

Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110 017

Ref. No. F.7(24)/DERC/2009-10/C.F.No.2020/6749

Petition No. 29/2009

In the matter of: Complaint under Section 142 of the Electricity Act, 2003.

AND

In the matter of:

Shri Vijay Bali & Others
C/o Sh. C.M. Vaid
305/6, Eastend Appartments,
Indirapuram,
Ghaziabad (U.P).

....Petitioner

VERSUS

BSES Yamuna Power Limited
Through its : **CEO**
Shakti Kiran Building,
Karkardooma,
Delhi-110 092.

....Respondent

Coram:

**Sh. P.D. Sudhakar, Chairperson, Sh. Shyam Wadhera, Member &
Sh. J.P. Singh, Member.**

Appearance:

1. Sh. P.K. Mahur, Officer Legal-BYPL;
2. Sh. Sita Ram, Asstt. V.P, BYPL;
3. Sh. Pramod Kumar Gupta, S.O. (A/C), BYPL;
4. Sh. Brajesh Ranjan, BM(Dilshad Garden), BYPL;
5. Sh. Krishnendu Datta, Advocate, BYPL;
6. Sh. Vijay Bali, Complainant, BYPL;
7. Smt. Shashi Bali, Complainant, BYPL;
8. Sh. Viayshish Bali, Complainant, BYPL.

ORDER

Date of Hearing: 21.02.2012
(Date of Order: 12.03.2012)

1. The instant complaint has been filed by Sh. Vijay Bali, who is a resident of 270 'C' block, J&K, Dilshad Garden, Delhi having electricity connection of

K. No121113250285 at his residence. He has filed the above complaint u/s142 of the Electricity Act, 2003 for violation of provisions of Supply Code and Performance Standards Regulation, 2007 and harassment meted out to his family under the hand of officials of Respondent Company.

2. The brief matrix of the case is as under:

The petitioner has alleged that on 30.3.2004 a faulty mechanical meter of DVB period was replaced with electronic meter by the officials of Respondent after making repeated requests (complaints) for seeking change of the above for the last 2 years and 6 months. However, the performance of the above replaced electronic meter was also observed as being faulty and a complaint to the effect was lodged on 23.4. 2004 in the office of Respondent BYPL. On July 2005 reading of the meter stopped at 2069, which was also informed to the Respondent but no action was taken on the information given. Thereafter, BYPL stopped delivering bills against which complaints were filed in the office of Respondent on dt. 30.5.2006 and 28.10.2006. The Complainant further submitted that the two duplicate bills for the month of May 2006 and September 2006 were delivered to the complainant wherein the Respondent confirmed that as per their record the supply of the premises has been shown as disconnected.

3. On 2nd May 2008 the representative of Respondent informed the consumer that they want to re-continue billing for which they will have to inspect the premises. In this regard, on 3.5.2008 a team of three persons from the Respondent visited the Petitioner's residence and informed that they have been directed to replace the faulty stopped meter. On 12.05.2008 a team of persons of about 25-30 led by one Sh. U.K. Upadhaya, Vikram Singh, Simran Khullar and others illegally visited the consumer premises and attempted to remove/take away the stopped

meter by breaking the door-lock of the meter. On 15.5.2008 a strong force of BSES escorted by police personnel of CISF and local police entered the premises of the consumer and without the consumer's consent or any information to the consumer illegally took away the faulty stopped meter after restoring the supply directly. Again on 02.07.2008 a BSES team along with local police illegally and forcibly trespassed into the drawing room of the consumer and illegally photographed the consumer's family and the said room. On 7.7.2008 a notice (assessment bill under section 135 of EA, 2003) for making payment of an amount of Rs.1,86,497/- towards electricity theft was delivered to the complainant.

4. The respondent in its replies filed in the Commission on dated 13.02.2009 and on 16.06.2009 against the notice issued by the Commission on dated 5.5.2009 submitted the following :

- I) That the Commission has no jurisdiction to hear the above petition or complaint on the following grounds:
 - a) Complainant is a habitual offender and was found indulging in direct theft of energy thrice i.e. on **02.07.2008, 15.12.2008 and 21.4.2009** and has also not paid the complete consumption charges legally due and payable to the Respondent from time to time. Hence the Commission has no jurisdiction to entertain the matters relating to theft of energy.
 - b) The complainant has also instituted several cases against Respondent in order to avoid the legitimate dues of the Respondent, which are at various stage of judicial review and decision making, the details of which are given as under :

- i) Criminal Complaint bearing No. 98/2008, which is pending adjudication before Hon'ble court of Shri Lalit Kumar, MM, Karkardooma.
- ii) Police Complaint dated 9.5.2008.
- iii) Civil suit for permanent injunction No. 376/08, inter alia, praying that Appellant be restrained from tampering with the evidence of Direct supply, which was dismissed on 01.5.2009.
- iv) Complaint before public grievances Cell No. 731 OWF- which was closed by the Public Grievance cell since the respondent has filed criminal complaint as well as civil suit against the appellant and matter was sub judice.
- v) Complaint before CGRF No. 325/08 – inter alia, alleging that energy bills issued to the Respondent from time to time are not correct, which is dismissed by the Ld. Consumer Forum on 16.03.2010.
- vi) Civil Writ petition before Hon'ble High Court Delhi Bearing No. 8859 of 2009 praying for quashing of FIR 444/08 and complaint case No. 1008 of 2008 and also to restraint the licensee against the consumer is pending for adjudication before the Hon'ble High Court of Delhi. However, in its interim order Hon'ble Justice Rajiv Sahai Endlaw vide its order 18.5.2010 quashed the three bills relating to direct theft of electricity and at para 14 of the orders found licensee guilty of clear cut violation of Regulation 40 in raising the theft bill.
- vii) **Regulation 40(c) expressly provides that pending replacement of meter a case of direct theft shall not**

be booked. The court also imposed cost of Rs. 20,000/- on the BYPL payable to Vijay Bali.

viii) Aggrieved with the above order the licensee has filed LPA 69/2011 and CM NO. 1100/2011(stay) against the above in the Hon'ble High Court of Delhi which is pending before the Double Bench of the Hon'ble High Court. In the interim order made on 31.1.2011 the order of the above single bench has been stayed whereas in the hearing held on 28.07.2011 the above LPA has been admitted and matter has been ruled.

5. The Respondent has further submitted that the consumer is attempting to obfuscate facts and figures in an attempt to mitigate his own misdeeds. In this connection the Respondent has cited a communiqué dated 27.1.09 addressed to it wherein the Hon'ble Ombudsman has taken strong objections in case of **Sadhana Malhotra Vs. BRPL** where consumer has approached CDRF after adjudication by Hon'ble Ombudsman. Since the consumer has suppressed material facts before CDRF, Ombudsman has suggested BRPL to take certain steps.

6. While filing its rejoinder the complainant has alleged many violations of regulations of Supply Code and provisions of Electricity Act, 2003. The details of some of the violations has been given as under:

A. *Violation of guaranteed Standards laid down in Schedule I of Supply Code :*

(i) **Clause 4 (i)** Not getting tested/replacing of the faulty meter within 15 days and subsequent replacing the same within 15 days thereafter filing the complaint by the consumer.

- (ii) **Clause 7** Not responding to correct billing by resolving the billing complaint within 15 days.
- (iii) Violation of Regulation 39(a) not checking the meter within 15 days on the complaint of the consumer and subsequent replacement of the meter within 15 days thereafter.
- (iv) Not resorting to periodical testing of meters as mandated in the Regulation 38 in case of LT meter. Time for testing of meter is 5 years.
- (v) Not giving prior 15 days disconnection notice to the consumer for default for payment of dues under Regulation 49(i) of the Supply Code *ibid* and Regulation 22 of Meter and Billing, 2002. (Disconnection of consumer supply July, 05 onwards)
- (vi) Violation of Regulation 52(vii, viii, ix, x, xi) as well as 53 & 54 of Supply Code *ibid* by not following the procedure for booking of theft. Evidence – LC report dated 28.5.2009 submitted by the local commissioner Adv. Rohan Dhiman (appointed by the Hon'ble High Court on 18.5.2009) confirms and establishes the manipulations of inspection report dated 02.07.2008 and corresponding load details by BSES/BYPL officials. This report also contradicts contents of aans. of Bk & Bk. It also confirms/verifies the criminal attempts made by the BSES official/team. The inspection report at the time of raid on 2-7-2008 shows total load 19.201kW while subsequent report shows it 6.95 kW.
- (vii) Violation of Regulation 41(ii) by not raising the bill for every billing cycle based on actual meter reading. Evidence – by manipulating bills for July 2008 to May 2009 as the meter was removed after 15.5.2008.
- (viii) The Petitioner filed a complaint regarding defective meter vide diary No. 918 dated 28.2.2003 and 31.10.2003 and Diary No. 4566 dated 24.12.2003, the meter was replaced on 30.4.2004. This is in

violation of Regulation 20(ii)DERC Performance Standard-Metering & Billing Regulations 2002,

- (ix) The Petitioner filed a complaint regarding defective meter vide No. DD 365 dated 6.5.2004, DD 84, 8.4.2005, DD 8634 dated 10.5.2006 and thereafter respondent refused to acknowledge his complaint of defective meter. This is again violation of Regulation 20(ii)(a) DERC (Performance Standards -Metering & Billing) Regulations 2002.

B. Violation of provisions of Section 55(1) of Electricity Act, 2003 for not providing meter connection.

7. The Commission after hearing the above matter on 23.08.2011 passed an interim order on 20.09.2011, asking the Respondent to show cause on certain (around (xxvi)) allegations of violations made by the complainant in his submissions and where hearing before the Commission was sought for.
8. The Respondent filed its reply & objections on 29.11.2011 in response to Interim Order dated 20.09.2011 of the Commission against which complainant filed Rejoinder on 15.02.2012.
9. The Respondent in its submission in addition to rebuttal of allegations has sought dismissal of the above complaint on the ground that since the issues raised in the instant matter are the same as those against which the complaint has gone in writ petition before the Hon'ble High Court and the theft cases booked against him along with other cases are pending for adjudication before other courts. The Respondent requested that the Commission should dismiss the above petition in line with provision made

in Section 10 of CPC matter being res-subjudice. The details of the case pending before various courts are given as under:

1. Criminal complaint no. 285 of 10 (earlier 1008 of 2008) is pending before the Special Court, Sh. Sukhdev Singh, Karkardooma Courts.
 2. The FIR no. 140/2009 is also pending before the Special court of Sh. Sukhdev Singh, Karkardooma Courts.
 3. LPA no. 69/2011 filed by BYPL against the order of the Single Bench of Hon'ble High Court dated 04.10.2010 in writ petition no. 8859 of 2009. The Double Bench admitted the LPA in the hearing held on July 28, 2011.
10. The above matter was listed for hearing in the Commission on 21.02.2012 which was attended by the above mentioned representatives. After hearing the arguments advanced by the representatives of both parties particularly on the issue of jurisdiction, Commission observed that since the matter is already pending for adjudication before the double bench of Hon'ble High Court of Delhi and also before other Civil & Criminal courts, therefore, it would not be proper to go into the merits of the case and to give its finding on the issues raised as the same shall vitiate the proceedings before the above courts and moreover, the matter is res-subjudice, adjudication of which is barred under section 10 CPC. Therefore, the Commission decides to adjourn the above matter sine-die till final outcome of the above pending litigations.
11. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON