

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 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. P. D. Sudhakar, Chairperson, Sh. J.P. Singh, Member & Sh. B.P. Singh, Member

Appearance:

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

INTERIM ORDER

(Date of Hearing: 27.08.2015)

(Date of Order: 04.09.2015)

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 Regulatory Supply Code and Performance Standards Regulations, 2007.
2. Notice was issued on 16.06.2015 to Respondent to file its reply.
3. In response to the notice, the Respondent filed its reply on 06.08.2015, and has sought dismissal of the above complaint on the following grounds:

- i. Lack of jurisdiction: The Commission has no jurisdiction to adjudicate the complaint relates to theft of electricity which is to be adjudicated by the Special Court. The Commission has no jurisdiction to entertain individual dispute between the Licensee and the Consumer.
 - ii. All allegations made by the Petitioner are denied.
 - iii. Being a case of theft of electricity under section 135/138 of the Electricity Act, 2003 as amended in 2007, the said case has been filed before Special court of Electricity, Saket. The same has been registered vide CC No. 439/2014 and listed on 27.11.2015.
4. The matter was heard on 27.08.2015 and on the basis of pleadings and oral submissions of both parties and considering the material available on the record, the Commission decided that the petition was admitted as there exists a prima-facie case for the following violations:-

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.

In accordance with the Regulation, it is mandatory for the Respondent to remove the old meter under a Seizure memo. However, it is evident 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. 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:-

....the old meter shall be tested in a NABL accredited laboratory lab for testing and the laboratory shall give a test report, in writing,

Regulation 38 (c) provides that:-

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

The Commission observed that the meter was tested in the absence of complainant. The complainant had no prior information about testing of meter in Lab. The Respondent clarified that intimation about meter testing in Lab, was sent to the complainant vide letter dated 02.07.2013 for witnessing the Lab testing on 09.07.2013. Since the consumer failed to appear on the scheduled date, the meter was tested on a subsequent date. In such a situation, the respondent would have given notice for meter testing on a subsequent date also. Therefore the Respondent has apparently 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 Commission observed that the inspection report was neither pasted in/outside the premises nor it was sent through a registered post to the complainant. The Respondent clarified the Consumer refused to sign the inspection report and hence, the same was sent through speed post. However, no copy of postal receipt/Dispatch details is attached along with the reply of the Respondent. Hence, the Respondent has apparently contravened the aforesaid provisions of Regulation 52 (ix) of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

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...

In the instant case prima facie it appears that the Respondent has violated the above provision by way of not serving a show cause notice within seven days of inspection and the Show cause notice was issued on 03.12.2013 i.e. after 16 days of inspection dated 18.11.2013. Hence, the Respondent has apparently contravened the abovementioned provisions of DERC Supply Code, 2007.

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 Commission observed that no opportunity of personal hearing was given to the Consumer. The Respondent's submission is that two show Cause notices for Personal hearing were issued. However, the Respondent has not provided proof of receipt for serving of Show cause notice. Hence, the Respondent has apparently contravened the abovementioned provisions of DERC Supply Code, 2007.

5. In view of the aforesaid, the Respondent is hereby directed to show cause as to why action u/s 142 of the Electricity Act, 2003 should not be taken against it for prima-facie violation of above Regulations. The Respondent is directed to file its reply within four weeks from the receipt of this notice and to serve a copy of the same to the complainant. The Complainant has also been given liberty to file rejoinder, if any, within a week of above filing.

6. Take notice that in case the Licensee above named fails to furnish the reply to this Show Cause Notice within the time mentioned above, it shall be presumed that the Licensee has nothing to say and the Commission shall proceed in the absence of such reply in accordance with law.
7. The next date of hearing shall be intimated to the parties in due course.
8. Ordered accordingly.

Sd/-
(B. P. Singh)
Member

Sd/-
(J. P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson