



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

F.11(1798)/DERC/2020-21

**Petition No. 30/2020**

Under section 142 of the Electricity Act, 2003

**In the matter of:**

**Shashi Bala Aggarwal**

..... **Petitioner**

**Versus**

**BSES Yamuna Power Ltd.**  
**Through its: M.D**

.....**Respondent**

**CORAM:**

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

**Appearance:**

1. Shri Ajay Goyal, Representative for Petitioner
2. Shri Prateek Gupta, Advocate for Respondent

**ORDER**

(Date of Hearing: 12.10.2021)

(Date of Order: 23.11.2021)

1. The Petitioner Ms Shashi Bala Aggarwal has filed the present Petition under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for violation of the procedure laid down in the DERC (Supply Code and Performance Standards) Regulations, 2007.
2. Meanwhile the Petitioner fairly admitted that there has been an oversight and decided to conform to the new regulations and a revised Petition was filed for violation of the procedure of DERC (Supply Code and Performance Standards) Regulations, 2017 (hereinafter referred to as SOP Regulations, 2017). By filing the revised Petition, the earlier Petition has lost its efficacy and has become obsolete. Adjudication is being made on the basis of the new Petition. Subsequently, the Respondent has filed its Reply to the new Petition.
3. After considering the submissions made by the Respondent and after being satisfied by the Commission that the Respondent has prima facie violated the provisions of SOP Regulations, 2017, vide Interim Order dated 30.07.2021, a Show cause notice was issued to the Respondent for violation of Regulation 32 (8) (i), (ii),

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**WEAR FACE MASK**

**WASH HANDS REGULARLY**

**MAINTAIN SOCIAL DISTANCING**

(v); Regulation 34 (2); Regulation 61 (2); Regulation 64 (1); Regulation 64 (3); and Appendix-I of SOP Regulations, 2017.

4. The Respondent in its reply to the Show cause notice, wherein it has denied all the violations.
5. On the last date of hearing i.e. on 12.10.2021, both the parties had made submissions and completed their arguments. Considering the submissions and arguments put forth by the parties, the findings of the Commission are as follows:

**a) Violation of Regulation 32 (8) (i), (ii), (v) of DERC Supply Code, 2017.**

8) *Testing of tampered meter: -*

*(i) If the Licensee suspects a case of unauthorised use of electricity and theft of electricity through a tampered meter, the meter shall be tested in an accredited laboratory notified by the Commission for that purpose:*

*Provided further that in the absence of an accredited laboratory notified by the Commission, the meter shall be tested in any accredited laboratory other than that of the Licensee.*

*Regulation 32 (8) (ii) is as follows: -*

*(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) (v) is as follows: -*

*If at the time of handing over the sealed container with the meter for testing to the accredited laboratory notified by the Commission, it is found that the seal of the container is damaged or tampered or missing, in all such cases the licensee shall replace the meter at its own cost and shall not carry out any further proceedings or actions against the consumer on account of tampering or suspected tampering of the meter.*

The Petitioner has alleged that the meter shall be tested in an accredited lab notified by the commission. The commission vide order dated 05.09.2018 notified a lab "ERTL", Okhla, for carrying out testing of suspected tampered meter. However, the Respondent tested the meter in "Baroda Calibration Services" Karkardooma, which is not notified lab by commission. It has further alleged that the Meter testing was done on 13.01.2020 without any notice to consumer for rescheduling the testing. It is the allegation of the Petitioner that the meter has been opened already at Lab other than accredited Lab as notified by the Commission. Therefore, as per Regulation, the licensee shall not carry out any further proceedings or actions against the consumer on account of tampering or suspected tampering of the meter.

The Respondent has clarified that as per proviso to regulation, in absence of the accredited notified Lab, the meter can be tested by any accredited Lab. Until Jan'2019, the ERTL was not accepting any meters from the Respondents for testing. After 12.02.2019, again ERTL refused to accept the meters. On 15.5.2019,

the Respondent sought indulgence of this Commission. Therefore, the meter got tested in the accredited Lab (NABL accredited Lab).

The Commission observes that vide letter dated 15.12.2019, which has been placed on record by the Respondent, the Respondent has apprised the Commission that the ERTL was not accepting any meters from the Respondents for testing. Further, the Petitioner itself, in its petition has admitted that due to her old age she could not attend the meter testing dated 31.12.2019. Since she did not appear on the date provided for testing of meter by the Respondent, the meter was tested on 13.01.2020, in the absence of the consumer. Therefore, the Petitioner failed to establish the fact that the Meter testing was done without her prior knowledge.

The plain reading of the regulation provides that 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. In the instant case, the Petitioner was well informed in advance, of the date and time of meter testing, however, she did not attend the same due to her old age. The regulation also allows that an authorized representative can represent the consumer to attend meter testing. However, the Petitioner chose not to do so. Therefore, the Respondent cannot be held liable on this account for violation of Regulation 32 (8) (i), (ii), (v) of DERC SOP Regulations, 2017.

**b) Violation of Regulation 34 (2) of DERC Supply Code, 2017.**

*(2) In all such cases, where supply is restored without a meter, the Licensee shall give the same in writing to the consumer or his representative, indicating his full name, ID Card / Employee number with signature:*

*Provided that pending replacement of the meter, wherever the supply has been restored without a meter by the Licensee, a case of theft of electricity, shall not be booked for the period of supply without the meter, and Consumers complaint for replacement of suspected defective meter or burnt meter or stolen meter, shall be considered sufficient for this purpose.*

The Petitioner has alleged that the electricity supply to the premises of the Consumer was restored on 14.12.2019 without a meter, as the meter was burnt. However, as per Regulation, replacement of defective meter/burnt meter/stolen meter has not been complied with.

The Respondent has clarified that meter was not replaced on 14.12.2019, it was replaced on 16.12.2019. The visit was on a complaint by the neighbours and the officials of the Respondent duly checked the supply connection. The Respondent has denied that the meter was burnt by any action of the officials of the Respondent.

The Commission observes that the allegation made by the Petitioner that the Meter was replaced on 14.12.2019 is not supported by any documentary evidence/proof. In the Petition, the Petitioner herself has submitted that she is not sure of the exact date of power cut.

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 & Ors. has 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 assumptions or presumptions. ‘ ..... “

Per Contra the documents placed on record by the Respondent, i.e. Inspection report, seizure memo, form of Assessment of connected load etc. reflects that the Meter was burnt on 16.12.2019, and the electricity supply was immediately restored on the same date. Hence, the Respondent cannot be held liable for violation of Regulation 34 (2) of DERC SOP Regulations, 2017.

**c) Violation of Regulation 61 (2) of DERC Supply Code, 2017.**

*(2) All the material evidences such as tampered meter, tampered meter seal and artificial means used for illegal abstraction of energy and the documentary evidences etc., which are relevant to the case and found during the inspection, shall be seized under a seizure memo and sealed in the presence of the consumer or his authorized representative and be kept as a proof along with photography and video recording of the premises.*

The Petitioner has alleged that the report has been made by the officials at their office and not at site itself. It has been further alleged that the inspection report was not handed over to the consumer at the site and has been provided after filing of the instant petition. The seizure memo was neither signed by the consumer nor by the witnesses.

The Respondent has clarified that the authorized representative of the Respondent carried out the inspection of the premises on 16.12.2019 and duly seized the old meter. The said action was taken place in front of the consumer and at the site. The consumer duly signed the notice dated 16.12.2019, a copy of which was handed over to the consumer.

The Commission observes that the claim of the Respondent that the consumer duly signed the notice dated 16.12.2019, a copy of which was handed over to the consumer, is not reflected from the reports. It appears that the meter was not seized at the time of its removal on 16.12.2019, as no copy of the seizure memo to that effect was furnished to the complainant. Moreover, the Inspection report along with the Seizure memo report does not bear the signature of the Consumer. Hence, the Respondent has violated Regulation 61 (2) of DERC SOP Regulations, 2017.

**d) Violation of Proviso to Regulation 64 (1) of DERC Supply Code, 2017.**

*(1).....  
Provided that if the consumption pattern for last 1 (one) year is reasonably uniform and is not less than 75% of the assessed consumption, no further proceedings shall be taken and the decision shall be communicated to the consumer within 3 (three) days:  
Provided further that if the consumption pattern is uniform as above, the existing meter shall not be sent for any further testing.*

The Petitioner has alleged that since the consumption pattern for last one year is reasonably uniform, no further proceedings should have been taken in this case.

The Respondent has clarified that the analysis of electronic billing data revealed that meter was downloaded with inconsistent consumption which was not in consonance with maximum demand recorded by the meter. Further, the average consumption pattern as per a computer module worked out to 26.69%, which is less than the prescribed limit of the commission which also corroborates the finding of the lab report. Significantly, the reading and consumption recorded after the installation of a new meter indicates increase in consumption with respect to the corresponding period, confirming that the low recording of reading prior to meter change was due to the reason of usage of tampering methods by the complainant.

The Commission observes that the Respondent has assessed the average Consumption pattern of the consumer, as to whether it was uniform or erratic while booking a theft case. Hence, no violation of the provisions of Regulation 64 (1) of DERC SOP Regulations, 2017 is established.

**e) Violation of Regulation 64 (3) of DERC Supply Code, 2017.**

*(3) If the Assessing officer, on the basis of Inspection Report, consumption pattern, results of meter testing, comes to 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 Petitioner has alleged that the Speaking order has been passed on 19.02.2020 i.e. after 37 days from the date of meter testing. Therefore, there is a delay of 30 days for passing of the Speaking Order whereas it should have been passed within 7 days of Meter testing.

The Respondent has clarified that due to burden of number of cases where DAE cases are registered, the staff of Respondent is over-burdened and due to administrative exigencies, delay in passing speaking order has been caused. The respondent has made best endeavours for passing a speaking order at the earliest. Further, it is clarified by the respondent that the complainant is incorrect in calculating the days of delay as the definition of 'Days' Under Regulation 2 (23) Of DERC SOP Regulations, 2017 means working days and do not include gazetted holidays and weekends. Thus, it is submitted that there was less than 30 days of delay in passing the speaking order dated 19.02.2020 and the testing of the meter on 13.01.2020.

The Commission observes that the days mentioned in the SOP Regulations are working days and by calculation, the Respondent has not been able to demonstrate that Speaking Order was passed within inordinate delay. There is a delay of more than 20 working days in passing of the speaking Order whereas as per regulation it should have been passed within 7 days from the date of meter testing. Hence, the Respondent has contravened the provisions of Regulation 64 (3) of DERC SOP Regulations, 2017.

**f) Violation of Appendix-I of DERC Supply Code, 2017.**

*“Connected load” means aggregate of the manufacture’s rating of all energy consuming devices in the consumer’s premises, which can be simultaneously used. This shall not include the load of spare plug, sockets, load exclusively installed for firefighting purposes. Only heating or cooling apparatus shall be taken into account as per prevailing season (1st April to 30th September for cooling use and 1st October to 31st March for heating use).*

The Petitioner has alleged that both the heating as well as cooling apparatus has been taken into account, to arrive at total load of 13.841 KW while it should have been 6.841 KW for 1<sup>st</sup> April to 30<sup>th</sup> September and 7.981 KW for 1<sup>st</sup> October to 31<sup>st</sup> March.

The Respondent has clarified that assessment has been done on the basis of the Appendix I which provides the formula and in accordance with the connected load definition.

The Commission observes that the Assessment has been done based on the LDHF formula, hence no violation of Appendix-I of DERC SOP Regulations, 2017 is made out.

6. For the reasons recorded above, the Commission imposes a penalty of Rs. 20,000/- (Twenty thousand only) (Rs. 10,000/- for each violation) in respect of violation of Regulation 61 (2) and 64 (3) of SOP Regulations, 2017. The amount of penalty to be paid within 30 days of the order.
7. The petition is disposed of and ordered accordingly.

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

**Sd/-**  
**(Justice Shabihul Hasnain ‘Shastri’)**  
**Chairperson**