case is established U/s 135 & 138 of Electricity Act, 2003. Therefore, it is held that the Respondent is not liable for violation of the Regulation 58 (1) (ii).

- c. With regard to the violation of Regulation 58(3) (i) & 58(4) (i) of DERC Supply Code,2017,** the Petitioner has alleged that, no opportunity has been provided to the consumer for personal hearing, neither any provisional assessment bill issued was handed over/sent to the consumer.

Regulation 58(3) (i) provides as under:

“(i) The Assessing officer shall arrange a personal hearing with the consumer or his authorized representative within 7 (seven) days from the date of filing of consumer's objections.”

Regulation 58(4) (i) provides as under:

“The Assessing officer shall pass a final assessment order within 30 (thirty) days from the date of service of the order of provisional assessment of the electricity charges payable by such person.”

Since the theft of Electricity is established under section 135 and 138 of Electricity Act, therefore Regulation 58 (3)(i) and (4)(i) are not applicable. Therefore, the Respondent cannot be held liable for violations of Regulation 58 (3)(i) and (4)(i).

d. With regard to the violation of Regulation 61(2), (3),(4) and (5) of DERC Supply Code,2017, the Petitioner has alleged that never any Speaking Order was passed & issued to the consumer. The Respondent has submitted that consumer has tried to manipulate the consumption of the meter by changing the feeding load of the meter. Consumption has been non uniform and increased after meter replacement. Thus, the Assessing officer on the basis of consumption pattern passed a Speaking Order on 23.12.2019, substantiated the case of theft of electricity.

Regulation 64(3) provides as under:

“If the Assessing officer, on the basis of Inspection Report, consumption pattern, results of meter testing, comes conclusion that it is prima facie a case of theft of electricity, procedure as specified in the Regulation 62 & Regulation 63 shall be followed:

Provided that the Assessing officer shall pass a Speaking Order substantiating the case of theft of electricity within 7 (seven) days of meter testing report.”

The Respondent had again inspected the premises on 18.12.2019 after Energy Meter Testing Analysis Report and prepared an Enforcement Inspection Report at site. The Petitioner refused to sign on the inspection report and the refusal to sign was also recorded on the Report. The record also shows that the respondent had dispatched the Enforcement Inspection Report on the address of Petitioner. Thereafter, on 23.12.2019, the Assessing Officer on the basis of Enforcement Inspection Report passed a speaking order within the 7 (seven days) of Energy Meter Testing Analysis Report as stipulated under the Regulation, 2017 and dispatched the speaking order to Petitioner. The copy of the speaking order and Enforcement Inspection Report are also placed on the record along with dispatch receipts. Hence, the Respondent cannot be held responsible for aforesaid violations of Regulation.

5. For the reasons recorded above, it is held that the Respondent has violated Regulation 56(4) of DERC Supply Code, 2017. Accordingly, Rs 10,000/- (Ten Thousand only) is imposed as penalty on the Respondent for the said violation.

6. The Petition is disposed of and ordered accordingly.

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

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