

Delhi Electricity Regulatory Commission

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

F.11 (625)/DERC/2010-11/C.F.No.2604

Petition No. 40/2010

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

AND

In the matter of:

Akram (User) &
Sh. Abdul Khaliq
B-48/4, Joshi Colony,
Mandawali, Fazalpur,
Delhi-110 092

...Petitioner

VERSUS

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

....Respondent

Coram:

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

ORDER

(Date of Order: 01.05.2014)

1. A petition had been filed by Shri Akram/Abdul Khaliq under Section 142 of the Electricity Act, 2003 against BSES Yamuna Power Ltd. for violation of Regulations of DERC Supply Code, 2007 on 27.07.2010.
2. The Commission vide its Order dated 01.05.2012 referred the matter to the CGRF-BYPL for deciding the billing dispute and also to give its findings on the allegations of violations of Regulations of DERC after giving both the parties full opportunities for representing their case.
3. In reference to the above Order of the Commission, the CGRF-BYPL vide its Order dated 30.04.2013 has observed and found the

Respondent in contravention of following Regulations of DERC Supply Code, 2007.

- i. Regulation 52 (viii) of DERC Supply Code, 2007.
 - ii. Regulation 52 (ix) of DERC Supply Code, 2007.
 - iii. Regulation 52 (x) of DERC Supply Code, 2007.
 - iv. Regulation 52 (xi) of DERC Supply Code, 2007.
 - v. Regulation 53 (ii) of DERC Supply Code, 2007.
4. On the basis of findings of CGRF-BYPL, the Commission instituted the instant proceedings under section 142 against the Discom namely BYPL.
 5. During the proceeding the attorney for the petitioner filed a written statement alongwith certain documents whereby he made allegations of more violations committed by the respondent apart from the violations indicated above.
 6. The Respondent denied the allegations and stated that no violation so far has been committed in booking the case of theft against the petitioner.
 7. A show cause notice was issued to the Respondent after hearing both the parties and the respondent submitted its reply to the show cause notice. The matter was finally listed on 13.3.2014 for hearing. During the hearing the respondent sought adjournment on the ground that its counsel is not available to argue the matter which was vehemently opposed by the petitioner on the ground that such adjournments have already been granted at the request of the respondent which has resulted in protracted litigation.
 8. The Commission asked the Petitioner to complete his arguments and the respondent was given liberty to file its arguments through a written submission.
 9. While putting forward the arguments, the petitioner recounted the events and reiterated that apart from violation committed by the Respondent as established by the CGRF, the Respondent has

committed more violations and has also resulted in pecuniary loss to the petitioner and harassment. The Petitioner prayed before the Commission for compensation under section 57 of Electricity Act., 2003 for the pecuniary loss and harassment meted out to him. In support of his claim, the Petitioner submitted that the Commission had granted compensation in case no. 41/2006 and 353/2005.

10. The petitioner stated that the Respondent while making the final assessment bill has not indicated the basis of calculations on which the assessment has been made and he was forced to pay huge amount. He also alleged that his electricity supply was disconnected even when he made the payments.
11. The Respondent has submitted its written submission whereby he has put arguments denying the allegations made by the Petitioner which are summarised below:

A. Alleged violation of Regulation 52(viii)

In terms of regulations 52(viii), meter was seized at site vide seizure memo No. BY-SM-0A-000491 dated 29/5/2009 in presence of consumer and this fact has clearly been mentioned in seizure report. Documents relating to the said inspection was sent to the complainant by post, receipt of which is even acknowledged by complainant in his reply dated 22.6.2010 to assessing order. It is also admitted fact that the meter was sent to NABL accredited laboratory and the same was tested in accordance with regulations.

B. Alleged violation of Regulation 52(ix)

Inspection was carried out on 29.5.2009 and the meter was seized in the presence of the complainant and sent to lab for further testing and the supply was restored through new electronic meter. It is pertinent to mention that Laboratory report was given on 23.6.2009 and accordingly Show Cause Notice was issued on 26.6.2009 and since consumer/complainant refused to sign the report, the Respondent had sent the same to the consumer/complainant under registered post.

C. Alleged violation of Regulation 52(x) and 52(xi)

The Ld. CGRF erroneously came to the consultation that a notice is required to be served within 7 days as alleged. It is submitted that a bare perusal of the regulation 52(x) would indicate that intention of the legislature is to give a notice for minimum 7 days show causing as to why a case of theft be not booked against him to enable the consumer to file its response and not that licensee shall serve notice within 7 days. It is the intent of the legislature that the consumer shall be given atleast 7 days to prepare its response and not the show cause notice itself. Ld. CGRF further erred in coming to the conclusion that only after 32 days the notice was served, whereas admitted fact is that even second show cause notice was issued within 30 days from inspection i.e. 26.6.2009.

D. Alleged violation of Regulation 53(iv)

Ld. CGRF erroneously came to the conclusion that there is violation of Regulation 53(ii). The consumer himself admitted that he was patiently heard by assessing officer and thereafter speaking order was passed on 1.9.2009. It is submitted that since, the Assessing officer has to take into account the complete evidence as well as documents placed by the parties to arrive at conclusion as to whether a case of theft of electricity is made out or not and hence, it took some time to pass a speaking order. It is submitted that the purpose of the Regulation 53 is to abide by the principles of natural justice and provide an opportunity to the consumer to present his case and after hearing the parties, decide the matter on merits. It is a settled principle of law that a mandatory provision in a statute is one, in which the omission to follow would render the proceedings void and the directory provision is one, the observance of which is not necessary for the validity of the proceedings but relates to form and manner [Church Auxiliary for Social Action Vs. DG of Income Tax (2010(4) AD 79]. In support of his argument, Respondent has referred following details of the Supreme Court:

- i. Mohan Singh and Ors. vs. International Airport Authority of India and Ors.,

- ii. Smt. Bachhan Devi and Anr. Vs. Nagar Nigam, Gorakhpur and Anr.,
- iii. Church Auxiliary for social Action Vs. DG of Income Tax (2010(4) AD79),
- iv. Kailash vs Nanhku (2005 (4)SCC 480)

E. Alleged violation of Regulation 54

There is no application of the said Regulation in the present case.

The electricity supply of the Petitioner was never disconnected. It is submitted the complainant concealed the fact that he approached the office of the respondent and showed his intention to settle the bill and accordingly after tendering the settlement amount of Rs. 5000/- on 26.7.2010 and Rs. 9900/- on 30.7.2010, the NOC was issued by the respondent in favour of the complainant. It is submitted that the Section 135 (1A) of the Electricity Act, 2003 categorically provides that upon detection of theft electricity by the consumer, the licensee may immediately disconnect the supply of electricity and there is no time frame prescribed under the abovesaid Section or requirement of notice. It is further submitted the said provision of the Electricity Act is w.e.f. 12.6.2007 whereas the Regulation 54 came into effect on 18.4.2007 and provisions of Electricity Act, 2003 as amended shall prevail.

F. Alleged violation of Section 56 of Electricity Act, 2003

There is no application of the said provision in the present case. The electricity supply of the petitioner was never disconnected.

G. Alleged violation of Regulation 53(iv)

Allegation of violation of regulation 53(iv) on the ground that detailed calculation is not provided to the consumer before passing speaking order is misconceived. As far as Regulation 53(iv) is concerned, it is a guideline prescribed for assessment of the theft bill and there is specific requirement of providing proposed detailed calculations by assessing officer to the consumer.

12. On the issue of compensation to the consumer under Regulation 57(2), the Respondent has contested that the complainant is not entitled to any compensation under Section 57(2) of the Electricity Act, 2003 as alleged in the interim order. It is further denied that the Respondent has violated any Guaranteed Standards of Performance as prescribed in Schedule I of the Delhi Electricity Supply Code and Performance Standards Regulation, 2007.

It is case of the Respondent that neither Section 57(2) of the Electricity Act is even applicable in the facts of the present case nor this Commission has jurisdiction to grant compensation under Section 142 of Electricity Act, 2003. Section 65 prescribes that this Hon'ble Commission may grant compensation to the affected consumer in terms of Schedule III. It is submitted that as far as Schedule II is concerned, the same is not mandatory which any licensee shall endeavor to discharge and no compensation can be granted for alleged violation of the entries in Schedule-II. That present case relates to theft of Electricity and allegations against the Respondents primarily relate to Regulation 52, 53 and 54 which do not form part of Schedule I and hence, even otherwise the complainant is not entitled to compensation as alleged. Complainant upon judgment of this Hon'ble Commission in Smt. Ram Sakhi Vs. NDPL passed in Petition No. 41/2007 dated 16.5.2001 for purposes of compensation is not only misconceived and not applicable on the present case but has been set aside by Hon'ble Appellate Tribunal for Electricity vide appeal no. in Appeal No. 114/2001 dated 15.12.2011 and remanded the matter before this Hon'ble Commission for fresh hearing and the same cannot be relied by the Complaint for any purposes. In any event, this Commission has no jurisdiction to grant compensation as sought by the complainant.

13. On the basis of arguments and written submissions made by the parties, the Commission has come to the following conclusions:
- i. The Respondent failed to prove that the meter was seized at the site and seizure memo report was prepared. The seizure memo no. BY-SM-0A-000491 dated 29.05.20109 as claimed by the Respondent is actually a form of assessment of

connected load not a seizure memo. Therefore, the Respondent is held liable for violations of Regulation 52(viii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

- ii. The Respondent has submitted that it has made the report at the site but as the complainant refused to sign and did not allow them to paste at any conspicuous place, the report could not be handed over to the consumer and not pasted at any conspicuous place. However, the Respondent sent it through the Registered Post. The Complainant has acknowledged that he has received the report through Registered Post. As per Regulation 52 (ix), the report shall be sent to the consumer under Registered post simultaneously. However, the inspection report has some contradictory remarks about hologram seal than what is observed in the lab report. Though it is established that IR was furnished to the complainant by Registered post, the Respondent failed to prove that the report was made at the site. Therefore, the Respondent is held liable for violations of Regulations 52(ix).
- iii. On the matter of serving of show cause notice beyond 30 days from the date of inspection, it is observed that the inspection carried on 29.05.2009 however the show cause notice was served on 30.06.2009 after 32 days and therefore, it is a violation of Regulation 52 (xi).
- iv. 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. Whereas Regulation 52 (xi), incase 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. In the instant case the argument of the

Respondent is that the intention of Respondent is to give notice of minimum 7 days show causing as to why case of theft they not booked against him, may not help to prove that there is no need to serve a show cause notice within 7 days. Therefore, the Respondent has violated the Regulations 52 (x) because the show cause notice was issued beyond 7 days.

- v. In the issue that speaking order must be passed within 3 days, the Respondent has argued that aforesaid time limit is directory and not mandatory. The Respondent has cited some Supreme Court Judgments to explain what provision may be treated as mandatory and what provision may be treated as directory. In *Kailash vs Nanhku* [2005(4)SCC480] which is one of judgment cited by the Respondent, the Hon'ble Supreme Court has held that:

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute".

From the above, it is evident that the object of prescribing a procedure to advance the cause of justice and no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. The aforesaid opinion of the Hon'ble Supreme Court goes contrary to the argument of the Respondent because issuing a speaking order within 3 days does not deny the opportunity to participating in the process of justice dispensation neither it is going to hamper the cause of justice. Even if it is assumed that the period of 3 days is not mandatory, the conduct of the Respondent of passing a speaking order after more than 50 days cannot be justifiable on any ground and therefore, the Respondent is held liable to violation of Regulations 53(ii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

- vi. On the alleged violation of not providing the detail of assessment of theft bill, it is pointed out that the Regulation 53(iv) provides that the Licensee shall assess the energy consumption from the past 12 months as per assessment formula given in annex (xiii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007. Though, a person being adversely affected by an order, has every right to know the quantum of assessment and reasons thereof, as no specific provision to provide the basis of calculation is made in the Regulations, the Respondent has not violated Regulation 53(iv) of Delhi Electricity Supply Code and Performance Standards Regulations 2007.
- vii. On the issue of disconnection of supply through serving 15 days clear notice, the Respondent has submitted that as per Section 135 (A) of the Electricity Act, 2003, the Licensee or supplier as a case may be, may, on detection of such theft of electricity, immediately disconnect the supply of electricity. The argument of the Respondent that as he had every right to disconnect the supply of such theft may not be acceptable because only in case of direct theft there is explicit provision that the electricity supply may be disconnected immediately. However, in case of a suspected theft the provisions of the Electricity Act, 2003 and Delhi Electricity Supply Code and Performance Standards Regulations, 2007 should be interpreted harmoniously and conjointly. The Licensee has to give at least 15 days notice in writing, thereafter, only the supply may be disconnected. The Regulation provides for a detailed procedure in case of suspected theft of electricity. In case of suspected theft, the Licensee has to examine various factors including reply of the consumer before coming to the conclusion of theft of electricity. The amount of bill is assessed and the consumer is given a reasonable period to pay the assessed amount. However as no disconnection was made the Respondent falls short on violating regulations.

14. In view of the aforesaid, the Respondent is found responsible for violations of Delhi Electricity Supply Code and Performance Standards Regulations, 2007, on five accounts. It is also observed that the conduct of Respondent has resulted in unnecessary harassment of the consumer. In view of the foregoing the penalty of Rs. 50,000/- (Rs. 10,000/- for each violation) is imposed on the Respondent. At the same time a compensation of Rs. 15,000/- is awarded to the consumer for harassment meted out to him due to the violations of several Regulations and thereby failing to meet specified Standards of Performances by the Respondent.
15. Ordered accordingly.

Sd/-
(J.P. Singh)
MEMBER

Sd/-
(P.D. Sudhakar)
CHAIRPERSON