

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017

F.11 (1147)/DERC/2014-15/4468

Petition No. 50/2014

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

And

In the matter of:

Tajuddin
S/o Shri Alauddin
D – 462 – G, Gali No. 1,
Buland Masjid, Shastri Park,
New Delhi – 110053

.....**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 A.A. Khan, Counsel for the Petitioner.
2. Shri Manish Srivastava, Advocate for Respondent.
3. Shri I U Siddiqui, Legal Officer, BYPL.
4. Shri Munish Nagpal, Sr. Manager, BYPL.

INTERIM ORDER

(Date of Hearing: 06.08.2015)

(Date of Order: 26.08.2015)

1. The instant petition has been filed by Shri Tajuddin, under Section 142 of the Electricity Act, 2003 against BSES Yamuna 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 09.09.2014 to Respondent to file its reply.
3. In response to the notice, the Respondent filed its reply on 19.11.2014 and has sought dismissal of the above complaint on the following grounds:

- i. The complaint is not maintainable in terms of Section 142 of the Electricity Act, 2003, hence liable to be dismissed.
 - ii. Theft of electricity is to be adjudicated by the Special Court and the Commission has no jurisdiction to adjudicate on a complaint relating to theft of electricity.
 - iii. The Commission has no jurisdiction to entertain individual dispute between the Licensee and the Consumer.
 - iv. Allegations made by the Complainant have been denied.
4. The matter was heard on 06.08.2015 and on the basis of pleadings and oral submissions of both parties and considering the material available on record, the petition was admitted as it was observed that there exist a prima-facie case for the following violations:-

a) Violations of Regulation 38 (c) of DERC Supply Code, 2007

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 which was carried out on 11.03.2011 in Lab, was sent to the complainant vide letter dated 04.03.2011. However, the Respondent could not produce a copy of the said letter dated 04.03.2011. Therefore the Respondent has apparently contravened the provisions of Regulation 38 (c) of DERC Supply Code, 2007.

b) 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.

c) Violation of Provision to Regulation 52 (ix) of DERC Supply Code, 2007

Provision to Regulation 52 (ix) provides that:-

Provided that, in case of suspected theft, if the consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within three days and connection shall be restored through original meter.

The Petitioner has alleged that the consumption pattern has not been assessed properly. Whereas, the Respondent submitted that the consumption was 3.59% of the assessed consumption. However, no calculation for assessment has been provided. Hence, the Respondent has apparently contravened the aforesaid provisions of DERC Supply Code, 2007.

d) Violations of Regulation 52 (x) and 52(xi) 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.

Regulation 52 (xi) provides that:-

.....In case show cause notice is not served even after thirty days from date of inspection, the case of suspected theft shall be considered as dropped and no further action can be initiated against the consumer

Available records reveal that the meter was removed on 04.03.2011 and was tested in the Lab on 11.03.2011. The Show cause notice was issued on 28.09.2011 i.e. after 6 months 17 days even from the date of meter testing. Though the Respondent has submitted that a subsequent inspection was

made on 28.09.2011 but failed to explain the reason for such subsequent inspection and delay in such inspection. Therefore, the stipulated period of 30 days for issue of Show cause notice was violated. Secondly three Show cause notices were issued and three Personal hearings were held, whereas there is no provision of repeated Show cause notices and Personal hearings. Hence, the Respondent has apparently contravened the provisions of Delhi Electricity Regulatory Supply Code and Performance Standards Regulations, 2007.

e) 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.....

In this regard, it has been observed that the personal hearing was held on 07.12.2011. However, the speaking order was issued on 23.12.2011 i.e. there is delay of more than 3 days between personal hearing and passing of speaking order. Hence, the Respondent has apparently contravened the provisions of DERC Supply Code, 2007.

f) Violation of Regulation 52 (xii) of DERC Supply Code, 2007

Regulation 52 (xii) provides that:-

..... Theft of electricity may be established by analysis of metering data down-loaded by a third party authorized laboratory. In case theft of energy is determined by way of meter down load, the show cause notice will be sent to the consumer/user.

The Commission observed that the above Regulation provides that in case of theft through remote control technique such as EHD/EHV/HF Coil, the theft of electricity may be established by analysis of metering data down-loaded by a third party authorized laboratory. However, in the instant case it appears that the Respondent has not downloaded data from the meter and therefore, violated the above provision.

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