

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

**Petition No. 23/2004**

Sh. Rajender .....Applicant  
459/33, Onkar Nagar,  
Tri Nagar, Delhi-35.

Through: Shri Lalit Kumar, Advocate  
50, Lawyer's Chamber,  
Tehsil Building, Tis Hazari Courts,  
Delhi-110054,

VERSUS

North Delhi Power Ltd. ....Respondent  
Through : its CEO  
Sub-Station Building, Hudson Lines,  
Kingsway Camp, Delhi.

**Petition No. 27/2004**

Sh. Alpha Industries .....Petitioner  
Through its Proprietor Smt. Santosh,  
Plot No. 250, DSIDC Indl. Area,  
Narela, Delhi.

Through: Shri B.P. Aggarwal, Advocate  
A-106, Prashant Vihar, Delhi-85.

VERSUS

North Delhi Power Ltd. ....Respondent  
Through : its CEO  
Sub-Station Building, Hudson Lines,  
Kingsway Camp, Delhi.

**Petition No. 28/2004**

Sh. Rajan Arora .....Petitioner  
BA-21, Mangol Puri Indl. Area, Delhi.

Through: Shri B.P. Aggarwal, Advocate  
A-106, Prashant Vihar, Delhi-85.

VERSUS

North Delhi Power Ltd. ....Respondent  
Through : its CEO.  
Sub-Station Building, Hudson Lines,  
Kingsway Camp, Delhi.

**Petition No. 31/2004**

Sh. Dalel Singh  
S/o Sh. Harphool Singh  
Kh. No. 86-87,  
Village Prahlad Pur, Delhi.

.....Petitioner

Through: Shri V.K. Goel, Advocate  
Ch. No. 749, W.W. Tis Hazari, Delhi.

VERSUS

North Delhi Power Ltd.  
Through : its CEO.  
Sub-Station Building, Hudson Lines,  
Kingsway Camp, Delhi.

.....Respondent

**Petition No. 32/2004**

Jindal Industries  
Kh. No. 73/5, Bawana Road,  
Narela, Delhi.  
Through its Proprietor : Sh. Pawan Kumar

.....Petitioner

Through: Shri V.K. Goel, Advocate  
Ch. No. 749, W.W. Tis Hazari, Delhi.

VERSUS

North Delhi Power Ltd.  
Sub-Station Building, Hudson Lines,  
Kingsway Camp, Delhi.

.....Respondent

**Petition No. 48/2004**

Sh. Pawan Mittal  
Shop No. 2 D/16, Mansarovar Garden,  
New Delhi.

.....Petitioner

Through: Shri V.K. Goel, Advocate  
Ch. No. 749, W.W. Tis Hazari, Delhi.

VERSUS

North Delhi Power Ltd.  
Through : its CEO.  
Hudson Lane,  
Kingsway Camp, Delhi.

.....Respondent

**Petition No. 45/2004**

Sh. Pawan Gupta  
S/o Sh. R.D. Gupta,  
Kh. No. 894, Alipur, Delhi.

.....Petitioner

Through: Shri V.K. Goel, Advocate  
Ch. No. 749, W.W.  
Tis Hazari, Delhi.

VERSUS

North Delhi Power Ltd.  
Through : its CEO.  
Grid Sub Station Building,  
Hudson Lines, Kingsway Camp,  
Delhi-110009.

.....Respondent

**Coram :**

**Sh. K. Venugopal, Member & Sh. R. Krishnamoorthy, Member.**

**Appearance:**

Shri B.P. Aggarwal, Advocate, for petitioners. Proxy Counsel for Shri Lalit Kumar.,

Shri V.K. Goel, Advocate, for petitioners. Proxy Counsel for Shri N C Jain, Advocate.

Sh. C Padmani, Advocate for the petitioner.

Sh. Jaswant Rai Grover, Advocate for Respondent,

Sh R.C Kher, GM (Commercial), NDPL, for Respondent.

Sh. Pankaj Kumar, HOD (Coml), NDPL, for Respondent.

Sh. Vivek Singla, CCM, NDPL.

Sh. Varun Sharma, NDPL.

**ORDER**

(Date of Order : 16.06.2005)

(Date of Hearing: 31.03.2005)

These seven petitions have been brought before the Commission with regard to adjudication of disputes between the consumers and the Licensee in the matters of theft of electricity. Various petitioners have filed these petitions against the Distribution Licensee, NDPL. These petitions involved common issues; therefore, they were heard together and are disposed of by this common Order.

2. The Petitioners have filed these petitions alleging that the Distribution Licensee, the Respondent herein, has illegally conducted inspections of their premises and they alleged that the Respondent have wrongly raised the assessment bill. It is alleged that the action of the Respondent Licensee is illegal, unreasonable and violative of principles of natural justice. It is prayed by the Petitioners that the Respondent Licensee may be directed to raise the bills of assessment of energy as per section 126 of the Electricity Act, 2003.

3. It is further submitted by the Petitioners that there is an overlap in the provisions of section 135 and 126. The 'unauthorised use of energy' as explained in section 126 of the Act has some overlap with regard to theft of electricity as provided in section 135 of the Electricity Act, 2003.

4. The learned counsel for the Petitioners submitted that in view of the over lap of the provisions of the Sections 135 and 126, the Licensee is expected to follow the provisions of section 126 of the Act. The duration and the rate to be applied has been provided therein depending on the nature of the user, which is 3 x 1.5 for residential and agricultural and 6 x 1.5 for industrial and commercial services. This is on the basis of sub-section (5) and sub-section (6) of section 126. It is contended that the bill raised by the licensee on the basis of 6 x 5 has no legal basis and has no sanction of law. It is submitted that the Central Act must prevail over the State Act including the Reform Act and the Regulations made there under.

5. During the course of the hearing, the Ld. Counsel for the Petitioners vehemently contested that the Commission has been vested with the authority to decide the issue relating to theft of electricity. Per contra, it is contested by the Respondent that, these cases, which have been brought before the Commission, are on the subject on which the Commission has not been vested with powers to adjudicate under the Electricity Act, 2003.

6. The issue was raised by the Ld. Counsel for the Respondent that they would like to make submissions with regard to the jurisdiction of the Commission dealing with the cases of this nature. Both the parties were given an opportunity to file their written submissions on the point of jurisdiction of this Commission and the parties have complied with the Order.

7. The Commission considered that before hearing the matter on merits, it would be appropriate that the question of jurisdiction be first dealt with. On this issue both the Petitioners and the Respondents, raised the following points in their pleadings.

8. The Petitioners have submitted that the Commission is vested with the powers of a Civil Court in certain matters as per law. Therefore, the Commission has jurisdiction to try and entertain and adjudicate upon the grievance/complaints/disputes of the consumers. Further, it is submitted that for any court/forum, the jurisdiction is vested as per the subject matter unless and until specifically barred by any provision of law. It is added that the offence punishable under sections 135 to 139 of Electricity Act,

2003 are triable only by the Special Courts as provided under Section 154 of the Electricity Act, 2003.

9. It is added that as per the Indian Electricity Act, 1910, the civil and criminal liabilities, in respect of the matters pertaining to theft of electricity, were tried by separate Civil and Criminal courts. But as per the new Electricity Act, 2003, Special Courts have been constituted and vested with the powers of deciding criminal liability and civil liabilities, in the matters of theft of electricity. It is contended that Section 154 of the Electricity Act, provides for certain civil liabilities to be decided by the court only after charges are proved. Whereas, the Respondents have raised the assessment bill which is more than the amount, which only the Special Courts have been empowered by the statute to levy. It is contended vehemently that the Respondent has adopted incorrect procedure in raising the bills and that such an action by the Respondent is beyond the provisions of law.

10. It is submitted that the cognisance of offence defined under sections 135 to 139 can be taken on a complaint in writing as provided under Section 151 of the Electricity Act, 2003. The Petitioners have submitted that in most of the cases, the complaints have not been filed by the Respondent, under Section 135 to 139 of the Act, and hence machinery of law has not been set in motion. The Special Courts, in absence of such complaints, cannot decide the issues between the parties. It is argued that the Commission, as a Regulator, is the key and independent institution, having quasi-judicial powers and also has the statutory duty to protect the interest of the consumers. Hence, the Commission has the jurisdiction to entertain these petitions.

11. The Respondent, on the other hand, has submitted that this Commission has not been vested with any function, power or jurisdiction to entertain or adjudicate upon issues brought in by these Petitioners. It is submitted that the Petitions are misconceived, mischievous and suffer from vice of forum shopping.

12. The Respondent has submitted that the powers, functions and the mandate of the Regulatory Commission has been specifically listed in Section 86 and 94 of the Electricity Act, 2003. The functions of the Commission are set out in an exhaustive provision of Section 86 of the Act.

The aforesaid section does not contain any inclusive provision so as to embrace functions, which are not enumerated therein. Section 86, it is submitted, does not include any function of resolving consumer grievances or disputes of the consumer with the Licensee. In this respect attention is also drawn to Section 86 as well as section 94, stating that these sections, which spells out the entire scope of the function of the State Regulatory Commissions, nowhere talks about the adjudication of disputes between the Licensee and the consumer. It is submitted that the Act never intended to create the Commission as a separate and additional forum to adjudicate disputes between the consumer and the Licensee. As under Section 42(5) of the Electricity Act, 2003, Consumer Grievance Redressal Forum (CGRF) have been established by each Licensee and, so also, an Office of Ombudsman, under Section 42 of the Electricity Act, 2003, has also been put in operation to deal with the grievances of the consumers who are aggrieved by the orders of the Consumer Grievance Redressal Forum. This Act has intended to establish these institutions, rather than place the burden on the State Commission, to adjudicate the disputes and differences between the consumers and the Licensees.

13. It is further submitted by the Respondent that part XII, XIV and XV of the Act contain a complete code for dealing with unauthorised use of electricity, theft and other offences. The DERC (Metering and Billing – Performance Standards) Regulations, 2002, framed under the Delhi Electricity Reform Act, 2000 deals with the assessment of bills to be raised in case of theft/DAE. This position has been upheld by the Hon'ble High Court of Delhi in the matter of Sohan Lal and another versus NDPL, Civil Writ Petition No. 649 of 2004. It is further added that Section 154 of the Act vests the power of entertaining and adjudicating upon cases relating to offences under Section 135 to 139 of the Act in the Special Courts and that it is worth mentioning that Special Courts have been duly constituted and are functional in the NCT of Delhi. Further Section 154(2) of the Act, mandates that all Courts must transfer cases involving offences under Section 135 to 139 of the Act to the Special Court. Special Courts are vested with the powers of not only determining the criminal liabilities but also the civil liabilities for the offences enumerated under Section 135 to 139 of the Act.

14. The Respondent has also added that the Regulatory Commission are expert bodies and vested with the important function requiring multi-disciplinary expertise, but the focus/intention of the constitution of this Commission has been kept away from adjudicating disputes between the Licensee and the consumer in particular. Hence it is submitted that the Commission has been barred to entertain the complaints brought in by the Petitioners.

15. Learned Counsel for Respondent, Sh. Jaswant Rai Grover, during the course of hearing has submitted that the Special Courts constituted under Section 154 of the Act, have been little slow in admitting the complaints filed by the Licensee under Section 151 of the Act. But now all the matters that have been listed before the Commission are registered as a formal complaint before the Special Courts.

16. The Counsel for the Respondent has further brought to the notice of the Commission, the judgement by the High Court of Gujarat in Ahmedabad Electricity Co. Ltd. Versus Ramesh D. Devnani AIR 2005, Gujarat 66 and has tried to bring home the point that once the matter has been dealt with by the Special Court, it bars jurisdiction of the other Courts/forums.

17. After hearing both the parties, the Respondent was further directed to file their written submission as to the status of all the cases, which were listed before the Commission along with proper verification under an affidavit.

18. As per the instructions of the Commission, the Respondent has given the following chart indicating the details of date of inspection of the premises, date of show cause notice, personal hearing to the Petitioners, Petitioners' bills, Speaking orders issued and the date of disconnection of electricity of the Petitioners. The details also accompany the date of filing of complaint with the Special Court.

S. No.	Name of Party	K.No.	Date of Inspection	Date of show Cause Notice	Date of Personal Hearing	Date of Provisional Bill	Date of Speaking Order	Date of issue of Final Bill	Due date of Final Bill	Date of Disconnection	Date of Filing in Special Court
1.	Pawan Mittal	333001 43652	12.5.04	12.5.04	14.5.04	14.5.04	29.5.04	2.6.04	8.6.04	08.7.04	17.12.04
2.	Pawan Gupta	431001 20834	22.5.04	22.5.04	26.5.04	26.5.04	3.6.04	9.6.04	15.6.04	19.11.04	21.12.04
3.	Jindal Industries	432001 26046	12.3.04	12.3.04	17.3.04	12.3.04	22.3.04	26.3.04	01.5.04	Disconnected on 5.6.04. However, got reconnected on	29.10.04

										receipt of part payment	
4.	Alpha Industries	432001 41705	5.4.04	5.4.04	8.4.04	8.4.04	21.3.05	21.3.05	29.3.05	Disconnection Advice issued, shall be disconnected shortly	30.3.05
5.	Rajender (DT Case)	-	24.3.04	24.3.04	25.3.04	-	-	25.3.04	29.3.04	-	19.7.04
6.	Dalel Singh	413001 22748	15.3.04	15.3.04	19.3.04	15.3.04	22.3.04	29.3.04	10.4.04	29.4.04	15.12.04
7.	Rajan Arora	344001 24425	25.9.03	25.9.03	1.10.03	25.9.03	21.3.05	21.3.05	29.3.05	Disconnection Advice issued, shall be disconnected shortly.	30.3.05

19. After going through the written and oral submissions of the parties, the basic issue which have come before the Commission are :-

- i) Whether matters under Section 135 to 139 can be entertained by this Commission and whether the Respondents in these cases should have proceeded under Section 126 of the Act?
- ii) Whether the Commission should pass any relief to the consumer when the matters are pending adjudication before the Special Courts?
- iii) Whether the Commission has been vested with the jurisdiction to entertain dispute between Licensee and the consumer?

The Commission has considered these issues as hereunder:

#### **Issue No I.**

20. Both the parties have clearly brought out that the Electricity Act, 2003, sets out a very clear procedure for dealing with offences enumerated in Section 135 to 139 of the Act. The position of law is also very clear that the Special Courts established under Section 154 shall have jurisdiction on the subject matter and trying the offences under Section 135 to 139 of the Act.

21. The Commission is of the view that the assessment under Section 126 and 135 of the Electricity Act, 2003, is absolutely different from each other. The formula for assessment of 'unauthorised use of electricity' is contained in section 126 and the formula for fixing civil liability for 'theft of electricity' is provided under section 154(5) of the Electricity Act. Under section 126, the Assessing Officer is the competent authority to make assessment



and under section 154(5) it is left to the Special Court to assess the civil liability for theft of electricity.

22. For clarity the following provisions of Electricity Act, 2003, are reproduced below.

**126 (5)** If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of three months immediately preceding the date of inspection in case of domestic and agricultural services and for a period of six months immediately preceding the date of inspection for all other categories of services, unless the onus is rebutted by the person, occupier or possessor of such premises or place.

(6) The assessment under this section shall be made at a rate equal to one-and-half times the tariff rates applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

**(a) “assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government ;**

**(b) “unauthorised use of electricity” means the usage of electricity –**

**(i) by any artificial means; or**

**(ii) by a means not authorised by the concerned person or authority or licensee; or**

**(iii) through a tampered meter; or**

**(iv) for the purpose other than for which the usage of electricity was authorised.**

## **OFFENCES AND PENALTIES**

**135.** (1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, so as to abstract or consume or use electricity .....

(2) XXX.

(3) XXX.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

### **PROCEDURES AND POWERS OF THE SPECIAL COURTS**

**154. (1)** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act :

Provided XXXX.

(3) XXX

(4) XXX

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined which ever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

*Explanation.* - For the purposes of this section, " civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.

23. After going through the provisions of the Act, as elucidated above, and the submissions made by the parties, the Commission is of the opinion that the intention of the statute is unambiguous that both Section 126 and 135 operate in different field. The difference in the two provisions of the Act, has been upheld in the case decided by High Court of Delhi in the matter of Sohan Lal Vs. NDPL WP(Civil) 649/04.

24. In the instant cases, the Commission is cognizant of the fact that the Licensee, NDPL, has filed complaints against the Petitioners for theft of

electricity, under Section 135, as per chart (supra) and has initiated prosecution against them before the Special Court. The Commission is of the considered view that as the Respondent has already moved the Special Court, the Commission is left without jurisdiction. In such cases, the Commission has been ousted and jurisdiction is perched with the Special Courts. The Special Court, as the statutory competent authority, would decide the matters according to law, after considering the facts of each case and may fix civil and criminal liabilities on the petitioners.

## **Issue No.2**

25. With regard to this issue, inference can be drawn from the scheme of the Act which envisages that once the matter is pending before the Special Court, the jurisdiction of other courts are barred. This would also mean that the other Authorities would be rather cautious in giving relief or an injunction in such matters. The Respondent has also brought in the case of Ahmedabad Electricity Co. Ltd. Vs. Ramesh D. Devnani, AIR 2005, Gujrat 66, wherein the Hon'ble High Court of Gujarat has held:

“Thus, looking to the aforesaid facts and circumstances, the City Civil Court at Ahmedabad has no jurisdiction and powers to entertain civil suit filed by the Respondent. The contention of the learned counsel for the respondent that the petitioner company cannot disconnect electricity connection without giving notice even in the case of theft of electric energy, is devoid of merit.....Therefore, the order passed by the Trial Court directing the petitioner company to reconnect electricity connection of the respondent subject to deposit of Rs. 9000/- is also bad in law as whenever Civil Court's jurisdiction is barred, the Civil Court ought not to have entertained the suit.

XXXXX

“In view of the aforesaid facts and circumstances and the provisions of law, in my opinion (High Court), the order passed by the City Civil Court, directing the petitioner company to immediately reconnect the electricity connection of the Respondent is bad in law, without jurisdiction, null and void and declared without jurisdiction. Accordingly, it is held and declared that the City Civil Court, Ahmedabad has no

jurisdiction to entertain Civil Suit and grant any injunction therein in view of the provisions of Section 145 of the Electricity Act, 2003....."

26. In view of the aforesaid judgement of the High Court of Gujarat, the Commission is fairly convinced that it would not be in the interest of justice to pass any injunction at this stage when the matter has been brought for adjudication before the Court of appropriate jurisdiction.

### **Issue No 3**

27. As regards to this issue, whether the Commission has jurisdiction to entertain the complaints of the consumer against the Licensee, it is very clear in the scheme of Electricity Act, 2003, that this Commission has been vested with the powers to frame Regulations, issue Orders, Directions to the licensee for ensuring conducive development of the electricity industry, promoting competition, ensuring equitable supply of electricity, rationalization of electricity tariff, ensuring transparency, promotion of efficient and environmentally benign policies and for the protection of the interest of the consumer. Under Section 142 of Electricity Act, 2003, the Commission, as a Regulator, has also been vested with powers to impose penalty and take such appropriate action against the persons contravening the provisions of the Act, Rules and Regulations, Orders and Directions. In the larger public interest, the Commission may intervene in the affairs of the Licensee by initiating necessary enquires and investigation. In case of gross violations of Act, Regulations, etc, the Commission may, under Section 129 of the Act, issue directions for securing compliance to prevent miscarriage of Justice. If such things come to the notice, the Commission may suo-moto or on a petition by any aggrieved person, become more pro active to punish the violator and to protect the interest of the bona-fide consumers. Therefore, the Licensee should not be left under the mistaken notion that the Commission should not intervene in the matters of dispute between the Licensee and the consumer.

28. However, in these matters the Commission would not interfere since the Special Court has been constituted and the matters are pending before it for adjudication. Further, the Commission has taken the same view in its previous Orders in the matter of Vikas Road Line versus NDPL

and the Commission finds no cogent reason to set aside its previous order of M/s Vikas Road Line.

29. In view of the facts above, the Commission considers that the present petitions are not maintainable before this Commission for want of jurisdiction. As the result, the petitions are dismissed.

30. Ordered accordingly. There shall be no Orders as to costs.

(K. Venugopal)  
MEMBER

(R. Krishnamoorthy)  
MEMBER