

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 110017

No. F. 11(643)/DERC/2010-11

Petition No. 34/2010

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

In the matter of:

Vijay Kumar
S/o Late Shri Tek Chand Kumar
5131, Harpool Singh Building
Delhi-110007

...Petitioner

Versus

M/s Tata Power Delhi Distribution Ltd.
Through its : CEO
Grid Sub-Station Building
Hudson Lines, Kingsway Camp,
Delhi-110009

...Respondent

Coram:

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

Appearance:

1. Petitioner with Shri Ashwani Kumar Gupta, Counsel for the Petitioner.
2. Sh. K Datta, Counsel for the Respondent (TPDDL)
3. Sh. O P Singh, Sr. Manager, TPDDL
4. Sh. Shalendra Singh, Sr. Manager, TPDDL
5. Ms. Sarika Mehta, AM, TPDDL.

INTERIM ORDER

(Date of Hearing: 14.03.2013)
(Date of Order: 11.04.2013)

1. The instant petition has been filed by the Petitioner under Section 142 of the Electricity Act, 2003 for violation of Regulation 2 (f) and Regulation 26 (ii) of the Delhi Electricity Regulatory Commission (Performance Standards-Metering Billing) Regulations 2002 against the Respondent-Tata Power Delhi Distribution Limited (erstwhile known as North Delhi Power Limited) on 21.10.2010.

2. The above matter was listed for hearing on 14.03.2013 in the Commission for deciding the objection raised by the Respondent to dismiss the petition as barred by limitation.
3. In this regard, the Respondent has submitted that admittedly an inspection was carried out on 11.12.2004 and theft assessment bill was raised on 06.01.2005 and hence, if the complainant was aggrieved by any wrongful act of the Respondent, the complainant ought to have filed the present complaint within three years from 06.01.2005, which expires on 05.01.2008 and admittedly the present complaint was filed on 09.10.2010 i.e beyond the period of Limitation as prescribed under law.
4. On the aforesaid issue, the Respondent had filed its written reply vide its letters 08.12.2010 and 16.04.2012 respectively as also addressed its arguments on 14.03.2013 wherein the following has been submitted:
 - (i) That the present petition is liable to be dismissed on the sole ground that the complaint is grossly barred by law of Limitation.
 - (ii) That Article 137 of Limitation Act, 1963 provides that any application or petition for which no period of limitation is provided elsewhere in the Limitation Act, the period of limitation for commencing the legal proceedings shall be three years from the date on which right to apply arises.
 - (iii) That admittedly, an inspection was carried out on 11.12.2004 and theft assessment bill was raised on 06.01.2005 and hence, if the complainant was aggrieved by any wrongful act of the Respondent, the complainant ought to have filed the present complaint within three years from 06.01.2005, which expires on 05.01.2008 and admittedly the present complaint was filed on 09.10.2010 i.e beyond the period of Limitation as prescribed under law.
 - (iv) That sometimes in the year 2006, the Complainant filed a civil suit challenging the theft assessment bill and since he did not get any substantial relief before the Civil Court, filed the present complaint

before this Commission beyond the period of Limitation and hence the present complaint is liable to be dismissed.

5. In relation to the above contention, the Respondent has relied upon the following judgments for concluding the case in their favour.

- (a) M.S. Shoes East Ltd. vs MRTD & Ors. 107 (2003) Delhi Law Times 595 (DB) passed by the Hon'ble Delhi High Court.
- (b) M/s Jain Atta Chakki vs. NDPL, Petition No.06/2005 dated 06.03.2005 passed by the Delhi Electricity Regulatory Commission.
- (c) Sh. Rajender vs. NDPL, Petition No.23/2004 dated 31.03.2005 passed by the Delhi Electricity Regulatory Commission.
- (d) (2007) 8 Supreme Court Cases 381 in the matters of Maharashtra Electricity Regulatory Commission vs. Reliance Energy Ltd. and Ors
- (e) BSES vs. DERC, Appeal No.181/08 passed by the Hon'ble Appellate Tribunal for Electricity.
- (f) BSES Rajdhani Power Limited vs. DERC, Appeal No.183/2010 passed by the Hon'ble Appellate Tribunal for Electricity.

6. The Counsel for the Respondent submitted that the period of limitation is to be on the basis of action of the Petitioner and since the Petitioner has already approached the civil court within the stipulated time i.e three years in the year 2006 from the date of inspection 11.12.2004, hence, the approach of the Petitioner in the Commission beyond three years is not reasonable and the present petition is liable to be dismissed.

7. The Counsel for the Respondent has invited attention of the bench on the provisions of Article 137 of the Limitation Act, 1963 which is reproduced as below.

Article 137 of the Limitation Act, 1963

"Any other application for which no period of limitation is provided elsewhere in this division"

8. The Counsel for the Respondent has also submitted that in view of the observations made in the matter of "M.S. Shoes East Ltd. vs. MRTD & Ors, 107 (2003) Delhi Law Times 595 (DB)" passed by the Hon'ble High Court of Delhi, the present petition filed before the Commission under Section 142 of the Electricity Act, 2003 is not filed within reasonable time and the same is liable to be dismissed. The relevant paragraph of the said judgment is reproduced as under.

"26. We have heard the learned Counsel for the parties at length and perused the various judgments delivered by the Apex Court and other Courts carefully. There is no doubt that the Legislature in its wisdom has not prescribed any limitation for preferring compensation petition under Section 12B of the MRTD Act. There are large numbers of similar Acts where the Legislature in its wisdom has not specified a period of limitation. On proper analysis of various judgments of the Apex Court and the other Courts, the ratio which clearly emerges is that all those cases where the Legislature has not specified any statutory time-limit, the claim has to be filed within reasonable time"

9. The above view of the Respondent was objected by the opposite counsel of the petitioner with the plea that the Article 137 of the Limitation Act, 1963 is applicable only to Civil Court and not to any quasi judicial forum or tribunal. The Counsel for the Petitioner submitted that the language prescribed under Section 142 of the Electricity Act, 2003 does not contemplate any time period for approaching the Commission.
10. The Counsel for the Petitioner invited the attention of the bench to the provisions of Section 142 of the Electricity Act, 2003, which is reproduced as below:

Section 142. (Punishment for non-compliance of directions by Appropriate Commission):

"In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand

rupees for every day during which the failure continues after contravention of the first such direction".

11. The Counsel for the Petitioner further submitted that the Commission may accept an application/petition under the said Act, if the Commission is satisfied and hence, the provisions of Article 137 of the Limitation Act, 1963 is not applicable in the instant case. In this context, the Counsel for the Petitioner has relied upon the following judgments.

- a) **AIR 1964 SC 752 in the matter of the Bombay Gas Co. Ltd. vs. Gopal Bhiva & Ors.** (In our opinion this arguments one of dispensation. It is well settled that Art. 181 applies only to applications which are made under the Code of Civil Procedure, and so, its extension to applications made under S. 33C(2) of the Act would not be justified).
- b) **AIR 1965 SC 540 in the matter of Smt. Prativa Bose vs. Kumar Rupendra Deb Raikat and others.** (We respectfully agree with these observations and feel no doubt that even now Art. 181 has to be read as confined to applications under the Code).
- c) **AIR 2003 SC 4394 in the matter of New India Assurance Co. Ltd. vs. Padma and another.**
- d) **AIR 1970 SC 209 in the matter of Nityanand M Joshi & another vs. The Life Insurance Corporation of India & ors.** (...It seems to us that the scheme of the Indian Limitation Act is that it only deals with applications to courts, and that the Labour Court is not a court within the Indian Limitation Act, 1963).
- e) **1999 Vol.6 SCC 82 in the matter of Ajaib Singh vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited & another.** (This Court in Bombay Gas Co. Ltd. v. Gopal Bhiva held that the provisions of Article 181 (now Article 137) of the Limitation Act apply only to applications which were made under the Code of Civil Procedure and its extension to applications under Section 33-C(2) of the Act was not justified. This position was further

reiterated and explained by this Court in Town Municipal Council Athani v. Presiding Officer, Labour Courts).

- f) **AIR 1985 SC 1279 in the matter of Sakuru vs. Tanaji** (It was held that the provisions of the Limitation Act applied only to proceedings in courts and not to appeals or applications before the bodies other than courts such as quasi judicial tribunals or executive authorities, notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on courts under Code of Civil or Criminal Procedure).
- 12.** The Counsel for the Petitioner further argued that the observations made by the Hon'ble High Court of Delhi in the matter of M.S. Shoes East Ltd. vs. MRTD & Others are related to money suits only and the contents of the same are not applicable in the instant case.
- 13.** The Counsel for the Petitioner further submitted that even if there is delay in filing the instant petition before the Commission, the same may be condoned and matter should be disposed of on merits and not technicalities.
- 14.** While dealing with an application for deciding the period of limitation (under Article 137 of the Limitation Act, 1963), it is most essential to proceed with utmost caution, as to whether the ingredients contained under the said section are met or not, to decide the issue. The object of this provision is not just to invoke Article 137 of the Limitation Act, straight away for the cases which are beyond three years but to be seen/considered in the light of the facts & circumstances of each case on merit.
- 15.** This Article may seem to be confined to applications under the Code of Civil Procedure. In a number of cases, it has been held that the Article governs applications which are contemplated by the Code of Civil Procedure. The decisions, however, were not uniform.

16. The Apex Court in its decision in Civil Appeal Nos. 2395 of 2008 titled **Improvement Trust vs. Ujagar Singh** has held that “justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold”.
17. It has also been observed by the Apex Court in the matters of Collector **Land Acquisition vs. Mst. Katiji & Ors**, that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay.
18. Further in the case of **Francis vs. Antony (1991) 1 CCC 530 (Ker)** an application for probate, letters of administration or succession certificate even if filed beyond three years from the date of the death of the testator cannot be rejected at the threshold as time-barred by invoking Article 137 of the Act.
19. Besides above, the Commission has inherent powers under the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001 wherein the Commission has power to initiate any proceedings *suo moto* or on a petition filed by any affected person. The relevant Regulation is reproduced as under:

Regulation 11 (1) of the Delhi Electricity Regulatory Commission Comprehensive (Conduct of Business) Regulations, 2001.

“The Commission may initiate any Proceedings suo moto or on a petition filed by any affected or interested person.”

20. In view of the above narrations and grounds taken by the Respondent on the applicability of Article 137 of the Limitation Act, the Commission observed that since the language used under Section 142 of the Electricity Act, 2003 does not contemplate any time period for filing the complaint under the said section & the fact that the Commission has suo-moto power under Regulation 11 (1) of the DERC (Conduct of Business) Regulations, 2001 as also the observations made by the Apex Court

referred to above, the contentions made by the Respondent cannot be accepted.

21. In regard to the judgments relied upon by the Respondent, it is observed that the same have been passed by the Apex Court/Forum in respect of money suits or the adjudicatory functions of the State Commission and not on the issue of limitation period. Hence, the same are not applicable in the instant matter.
22. In view of the above, the objections raised by the Respondent that the present petition is not maintainable in terms of provisions of Articles 137 of the Limitation Act, 1963, is rejected.
23. Accordingly, the petition is admitted. The next date of hearing shall be intimated to the parties in due course.
24. Ordered accordingly.

Sd/-
(J. P. Singh)
Member

Sd/-
(Shyam Wadhera)
Member

Sd/-
(P. D. Sudhakar)
Chairman