

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

Petition No. 23/2005

In the matter of: Application by BSES Yamuna Power Limited under Section 151 of Code of Civil Procedure read with Order IX Rule 13 for setting aside the Order of the Commission dated 24.01.2006

Sh. Ishwar Dass
S/o Late Budhan Ram,
H.No. XV 2/402, Gali No. 1 /2,
Than Singh Nagar, Anand Parbat,
New Delhi.

.....**Complainant**

Through: Shri V.K. Goel, Advocate,
Ch. No. 749, W.W. Tis Hazari, Delhi.

VERSUS

BSES Yamuna Power Ltd.
Through its : **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110092.

.....**Respondent**

Coram :

Sh. Berjinder Singh, Chairman & Sh. K. Venugopal, Member .

Appearance :

1. Sh. V.K. Goel, Advocate on behalf of Complainant.
2. Sh. Raj Arora, Head – Legal (BYPL).
3. Sh. Anil Kumar.
4. Mr. Mansoor Ali, Advocate, BYPL.

ORDER

(Date of Hearing : 21.3.2006)

(Date of Order : 13.4.2006)

1. The Licensee, namely, BSES Yamuna Power Ltd., has filed this application under Section 151 of Code of Civil Procedure read with Order IX Rule 13 for setting aside the Order of the Commission dated 24.01.2006.

2. The Licensee has moved this application with specific prayer to set aside the ex-parte Order dated 24.1.2006 and allow the Licensee to file the reply on the complaint filed by the consumer.

3. In the application, the Licensee has stated that after the notice was served on the Licensee, the legal department had assigned the file to the Senior Legal Officer who had sought comments from the concerned officials for preparing an appropriate reply to the complaint.

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4. It is stated that the Licensee has only one legal office at Andrews Ganj who was handling around 5000 files. It is also stated in the application that while the Licensee was seeking information from the concerned officers, the Senior Legal Officer left the services of the Licensee, while doing so, he did not inform his successor about the details of the notice of this case. Further, it was during the same time when the office of the Licensee was segregated from the office of BSES Rajdhani Power Ltd. and in this process the Licensee lost track of the case and was unable to appear before this Commission.

5. In the application brought before the Commission, the Licensee has tried to bring about certain factors, which also includes that the consumer has resorted to illegal and unauthorised restoration of supply etc. The Commission at this stage is not keen to deal with the merits of these statements.

6. Sh. Mansoor Ali, Advocate, appearing on behalf of the applicant Licensee has tried to put an argument that it was a bonafide mistake that the Licensee was not able to appear before the Commission and the Licensee should not suffer on account of an ex-parte order. It is requested by the Counsel that Licensee should be given an opportunity to file the reply to the complaint so that the Commission can appreciate the real facts.

7. The Licensee has been heard in detail.

8. Sh.V.K. Goel, Advocate, appearing on behalf of the Complainant is also present and he states that this application is not maintainable since the Licensee has already admitted that they had received the notice of the Commission. Sh. Goel has also submitted that the Licensee is trying to abuse the process of law by not obeying the orders of the Commission and it is further stated by the Counsel that he is moving another application under Section 142 of the Electricity Act for imposition of penalty on the Licensee.

9. It is seen from the submissions of the Licensee in this application that they do not deny the receipt of notice. It is also revealed from the records of Commission that an adequate notice had been sent to the Licensee both for filing the reply and for the hearing held at the Commission.

10. The Licensee in this case chose not to file the reply to the complaint, despite a notice. Further, the Licensee failed to appear before this Commission

on the date of hearing. The Commission while passing the Order dated 24.01.2006 had heard the Complainant and it was a case where violation of theContd.

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Act and Regulations was made out. The Licensee in its application has been unable to furnish any cogent reasons to interfere with the Commission's Order of 24.01.2006. The Commission has considered that the provision of Order IX, Rule 13 can be invoked for setting aside a decree issued ex-parte against the defendant when the court is satisfied that the summons/notice was not duly served upon the defendant or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, or the court otherwise thinks the case is fit or setting aside the ex-parte order.

11. In the instant case the Applicant has failed to show as to what was the sufficient reasons/causes which prevented the Licensee from, firstly, filing a reply to the complaint and secondly, to appear before the Commission when an adequate notice was served upon the Licensee.

12. In view of the facts and circumstances of the present case the Commission opines that the application made by the Licensee is not maintainable and therefore, is dismissed.

13. Ordered accordingly.

Sd/-
(K. Venugopal)
Member

Sd/-
(Berjinder Singh)
Chairman