

## **Delhi Electricity Regulatory Commission**

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

F.11 (1140)/DERC/2014-15/4433

### **Petition No. 43/2014**

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

**In the matter of:**

M/s Print Wizards

Shri Pardeep bajaj (proprietor)

A-45, Naraina Industrial Area, Phase – II,

New Delhi – 110028

.....**Complainant**

VERSUS

1. Tata Power Delhi Distribution Ltd.

Through its: **General Manager**

Opposite C-2 Block, Lawrence Road,

Keshavpura, New Delhi - 110035

2. Tata Power Delhi Distribution Ltd.

Through its: **M.D**

Grid Sub – Station Building,

Hudson Lines, Kingsway Camp

New Delhi – 110009

.....**Respondents**

**Coram:**

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

**Appearance:**

1. Petitioner in person;
2. Shri K Dutta, Advocate for the Respondent.
3. Sh. Manish Srivastava, Advocate for Respondent;
4. Sh. O P Singh, AGM, TPDDL;
5. Ms. Sarika Mehta, AM, TPDDL;
6. Ms. Nayantara Pande, Corp Legal, TPDDL.

### **INTERIM ORDER**

(Date of Hearing: 30.10.2014)

(Date of Order: 17.11.2014)

1. The instant petition has been filed by M/s Print Wizard through its proprietor Shri Pradeep Bajaj against the Respondent Company under Section 142 of the Electricity Act, 2003 for grant of compensation under Section 67 for violation of provision of Section 43(1) of the Electricity Act, 2003.

2. The complainant in its complaint has sought following relief from the Commission:
  - i. To compensate the applicant with an amount of Rs. 1,00,000/- towards penalty as per section 142 of the Electricity Act, 2003.
  - ii. To compensate the applicant with an amount of Rs. 1000/- for each day default i.e. from 23.11.2010 to upto date towards penalty under Sub Section 3 of Section 43 of the Electricity Act, 2003.
3. Notice of the petition was issued on 08.08.2014 to Respondent to file its reply.
4. In response to the above notice, the Respondent filed its reply on 25.09.2014 and has sought dismissal of the above complaint on the following grounds that:
  - a) The Commission has no jurisdiction to adjudicate the complaint relates to theft of electricity which is to be adjudicated by the Special Court. The Commission has no jurisdiction to entertain individual dispute between the Licensee and the Consumer.
  - b) The complaint is barred by Order II Rule 2 of CPC, 1908. The complainant has filed the civil suit on the same cause of action on which he has filed the present complaint and has not claimed any such relief of compensation. Hence, complainant is stopped from claiming the same before the Commission.
  - c) That one **Mr. Balkar Singh** was seeking to be owner of the premises and has also raised dispute through his lawyer vide legal notice dated 29.11.2010. The respondent refused connection till the ownership of the premises was ascertained.
5. The matter was listed for hearing today i.e. 30.10.2014 whereby representatives of both the parties were present.
6. In the instant case the petitioner had applied for a new connection and had even paid the amount as asked through the demand note raised by

the Respondent. As the Respondent failed to provide the electricity connection, the petitioner approached the court of Additional Senior Civil Judge/JSCC seeking directions to the Respondent to provide the new electricity connection as applied by him. No prayer for compensation was made before the court of Additional Senior Civil Judge/JSCC.

7. The Respondent has raised the plea that as the petitioner had failed to make claim of compensation before the court of Additional Senior Civil Judge/JSCC, he shall not afterwards make claim for compensation and therefore, the instant petition is barred by Order II Rule 2 of CPC 1908.
8. Order II Rule 2 of CPC, 1908 is on the issue of Relinquishment of part of claim. It says that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Order 2 Rule 2, Code of Civil Procedure, reads as under: -

*"2. Suit to include the whole claim -*

*(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.*

*(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.*

*(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs, but if he omits, except with the leave of the Court to sue for all such reliefs, he shall not afterwards sue for any relief so omitted."*

9. Order II Rule 2 contemplates a situation where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a case the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained.

10. The Rule engrafts a laudable principle that discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court.

11. In the instant case, it is to be examined whether the petitioner had omitted the relief of compensation available to him while filing a suit before the court of Additional Senior Civil Judge/JSCC. A compensation is payable under Section 57(2) of the Electricity Act, 2003, which provides that:

*"If a licensee fails to meet the standards specified under subsection (1), without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:*

*Provided that before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard".*

12. It may be seen that the compensation has to be determined by the Appropriate Commission and not by any other court of law. The suit for permanent injunction filed by the Petitioner before the Court of Additional Senior Civil Judge/JSCC was for directions to install and energize a fresh electric connection for the suit premises. The Court of Additional Senior Civil Judge/JSCC was not the right forum for seeking compensation and therefore, it may not be held that the available relief was not claimed by the Petitioner.

13. The Supreme Court of India in *Sidramappa vs. Rajashetty and ors* (AIR 1970 SC 1059) has rejected a plea of bar under Order II, Rule 2 CPC on the ground that the plaintiff could not have claimed the relief in the earlier suit which he has sought in the subsequent suit.

14. In view of the above, the Commission is of the view that the present petition may be entertained and is not barred by the Order II Rule 2 of CPC.

15. In respect to the issue of violations of the regulations, on the basis of pleadings and oral submissions and considering the material available on the record, the Commission is of the opinion that the petition may be admitted as there appears to be a violation of Section 43(1) of the Electricity Act, 2003.

16. Section 43(1) of the Electricity Act, 2003 provides that:

*(Duty to supply on request): - (1)[Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:*

The Commission observed that the Respondent failed to supply the electricity within the period stipulated in sub section 1 of Section 43 of the Act, 2003 even after payment of the amount raised in the demand note issued by the Respondent and shall be liable to a penalty

17. In view of the above-mentioned findings, the Respondent is hereby directed to show cause as to why proceeding u/s 142 of the Electricity Act, 2003 should not be initiated against it for prima-facie violation of aforesaid Regulations of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 and Section 43 of the Electricity Act, 2003. The respondent is also directed to Show-cause as to why compensation under Regulation 65 of the DERC Supply Code and Performance Standards Regulations, 2007 read with Section 57 (2) of the Electricity Act, 2003 should not be awarded to the consumer.

18. The Respondent is directed to file its reply within four weeks from the 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.

19. Take notice that in case the Licensee above named fails to furnish the reply to this Show Cause Notice within the time mentioned above, it shall be presumed that the Licensee has nothing to say and the Commission shall proceed in the absence of such reply in accordance with law.

20.The next date of hearing shall be intimated to the parties in due course.

21.Ordered accordingly.

Sd/-  
(B. P. Singh)  
Member

Sd/-  
(J. P. Singh)  
Member

Sd/-  
(P. D. Sudhakar)  
Chairperson