

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

Petition No. 06/2005

M/s Jain Atta Chakki
Through its **proprietor**
Mrs. Lajwanti Jain,
2/21, Sadar Bazar,
Delhi Cantt. New Delhi-10.

.....**Petitioner**

VERSUS

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

.....**Respondent**

Coram :

Sh. K. Venugopal, Member & Sh. R. Krishnamoorthy, Member.

Appearance :

1. Sh. K.N. Tripathy, Advocate for the Petitioner.
2. Sh. Virender Kumar Jain, Representative of the Petitioner/Petitioner.
3. Sh. R.C. Kher, G.M. Commercial for the Respondent.
4. Sh. Abhay Kumar, A.M.(Legal), NDPL.
5. Sh. Jaswant Rai Grover, Advocate for the Respondent.
6. Sh. Ajay Kalsie, AM(Legal), NDPL.
7. Sh. S.K. Das, H.O. (Enforcement), NDPL.

ORDER

(Date of Hearing: 04.03.2005)

(Date of Order : 06 .03.2005)

The matter was earlier listed for hearing on 01.03.2005.

2. The Petitioner had moved the Commission through the Grievance Redressal Officer by an application of 19.5.2004. The Petitioner has submitted that the Respondent has given him a Show-Cause Notice under Sections 135 and 138 of Electricity Act, 2003, on 18.5.2004 and alongwith the Show-Cause, they had served a provisional bill of Rs.1,14,968/- on account of alleged Dishonest Abstraction of Energy (DAE)/theft of electricity.

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3. The Petitioner, in its application of 19.5.2004 has submitted that the Officials of NDPL had installed on replacement a polycarbonate meter in August, 2004. After installing the meter, the officials had not provided any seal on the terminals of the polycarbonate meter and the meter box. The Petitioner states that the inspection report of 15.5.2004, mentions that outgoing and incoming phases were inter-changed, whereby the meter was moving in the right direction on two phases and in the opposite directions on one phase. The inspection report mentions that one of the phases has been deliberately changed to manipulate the recorded consumption.

4. The Petitioner further submits that the polycarbonate meter has inbuilt seals and are tamper proof. It is averred by the petitioner that the report of the inspection team is unfounded, as the inspection team had no apparatus or equipments to verify the facts.

5. The petitioner submits that he has a small Atta Chakki Unit operating in Sadar Bazar, and that the load calculated for the said unit by the inspecting team is also incorrect. In its application of 19.5.2004, the Petitioner has requested for a re-inspection and re-verification of the premises by some other team with the help of some apparatus so that correct facts could be placed on record.

6. The Respondent were directed by the Grievance Redressal Officer to submit their reply on the application of the Petitioner. The reply submitted by the Respondent on 14.6.2004 was found inadequate and hence the Respondent were requested to furnish photographs of the inspected site alongwith protocol of the meter within 2 weeks. However, such photographs and meter protocol was not furnished by the Respondent.

7. The Respondent disconnected the supply of the Petitioner on 27.1.2005 on the grounds that the bill raised on account of theft of Electricity was not paid by the petitioner.

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8. The Petitioner then moved an application before the Commission on 28.01.2005, praying for restoration of supply. The Petitioner further made applications on 4.2.2005 and 7.2.2005 praying for restoration of supply and for imposing penalty on the Licensee for not providing the requisite information to the Commission with regard to photographs of the inspected site and the protocol of the meter and for illegal disconnection of his supply.

9. Meanwhile the Petitioner also moved the High Court of Delhi in the same issue. The Hon'ble High Court of Delhi passed an Order on 15.2.2005, wherein, the Hon'ble High Court has held that :-

"I find that the petitioner has raised all the issues raised before this Court in his petition before the Delhi Electricity Regulatory Commission. The Commission had issued notice to the respondent and made directions including orders for maintenance of status quo. The applications of the petitioner have been kept pending and no orders thereof appeared to have been passed. In this view of the matter, in my view, the proceedings before the Delhi Electricity Regulatory Commission would deal with the issues relating to the challenge to the inspection and the bill. However, so far as the prayer of restoration of electricity connection of the Petitioner is concerned, it is directed that upon the petitioner depositing a sum of Rs.25,000/- within one week, the Respondents shall restore the electricity connection to the premises of the petitioner.

The Petitioner shall also make the requisite application for re-inspection of the premises and deposit all charges. Immediately on receipt thereof, the Respondents shall conduct an inspection of the premises. Needless to say, the report of this inspection shall have no bearing on the matters, which are already in issue. It is expected that the proceedings before the Delhi Electricity Regulatory Commission shall be expeditiously disposed of. The Petitioner shall be at liberty to take such action as is available to it in law in respect of orders passed by the Commission, if it is still aggrieved".

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10. Both parties have produced a copy of the aforesaid High Court Order during the hearing.

11. Sh. K.N. Tripathy, Counsel for the Petitioner, submitted that the meter of the Petitioner was not tampered contrary to what has been mentioned in the inspection report. It is also further submitted that the licensee has failed to provide photographs of the inspected premises and the protocol of the meter, which leads to the conclusion that the Respondent is biased and is acting arbitrarily. It is also submitted that the Respondent have been raising bills from the date of inspection till the date of disconnection i.e. 27.1.2005 and the bills have never shown any arrears as claimed by the Respondent. The petitioner fails to understand what provoked the Respondents to disconnect the petitioner on 27.1.2005. The Petitioner contends that the licensee has not followed the procedure and is incorrect in raising the impugned bill.

12. The Counsel for the Petitioner further clarified that in pursuance of the High Court Order mentioned above, the Respondent have restored the power supply through a new meter and that the petitioner has already deposited a sum of Rs.25,000/- with the Respondent.

13. Sh. Jaswant Rai Grover, Counsel for the Respondent submitted that the Respondents have followed the procedure laid down by the Commission in the instant case. The inspecting team has, as per procedure, inspected the premises of the Petitioner and after finding the changes made in the connections to the meter, recorded the same in the inspection report. A copy of the report was given to the petitioner. Thereafter, a speaking order was issued after giving the petitioner an opportunity of being heard. When dishonest abstraction of energy was established in the matter, the Respondent raised the bill of Rs.1,14,968/- as per the Regulations of the Commission.

14. The Counsel for the Respondent has also cited judgements of Supreme Court cases, namely Punjab State Electricity Board versus Ashwani Kumar (1997) 5 SCC 120, Special Director versus Mohd. Ghulam Ghouse (2004) 3 SCC 440 and J.M.D. Alloys Ltd. versus Bihar State Electricity Board (2003) 5 SCC 226. Relying on the aforesaid citations, the

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Counsel seeks to bring home a point that once the procedure for inspection of the premises has been established, the only thing which needs to be looked into is that as to whether or not the procedure as laid down in the Regulations have been followed. In the instant case, the Counsel for Respondent submitted that they had followed the due procedure and hence nothing further needs to be re-opened.

15. The Counsel for the Respondent further submitted that it is not correct to state that the Respondent has not furnished any reply on the application of the Petitioner. He has drawn the attention to a letter of 14.6.2004 wherein the Respondent has explained that the assessed consumption based on connected load of 6.304 KW, found at site, is around 946 units per month. The average consumption per month of the Petitioner, as based on the actual reading, is around 301 units, which comes around 32% of the computed consumption. In view of these consumption pattern, the Counsel submits that the DAE case has been established against the Petitioner. He further adds that the consumer's contention that the seals are not provided on the meter is not correct since it is a general practice to fix seals and check the same before energising the meter. The question of meter being tamper proof is of no significance, since the incoming and out going terminals were found inter changed to manipulate the recording of consumption. The Counsel has further drawn the attention of the Commission to another letter written by the licensee wherein it has been submitted that sizeable number of consumers have raised the objection to the DAE/theft bills, being raised by the licensee on 6 X 5 basis. It is submitted that the High Court of Delhi in the case titled Sohan Lal Versus NDPL have upheld that the bill raised by the Licensee on 6 X 5 basis is valid in law. However, it has also been mentioned that the aforesaid matter is in appeal before the Division Bench of the High Court, but till date there is no stay on the Orders in the aforesaid case. The Counsel further submits that the Commission has not been vested with the jurisdiction to entertain a dispute regarding the theft bill, which has been raised as per the Regulation approved by the Commission.

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16. The Counsel for Respondent further submitted that the functions of the Commission has been explicitly enumerated under Section 86 of Electricity Act, 2003, and there is no scope for the Commission to adjudicate petitions of such nature. It is added that the Commission has been assigned with the functions which relate to Regulation of the electricity sector in Delhi and that it was not envisaged in the Act of 2003, that the Commission would sit as a Court for adjudicating the matter of theft of electricity. It is highlighted that the consumers have adequate remedy to move either to a Civil Court, Consumer Court or avail the remedy under Writ Court, in case they have any grievance against the Licensee. However, the petitioner is misdirected to bring a petition before the Commission to inquire into the issue of theft. It is further argued that Chapter XIV and XV of the Electricity Act, 2003, has the entire code relating to the matter regarding theft of Electricity. It is also informed by the Counsel of the Respondent that they have already filed a complaint under Section 135 of Electricity Act, 2003 before the Special Court.

17. The Respondent further cited the judgement of this Commission in Petition No. 46/2004, titled as Vikas Road Line Versus NDPL, wherein the Commission has held that the Commission has failed to locate as to where the power has been vested with the Commission to entertain the case of theft and that the petition was not maintainable for want of jurisdiction.

18. The parties have been heard in detail. The scheme of Electricity Act, 2003, has clearly made demarcations as to what shall be the powers and domain of the Regulatory Commission. While it is true that the Regulatory Commission has been vested with powers to make Regulations under the Act, it would be difficult to accept the argument that the Commission would be helpless not to ensure that these Regulations are complied with. None the less, the Electricity Act, 2003, has also dedicated Chapters which exclusively deal with matters relating to theft of Electricity. The Statute provide for Special Courts which are empowered to decide the criminal and civil liability in such matters. There is an elaborate procedure laid down for this purpose.

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19. The Commission has also taken cognisance of the statement given by the Respondents that they have moved the Special Court in the instant matter.

20. In view of the submissions made by both the sides, the matter which takes precedence over other is the fact that the Respondent has now moved the Special Court in this case. This Commission in a previous Order in the matter of Vikas Road Line Versus NDPL, has already upheld that in case the Licensee has moved the Special Court, the Commission has no jurisdiction to entertain the matter relating to theft of electricity. Further the Commission does not find any reason to set aside its own previous Order.

21. In view of the facts above, the Commission considers that the present petition is not maintainable for want of jurisdiction. As the result, the petition is dismissed.

22. This Order, however, does not restrain this Commission to point out that the Licensee in their enthusiasm to curtail theft of electricity, should not put consumers to hardship by booking them for suspected theft and not giving them an opportunity to prove his innocence. As it was pointed out even in the order of Vikas Road Line Versus NDPL, the Licensee should endeavour to taking all such steps in conformity with Rules of justice so as to ensure that innocent are not subject to hardship and the guilty is not spared.

23. The Licensee should appreciate that person is not guilty before he is proved to be so. In case an allegation of theft is made against a consumer it not only hurts his reputation but also his esteem. The Licensee should be conscious enough to weigh these issues before they proceed against the consumer in such matter.

24. In view of the fact and circumstances of the case that the connection of the Petitioner has been restored by the Respondent on the basis of the High Court's Order of 15.2.2005 and the fact that the Respondent has moved the Special Court on the basis of the inspection of

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15.5.2004, there is not much that the Commission can grant as a direction in this case. The Petitioner is at liberty to approach any other Court for redressal of his grievance in accordance with law.

25. Ordered accordingly. There shall be no Orders as to costs.

(K. Venugopal)
MEMBER

(R. Krishnamoorthy)
MEMBER