



CA No. 152857471
Complaint No. 276/2023

In the matter of:

Rahul ChaudharyComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat A Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. S.R. Khan, Member (Technical)

Appearance:

1. Mr. Vinod Kumar, Counsel of the complainant
2. Ms. Ritu Gupta, Mr. R.S. Bisht & Ms. Shweta Chaudhary, On behalf of BYPL

ORDER

Date of Hearing: 26th September, 2023
Date of Order: 10th October, 2023

Order Pronounced By:- Mr. P.K. Agrawal, Member (Legal)

1. Present complaint has been filed by Mr. Rahul Chaudhary against BYPL-KRN.
2. The brief facts of the case giving rise to this grievance are that complainant Mr. Rahul Chaudhary, is using electricity through CA No. 152857471 installed at IX/5265, GF, Old Seelampur, Delhi-110031.

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He further submitted that respondent raised him bill of Rs. 89,390/- on dated 19.05.2023. He also submitted that speaking order dated 16.05.2023 stated that consumption is more than or near to 75% but the assessment is to be done in regular energy bill as per DERC Regulations. The said bill is illegal and unlawful and OP should be directed to quash bill of Rs. 89,390/- and re-connection of electricity bill. He also asked for meter testing report, lab report and inspection report.

3. OP in its reply submitted that the complainant has challenged assessment bill raised in respect of CA No. 152857471, whose old meter was replaced and sent to lab for testing. The lab vide its report dated 04.05.2023 observed that meter was tampered. Lab report stated that one extra hole found at the back side of meter body. One extra hole found from the back side of neutral CT. Earth load occurred on 15.06.2022 and not restored yet. Energy consumption recorded zero for several days. Meter showing power off from 14.03.2023 to 04.05.2023.

After change of meter premises were inspected and vide speaking order dated 16.05.2023 proceedings of dishonest abstraction of energy were dropped by the assessing officer and it was further held that assessment be done from 28.09.2022 to meter removal based on defective period on the basis of past consumption. Accordingly in terms of DERC Regulations 32 (7) assessment was done.

Assessment was done for the period of 29.09.2022 to 30.03.2023 for 7019 units by charging differential unit on the basis of consumption recorded during the relevant period in the previous year. OP also submitted that during the previous year which is taken as base period, consumption recorded as on 28.09.2021 was 3056 KW whereas on 30.03.2022 the consumption recorded by 10351 KW. Thus for 183 days consumption recorded was of 7295 units whereas in the defective period consumption

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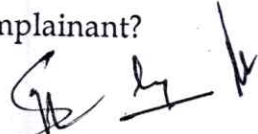
recorded for the said period was 276 units. Accordingly, there was short charging for 7019 units amounting to Rs. 85,727/- which the consumer is liable to pay. At present net payable amount is Rs. 92690/- as per bill dated 13.06.2023. The bill is correct and needs no revision.

4. Arguments of both the parties were heard.
5. The counsel of the complainant rebutted the contentions of respondent and argued that the meter was checked and tested by Yadav Measurement Private Limited., meter testing lab, SF, Near LSC Market, Sarita Vihar, Yojna Vihar, Delhi which is not notified by DERC. As per DERC order dated 06.12.2021, OP should have tested the meter in NABL accredited meter testing laboratories as notified by DERC. Representative of the complainant further submitted that Assessing Officer of the respondent dropped the DAE proceedings because the consumption pattern showed more than 75% of the complainant meter as prescribed in DERC 64 (1). The consumer was not present at the laboratory at the time of meter testing.
6. The LR of the OP submitted that the meter of the complainant was tested by M/s Yadav Measurements Pvt. Ltd. this is an independent lab as prescribed by DERC in order dated 06.12.2021. Also, they have not raised the meter tempering bill have only raised the bill for slow meter which is as per DERC Regulations. OP emphasized that same subject matter in different case is stayed in Hon'ble High Court therefore, Forum cannot adjudicate the same.
7. The main issue in the present complaint is whether the bill raised by OP for slow meter is correct and payable by the complainant?

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8. Before disposing off the application of the complainant, it is relevant to discuss the rules and regulations applicable to this issue.

64. Suspected Theft:-

(1) In all such cases where theft cannot be established on inspection but the theft is suspected based on the consumption pattern, etc., the Authorized officer may remove the old meter under a seizure memo and seal it in the presence of the consumer or his representative which shall be signed by both the parties, and shall restore the supply to the consumer with a new meter:

Provided that if the consumption pattern for last 1 (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 within 3 (three) days:

Provided further that if the consumption pattern is uniform as above, the existing meter shall not be sent for any further testing.

(2) The meter shall be tested as per sub-regulation (8) of Regulation 32.

32. Testing of meter:- (8) Testing of tampered meter:-

(vii) If as a result of testing, it is established that:

(b) the meter was tampered, the licensee shall initiate action against the consumer, as per the provisions of the Act and applicable regulations for theft of electricity or unauthorized use of electricity, as the case may be, and shall also recover the cost of meter and the testing fee as notified in the Commission's Orders from the consumer.

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9. In the present case, we observe that the meter testing report has concluded the meter was found tampered. Consumer was advised vide BYPL letter dated 30.03.2023 to attend the laboratory on 02.05.2023, but testing was done on 04.05.2023 for which no intimation was given to the consumer. The meter was tested by M/s Yadav Measurement Pvt. Ltd. in a lab situated at the address which is not notified by DERC. Thus, there was complete violation of DERC Regulations with regard to meter testing. The consumption pattern placed on record by OP shows the meter of the complainant recorded zero on number of occasions. OP did not file any proof in respect of their contentions regarding the fact why they did not accept zero consumption. OP contented that meter was tampered therefore it recorded zero consumption and complainant stated that he was not in town therefore there is no consumption. A study of the consumption pattern for last two years shows high and low consumption during different periods of time. Sometimes there is zero consumption. Therefore, the benefit of doubt is given to the complainant as the reading pattern is not same all the time, there are high, low and even no consumption recorded.


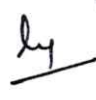
Also, the Assessing Officer of OP, who is a technical person, dropped the DAE proceedings against the complainant without taking cognizance of the fact that the meter was tampered, and the same tempering details OP submitted before this Forum to prove that the meter of the complainant was tampered.

10. In view of the above, it is clear that high, low and zero consumption of the electricity is part of normal use by consumer. It does not have any connection with the observations made by the laboratory. The lab has not indicated whether electricity meter was running slow or whether meter failed to record consumption of electricity. Assessing Officer has not taken any cognizance of tampering meter nor expressed any adverse views regarding this. OP can't view the pattern of non-consumption of electricity as theft or DAE of the electricity.

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11. OP argued that the stay granted by Hon'ble High Court of Delhi in CA No. 185/2022 (Mohd Mustafa Vs BYPL) will be applicable to this case. This argument is unjustified because this present case is a separate case and is not linked with Mohd Mustafa's case in any way. There is no linkage between these two cases by common place, time or fact. The Hon'ble High Court did not have any occasion to consider the present case. Thus, the argument of OP for restraining consideration of this case by this Forum is fallacious & cannot be countenanced.

12. In view of the above, we are of considered opinion that in the absence of justifying documentation on the part of OP, the bill raised by OP is not as per DERC Regulations 2017, and therefore, same is not payable by the complainant.


ORDER


The complaint is allowed. The OP is directed to charge the complainant normally as allowed under relevant sections of DERC Regulations 2017. The bill raised by OP for excess units of electricity should be withdrawn.

OP is also directed file compliance report within 21 days of this order.

Case is disposed off as above.

No order as to the cost. Both the parties should be informed accordingly. File be consigned to Record Room.


(NISHAT A ALVI) MEMBER (CRM)


(P.K. AGRAWAL) MEMBER (LEGAL)


(S.R. KHAN) MEMBER (TECH.)


(P.K. SINGH) CHAIRMAN

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