

# Delhi Electricity Regulatory Commission

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

Ref. F.11(698)/DERC/2011-12/C.F.No. 2929/894

## **Petition No. 41/2011**

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

**AND**

**In the matter of:**

O. P. Chopra  
A/282, Phase-2,  
Maidan Garhi Road  
Chattarpur Enclave,  
New Delhi-110 074

**...Petitioner**

**Versus**

BSES Rajdhani Power Ltd.  
Through its: **CEO**  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019

**...Respondent**

### **Coram:**

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

### **Appearance:**

1. Sh. S. Bhattacharya, Sr. Manager(Enf), BRPL;
2. Sh. K. Datta, Advocate, BRPL;
3. Sh. Manish Srivastava, Advocate, BRPL;
4. Sh. O. P. Chopra, Complainant.

## **ORDER**

(Date of Hearing: 24.04.2012)

(Date of Order: 17.05.2012)

1. This Petition has been filed against the Respondent under Section 142 of the Electricity Act, 2003 for imposing penalty for violation of Regulations of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 (hereinafter referred as the Supply Code).
2. The Petitioner's case in brief is that he is the actual occupant/user of K. Nos. 2520G8772613 and 2520G8772614 for domestic purposes on H. No. A/282, Phase-2, Maidan Garhi Road, Chattarpur Enclave, New Delhi – 110 070. The Petitioner is regularly paying all the electricity bills. The Petitioner complained at BSES complaint centre Chattarpur on 22.02.2010

mentioning meter display is not working and meter is defective. On 25.02.2010, the officials of the Respondent came at above house, but instead of changing the meters they booked DAE case contrary to the provisions of law. The Respondent has violated Regulations of the Supply Code and Performance Standards while booking the case.

3. The Petitioner further submitted that on the advice of Dy. Director (Consumer Assistance) of Delhi Electricity Regulatory Commission, he approached the concerned CGRF-BRPL on the above issue. The Hon'ble Forum while disposing off the above complaint declined to intervene in the above matter in view of pendency of the above case in the Special Court. However, it has made certain observations relating to above issue at para 3 of its order dated 13.04.2011, which has been reproduced as under:

*"Incidentally as per the provisions contained in Clause 52 (ix) of DERC Regulations 2007, in case Show Cause Notice is not served even after 30 days from the date of inspection, the case of suspected theft shall be considered as drop and no further action can be initiated against the consumer".*

4. After hearing both the parties and considering the facts and circumstances alongwith the documents placed on record, the Commission found a prima facie case of violation of Regulation 53(iv) and 54 of the Supply Code. Following the principles laid down by the Hon'ble Appellate Tribunal for Electricity in matters of Smt. Santosh Gargya vs. BSES Rajdhani Power Ltd; in appeal no. 183/2010, the Commission issued show-cause notice to the Respondent in this regard.
5. The Respondent in its reply to the show-cause notice, challenged the jurisdiction of the Commission and denied the allegations of the Petitioner in toto. The Respondent further submitted that the Commission has wrongly taken cognizance against the Respondent under Regulation 53(iv) and 54 of the Supply Code. There is no mandatory requirement of mentioning theft assessment amount in the speaking order as alleged and there is no requirement of Licensee either under Electricity Act, 2003 or Supply Code or Criminal Procedure Code, 1973 to give any prior information before filing any criminal complaint. The Respondent further submitted that this Petition is not maintainable because two theft cases are pending before the Special Court, therefore present proceedings against Respondent are to be closed.

6. The Complainant in his rejoinder submitted that there is gross abuse of due process of law and justice on the part of the Respondent by violating the Regulation 53(iv) and 54 of the Supply Code, for which the Respondent is liable to be penalised under Section 142 of the Electricity Act, 2003.
7. The matter was listed for final hearing on 24.04.2012 which was attended by the Complainant and the representatives of the Respondent.
8. The Commission heard both the parties at length.
9. For deciding this Petition issue for consideration before the Commission is **whether Respondent has violated Regulation 53(iv) and 54 of the Supply Code.**

**Regulation 53(iv):**

10. Regulation 53(iv) of the Supply Code provides that:

*"53(iv) Where it is established that there is a case of theft of energy, the Licensee shall assess the energy consumption for past twelve (12) months as per the assessment formula given in **ANNEXE-XIII** and **prepare final assessment bill** on two times the rates as per applicable tariff **and serve on the consumer under proper receipt**. The consumer shall be required to make the payment within seven days of its proper receipt. The Licensee may, taking into consideration the financial position and other conditions of the consumer, extend the last date of payment or approve the payment to be made in instalments. **The amount, the extended last date and/or time schedule of payment/instalments should be clearly stated in the speaking order.**"*

11. A bare reading of the above provision shows that when a case of theft of energy is found, the preparation and service (under proper receipt) of the final assessment bill is mandatory for the Licensee. In this case the Respondent has not filed any documentary proof to show that the final assessment bill was prepared and served on the consumer under proper receipt. So, there is a violation of Regulation 53(iv) of the Supply Code. As per the provisions of Regulation 53(iv) of the Supply Code the amount of bill assessed by the Licensee should also be stated in the speaking order, but in this case the amount of assessment bill is not mentioned in the speaking order and that is also a violation of above mentioned Regulation.

**Regulation 54:**

12. Regulation 54 of the Supply Code provides that:

***"54. Default in payment of assessed amount or installments thereof.***

*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."*

13. The Respondent argued that the Licensee is not required to give 15 days notice before filing any criminal complaint against the complainant. However, it is clear from the provisions of Regulation 54 of the Supply Code mentioned above that in case of default of any payment of the assessed amount, the Licensee will after giving a 15 days notice in writing file a case against the consumer in the Special Court. In this case, the Licensee could not establish that the final assessment bill was prepared and served upon the consumer. Since the amount of bill was also not mentioned in the speaking order, reasonable opportunity was not provided to the consumer to pay the assessed amount. The intention of the provision is clear that the consumer should be provided 15 days time to pay the amount of assessed bill, then only a case against the consumer should be filed before the Special Court. Therefore, the contention of the Respondent that a 15 days notice is not required cannot be accepted. In this case the Respondent has not produced any documentary evidence to prove that a 15 days notice as required by the Regulations was given to the Complainant. This is a violation of the provision of Regulation 54 of the Supply Code.
14. For the reasons recorded above, the Commission holds that the Respondent is responsible for violation of Regulations 53(iv) and 54 of the Supply Code.
15. After considering the facts and circumstances of the case, the Commission imposes a penalty of Rs. 20,000/- (Rs. 10,000/- for each violation) upon the Respondent under the powers vested with the Commission under Section 142 of the Electricity Act, 2003.
16. Ordered accordingly.

Sd/-  
(J.P. Singh)  
MEMBER

Sd/-  
(Shyam Wadhera)  
MEMBER

Sd/-  
(P.D. Sudhakar)  
CHAIRPERSON