

DELHI ELECTRICITY REGULATORY COMMISSION

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

F.11 (1348)/DERC/2015-16

Petition No. 09/2016

Under section 142 of Electricity Act, 2003

In the matter of:

Shri Jai Prakash Singh
15/32, West Patel Nagar,
New Delhi – 110008

.....**Complainant**

VERSUS

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

.....**Respondent**

CORAM: Sh. B.P. Singh, Member

Appearance:

1. Shri. J. P. Singh, Petitioner;
2. Shri Kshitij Singh, along with the Petitioner;
3. Shri Manish Srivastava, Advocate for Respondent;
4. Shri Imran Siddiqi, Legal Officer, BYPL;
5. Shri Munish Nagpal, Sr. Manager, BYPL.

ORDER

(Date of Hearing: 08.03.2018)

(Date of Order: 15.03.2018)

1. The instant petition has been filed by Sh. Jai Prakash Singh, under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for violation of the procedure laid down in the Delhi Electricity Supply Code and Performance Standards Regulations, 2007.
2. Vide Interim Order dated 05.08.2016, a Show Cause notice was issued to the Respondent for violation of Regulations 52 (iv), 52 (viii) read with Regulation 38 (c), 52 (ix), 52 (x) and 54 of Delhi Electricity Supply Code & Performance Standards Regulations, 2007. The Respondent replied to the Show Cause Notice on 24.03.2017.
3. The matter was heard on 08.03.2018 and both the parties submitted their respective versions. Based on the arguments put forth by the parties the Commission's findings are as follows:

a) Violation of Regulation 52(iv) of DERC Supply Code, 2007

Regulation 52(iv) provides that:-

As per the above regulation, the Authorised Officer shall prepare a report giving details such as connected load, condition of meter seals, working of meter and mention any irregularity noticed (such as tampered meter, current reversing transformer, artificial means adopted for theft of energy) as per format.

b) Violation of Regulation 52 (ix) of DERC Supply Code, 2007

Regulation 52 (ix) provides that:-

..... a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post.

The Respondent has clarified that all reports, including seizure memo, meter change report and inspection reports were prepared on site and served to the representative of the complainant Mr. Kshitij Kumar Singh but he refused to sign and did not allow to paste. Subsequently, the same was sent to the complainant along with the first Show Cause notice which was duly dispatched on 10.09.2015.

The Commission observed that though the Respondent has clarified that the reports were sent to the complainant along with the first Show Cause notice which was duly dispatched on 10.09.2015. The dispatch details were also furnished. However, the dispatch sheet does not bear any dispatch date. It is further observed that the Inspection was conducted on 25.08.2015 and as per the reply of the Respondent the reports were dispatched on 10.09.2015 i.e. after 16 days from the date of inspection, whereas the Regulation provides that the reports shall be sent to the consumer simultaneously. The Respondent has failed to provide any reason that when the report was made at site, why it was not sent simultaneously. Hence, the Respondent has violated the aforesaid Regulations on two accounts, firstly the reports were not prepared at site at the time of inspection and secondly the reports were not sent to the consumer simultaneously. Hence, the Respondent has violated the Regulations 52(iv) and 52 (ix) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

c) Violations of Regulation 52 (viii) read with Regulation 38 (c) of DERC Supply Code, 2007

Regulation 52 (viii) provides that:-

..... In case of suspected theft, the Authorised Officer shall Remove the old meter under a seizure memo and seal it in the presence of the consumer/ his representative. The Licensee shall continue the supply to the consumer with a new meter. The old meter shall be tested in a NABL accredited laboratory and the laboratory shall give a test report,

in writing, which along with photographs/ videographs shall constitute evidence thereof.

Regulation 38 (c) provides that:-

The consumer shall be informed of proposed date and time of testing at least two days in advance.

The Respondent submitted that the seized meter was sent to the Authorized Lab for further testing and analysis. As for the Seizure memo, the same was prepared at site but the representative of the complainant refused to receive and sign the same. As such, it was sent to the complainant through speed post on 10.09.2015 along with the Show Cause notice. Placing reliance on the judgment of **Smt. Kanta Sharma vs. BSES Rajdhani Power Ltd. (WP.C 1712/2011)** in respect of Regulation 38 (c) the Respondent submitted that it is not applicable in the present case. The said provision applies to cases wherein the user himself disputes the accuracy of the meter installed at his premises.

As much it is related to the ratio of judgement of the Hon'ble High Court of Delhi, it is to be noted that the Hon'ble High Court has held that once the Regulations are not found to impose any obligation on the respondent to test the meter in the presence of the consumer and the consumer fails to avail the opportunity on the date given for testing, the process cannot be made cumbersome and the condition that no testing can be carried out without the presence of the petitioner and which may lead to delays cannot be imposed. It makes amply clear that if a person fails to appear on the date of inspection, he may not be given another chance to make the process cumbersome causing unnecessary delay. But giving an opportunity to the consumer for witnessing testing of meter was not denied by the Hon'ble High Court.

In respect of Regulation 38 (c) the Commission has time and again observed that the meter testing report is an important evidence for DAE case and rule of equity demands that the meter be tested in the presence of the consumer. The Regulations should be read as a whole for proper interpretations. Therefore, Regulation 38 (c) has applicability for every type of meter testing. Hence, the Respondent has contravened the provisions of Regulation 52 (viii) read with Regulation 38 (c) of DERC Supply Code, 2007 since no information was given to the Consumer about testing of meter in Lab and the meter was tested in the absence of the consumer.

d) Violation of Regulation 52 (x) of DERC Supply Code, 2007

Regulation 52 (x) provides that:-

.....the Licensee shall, within seven days of inspection, serve on the consumer a seven days show cause notice giving reasons, as to why a case of theft should not be booked against such consumer giving full details for arriving at such decision and points on which reply to be submitted...

The Respondent has submitted that a Show Cause notice was duly sent to the consumer vide speed post on 10.09.2015. The consumer received the Show Cause notice, as per his own statement and gave written reply along with ID proof on 22.09.2015. When the Customer attended personal hearing on 29.09.2015, he was given a patient hearing by the assessing officer. Thereafter, another Show Cause notice was sent on 06.10.2015, which has been admitted by the consumer. The date of 23.10.2015 was fixed asking the complainant to present the details of his case but he failed to appear on the said date. However, the consumer sent a written reply on 19.10.2015.

As for the alleged delay in sending the Show Cause notice, without admitting to the same, it is submitted that time limit prescribed in the regulation is merely procedural in nature and in respectful submission of the Respondent, the same is merely directory and not mandatory.

The Commission observed that the Show cause notice was not issued within the stipulated period of seven days from the date of inspection i.e. on 25.08.2015. The first Show cause notice was issued on 10.09.2015 i.e. after 16 days from the date of inspection dated 25.08.2015 and after 6 days even from the date of meter testing dated 03.09.2015.

On the issue of mandatory vs. directory Regulation, it is noted that a Regulation must be complied with, whether it contains a mandatory or a directory direction. It is not the free will of the Discom to comply or not to comply with the provisions of Regulations. The only point worth consideration is regarding the related consequences when a Regulation is not complied with. In the case of a mandatory direction, non-compliance makes the whole process null and void, whereas non-compliance of a directory Regulation entails some damages or penalty.

Keeping in view that the Show cause notice was served within 6 days from the date of meter testing, no violation of the provision of Regulation 52 (x) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 is established.

e) Violation of Regulation 54 of DERC Supply Code, 2007

Regulation 54 provides that:-

In case of default in payment of the assessed amount, the Licensee will, after giving a fifteen days notice, in writing, file a case against the consumer in the designated Special Court as per the provisions of section 135 of the Act. Disconnection of supply, however, can only be done after getting an order from the Special Court.

The Commission observed that the Final assessment bill was issued for payment by the consumer by the due date of 09.11.2015. However, the official of the Respondent went for disconnection of electricity for failure to pay the assessment bill without observing the procedure as per Regulation 54 which provides that the Discom shall disconnect the supply, only after getting an order from the Special Court.

The Respondent has submitted that the Respondent has never gone to disconnect the supply of the premises. On 12.11.2015, one Mr Amit, representative of the Respondent has visited the premises of the complainant for recovery of the enforcement dues and not for disconnection of the electric supply. It has further submitted that no disconnection notice was sent to the complainant as the consumer made a part payment of Rs. 26,400/- on 13.11.2015 on the basis of the order of the Electricity Special Court, Tis Hazari.

Though the Respondent has clarified that the representative of the Respondent has visited the premises of the complainant for recovery of the enforcement dues and not for disconnection of the electric supply, however, it is evident from the submissions that the Special Court of Electricity has directed for payments of certain amount, which was deposited by the Petitioner on 13.11.2015 i.e. on the next date of visit of recovery agent. Presumably, a recovery agent uses the threat of disconnection of supply for recovery of amount. Moreover, as per the Regulation, the Respondent shall give a fifteen days notice to the consumer in case of default of payment, thereafter the disconnection of electric supply can be done but there is no provision of sending recovery agents to the consumer to recover the enforcement dues. Hence, the Respondent has contravened the provisions of Regulation 54 of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

6. For the reasons recorded above, the Commission finds the Respondent has violated provisions of Regulations 52 (iv), 52 (viii) read with Regulation 38 (c), 52 (ix) and 54 of Delhi Electricity Supply Code & Performance Standards Regulations, 2007. For violation of Regulation 52 (iv), Regulation 52 (viii) read with Regulation 38 (c), Regulation 52 (ix), and Regulation 54, the Commission imposes penalty of Rs. 40,000/- (Rs. 10,000/- for each violation) to be paid within 30 days of the order.
7. The petition is disposed of and ordered accordingly.

Sd/-
(B. P. Singh)
Member