

Delhi Electricity Regulatory Commission

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

Ref. F.11(619)/DERC/2010-11/C.F.No. 2597/4393

Petition No. 72/2010

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

AND

In the matter of :

Ashok Kumar Jindal
H.No. 4644, Roshnara Road
Sabzi Mandi
Delhi.

....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. B P Agarwal Counsel for the Petitioner along with Sh. B.K. Sharma, Adv.
2. Sh. K Datta, Counsel for the Respondent (TPDDL)
3. Sh. Manish Srivastava, Counsel for the Respondent (TPDDL)
4. Sh. O.P. Singh, Sr. Manager, TPDDL;
5. Sh. Shalendra Singh, Sr. Manager, TPDDL.
6. Sh. Anurag Bansal, Sr. Manager, TPDDL.

ORDER

Date of Hearing: 18.10.2012
(Date of Order: 12.11.2012)

1. The present petition has been filed by Shri Ashok Kumar Jindal, R/o 4644, Roshnara Road, Sabzi Mandi, Delhi-110007, under Section 142 of Electricity Act, 2003, for imposition of penalty against the respondent (TPDDL) for violation of various Regulations.

2. In brief, the facts of the case are as under:

- i. The Petitioner is the actual user of electricity connection bearing K No. 35100241788 installed at his residence mentioned above. That on 07.04.2006, the meter of the complaint got burnt for which the complainant informed to the office of the Respondent. The officer of the Respondent in response to the above complaint visited the premises of the complainant and connected the electricity supply directly from the pole after breaking the seal of the meter.
- ii. Again on 08.01.2007, the officials of the Respondent inspected the premises of the complainant and booked a case of DAE alleging that the meter box seals & meter terminal seals were not existing and both half lead seals found fixed. It was also alleged that the neutral I/C service cable found directly connected to the O/G neutral cable to manipulate the recorded consumption. Following which the respondent issued an assessment bill for Rs. 67,000/- with due date of payment 10.10.2007.
- iii. Against the above action of the Respondent the complainant made several representations to various officers of the Respondent.
- iv. Alleging that no action was taken by the Respondent, the Complainant on 08.09.2009 approached the Office of Chairman, Public Grievance Cell, Department of Power, Govt. of NCT of Delhi, Minto Road, New Delhi and challenged the illegal demand made by the Respondent in pursuant to booking of a false case of theft. The PGC vide its order dated 04.03.2011, dropped the allegations of theft of electricity against the Complainant.
- v. In the instant complaint, the Complainant has alleged that by making a false and fabricated case of theft of electricity by the Respondent, the complainant has suffered an irreparable loss, mental torture, pain and agony and has also lost his precious time. He has requested for grant of compensation of Rs. 50,000/- with action against the guilty officials of the Respondent as per law.

3. Notice of the petition was issued to the Respondent to file its the reply on the above vide Commission notice dated 13.10.2011.

4. The Respondent in its reply has sought dismissal of the above complaint on the following ground that:
 - i. Since the case of DAE has been dropped by the Apex Committee of the Respondent in pursuant to the undertaking given by the authorized representative of the Respondent, therefore, nothing has been left to comply with the order of the PGC.
 - ii. The Complainant has failed to cite any violation, which can qualify his case to be considered u/s 142. He has further submitted that to seek the implementation of the order of the PGC, in the instant petition is not procedurally correct as the Commission cannot be an Appellate Authority of PGC.
 - iii. The Complainant has only made prayer for seeking compensation which is neither tenable nor maintainable before the Commission.
5. The matter was listed for admission in the Commission on 28.02.2012, which was attended by the representatives/counsels on behalf of both the parties. The Commission prima-facie found violation of Regulation 20 (iii); Regulation 26 (i) to (iv) and 27 (i) & (ii) of the DERC Performance Standards Metering and Billing Regulation, 2002 for which a show cause to the Respondent was issued and Respondent was directed to file its reply within 15 days.
6. The Respondent in response to the above show cause notice filed reply on 21.06.2012, wherein he has denied that it has violated any of the above said Regulations. It has been submitted that u/s 142 of Electricity Act, 2003, the Commission has jurisdiction to entertain any complaint or take cognizance of any contravention of Electricity Act or rules or regulations made thereunder or any direction issued by the Commission but in the present case no such allegation is made against the Respondent which shows that the Respondent has violated either provisions of Electricity Act, 2003 or any directions issued by the Commission.
7. The Respondent has sought dismissal of above complaint on the sole ground that since the grievance of the complainant has already been resolved and the case of theft of electricity has been dropped against the complainant after affording an opportunity of being

heard and no cause of action survived which may require adjudication by the Commission. Hence, there is no merit in the case to subsist.

8. The Respondent further submitted that the present complaint is liable to be dismissed on the sole ground that this Commission has no jurisdiction to entertain present complaint relating to theft of electricity and the petition is barred by limitation.
9. The above matter was listed for hearing on 18.10.2012, which was attended by the above mentioned representatives of both parties. The Commission after hearing arguments advanced by the above and perusing the facts and records placed before the Commission observed that:

10. **Violation of Regulation 20 (iii) (a) of the DERC Performance Standards Metering and Billing Regulation, 2002.**

Regulation 20 (iii) of the DERC Performance Standards Metering and Billing Regulation, 2002 provides that:

“20. Burnt meter

(iii) In case the meter is found burnt upon inspection by the licensee on consumer's complaint or otherwise

a. The licensee shall restore connection immediately upon receiving the complaint by bypassing the burnt meter after ensuring that necessary corrective action at site is taken to avoid future damage. New meter shall be provided by the licensee/consumer, as the case may be, within three days.”

11. The Complainant has alleged that his electricity connection bearing K No. 35100241788 installed at his residence got burnt on 07.04.2006 for which the Complainant informed to the Respondent but the Respondent could not provide the new meter within the stipulated time i.e. within three days. Thus, the Respondent has violated the above Regulation.
12. On this issue the Respondent has submitted that on 07.04.2006, the meter of the Complainant was found burnt and the Respondent as a temporary measure, connected the premises of the Complainant directly so that there should not be any inconvenience to the Complainant. The Respondent has admitted its mistake of not providing the meter in stipulated period which they rectified on

20.01.2007 and has submitted that by this mistake no prejudice is being cause to the Complainant as no additional amount is charged from the Complainant and there is not financial loss to the Complainant on account of the above mistake.

13. The Commission observed the Respondent could not replace the old meter by a new meter within three days which is a mandatory requirement under Regulation 20(iii)(a) of DERC Performance Standards Metering and Billing Regulation, 2002 which is a clear-cut violation of above regulation.

14. Violation of Regulation 26 (i) to (iv) of the DERC Performance Standards Metering and Billing Regulation, 2002.

Regulation 26 (i) to (iv) of the DERC Performance Standards Metering and Billing Regulation, 2002 provides that:

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.*
- (iv) 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.

15. The Complainant has alleged that the inspection was carried out on 08.01.2007 whereas Assessment Bill/DAE/DT was issued on 01.10.2007 i.e after a lapse of around 10 months, which is in contravention of Provisions 26(iii) and the Respondent also did not follow the procedure prescribed in Regulation(i) to (iv) of the above Regulations which prescribe a time limit for taking cognizance on the above including filing / lodging of report with the local police and in case of nonpayment, disconnection of supply.

16. On this issue the Respondent has submitted that the Complainant did not turn-up for personal hearing in pursuant to order of the PG Cell, Delhi. However, when the Complainant attended the personal hearing in terms of the Regulation 26, the Respondent immediately dropped the case of theft vide its order dated 22.02.2011. It is further submitted that since the matter has been dropped, therefore, invoking of Regulation 26 is not desirable and hence there is no such violation.

17. The Commission observed that the electricity meter of the Complainant burnt out on 07.04.2006 and complaint for the same was lodged by the complainant on the same day i.e. 07.04.2006. Thereafter, inspection was carried out on 08.01.2007 and an assessment bill/DAE/DT for a sum of Rs.67,000/- was issued on 01.10.2007 i.e. after expiry of ten months which is in contravention of Provisions 26(iii) and the Respondent did not follow the procedure and directions prescribed in the above Regulation (i)to (iv) which provide a time limit for taking cognizance on the above including filing / lodging of report with the local police and in case of nonpayment, disconnection of supply. Therefore, in the instant case the Respondent has been found guilty of the above violation.

18. The Commission observed that respondent's argument has no substance that the condition of passing of speaking order within 15 days, as prescribed under Regulation 26 after personal hearing, is merely procedural in nature and same is only directory and not mandatory. Provisions of Regulation 26 clearly show that they are mandatory in nature.

19. Violation of Regulation 27 (i) & (ii) of the DERC Performance Standards Metering and Billing Regulation, 2002.

Regulation 27 (i) & (ii) of the DERC Performance Standards Metering and Billing Regulation, 2002 provides that:

27 Default in payments of installments

- (i) In case of default in payment of subsequent installment(s) approved by the licensee, the consumer shall be served with a 7 working days notice under proper receipt to make the payment.
- (ii) *In case the consumer fails to pay installment within specified period, the licensee shall give the consumer 2 working days' disconnection notice. Thereafter, if the installment remains unpaid, the licensee shall disconnect the supply. The supply shall not be reconnected till the remaining part of bill is fully paid. The reconnection shall be carried out as per the provisions of new connection laid down in Chapter II above.*

20. On this issue, the Respondent has submitted that Regulation 27(i) and (ii), which required issuing of 7 days notice and subsequent 2 days, 2nd notice to the Complainant, in case of default in payment of assessed money, since, they have already dropped the theft case against the Complainant, therefore, there was no need to issue above notices, hence it has not violated the above Regulation.

The Commission observed that the electricity meter has not been disconnected by the Respondent in terms of the above regulation and the fact that matter has already been dropped by the respondent, therefore, there is no violation of Regulation 27 of DERC Performance Standards Metering and Billing Regulation, 2002

21. **On the issue of jurisdiction of the Commission:** The plea of the Respondent that the Commission cannot hear the present complaint as being related to theft of electricity is not tenable as in the instant case the Commission is not deciding the issue of theft, the jurisdiction

of which only lies with the Special Court. Here the Commission is only hearing the issue on limited grounds of violation of Regulations which is well within its jurisdiction.

22. The Respondent has also sought dismissal of the above complaint on the ground of limitation and submitted that the present complaint has been filed by the Complainant in July, 2010 i.e. after expiry of approx. 4 years, therefore, the same is barred by limitation and liable to be, dismissed. In this regard it has invited the attention of the Commission to Section 137 of the Limitation Act which prescribes 3 years time to file petition. In the instant case as per section 14 of the Limitation Act the period in which the complaint has been heard in PG Cell is bonafide and shall not be counted for the purpose of calculating period of limitation. Therefore, the above stand of the Respondent is not tenable.

23. For the reasons recorded above, the Commission finds the Respondent guilty of violation of Regulation 20 (iii) (a) and 26 (i) to (iv) of the DERC Performance Standards Metering and Billing Regulation, 2002 and looking to the circumstances of the case where a case of theft has been booked and dropped after 5 years and for which the consumer had to spend 5 valuable years of his life in litigation, imposes a total penalty of Rs. 20,000/- (Rs. 10,000/- for each violation).

24. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON