

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

No. F. 11(355)/DERC/2007-08

**Petition No. 40/2007**

**In the matter of:** Complaint under Section 142 of the Electricity Act, 2003 for violation of the Act, Tariff and DERC Regulation.

**AND**

**In the matter of:**

Sh. Ajay Kumar  
H. No. 289, Village Shalimar,  
Delhi.

**...Petitioner**

**VERSUS**

North Delhi Power Limited  
Through its : **CEO**  
Sub-Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi-110009.

**...Respondent**

**Coram:**

**Sh. Shyam Wadhera, Member.**

**Appearance:**

1. Sh. Ajay Kalsie, Company Secretary, NDPL;
2. Sh. O.P. Singh, AM, CCM, NDPL;
3. Sh. K. L. Bhayana, Advisor, NDPL;
4. Sh. K. Datta, Advocate, NDPL;

**ORDER**

(Date of Hearing: 10.02.2011)

(Date of Order: 16.05.2011)

1. Sh. Ajay Kumar, the Petitioner, resident of House no. 289, Village Shalimar, Delhi has filed the above complaint against North Delhi Power Ltd. under Section 142 of the Electricity Act, 2003 and submitted that he is a registered consumer of electricity connection with K. No. 45300151448 having sanctioned load of 2 kw (non-domestic).
2. An inspection was carried out by the Respondent on 27.04.2007 at the premises of the Complainant.
3. The Respondent in their inspection report have mentioned that the Complainant was found using excess load i.e. 4.83 kw. It has mentioned

the load report prepared by enforcement team and the actual load. The same is reproduced as under:

<b>Connected load as per O.P. (ENF TEAM)</b>		<b>Actual Load</b>
Deep Fridger	2.25 kW	1.25 kW
Fridge	1.50 kW	0.745 kW
F.T. 8x40 W	.460 kW	0.460 kW
C/Fan. 2x60 W	.120 kW	0.120 kW
E/Fan 1x180 W	.180 kW	0.180 kW
<b>Total C/Load</b>	<b>4.83 kW</b>	<b>2.75 kW</b>

4. A show-cause notice was issued to the Respondent on 27.04.2007 whereby, the Complainant was asked to appear before the Respondent officials on 04.05.2007.
5. The Complainant has stated that he has attended the personal hearing 04.05.2007 and verbally intimated that there is no tampering of meter and meter was working in order and further submitted that the last few months consumption was less due to the reason that the Complainant's business not running well due to which there was less consumption and further stated that he made request to the Licensee to have check of the meter in laboratory.
6. The Complainant has mentioned that in the month of June 2007, the Respondent raised a DAE bill for an amount of Rs. 1,69,627/- without making check of the meter or re-inspection of the load.
7. The Complainant has alleged the violation of Regulation 26 of the DERC (Performance Standards – Metering & Billing) Regulations, 2002. The Complainant has also alleged that the Respondent have wrongly done the DAE assessment for 12 months.
8. The Complainant has mainly sought the following relief:
  - a) To set aside the DAE bill for an amount of Rs. 1,69,627/-.
  - b) Direction to the Respondent to check the meter from the independent authority.
  - c) To pay compensation of Rs. 1 lac etc.

**Submission of NDPL:**

9. When the Respondent was asked to reply on the above issue raised in the complaint, it filed its reply on 10.09.2007 objecting therein the maintainability of the case before this Commission. In support of its view the Respondent gave some of the citations namely, Maharashtra Electricity Regulatory Commission versus Reliance Energy Limited (CA No. 2846/2006) before Hon'ble Supreme Court of India wherein the Hon'ble Court held that an aggrieved consumer should approach the forum constituted under the Electricity Act, 2003 and stated that above case does not lie in the jurisdiction of the Commission.
10. It has further cited another case of Cement Corporation of India versus HPSEB (Appeal no. 31 of 2007) decision dated 02.08.2007 wherein the Hon'ble Appellate Tribunal for Electricity held that the Tribunal has no jurisdiction to entertain billing disputes and as the instant complaint pertains to billing dispute, therefore, the same cannot be entertained by the Commission. The same issues have also been decided in Appeal no. 220 of 2006 titled M/s. Polyplex Corporation Ltd. versus Uttaranchal Power Corporation Limited & Ors. before Hon'ble Appellate Tribunal for Electricity.
11. The Respondent has submitted that the present case falls in the category of consumer dispute, therefore, if the Complainant had any grievance it may approach the CGRF constituted by the Respondent and not the Commission.
12. In another communication vide its letter no. NDPL/CCM/110 dated 05.11.2008, the Respondent informed the Commission that the above case has been settled by enforcement settlement committee of NDPL and the party has deposited the settled amount, hence, the case has been closed.
13. Subsequent to this letter the Commission issued three letters on 11.11.2008, 28.04.2009 and 29.09.2009 to the Counsel of the Complainant as well as the Complainant regarding confirmation of amicable settlement/redressal of his grievance but, the Complainant as well as his Counsel failed to send replies to the same. Failing this, the Commission fixed the hearing on 13.01.2011 and issued notices to both the parties to be present at the time of hearing.

14. A hearing was held in the Commission on 13.01.2011 wherein, the representative from the NDPL were present. However, no one appeared for the Complainant.

**Points for consideration for the Commission:**

15. The Complainant has alleged the violation of Regulation 26 of the DERC (Performance Standards – Metering & Billing) Regulations, 2002 (reproduced below) whereas, at that time Delhi Electricity Supply Code & Performance Standards Regulations, 2007, which were notified on 18.04.2007, were already in force.

**“26. Personal hearing**

- i. Within 4 working days from the date of submission of consumers' reply, if made within prescribed period, the licensee shall arrange a personal hearing with the consumer.
- ii. Before the personal hearing, the officer of the licensee, before whom personal hearing has to be given, shall analyse the case after carefully considering all the documents, submissions by the consumer, facts on record and the consumption pattern, wherever available. The licensee shall also assess the energy consumption for past six months as per the Tariff Order. In case of suspected DAE, if consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption where meter is less than 10 years old and not less than 65% of the assessed consumption where meter is more than 10 years old, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within 3 working days and connection shall be restored through original meter.
- iii. During the personal hearing the licensee shall give due consideration to the facts submitted by the consumer and pass, within 15 days, a speaking order as to whether the case of suspected theft/DAE is established or not. In case of the decision that the case of suspected theft/DAE is not established, no further proceedings shall be taken and connection shall be restored through original meter.  
Where it is established that there is a case of DAE, the licensee may lodge a report with the local police along with the material evidence including wires/cables, meter, service line etc. seized from the site, which shall be handed over to police. The licensee shall also assess the energy consumption for past six months as per the Tariff Order and prepare final assessment bill on 5 times the rates as per applicable tariff. The consumer shall be required to make the payment within 2 working days of its proper receipt. The licensee may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in installments. The amount, the extended last date and/or time schedule of payment/installments should be clearly stated in the speaking order. A copy of the speaking order shall be handed over to the consumer under proper receipt on the same day.”

16. So, in the instant case the provision of Regulation 52, 53 and 59 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 was applicable. The same are reproduced as under:

**“52. Procedure for booking a case for Theft of Electricity**

- i The Licensee shall publish the list of the Authorized Officers of various districts, prominently in all the District Offices and the Photo ID Card issued to such officers shall indicate so.
- ii An Authorized Officer, suo moto or on receipt of reliable information regarding theft of electricity shall promptly conduct inspection of such premises.
- iii The inspection team of the Licensee, headed by such Authorised Officer shall carry along with them their Visiting Cards and Photo Identity Cards. Photo ID card should be shown and Visiting Card handed over to the consumer before entering the premises. Photo ID card of the Authorised Officer shall clearly indicate that he has been nominated as authorized officer as per provisions of section 135 of the Act.
- iv The Authorised Officer shall prepare a report giving details such as connected load, condition of meter seals, working of meter and mention any irregularity noticed (such as tampered meter, current reversing transformer, artificial means adopted for theft of energy) as per format given in ANNEXE-XI or as approved by the Commission from time to time.
- v The report shall clearly indicate whether sufficient evidence substantiating the fact that theft of energy was found or not. The details of such evidence should be recorded in the report.
- vi No case for theft shall be booked only on account of seals on the meter missing or tampered or breakage of glass window, unless corroborated by consumption pattern of consumer and such other evidence as may be available.
- vii 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 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.
- viii In case of suspected theft, the Authorised Officer shall Remove the old meter under a seizure memo and seal it in the presence of the consumer/ his representative. The Licensee shall continue the supply to the consumer with a new meter. 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.
- ix 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.

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 and the decision shall be communicated to the consumer under proper receipt within three days and connection shall be restored through original meter.

- x After detailed examination of the evidence and the consumption pattern of the consumer, if the Licensee is convinced that a prima-facie case is made out for the abstraction, consumption or use of electricity dishonestly against the consumer, the Licensee shall, within seven days of inspection, serve on the consumer a seven days show cause notice giving reasons, as to why a case of theft should not be booked against such consumer giving full details for arriving at such decision and points on which reply to be submitted. 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.
- xi In case show cause notice is not served even after thirty days from date of inspection, the case of suspected theft shall be considered as dropped and no further action can be initiated against the consumer.
- xii Theft will not be limited to physical interference with the meter found in physical inspection. It will also include theft committed by resorting to external methods such as remote control/ high voltage injection etc. which interfere with the accurate registration of energy consumed. Theft of electricity may be established by analysis of metering data down-loaded by a third party authorized laboratory. In case theft of energy is determined by way of meter down load, the show cause notice will be sent to the consumer/user.

### **53. Personal hearing in case of suspected Theft**

- i Within four days from the date of submission of consumers' reply, the Licensee shall arrange a personal hearing with the consumer. The consumer may be given another opportunity in case he fails to appear for the hearing. In case, the consumer fails to appear for the second time, the Licensee may proceed ex-parte.
- ii During the personal hearing, the Licensee shall give due consideration to the facts submitted by the consumer and pass, within three days, a speaking order as to whether the case of theft is established or not. Speaking Order shall contain the brief of inspection report, submissions made by consumer in his written reply and oral submissions during personal hearing and reasons for acceptance or rejection of the same.
- iii In case of the decision that the case of theft is not established, no further proceedings shall be required and connection shall be restored through original meter.
- iv Where it is established that there is a case of theft of energy, the Licensee shall assess the energy consumption for past twelve (12) months as per the assessment formula given 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. The consumer shall be required to make the payment within seven days of its proper receipt. The Licensee may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in installments. The amount, the extended last date and/or time schedule of payment/installments should be clearly stated in the speaking order.

#### **59. Personal hearing**

- i Within four days from the date of submission of consumers' reply, the Licensee shall arrange a personal hearing with the consumer.
- ii During the personal hearing, the Licensee shall give due consideration to the facts submitted by the consumer and pass, within fifteen days, a speaking order as to whether the case of Unauthorized Use of Electricity is established or not. Speaking Order shall contain the brief of inspection report, submissions made by consumer in his written reply and oral submissions during personal hearing and reasons for acceptance or rejections of the same.
- iii In case Unauthorized Use of Electricity is not established, further proceedings shall be discontinued and case of Unauthorized Use of Electricity shall be dropped immediately.

*Where it is established that there is a case of Unauthorized Use of Electricity, the Licensee shall assess the energy consumption for past three (3) months for domestic and agricultural connection and for past six (6) months for other categories as per the assessment formula given in ANNEXE-XIII and prepare final assessment bill on 1.5 times the rates as per applicable tariff and serve on the consumer under proper receipt. The consumer shall be required to make the payment within seven days of its proper receipt. The Licensee may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in installments. The amount, the extended last date and/or time schedule of payment/installments should be clearly stated in the speaking order. A copy of the speaking order shall also be handed over to the consumer under proper receipt."*

- 17. At the time of hearing when the Commission invited the attention of the representative of the Respondent to Regulations 52, 53 and 59 of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and enquired whether these were strictly adhered to or not while framing the charges against the Complainant as well as conducting inspection. The Distribution Licensee sought time to file its submissions on the above.
- 18. On the above, the Respondent filed its submission on 19.01.2011 which was taken on record.
- 19. In its submission the Respondent has submitted that the premises of the Complainant were inspected on 27.04.2007 and the evidence found at site indicated the possibility of dishonest abstraction of energy having taken place thereat in pursuance whereof a show cause notice was served upon the complainant and he was requested to appear for personal hearing on 04.05.2007. It is submitted that after affording opportunity to the complainant herein, assessing officer passed a speaking order dated 07.06.2007, whereby the assessing officer came to the conclusion that dishonest abstraction of energy is made out. Pursuant to speaking order, bill of Rs. 169627/- was raised in terms of Delhi Electricity Supply Code and Performance Standards Regulations 2007. It is pertinent

to mention that the Petitioner was afforded due opportunity to explain his case in response to the above said show cause notice and substantially provisions of the regulation was followed before raising DAE bill upon the Petitioner.

20. The Respondent has submitted that there is no violation on part of the Respondent in processing the DAE case and the Respondent has substantially complied and followed the prescribed procedure. A perusal of the complaint would reveal that no violation of Regulation is made out on part of the Respondent herein.
21. It is submitted that thereafter, complainant made a written request to the Respondent that he wishes to settle the dispute out of court and is willing to pay the amount of Rs. 85,000/- against the Theft bill. It is also submitted that since, complainant voluntarily approached the Respondent for amicable settlement his case was referred to Settlement Committee, which after considering all material facts and circumstances approved the same. Infact, the Petitioner has also paid the settlement amount of Rs. 85,000/-. Hence, the theft bill stands settled and no dispute of grievances remains, which may be adjudicated by this Hon'ble Commission. It is pertinent to mention that in Crl. M.C. no. 482 of 2008, the Hon'ble High Court vide order dated 13.02.2008, has approved the right of the licensee to settle the DAE cases and has also observed that the Electricity Act, 2003 was brought into force with various objects and reasons, with clause (xiii), which stipulates that the provisions relating to theft of electricity as revenue focus.
22. It is also case of the Respondent that once the DAE case is settled against the complainant herein after following the guidelines laid down under Delhi Electricity Supply Code and Performance Standards Regulations 2007, there is no dispute or complaint survives and hence, the present complaint is liable to be dismissed.
23. It is further submitted that no useful purpose would be served in continuing with the present complaint as the grievances of the Petitioner already stand redressed as theft case has already been dropped after following the due process as laid down in Regulation 52 of Delhi Electricity Supply Code and Performance Standards Regulations 2007 for booking of theft of Electricity and the Complaint has become infructuous. It is submitted that this Hon'ble Commission was also informed vide letter 05.11.2008 that the DAE proceedings were dropped against the consumer.



24. It is submitted that only allegation of the Complainant in the Complaint is that the Respondent has not adhered to the time lines prescribed under Regulation 52 of Delhi Electricity Supply Code and Performance Standards Regulations 2007. On merits, it is submitted that 4 days as prescribed under the Regulation 53 passing of speaking, is merely procedural in nature and in respectful submission of the Respondent, the same is merely directory and not mandatory. Without prejudice and without admitting that the Respondent has violated any provision, even if it is assumed that there is some delay in passing the speaking order, the same cannot be treated as violation as contemplated under provisions of Section 142 of Electricity Act, 2003. It is submitted that the purpose of the Regulation 52 & 53 is to advance principles of natural justice and provide an opportunity to the consumer to present his case and after hearing the parties, decide the matter on merits. It is a settled principle of law that a mandatory provision in a statute is one, in which the omission to follow would render the proceedings void and the directory provision is one, the observance of which is not necessary to validity of the proceedings but relates to form and manner [Church Auxiliary for Social Action vs, DG of Income tax (2010(4) AD 79]. It is submitted that timeline as stipulated in the Regulation relates only to form and manner in which the proceedings are to be conducted and does not give or take away any right of the consumer and hence, is merely directory. Interpretation of 4 days for personal hearing or 3 days for passing speaking order days as mandatory provision shall lead to unjust results. It is also settled principle that when public functionary is asked to perform a statutory duty within specified time, the provisions of statute are held to be directory only.
25. It is submitted that mere use of the word "shall" in the regulation itself shall not make the time line of 4 days for personal hearing or 3 days mandatory for passing the speaking order. It is submitted that it is well settled principle of law for determining whether a provision is directory or mandatory is to see whether the enactment provides for any consequences that would follow from the non compliance with the requirement prescribed. In the present case, no such consequences are provided for non compliance with the timelines and hence, cannot be said to be mandatory.
26. It is submitted that in (2006) 8 SCC 629 Jagmodhan Mehatabsing Gujaral and others -vs- State of Maharashtra where the Hon'ble Supreme Court has held that theft of electricity is a very alarming problem faced by all the State Electricity Boards in our country, which is causing loss to the State

revenue running in hundreds of crores of rupees every year and Courts should invariably impose heavy fine for making theft of electricity a wholly non-profitable venture. It is submitted that if the provision of the regulation is considered to be mandatory, the purpose of the Act as well as the Regulation, which has revenue focus would stand defeated due to mere procedural lapse, which cannot be the intention of the legislatures.

27. During course of argument, an issue was raised relating to sending the meter to an NABL accredited laboratory for testing of meter. The provision relating to sending the suspected meter to NABL accredited laboratory was, for the first time, incorporated in Delhi Electricity Supply Code and Performance Standards Regulations 2007, which came in effect on 18.04.2007. It is pertinent to mention that the present inspection was carried out on 27.04.2007, when there was no NABL accredited laboratory nor any such laboratory notified by this Hon'ble Commission.
28. It is pertinent to mention that no NABL accredited Laboratory for testing the meters for tampering had been notified by the Commission on the date of inspection. Consequently, no violation can be attributed to the Appellant for not sending the meter to the notified NABL accredited laboratory in terms of Regulation 52(viii). It is submitted that only in month of February 2008 and June 2008, vide letters dated 22.02.2008 and 03.06.2008, this Commission notified two NABL Accredited laboratory i.e. Electronic Regional Test Laboratory and Central Power Research Institute (CPRI) Bangalore respectively for testing of energy meter for third party testing in NCT of Delhi. It is further submitted that even, the notified laboratories are not accepting the meters for testing and this commission was already intimated by the Respondent in this regard on several occasions. Hence, no fault or violation can be attributed to the Respondent for not sending the meters to the notified NABL accredited laboratory in terms of Regulation 52(viii).
29. Without prejudice to the rights and contention of the Respondent, it is submitted at the outset that this Hon'ble Commission does not have jurisdiction to entertain the present petition for the reasons mentioned below:
  - a. The present complaint is liable to be dismissed on the sole ground that this Hon'ble Commission has no jurisdiction to entertain the present complaint relating to theft of electricity. It is respectfully submitted that admittedly, the present complaint relates to theft of

electricity and hence, this Hon'ble Commission has no jurisdiction to entertain the present complaint. The functions of this Hon'ble Commission have been explicitly enumerated under section 86 of the Electricity Act, 2003 and there is no scope for this Hon'ble Commission to adjudicate the complaint relating to theft of electricity.

- b. This Hon'ble Commission, under Electricity Act, 2003, has been assigned with the functions, which relate to regulation of the electricity sector and that it is not envisaged in the Electricity Act, 2003 that this Hon'ble Commission would sit as a court for adjudication of the matters relating to theft of Electricity. It is submitted that Chapter XIV and XV of the Electricity Act, 2003 has entire code relating to the matters relating to theft of electricity, which clearly stipulates that such matters shall be adjudicated upon by the Special Courts as envisaged under the Electricity Act, 2003. In Petition No. 46 of 2004 bearing title Vikas Road Line versus NDPL, this Hon'ble Commission has held that this Hon'ble Commission has no jurisdiction to entertain cases relating to theft of electricity. In Jain Atta Chakki vs. North Delhi Power Limited bearing Petition No. 06 of 2005 and in Sh. Rajendra vs. North Delhi Power Limited bearing Petition No. 23 of 2004, this Hon'ble Commission has reiterated the view taken in Vikas Road Line versus NDPL and held that this Hon'ble Commission has no Jurisdiction to entertain such cases.
- c. It is further submitted that this Hon'ble Commission cannot sit in appeal against the order of Assessing officer. Without admitting and without prejudice to the objections raised by the Respondent herein that this Hon'ble Commission has no jurisdiction to entertain the present complaint, it is submitted that in any event, this Hon'ble Commission has no jurisdiction to grant the prayer as prayed by the Complainant and on this ground alone, the present complaint is liable to be dismissed.
- d. The present complaint is liable to be dismissed on the sole ground that this Hon'ble Commission has no jurisdiction to entertain individual dispute between the Licensee and the Consumer. It is submitted that since the complaint relates to consumer and licensee the Hon'ble Commission does not have jurisdiction over

the same. It is submitted that the powers of the commission are enumerated in Section 86 of the Electricity Act, 2003 and no power has been given therein to the commission to adjudicate upon the disputes between licensees and consumers. In Maharashtra Electricity Regulatory Commission vs Reliance Energy Ltd. (2007 (8)SCC 381), the Hon'ble Supreme Court has categorically held that section 86(1)(f) of the Electricity Act, 2003 which prescribes the adjudicatory functions of the state Commission does not encompass within its domain complaints of individual consumers and that it only provides that the commission can adjudicate upon the disputes between the licensees and the generating companies and to refer any such dispute to arbitration. The Supreme Court affirmed that this does not include in it a grievance of an individual consumer.

- e. Further, in BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission bearing appeal No. 181 of 2008, the Hon'ble Appellate Tribunal for Electricity has held, *inter alia*, that individual consumer cannot approach the state commission to decide about the disputes between the licensee and the consumer.
  - f. It is further submitted that a Division Bench of the Delhi High Court in the judgment reported as B.L Kantroo Vs. BSES Rajdhani Power Ltd. [154(2008) DLT 56 (DB)] has held that not even a Civil Court which clearly enjoys unlimited jurisdiction, can adjudicate upon disputes relating to theft of electricity. In fact the Division Bench has held that the exclusive jurisdiction to go into all aspects relating to theft of electricity is with the Special Court set out under the said Act. This would include all aspects of the present case which the Complainant is seeking to urge before this Hon'ble Commission.
  - g. It is further submitted that the complaint as raised by the Complainant involves disputed facts, which cannot be decided by this Hon'ble Commission in summary manner.
30. That without admitting any contents of the complaint and without prejudice to its rights and contentions the respondent submits that since the complainant has also chosen not to press the complaint any further in view of the settlement arrived between the parties as also the fact that there is no cause of action subsisting anymore which may necessitate the

adjudication by the Hon'ble Commission, the Hon'ble Commission may close the same . It is supported by the decision of the Hon'ble Appellate Tribunal For Electricity in the Appeal no 32 , 33 and 118 of 2009 whereby in para 7 it was pleased to observe that it is the judicial discretion of the state Commission to decide whether to impose any punishment or not as it considers of penalty under section 142 of the Act is purely directory and discretionary .

31. That Respondent has already filed its reply dated 06.09.2007 before this Hon'ble Commission and the contents of the same is not repeated herein for sake of brevity and it is prayed that the same may be considered and read as part and parcel of the present written synopsis.
32. In view of the above, it is submitted that the present complaint is liable to be dismissed as no real purpose would be served after satisfaction of grievances of the Petitioner

**Conclusion:**

33. After taking into consideration all facts and figures placed before the Commission and recent submissions of the Respondent, the Commission concludes that the Respondent cannot take the plea that adhering of time limit is optional and it is not mandatory. The time limit prescribed in the Regulations is not discretionary. Had it been discretionary then the Commission would have provide the word 'may' instead of 'shall' in the Regulation. The word 'shall' makes the provision mandatory. If the Distribution Licensee had any objection to the above Regulation and felt that these provisions are unjust it had the right to challenge the above Regulations in the appropriate Court of law. But, it cannot evade the responsibility of adherence to the above Regulation. Therefore, the Respondent has violated the above Regulation.
34. It is true that NABL **accredit** laboratory for testing the meters for tampering was been notified in the month of February, 2008 and June, 2008 but, there were other laboratories available where the Distribution Licensee could have sent the meter for accuracy check.
35. It has also been observed that initially the Respondent raised a bill of Rs. 1,69,627/- but, at the time of dropping the case and settling the same it has reduced it to Rs. 85,000/-. Here Respondent has failed to provide the justification of reduction of the amount. However, the Complainant had the option to approach the appropriate forum if he was not satisfied

with the assessment of the Respondent. The Complainant, by making payment by way of settlement with the Respondent has given his acceptance of the revised assessment made by the Respondent.

36. As far as the plea of the Distribution Licensee that Commission has no jurisdiction to hear the case, the case relating to theft or bill dispute is concerned, the Commission has not gone in the merits of the case in relation to adjudication of theft case or bill dispute. It has its original jurisdiction under Section 142 of the Electricity Act, 2003 to hear the case and has power to take suo moto action against any person if the Commission is satisfied that such person has contravened any of the provisions of this Act or the rules or regulations made there under, or any direction issued by the Commission. The Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction. So the Commission has full jurisdiction to hear the above case.
37. From the above, the Commission finds the distribution licensee responsible for violation of procedural norms specified in the supply code. Accordingly, the Commission advises the Licensee to be careful while taking such action against any consumer and act strictly as per provisions of law, failing which it could consider imposition of penalty in future.
38. Ordered accordingly.

Sd/-  
(Shyam Wadhera)  
Member