



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

F.11 (1667)/DERC/2018-19

Petition No. 14/2019

Under section 142 of the Electricity Act, 2003

In the matter of:

Shri Khosmendir Singh Gahunia

.... Petitioner

VERSUS

BSES Rajdhani Power Ltd.

Through its: CEO

.....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. Petitioner in person
2. Shri Manish Srivastava, Advocate for Respondent;

ORDER

(Date of Hearing: 22.09.2020)

(Date of Order: 15.10.2020)

1. The instant Petition has been filed by Shri. Khosmendir Singh Gahunia, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. for violation of the procedure laid down in the DERC (Supply Code and Performance Standards) Regulations, 2017 (hereinafter referred to as SOP Regulations, 2017).
2. The Petitioner has alleged that while booking the case of UUE (Unauthorized use of Electricity), the Respondent has violated provisions of Regulations of SOP Regulations, 2017.
3. After considering the submissions made by the Respondent and after being satisfied by the Commission that the Respondent has prima facie violated provisions of SOP Regulations, 2017, *vide* Interim Order dated 18.09.2019, a Show-cause notice was issued to the Respondent for violation of Regulation 55 (2); Regulation 56 (2) & (3); Regulation 56 (4); Regulation 57 (1), (2), (4), (3), (5), (6); 58 (1)(ii), Regulation 58 (3)(i); and Regulation 58 (4) (i) of SOP Regulations, 2017.

4. The Respondent in its reply to the Show cause Notice denied all the violations and submitted due procedure was adopted while booking UUE case against the Petitioner.
5. On the date of last hearing i.e. on 22.09.2020, both the parties made submissions and completed their arguments. Considering the submissions and arguments put forth by the parties, the Commission's findings are as follows:

(a) Violation of Regulation 55 (2) of SOP Regulations, 2017.

Regulation 55 (2) provides that: -

(2) The Licensee shall publish on its website, the list of the Assessing officers under section 126 of the Act, the Authorized officers under sub-section (2) of section 135 of the Act and the officers authorized by the Commission to disconnect supply under sub-section (1A) of Section 135 of the Act and shall display such list at prominent locations in its local offices

The Respondent has clarified that the list of Assessing Officers of the Respondent are published and available on the official website of the Respondent, which is accessible through WWW. Bsesdelhi.com. A Copy of the print out of the website has also been annexed by the Respondent. Whereas, the Petitioner stated that the list of assessing officers was uploaded at the website of the Respondent subsequently, however, no evidence in this regard was placed on record by the Petitioner.

The Commission observed that from the available records it cannot be categorically established whether list was already uploaded at the website at the time of inspection or it was uploaded subsequently. Hence, the Respondent may not be held liable for violation of Regulation 52(2) of the SOP Regulations, 2017.

(b) Violation of Regulation 56 (2) and (3) of SOP Regulations, 2017.

Regulation 56 (2) is as follows: -

(2) The Assessing officer shall carry his visiting card bearing his photograph and photo identity card issued under Regulation 55(3)

Regulation 56 (3) is as follows: -

(3) Photo ID shall be shown and the visiting card bearing his photograph shall be handed over to the consumer before entering the premises.

The Respondent has clarified that Mr. Parvinder Singh, Manager, led the enforcement team at the time of inspection on 16.04.2018. The said Mr. Parvinder Singh, Manager has filed specific personal affidavit deposing that he was carrying his identity card/visiting card and the same was shown to the person present at site. There is no reason as to why the official of the Respondent would not show their identity card. In fact, from the video graph, it is evident that no such objections were raised by said Mr. Malvin while

video-recording was done. It is only after satisfying himself regarding identity card/ visiting card, Mr. Malvin allowed the inspecting team to enter the premises.

The Commission observed that from the available evidences, it cannot be conclusively established whether ID cards were shown or not. Hence, the Respondent may not be held liable for violation of the provisions of Regulation 56 (2) and (3) of SOP Regulations, 2017.

(c) Violation of Regulation 56 (4) of SOP Regulations, 2017.

Regulation 56 (4) is as follows: -

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

The Respondent has clarified that the Inspection report was prepared at site by the enforcement team, Mr. Parvinder Singh, Manager personally prepared the inspection report in his own handwriting and the same was offered to the person present at site. To this effect Mr. Parvinder Singh, Manager has made statement on oath and there is no reason to disbelieve his statement. It has further submitted that the Complainant, had submitted his response dated 14.05.2018 to provisional Assessment Order dated 01.05.2018 but no such allegation was made by the Complainant in the said response. In fact, the Complainant admits that the inspection report was received by him but nowhere prior to filing the present complaint has alleged that the inspection report or other documents were not prepared by the inspection team. This only shows that when his illegal demands to drop the case of misuse against him were not met, as an afterthought, he has started levying such unsubstantiated allegations.

The Commission observed that the claim of the Respondent that the Inspection report was prepared at site by the enforcement team, is not reflected in the video provided by the Respondent. Therefore, the Respondent has failed to corroborate their plea that the reports were made at site. Hence, the Respondent has violated the provisions of Regulation 56 (4) of SOP Regulations, 2017.

(d) Violation of Regulation 57 (1), (2), (3), (4), (5), (6) of SOP Regulations, 2017.

Regulation 57 (1), (2), (3), (4), (5), (6) is as follows: -

(1) In the event of detection of unauthorized use of electricity, the Assessing officer shall prepare a detailed Report at site, in the manner as prescribed in the Commission's Orders.

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

(3) A detailed description of the material seized, including date, time and place and name & address of witnesses to the seizure shall be recorded on the exterior of the cover and signatures of all witnesses shall be affixed on the sealing points:

Provided that if the witness refused to sign, the same shall be recorded in the report and captured in the videograph.

(4) The Inspection Report shall be signed by the Assessing officer and a copy of the same shall be handed over to the consumer or his representative at the site immediately under proper acknowledgement. The other persons present at site may also sign the inspection report.

(5) If consumer or his representative at site refuses to acknowledge and/or accept the copy of the report, a copy of the report shall be pasted at a conspicuous place in or outside the premises and photographed and video recorded. Another copy of the same report shall be sent to the consumer under Registered Post or Speed Post or electronically on the same day or on the next day of the inspection.

(6) The Inspection report shall form the basis for further action as per the provisions contained in Regulations.

The Respondent has clarified that as far as Regulation 57(5) and (6) are concerned, it is submitted that the inspection report was offered but the same was not accepted by the person present at site on behalf of the registered consumer/user and the person present also did not allow the inspection team to paste the same at the premises. To this effect the affidavit on oath of the assessing officer has been filed. As far as dispatch of inspection report is concerned, it is matter of record of the registered post was dispatched on 18.04.2018. The delay of one day was only attributable to the fact. It has further clarified that time period of one day as prescribed under the Regulation 57 for sending inspection report is merely procedural in nature and hence, no violation for purpose of section 142 can be alleged in respect of a directory provision. Even if it is assumed that there is one-day delay in sending inspection report by post, the same cannot be treated as violation as contemplated under provisions of section 142 of the Electricity, Act, 2003.

The Commission observes that the Respondent has not provided any proof on record to establish that the Petitioner refused to accept, or resisted when attempts were made to paste those at a conspicuous place in/outside the premises. The Regulation provides that in case of refusal by the consumer to either accept or give a receipt, a copy of the Inspection Report must be pasted at conspicuous place in/outside the premises and photographed. There is partial violation of the Regulation. However, the said report was sent to the complainant through 'Speed Post' on 18.04.2018 for the inspection conducted on 16.04.2018. The Respondent has also provided a proof of the same, i.e. the Postal receipts showing dispatch of the report to the consumer and there was no abnormal delay in dispatch of report. However, the Respondent is cautioned to be more careful in future about other provisions of this Regulation.

(e) Violation of Regulation 58 1 (ii) of SOP Regulations, 2017.

Regulation 58 1 (ii) is as follows: -

1 (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.

The Respondent has clarified that allegation of the complainant that no Show-cause notice was issued is incorrect. It is admitted fact that a Provisional Assessment Order in terms of Section 126 of the Electricity, act, 2003 was issued read with Regulation 58 of SOP Regulations, 2017. It has clarified that vide Provisional Assessment Order the consumer was called upon to show cause and informed that he has been found unauthorizedly using domestic connection for non-domestic purposes i.e. running a paying guest accommodation. Hence, to allege that no show cause was issued to the consumer is not correct. As far as the issuance of the notice on 01.05.2018 is concerned, the same is matter of record. It has submitted that delay in issuance of provisional assessment order cannot be treated as violation of the Regulation 58 as it is not mandatory. It is submitted that 7 days as prescribed under the Regulation 58 for sending provisional assessment order is merely procedural in nature and hence, no violation for purpose of Section 142 can be alleged in respect of a directory provision.

The Commission observed that the Respondent has violated the above provision by way of not serving a show cause notice within seven days of inspection and the Show cause notice was issued on 01.05.2018 i.e. after 15 days of inspection dated 16.04.2018. Hence, the Respondent has violated the provisions of Regulation 58 1 (ii) of SOP Regulations, 2017.

(f) Violation of Regulation 58 (3)(i) of SOP Regulations, 2017.

Regulation 58 (3)(i) provide that: -

(3) Personal Hearing: -

(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.

(ii) At the request of the consumer, the hearing may be arranged for a future date but not later than 10 (ten) days from the date of filing of the objections by the consumer.

The Respondent has clarified that it is incorrect to suggest that no opportunity of personal hearing was given to complainant. Admittedly the Provisional assessment order was served upon the consumer and show caused to explain the unauthorized use of electricity and personal hearing

was fixed for 15.05.2018. in fact, vide reply dated 14.05.2018, the complainant even responded to the said show cause notice. It is also important to point out that on 15.05.2018, the complainant did not appear for the personal hearing but submitted his above stated reply. It is only upon request of the complainant due to his personal difficulty, the personal hearing was adjourned to 18.06.2018. In spite of receipt of the said letter, the complainant deliberately refused to appear before Assessing officer on the date fixed i.e. 18.06.2018. Having, no other option, the Assessing officer passed the final assessment order/speaking order dated 25.06.2018.

The Commission observed that the Respondent had given another date (18.06.2018) of Personal Hearing on the request of Petitioner and the notice for Personal Hearing was sent to the Petitioner through Speed Post. It is observed that it is not the case of not affording personal hearing to the Petitioner as on the first date of Personal Hearing, the Petitioner had some personal difficulty and filed its written objection requesting for a change of date in personal hearing from 15.05.2018, and on the next date fixed for hearing did not present himself nor made any objection to the Respondent that he has not been given personal hearing. Therefore, it would not be correct to observe that no opportunity of Personal Hearing was given to the Petitioner by the Respondent in terms of the provisions of Regulation 58 (3) (i) of SOP Regulations, 2017).

(g) Violation of Regulation 58 4 (i) of SOP Regulations, 2017.

Regulation 58 4 (i) provide that: -

(4) Final assessment Order: -

(i) 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.

The Respondent has clarified that the final assessment order/Speaking Order was passed on 25.06.2018. the final assessment order was passed within 30 days from the date of service of the Provisional Assessment Order. It is a case of Respondent that a perusal of Regulation 58 (4)(i) read with regulation 23 of SOP Regulation, 2017, 30 days expires on 26th June 2018 and hence, final assessment order passed on 25th June 2018 is well within the period of 30 days as, 19-20th, 26-27. 2-3. 9-10, 16th and 17th, 23rd and 24th June 2018 were no working days and hence there is no violation. It has submitted that even otherwise, delay in passing the speaking order/final assessment order cannot be considered to be a violation for purpose of section 142 of the Act being only procedural in nature.

The Commission observed that the days mentioned in the SOP Regulations are working days and by calculation the Respondent has been able to demonstrate that final Assessment Order was passed within 30 days (working days) from the date of service of the order of provisional assessment of the electricity charges payable by such person. Hence, it appears that the

Respondent has not contravened the provisions of Regulation 58 4 (i) of SOP Regulations, 2017.

6. For the reasons recorded above, the Commission finds the Respondent has violated provisions of Regulations 56 (4) and 58 (1)(ii). For violation of Regulations the Commission imposes penalty of Rs. 20,000/- (twenty thousand only) (Rs. 10,000/- for each violation) to be paid within 30 days of the order.
7. The petition is disposed of and ordered accordingly.

Sd/-
(A.K. Ambasht)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Justice S S Chauhan)
Chairperson