

# Delhi Electricity Regulatory Commission

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

Ref. F.11(692)/DERC/2011-12/C.F.No. 2894/

## **Petition No. 36/2011**

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

**AND**

**In the matter of:**

N. C. Aggarwal  
S/o. Late Sh. R. G. Aggarwal,  
R/o. H. No. 11 (15 old),  
Sri Nagar Colony,  
New Delhi-110 052.

**...Complainant**

**Versus**

Tata Power Delhi Distribution Ltd.  
Through its: **CEO**,  
Grid Sub-Station Building,  
Hudson Lines, Kingsway Camp,  
New Delhi – 110 019.

**...Respondent**

**Coram:**

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

**Appearance:**

1. Sh. K. L. Bhayana, Advisor, TPDDL;
2. Sh. Ajay Kalsi, Company Secretary, TPDDL;
3. Sh. Shailendra Singh, Manager, TPDDL;
4. Sh. K. Datta, Advocate, TPDDL;
5. Sh. Sunil Kumar Gupta, Asstt. Accountant;
6. Sh. N. C. Aggarwal, Complainant.

## **ORDER**

(Date of Hearing: 03.07.2012)

(Date of Order: 20.07.2012)

1. The Complainant through this Petition has filed a complaint under Section 142 of the Electricity Act, 2003 against the Respondent Company for violation of Regulations.
2. The brief facts of this case are that the Complainant is an Ex-employee of erstwhile DVB who retired on 31.03.2003 from BYPL as he was posted on the strength of the Private Discom on unbundling of DVB in July, 2002 As per DVB policy the Complainant was availing the facility of concession in

respect of his electricity connection which is also extended to retired employees.

3. As per the Complainant's submissions, in the year 2006 he received threats from the Respondent for disconnection of his electricity supply on account of non-payment of pending dues. The Complainant filed a complaint before CDRF, Tis Hazari. The CDRF vide its interim order dated 15.11.2006 restrained the Respondent Company from disconnecting the supply of the Complainant subject to making the payment of current consumption bills by the Complainant.
4. The Complainant further submitted that in June, 2010 the Respondent withdrew the staff concession without issuing a show-cause notice and started raising the bills on general domestic tariff. On 08.02.2011 the Respondent suddenly disconnected the supply of electricity of the Complainant despite the CDRF order dated 08.02.2011 and without issuing a show-cause notice under Section 56(1) of the Electricity Act, 2003. Thereafter, the Complainant filed a complaint before the CDRF on 09.02.2011 regarding violation of the above order of CDRF.
5. On 11.02.2011 the CDRF directed the Respondent to restore the electricity supply subject to payment of the current dues by the Complainant. However, the Complainant challenged the above order on the ground that the Respondent is charging him general tariff while he is entitled to a staff concession. The complaint of the Complainant is still pending in CDRF. The Complainant further submitted that the Hon'ble High Court of Delhi vide its latest Judgment of in W.P.(C) No. 8586/2009 in the matter of Lalit Gulati vs. GNCTD directed the Govt. of Delhi to write off all the arrears pertaining to DVB period in respect of any dispute pending in any court of law. The Complainant further alleged that pursuant to the above order, no dues remained pending against the Complainant for the DVB period and hence, no arrears shall remain unpaid against him as he had deposited the entire current demand.
6. In view of the above circumstances the Complainant prayed for action against the Respondent under Section 142 and 146 of the Electricity Act, 2003 and for imposing suitable compensation and penalty against the Respondent for causing harassment, mental pain and agony in the interest of justice.

7. Against the above complaint, the Commission sought reply from the Respondent vide its notice dated 09.05.2011.
8. The Respondent in its reply filed in the Commission on 23.06.2011 has refuted the charges and sought dismissal of the above complaint on the ground mentioned as under:
  - (i) Commission has no jurisdiction to interfere in the above matter stating that it is a billing dispute and required to be settled by the CGRF.
  - (ii) Since the matter is sub-judice before CDRF in which next date of hearing is 12.05.2012 therefore, the same is barred by section 10 of CPC.
  - (iii) As far as the withdrawal of the staff concession is concerned that step was taken in result of denial of replacing the meter by the complainant as per order of the CDRF. However, the Respondent has affirmed that staff concession will be restored, the moment the complainant allows Respondent to change the meter.
9. The matter was listed for hearing in the Commission on 20.03.2012, wherein, the Hon'ble Commission directed the Respondent to file reply on the limited aspects/issue, whether his action of disconnection of supply of the complainant was in conformity with the provisions of Section 56(1) of the Electricity Act, 2003 and also sought notice if any, issued by the Respondent in pursuance of the provisions made under the above section.
10. In compliance of the above direction, the Respondent has filed a reply on 19.04.2011. In its reply, the Respondent has submitted in its para 2 that it has issued and sent a disconnection notice on 27.10.2010 for an outstanding amount of Rs. 727/-. The same was delivered to the complainant along with the electricity bill. It has been alleged that a second notice was also served on 30.12.2010 for Rs. 1094/-.
11. The complainant has also filed his rejoinder on 10.05.2012 against the reply of the Respondent, wherein he has denied receiving any such notice. He has also submitted that the basic issue, which is the bone of contention, is the differential tariff, as the consumer being a DVB employee is entitled for staff concession, whereas the Respondent started issuing bill on general

tariff w.e.f. June 2010 without any change of circumstances and passing any Speaking Order.

12. The above matter was further listed for hearing in the Commission on 03.07.2012 in which the above mentioned officials/counsel appeared on behalf of the both parties. At the time of hearing the counsel of the Respondent Sh. K. Datta submitted that the allegation of the complainant that he was not served notice of disconnection under section 56(i) is totally incorrect. He produced the copies of such notices and submitted that the same notices were sent to the complainant along with the electricity bill for the same month. The above statement of the counsel was immediately refuted by Sh. N. C. Aggarwal, the complainant, who appeared in person and denied any receipt of such notices.
13. Section 171 of the Electricity Act, 2003 provides mode of services of notice, the extract of which reproduced as under:
  - (1) *"Every notice, order or document by or under this Act required, or authorised to be addressed to any person may be served on him by delivering the same after obtaining signed acknowledgement receipt there for or by registered post or such means of delivery as may be prescribed -*
    - a) *where the Appropriate Government is the addressee, at the office of such officer as the Appropriate Government may prescribe in this behalf;*
    - b) *where the Appropriate Commission is the addressee, at the office of the Appropriate Commission;*
    - c) *where a company is the addressee, at the registered office of the company or, in the event of the registered office of the company not being in India, at the head office of the company in India;*
    - d) *where any other person is the addressee, at the usual or last known place of abode or business of the person.*
  - (2) *Every notice, order or document by or under this Act required or authorised to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the owner or occupier of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises".*
14. When the Commission sought proof of receipt/delivery of such notices from the Respondent, the counsel of the Respondent replied that the above notices were delivered by hand under the provision laid down in Regulation 68 (b) of DERC Supply Code and Performance Standards Regulations, 2007, the extract of which is reproduced as under:

**"68. Notice to the Consumer**

*Any order/ notice to the consumer by the Licensee including the notice under section 56 of the Electricity Act, 2003 shall be deemed to be duly served by the Licensee if it is:*

- a) Sent by registered post at the correct postal address of the addressee, or*
- b) Delivered by hand to the person residing at the address notified to the Licensee by the consumer, or*
- c) Affixed at a conspicuous part of such premises and photographed in case there is no person to whom the same can, with reasonable diligence, be delivered".*

Respondent argued that no signature were taken from the receiver as taking of the signature from the receiver was not necessarily required under the provisions made in the above Regulation.

15. After hearing both parties and taking into account the facts and record submitted and available with the Commission, the Commission found that the Respondent can not be allowed to take shelter of the provisions made in the said Regulation, wherein signature from the receiver is not mentioned. Firstly, where provision of on any issue has been made in the original statute/act then it will always prevail on subsequent subordinate legislation. Moreover, in the instant case though in the subordinate legislation the requirement of signature from the receiver is absent, yet the same has been provided in the main Act. So the provisions made in the main Act cannot be superseded or ignored by any person while implementing the provisions of law. In the instant case the Respondent has failed to produce any proof of service of notice which is an essential requirement under section 171 of the Electricity Act, 2003. Therefore, the allegation of the complainant that the Respondent has disconnected his supply without service of notice under section 56(i) is found to be correct and accordingly the Respondent is found guilty of violation of the above Regulation. Hence, a penalty of Rs. 5,000/- is imposed on the Respondent for the said violation.

16. Ordered accordingly.

Sd/-  
(J.P. Singh)  
MEMBER

Sd/-  
(Shyam Wadhera)  
MEMBER

Sd/-  
(P.D. Sudhakar)  
CHAIRPERSON