

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

Petition No. 70/2008

In the matter of:

Sh. Suresh Sharma
B – 7/ 5115, , Vasant Kunj,
New Delhi-110070.

...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. Suresh Sharma, Complainant;
2. Sh. H.L. Attri, Representative of the Complainant;
3. Sh. S.S. Sondhi, AVP, BRPL;
4. Sh. Sudhir Kumar, Asstt. BRPL;
5. Sh. Sita Ram, DGM, BRPL.

ORDER

(Date of Hearing: 26.02.2010)

(Date of Order: 06.04.2010)

1. A Petition was filed under Section 142 of the Electricity Act, 2003 from Sh. Suresh Sharma against the BRPL wherein, the Complainant submitted that on 14.05.2008, the representative of BRPL Sh. Sachin Gupta took away the electronic meter bearing no. 22153870 unauthorisedly from the premises of the Complainant. On 27.05.2008, a show-cause notice for DAE dated 27.05.2008 was received by the Complainant wherein, he was directed to appear before the assessing authority on 26.05.2008.
2. On request Mr. Sachin Gupta allowed him to appear before them on 28.05.2008 where the false allegations was leveled against him that the meter terminal seal found missing and all seals of meter found tampered, Meter body also found tampered and there were illegal soldering marks at Calibration ladder, near CT Terminals.

3. On 28.05.2008, the Complainant appeared before the assessing authority and explained that he did nothing whatsoever with the electric meter and all what has been alleged against him is false.
4. He has further submitted that while conducting raid Regulation 52(iii), 18, 19, 20(ii) (b), 25 (iv), 25 (vi), 25 (vii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007 have not been complied with,.
5. He has further submitted that the Respondent have not observed provisions of Section 135 while conducting the raid in his premises.
6. In reply to the above, the Respondent submitted that an inspection of the premises where single phase electronic meter was installed was carried out by the Enforcement Inspection team on 14.5.2008 in the presence of the Petitioner's son, without whom the access to the interior of the premises of the petitioner was not possible. The son of the petitioner was present during the inspection as is evident from the video-graphy. In seizure memo it has been very clearly mentioned that the consumer refuses to accept the records of inspection. The representative of the petitioner did not permit the inspection team to paste the record of the inspection at any conspicuous place of the premises. The show-cause notice and inspection records were sent to the petitioner by Speed post.
7. The Respondent further submitted that the Supply of the connection was found being used by the petitioner with a connected load of 10.28 KW for domestic purpose. During the inspection meter box seals and meter half seals of the single phase electronic meter were found tampered. Meter was not blinking and terminal seals of meter were found missing. To check, internal status of the meter, the meter was segregated at site when illegal soldering marks were observed at calibration ladder near CT terminal (clearly visible in video-CD).
8. The Respondent also submitted that in view of the analysis a speaking order dated 6.6.2008 establishing case of theft of electricity (meter tampering) had been passed by the Assessing Officer and assessment bill for theft amounting to Rs.34,925/- with due date June 19,2008 had been raised.
9. The Respondent further submitted that Smt. Beena Sharma wife of Sh. Suresh Sharma, registered consumer applied for settlement of theft bill under the Amnesty Scheme 2008, submitting that she is ready and willing to settle the matter and upon settlement undertake to withdraw all cases pending against the company. Accordingly, the case has been settled and petitioner has made payment of 1st installment of settled amount of the theft bill (@ Rs.13,970/- in three installments) on 16.6.2008 and thereby obtained No Dues Certificate.

10. In the rejoinder filed by the Petitioner in the Commission, he denied the charges leveled against him. He submitted that all the actions taken by the respondent are illegal, arbitrary and in violation of the provisions of the Electricity Act, Rules, Regulations, Standard Performance procedure. The case thus subsists. The grievances of the consumer are still persisting, alive and fresh.
11. Both the parties are heard at length.
12. At the time of hearing, the representative of Complainant Sh. H. L. Attri, again reiterated that the Enforcement Party conducted the raids in the absence of the consumer inspite of the assurance given by the Complainant Sh. Suresh Sharma that he would be available there within short period, as he was away from his house for his official duties. It was utmost to the surprise of the Complainant that Sh. Sachin Gupta and some of his colleagues (members of the Enforcement Party) not only conducted the inspection in his absence but, also left the premises with old meter without showing the consumer the evidence or the status of the meter for which the entire theft case was registered and course of action initiated. He made allegation against the members of the Enforcement Party that by an act of breaking the meter they have destroyed the evidence and it is they who have tampered the meter either just to harass the consumer or for some ulterior motive. According to him only one male member of the Complainant's family i.e. the son of Complainant 17 years of age, who was minor at that time, was present at the house and it is he who helped them to show each and every part of the inner as well as outer part of his house in absence of elder person. So the allegation made by the Enforcement party that he refused to sign and did not allow the pasting of notice at any place of the house is totally false and mischievous. As far as conducting of the raid or investigation in the presence of any adult male member is concerned, the same was not done properly as the Complainant's son was a minor. He further submitted that the Complainant being a highly placed person in a pharmaceutical company having annual package to the tune of Rs. 32 to 34 lakhs and where all the above charges are to be paid by the Complainant's company, therefore, in such circumstances why the Complainant would like to do such a criminal act which will totally tarnish his image?
13. The Complainant made following charges of violation of provisions of law as well as Regulations which has been discussed as under:

14. Complainant's statement:- Allegation made by the Complainant that the officials of the Respondent while making inspection/search in the premises of the Complainant did not follow the conditions laid down in Section 135(3) which says as under:

15. Violation of Sub-section (3) of Section 135 of the Electricity Act, 2003:

"135. Theft of electricity

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

PROVIDED that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises."

16. According to the Complainant the Enforcement Party took away the meter in absence of the owner/occupier/any member of the family (adult) who was required to sign the seizure memo/list. As his son was minor, therefore, he was not authorised to sign on behalf of the consumer. Moreover, the report was not prepared by the party at site but it was prepared later on in the office of the Respondent and thus, was sent by post Complainant inspite of the fact that the Complainant visited the office of the Respondent on the same day and met Sh. Sachin Gupta, the officer, who lead the inspection party. According to him the party should have waited for him as he was on the way to reach his house. Infact, he reached the house at the time when the remaining members of the party were installing new meter in his premises in place of the old meter which was taken away by Sh. Gupta.
17. Respondent's reply:- The Respondent refuted the charges of the Complainant and submitted that the son of the occupant was very much available at the time of inspection and entire inspection was carried out in his presence and it was done as per procedure. They submitted that the R/c meter was segregated in presence of the son of the Complainant. In the videography it is clear that meter box seal and meter half seal of the single phase electronic meter was found tampered. Meter was not blinking and terminal seals were found missing. To check internal status of the meter, the meter was segregated at site by the inspection team in front of the son of the Complainant where illegal soldering marks were observed at the calibration ladder near C. T. Terminal. Further, the

old tampered meter was seized after maintaining the status quo by pasting paper seal and seizure memo prepared and supply of the premises restored through a new electronic meter as per DERC Regulations. The Respondent further submitted that the Complainant's son refused to sign the inspection documents including the seizure memo and did not permit pasting of the inspection report which were subsequently sent to the Petitioner through Speed Post.

18. On the above, the Complainant refuted the charges made by the Respondent stating that it is wrong to say that his son did not permit pasting of the inspection report in the house as he was all the way helping them to inspect/search each and every inner and outer part of the house. So the above charges are totally wrong. As far as signing of the inspection report or seizure memo is concerned, his son being minor was not authorised to do so.
19. Commission's view: Seeing the video footage on the screen, the Commission noticed that it is the officials of the Respondent who removed the meter themselves and broken the seal by using pliers and screw drivers and also broken the meter by the above instruments. It was repeatedly seen and found that the paper seal was intact initially and was broken by the officials themselves. The other evidence were totally destroyed by them. When the Commission repeatedly asked the representative of the Respondent to specify the point in the video clip where any such illegal tampering of the meter is being done by the consumer then the representative of the Respondent could not specify the same. Seeing all this, Commission found that the above act was totally a violation of the provisions and procedure laid down in the above Section and the Respondent Discom is guilty of such violation. It also observed that in the instant case the officials of Discoms destroyed the evidence by breaking/tampering of the meter themselves. It is beyond reason to understand whether this act can be considered as an act to give benefit to the consumer or just to harass a consumer for ulterior motive.
20. Violation of Regulations of DERC Supply Code & Performance Standards Regulations, 2007.

“52(ii) An Authorized Officer, suo moto or on receipt of reliable information regarding theft of electricity shall promptly conduct inspection of such premises.”

The Complainant submitted that the above inspection was made to his premises without any justification as he was a regular payer of the bills and he never made any default in paying any dues of the electricity and he being a highly paid person cannot do any tampering or any such activity which can tarnish his image.

21. On this the Commission inquired from the representative of the Respondent Discom about the reason which lead to inspection of the above premises where there was no significant reason as alleged by the Complainant for such inspection or theft of energy. On this query the representative of the Respondent could not give any reasonable response. They could even not say whether it was made under any provocation either a complaint by someone or any default made by the Complainant or suo moto.
22. This leads the Commission to the conclusion that the Discom made the above inspection just to harass the consumer and not for other reason, thereby, the Respondent was found guilty of contravention of the above Regulation.
23. Violation of below-mentioned Regulations:

"52(v) *The report shall clearly indicate whether sufficient evidence substantiating the fact that theft of energy was found or not. The details of such evidence should be recorded in the report.*

(vi) *No case for theft shall be booked only on account of seals on the meter missing or tampered or breakage of glass window, unless corroborated by consumption pattern of consumer and such other evidence as may be available.*

(vii) *In case sufficient evidence is found to establish direct theft of electricity, Licensee shall disconnect the supply and seize all material evidence including wires/cables, meter, service line etc., from the premises and within two days from date of inspection, file a case against the consumer in designated Special Court as per the provisions of section 135 of the Act. Copy of filing shall be served on the consumer under proper receipt within two days of such filing. The Licensee shall also assess the energy consumption for past twelve (12) months as per the assessment formula prescribed 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."*

24. The Complainant in its Complaint submitted that the officials of Respondent company by their act of breaking of the meter in his absence destroyed the evidence or any facts which may prove their allegation against him. As per above Regulation the old meter must have been sealed in his presence so that the authenticity of the report/seizure memo could be proved at the time of producing evidence against above which may prove theft of electricity or the

the allegations made by them in the seizure memo. The Commission observed while seeing the video clip that the vital evidence which may prove the above fact and prove the genuinity of the report was destroyed by the Enforcement Party themselves. Thus, they are found guilty of violation of the above Regulation. Similarly, implementation of Regulation (vi) & (vii) while conducting inspection cannot be ascertained in the absence of vital proof of old meter which was broken at site. So, the Discom is also found guilty for violation of above two sub-regulations.

25.

“52(viii) 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 alongwith photographs/ videographs shall constitute evidence thereof. The list of NABL accredited laboratories shall be notified by the Commission. The Authorised Officer shall record reasons to suspect theft in the premises in his report.”

26. The Complainant alleged that the act of removing the old meter and breaking and taking away the same by Sh. Sachin Gupta and also not sending the old meter for further testing in the NABL accredit laboratory and further not sending the report of the laboratory which can be taken as an evidence to prove the allegations against him is gross violation of above Regulation for which heavy penalty may kindly be imposed upon the Respondent.

27. When the Commission inquired from the representative of the Respondent about the above then they affirmed that they did not send the meter to the laboratory for further testing. On the above the Commission found the Respondent guilty of gross violation of the above conduct of the Respondent as well as the officers of Respondent company for not adhering to the procedures laid down under the above Regulations and its gross violation.

28. So, in view of the above, the Commission is of the view that a penalty of Rs. 1 lac be imposed on the DISCOM, BRPL for contravention of rules and regulations prescribed under the Electricity Act, 2003 and the Delhi Electricity Supply Code & Performance Standards Regulations, 2007 as discussed above. This penalty is imposed upon DISCOM under the power vested with to the Commission under Section 142 of the Electricity Act, 2003 which reads as under:

“142. Punishment for non-compliance of directions by Appropriate Commission

In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened

any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."

29. Apart from this, the Commission imposes a penalty of Rs. 5,000/- upon Sh. Sachin Gupta, Area Manager, the officer who led the enforcement party for his unlawful act, unbecoming and mischievous behavior shown at the time of conducting inspection and particularly destroying the evidence. The above amount should be recovered from his salary.
30. The Respondent is also directed to pay an amount of Rs. 20,000/- as compensation to the Complainant/consumer for harassment caused to him due to the illegal and unjust act of the enforcement party of the Respondent. The Respondent is also directed to refund the entire amount deposited by consumer on account of the booking of above case.
31. By this Order the DISCOM is directed to ensure adherence to rules and regulations made by the Government or the Commission or any other authorised agency and 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.
32. The compliance of the Order may be made within 4 weeks from the issue of this Order.
33. Ordered accordingly.

Sd/-
(Subhash R. Sethi)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN