

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

Petition No. 16/2006

Bharat Engineering Company
E-144, Shastri Nagar,
Delhi.

.....**Complainant**

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

VERSUS

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

.....**Respondent**

Coram:

**Sh. Berjinder Singh, Chairman, Sh. K. Venugopal, Member &
Sh. R. Krishnamoorthy, Member.**

Appearance:

1. Sh. V.K. Goel, Advocate, on behalf of the Complainant.
2. Sh. N.L. Nagpal, Complainant.
3. Sh. Deepak Nagpal, Complainant.
4. Sh. A.K. Chandhok, HOD Coml. NDPL.
5. Sh. Sunil Singh, DM, SKN, NDPL.
6. Sh. D.P. Nair, NDPL.
7. Sh. B. Biswal, AM (CCM) NDPL.
8. Ms. Anamika Sharma, Legal Retainer, NDPL.
9. Sh. I.M. Singh, HOG (Legal Affairs) & Dy. C.S., NDPL.

ORDER

(Date of Order : 04.05.2007)

1. The Complainant has approached this Commission, under Section 142 of the Electricity Act 2003 seeking penalty against the Respondent, NDPL, for raising the bills against a non-existing connection.

2. The case of the Complainant in brief is that he had two connections in his name one for IP purpose with K. No. 546295 (sanctioned load of 12 K.W.) and another for I.L. purpose with K. No. 546296 (sanctioned load of 1 K.W.).

3. The dispute arose when the Respondent conducted an inspection on the premises of the Respondent on 18.12.1990 and thereafter raised a bill for an amount of Rs.78,135.77.

4. The Complainant approached the Civil Court and challenged the bill before the Ld. Civil Judge. The Ld. Civil Judge dismissed the Suit vide its Order dated 5.2.1996. Aggrieved by the judgement of Ld. Civil Judge, the Complainant preferred an appeal before the Ld. Additional District Judge and during the course of the proceedings, the matter was referred to the Permanent Lok Adalat (PLA) for a possible settlement.

5. The PLA vide its Order dated 11.4.2000 have held the following:

- a) The Petitioner shall be liable to pay minimum charges on the basis of 60% of the connected load of 35.72 kw.
- b) The Executive Engineer was directed to issue the revised bill in terms of the aforesaid directions.
- c) The Petitioner was not held liable to pay any LPF penalty from March 1998 when the post notice was deposited.

6. The Complainant again approached the PLA to seek clarification of the Order dated 11.4.2000 regarding applicability of the same in respect of IL meter also and the PLA vide its order dated 17.10.2000 clarified the following:-

- a) The 60% of the connected load shall be treated w.e.f. 01.4.1997 instead of 13.9.2000 (the date provisions of Tariff were made effective).
- b) The Petitioner is entitled to the benefit of removal of misuse in respect of IL meter also.
- c) The department was directed to revise the demand in terms of the aforesaid Orders.

7. The Complainant further submitted that in the month of May 2003, a bill was raised against the IP connection for an amount of Rs.9,502.31 including the current demand of Rs.4,795/-. In the said bill an amount of Rs.1,26,621/- was also separately reflected as NTA (not to be accounted) amount. The Complainant has further submitted that in the next demand raised by the Respondent under the LPSC Waiver Scheme 2005, the principal amount of Rs.2,070/- was reflected and no NTA amount was shown in that bill.

8. The Respondent in reply to the complaint have raised preliminary objections on the maintainability of the present complaint before the Commission. The Respondent, in preliminary objections, have submitted that the Complainant has not approached this Commission with clean hands and misled the Hon'ble Commission by suppressing the material facts that he only

made part payments in respect of IP and IL connections during the period from February 1992 to November 1997 and therefore, the dues had accumulated.

9. It is further submitted by the Respondent that the Complainant may not be allowed to escape liability of paying the electricity dues for the period he consumed the electricity. In their reply on merits, the Respondent submitted that during the inspection carried out on 18.12.2000, it was found that the connection was being misused. The Respondent further submitted that both these connections IL and IP, installed at the premises of the Complainant, were amalgamated in April 2001. The Respondent admitted that a bill Rs.78,135.77 was raised in October 1999 consequent to the inspection carried out by the representative of the then DVB and a credit of Rs.39,408.43 was given to the Complainant in August 2000, which is prior to the date of the final order passed by the PLA on 17.10.2000.

10. The Respondent also submitted that the amount raised by the Respondent reflected against code 7, in their ledgers was for LPSC and as such it could not be correlated with the revision of the bill in terms of the order passed by the PLA on 11.4.2000 and 17.10.2000. The Respondent have submitted that in respect of IP connection, the complainant made payments of Rs. 6,000/-, Rs. 9,000/-, Rs. 15,000/- and Rs. 80,000/- between February, 1992, and May, 1996. Similarly, in respect of IL connection also, the complainant made payments of Rs. 625/-, Rs. 4,244/- and Rs. 6,000/- between January, 1992, and January, 1994. Since, all these payments were only part payments, the dues in respect of the 02 connections got accumulated. The amount accumulated against IL connection up to the month of September, 1999, was Rs. 1,52,632.66, out of which, an amount of Rs. 1,51,083.00 was transferred in NTA column in October, 1999. As regards IP connection, the amount accumulated was to the tune of Rs. 1,31,351.52, out of which, an amount of Rs. 1,26,621.00 was transferred to NTA column in October, 1999.

11. The Respondent have also submitted that during DVB time there was no provision of reflecting the NTA amount in regular bills. This facility was introduced by the Respondent in 2003 after taking charge from the then DVB. Therefore, the NTA amount of Rs. 1,26,621/- was reflected in the bill for May, 2003. The Respondent have also submitted that the SIS (special intimation slip) raised by the complainant under the LPSC, did not contain the NTA amount, but that did not mean that the NTA amount was settled. The Respondent have denied that the IL connection was lying disconnected prior

to the amalgamation as alleged by the Complainant. The Respondent have submitted that the total accumulated outstanding dues against the complainant in respect of two connections (IP & IL) was Rs. 4,92,461.35.

12. The Complainant in his rejoinder has reiterated his earlier stand that when all the outstanding dues were cleared by him after the Respondent raised the revised bill in terms of the Order of PLA, any subsequent demand by the Respondent is illegal and not sustainable.

13. During the course of the arguments Sh. V.K. Goel, Counsel for the Complainant, contended that the demands raised by the Respondent are illegal and not recoverable as they pertain to a very old period and are barred by the provisions of law. Sh. Goel also argued that the bill raised by the Respondent after first inspection carried out on 18.12.1990 for an amount of Rs.78135.77 was revised to Rs.51,132.11 in the month of July 2000 in terms of the Order of the PLA on 11.4.2000. Sh. Goel also furnished the copies of two bills pertaining to the DVB period to refute the submissions made by the Respondent that the system of reflecting NTA amount was not prevalent at the time of DVB.

14. The representative of the Respondent, Sh. I.M. Singh submitted that the complainant is under obligation to clear the outstanding dues in respect of both the connections as he has consumed the electricity but failed to clear the outstanding dues.

15. The parties have been heard and on perusal of the pleading of both the parties, it is observed that the amount relate to the period when the provisions of Electricity Act, 2003 were not in existence. It has also been observed that the Respondent have not submitted any document or record to show that they have been reflecting the arrears in the bills raised against the Complainant before May 2003, that too, in respect of IP connection.

16. The Commission has observed and which fact has been admitted even by the Respondent that the bills pertain to the period between February 1992 to November 1997, when the provisions of the Electricity Act, 1910 were applicable. The relevant extract of Section 24 of the Electricity Act, 1910 which was applicable at the relevant time, is reproduced below: -

"Discontinuance of supply to consumer neglecting to pay charge:

- (1) Where any person neglects to pay any charge for energy or any (sum, other than the charge of energy,) due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.*
- (2) Where any difference or dispute (which by or under this Act is required to be determined by an Electricity Inspector, has been referred to the Inspector) before notice as aforesaid has been given by the Licensee, the Licensee shall not exercise the powers conferred by this section until the Inspector has given his decision."*

17. In the present case, the Respondent as also the then DVB have failed to take any action against the Complainant for non payment of the dues and they even did not reflect the NTA amount in any of the bills prior to April 2003. The contention of the Respondent that the system of reflecting the disputed amount was not prevalent during the DVB period is not sustainable as the bills produced by Sh. V.K. Goel, Advocate, reveal that even during the DVB time, NTA amount used to be reflected in the bills. The present complaint is a glaring example of the lapses on the part of the then DVB for recovery of the electricity dues from the consumers. It has also been observed that the bill raised by the Respondent after inspection carried out on 18.12.1990, was revised in the month of July 2000 after the order of the PLA dated 11.4.2000, so the question of any arrear on that account did not arise. Moreover, the Respondent have not furnished any data/record to show that the bill was not revised in terms of the Order of PLA.

18. The Respondent have not been able to justify the demand raised by them against both the connections during the course of arguments. They also could not produce any document for the DVB period to establish that the NTA amount was not reflected in the bills during the DVB time. On the contrary, the Counsel for the Complainant have produced the bills for the DVB period which show that NTA amount used to be reflected in the bills even during the DVB period.

19. It is evident from the arguments on both sides that there have been two important stages in the case; first the Order of PLA in the year 2000 and second was the LPSC waiver scheme 2005. At both these stages, the licensee claims that the amount classified as 'NTA' was not reflected. The licensee also states that the 'NTA' amount is the sum which is due to DPCL (Delhi Power Company Limited) and as such, would require a separate treatment.

It is difficult to agree with the argument of the licensee that NTA amount, which was due to DPCL, was not covered in the LPSC waiver scheme. In fact, the LPSC waiver scheme had its route in the outstanding dues of DPCL, which contained both i.e., the Principal amount as well as the late payment surcharge. The licensee has, under the said scheme, settled the outstanding dues prior to the period of unbundling of DVB and remitted the amount to DPCL. If the NTA amount deserved a separate treatment, as suggested by the licensee, then why have they not taken the due course of recovery of the said amount through the process of law. The licensee has not shown any provision in the Electricity Act, 2003 or the Regulations where the NTA amount would require a separate treatment apart from what has been ordered by PLA or covered under LPSC scheme.

20. The arguments on both sides indicate that the licensee has perhaps overlooked two major settlement options of the outstanding dues, if any; once at the time of the orders of PLA and the other at the time of LPSC waiver scheme. The entire circumstances suggest that the licensee has not assimilated its accounts against the said connections.

21. Considering the facts and circumstances of this case, the Respondent are not justified in raising the demand when the Complainant had already cleared the dues as per the revised bills issued by the Respondent after the Orders of the PLA. In case the Respondent were not satisfied with the Orders of the PLA or if some dues were still to be recovered from the Complainant, they ought to have invoked the provisions of the Electricity Act, 1910, or filed a suit for recovery within the limitation period as applicable at the relevant time. We are convinced that the demand, if any, including the NTA amount, ought to have been reflected/ recovered at the stage of PLA Orders in the year 2000 or at the time of LPSC waiver scheme 2005. Not reflecting the amount of NTA in the said bills and then raising the demand subsequently, on the plea that 'NTA' amount was to be dealt with separately, cannot be accepted as a valid argument. In the present case, the Respondent are not entitled to recover the dues which are said to be still pending against the Complainant and we therefore, set aside the said demand which relates to the period from 1992 to 1997.

22. The petition is disposed of accordingly.

Sd/-
(K. Venugopal)
MEMBER

Sd/-
(R. Krishnamoorthy)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN