

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal 157 of 2013**

**Dated: 2<sup>nd</sup> May, 2014**

**Present: Hon'ble Mr. Rakesh Nath, Technical Member  
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

**In the matter of:**

1. **Jaipur Vidyut Vitran Nigam Ltd** ...Appellant(s)  
**Vidyut Bhawan, Janpath**  
**Janpath – 302 005**
2. **Jodhpur Vidyut Vitran Nigam Ltd.**  
**New Power House, Industrial Area**  
**Jodhpur – 342 003**
3. **Ajmer Vidyut Vitran Nigam Limited**  
**Old Power House Hatthi Bhatta,**  
**Jaipur Road**  
**Ajmer – 305 001**

**Versus**

1. **Rajasthan Electricity Regulatory** ...Respondent(s)  
**Commission**  
**“Vidyut Vinayamak Bhawan”**  
**Near State Motor Garage**  
**Sahakar Marg**  
**Jaipur – 302 005**

**2. Shri Magan Singh Naruka  
C/o Rajasthan Vidhyut Vikas Sansthan  
303, Crown Square  
Gandhi Path, Queens Road  
Vaishali Nagar  
Jaipur – 302 0212**

**Counsel for Appellant(s) : Mr. P.N. Bhandari**

**Counsel for the Respondent(s): Mr. C.K. Rai  
Ms. Priyadarshini Verma  
Mr. R.G. Gupta  
Mr. Arvind Kr. Singh  
Mr. Mahipal (Rep).**

## **JUDGMENT**

### **RAKESH NATH, TEHNICAL MEMBER**

Whether the State Electricity Regulatory Commission can fix the cost of meter to be charged by the Distribution Licensee from a consumer for replacement of a meter which has been damaged due to cause attributable to the consumer is the issue raised in this Appeal.

2. The Distribution Licensees are the Appellants.  
Rajasthan Electricity Regulatory Commission (“State

Commission”) is the Respondent no.1. The Respondent no.2 is a consumer. The impugned order is dated 17.8.2012 passed by the State Commission.

3. The brief facts of the case are as under:
  - a) On 27.12.2011 the Respondent no.2 filed a petition before the State Commission challenging the fixing of meter cost by the Distribution Licensees, the Appellants herein, for replacement of meter damaged due to cause attributable to the consumer.
  - b) The State Commission vide its order dated 17.8.2012 decided that though it had no power to fix the cost of meters in view of Section 46 read with section 2(22) of the Electricity Act, but held that since the Regulations framed by the Commission have specified security for meters, therefore, the cost of meters cannot be different from that.

c) The Appellants filed a review petition which was dismissed by the State Commission by order dated 8.4.2013.

d) Aggrieved by the main order of the State Commission read with the review order, the Appellants have filed these Appeals.

4. The Appellants have made following submissions:

a) The State Commission has committed a patent error in agreeing in the impugned order that under the Electricity Act it cannot fix the cost of meters and yet through the back door it claims to have this right by claiming to fix the security of meters. The cost of meters is not the same as security of meters. Therefore, even while conceding that it cannot fix the cost of meters but still it chooses to exercise the same power by giving it a different name i.e. "security of meters". This is not a valid contention.

- b) Under Section 46 read with Section 2(22) of the Act, it is not permissible for the State Commission to fix the cost of meters.
- c) The provisions of the Electricity Act cannot be bypassed by fixing the cost of meter and using another name for claiming precisely what has been specifically excluded by the Act.
- d) Regulation 31 of the Supply Code notified by the State Commission provides for replacement of metering system at the cost of the distribution licensee, unless it is established that the system has been tempered or damaged in anyway including excess load by the consumer in which case the consumer shall bear the cost. Nowhere it is mentioned that the cost would be approved/determined by the State Commission.
- e) According to Regulation 41 of the Supply Code also in case of tempering, distress or damage of electric plant,

electric lines or meter by the consumer, the licensee in addition to other provisions of the Act will recover the cost of repair or replacement of such electric plant, electric line or meter from the consumer. Here also there is no mention that cost of meter has to be approved by the State Commission.

- f) The Supply Code has fixed the security for meters but has specifically avoided fixing the cost of meters.
- g) If the consumer has damaged the meter which is a property of the distribution licensee, it has every right to recover the cost from the consumer.
- h) The State Commission has wrongly relied upon RERC (Distribution Licensees Standard of Performance) Regulations, 2003 to come to the erroneous conclusion.
- i) The State Commission has fixed the security of meters in 2004 which has not been revised since then. Thus, the security amount for a single phase meter continues

to be Rs. 350/- while the current price of single phase meter is Rs.900/-. Similarly the security of a three phase meter is Rs. 650/- whereas its current market price is Rs.2400/-.

5. On the above issues we have heard Shri P.N. Bhandari, Learned Counsel for the Appellants, Shri C.K. Rai, Learned Counsel for the State Commission and Shri R.G. Gupta representing the Respondent no.2.
6. On the basis of the rival contentions of the parties, the following question would arise for our consideration.

“Whether the State Commission has erred by holding that the meter security is to be adjusted towards the cost of replacement of the meter damaged due to causes attributable to the consumer and the distribution licensees cannot determine on their own the cost of meter to be charged from the consumer?”

7. According to Shri C.K.Rai, there is no provision in the Electricity Act, 2003 to determine the cost of meter and it is only under Section 47 of the Act that the licensee has been empowered to take the security for meters as specified by the State Commission through Regulations. First proviso of Section 55(1) of the Electricity Act also provides that the licensee may require the consumer to give security for the price of meter unless the consumer elects to purchase a meter. The state Commission in consonance with Section 47(1)(b) and 55(1) of the Act has specified the security amount to be obtained by the distribution licensee for the cost of meter vide Regulation 20 of the Supply Code Regulations. The State Commission vide Regulation 9(iii) of Standard of Performance Regulations has provided for recovery of cost of meter by adjustment of meter security already deposited which is a mechanism to implement regulations 31 and

41 of the Supply Code Regulations. The Tribunal in catena of judgments has held that the Regulations framed by the State Commission are Subordinate Legislation and are binding upon the parties.

8. The Respondent no.2 while supporting the impugned order has referred to various Sections of the Act and the Regulations and argued that the distribution licensees cannot determine the cost of meter on their own.
9. Let us examine the findings of the State Commission in the impugned order dated 17.8.2012. The relevant extracts are reproduced below:-

*“16. Commission while framing Supply Code Regulations, 2004 specified the expenses, levyable by a distribution licensee from a person requiring supply of electricity, reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply, as per Section 46 of the Act. The Commission did not specify the cost of the meter in the Regulations as the said Section of the Act, does not require the*

*Commission to specify cost of meter, since meter is not included in the definition of electric line and electric plant given in the Act as mentioned earlier. However, in accordance with Section 47(1) (b) and 55 (1) of the Act, the Commission vide regulation 20 of the Supply Code Regulations, specified the security amount to be obtained by the distribution licensee for the price of meter, if provided by licensee. Thus, in respect of electric line and electric plant, the cost has been specified by the Commission whereas only security amount for price of meter stands specified by the Commission in Supply Code Regulations*

18. *From simple reading of above text it is clear that the licensee is authorized to recover the cost of meter in certain circumstances and to this extent there is no dispute between the parties. However the basic question to be answered is that under above circumstances what will be the cost of meter and how will it be recovered?"*

“21. *Section 46 of the Act empowers Commission to authorize distribution licensee to recover expenses incurred by licensee in respect of electric lines or electric plant but this Section excludes expenses of meter, as the same is not covered in the definition of ‘electric line’ or ‘electric plant’.*

22. *However, Section 47 of the Act empowers licensee to take security for meter as being determined by Commission through Regulations. First proviso of Section 55 (i) also stipulates that security for the price of meter may be taken by the licensee from consumer.*

23. *Regulations 31 and 41 of the Supply Code provide for recovery of cost of meter in case system has been tempered or damaged in any way by the consumer, as mentioned earlier. The question, therefore, arises is as to what would be cost of meter to be charged in pursuance of the said Regulation of Supply Code.*
24. *In the above context, one needs to have a look at Regulation 9(iii) of the RERC (Distribution Licensee's Standard of Performance) regulations, 2003, which reads as under:*
- "In case burning of the meter/metering system is due to causes attributable to consumer (like tampering, defects in consumer's installation, excessive leakage to meter due to falling of water on meter, unauthorized connection of additional load by the consumer etc.), then meter security will be adjusted towards cost and consumer shall be served notice to deposit meter security amount afresh and cost of associated equipments/materials (e.g. meter box, MCBs, and/or service line etc.)....."*
25. *The above quoted Regulation clearly stipulates for recovery of cost of meter by way of adjustment of meter security already deposited even when burning of meter/metering system is due to causes attributable to consumer.*
26. *Conjoint reading of regulations 31 and 41 of Supply Code and Regulation 9(iii) of Standard of Performance Regulations makes it obvious that*

*meter security is to be adjusted towards cost of meter. Discoms are further authorized as per Regulation 9(iii) of Standard of Performance to seek fresh security once adjustment towards cost of meter from the security is made.*

27. *In the light of the above, the question mentioned in para 11 gets answered in the manner that the cost of meter has to be recovered by way of adjustment of meter security already deposited in case of tampering/ damage of meter due to causes attributable to consumer and licensees on their own cannot determine the cost of meter to be charged in said situation.*
28. *However, if licensees felt that prescribed security was not sufficient to recover the actual cost of the meter, they could have filed petition for amendment in Supply Code Regulations seeking appropriate revision in meter security.*
29. *In the light of the above discussion, Commission is of the view that impugned orders issued by the Discoms are in violation of the Act/Regulations and accepts the contention of the petitioner that cost of meter can be recovered only through procedure prescribed in the Regulations.*
30. *Commission directs the Discoms to refund the excess amount recovered from consumer regarding cost of the meter against their consumption security, if due and remaining amount , if any, may be refunded by way of adjustment in bills in three equal installments.”*

10. Thus, the State Commission on the basis of Regulations 31 and 41 of Supply Code and Regulation 9 (iii) of Standard of Performance Regulations decided that meter security is to be adjusted towards cost of meter and the Distribution Licensee can seek fresh security from the consumer once adjustment towards cost of meter against security is made. The State Commission further held that if the Distribution Licensee felt that the meter security amount is not sufficient to recover the cost of meter then it could file petition for amendment in the Regulation regarding amount of meter security.

11. Let us examine the provisions of the Electricity Act, 2003. Section 43 deals with duty of the distribution licensee to supply electricity on request.

12. Section 43 (2) provides as under :

*“(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for*

*giving electric supply to the premises specified in subsection (1) :*

*Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission .”*

13. The electric plant is defined under Section 2(22) as under:

*“(22) "electrical plant" means any plant, equipment, apparatus or appliance or any part thereof used for, or connected with, the generation, transmission, distribution or supply of electricity but does not include-*

- (a) an electric line; or*
- (b) a meter used for ascertaining the quantity of electricity supplied to any premises; or*
- (c) an electrical equipment, apparatus or appliance under the control of a consumer;”*

Thus, electric plant does not include meter.

14. Thus, according to Section 43, it is the duty of the distribution licensee to provide electric plant or electric line for giving supply to a premises provided that no

person is entitled to demand or continue to receive supply unless he has agreed to pay the licensee such price as determined by the Appropriate Commission. Electric plant does not include meter.

15. Section 45 deals with power to recover charges by the distribution licensee for supply of electricity:-

*“45. Power to recover charges*

- (1) Subject to the provisions of this section, the prices to be charged charges by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.*
- (2) The charges for electricity supplied by a distribution licensee shall be -*
  - (a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission ;*
  - (b) published in such manner so as to give adequate publicity for such charges and prices.*
- (3) The charges for electricity supplied by a distribution licensee may include -*

- (a) *a fixed charge in addition to the charge for the actual electricity supplied;*
- (b) *a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.”*

16. Thus, according to Section 45, the distribution licensee can recover the rent or other charges in respect of any electric meter provided by the distribution licensee and such charges shall be fixed by the distribution licensee in accordance with methods and principles specified by the State Commission.

17. Section 46 provides that the State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring supply of electricity in pursuance of Section 43 any expenses incurred in providing electric line or electrical plant used for giving the supply.

18. Section 47 stipulates the power of the distribution licensee to require security.

*“47. Power to require security*

*(1) Subject to the provisions of this section, a distribution licensee may require any person, who requires a supply of electricity in pursuance of section 43, to give him reasonable security, as determined by regulations, for the payment to him of all monies which may become due to him -*

*(a) in respect of the electricity supplied to such persons; or*

*(b) where any electric line or electrical plant or electric meter is to be provided for supplying electricity to such person, in respect of the provision of such line or plant or meter, and if that person fails to give such security, the distribution licensee may, if he thinks fit, refuse to give the supply or to provide the line or plant or meter for the period during which the failure continues.*

*(2) Where any person has not given such security as is mentioned in subsection (1) or the security given by any person has become invalid or insufficient, the distribution licensee may, by notice, require that person, within thirty days after the service of the notice, to give him reasonable security for the payment of all monies which may become due to him in respect of the supply of electricity or provision of such line or plant or meter.”*

19. According to Section 47(1), the distribution licensee is empowered to recover security as determined by the Regulations, for electric meter provided the same is provided by the distribution licensee.
20. Section 50 provides for the Electricity Supply Code.

*“50. The Electricity Supply Code.*

*The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof; restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant, electrical line or meter, entry of supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.*

21. According to Section 50, the Supply Code has to be specified by the State Commission which *interalia* provides for recovery of electricity charges, damage to meter and replacement of meter.

22. Section 55 provides for use of correct meters.

*“55. Use, etc., of meters*

*(1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a correct meter in accordance with regulations to be made in this behalf by the Authority:*

*Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.”*

23. Thus, as per Section 55 the consumer has to give security for the price of a meter and enter into an agreement for the hire thereof if the meter is provided by the distribution licensee. However, the consumer has a choice to purchase a meter of his own.

24. According to above provisions of the Electricity Act the following position emerges regarding cost of meter:

i) A consumer is required to give security for the price of meter provided by the distribution licensee as

- determined by Regulations notified by the State Commission.
- ii) The consumer has to also pay rent as specified by the State Commission for the meter provided by the distribution licensees.
  - iii) Consumer has a choice to purchase meter in which case no security and rent for meter can be charged by the distribution licensee from the consumer.
  - iv) There is no provision in the Electricity Act, 2003 for recovery of cost of meter from the consumer and the Act only empowers the distribution licensee to take security for meter as specified by the State Commission through Regulations.
25. Let us now examine the Electricity Supply Code 2007 specified under Section 50 of the Electricity Act by the State Commission.

26. Regulation 20 provides for security amount for meter when provided by the licensee. The security for single and three phase meters, and metering CT, PT, etc., has been specified under Regulation 20.

27. Regulation 31 and 41 provide as under:

*“31. Replacement of meter*

*(1) In case of a slopped/defective meter the licensee shall inspect and replace the metering system at its cost unless it is established that the system has been tampered or damaged in any way including excess load by the consumer, in which case the consumer shall bear the cost.”*

*“41. Tampering, distress or damage to electric plant etc.*

*(1) In case of tampering, distress or damage to electrical plant, electric lines or meter by a consumer, the licensee may, in addition to other action under the provisions of the Act, recover the cost of repair or replacement of such electric plant, electric lines or meter from the consumer, and disconnect his supply.”*

28. According to Regulation 31(1) and 41 (1), in case the meter is tempered or damaged by the consumer, the consumer has to bear its cost and the licensee can

recover the cost of repair or replacement of such meter.

How and in what manner this cost has to be recovered is not specified in the Supply Code.

29. Let us now examine Standard of Performance Regulations, 2003. Regulation 9(iii) is reproduced below:

*“In case burning of the meter/metering system is due to causes attributable to consumer (like tampering, defects in consumer’s installation, excessive leakage to meter due to falling of water on meter, unauthorized connection of additional load by the consumer etc.), then meter security will be adjusted towards cost and consumer shall be served notice to deposit meter security amount afresh and cost of associated equipments/materials (e.g. meter box, MCBs, and/or service line etc.).”*

Regulation 9(iii) specifies that in case of burning of meter due to causes attributable to consumers the meter security will be adjusted towards cost and the consumer shall have to deposit meter security afresh for restoration of supply.

30. Conjoint reading of the provisions of the Act and the Regulations indicates that in case of damage of meter due to reasons attributable to the consumer, the distribution licensee can adjust the meter security towards the cost of meter and seek meter security afresh from the consumer before installing new meter and reconnecting the supply.
  
31. The Learned Counsel for the Appellant has argued that the security which was specified by the State Commission in the year 2007 is inadequate to cover the cost of meter. The State Commission in the impugned order has already given liberty to the Appellants to approach the State Commission with a proposal to amend the Regulation and increase the meter security. Accordingly, the Appellant may approach the State Commission for enhancement of meter security.

32. In view of above, we do not find any infirmity with the impugned order of the State Commission and confirm the same.

**33. Summary of our findings.**

**A. According to provisions of the Electricity Act the following position emerges regarding cost of meter:**

**i) A consumer is required to give security for the price of meter provided by the distribution licensee as determined by Regulations notified by the State Commission.**

**ii) The consumer has to also pay rent as specified by the State Commission for the meter provided by the distribution licensees.**

**iii) Consumer has a choice to purchase meter in which case no security and rent for meter can be charged by the distribution licensee from the consumer.**

- iv) There is no provision in the Electricity Act, 2003 for recovery of cost of meter and the Act only empowers the distribution licensee to take security for meter as specified by the State Commission through Regulations.**
- B. Regulation 9(iii) specifies that in case of burning of meter due to causes attributable to consumers, the meter security will be adjusted towards cost and the consumer shall have to deposit meter security afresh for restoration of supply.**
- C. Conjoint reading of the provisions of the Act and the Regulations indicates that in case of damage of meter due to reasons attributable to the consumer, the distribution licensee can adjust the meter security towards the cost of meter and seek meter security afresh from the consumer before installing new meter and reconnecting the supply.**

34. In view of above the Appeal is dismissed as devoid of any merit. No order as to cost.

35. Pronounced in the open court on this day of  
2<sup>nd</sup> May, 2014.

**(Justice Surendra Kumar)**  
**Judicial Member**

**(Rakesh Nath)**  
**Technical Member**

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**REPORTABLE/NON-REPORTABLE**  
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