

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

F.No. 7(23)/DERC/C-490/2007-08

In the matter of :

Sh. Raj Kumar Tehlan
H. No. 4, Khasra No. 26/6
Village Nangli, Sakrawati,
Najafgarh
New Delhi – 110043

...Petitioner

VERSUS

BSES Rajdhani Power Ltd.
Through : its **CEO**
BSES Bhawan
Nehru Place
Delhi-110019

...Respondent

Coram:

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

Appearance:

1. Sh. Hari Chand, Father of the Complainant.
2. Sh. Paritosh Srivastava, DGM, BRPL, Najafgarh
3. Sh. Ramesh, DGM(B)JFR, BRPL
4. Sh. P.K.Gupta, Asstt. Mgr. (Legal), BRPL
5. Sh. M.L.Meena, Asstt. Vice President, BRPL
6. Sh. Manish Srivastava, Advocate, BRPL

ORDER

(Date of Hearing: 23.08.2011)

(Date of Order : 06.09.2011)

1. The present complaint has been filed by the above named petitioner Sh. Raj Kumar Tehlan, R/o. H. No. 4, Khasra No. 26/6, Village Nangli, Sakrawati, Najafgarh, New Delhi – 110043, against the Respondent BRPL.
2. In this complaint the Consumer has sought imposition of penalty on BRPL, for delay of over four months in giving him an electricity connection, an act, which is in contravention of provisions made under Section 43(3) of Electricity Act, 2003.
3. **The facts of the case:-**
 - (i) The Consumer was given two separate connections on '**as is where basis**' by the erstwhile DVB in the year 2000.

- (ii) As per the Consumer, some BRPL representative approached the Consumer advising him to seek a regular connection since the DISCOM was considering discontinuing the 'as is where is basis' scheme.
 - (iii) Accordingly, the Complainant submitted two separate applications on the 1st February, 2007, which were assigned applications Nos. E262007020045 and E 262007020046. Against the same demand notes bearing Nos. 07020050 and 07020051 were also issued on the same date i.e. 1st February, 2007.
 - (iv) Complainant alleged that inspite of making the payment against the above demand notes, the connections were not given to the Consumer till 13.06.2007 i.e. after a period of over four months since deposit of the demand charges for the connection.
 - (v) On 5th June, 2007, the premises of the Complainant was raided by the Enforcement Team of BRPL.
 - (vi) In pursuant to this a combined bill for theft against both the connections to the tune of Rs. 1,58,520 /- was raised by BRPL.
 - (vii) The bill was unilaterally decreased in the first instance, to Rs. 29,000/- and finally an amount of Rs. 17,570/- was asked to be deposited by the licensee towards the theft bill on 25.06.2007 which was instantly deposited by the Complainant.
 - (viii) On 19.06.2007, the BRPL Enforcement team referred the matter to the concerned Divisional Office of BRPL for seeking the details of installation of Meter.
 - (ix) The Divisional Office in its reply on 20.06.2007 informed the Enforcement division that, "The Consumer have applied for two Metered connection vide application No. E 262007020046 and application No. E2622007020045 under LT system against which two demand notices were issued and the Consumer deposited an amount of Rs. 2000/- against each connection on 01.02.2007. However, the Meters have been installed on 13.06.2007.
4. From perusal of the above, it has been observed that the Complainant has raised two issues in the above complaint:
- (i) Imposition of penalty on BRPL, for delay of over four months in giving him connection, an act, which is in contravention of provisions made under Section 43(3) of Electricity Act, 2003.
 - (ii) Wrongful framing of theft case against the Consumer.
- (a) However, it has also been observed that the complainant has only approached the Commission for redressal of his first grievance for imposition of penalty on Licensee for delay of four months in conversion of his two 'fixed charges connection' to 'metered connection', which were granted to

him under 'as is where is' basis scheme in 2001, when the area was un-electrified. Under the 'As is where is basis' scheme the Consumer was permitted to draw the electricity from the mains by using his own wires and was liable to pay a fixed amount per month (in the present case it was Rs. 510/- per month per connection) depending upon the area of the premises where such connections were used.

- (b) Taking cognizance of the complaint of the complainant, the Commission issued 'a show cause notice' on August 03, 2007 to the licensee to file its reply on the charges made against it in the above complaint. The Respondent initially filed its reply in the Commission on 14.05.2009, stating therein that the said connection could not be energised till June 2007 due to improper electrification of the area.

5. **Hearing in the Commission:-**

- a) The Commission heard the matter on 23.08.2011, where both parties were present. In the course of hearing the counsel of the Respondent submitted through his oral as well as written arguments that :-
 - (i) The Complainant has deliberately concealed the fact that he has failed to pay dues against the connection for period 2002 till February 2007 as required under "As is where is" scheme and as on March 2007, there were a total outstanding dues of Rs. 19870/- & Rs. 10617/- respectively against the said Kundi connections. It is well settled principle of law that the Respondent is well with its rights to refuse grant of a new connection or to discontinue the supply, till outstanding dues are not cleared by the Consumer. It has further submitted that on 01st Feb., 2007, the Consumer has applied for two metered connections for which an inspection was conducted on 05th June, 2007, where the complainant was found indulging in direct theft of electricity by tapping electricity directly from LV lines.
 - (ii) Respondent has further submitted that it is upon the request and assurance of the Consumer that he will deposit the outstanding amount in ten instalments in respect of the said kundi (fixed charges) connections and will commence the payment of above w.e.f., 22.06.2007 that he was granted meter connection on 13.06.2007. It is an admitted case of the Complainant that the complainant had commenced paying pending dues with effect from 22.06.2007.
 - (iii) Respondent submitted that delay in grant of the metered connection to the complainant was not due to any default on his part but was attributed to non electrification as well as default on part of the complainant himself and hence, there is no violation on part of the Respondent of Section 43 (3) of the Electricity Act, 2003.
 - (iv) It further reiterated that the present complaint is liable to be dismissed on the sole ground that consumer has failed to make out even a prima facie case of violation of Section 43 of Electricity Act, 2003.

- (v) It has been pleaded that without prejudice and without admitting, even if allegations of the Consumer as mentioned in the complaint are taken as correct, it is not a case of the Complainant that he was without electricity during the period of alleged delay. As per complaint only meter was not provided to the Complainant during the alleged period of delay but "supply of electricity" to his premises was continuing. A perusal of Section 43 of Electricity Act, 2003 would reveal that the Act, 2003 contemplates that "supply of electricity " within one month from the date of application be given and not the meter of electricity. The purpose of Section 43 is to provide electricity supply within a period of 30 days provided such supply does not require extension or distribution mains or commission of new sub stations etc; so that there shall be no inconvenience to the Consumer. In the present case, Complainant already had electricity connection under "As is where is" scheme and supply continuing since date of "As is where is" or 'Kundi' Connection till the date of providing new metered connection at his premises. Hence, question of violation of Section 43, in the present case, does not even arise.
- (vi) The Respondent has sought dismissal of present complaint on the sole ground of concealment of the material facts that he has failed to pay dues against the connection for period 2002 till February 2007 as required under "As is where is" scheme.
- (vii) The Respondent has also raised the issue of jurisdiction of the Commission to hear a case where theft case is involved. It has cited various case laws to substantiate its plea that the Commission has no jurisdiction under the prevailing laws to hear the complaint against theft case.

6. **Commission's findings:-**

After taking into consideration the facts and figure placed before the Commission and arguments advanced by the representatives of both parties as elaborately discussed above, The Commission has observed as follows:-

Issue (i)

Issue of violation of provisions of the Act by delaying the conversion of Kundi connection into metered connection and imposition of penalty on BRPL, for delay of over four months in giving connection, which is in contravention of provisions of Section 43(3) of Electricity Act, 2003.

- (a) The licensee has not explained why the dues accumulated between 2002 and February 2007 were not included in the Demand Notes issued on 1st February, 2007. Also, to say that at that time the area was not electrified owing to which it could not convert the connection into a metered connection is not tenable/acceptable. In such a situation the licensee should not have issued demand notes and should have informed the applicant the approximate time frame by which the connection can be energised not exceeding the time schedule given in table 1 under Regulation 17 of Supply Code.

Regulations 17 of Supply Code states as under :-

Connection where system augmentation is required:

- i) *Wherever the existing transformation capacity is loaded up to 80% of its capacity, the Licensee shall take appropriate action for augmentation of capacity. However, new connection shall not be denied in such cases.*
- ii) *For connection requiring augmentation of distribution system, the Licensee shall inform the applicant the approximate time frame by which applied load can be energized which shall not exceed the time schedule given in Table 1 below:*

TABLE : 1

1	Extension of LT line upto 5 poles	Fifteen days
2	Electrified Areas where extension of lines or augmentation of Distribution Transformer is required	Sixty days
3	Electrified Areas where new Distribution Transformer is required	One hundred and twenty days
4	Electrified Areas where existing 11 KV network needs to be strengthened	One hundred and eighty days
5	Electrified Areas where existing (66/33 kV grid sub-station needs to be augmented	Two hundred and forty days

The above time schedule shall commence upon completion of all formalities including the Licensee receiving payment of all dues including the amount mentioned in the demand note to undertake such augmentations. Compensation for delay in releasing the connection beyond the stipulated date shall be as specified in Schedule III and shall be payable after necessary hearing by the appropriate authority.

- (b) In case it was an un-electrified area the licensee should have taken action in accordance with Regulations 18 of Supply Code.

The record placed before the Commission shows that no such action was taken by the licensee.

- (c) The licensee's plea that these connections were not converted into meter connections, as the Consumer was not making payment of the past dues is also not tenable or acceptable as in such conditions the licensee should not have issued demand notes to the Consumer and should have taken necessary steps to recover the pending dues. Whereas the available record does not show any evidence, which can support the claim of the Respondent that it has made genuine efforts towards recovery of the pending dues prior to the issuing of the demand notes.

- (d) As per the provisions of Section-55 of EA 2003 it is clear that the licensee was required to give metered connections against a Kundi connection within the period specified under Section 43 of the Act provided that the Commission may, by notification extend the said period of two years for a class or classes of persons or for such area as may be specified in that notification. However, the Commission has not issued any such orders and hence the observance of above provision was mandatory for the licensee .
- (e) The plea of the licensee that the Consumer was enjoying connectivity of electricity and that Section 43 is not applicable in the instant case since the same is applicable for new connection does not appear to be sustainable. If the delay was on account of non-payment of dues for the period between 2002 and February, 2007, this should have been checked at the time of issuance of Demand Note.
- (f) Therefore, the Commission is of the view that the licensee has unnecessarily delayed the conversion of the above two connections into metered connections for which a penalty of Rs.10,000/- is imposed on the Respondent under Section 142 of the EA, 2003 for violation of the above provisions of law.

Issue (ii)

Issue of Jurisdiction in the theft case:-

The Respondent has also raised the issue of jurisdiction of the Commission to hear a case where theft is involved. It has cited various case laws to substantiate its plea that the Commission has no jurisdiction under the prevailing laws to hear the complaint against theft case. The Commission has noted that the Complainant has not approached the Commission on the above issue for any violation. So the Commission is not going into the merits of the theft case and does not want to interfere in the settlement reached between the parties.

7. The Respondent shall comply with the above orders and submit a compliance report to the Commission within four weeks from the date of this Order.
8. Ordered accordingly.

(J. P. Singh)
MEMBER

(Shyam Wadhera)
MEMBER

(P. D. Sudhakar)
CHAIRMAN