

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

F.11 (1180)/DERC/2014-15

Petition No. 01/2015

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

And

In the matter of:

Sarla Devi,
W/o Late Sh. Naresh Kumar,
A-145, G/F Laldora village,
Patparganj, New Delhi – 110091

.....**Complainant**

VERSUS

BSES Yamuna Power Ltd.
Through its: **CEO**
Shakti Kiran Building,
Karkardooma
New Delhi – 110092

.....**Respondent**

Coram:

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

Appearance:

1. Shri Rakesh Kumar, A.R of Petitioner
2. Shri sanjeev jain, along with the petitioner.
3. Shri I U Siddiqui, Legal Officer, BYPL.
4. Shri Munish Nagpal, Sr. Manager, BYPL.
5. Shri Manish Srivastava, Advocate for Respondent.

ORDER

(Date of Hearing: 10.12.2015)

(Date of Order: 04.01.2016)

1. The instant petition has been filed by Ms. Sarla Devi under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for violation of the procedure laid down in the Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.
2. Vide Interim Order dated 20.03.2015, the Respondent was directed to show cause on the prima facie findings of violations of Regulation 52 (iii), 52 (viii) read with 38 (C), 52 (ix), 52 (x), 53 (i), 53 (ii), 53 (iv) and 56 of Delhi Electricity Supply Code & Performance Standards Regulations, 2007. The Respondent replied to the Show Cause Notice on 11.08.2015.

3. The matter was heard on 10.12.2015 and both the parties submitted their respective versions. Based on the arguments put forth by the parties the Commission's findings are as follows:

a) Violation of Regulation 52 (iii) of DERC Supply Code, 2007

Regulation 52 (iii) provides that:-

The inspection team of the Licensee, headed by such Authorised Officer shall carry along with them their Visiting Cards and Photo Identity Cards. Photo ID card should be shown and Visiting Card handed over to the consumer before entering the premises. Photo ID card of the Authorised Officer shall clearly indicate that he has been nominated as authorized officer as per provisions of section 135 of the Act.

The Respondent submitted that at the time of inspection identity proof was shown to the complainant. The inspection was conducted along with the staff of the local police station at Pandav nagar, including Sh. Banwari Lal (ASI), Sh. Mahender & others.

Considering the submissions made by the Respondent that the inspection was conducted in the presence of local police, no violation of the provisions of Regulation 52 (iii) of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007 is established.

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 Seizure Memo bearing No. BY-IR-OB-030588 dated 11.07.2014 was prepared at site. However, the consumer/representative user refused to sign the same. Meter was seized at

site in gunny bag no. 456275 along with seal. However, no copy is attached along with the reply. 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.

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 its 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. Neither did he allow the representatives of the Respondent to paste the same on the wall pertaining to its premises. Therefore, the inspection report dated 11.07.2014 was made as an enclosure and sent to the complainant along with the Show cause notice dated 26.07.2014.

The Commission observed that the copy of the inspection report was sent along with the Show cause notice dated 26.07.2014, whereas per the regulation, the report should be sent simultaneously under registered post. Hence, the Respondent has contravened the provisions of Regulation 52 (ix) of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

d) Violation 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 a due show cause notice was issued on 26.07.2014 for the inspection that was carried out on 11.07.2014 and was duly served upon the complainant.

The Commission observed that the show cause notice was served after 14 days of inspection dated 11.07.2014 and one day after meter testing dated 25.07.2014. The Regulation says that the Show Cause Notice be issued within 7 days (working) of inspection.

The aforesaid act of omission on part of the Respondent comes in purview of violation of said regulation. However, keeping in view that it was issued one day after meter testing, no penalty is imposed.

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 4 days period prescribed under Regulation 53 (i) for the holding of personal hearing from the date of submission of the consumer's reply, is merely procedural in nature and in respectful submission of the respondent, the same is merely directory and not mandatory. Even if it is presumed that there is some delay in holding the personal hearing, the same cannot be treated as violation as contemplated under provisions of Section 142 of the EA, 2003.

In this regard it has been observed that the date of holding a personal hearing dated 22.08.2014 was not decided after the date of submission of the consumer's reply dated 11.08.2014, rather it was pre-decided in the Show Cause notice dated 26.07.2014. Hence, no violation of the provisions of Regulation 53 (i) of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007 is established.

f) Violation of Regulation 53 (ii) of DERC Supply Code, 2007

Regulation 53 (ii) provides that:-

.....During the personal hearing, the Licensee shall give due consideration to the facts submitted by the consumer and pass within three days, a speaking order as to whether the case of theft is established or not. Speaking order shall contain the brief of inspection report, submissions made by the consumers in his written reply and oral submissions during personal hearing and reasons for acceptance or rejection of the same.....

The Respondent submitted that the 3 days period as prescribed under the regulation 53 (ii) for passing of speaking Order, is merely procedural in nature and in respectful submission of the respondent, the same is merely directory and not mandatory. Even if it is presumed 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 the EA, 2003

Available records reveal that the personal hearing was held on 22.08.2014. However, the speaking order was issued on 10.09.2014 i.e. after 19 days from the date of personal hearing. Hence, the Respondent has contravened the provisions of Regulation 53(ii) Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

g) Violation of Regulation 53(iv) of DERC Supply Code, 2007

Regulation 53(iv) provides that:-

Where it is established that there is a case of theft of energy, the Licensee shall assess the energy consumption for past twelve (12) months as per the assessment formula given in ANNEXE-XIII and prepare final assessment bill on two times the rates as per applicable tariff and serve on the consumer under proper receipt.

The Respondent submitted that the bill has been duly generated as per the DERC regulation after using the LDHF Formula.

The Commission observed that the Assessment bill dated 09.09.2014 does not contain any details of calculation of assessment. Further, the Respondent in its reply to the Show Cause notice has failed to give basis of calculation. Hence, the Respondent has contravened the provisions of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

h) Violation of Regulation 56 of DERC Supply Code, 2007

Regulation 56 provides that:-

While making the assessment bill, the Licensee shall give credit to the consumer for the payments already made by the consumer for the period of the assessment bill. The bill shall clearly indicate the timing, days and place where it is to be deposited. All such payments shall be made by way of Demand Draft/Bank Pay Orders only.

The Respondent submitted that the bill has been duly generated as per the DERC regulation and a credit for an amount of Rs. 12,093/- has been given for the payment already made by the consumer for the period of the assessment bill.

Available records reveal that the Respondent has given a credit for an amount of Rs. 12,093/- for the payment already made by the consumer for the period of the assessment bill. Hence, no violation of the provisions of Regulation 56 of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007 is established.

4. For the reasons recorded above, the Commission finds the Respondent has violated provisions of Regulations 52 (viii) read with regulation 38 (C), 52 (ix), 53 (ii), 53 (iv) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007. For violation of Regulations 52 (viii) read with Regulation 38 (C), 52 (ix), 53 (ii), 53 (iv), the Commission imposes penalty of Rs. 40,000/- (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/-
(J. P. Singh)
Member

Sd/-
(P. D. Sudhakar)
Chairperson