

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11 (1667)/DERC/2018-19

Petition No. 14/2019

Under section 142 of the Electricity Act, 2003

In the matter of:

Shri Khosmendir Singh Gahunia

..... **Petitioner**

VERSUS

BSES Rajdhani Power Ltd.

Through its: CEO

.....**Respondent**

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

Appearance:

1. Petitioner in person
2. Shri Manish Srivastava, Advocate for Respondent;

INTERIM ORDER

(Date of Hearing: 26.08.2019)

(Date of Order: 18.09.2019)

1. The complainant Shri. Khosmendir Singh Gahunia has filed the present petition under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. for violation of the procedure laid down in the DERC (Supply Code and Performance Standards) Regulations, 2017 (hereinafter referred to as SOP Regulations, 2017).
2. The Petitioner has alleged that while booking the case of UUE (Unauthorized use of Electricity), the Respondent has violated following Regulations of SOP Regulations, 2017:
 - (i) Regulation 55 (1), (6), (7) and 56 (1);
 - (ii) Regulation 55 (2);
 - (iii) Regulation 56 (2), (3);
 - (iv) Regulation 56 (4);
 - (v) Regulation 56 (5);
 - (vi) Regulation 57 (1), (2), (4), (3), (5), (6);
 - (vii) Regulation 58 (1), (6);
 - (viii) Regulation 58 (1) (ii);

- (ix) Regulation 58 (3)
- (x) Regulation 58 (4);
- (xi) Regulation 59 (1); &
- (xii) Regulation 59 (2)

3. In the reply to the notice, the Respondent has denied the allegations and has stated that the due procedure was followed as per the provisions of SOP Regulations, 2017.
4. On the basis of pleadings and oral submissions of both parties and considering the material available on the record, the petition is admitted as there exists a prima-facie case of violation of following Regulations: -

(a) Violation of Regulation 55 (2) of SOP Regulations, 2017.

Regulation 55 (2) provides that: -

(2) The Licensee shall publish on its website, the list of the Assessing officers under section 126 of the Act, the Authorized officers under sub-section (2) of section 135 of the Act and the officers authorized by the Commission to disconnect supply under sub-section (1A) of Section 135 of the Act and shall display such list at prominent locations in its local offices

The Petitioner alleges that the Respondent have not published in the website the list of the Assessing officers under Section 126 of the Act, the Authorized officers under sub-section (2) of Section 135 of the Act, etc. There is no denial by the Respondent in its reply and therefore, it appears that prima-facie the Respondent has violated Regulation 52(2) of the SOP Regulations, 2017.

(b) Violation of Regulation 56 (2) and (3) of SOP Regulations, 2017.

Regulation 56 (2) is as follows: -

(2) The Assessing officer shall carry his visiting card bearing his photograph and photo identity card issued under Regulation 55(3)

Regulation 56 (3) is as follows: -

(3) Photo ID shall be shown and the visiting card bearing his photograph shall be handed over to the consumer before entering the premises.

The Petitioner alleges that despite requests by the Petitioner's representative, the enforcement team did not show the identity cards/visiting cards. Whereas the Respondent controverts that from the

complaint itself it is evident that the Petitioner was introduced with the enforcement team as the Petitioner knows the name of team leader.

The Commission observes that the Respondent in preliminary reply and during oral submission could not demonstrate satisfactorily that the enforcement team has shown their identity card/visiting card at the time of inspection despite demand by the representative of the complainant. Hence, it appears that the Respondent has contravened the provisions of Regulation 56 (2) and (3) of SOP Regulations, 2017.

(c) Violation of Regulation 56 (4) of SOP Regulations, 2017.

Regulation 56 (4) is as follows: -

“(4) The Assessing officer shall prepare an inspection/site report as per the provisions under these Regulations.”

The Petitioner alleges that no report was made at site and the report was made in the office. The Respondent controverts it that the report was made at site and because the Petitioner refused to sign the report, it was sent through post as per the requirement of SOP Regulations, 2017.

The Commission on the basis of record brought before it observes that prima facie it may be inferred that the inspection report was not prepared at site. Hence, it appears that the Respondent has contravened the provisions of Regulation 56 (4) of SOP Regulations, 2017.

(d) Violation of Regulation 57 (1), (2), (3), (4), (5), (6) of SOP Regulations, 2017.

Regulation 57 (1), (2), (3), (4), (5), (6) is as follows: -

(1) In the event of detection of unauthorized use of electricity, the Assessing officer shall prepare a detailed Report at site, in the manner as prescribed in the Commission's Orders.

(2) All the material evidences such as tampered meter, etc. and the documentary evidence, which are relevant to the case found during the inspection, shall be seized under a seizure memo and sealed in the presence of the consumer or his representative and be kept as a proof along with photography and video recording of the premises.

(3) A detailed description of the material seized, including date, time and place and name & address of witnesses to the seizure shall be recorded on the exterior of the cover and signatures of all witnesses shall be affixed on the sealing points:

Provided that if the witness refused to sign, the same shall be recorded in the report and captured in the videography.

(4) The Inspection Report shall be signed by the Assessing officer and a copy of the same shall be handed over to the consumer or his representative at the site immediately under proper acknowledgement. The other persons present at site may also sign the inspection report.

(5) If consumer or his representative at site refuses to acknowledge and/or accept the copy of the report, a copy of the report shall be pasted at a conspicuous place in or outside the premises and photographed and video recorded. Another copy of the same report shall be sent to the consumer under Registered Post or Speed Post or electronically on the same day or on the next day of the inspection.

(6) The Inspection report shall form the basis for further action as per the provisions contained in Regulations.

The petitioner alleges that there is no proof on record to establish that the Report was handed over to the Petitioner or pasted at a conspicuous place in the premises or was sent to the consumer under a registered post. There is no proof of any witness, consumer, representative showing refusal of any kind including signing of the report taken in the videography because as such there was no report made/ prepared at the site.

The Respondent has submitted that the Inspection report, Load report in the form Assessment of connected load, meter report and seizure memo dated 16.04.2018 prepared at site and offered to representative of Petitioner. However, same were refused to sign and receive. The representative of the Petitioner did not allow the Authorized representative to paste the inspection reports at premises and hence, the same were sent by speed post dispatch no. ED533316032IN.

However, the Commission observes that the reports were sent on 18.04.2018 for the inspection conducted on 16.04.2018, whereas as per the regulation another copy of the same report shall be sent to the consumer under Registered Post or Speed Post or electronically on the same day or on the next day of the inspection. Hence, it appears that the Respondent has apparently contravened the aforesaid provisions of Regulation 57 (1), (2), (3), (4), (5), (6) of SOP Regulations, 2017.

(e) Violation of Regulation 58 1 (ii) of SOP Regulations, 2017.

Regulation 58 1 (ii) is as follows: -

1 (ii) Serve a notice along-with a provisional assessment bill and copy of videography of inspection, within 7 (seven) days from the date of inspection or date of receipt of meter testing report, if required, whichever is later, to the consumer giving reasons as to why a case of

unauthorised use of electricity is being initiated against him. The notice should clearly state the time, date and place at which the reply has to be submitted and the designation of the person to whom it should be addressed.

The Petitioner has alleged that the Respondent did not serve a Show cause notice as prescribed by Regulation and rather straight away passed assessment order and has predetermined everything even before giving opportunity to the complainant to file his objection and have adjudicated the entire case in advance without hearing the complainant as to whether there was any UUE in the Ground Floor premises.

In the instant case prima facie it appears that the Respondent has violated the above provision by way of not serving a show cause notice within seven days of inspection and the Show cause notice was issued on 01.05.2018 i.e. after 15 days of inspection dated 16.04.2018. Hence, it appears that the Respondent has contravened the provisions of Regulation 58 1 (ii) of SOP Regulations, 2017.

(f) Violation of Regulation 58 (3)(i) of SOP Regulations, 2017.

Regulation 58 (3)(i) provide that: -

(3) Personal Hearing: -

(i) The Assessing officer shall arrange a personal hearing with the consumer or his authorized representative within 7 (seven) days from the date of filing of consumer's objections.

(ii) At the request of the consumer, the hearing may be arranged for a future date but not later than 10 (ten) days from the date of filing of the objections by the consumer.

The Petitioner alleges that no personal hearing was arranged or given to the complainant within the stipulated 7 days period from the date of filing of objection by the complainant despite the fact that it was the complainant who have already requested for the particular date written in his objection.

In the instant case it appears that the Petitioner has filed its written objection requesting for a change of date in personal hearing from 15.05.2018 to 16.05.2018 or 21.5.2018 stating that a matter is already fixed for appearance in Saket Court. However, the Respondent has failed to provide personal hearing to the Petitioner. Hence it appears that the Respondent has contravened the provisions of Regulation 58 (3 of SOP Regulations, 2017).

(g) Violation of Regulation 58 4 (i) of SOP Regulations, 2017.

Regulation 58 4 (i) provide that: -

(4) Final assessment Order: -

(i) The Assessing officer shall pass a final assessment order within 30 (thirty) days from the date of service of the order of provisional assessment of the electricity charges payable by such person.

The Petitioner has alleged that no final Assessment Order was passed by Assessing officer as stipulated within 30 days from the service of the Order of provisional Assessment.

In the instant case it appears that the Respondent has violated the above provision by way of not passing the final Assessment Order within 30 days from the date of service of the order of provisional assessment of the electricity charges payable by such person. The final Assessment Order was passed on 28.06.2018 whereas the provisional assessment was passed on 01.05.2018. There is a delay of 58 days. Hence, it appears that the Respondent has contravened the provisions of Regulation 58 4 (i) of SOP Regulations, 2017.

5. In view of the aforesaid, the Respondent is hereby directed to show cause as to why action u/s 142 of the Electricity Act, 2003 should not be taken against it for prima-facie violation of aforesaid Regulations. The Respondent is directed to file its reply within four weeks from the date of receipt of this notice and to serve a copy of the same to the complainant. The Complainant has also been given liberty to file rejoinder, if any, within a week of above filing.
6. The next date of hearing shall be intimated to the parties in due course.
7. Ordered accordingly.

Sd/-
(Justice S S Chauhan)
Chairperson