

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

Petition No. 62/2008

In the matter of:

Smt. Santosh Gargya
H.No. 39, Village Ziya Sarai,
New Delhi.

.....**Complainant**

VERSUS

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

.....**Respondent**

Coram:

**Sh. Berjinder Singh, Chairman, Sh. Shyam Wadhera, Member &
Sh. Subhash R. Sethi, Member.**

Appearance:

1. Sh. Manish K. Choudhary, Adv. for Complainant.
2. Sh. Pradeep, Advocate for complainant
3. Sh. Surender Kumar, representative of Complainant
4. Sh. Krishan, representative of Complainant
5. Sh. Sita Ram, DGM for BRPL.

ORDER

(Date of Hearing : 17.11.2009)

(Date of Order : 22.07.2010)

1. The instant petition has been filed under section 142 of the Electricity Act, 2003 against the BRPL, wherein the petitioner has prayed the following:
 - (a) To issue direction to the Respondent to re-assess the impugned bill dated 16.2.2008;
 - (b) To issue direction to the Respondent not to disconnect the electricity supply of the Petitioner's premises.

The averment made by the petitioner –

2. Smt. Santosh Gargya (complainant) is a registered consumer of electricity having connection K.No.2551L2030845 sanctioned for 10kW (non-domestic category). Due to financial constraint she was unable to set up the office for which the non-domestic connection was installed. Thereafter her husband visited the office of the Respondent for load

reduction but the same was refused on the grounds that the commercial load once sanctioned cannot be reduced within 2 years of its sanction. This has compelled the complainant to pay minimum fixed charges for total sanctioned load of 10 kW, without using the electricity.

3. On 5.1.2008 the official of the respondent inspected the meter installed at the premises of the Complainant and prepared an inspection report, wherein a false case of theft was stated to be booked against her. The grievance of the complainant is that the respondent did not follow the mandatory procedure for carrying out the inspection. Thereafter the Complainant was served with the assessed energy bill for an amount of Rs.2,20,184/- in the month of February 2008 considering it to be a case of theft.
4. It is further submitted that even as per the load report the Complainant was found to be using load of 0.51 kW only. According to the complainant the electricity connection is being used in Small Stationery Shop, STD and Small Office having one fan, tube light and PC. On 22.2.2008 the Complainant approached the officials of the Respondent where they agreed with the Complainant to rectify the bill, thereafter on the assurance of the Respondent the complainant deposited an amount of Rs.10,000/- on 13.3.2008. But the Complainant was directed to deposit the remaining amount of Rs.1,10,000/- against the impugned bill of Rs.2,23,337/- and hence this petition.

Averment made by the Respondent :

5. BRPL in its reply dated 20.06.2008 filed in the Commission on dated 27.06.2008 submitted that the inspection of the premises bearing No. 39, G/F, Front Portion, Jiya Sarai, Hauz Khas, New Delhi was carried out by Authorized Enforcement Inspection Team on 05.01.2008 where two nos. single phase meters bearing Meter No. 13349010 & 3340945 were found installed against K. No. 2551 L203 0845 (NX) & 2551 L203 0583 (DX). Connection bearing K. No. 2551 L203 0845 (NX) was sanctioned for Non-Domestic purpose in favour of Mrs. Santosh Sharma Gargya for a load of 10 KW and supply of this connection was found being used by the Krishna Gargya with a connected load of 0.51 KW for Non-Domestic purposes and Connection bearing K.No.2551 L203 0583 (DX) was sanctioned for Domestic purpose in favour of Smt. Ram Pyari for a load of 8 KW and supply of this connection was found being used by the Krishna Gargya with a connected load of 23.882 KW for Domestic purposes.

6. Load reports in the form of Assessment of Connected Load vide L.R. No. 4071 & 4072, Meter Reports vide MR NO. 6489 & 6493 and Inspection report vide IR No. 8841 dated 05/01/2008 were prepared at site. Necessary video-graphs were taken by M/s. Arora photo Studio at site. The representative of the petitioner was present during the entire process of inspection, however he refused to sign while receiving the copy of inspection reports. Paper seals I.R. NO. 71641 & 71642 were pasted on the tampered meter to maintain the status quo.

7. As per meter report dated 5.1.2008, following irregularities were found in the metering equipments :

A) Meter No. 334095 installed against K. No. 2551 L203 0583

- Meter terminal seals found missing.
- Meter half seals found tampered.
- Meter was found slow by 85.10%
- The meter was segregated at site in the presence of the consumer and one No. illegal shunt (green colour wire) was found connected between phase input & phase output to manipulate the recording consumption through the meter.

B) Meter No. 13349010 installed against K. No. 255 L203 0845

- Meter terminal seals found tampered and re-fixed.
- Meter half seals found tampered and re-fixed.
- Ultrasonic welding of meter found tampered and re-fixed.
- Hologram seals found tampered and re-fixed.
- Meter was found slow by 64.82% with the standard accuracy check.
- The meter was segregated at site in the presence of the consumer and two now. Illegal copper shunts were found connected between phase input to phase output and neutral input to manipulate the recorded consumption through the meter.

As such both meters were found tampered.

In additional reply Respondent submitted that the petitioner failed to deposit the impugned bill against K.No. 2551 L 203 0845 (NX) and the respondent has initiated a criminal proceeding against the petitioner by filing complaint before Special Electricity Court, vide Cc No. 597/09. The instant matter is being sub-judice before special court.

8. The Respondent in the above additional reply further submitted that in the above case the Commission has no jurisdiction as the above case falls under Section 135 of the Electricity Act, 2003.

9. Hearing in the Commission :

The Commission heard the matter on dated 17.11.2009 keeping in view that the Commission has jurisdiction to hear the complaint filed under Section 142 of the Electricity Act, 2003 by any person against violation of

any regulation/rules/directions issued by the Commission. Both the parties were present. While processing the case and in the course of hearing the Commission framed two issues in this case on which the Commission sought necessary clarification from the Respondent:

- a) Whether the inspection report had been delivered through post as the inspection report had not been signed by the consumer?
- b) Why assessment bill has been raised on sanctioned load i.e. 10KW (NX) and not on connected load i.e. 0.51Kw?

10. In compliance of above the Respondent vide its reply dated 23.11.2009 submitted that neither the consumer nor his representative accepted the show cause notice and inspection reports etc. nor did he allow inspection team to paste the same in his premises, as per inspection records, meter report, load report, inspection report alongwith the show cause notice were sent to the consumer through Speed post vide No. ED 2098250621N dated 15.1.2008 in compliance of Regulation 52(IX) of Delhi Electricity Supply Code and Performance Standards Regulations 2007.

11. It is further submitted that in the Annexure –XIII of Delhi Electricity Supply Code and Performance Standard Regulations 2007 formula for assessment of energy in cases of theft/pilferage has been given as :-

Unit assessed = $L \times D \times H \times F$,

Where L is load (connected/sanctioned load which ever is higher) in KW where KWh rate is applicable and in KVA where KVAH rate is applicable.

So in the instant case they have assessed the DAE bill taking into account sanctioned load instead of consumption load being higher as per Delhi Electricity Supply Code and Performance Standard Regulations 2007.

Commission's View :

12. After going through the averments made by both parties, and considering the facts and figure/documentary evidence placed before the Commission, it has been observed that Section 135 of the Electricity Act -2003 also envisages the making of an assessment as laid down in the last proviso of Section 135(1). However, once the matter goes to the Special Court, the final civil liability is to be determined by the Special Court and the assessment already made will no longer remain final.

13. In the instant case, BRPL booked a theft case against the consumer under section 135 and has moved the Special Court in this regard.

However, the procedure for booking a theft case under section 135 was not followed by the DISCOM. BRPL itself has admitted in its written submission dated 13.06.2008, that the Meter of the consumer was broken, open and segregated at the site for which the DISCOM had no authority under the Act or the Supply Code – 2007. Regulation 52(viii) of the Commission's Supply Code & Performance Standards Regulations – 2007 clearly prescribe the procedure in such cases, which reads as under:

"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/ video graphs shall constitute evidence thereof. The list of NABL accredited laboratory shall be notified by the Commission. The authorized Officer shall record reasons to suspect theft in the premises in his report."

14. The meter was not sealed nor tested in NABL accredited laboratory as required under the above Regulations, but was segregated at site during inspection, which is in violation of the Commission's Regulations, for which a penalty for Rs. 1 lakh is imposed upon Respondent Discom, under Section 142 of the Act
15. By this order the Discom is directed to issue direction to its employees to be careful while making such inspection and adhere to the provisions of Regulations while conducting enforcement action or booking a case of theft against any consumer and desist from doing any illegal, unwarranted action. The compliance of the order be made within 4 weeks from the date of issue of this Order.
16. Ordered accordingly.

-sd-
(Subhash R. Sethi)
MEMBER

-sd-
(Shyam Wadhera)
MEMBER

-sd-
(Berjinder Singh)
CHAIRMAN