

Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110 017

Ref. F.11(667)/DERC/2010-11/C.F.No. 2808/ 2121

Petition No. 13/2011

In the matter of: Complaint under Section 142 of the Electricity Act, 2003.

AND

In the matter of:

Anita Goel
W/o Sh. S.K. Goel
Shop No. 8, CSC-3,
Sector-2, Rohini,
Delhi-110 034.

...Complainant

VERSUS

M/s. Tata Power Delhi Distribution Limited
Through its: **CEO**
Grid Sub-Stn. Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009.

...Respondent

Coram:

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

Appearance:

1. Sh. K.L. Bhayana, Advisor, TPDDL;
2. Sh. Ajay Kalsi, Company Secretary, TPDDL;
3. Sh. Shalendra Singh, Manager, TPDDL;
4. Sh S. N. Garg, Advocate of Complainant;
5. Sh. K. Datta, Advocate, TPDDL;
6. Sh. Manish Srivastava, Advocate, TPDDL.

ORDER

(Date of Hearing: 03.07.2012)

(Date of Order: 27.07.2012)

1. The Complainant Ms. Anita Goel filed the present complaint in the Commission under Section 142 & 146 of the Electricity Act, 2003 for imposing penalty against the Respondent Company TPDDL for violation of various Regulations and provision of law.

2. It is undisputed between the parties that the Complainant filed a complaint no. 3108/11/10/RHM before CGRF against the Respondent regarding raising a wrong assessment bill on the basis of inspection dated 13.07.2010 and provisional assessment order 02.08.2010. The said complaint was disposed off by CGRF vide order no. CG3108/11/10/RHN/3332 dated 27.01.2011 in favour of the Petitioner.
3. The Complainant in the present complaint alleged that the Respondent has violated Regulations 58, 59 of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and Section 56(1) of the Electricity Act, 2003.
4. The Respondent in its reply denied the allegations made against him on the grounds that the present complainant is not the registered consumer, whereas, Ms. Raj Rani Gautam is the registered consumer of the Respondent hence, she has no locus to file the instant complaint.
5. The matter was initially listed for hearing (admission) on 20.03.2012 in the Commission, wherein, the Commission while admitting the above petition, vide its Interim Order dated 23.04.2012, directed the Respondent to show cause on the prima facie findings of violation of Regulations 42, 58, 59(i) & (ii) of Delhi Electricity Supply Code & Performance Standards Regulations, 2007 and Section 56(1) of Electricity Act, 2003 along with Regulation 11 of DERC (Guidelines of Establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2003.
6. The Respondent filed its reply to the above Show Cause Notice on 02.07.2012. The Respondent submitted that he has complied with the order of the CGRF dated 27.01.2011, so the above complaint is liable to be dismissed, since it has become infructuous and the bill of the complainant has been charged on non-domestic tariff from 02.11.2006 to 08.02.2011.
7. The Respondent in its reply further submitted that the Hon'ble Commission is neither an execution court for compliance of the order of the CGRF nor an appellate authority. Therefore, it has no jurisdiction to hear above complaint.

8. The Respondent further denied the violation of Regulation 11 of DERC (Guidelines of Establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2003 with the plea that the non-implementation of the CGRF order cannot be treated as violation u/s 142 of Electricity Act, 2003 as both are separate statutory bodies. Therefore, the allegation of violation of Regulation 11 is not tenable.
9. The Respondent further submitted that the said connection was issued for non-domestic purposes; however, the same was billed for domestic tariff by mistake. The Respondent has raised the demand based on applicable tariff (commercial tariff instead of domestic tariff, which was not paid). The bill raised for misuse charges was revised and subsequently, bill for applicable tariff was sent to the complainant, which she was bound to pay. The Respondent has not done any thing with any mala fide intention. Therefore, the Respondent is not liable to be penalized for the alleged violation of Regulation 42 of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007. On the allegation of violation of Regulations 58, 59 (i) and (ii) of DERC Supply Code and Performance Standards Regulations, 2007 the Respondent has submitted that the very basic fact that the complainant has applied for non-domestic connection was first time revealed by the complainant (user) when she attended the personal hearing against the case framed by the Respondent for misuse under section 126 of the Electricity Act, 2003. Following which, the Respondent dropped the case on 30.09.2010 and the Respondent changed the category of tariff and revised the bill on non-domestic tariff, which is well within the right of the Respondent.
10. On the issue of the allegation that the Respondent failed to issue disconnection notice under Section 56(i) of Electricity Act, 2003, the Respondent submitted that the complainant defaulted in making payment of the bill No.1010917359 dated 12.10.2010 with due date of 29.10.2010 issued by the Respondent for a sum of Rs. 57373/- including current dues, which was raised pursuant to revision of the tariff category from domestic to non-domestic. Since the complainant failed to pay the arrears, a disconnection notice dated 03.11.2010 was issued to the consumer in accordance with the Section 56 of the Electricity Act, 2003 however the same was still not paid by the complainant till 24.11.2010 and then disconnection order was issued by the Respondent in accordance with the applicable law.

11. The Respondent submitted that since the grievance of the complainant has already been adjudicated upon by the Ld. CGRF and complainant has been granted the relief prayed for by him, there is no further cause left for being further adjudicated by this Hon'ble Commission.
12. The matter was listed for hearing in the Commission on 03.07.2012 which was attended by the representatives/Counsels on behalf of both the parties. The Commission heard both the parties at length. Commission's findings on violation of Regulations and provisions of Electricity Act, 2003 by the Licensee (as mentioned in show-cause notice) are as below:
13. **Regulation 11 of the DERC (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations, 2003.**

Regulation 11 of the DERC (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations, 2003 provides that:

"11.Orders of the Forum to be binding

Subject to the right of the representation before the Ombudsman specified in these Regulations, the Orders of the Forum shall be binding on the consumers and the licensee."

As per the above Regulations the Orders of the Forum shall be binding on the consumers and the Licensee. On the basis of material available on record the Commission observed that the Respondent disconnected the supply of the Complainant on 20.12.2010 inspite of the Order of CGRF dated 09.12.2010 for restoration of the supply which is a violation of the above mentioned Regulation.

On this issue the Counsel of the Respondent submitted at the time of arguments that inadvertently the details of the said order could not be uploaded and flagged in their system which resulted in issuing of disconnection order on 14.02.2010 which was just restored one day earlier. The moment this error was deducted on 22.12.2010 the supply of the Complainant was restored. Moreover, the Respondent has already been penalised for the same by the CGRF by way of having paid

compensation of Rs. 1,000/- to the Complainant. Any further penalty would run against the established principle of natural justice.

14. The Commission observed that the Respondent cannot take excuse of its own follies by not flagging the information in their own system either due to court cases or due to any other reason. The above action of the Respondent comes in the purview of violation of the said Regulation. The Respondent's claim that CGRF and the Commission both are Statutory bodies and moreover the Commission is not an execution court of CGRF or court of appeal is not at all tenable as in the instant case the Commission is taking punitive action against any person who has violated any provisions of Rules, Regulations and law which is well within its domain under the powers vested with it under section 142 of Electricity Act, 2003.
15. **Regulation 42 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007.**

Regulation 42 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 provides that:

"42. Bill particulars

The following particulars shall be indicated in the bill

- 1 K.No - This is the unique consumer identification number, which can be referred to for any communication.
- 2 Book No./DT No./Reading Repository/Binder details - Meter book no. is the book where in the consumers meter reading details taken during the meter reading cycle is noted down /compiled in soft form.
- 3 Bill Number
- 4 Bill Month
- 5 Bill type - Provisional or Regular
- 6 Meter Number
- 7 Meter type
- 8 Supply type
- 9 Applicable tariff
- 10 Security deposit with the Licensee.
- 11 Sanctioned Load
- 12 Fixed charge
- 13 Meter Reading of previous billing cycle and date of reading
- 14 Current Meter Reading and date of reading
- 15 Billed Units- This shows the total units consumed for the particular billing cycle.
- 16 Slab Calculation (units, rate, amount)- This gives the breakup of charges for the billed units for each slab of tariff.
- 17 Energy charge
- 18 Arrear amount

- 19 *Arrear Details - indicating period for which arrears are due, energy charges, fixed/demand charges, LPSC, electricity tax etc.*
- 20 *Amount payable (rounded off) after the due date- net amount to be paid after the due date.*
- 21 *Due Date including last date before which the bill has to be paid.*
- 22 *Late Payment Surcharge- fees that is charged in case the payment is not made within the due date/ amount payable after due date within one month from due date*
- 23 *Amount payable (rounded off) within the due date- net amount to be paid before the due date.*
- 24 *Amount payable after due date*
- 25 *Government subsidy, if any*
- 26 *Compensation to the consumer, if any*
- 27 *Previous Consumption Pattern (Bill Month, Units, Status)- This shows the consumption pattern for last six months*
- 28 *Other information as applicable to kVAh billing and HT consumers to be appropriately added and unrelated items to be deleted*
- 29 *Any other information which the Licensee deems fit.*
- 30 *Meter Remark- This indicates the meter status."*

On the basis of material available on record the Commission observed that the Respondent by framing a case of unauthorized use of electricity has made a wilful and deliberate attempt to pass the onus on to the Petitioner regarding raising of bills on wrong tariff as the Respondent has failed to fill the correct information in its bills against item no. 9 i.e. applicable tariff which leads to instant default and is in violation of Regulation 42 of the Supply Code.

On this issue the Respondent could not submit any satisfactory reply as to why it failed to claim NDLT tariff instead of domestic tariff which is basic requirement/information to be supplied by the Respondent while issuing bill. The Respondent argued that it was the duty of the Complainant to bring to the notice of the Respondent about levying of wrong tariff. The above submission of the Respondent is also not acceptable as it cannot pass the onus of his misdeed on others. In Sub-Regulation 9 of above Regulation it has specifically been mentioned that the Respondent shall indicate applicable tariff in the bill particulars. So any mistake made by the Respondent by not following the above provision, while issuing bills, comes in the category of violation and that too the Respondent is taking action against the complainant for his own misdeeds. It is also true that the Respondent conceded his mistake and also corrected the same by revising the bill of the Complainant. But that is not enough. The Respondent is liable for imposition of penalty for such violation of the above Regulation.

16. **Regulation 58 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007.**

Regulation 58 of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 provides that:

“58. Submission of consumer’s reply

- i. *Within seven days from the date of receipt of inspection report/show cause notice, the consumer may submit a reply or deposit prescribed inspection fee and request the Licensee to do site verification again.*
- ii. *Within seven days from the date of such request, the Licensee shall arrange second inspection of the consumer's premises and shall do site verification.*
- iii. *Within seven days from the date of second inspection, the Licensee shall analyze the case after carefully considering all the documents, submissions by the consumer, facts on record and the report of second inspection on consumer's request. If it is concluded that there is no Unauthorized Use of Electricity, the case of Unauthorized Use of Electricity shall be dropped immediately and the decision shall be communicated to the consumer under proper receipt within seven days from the date of taking the decision.*
- iv. *If it is concluded that there is Unauthorized Use of Electricity, the Licensee shall arrange personal hearing with the consumer within fifteen days from the date of such decision.”*

On the basis of the material available before the Commission and taking into consideration the facts and circumstances of the case, the Commission observed that despite filing the objections dated 11.08.2010, the Respondent did not take any action to analyse the case within a specific period as mentioned above and did not follow the procedure as provided in the above Regulations. Hence, there is a clear cut violation of the above Regulation and the Respondent is liable for imposition of penalty.

17. **Regulation 59(i) & (ii) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007.**

Regulation 59(i) & (ii) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 provides that:

"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."*

18. On the basis of the material available on the record and taking into consideration the facts and circumstances of the case the Commission observed that the Respondent has failed to arrange personal hearing within four days from the date of submission of consumer's reply and also failed to pass speaking order within 15 days as mandated in the above Regulations.
19. On these issues the Counsel of the Respondent argued that adherence of time limit is not mandatory and is only by way of an advisory direction. This argument is not tenable because prescribing of time limit in the statute itself is a mandatory cap and any non observation of the same cap/prescribed time limit shall be tantamount to non-adherence of the same provision of the statute. Its submission that "had the intention of the legislature been to make observance of the above time limit mandatory then it may have provided punishment for non-observance in the statute. Since no punishment for non-adherence of above time limit has been prescribed in the statute therefore, the same is not mandatory" is also not acceptable because any deviation from the Regulation which also include time limits prescribed shall invite invoking of Section 142 of the Electricity Act, 2003. As far as applicability of word "shall" is concerned, that is used for mandatory requirement in general. However, it changes its meaning only in special circumstances, whereas in the instant case there were no special circumstances, which warranted the Respondent not to adhere to the time limit. So, the Respondent is again found to be guilty of violation of the above said Regulation.
20. We now come to the Respondent's submission that it has been penalized for inadvertently disconnecting the complainant's supply owing to mismatch in the system for which the CGRF has already imposed a penalty of Rs. 1,000/- and holding the Respondent guilty of an error for

which it has already been penalized would run against the established principle of natural justice and doctrine of double jeopardy. The Commission observed that the compensation of Rs. 1,000/- was awarded by the CGRF against the harassment caused to the consumer due to disconnection of the consumer's supply inspite of the stay order. However, no penalty was imposed on the Respondent by the forum, as the imposition of penalty comes in the purview of the Commission. Section 147 of the Electricity Act *ibid* also clarifies on the above which states that ***the penalty imposed under the Act shall be in addition to, and not derogation of, any liability in respect of payment of compensation or*** Hence it is not a case of double jeopardy and the Commission has power to impose penalty for the above violation of Regulations.

21. **Section 56(1) of the Electricity Act, 2003**

Section 56(1) of the Electricity Act, 2003 provides that:

“56. Disconnection of supply in default of payment

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity.”

On the basis of material available on record the Commission observed that the Respondent has failed to issue 15 days notice under Section 56(1) of the Electricity Act, 2003 prior to disconnection of supply on 02.12.2010 and 20.12.2010.

22. In reply to the above charge, the Respondent submitted that it delivered the same notice by hand along with monthly electricity bill, without seeking signature of the complainant/representative by following the provisions made in Regulation 68(b), whereby taking of signature on acknowledgement is not mentioned.

It is true that in the said Regulation, the mode of delivery of notice, has been prescribed in sub-Clause (b) which is reproduced as under:

"Delivered by hand to the person residing at the address notified to the Licensee by the consumer, or"

23. From perusal of the above provisions in the Regulation as well as in the Act, it has been observed that the provision which has been laid down in the Regulation has further been clarified in the Act, that the signature of the receiver is essential on acknowledgement. In this regard, it is also worth-while to mention that the Commission while framing above Regulation in order to remove any conflict in the interpretation of statute has also provided in Chapter I Regulation 1 (v) of the above said Regulation that **Regulations framed under the above shall be interpreted and implemented in accordance with, and not at variance from, the provisions of the Act.** Hence, the provision made in the main Act shall always prevail. Therefore, in the instant case not showing signed acknowledgment by the Respondent leads to two conclusions i.e. (a) either the Respondent has failed to issue the said notice to the complainant or (b) it has not complied with the provisions laid down in Sub-section (1) of Section 171 of the Act wherein acknowledgement is mandatory. In both ways the Respondent has violated the said provisions of law and is liable for imposition of penalty.
24. For the reasons recorded above, the Commission finds the Respondent guilty of violation of Regulation 11 of the DERC (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations, 2003, Regulations 42, 58, 59(i) & (ii) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 and Section 56(1) of the Electricity Act, 2003 and imposes penalty of Rs. 25,000/- (Rs. 5,000/- for each violation).
25. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON