

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11 (1251)/DERC/2015-16

Petition No. 47/2015

In the matter of: Petition filed under section 142 of the Electricity Act, 2003

And

In the matter of:

Sandeep Tiwari,
C-22 Dronacharya Apartment,
Mayur Vihar, Phase – I,
Delhi – 110091

.....**Complainant**

VERSUS

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

.....**Respondent**

Coram:

Sh. Krishna Saini, Chairperson & Sh. B.P. Singh, Member

Appearance:

1. Shri NK Nagar, Advocate for the Petitioner;
2. Shri S Bhattacharya, DGM, BRPL;
3. Shri Arav Kapoor, Advocate for Respondent, BRPL;

ORDER

(Date of Hearing: 26.05.2016)

(Date of Order: 17.06.2016)

1. The instant petition has been filed by Sh. Sandeep Tiwari, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. for violation of the procedure laid down in Regulations of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007.
2. Vide Interim Order dated 04.09.2015, the Respondent was directed to show cause on the prima facie findings of violations of Regulation 52 (viii) read , 52

(viii) read with 38 (C), 52 (ix), 52 (x) and 53 (i) of Delhi Electricity Supply Code & Performance Standards Regulations, 2007. The Respondent replied to the Show Cause Notice on 29.01.2016.

3. The matter was heard on 26.05.2016 and both the parties submitted their respective versions. Based on the submission made by the parties the Commission's findings on violation of regulations are as follows:

a) Violation of Reg. 52 (viii) of DERC Supply Code, 2007

Regulation 52 (viii) provides that:-

In case of suspected theft, the Authorised Officer shall Remove the old meter under a seizure memo and seal it in the presence of the consumer/ his representative. The Licensee shall continue the supply to the consumer with a new meter. The old meter shall be tested in a NABL accredited laboratory and the laboratory shall give a test report, in writing, which along with photographs/ videographs shall constitute evidence thereof.

The Respondent submitted that the meter was seized. The seized meter was sent to NABL accredited Laboratory for further testing/analysis under intimation to the consumer vide seizure/investigation letter dated 02.07.2013 which was duly signed and received by the consumer or his representative.

The Commission observed that the meter was replaced on 02.07.2013, whereas the seizure memo was prepared on 18.11.2013. It is clear that the meter was not seized at the time of its removal as no copy of the seizure memo to that effect was furnished to the complainant. Further the letter claimed to be a seizure memo is basically Investigation Report/ letter, intimating the consumer about the date of meter testing and such document cannot be treated as a Seizure Memo. Hence, the Respondent has apparently contravened the abovementioned provisions of DERC Supply Code, 2007.

b) Violations of Regulation 52 (viii) read with Regulation 38 (c) of DERC Supply Code, 2007

Regulation 52 (viii) provides that:-

In case of suspected theft, the Authorised Officer shall Remove the old meter under a seizure memo and seal it in the presence of the consumer/ his representative. The Licensee shall continue the supply to the consumer with a new meter. The old meter shall be tested in a NABL accredited laboratory and the laboratory shall give a test report, in writing, which along with photographs/ videographs shall constitute evidence thereof.

Regulation 38 (c) provides that:-

The consumer shall be informed of proposed date and time of testing at least two days in advance.

The Respondent submitted that the seized meter was sent to NABL accredited Laboratory for further testing/analysis under intimation to the consumer vide seizure/investigation letter dated 02.07.2013 which was duly signed and received by the consumer or his representative. Since the consumer failed to appear on the scheduled date, the meter was tested on 05.08.2013. Placing reliance on the judgment of **Smt. Kanta Sharma vs. BSES Rajdhani Power Ltd. (WP.C 1712/2011)** in respect of Regulation 38 (c) the Respondent submitted that it is not applicable in the present case. The said provision applies to cases wherein the user himself disputes the accuracy of the meter installed at his premises.

As much it is related to the ratio of judgement of the Hon'ble High Court of Delhi, it is to be noted that the Hon'ble High Court has held that once the Regulations are not found to impose any obligation on the respondent to test the meter in the presence of the consumer and the consumer fails to avail the opportunity on the date given for testing, the process cannot be made cumbersome and the condition that no testing can be carried out without the presence of the petitioner and which may lead to delays cannot be

imposed. It makes amply clear that if a person fails to appear on the date of inspection, he may not be given another chance to make the process cumbersome causing unnecessary delay. But giving an opportunity to the consumer for witnessing testing of meter was not denied by the Hon'ble High Court.

The Commission observed that the intimation letter dated 02.07.2013 bears no signature of issuing Authority of the Respondent. A letter without signature of the issuing authority cannot be admitted as documentary evidence. In respect of Regulation 38 (c) the Commission has time and again observed that the meter testing report is an important evidence for DAE case and rule of equity demands that the meter be tested in the presence of the consumer. The Regulations should be read as a whole for proper interpretations. Therefore, Regulation 38 (c) has applicability for every type of meter testing.

Hence, it is apparent that the Respondent has contravened the provisions of Regulation 52 (viii) read with Regulation 38 (c) of DERC Supply Code, 2007.

c) Violation of Regulation 52 (ix) of DERC Supply Code, 2007

Regulation 52 (ix) provides that:-

..... a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post.

The Respondent submitted that the Consumer refused to sign the inspection report. Subsequently, the said report was sent to the complainant through speed post.

The Commission observes that the Respondent has not provided any proof on record to establish that the Petitioner refused to accept, or resisted when attempts were made to paste those at a conspicuous place in/outside the premises. The Regulation provides that in case of refusal by the consumer to either accept or give a receipt, a copy of the Inspection Report must be pasted at conspicuous place in/outside the premises and photographed. There is partial violation of the Regulation. However, the said report was sent to the complainant through speed post. The Respondent has also provided a proof of the same, i.e. the Postal receipts showing dispatch of the report to the consumer and there was no abnormal delay in dispatch of report. However, the Respondent is cautioned to be more careful in future about other provisions of this Regulation.

d) Violations of Regulation 52 (x) of DERC Supply Code, 2007

Regulation 52 (x) provides that:-

.....the Licensee shall, within seven days of inspection, serve on the consumer a seven days show cause notice giving reasons, as to why a case of theft should not be booked against such consumer giving full details for arriving at such decision and points on which reply to be submitted...

The Respondent submitted that the first Show cause notice was issued on 03.12.2013 and sent by Speed Post with a date of Personal Hearing on 26.12.2013, but the Petitioner did not appear and hence, Second/Final Show cause notice was issued on 27.12.2013 to attend Personal Hearing on 13.01.2014. Again there was no response from the Complainant. As for the alleged delay, it was further contended that the time limit prescribed in the Regulation being merely procedural in nature, is merely directory and not mandatory.

The Commission observed that the show cause notice was served after 153 days of first inspection dated 02.07.2013 and 120 days after meter testing dated 05.08.2013. The second inspection dated 18.11.2013 has no sanctity as it is not required as per Regulations. Moreover, it was made after more than three months from the date of meter testing (05.08.2013), whereas the whole process of issue of show cause notice should be completed within 1 month.

On the issue of mandatory vs. directory Regulation, it is noted that a Regulation must be complied with, whether it contains a mandatory or a directory direction. It is not the free will of the Discom to comply or not to comply with the provisions of Regulations. The only point worth consideration is regarding the related consequences when a Regulation is not complied with. In the case of a mandatory direction, non-compliance makes the whole process null and void, whereas non-compliance of a directory Regulation entails some damages or penalty.

The aforesaid act of omission on part of the Respondent comes in purview of violation of said regulation.

e) Violation of Reg. 53 (i) of DERC Supply Code, 2007

Regulation 53 (i) provides that:-

Within four days from the date of submission of consumers' reply, the Licensee shall arrange a personal hearing with the consumer. The consumer may be given another opportunity in case he fails to appear for the hearing. In case, the consumer fails to appear for the second time, the Licensee may proceed ex-parte.

The Respondent submitted that the first Show cause notice was issued on 03.12.2013 and sent by Speed post with a date of Personal hearing on 26.12.2013. Respondent has submitted that the Petitioner did not appear and hence, Second/Final Show cause notice was issued on 27.12.2013 to attend

Personal hearing on 13.01.2014. Again there was no response from the Complainant. The Respondent has also attached the proof of dispatch of both the cited Show cause notices.

Considering the submissions made by the Respondent that the Respondent has provided opportunity of personal hearing to the Consumer and has also attached the proof of dispatch of both the cited Show cause notices, no violation of the provisions of Regulation 53 (i) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 is established.

4. For the reasons recorded above, the Commission finds the Respondent has violated provisions of Regulation 52(viii), Regulation 52(viii) read with Regulation 38(C) and Regulation 52 (x) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007. For violation of Regulation 52(viii), Regulation 52(viii) read with Regulation 38(C) and Regulation 52 (x), the Commission imposes penalty of Rs. 30,000/- (Rs. 10,000/- for each violation) to be paid within 30 days of the order.
5. The petition is disposed of and ordered accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(Krishna Saini)
Chairperson