

**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17**

No. F. 11(859)/DERC/2012-13/3688/1448

**Petition No. 45/2012**

**In the matter of:**     Petition under Section 142 of the Electricity Act, 2003

**In the matter of:**

Abha Kothari  
W/o Manoj Kothari  
R/o 26/6, West Patel Nagar  
Delhi – 110 008

**...Petitioner**

**Versus**

M/s BSES Yamuna Power Ltd.  
Through its: CEO  
Shakti Kiran Building  
Karkardooma  
Delhi-110092

**...Respondent**

**Coram:**

**Sh. P. D. Sudhakar, Chairperson & J. P. Singh, Member.**

**ORDER**

(Date of Order: 01.05.2014)

1.     The instant petition has been filed by Smt. Abha Kothari, under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for violation of the procedure laid down in Regulation of the Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.
  
2.     In her petition, she has alleged that the Respondent has not shown the ID card and neither handed over visiting card while entering into the premises. She has also alleged that neither detailed report nor seizure memo was prepared and handed over to the petitioner. It is further alleged by the petitioner the Respondent failed to get the burnt meter tested in any NABL accredited lab and the show cause notice was issued after 2 months from the date of removal of meter. The Speaking order was issued after stipulated 3 days from the date of personal hearing.

It is also alleged that in DAE case, no personal hearing was held and no speaking order was passed within the stipulated time. On the aforesaid accounts the Respondent has committed violation of Regulations 40(b), 52 (iii-v) (viii) (ix- xi), 53(iii), 58(iv) and 59(ii).

3. A show cause notice dated 21.10.2013 was issued to the Respondent wherein the Respondent, prima-facie, appears to be responsible for the following violations:-

- a. Violations of Regulation 52 (iii) of DERC Supply Code, 2007
- b. Violations of Regulation 52 (iv) & (v) of DERC Supply Code, 2007
- c. Violations of Regulation 52 (viii) of DERC Supply Code, 2007
- d. Violations of Regulation 52 (ix) of DERC Supply Code, 2007
- e. Violations of Regulation 52 (xi) of DERC Supply Code, 2007
- f. Violations of Regulation 52 (xii) of DERC Supply Code, 2007
- g. Violations of Regulation 53 (ii) of DERC Supply Code, 2007
- h. Violations of Regulation 52 (x) of DERC Supply Code, 2007
- i. Violations of Regulation 58 (iv) of DERC Supply Code, 2007

The Respondent submitted its reply to the show cause notice and denied all the allegations made against it.

4. The matter was scheduled for hearing for 13.03.2014 on the date of hearing i.e. 13.03.2014, the Respondent sought adjournment on the ground that its counsel was not available to argue the matter, which was vehemently opposed by the Petitioner that such adjournments have already been granted and the case has already been delayed.
5. The Commission had asked the Petitioner to complete her arguments and an opportunity was given to the Respondent to submit its arguments through written submission within two weeks.
6. The Petitioner reiterated its allegations that she has been falsely implicated in a theft case where it was a simple case of burnt meter due to fire broken into the meter which resulted in damage of her meter and

other meters also. She alleged that the Respondent has violated all the Regulations, which is required be observed by them and has harassed her. She further said that she was forced to deposit the assessed amount of Rs. 63,146/- However, when she filed a complaint before the Commission, the Respondent in order to harass her filed a theft case in a Special Court whereas payment has already been made by her.

7. While putting forward the arguments, the petitioner recounted the events and reiterated that the violation committed by the Respondent has also resulted in pecuniary loss to the petitioner and harassment. The Petitioner reiterated its prayer made in the petition that the Commission may grant compensation under Section 57 of Electricity Act, 2003 for the pecuniary loss and harassment meted out to her. In support of her claim, the Petitioner submitted that the Commission had granted compensation in case no. 41/2006 and 353/2005.
8. The Respondent through its written submission dated 27.03.2014, has contested that no violation of regulations had taken place and entire proceeding was done as per norms of regulations.
9. The response of the Respondent for alleged violations is as under:
  - a. The Respondent submitted that officers were carrying their identity cards in any event, the issue relating to the fact requires trial and evidences are required to be led for which the Respondent had sought the permission of this Commission vide its reply and since there is nothing on record to suggest that officers were not carrying identity cards, the allegations relating to regulation 52(iii) is liable to be withdrawn.
  - b. The Respondent submitted that a perusal of the inspection report dated 06/06/2012 records complete details as prescribed In Annexure-IX to the DERC Supply Code, 2007 and no violation can be attributed on this ground against the Respondent. The Respondent further that as per lab report, which categorically gives status of seals, inter alia, that Plastic seals burnt and Hologram seals ok. Hence, to say that details of seals are not

mentioned is completely misconceived. It is mentioned in laboratory report that working of meter was also found to be not ok i.e. LCI) and Meter LED and further accuracy test could not be conducted as meter was found burnt.

- c. The representative of the Complainant who was present at the site signed and acknowledged the intimation letter dated 18/04/2012, through which the meter was sealed and seized and the meter was sent to NABL accredited laboratory and was tested in a NABL accredited laboratory on 27/04/2012 and further vide the report no I3Y12/4426, the meter was found to be externally burnt. It is also important to mention that the meter was seized at site vide seizure memo no. BR-IR-OB-000311. A copy of the same was also received by complainant with inspection report and hence, is estopped from alleging contrary to the fact, copy of inspection report, laboratory report as well as seizure memo is already on record, which clearly establishes that the Complainant has falsely made allegations of Regulation 52 (viii).
- d. The Respondent submitted that a perusal of inspection report would reveal that the authorized officer involved in the inspection of the premises of the complainant has signed the report along with his official stamp as well as all other officers, who conducted the inspection and hence, the allegation that it was not signed is misconceived and false on the face of the records. The same were sent to the consumer by speed post [Postal receipt dated 07.06.2012 is already on record].
- e. The Respondent submitted that it is admitted by the Complainant in Paragraph 8 of her complaint as well as Paragraph 6 M of written submission filed by the Petitioner that she received show cause notice on 08.06.2012 [within 2 days of inspection] and hence, question of expiry of thirty days does not arise.
- f. The allegations against Complainant are that meter was deliberately externally burnt by her i.e. due to the reason

attributable to the complainant. In any event, it is submitted that data was downloaded in terms of the regulation and also show cause notice dated 06.06.2013 was admittedly sent and received by the Complainant.

Infact, the assessing officer also after analysis of data has given categorical finding that meter data is downloaded with inconsistent and erratic consumption pattern and not in consonance with maximum demand recorded by the meter. It is also important to mention that the consumption pattern of the consumer is only 47.54% which is less than prescribed limit of under DERC Regulation, 2007.

- g. The Respondent submitted that 3 days period from date of personal hearing prescribed for passing speaking order is not mandatory and is only directory in nature and no violation may be alleged for not passing a speaking order strictly within 3 days.
- h. In support of its claim the Respondent has cited following judgments:
  - i. Church Auxiliary for Social Action vs., DG of Income Tax, 2010 (4) AD 79.
  - ii. Mohan Singh and Ors. vs. International Airport Authority of India and Ors.(1997) 9SCC132
  - iii. Maddada Chayanna vs. Karnam Narayana and Anr. (1979)3SCC42
  - iv. Smt. Bachahan Devi and Anr. Vs. Nagar Nigam, Gorakhpur and Anr. AIR 2008SC1282, 2008(2)SCALE224.
  - v. Kailash vs Nanhku [2005(4)SCC480]
  - vi. The Executive Engineer vs. M/S S Sri Seetaram Riecmill
  - vii. Jagmodhan Mehatabsing Gujaral and others vs State of Maharashtra [(2006) 8 SCC 629]
- i. Since, the consumer did not appear for personal hearing on 20.06.2012, the Respondent issued notice on 03.07.2012 for appearance on 12.07.2012 and again on 19.07.2012 for appearance on 13.08.2012 in terms of Regulation 53 (i) and hence, there is no bar of issuing two or more show cause notices as alleged. It is specifically denied that that no hearing took place on

13.08.2012 as alleged. The allegations of the complainant that no hearing took place is nothing but an afterthought to misled this Commission.

- j. It is pertinent to mention that Regulation 58 (iv) relates to assessment under Section 126 of Electricity for unauthorized use of electricity and admittedly the present case relates to theft of Electricity under Section 153 of Electricity Act, 2003 read with Regulation 52 of Supply Code and hence, the Regulation 58 (iv) is not even applicable in the present case.
10. On the basis of argument and written submissions made by the parties, the Commission has come to the following conclusions:
- a. That the issue of meter seizure and the seizure memo as claimed by the Respondent is not acceptable because the meter was sent to Lab for testing on 27.04.2012, how could it be that the same meter was seized again on 06.06.2012. Hence, it appears that the Respondent has contravened the provisions of Regulation 52 (viii) of DERC Supply Code, 2007.
  - b. That the inspection report dt. 06.06.2012 prepared by the Respondent only refers the lab report about condition of meter seals; working of the meter etc. Hence, it appears that the Respondent had not made report at the site when meter was removed and therefore has contravened the provisions of Regulation 52(iv) and 52 (v) DERC Supply Code, 2007.
  - c. As it is a case of burnt meter, provisions of Regulations 40 may also be considered which provides for inspection of consumer's installation and subsequent meter test. Therefore, it is prudent to carry out inspection first and then meter testing. Whereas in the instant case the meter was tested on 27.04.12 and inspection was carried out after a period of 30 days on 06.06.12. Even assuming that the regulation is silent about date of inspection in the case of suspected theft, the delay in conduction of inspection has not been

explained by the Respondent. It appears that to cover up the delay of 30 days or more, inspection was carried out on 06.06.2012. It is a case of violation of Regulation 52 (xi).

- d. As the data was not downloaded in a third party lab to corroborate evidence of theft, it may be inferred that the Regulation 52 (xii) has been violated.
- e. The complainant has stated that she had not only attended the hearing on 20.06.12, but also submitted her reply to the Respondent. There was no need to issue another show cause notice in the same case. This is also pertinent to note that the first show cause notice was issued on 06.06.2012 and second show cause notice was issued on 19.07.2012, with a date of personal hearing 13.08.2012. Whereas in the speaking order dated 11.09.2012 the date of second show cause notice is mentioned as 29.08.2012 and date of personal hearing as 11.09.2012. It reflects that how poorly the procedure for DAE was followed by the Respondent. Issuing another show cause notice in the same case, without mentioning about the previous show cause notice or suppreceding the previous notice, is bad in law. Moreover, there is no provision to issue a second show cause notice and hence it is a violation of Regulation 52(x).
- f. In the issue that speaking order must be passed within 3 days, the Respondent has argued that aforesaid time limit is directory and not mandatory. The Respondent has citation of some Supreme Court Judgments to explain what provision may be treated as mandatory and what provision may be treated as directory. In Kailash vs Nanhku [2005(4)SCC480] which is one of the judgments cited by the Respondent, the Hon'ble Supreme Court has held that:

*“All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute”.*

From the above, it is evident that the object of prescribing a procedure to advance the cause of justice and no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. The aforesaid opinion of the Hon'ble Supreme Court goes contrary to the argument of the Respondent because issuing a speaking order within 3 days does not deny the opportunity to participate in the process of justice dispensation neither it is going to hamper the cause of justice. Even if it is assumed that the period of 3 days is not mandatory, the conduct of the Respondent of passing a speaking order after more than a month cannot be justifiable on any ground and therefore, the Respondent is held liable to violation of Regulations 53(ii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

11. In view of the aforesaid, the Respondent is found responsible for violations of Delhi Electricity Supply Code and Performance Standards Regulations, 2007, on seven accounts. It is also observed that the conduct of Respondent has resulted in unnecessary harassment of the consumer. In view of the foregoing the penalty of Rs. 70,000/- (Rs. 10,000/- for each violation) is imposed on the Respondent. At the same time a compensation of Rs. 15,000/- is awarded to the consumer for harassment meted out to her due to the violations of several Regulations and thereby failing to meet specified Standards of Performances by the Respondent.
12. Ordered accordingly.

Sd/-  
(J. P. Singh)  
Member

Sd/-  
(P. D. Sudhakar)  
Chairperson