

**DELHI ELECTRICITY REGULATORY COMMISSION**

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

F.11 (1312)/DERC/2015-16

**Petition No. 82/2015**

Under section 142 of the Electricity Act, 2003

**In the matter of:**

M/s A.K. Mehta & Co.,  
**Through its Director, Shri A.K. Mehta**  
Contractor, Mega Housing Group,  
V-279, Rajouri garden,  
New Delhi – 110027

.....**Complainant**

**VERSUS**

BSES Rajdhani Power Ltd.  
**Through its: CEO**  
BSES Bhawan  
Nehru Place  
New Delhi-110019

.....**Respondent**

**CORAM: Sh. B. P. Singh, Member**

**ORDER**

(Date of Order: 14.06.2018)

1. The instant petition has been filed by M/s A.K. Mehta & Co., through its director Shri A.K. Mehta, under Section 142 of the Electricity Act, 2003 against BSES Rajdhani Power Ltd. for violation of the provisions of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007.
2. Vide Interim Order dated 20.01.2016, a Show Cause notice was issued to the Respondent for violation of Regulations 38 (C), 52 (viii), 52 (ix), 53(ii) and 53(iv) of Delhi Electricity Supply Code & Performance Standards Regulations, 2007. The Respondent replied to the Show Cause Notice on 08.07.2016
3. On the date of last hearing i.e. on 13.04.2017, the Commission heard both the parties and reserved its judgement. The parties were directed to file written submissions within two weeks.
4. Based on the arguments putforth by the parties, the Commission's findings are as follows:

**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.*

**b) Violations of Regulation 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.*

The Respondent has clarified that the meter no 27111842 was sent to NABL Lab for further testing under intimation to the Petitioner vide letter no.12506 dated 10.12.2008, which bears the signature of the representative of Petitioner. Since the Petitioner failed to appear before the Lab on scheduled date, the meter no 27111842 got tested in due course on 06.05.2009. It has further clarified that on receipt of the Lab report the site was inspected on 31.08.2009 to check the connected load. In the Seizure memo prepared by the inspection team on 31.08.2009, it has been specifically mentioned that the case of DAE has been booked on the said basis of Lab report dated 06.05.2009.

The Commission observed that since the Petitioner failed to appear before the Lab on scheduled date, the Respondent would have got tested the meter on the same date. The Respondent failed to give reason for meter testing after five months from the scheduled date of testing. The Respondent has itself admitted that the Seizure memo was prepared by the inspection team on 31.08.2009. The Respondent failed to produce evidence of Seizure memo of the date of removal of meter. The meter was removed on 10.12.2008 and Seizure memo is with respect to the Inspection dated 31.08.2009 i.e. after the date of testing of the meter. Hence, the Respondent has violated the Regulations 52 (viii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

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

Regulation 52 (ix) provides that:-

*..... a copy of inspection report must be pasted at a conspicuous place in/outside the premises and photographed. Simultaneously, the report shall be sent to the consumer under Registered Post.*

The Respondent has clarified that necessary videography was carried out by the M/s Arora Photo Studio at site. The representative of the consumer present at site did not allow the inspection team to paste the report at site and did not provide any acknowledgement. Finding no alternative the report was sent by speed post vide speed post dispatch ED745688561IN.

However, it has been observed that the dispatch date is 08.09.2009 whereas the inspection was conducted on 31.08.2009. Therefore, the report was sent after 8 days of inspection whereas it has to be sent simultaneously. However, keeping in view that there was no abnormal delay in dispatch of report, the Respondent is cautioned to be more careful in future about the provisions of this Regulation.

**d) 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.....*

The Respondent has clarified that since it was necessary to verify the records submitted by the consumer, the final Order could be passed only on 04.12.2009 after necessary verifications. It has further submitted that the provision of passing speaking order within three days is only directory and not mandatory in nature.

The Commission observed that the personal hearing was held on 06.10.2009. However, the speaking order was issued on 04.12.2009 i.e. after 1 month and 28 days from the date of personal hearing.

On the issue of mandatory vs. directory Regulation, it is noted that a Regulation must be complied with, whether it contains a mandatory or a directory direction. It is not the free will of the Discom to comply or not to comply with the provisions of Regulations. The only point worth consideration

is regarding the related consequences when a Regulation is not complied with. In the case of a mandatory direction, non-compliance makes the whole process null and void, whereas non-compliance of a directory Regulation entails some damages or penalty.

The aforesaid act of omission on part of the Respondent comes in purview of violation of said regulation.

**e) Violation of Regulation 53(iv) of DERC Supply Code, 2007**

Regulation 53(iv) provides that:-

*Where it is established that there is a case of theft of energy, the Licensee shall assess the energy consumption for past twelve (12) months as per the assessment formula given 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.*

The Respondent has clarified that the theft assessment bill has been raised correctly by applying LDHF formula applicable for temporary connections. Details of calculation were also furnished. Hence, no violation of Regulation 53 (iv) of DERC Supply Code, 2007 is made out.

5. For the reasons recorded above, the Commission finds the Respondent has violated provisions of Regulations 52(viii) and 53(ii) of the Delhi Electricity Supply Code & Performance Standards Regulations, 2007. For violation of Regulations 52 (viii) and 53(ii) the Commission imposes penalty of Rs. 20,000/- (Rs. 10,000/- for each violation) to be paid within 30 days of the order.
6. The petition is disposed of and ordered accordingly.

Sd/-  
(B. P. Singh)  
Member