

**In the matter of - Overcharging of Consumptions deposits etc.**

**THE DELHI ELECTRICITY REGULATORY COMMISSION  
C-Block, Shivalik, Malviya Nagar,  
NEW DELHI**

**F NO. F.7(23)A/DERC/2002-03 Dated 30th of January,2003**

**Coram:**

Sh. V.K.Sood-Chairman

**In the matter of:**

Over- charging of consumption deposits etc.

And

**In the matter of:**

M/S Karan Motors Pvt. Ltd. Petitioner

B-67,Phase -1, Mayapuri

Industrial Area, New Delhi

**Versus**

M/S BSES Rajdhani Power Company Ltd.

BSES Bhawan, Nehru Place,New Delhi Respondent

**Present :**

Sh. Harish Chadha, Director for the Petitioner

Mrs. Vaishalee Mehra Chaudhry, Counsel for the Respondent

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**Order  
(Date of hearing 24.01.2003)**

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**1.** The Petitioner has approached the Commission with a prayer for quashing demand letter dated 3.10.2002 for Rs. 10,48,750/- issued by the Respondent towards revised consumption deposit rates. The Petitioner has also prayed for a direction to the Respondent to pay back to the Petitioner the amounts paid by the latter under the impugned letter and for stopping further payments.

**2.** Brief facts of the case are that the Petitioner is the owner of a manufacturing plant and applied to the Delhi Vidyut Board for sanction of additional load of 993.50 HP (IP) on 3.11.1998. The said additional load was sanctioned by the Delhi Vidyut Board vide their letter dated 30.6.1999. Thereafter, protracted correspondence took place between the Petitioner and the Delhi Vidyut Board for completion of various formalities regarding remission of additional consumption deposit, provision of space for switch gears and cubicles etc. The Petitioner has filed copies of the correspondence between him and the Respondent including the latter's predecessor, Delhi Vidyut Board.

3. After the said correspondence on various formalities and issue of a No Objection Certificate by the Electrical Inspector of Delhi on 28.8.2002, the Petitioner on 3.10.2002 requested the Respondent, who had by then succeeded to the Delhi Vidyut Board(DVB), to release the HT connection. The same day i.e. on 3.10.2002 the Respondent issued the impugned demand note (annexure P-03) saying that their predecessor vide their letter dated 14.3.2000 had revised the rate of consumption deposit and the Petitioner was called upon to deposit Rs. 10,48,750/- as consumption deposit as per the said revised rates. The Petitioner vide their letter dated 4.10.2002 requested the Respondent that there was an order dated 17.7.2000(annexure-P-5) which followed the order dated 14.3.2000, whereby it was clarified by the DVB that the applicants who had already deposited consumption deposit prior to 1.4.2000 were exempted from the additional demand on revised rates. The Petitioner has also stated in the Petition that they met the Chief Executive Officer, the General Manager, Chief Engineer (Bulk Supply) and the Chief Engineer (West) of the respondent who refused to pass any speaking order and that the request was turned down orally. Thereafter the Petitioner vide letter dated 10.10.2002 requested the Respondent to allow them to deposit the said amount in ten equal monthly installments and to energize the connection. The said letter is stated to be under protest. The connection was energized by the Respondent on 12.10.2002.

4. The Respondent's case is based on office order dated 13/14.3.2000 of the Delhi Vidyut Board whereby the rates of consumption deposit were revised. The said consumption deposit at the revised rates was made payable at the time of sanction of new/additional load and replenish able from time to time w.e.f. 1.4.2000. It prescribed Rs. 1,350/- per KW as new rate for industrial connection as against the pre-existing rate of Rs. 100/- per KW. The Respondents have not disputed that the DVB vide their office order dated 17.7.2000 had clarified the aforesaid order stating that the consumption deposit on revised rates was not recoverable from those applicants who had already deposited the same prior to 1.4.2000. As per the respondents, their circular dated 3.10.2002 prescribes that the advance consumption deposit as applicable from time to time is to be recovered from all applicants/consumers including the Govt. Departments, Autonomous Bodies etc. who had earlier been exempted and that in case there were any remaining existing consumers who had been exempted earlier, such consumers were also to deposit the same at the revised rates.

5. The petitioner has actually challenged the circular dated 03.10.2002 of the Respondent as violative of the office order dated 17.7.2000 of the Delhi Vidyut Board and consequent violation of Regulation 43 (iii) of Delhi Electricity Regulatory Commission ( Performance Standards-Metering &Billing ) Regulations 2002.

6. During the hearing I have heard the parties extensively. The Petitioner has not stated anything other than what has already been stated in his Petition and in the rejoinder.

7. The Counsel for the Respondents relying on office order dated 20.12.1996 of Delhi Electricity Supply Undertaking has explained that under the said order the "Security Deposit" was renamed as consumption deposit and that it was chargeable from the consumers so as to cover the cost of energy consumption for average period of three consecutive months and that the consumers who had been exempted by the Delhi

Vidyut Board vide their order dated 17.7.2000 were made liable to pay the said consumption deposit vide order dated 3.10.2002 of the Respondent.

8. Respondent has also pleaded that the petitioner having requested and thereafter agreed to deposit the demanded sum in installments, was estopped from challenging the same.

9. The issues necessary for the determination of this case are whether the Respondent was justified in issuing the order dated 3.10.2002, whereby it in-effect superseded the Delhi Vidyut Board's order dated 17.7.2000 and brought the existing consumers also under the purview of the order and whether the petitioner was estopped from challenging the demand.

10. Delhi Electricity Regulatory Commission (Performance Standard – Metering & Billing) Regulations, 2002 were notified by the Commission on 19.8.2002 and Regulation 43 (iii) of the said Regulations reads as follows :-

43 (iii) "The licensee shall, within 3 months from the notification of these Regulations, submit to the Commission for its approval, the Schedule of Miscellaneous Charges for all the applicable charges proposed to be charged from the customer under these Regulations. Till such time the approval is granted by the Commission, the existing charges shall continue to be applicable."

11. The Respondent was under an obligation to submit to the Commission for its approval the schedule of miscellaneous charges which included the consumption deposit in question and it was only after the said charges were approved by the Commission that the Respondent could change the existing rates. The Respondents took over the business of the Delhi Vidyut Board and should have continued the same charges as were being charged by the Board which means that the consumers who were not to pay any charges under the Policy of the Circular dated 17.7.2000 could not be asked to pay anything till the new rates were approved by the Commission under the aforesaid Regulation. The counsel for the respondent has tried to justify their action on the basis of instructions in the hand book. The instructions can be only for internal guidance of the respondent's officers and cannot over-ride the Regulations of the Commission. The counsel has nothing to state on this aspect. The impugned demand letter as well as the circular dated 3.10.2002 are, therefore, violative of the Regulation 43 (iii) of Delhi Electricity Regulatory Commission (Performance Standard – Metering & Billing) Regulations, 2002.

12. The petitioner in his petition and in the rejoinder has stated that it agreed to deposit the demand under protest because the respondent would not have energized the connection otherwise. Even in the absence of a protest, the petitioner could not be estopped from challenging the illegality of the demand and more so, because it is violative of the Regulations of the Commission and a compliance with an illegal order cannot create estoppel.

13. The Counsel for the Respondents has, under instruction, offered to withdraw the impugned demand letter and to adjust the installments already paid by the Petitioner against the energy bills of coming months which was accepted by the petitioner; it shall be done.

14. Since the circular dated 3.10.2002 is violative of the Regulation 43 (iii) of Delhi Electricity Regulatory Commission (Performance Standard – Metering & Billing) Regulations, 2002 the same is hereby quashed. Consequently, any demand realized pursuant to the said circular shall be adjusted / refunded to the consumers. The Respondent shall file an Affidavit of having done so by 31.03.2003 before the Commission along with the details.

15. Since a case of violation of Regulation 43 (iii) of Delhi Electricity Regulatory Commission (Performance Standard – Metering & Billing) Regulations, 2002 has been clearly brought out for imposition of fine under Section 33 of the Delhi Electricity Reform Act, 2000, let the Respondent make submissions in this regard by 14.02.2003.

Sd/-  
(V.K. SOOD)  
**Chairman**