

## **DELHI ELECTRICITY REGULATORY COMMISSION**

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

F.11 (1170)/DERC/2014-15

### **Petition No. 59/2014**

**In the matter of:** Petition filed under section 142 of Electricity Act, 2003

**And**

**In the matter of:**

Charan Singh Maan  
S/o Yashwant Singh,  
Flat No. c2/2125 (2<sup>nd</sup> Floor) Vasant Kunj,  
New Delhi – 110070

.....**Complainant**

VERSUS

BSES Rajdhani Power Ltd.  
Through its: **CEO**  
BSES Bhawan  
Nehru Place  
New Delhi-110019

.....**Respondent**

**Coram:**

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

### **Appearance:**

1. Petitioner in person.
2. Shri S. Bhattacharya, DGM Enforcement, BRPL.
3. Shri K. Datta, Advocate for Respondent.
4. Shri Manish Srivastava, Advocate for Respondent.

### **INTERIM ORDER**

(Date of Hearing: 12.06.2015)

(Date of Order: 22.07.2015)

1. The instant petition has been filed by Shri Charan Singh Maan, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. for violation of the procedure laid down in Regulations 52 and 53 of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

2. In his petition, the Petitioner has alleged the following violations:
  - a) **Regulation 52 (vi)** – No case of theft shall be booked only on account of seal on meter missing or tempered or breakage of glass window unless corroboration by consumption pattern or other evidences.
  - b) **Regulation 52(viii)** – Meter not seized and No Seizure memo was provided when the inspection was conducted. Meter was not sent to NABL accredited Lab before making allegation.
  - c) **Regulation 53(ii)** - Speaking order was passed without hearing, when owner was posted abroad and out of country at the time of inspection of residence.
  - d) **Regulation 2(n)** – Connected load was increased without properly calculating.
3. A notice of the petition was issued on 26.11.2014 to Respondent to file its reply.
4. In response to the above notice, the Respondent filed its reply on 13.01.2015, whereby they denied the allegations made in the petition and requested the Commission to dismiss the petition on the grounds of lack of jurisdiction and non-applicability of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 in the instant case.
5. The matter was listed for hearing in the Commission on 30.04.2015, which was attended by the petitioner and Counsel/representatives of the Respondent. During the hearing, the Counsel of the Respondent raised objections on the following issues:
  - a) **Lack of jurisdiction:** that the complaint is in respect of case which took place in the year 2004 when the Delhi Electricity Regulatory Commission (Performance standards metering and billing) Regulation, 2002 was in force. The present petition is filed under Section 142 of the Electricity Act, 2003, which is a subsequent legislation and the Commission has no jurisdiction to entertain the complaint.
  - b) **Barred by limitation:** that the present complaint is for the incident which is more than 10 years old and therefore barred by limitation.
6. The Petitioner was granted two weeks time to file reply on the issues raised by the Respondent. The Petitioner filed its Rejoinder to the reply of the Respondent and submitted the following:

- i. **On the issue of Limitation** – Article 137 of Limitation Act, 1963 is applicable to civil courts and not to any quasi- judicial forum or tribunal. The language prescribed under Section 142 of the Electricity Act, 2003 does not contemplate any time period for the approaching the Commission.
  - ii. **On the violation of Regulations -**
    - a. The average consumption pattern is bound to be less since use of electric power is not regular as house for most of the period was unoccupied.
    - b. Licensee has violated Regulation 30 by not giving proper credit of units consumed in calculation of assessment bill.
    - c. The affected meter remained connected even after case of DAE on account of tempered seals for few months thereafter. The new meter was installed by licensee without any intimation to us and knowledge.
7. The matter was listed for hearing on 12.06.2015, wherein the Counsel/representatives of both the parties were present. The Commission heard both the parties at length.
8. Regarding jurisdiction of DERC under Section 142 of the Electricity Act, 2003, it is made clear that though the Delhi Electricity Regulatory Commission (Performance standards metering and billing) Regulations, 2002 was made under Delhi Electricity Reforms Act, 2000, but the same is saved under Section 185 (3) of the Electricity Act, 2003. Section 185 (3) of the Electricity Act, 2003 provides that:

*“185 (3) the provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.”*

The Delhi Electricity Reforms Act, 2000 is one of the enactments in the Schedule, therefore DERC have jurisdiction to adjudicate upon the issue.

9. On the issue of Limitation, the Commission is of the view that the Electricity Act is a special statute which does not provide for any period of limitation for adjudication of claims by this Commission. The Hon'ble Supreme Court has consistently held the view **(LS Synthetics Ltd Vs Fairgrowth Financial Services Ltd & others [(2004) 11 SCC456] & Sakuru Vs Tanaji [(1985) 3 SCC 590])** that the provisions of the Limitation Act are not applicable to the proceedings before the quasi judicial bodies and tribunals. The Electricity Act does not specifically lay down period of limitation for adjudication of disputes. Further, the Commission observed that the petitioner has approached CDRF in the year 2006 and the case remained pending due to an SLP (special leave petition) filed by the Respondent in the Supreme Court, as informed by the CDRF vide letter dated 11.12.2012. The petitioner filed the instant case on 26.11.2014 before this Commission.

10. Considering the above facts and keeping in view that the Electricity Act, 2003 is the special statute which does not provide for any period for limitation for adjudication of claims by this Commission, the instant petition may not be barred by limitation.

11. On the basis of pleadings and oral submissions of both parties and considering the material available on the record, the Commission is of the opinion that the petition may be admitted as the Respondent prima-facie appears to be responsible for the following violations:-

**a) Violation of Regulation 25 (iv) of DERC Supply Code, 2002**

Regulation 25 (iv) provides that:-

*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.*

The Commission observed that the Respondent failed to assess the Consumption pattern of consumer while booking a theft case and such other evidences as may be available. Hence, it appears that the Respondent has contravened the provisions of Regulation 25 (iv) of DERC Supply Code, 2002.

**b) Violation of Regulation 25 (vii) of DERC Supply Code, 2002**

Regulation 25 (vii) provides that:-

*While the report must be signed by each member of the joint team and the notice, if any, must be signed by an authorized signatory of the licensee and all these 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 each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the joint report, the assessment bill and the notice shall be sent to the consumer under Registered Post.*

The Commission observed that the inspection report was not sent through a registered post to the complainant. Hence, it appears that the Respondent has contravened the provisions of Regulation 25 (vii) of DERC Supply Code, 2002.

**c) Violation of Regulation 28 (i) of DERC Supply Code, 2002**

Regulation 28 (i) provides that:-

*In case the consumer is not satisfied with the decision taken during personal hearing and makes the payment under protest within the prescribed period, the licensee shall ask the consumer to furnish information to further substantiate his stand and arrange a personal hearing before an officer of the licensee one level above the officer before whom the previous hearing was given. The licensee shall give due consideration to the facts submitted by the consumer and pass a speaking order as to whether the case of DAE is established or not.*

The Commission observed that no opportunity of Personal hearing was given to the consumer, when the amount was deposited under protest. Hence, it appears that the Respondent has contravened the provisions of Regulation 28 (i) of DERC Supply Code, 2002.

**d) Violation of Regulation 30 (i) of DERC Supply Code, 2002**

Regulation 30 (i) provides that:-

*While making the assessment bill, the licensee shall give credit to the consumer for the payments already made by the consumer for the period of the assessment bill. The assessed bill shall be prepared after excluding the consumption recorded by the meter. The bill shall clearly indicate the timing, days and place where it is to be deposited.*

In this regard, it has been observed proper credit was not given of unit consumed in calculation of assessment bill. Hence, it appears that the Respondent has contravened the aforesaid provisions of Regulation 30 (i) of DERC Supply Code, 2002.

12. In view of the above-mentioned findings, the Respondent is directed to show-cause as to why penal action under Section 142 of the Electricity Act, 2003, for violating the above-mentioned Regulations should not be taken against it. The Respondent is directed to file its reply within two weeks with service of a copy to the Petitioner. The Petitioner has also been given liberty to file rejoinder, if any, within two weeks of above filing.
13. Take notice that in case the Respondent fails to furnish the reply to this Show Cause Notice within the time mentioned above, it shall be presumed that the Respondent has nothing to say and the Commission shall proceed in the absence of such reply in accordance with law.
14. The next date of hearing shall be intimated to the parties in due course.
15. Ordered accordingly.

Sd/-  
(B. P. Singh)  
Member

Sd/-  
(J. P. Singh)  
Member

Sd/-  
(P. D. Sudhakar)  
Chairperson