

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

F.11(324)/DERC/2008-09

Petition No. 22/2007

In the matter of:

Surender Kumar
Kh. No. 70, Village Kureni,
New Delhi.

...Complainant

Through: Shri V.K. Goel, Advocate,
Ch. No. 749, W.W. Tis Hazari, Delhi.

VERSUS

North Delhi Power Ltd.
Through: its **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110 009.

...Respondent

Coram:

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

Appearance:

1. Sh. V.K. Goel, Advocate for Complainant;
2. Sh. Krishnendu Datta, Advocate, NDPL;
3. Sh. Ajay Kalsie, Company Secretary, NDPL;
4. Sh. K.L. Bhayana, Adviser, NDPL;
5. Sh. O.P. Singh, Manager, NDPL

ORDER

(Date of Hearing: 28.01.2010)
(Date of Order: 06.04.2010)

1. Sh. V. K. Goel, Ld. Counsel, appearing for the Complainant, submitted that he applied for disconnection of electricity supply on K. No. 43200131616 on 11.9.2002. Sh. Goel further submitted that according to Regulation 23(ii) of DERC (Performance Standards – Metering & Billing) Regulations 2002, the Respondent (NDPL) was to take a special reading and prepare final bill including all arrears up to the date of such billing within 5 days from such request. Further as per Regulation 23(iii) of DERC (Performance Standards – Metering & Billing) Regulations 2002, the NDPL has no right to recover any charges for any period prior to this date of billing. In this matter Meter Removal Order (MRO) was issued on 5.12.2002 and meter was finally removed from the site on 24.2.2003 at reading of 107311 units. In view of the above, the NDPL had grossly violated Regulation 23(ii) of DERC (Performance Standards – Metering & Billing) Regulations, 2002.

2. Sh. Goel further submitted that NDPL raised the additional demand for an amount of Rs.3,13,072/- for the first time for the period from September 1997 to 24.2.2003 in the bill for the month of July, 2006. Since, this demand is in violation of Section 56(2) of the Electricity Act, 2003, therefore, it is not recoverable.
3. Sh. V.K. Goel further submitted that a penalty may be imposed on NDPL under Section 142 of the Electricity Act, 2003 and NDPL may kindly be directed to withdraw all the demands and provide no due certificate to the complainant. A prayer for suitable compensation to the complainant was also made by Sh. Goel.
4. Regarding alleged violation of Regulation 23(ii) of the DERC (Performance Standards – Metering & Billing) Regulations 2002, Sh. K. Datta the learned Counsel appearing for the NDPL submitted that disconnection of the said electricity connection could not be done within the stipulated time as the request was made in September 2002 when NDPL alongwith BRPL and BYPL had just taken over the Distribution and Retail Supply Business from the erstwhile DVB after its unbundling. During this time NDPL was highly engrossed in settling such issues and perhaps that was the reason of delay in disconnection of the supply of the complainant. Sh. Datta accepted the delay in preparation of final bill including all arrears up to the date of such billing which caused the violation of Section 23(ii) of DERC (Performance Standards – Metering & Billing) Regulations, 2002.
5. Sh. K. Datta contended that few High Courts/Appellate Tribunal for Electricity/Supreme Court of India in some matters have upheld the right of an electricity distribution company to raise a demand for any amount payable by a consumer for electricity consumed by him but which escaped billing for any reason even after a number of years of consumption of electricity. Such bills have been commonly described as supplementary demand for escaped bills. It is further submitted that the prescribed statutory period of limitation pertains to recovery of amount by way of a civil suit. However, there is no period of limitation prescribed for disconnection of electricity supply of defaulting consumer. The limitation for such recovery by a civil suit starts when the amount first becomes due. Further the amount becomes due only when a demand is raised through a bill and not when the electricity is consumed.
6. Sh. Datta in support of his above contention cited the case of Maharashtra State Electricity Board Vs. Swastic Industries, where four judges bench of National Consumer Disputes Redressal Commission upheld a demand raised after a

period of 9 years of actual consumption of electricity. Thus clearly holding that raising a bill for electricity consumed, however, belated cannot be termed as deficiency of service.

7. Sh. Datta further submitted that this view of National Consumer Disputes Redressal Commission was upheld by the Supreme Court by dismissing the appeals by special leave in *Swastic Industries Vs. Maharashtra State Electricity Board*. The Apex court settled the position of law by holding that there is no limitation for making the demand by way of supplementary bill. The relevant portion of the Apex Court judgement is reproduced below :-

"The National Commission relying upon the judgment of a Division Bench of the Bombay High Court in M/s Bharat Barrel and Drum Manufacturing Company Pvt. Ltd. Vs. The Municipal Corporation of Greater Bombay & Another, AIR 1978 Bom 369 has held there is no limitation for making the demand by way of supplementary bill. Section 24 of the Indian Electricity Act, 1910 gives power to the Board to issue such demand and to discontinue the supply to a consumer who neglects to pay the charges.

...

It is contended by the learned counsel for the petitioner that Section 60-A of the Electricity (Supply) Act, 1948 prescribes a limitation of 3 years for the Board to institute any suit... for recovery of arrears. Thereby a limitation of 3 years is required to be observed.

....

We find no force in this contention."

The Hon'ble Supreme Court observed as follows:-

"It would thus be clear that the right to recover charges is one part of it and right to discontinue supply of electricity energy to the consumer who neglects to pay charges is another part of it.

...

Therefore, the mere fact that there is a right given to the Board to file the suit and a limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same, they have the power to discontinue the supply or cut off the supply as the case may be, when the consumer neglects to pay the same."

8. Sh. Datta further submitted that a Division Bench of the Hon'ble High Court in *Municipal Corporation of Delhi Vs. H. D. Shourie* observed as mentioned below:

"....we find no infirmity in the finding of the learned Single Judge that the liability to pay may arise when the electricity is consumed by a consumer, nevertheless it becomes due and payable only when the liability is quantified and a bill raised. We fully agree with the reasons given by the learned single Judge on this respect of the matter. Accordingly, we reject the contention raised by the learned Counsel for the respondent."

9. Sh. Datta further submitted that in the case of BSES Rajdhani Power Ltd. Vs. Consumer Grievance Redressal Forum W.P.(C) 13556/2006 with Nalin Bhushan Chandhok Vs. B.S.E.S. Rajdhani Power Ltd. W.P.(C) 14873/2006 the Hon'ble Court agreed with the view that no limitation period was prescribed for raising an electricity bill by a transmission licensee. The Hon'ble Court observed as under :-

"It is well settled that normal law of limitation is not applicable for recovery of electricity dues. The period in question, is before the Electricity Act, 2003, came into operation and will be governed by the provisions of Electricity Act, 1910. Reference in this regard may be made to the decision in H.D. Shourie versus Municipal Corporation of Delhi and Another, reported in 32(1987) DLT 73...."

10. Sh. Datta further submitted that in the matter of Brihan Mumbai Municipal Corporation through the General Manager BEST Undertaking versus Yatish Sharma & Ors. held that "the amount of charges would become due and payable with the submission of the bill and not earlier. If the word "due" in section 24 is to mean consumption of electricity and if the contention of the petitioner is correct then it would mean that electricity charges would become due and payable the moment the electricity is consumed and if charge in respect thereof are not paid then even without issuing a bill a notice of disconnection would be liable to be issued under section 24, which certainly could not be the intention of the legislature. It thereby duly supported the contention that "a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him."

11. Sh. Datta further submitted that in Ajmer Vidyut Vitran Nigam Limited Vs. Sisodia Marble & Granites Pvt. Ltd. & Ors. the Hon'ble Tribunal held as under:

"...the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charge would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running."

12. Sh. Datta submitted that in Swastic Industries Vs. Maharashtra State Electricity Board, it was held that raising supplementary demand by Electricity Board for escaped energy charges (escaped billing) does not amount to deficiency in service. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers which would be deficiency of service under the Consumer Protection Act. However,

there was no deficiency of service in making the supplementary demand . We do not find any illegality warranting interference. Sh. Datta is of the view that it is clear that the liability to pay may arise when the electricity is consumed by a consumer. Nevertheless it becomes due and payable only when the liability is quantified and a bill is raised.

13. Sh. Datta further submitted that the above contentions are also equally applicable in cases where the case pertains to a defective/burnt meter assessment wherein also liability to pay is corrected at the time of detecting the arrear but the same become due and payable when a bill is raised.
14. The Commission heard the Counsel of both the parties at length. The Commission also perused the entire record placed before it. On a query raised by the Commission to the NDPL that why there was so much delay in carrying out the special reading and preparation of final bill including of arrears up to the date of such billing and why the same could not be done within 5 days from such request. Sh. Datta submitted that the request for disconnection was made in September 2002 i.e. during the unbundling time. That was the time when NDPL had just taken over the distribution business from the erstwhile DVB and possibility of numerous such cases could not be ruled out. The NDPL was highly engrossed during that time in settling such issues and probably that was the reason of delay. Sh. Datta accepted the delay in preparation of final bill including all arrears up to the date of such billing. Thus, it is proved that there was violation of Section 23(ii) of of DERC (Performance Standards – Metering & Billing) Regulations, 2002. .
15. It is clear that the NDPL has violated Regulations 23(ii) of DERC (Performance Standards – Metering & Billing) Regulations, 2002. However, the Commission is not imposing any penalty U/s 142 of the Electricity Act, 2003 because the violation is committed prior to the enactment of the Act. Though, the Commission is not imposing penalty, the fact remains that the Discom is guilty of violation of Section 23(ii) of the said Regulations. In view of this, the Discom is warned to be careful in future and not to commit any such violation.
16. The Complainant also alleged violation of Section 56(2) of the Electricity Act, 2003. The Commission has considered the detailed submissions made on behalf of the NDPL and is inclined to agree with the contention of the Respondent (NDPL) based on judgement of Delhi High Court/Appellate Tribunal for Electricity and Supreme Court of India wherein it was decided that the distribution

company can raise a demand for escaped billing even beyond the period prescribed in Section 56(2).

17. Further, the Commission is of considered view that if there is any dispute regarding billing amount to be paid to the NDPL, the Complainant is at liberty to approach the appropriate Forum/Court.
18. Ordered accordingly.

Sd/-
(Subhash R. Sethi)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN