



C A No. 150472457
Complaint No. 04/2021

In the matter of:

Poonam DeviComplainant
(Through Ajay Dutt Gaur)
VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. Arun P Singh (Chairman)
2. Mrs. Vinay Singh, Member (Legal)
3. Dr. Harshali Kaur, Member (CRM)

Appearance:

1. None present on behalf of the complainant
2. Mr. Imran Siddiqi, On behalf of BYPL

ORDER

Date of Hearing: 01st February, 2021

Date of Order: 05th February 2021

Order Pronounced by:- Mrs. Vinay Singh, Member (Legal)

Briefly stated facts of the case are that the electricity supply was affected in the area of complainant and respondent did not give prior information.

It is also her submission that in the month of July 2020 there was electric shut down in her area and same was not prior intimated by the respondent. The same incidence happened again between 11th August 2020 to 19th August 2020. On 25th August 2020, there was a planned shut down but the duration of the shutdown was much more than as mentioned in the text message. Therefore she requested the Forum to direct the respondent company for granting her compensation as per DERC Guidelines.

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CGRF (BYPL)

Harshali Kaur

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Imran Siddiqi

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Notices were issued to both the parties to appear before the Forum on 18.01.2021.

The respondent submitted their reply stating therein that the complainant claiming to be tenant of registered consumer of CA NO. 150472457 have claimed compensation on account of power failure. They also submitted that the complainant has no locus standi to file the present complaint firstly he is not a registered consumer of the respondent and secondly as he is user of the electricity connection which is sanctioned for 1 KW.

Respondent also submitted that in terms of Schedule-I of Supply Code 2017 only registered consumer of 20 KW or more can claim compensation. They also submitted that as per Regulation 83 of DERC (Supply code and Performance Standards) Regulations 2017, which is narrated below:

Regulation 83, Exemption:- The standards of performance specified in his Regulation shall remain suspended during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, lightning, earthquake, lockout, fire, sabotage, blockade etc., affecting the Licensee's installations and activities.

It was also their submission that any claim on account of power failure shall not be admissible for those consumers who have outstanding dues upto preceding billing cycle, or have been during last two years convicted for theft of electricity or finally assessed for unauthorized use of electricity.

The details of the power failure as mentioned in the complaint/email are as under:-

S.No.	Date	Complaint No
1	11.07.2020	Not provided
2	11.08.2020	Not provided
3	19.08.2020	Not provided
4	25.08.2020	200825501061
5	01.09.2020	20090100193
6	04.09.2020	20090400502
7	04.09.2020	02090400981

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It is also their submission that present complaint is not maintainable and without prejudice to the above it is submitted that even otherwise the complainant is not entitled to any compensation as there is no failure on the part of the respondent.

The matter was heard on 18.01.2021 when Mr. Ajay Gaur was present and he was directed to file authority letter from the registered consumer, as per the complaint he is tenant of Ms. Poonam Devi.

The matter was finally heard on 01.02.2021, when complainant was not present and telephonically informed the Officer of the Forum, that he is not interested in virtual hearing and refused to file authority letter on behalf of the complainant. The complainant directed the Forum to pass the orders as he is a journalist and will approach the higher authorities.

The respondent submitted their additional reply vide mail dated 04.02.2021, submitting therein that complainant claiming himself to be tenant of registered consumer of CA No. 150472457 has claimed compensation of account of power failure. The complainant was asked to file authority letter which he failed to do so as such present complaint is liable to be dismissed on account of lack of locus standi of complainant to file the present complaint. Respondent also submitted that inadvertently it was submitted by them that complainant was not entitled to any compensation as the sanctioned load of electricity connection in issue was less than 20 KW. The said objection may be treated as dropped.

Regarding the third amendment i.e. DERC (Supply code and performance standards) (third amendment) Regulations 2018, it is stated that Hon'ble High Court of Delhi vide its order dated 12.04.2019 has held as under:

"In view of these contentions, and given the nature and the short time limit as opposed to the earlier regulations, the Court is of the opinion that the respondents should not take any coercive action under the amendment

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Regulations during the pendency of the proceedings. Likewise, in complaints contemplated by the amendment Regulations, no final decision shall be taken. In the meanwhile, the claims made may be processed in accordance with the pre-existing regulations which would operate. The complaints received from consumers shall be processed and appropriate orders made but enforced only having regard to the earlier regulations. However, in the event the amendment Regulations are upheld, the additional compensation, , of any, shall be paid to the concerned consumers by the concerned Discoms subject to the final outcome of the present proceeding.

The said matter is listed before the Hon'ble High Court of Delhi for hearing on 22.03.2021.

The main issue in the present complaint is:-

1. Can unregistered consumer file a complaint without authority letter of the registered consumer?
2. Asking compensation by unregistered consumer is entitled or not.

As defined in Indian Electricity Act 2003, definition of consumer as "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

Said definition is also confirmed by Government of India, Ministry of Power Notification of December 2020, it is same as above.

As defined in DERC Supply Code and Performance Standards 2018,

Regulation 74. Determination of Compensation:- (1) The Licensee shall be liable to pay compensation to the affected consumers, in case of his failure to

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meet the Guaranteed Standards of Performance as specified in Schedule - I of the Regulations: Provided that the claim for compensation for violation of provisions of any other Regulations not specified in Schedule-I of these Regulations may be filed before the Commission. (2) The compensation paid by the Licensee shall not be allowed to be recovered in the Annual Revenue Requirement (ARR) of the Licensee.

It is pertinent to mention here that the complaint is based on the Force Majeure Conditions due to heavy rain and water logging on the roads, the electricity is cut for longer duration. As Force Majeure defined in Chapter-I, General, Regulation 2 Definitions Sub-Regulation (32) of the DERC (Supply and Performance Standards) Regulations 2017. **Force Majeure means the occurrence of any event/circumstances which are beyond the control of a licensee which could not have been reasonably foreseen by the licensee and which has the effect of preventing/delaying due to performance of any obligation by the licensee.**

The water logging on the roads is based on Municipal Corporation maintenance and providing civic amenities. The condition of the area Karawal Nagar, due to unauthorized construction and narrow lane is very worst. If the basic amenities will not be in a good condition then how the electricity can be supplied without interruption and water logging should be cleared by the MCD or Civil Department, till then the respondent is not able to fulfill/clear the complaints as done by the registered consumers.

As per the DERC Guidelines 2017, the Force Majeure condition is also exempted under Section 83 which is narrated below:

Regulation 83, Exemption:- The standards of performance specified in his Regulation shall remain suspended during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, lightning, earthquake, lockout, fire, sabotage, blockade etc., affecting the Licensee's installations and activities.

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As per Notification of Ministry of Power, December, 2020 regarding compensation is as such:

13. Compensation mechanism: (1) "Consumer shall be automatically compensated for those parameters which can be monitored remotely when it can be successfully established that there is a default in performance of the distribution licensee".


For determination of compensation, since the respondent has already filed a case regarding this issue in the High Court of Delhi and same is pending before the Hon'ble High Court for hearing on 22.03.2021. Also the complainant is not liable for compensation, as the power cuts were related to Force Majeure conditions.


After going through all the material facts of the case, we are of considered opinion that this case is not maintainable because firstly the complainant is not a registered consumer as per the definition of consumer stated in Indian Electricity Act, 2003 under section 2 (15) and also refused to file the authority letter on behalf of the complainant and regarding the compensation, for determination of compensation, since the respondent has already filed a case related to this issue in the High Court of Delhi and same is pending before the Hon'ble High Court for hearing on 22.03.2021. Also the complainant is not liable for compensation, as the power cuts were related to Force Majeure conditions.

Also, the complainant is not a registered consumer and he refused to file an authority letter. Secondly, the force Majeure, which is beyond the control of licensee/respondent and force majeure condition, is also exempted under DERC guidelines Regulations 83.

Accordingly, the case is disposed off as above.


(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN