

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

F. No. 11 (356)/DERC/2007-08/

Petition No. 41/2007

In the matter of: Complaint under Section 142 of the Electricity Act, 2003
for violation of the Act, Tariff and DERC Regulation.

AND

In the matter of:

Smt. Ram Sakhi
W/o Sh. Mani Lal,
Shop No. 48, AD Block,
Shalimar Bagh,
Delhi.

...Petitioner

VERSUS

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

...Respondent

Coram:

Sh. Shyam Wadhera, Member.

Appearance:

1. Sh. Ajay Kalsie, Company Secretary, NDPL;
2. Sh. O.P. Singh, AM, CCM, NDPL;
3. Sh. K. L. Bhayana, Advisor, NDPL;
4. Sh. D. K. Sinha, Counsel;
5. Sh. K. Datta, Advocate, NDPL.

ORDER

(Date of Hearing: 10.02.2011)

(Date of Order: 16.05.2011)

1. The instant Petition has been filed by the Complainant Smt. Ram Sakhi W/o. Mani Lal against North Delhi Power Ltd. under Section 142 of the Electricity Act, 2003.
2. In the complaint, the Complainant has stated that she is a registered consumer of electricity connection with K. No. 45300151135 having sanctioned load of 3 kw (non-domestic) installed at her Shop No. 48, AD Block, Shalimar Bagh, Delhi.

3. The complainant has submitted that she is making all bills payment honestly on time.
4. The electricity meter against connection no. 45300151135 was installed in the premises of the Complainant on 15.06.1995.
5. The meter got burnt on 15.03.2007 after about 12 years from the date of its installation.
6. The Complainant approached the office of the Respondent for replacement of the burnt meter on 16.03.2007.
7. The electricity supply was restored by the officials of the Respondent directly on 16.03.2007 by the way of by-passing/directly connecting the meter by the officials of the Respondent.
8. On 17.03.2007, the officials of the Respondent visited the premises (Shop) of the Complainant for inspection where the meter was declared tempered with connected load of 4.74 kw against the sanctioned load of 3 kw and a DAE case was booked on 30.04.2007 against the Complainant.
9. A show-cause notice was issued on 17.03.2007 to the Complainant asking him to attend the personal hearing on 26.03.2007, which was attended by her.
10. The complainant has submitted that she verbally intimated the assessing officer that there is no tampering in the meter and meter got burnt in the midnight of 15.03.2007 against which complaint was made on 16.03.2007 and the meter was working accurately right from its installation.
11. The complainant also mentioned that its one year consumption of the inspected meter was 8315 Units whereby if the Respondent calculate/assess the consumption taking into account the sanctioned load of 4.24 KW then it will come to 9115 in a year which is on higher side of the 75% units of consumption bill as per rule. She has further submitted that in case of ten year old meter, if the consumption found not less than 65% of the connected load then no DAE case is established.

12. The complainant has further submitted that under Regulation 20(iii) of DERC Performance Standards Metering & Billing Regulations, 2002 in case the meter is found burnt upon inspection by the licensee on consumer's complaint or otherwise the licensee shall restore connection immediately upon receiving the complaint by bypassing the burnt meter after ensuring that necessary corrective action at site is taken to avoid future damage. New meter shall be provided by the licensee/consumer, as the case may be, within three days. The licensee shall get the burnt meter removed from site/consumer's premises and test the same. If it is established, based on test results, that meter got burnt due to technical reasons e.g. voltage fluctuation, transients etc. attributable to system constraints, the licensee shall bear the cost of meter. In case upon inspection of the consumer's installation and subsequent testing of the meter, it is established that meter got burnt due to causes attributable to the consumer e.g. tampering, defect in consumer's installation, meter getting wet due to falling of water, connection of unauthorized load by the consumer etc. the consumer shall bear cost of new meter in case the original burnt meter was provided by him. In case the meter was provided by the licensee, the consumer shall pay the cost as under:

If meter was less than 2 years old	full cost
Between 2 to 5 years old	75% of the cost
Between 5 years to 8 year	50% of the cost
Between 8 years to 10 years	25% of the cost
More than 10 years	no cost

In case the meter is found burnt and there is reason to believe that an official of the licensee gave a direct connection, pending replacement of meter, a case of direct theft shall not be booked. Consumer's complaint for replacement of burnt meter or the complaint regarding disruption in supply of energy shall be considered sufficient for this purpose.

13. The Complainant has further alleged the violation of Regulation 26(iii) of the DERC (Performance Standards – Metering & Billing) Regulations, 2002 which states that during the personal hearing the licensee shall give due consideration to the facts submitted by the consumer and pass, within 15 days, a speaking order as to whether the case of suspected theft/DAE is established or not. In case of the decision that the case of suspected theft/DAE is not established, no further proceedings shall be taken and connection shall be restored through original meter.

14. The Complainant has mainly sought the following relief:

- a) To set aside the proceedings of DAE.
- b) Direction to the Respondent to replace the burnt meter immediately.
- c) To pay compensation of Rs. 1 lac.

Reply of NDPL:

15. NDPL has challenged the jurisdiction of the Commission to hear such cases. They have cited the case in the matters of Maharashtra Electricity Regulatory Commission versus Reliance Energy Ltd. in C.A. No. 2846/2006 decided by the Hon'ble Supreme Court wherein, the Hon'ble Supreme Court has held that the adjudicatory function of the Commission is limited to the matter prescribed in Section 86(i)(f) of the Electricity Act, 2003. Whereas, the consumers can approach the appropriate forum constituted under Section 42(5) & (6) of the Electricity Act, 2003 and Ombudsman.
16. They have further cited the ATE Judgment in the matter of Cement Corporation of India Ltd. versus Himachal Pradesh State Electricity Board in Appeal no. 31/2007 Order dated 02.08.2007 wherein, the Hon'ble ATE has decided that it has no jurisdiction to hear cases relating to billing dispute and further submitted that remedy lies with concerned forums.
17. NDPL has also cited another case of Polyplex Corporation Limited versus Uttaranchal Power Corporation Limited & Ors. in Appeal no. 220/2006 on the same issue. They have also cited certain other cases claiming that the above case being a billing dispute cannot be raised before the Commission and has not submitted anything about the parawise reply of the above case.
18. As far as Para-wise reply is concerned, they did not submit any reply till the hearing held on 13.01.2011.
19. However, NDPL vide its letter no. NDPL/CCM/110 dated 07.01.2011 has informed the Commission that the above matter has been considered by Enforcement Settlement Committee of NDPL and has now been dropped.
20. The Commission heard the matter on 13.01.2011 where no-one appeared on behalf of the Complainant.

21. The Respondent submits that as far as redressal of grievance of the consumer is concerned, that has already been addressed by dropping the case. Also, the Commission is not the right forum for redressal of grievances pertaining to theft. However, the Commission has power to take cognizance on where there is any violation of its direction/rules and regulations by any person as per provisions of the Section 142 of the Act. So, the Commission took cognizance of the alleged violation of Regulations 20(iii) and 26(iii) of the DERC (Performance Standards – Metering & Billing) Regulations, 2002.
22. In response to the clarifications sought by the Commission, the Respondent wanted time to file the reply which was allowed.
23. The Commission received the reply on the above on 20.01.2011 which was taken on record.
24. The preliminary observations/submissions in the reply have been given as under:
 - I. That the premises of the Complainant were inspected on 17.03.2007 and the evidence found at site indicated dishonest abstraction of energy and hence, a show cause notice was served upon the complainant and the complainant was requested to appear for personal hearing on 26.03.2007. It is also submitted that a provisional bill of Rs. 239090/- was raised in terms of DERC (Performance Standards- Metering and Billing) Regulation, 2002. It is pertinent to mention that the complainant appeared for personal hearing and represented his case. It is pertinent to mention that the complainant was afforded due opportunity to explain his case in response to the abovesaid show cause notice. After hearing the parties, the Assessing Officer came to the conclusion that no case of DAE is made out against the complainant and hence, vide letter dated 20/22.09.2007, the DAE proceedings pursuant to inspection dated 17.03.2007 was dropped against the Complainant in terms of the Regulation 26 of DERC (Performance Standards- Metering and Billing) Regulation, 2002 and intimation was also sent to him.
 - II. It is case of the Respondent that there is no violation on part of the Respondent in processing the DAE case and the Respondent has substantially complied and followed the prescribed procedure

- III. It is also case of the Respondent that once the DAE case is dropped against the complainant herein after following the guidelines laid down under DERC (Performance Standards- Metering And Billing) Regulation, 2002, is no dispute or complaint survives and hence, the present complaint is liable to be dismissed.
- IV. It is further submitted that no useful purpose would be served in continuing with the present complaint only for academic interest as the grievances of the complainant already stand redressed as theft case has already been dropped after following the due process as laid down in Regulations 25 & 26 of DERC (Performance Standards- Metering And Billing) Regulation, 2002 for booking of theft of Electricity and the Complaint has become infructuous. It is settled principle of law that a court ought not continue with the proceeding only for academic interest, if the dispute already stands settled or grievances are already redressed as no real purpose would be solved by continuing with the same. In **Arnit Das vs. State of Bihar [2001(7) SCC 657]**, the Hon'ble Supreme Court has held that courts should not decide matters, which are only for academic interest. In recent judgment of **Association for Development vs. UOI [2010(167) DLT 481]**, the Hon'ble High Court of Delhi, followed the said judgment and also took similar view.
- V. It is submitted that only allegation of the Complainant in the Complaint is that the Respondent has not adhered to the time limits prescribed under Regulation 26 of DERC (Performance Standards- Metering and Billing) Regulation, 2002. On merits, it is submitted that 15 days as prescribed under the Regulation 26 for passing of speaking, is merely procedural in nature and in respectful submission of the Respondent, the same is merely directory and not mandatory. Without prejudice and without admitting that the Respondent has violated any provision, even if it is assumed that there is some delay in passing the speaking order, the same cannot be treated as violation as contemplated under provisions of Section 142 of Electricity Act, 2003. It is submitted that the purpose of the Regulation 26 is to advance principles of natural justice and provide an opportunity to the consumer to present his case and after hearing the parties, decide the matter on merits. It is settled principles of law that a mandatory provision in a statute is one, in which the omission to follow would render the proceedings void and the directory provision is one, where

observance is not necessary to validate the proceedings but relates to form and manner [**Church Auxiliary for Social Action vs, DG of Income tax (2010(4) AD 79]**]. It is submitted that timeline as stipulated in the regulation 26 relates only to form and manner in which the proceedings are to be conducted and does not give or take away any right of the consumer and hence, is merely directory. Interpretation of 15 days as mandatory provision shall lead to unjust results.

- VI. It is submitted that mere use of the word "shall" in the regulation itself shall not make the time limit of 4 days for personal hearing or 15 days mandatory for passing the speaking order. It is submitted that it is well settled principle of law for determining whether a provision is directory or mandatory is to see whether the enactment provide for any consequences that would follow from the non compliance with the requirement prescribed. In the present case, no such consequences is provided for non compliance with the timelines and hence, cannot be said to be mandatory.
- VII. It is submitted that in (2006) 8 SCC 629 **Jagmodhan Mehatabsing Gujaral and others -vs- State of Maharashtra** where the Hon'ble Supreme Court has held that theft of electricity is a very alarming problem faced by all the State Electricity Boards in our country, which is causing loss to the State revenue running in hundreds of crores of rupees every year and Courts should invariably impose heavy fine for making theft of electricity a wholly non-profitable venture. It is submitted that if the provision of the regulation is considered to be mandatory, the purpose of the Act as well as the Regulation, which has revenue focus would stand defeated due to mere procedural lapse, which cannot be the intention of the legislatures.
- VIII. Without prejudice to the rights and contention of the Respondent, it is submitted at the outset that this Hon'ble Commission does not have jurisdiction to entertain the present petition for the reasons mentioned below:
 - a. The present complaint is liable to be dismissed on the sole ground that this Hon'ble Commission has no jurisdiction to entertain the present complaint relating to theft of electricity. It is respectfully submitted that admittedly, the present complaint relates to theft of electricity and hence, this Hon'ble Commission has no jurisdiction

to entertain the present complaint. The functions of this Hon'ble Commission have been explicitly enumerated under section 86 of the Electricity Act, 2003 and there is no scope for this Hon'ble Commission to adjudicate the complaint relating to theft of electricity.

- b. This Hon'ble Commission, under Electricity Act, 2003, has been assigned with the functions, which relate to regulation of the electricity sector and that it is not envisaged in the Electricity Act, 2003 that this Hon'ble Commission would sit as a court for adjudication of the matters relating to theft of Electricity. It is submitted that Chapter XIV and XV of the Electricity Act, 2003 has entire code relating to the matters relating to theft of electricity, which clearly stipulates that such matters shall be adjudicated upon by the Special Courts as envisaged under the Electricity Act, 2003. In Petition No. 46 of 2004 bearing title **Vikas Road Line** versus **NDPL**, this Hon'ble Commission has held that this Hon'ble Commission has no jurisdiction to entertain cases relating to theft of electricity. In **Jain Atta Chakki** vs. **North Delhi Power Limited** bearing Petition No. 06 of 2005 and in Sh. **Rajendra** vs. **North Delhi Power Limited** bearing Petition No. 23 of 2004, this Hon'ble Commission has reiterated the view taken in **Vikas Road Line** versus **NDPL**, and held that this Hon'ble Commission has no Jurisdiction to entertain such cases.
- c. It is further submitted that this Hon'ble Commission cannot hear appeal against the order of Assessing officer. Without admitting and without prejudice to the objections raised by the Respondent herein that this Hon'ble Commission has no jurisdiction to entertain the present complaint, it is submitted that in any event, this Hon'ble Commission has no jurisdiction to grant the prayer as prayed by the Complainant and on this ground alone, the present complaint is liable to be dismissed.
- d. The present complaint is liable to be dismissed on the sole ground that this Hon'ble Commission has no jurisdiction to entertain individual dispute between the Licensee and the Consumer. It is submitted that since the complaint relates to consumer and licensee the Hon'ble Commission does not have jurisdiction over the same. It is submitted that the powers of the Commission are enumerated in Section 86 of the Electricity Act, 2003 and no power has been given therein to the Commission to adjudicate upon the disputes between licensees and consumers. In **Maharashtra**

Electricity Regulatory Commission vs Reliance Energy Ltd. (2007

(8)SCC 381), the Hon'ble Supreme Court has categorically held that section 86(1)(f) of the Electricity Act, 2003 which prescribes the adjudicatory functions of the state Commission does not encompass within its domain complaints of individual consumers and that it only provides that the commission can adjudicate upon the disputes between the licensees and the generating companies and to refer any such dispute to arbitration. The Supreme Court affirmed that this does not include in it a grievance of an individual consumer.

- e. Further, in **BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission** bearing appeal No. 181 of 2008, the Hon'ble Appellate Tribunal for Electricity has held, *inter alia*, that individual consumer cannot approach the state commission to decide about the disputes between the licensee and the consumer.
- f. It is further submitted that a Division Bench of the Delhi High Court in the judgment reported as B.L Kantroo Vs. BSES Rajdhani Power Ltd. [154(2008) DLT 56 (DB)] has held that not even a Civil Court which clearly enjoys unlimited jurisdiction, can adjudicate upon disputes relating to theft of electricity. In fact the Division Bench has held that the exclusive jurisdiction to go into all aspects relating to theft of electricity is with the Special Court set out under the said Act. This would include all aspects of the present case which the Complainant is seeking to urge before this Hon'ble Commission.

- IX. It is further submitted that the complaint as raised by the Complainant involves disputed facts, which cannot be decided by this Hon'ble Commission in summary manner.

Conclusion:

- 25. After taking into consideration all facts and figures placed before the Commission and recent submissions of the Respondent, the Commission concluded that the Respondent cannot take the plea that adhering of time limit is directory and it is not mandatory. The Respondent cannot exercise discretion in this regard. The time limit prescribed in the Regulations is to be adhered to. Had it been directory then the Commission would have provide the word 'may' instead of 'shall' in the Regulation. The word 'shall' makes the provision mandatory. If the Distribution Licensee had any objection to the above Regulation and felt

that these provisions were unjust it had the right to challenge the above Regulations in the appropriate Court of law. But, it cannot evade the responsibility of adherence to the above Regulation till these are in force. Therefore, the Respondent has violated the above Regulations.

26. As far as the plea of the Distribution Licensee that Commission has no jurisdiction to hear the case, the Commission has not gone into the merits of the case in relation to the matter of theft or bill dispute. It has its original jurisdiction provided under Section 142 of the Electricity Act, 2003 to hear the case even the Commission has power to take suo moto action against any person if the Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made there under, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction. Accordingly, the Commission has full jurisdiction to hear the above case. The Act provides power to the Commission to adjudicate case under Section 86(i)(k).
27. The Commission finds the distribution licensee responsible for violation of the procedure specified in the supply code as well as causing harassment to the consumer by framing of charges which were subsequently dropped after a considerable lapse of time. Keeping in view the harassment caused to the consumer, the Commission supposes a penalty of Rs. 10,000/- in this case and advises the Licensee to issue directions to its employees to strictly follow and adhere to the provisions of law and the regulations , while taking any such action against any consumer in future.
28. Ordered accordingly.

Sd/-
(Shyam Wadhera)
Member