IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
NEW DELHI

(APPELLATE JURISDICTION)

APPEAL NO. 22 OF 2021
APPEAL NO. 49 OF 2021
APPEAL NO. 271 OF 2022
AND
APPEAL NO. 319 OF 2022

Dated: **15.09.2022**

Present: **Hon'ble Mr. Justice R.K. Gauba, Officiating Chairperson**
Hon'ble Mr. Sandesh Kumar Sharma, Technical Member

In the matter of:

APPEAL NO. 22 OF 2021

TATA POWER DELHI DISTRIBUTION LIMITED
Through Mr. Anurag Bansal
Having its Office at:
33 Kv Building, Hudson Lane
GTB Nagar, Delhi – 110 009
Email: anurag.bansal@tatapower-ddl.com …. Appellant(s)

VERSUS

1. **DELHI ELECTRICITY REGULATORY COMMISSION (DERC)**
Through Secretary
Office at Vinayamak Bhawan
C Block, Shivalik, Malviya Nagar,
New Delhi – 110017
Email: secyderc@nic.in

2. **AMIT BANSAL**
R/o 58, Vasudha Enclave
Pitampura, Delhi – 110 034

Also at:
Plot No.238, Ground Floor,
Pocket-1, Sector-1
DSIDC Industrial Area
Bhawana Delhi – 110 039
*Email:*bpagarwal57@gmail.com … Respondent(s)

Counsel for the Appellant (s)	:	Mr. Buddy A. Ranganadhan Mr. Manish Kumar Srivastava Mr. Akhil Hasija
Counsel for the Respondent (s)	:	Mr. Mohd Munis Siddique Ms. Pratiksha Chaturvedi Ms. Preeti Goel for R-1 Mr. Bhagwat Prasad Agarwal Mr. Ujjwal Kr. Jha for R-2

APPEAL NO. 49 OF 2021

TATA POWER DELHI DISTRIBUTION LIMITED
Through Mr. Anurag Bansal
Having its Office at:
33 Kv Building, Hudson Lane
GTB Nagar, Delhi – 110 009
*Email:*anurag.bansal@tatapower-ddl.com …. Appellant(s)

VERSUS

1. **DELHI ELECTRICITY REGULATORY COMMISSION (DERC)**
Through Secretary
Office at Vinayamak Bhawan
C Block, Shivalik, Malviya Nagar,
New Delhi – 110017
Email: secyderc@nic.in

2. **RAVI AGGARWAL**
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Counsel for the Appellant (s)	:	Mr. Buddy A. Ranganadhan Mr. Manish Kumar Srivastava Mr. Akhil Hasija
Counsel for the Respondent (s)	:	Mr. Mohd Munis Siddique Ms. Pratiksha Chaturvedi Ms. Preeti Goel for R-1 Mr. Bhagwat Prasad Agarwal Mr. Ujjwal Kr. Jha for R-2

APPEAL NO. 271 OF 2022

AMIT BANSAL
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*Email:*mohitoverseas@ymail.com …. Appellant(s)

VERSUS

1. **DELHI ELECTRICITY REGULATORY COMMISSION (DERC)**
   Through its Secretary
   Shivalik Hills, Malviya Nagar,
   New Delhi – 110017
   Email: secyderc@nic.in

2. **TATA POWER DELHI DISTRIBUTION LIMITED**
   Through its M.D.
   Grid Sub-Station Building
   Hudson Lines, Kingsway Camp,
   Delhi – 110 009
   *Email:*ceo.office@tatapower-ddl.com … Respondent(s)

Counsel for the Appellant (s)	:	Mr. Bhagwat Prasad Agarwal Mr. Ujjawal Kumar Jha
Counsel for the Respondent (s)	:	Mr. Mohd Munis Siddique Ms. Pratiksha Chaturvedi Ms. Preeti Goel for R-1 Mr. Buddy A. Ranganadhan Mr. Manish Kumar Srivastava Mr. Akhil Hasija for R-2

APPEAL NO. 319 OF 2022

SHRI RAVI AGGARWAL
Plot No.238, Pocket-1, Sector-1
DSIDC Industrial Area
Bhawana Delhi – 110 039
*Email:*mohitoverseas@ymail.com …. Appellant(s)

VERSUS

1. **DELHI ELECTRICITY REGULATORY COMMISSION (DERC)**
   Through its Secretary
   Shivalik Hills, Malviya Nagar,
   New Delhi – 110017
   Email: secyderc@nic.in

2. TATA POWER DELHI DISTRIBUTION LIMITED
Through its M.D.
Grid Sub-Station Building
Hudson Lines, Kingsway Camp,
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Email: ceo.office@tatapower-ddl.com … Respondent(s)

Counsel for the Appellant (s)	:	Mr. Bhagwat Prasad Agarwal Mr. Ujjawal Kumar Jha
Counsel for the Respondent (s)	:	Mr. Mohd Munis Siddique Ms. Pratiksha Chaturvedi Ms. Preeti Goel for R-1 Mr. Buddy A. Ranganadhan Mr. Manish Kumar Srivastava Mr. Akhil Hasija for R-2

J U D G M E N T *(Oral)*

PER HON'BLE MR. JUSTICE R.K. GAUBA, OFFICIATING CHAIRPERSON

1. By similar orders, against common background facts, passed by the *Delhi Electricity Regulatory Commission* (for short, "DERC" or "the State Commission") on 09.11.2020, the distribution licensee has been held guilty of violation of *Supply Code* concerning testing of energy meters suspected to be tampered, penalties having been imposed, within the mischief of section 142 of Electricity Act, 2003, the allegations of it having further failed to abide by the mandate in the *Supply Code* of giving certain credit for the electricity consumed and already paid for having been rejected. The distribution licensee has filed appeals challenging the former decision while

the consumers who accuse the distribution licensee of the latter are in appeal questioning the propriety of the said conclusion.

2. *Tata Power Delhi Distribution Limited* ("TPDDL"), the appellant in the first two captioned appeals, is the distribution licensee operating in a part of *National Capital Territory of Delhi*, the functions assigned to it being subject to regulatory control of the first respondent i.e. DERC. The appellants in the third and fourth above-captioned appeals are individual consumers of electricity having taken their respective electricity connections for industrial units operating in separate parts of *Plot no.238, Pocket-1, Sector-1, DSIDC Industrial Area, Bhawana Delhi – 110 039*. A fire incident had occurred on 06.07.2018 in the said property affecting the industrial units of the each of the said consumers, in the wake of which, on the basis of inspections carried out, on 09.07.2018, by the enforcement officers of the distribution licensee, cases of theft of electricity, a punishable offence under section 135 of electricity Act, 2003, appear to have been registered and follow-up action thereupon taken. The investigative steps taken include the energy meters installed at the two premises being sent for forensic testing on 19.07.2018.

3. Against the above backdrop, the aforementioned consumers had approached the DERC, by petition nos. 22/2019 and 23/2019, invoking the provision contained in section 142 of Electricity Act, 2003, alleging violation

on the part of the distribution licensee of the procedure laid down in *DERC (Supply Code and Performance Standards) Regulations, 2017* (hereinafter referred to as "the Supply Code 2017").

4. The subject of testing of an energy meter which is suspected of having been tampered is governed by regulation 32(8)(i) of the *Supply Code 2017* reading as under:

> *"If the Licensee suspects theft of electricity or unauthorized use of electricity through a meter or through a burnt meter, the meter shall be tested in an accredited laboratory notified by the Commission for that purpose or at any other agency as may be notified by the Commission:*
>
> *Provided further that in the absence of an accredited laboratory notified by the Commission, the meter shall be tested in any accredited laboratory other than that of the Licensee."*
>
> *(Emphasis supplied)*

5. The *Supply Code 2017* had been notified on 03.05.2017. It was preceded by *Supply Code* which had been notified in 2007 (for short "2007 Code"). In terms of the more or less similar regulation on the subject of testing of a suspected tampered meter, forming part of the *2007 Code,* the State Commission had previously notified one laboratory named *Electronics Regional Test Laboratory* (for short "ERTL"). Concededly, after the *2007 Code* had been superseded, upon coming into force of *Supply Code 2017,* no notification was issued accrediting any laboratory for purposes of

regulation 32(8) till 05.09.2018 when ERTL was again named as the accredited lab. Indisputably, the licensee sent the meters pertaining to the cases at hand to another laboratory named *Electronics and Quality Development Centre* (for short "EQDC"). It is not in contest that EQDC is a laboratory set up and working under the aegis of the Government of Gujarat, it having been certified by *National Accreditation Board for Testing and Calibration Labs* (for short "NABL").

6. Though nothing turns on these facts, for completion of the narration, it may be noted that the licensee had subsequently sent the energy meters in question for another testing by a third laboratory known as *Truth Labs* on 31.07.2018. Further, the State Commission in December, 2021 has notified four labs for such purposes as at hand, each certified by NABL, the said four labs including EQDC, the laboratory whose services the licensee herein had availed in the cases at hand.

7. The sum and substance of the cases made out by the complainants before the State commission was that the sending of the energy meters to EQDC was in violation of regulation 32(8) of the *Supply Code 2017,* within the mischief of provision contained in section 142, there being no reason why testing could not have been arranged through ERTL, the solitary laboratory earlier notified by the State Commission.

8. The DERC has held the licensee guilty articulating its views as under (quoted from order impugned in appeal no.22/2021 – the views in the other decision being identical):

> *" Regulation 32 (8) (i) is as follows: -*
>
> > *(8) Testing of tampered meter: -*
> > *(i) If the Licensee suspects a case of unauthorised use of electricity and theft of electricity through a tampered meter, the meter shall be tested in an accredited laboratory notified by the Commission for that purpose:*
>
> *The Respondent has clarified that since the ERTL (Electronic Regional Test Laboratory), which was notified by this Hon'ble Commission has expressed its inability to test the meters on a number of occasions, the Respondent has been constrained to forward the suspect meters for testing to the EQDC (Electronic and Quality Development Center). It has further submitted that this Commission has been apprised of the inability of the ERTL to test the suspected meters in its laboratory and has apprised of the fact that in the alternate of the above laboratory, the DISCOMs have been regularly sending meters for testing to the EDQC, which has been established by Govt. of Gujarat & under STQC (Standardization Testing and Quality Certification), Dept. of Electronics and Information technology, Ministry of Communication and Information technology. EQDC has received accreditation from National Accreditation Board for testing and calibration Laboratories (NABL).*
>
> *The Commission observes that the EDQC Lab, where the meter was tested is an accredited laboratory but not notified by the Commission. If the law requires to do a thing in a particular manner it should be done in that manner only, other modes are prohibited. Therefore, the action of Respondent in getting the meter tested in a third party NABL accredited lab is considered as violation of the provisions of the Regulations. Hence, the Respondent is held liable for violation of Regulation 32 (8) (i) of SOP, Regulations, 2017."*

9. Pertinent to note that the Commission has failed to consider the proviso to regulation 32(8)(i) which, in the submission of the appellant, has led to a misdirected approach. The reasons set out in the order for finding the licensee guilty show that the Commission proceeded on the assumption that the laboratory notified under *2007 Code* was the notified laboratory for purposes of *Supply Code 2017* as well.

10. Section 142 of the Electricity Act, 2003, reads as under:

> *"Section 142. (Punishment for non-compliance of directions by Appropriate Commission):*
>
> *In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction."*
>
> *(Emphasis supplied)*

11. The contravention which is to be dealt with under section 142 must be deliberate or intentional. After all, it is a penal provision for invocation of which not only *actus reus* but also *mens rea* must be shown to exist. Further,

being a penal clause, it must be construed strictly. This is where the Commission seems to have fallen in serious error.

12. As is clear from the above extract of the impugned part of the orders under challenge, the Commission failed to take note of the proviso to regulation 32(8)(i). Strictly speaking, the notification of an accredited laboratory under *2007 Code* would have become inoperative upon the cessation of the said regulations. The *Supply Code 2017* required renewed action in the form of fresh notification of accredited laboratories. Such notification was issued only after elapse of one year on 05.09.2018. The incident of fire leading to suspicion of meter tampering, registration of criminal cases and the fallow-up action in the nature of sending the suspected tampered meters for testing were events that had occurred prior to the issuance of notification of 05.09.2018, and thus at a stage wherein there was a vacuum. In these circumstances, the proviso appended to regulation 32(8) conferred on the licensee the discretion or choice to send the meters to any accredited laboratory other than that of the licensee. In this view of the matter, the legality or propriety of sending of the meters to EQDC cannot be questioned.

13. We may assume, for sake of consideration of the argument, that the notification of an accredited lab under *2007 Code* would have survived the

repeal of the said regulation upon promulgation of *Supply Code 2017.* But, it cannot be ignored that under the said erstwhile notification there was only one laboratory notified by the State Commission viz. ERTL. Sufficient material had been shown to the State Commission at the hearing leading to the impugned orders being passed, as has been again presented to us, demonstrating that ERTL had been finding it difficult to carry on with the responsibility of testing meters. This ground reality cannot be ignored. In fact, the Commission itself has acknowledged this difficulty faced by the licensees in a recent order passed on 23.11.2021 in the matter of *Shashi Bala Aggarwal v. BSES Yamuna Power Limited* (petition no.30/2020), also in proceedings under section 142 of Electricity Act, 2003. The relevant part of the said subsequent decision of DERC, duly noting the proviso to regulation 32(8), needs to be quoted *in extenso* as under:

> *"The Petitioner has alleged that the meter shall be tested in an accredited lab notified by the commission. The commission vide order dated 05.09.2018 notified a lab "ERTL", Okhla, for carrying out testing of suspected tampered meter. However, the Respondent tested the meter in "Baroda Calibration Services" Karkardooma, which is not notified lab by commission. It has further alleged that the Meter testing was done on 13.01.2020 without any notice to consumer for rescheduling the testing. It is the allegation of the Petitioner that the meter has been opened already at Lab other than accredited Lab as notified by the Commission. Therefore, as per Regulation, the licensee shall not carry out any further proceedings or actions against the consumer on account of tampering or suspected tampering of the meter.*

The Respondent has clarified that as per proviso to regulation, in absence of the accredited notified Lab, the meter can be tested by any accredited Lab. Until Jan'2019, the ERTL was not accepting any meters from the Respondents for testing. After 12.02.2019, again ERTL refused to accept the meters. On 15.5.2019, the Respondent sought indulgence of this Commission. Therefore, the meter got tested in the accredited Lab (NABL accredited Lab).

The Commission observes that vide letter dated 15.12.2019, which has been placed on record by the Respondent, the Respondent has apprised the Commission that the ERTL was not accepting any meters from the Respondents for testing. Further, the Petitioner itself, in its petition has admitted that due to her old age she could not attend the meter testing dated 31.12.2019. Since she did not appear on the date provided for testing of meter by the Respondent, the meter was tested on 13.01.2020, in the absence of the consumer. Therefore, the Petitioner failed to establish the fact that the Meter testing was done without her prior knowledge.

The plain reading of the regulation provides that a prior intimation should be given to the Consumer informing about the date and time of testing so that the Consumer or his authorized representative could be present during meter testing. In the instant case, the Petitioner was well informed in advance, of the date and time of meter testing, however, she did not attend the same due to her old age. The regulation also allows that an authorized representative can represent the consumer to attend meter testing. However, the Petitioner chose not to do so. Therefore, the Respondent cannot be held liable on this account for violation of Regulation 32 (8) (i), (ii), (v) of DERC SOP Regulations, 2017."

14. Interestingly, the Commission in yet another case (petition no.39/2020) in the matter of *Rakesh Kumar Goyal v. Tata Power Delhi Distribution Limited,* decided by order dated 09.06.2022 has taken an approach different from the one adopted in the cases at hand. The background facts were

similar, the case of theft having been lodged on the basis of inspection carried out on 27.02.2018. As in the cases at hand, the licensee had pointed out to the Commission that ERTL, the solitary laboratory notified under *2007 Code,* had been expressing inability to test the meters sent to it. The Commission found no case of violation of regulations made out, observing as under:

> *"The Commission observed that as per the meter testing report submitted by the respondent it is revealed that the meter was got tested in EQDC Lab, which is an accredited Lab, but not notified by the Commission, which in the circumstances due to lack of labs notified by the Commission and due to lack of resources at ERTL labs. For that reason, ERTL has rejected the meter testing most of the time, so, the respondent has been constrained to forward the suspected meter for testing to the EQDC (Electronic and Quality Development Center). It was subsequently notified by the commission vide notification dated 05.09.2018. The above said violation hence is held not attributable to the Respondent."*

15. We find the approach taken by the State Commission in the subsequent orders dated 23.11.2021 and 09.06.2022 more fair and balanced. Strictly speaking, there was no notified lab available to the licensee at the relevant point of time, the vacuum being on account of absence of a notification by the Commission. Even had it were to be assumed that the laboratory previously notified under the old *Supply Code* would continue to be the prescribed laboratory, it having expressed inability to take the work load of such nature would mean that sending of the subject meters to ERTL only would have been a sheer formality, serving no purpose.

The licensee did not fail to send the meter for forensic testing. It availed of the proviso appended to regulation 32(8)(i) and such action cannot be said to be in breach of the regulatory regime.

16. In the above facts and circumstances, the finding of guilty for violation of regulation 32(8)(i) of *Supply Code 2017*, as returned by the State Commission through the impugned orders, cannot be upheld.

17. The grievance agitated by the consumers through their appeals also relate to the alleged violations of regulations 63(2) and 63(4) of *Supply Code 2017* which read as under:

> *"Regulation 63:*
> *…*
> *(2) The period of assessment for theft of electricity shall be for a period of 12 (twelve) months preceding the date of detection of theft of electricity or the exact period of theft if determined, whichever is less:*
>
> > *Provided further that period of theft of electricity shall be assessed based on the following factors: -*
> >
> > *(i) actual period from the date of commencement of supply to the date of inspection;*
> > *(ii) actual period from the date of replacement of component of metering system in which the evidence is detected to the date of inspection;*
> > *(iii) actual period from the date of preceding checking of installation by authorized officer to date of inspection;*
> > *(iv) data recorded in the energy meter memory wherever available.*
> > *(v) based on the document being relied upon by the accused person.*

…

(4) While making the assessment bill, the Licensee shall give credit to the consumer for the electricity units already paid by the consumer for the period of the assessment bill."

18. The contentions raised by the parties and the views taken thereupon by the Commission with reference to regulation 63(2) may be quoted as under:

"The Petitioner has submitted that inspection was carried out on 08.07.2018 and the Respondent has assessed the theft bill for the period of 12 months preceding the date of inspection i.e. from 08.07.2017 to 07.07.2018, whereas the last inspection was carried out on 30.06.2018 when the seals of the meter box, etc. were replaced and data of the meter was downloaded. The action of the Respondent is against the Regulation because as per this regulation, the bill of theft of energy was required to be raised for the actual period based on the factors mentioned in the Regulation.

The Respondent has clarified that the allegation that the theft bill raised upon the Petitioner between 08.07.2017 to 07.07.2018 is in violation of the Regulation 63(2)(iii) is baseless and without any proof. It has submitted that no checking of installation has been conducted by the authorized officer of the Respondent hence the Regulation 63(2)(iii) does not apply in the present case. It has further been submitted that the assessment bill for theft of electricity has been raised by the Respondent in terms of the DERC Regulations, 2017 and a bare perusal of the inspection report as well as the Laboratory test results indicate that the complainant has been indulging in theft of electricity and the respondent is not in violation of the provisions of the DERC, Regulations 2017.

The Commission observes that downloading of data on 30.06.2018 for the purpose of meter reading and re-fixing of seal of meter box cannot be termed as 'inspection' neither the data downloaded by meter reader can be treated as "data recorded in

the energy meter memory" in terms of Regulation 63(2)(ii)&(iii), respectively. Therefore, the contention of Petitioner that assessment has to be made from 30.06.2018 fails on merit. Hence, the Respondent cannot be held liable for violation of the provisions of Regulation 63 (2) (iii) of the SOP Regulations, 2017."

19. We find no error in the above quoted observations of the State Commission. Mere reading of the meter cannot be equated with checking of the installation by an authorized officer.

20. Similarly, the submissions made with regard to regulation 63(4), and the finding returned by the Commission thereupon, read thus:

"The allegation by the Petitioner is that while making the assessment bill, the Respondent has not given credit for the electricity units already paid, rather the amount paid by the consumer during the period of assessment has been adjusted.

The Respondent has submitted that while preparing final bill, as per methodology adopted by the Respondent, amount already paid during the period of assessment has already been deducted from the final amount in the assessment bill of the Petitioner. Therefore, adjustment for regular bill paid by the Petitioner has already been given in the Final Assessment bill. It has further submitted that taking the observation of the Hon'ble Commission in consideration, it undertakes to revise the bill of the Petitioner as per methodology stated by the Hon'ble Commission in the Interim order dated 10.01.2020. Consequently, the Respondent has submitted a rectified bill wherein in place of amount paid, the units have been deducted from the assessed units. On the revised bill issued, the Petitioner has some concern about conversion of kWh units into kVAh units, which does not require deliberations by this Commission. The Respondent is supposed to clarify it to the Petitioner.

The Commission observed that it was incumbent upon the Respondent to adjust the electricity units already paid by the consumer for the period of the assessment bill and not the amount already paid by the consumer. Such practice tantamount to violation on the part of the Respondent. However, the Respondent has submitted that it has rectified the bill after adjustment of electricity units already paid by the consumer for the period of assessment of bill.

Considering the submission of the Respondent that adjustment of amount paid from the assessed bill was due to misunderstanding of the provisions of the Regulations and keeping in view the action of the Respondent whereby it has rectified the bill and has given due credit of units to the Petitioner, the Commission being satisfied has not imposed penalty on the Respondent in this regard, however, at the same time the Respondent is cautioned that it has to be more careful about the provisions of this Regulation and any such violation in future shall make it liable for an exemplary penalty."

21. We have given our anxious consideration to the submissions of the individual consumers challenging the view taken by the Commission on above aspect. The fact that the licensee readily took corrective steps demonstrates that the perceived infraction of regulation 63(4) was unintentional. It was explained to the Commission that there was some misunderstanding. The bill in question has been suitably rectified. In these circumstances, it cannot be said that the licensee had conducted itself in such a manner as to be subjected to any penalty under section 142 of Electricity Act, 2003, on this account.

22. For the above reasons, the appeals of *Tata Power Delhi Distribution Limited* succeed. The finding of guilty recorded vis-à-vis regulation 32(8)(i) of the *Supply Code 2017* and the penalty imposed in the result as also observations respecting regulation 63(4) are hereby set aside and vacated. The appeals of the consumers fail. They are accordingly dismissed.

23. As a consequence, the complaints of the consumers on which the impugned orders were passed by the Commission are dismissed.

24. The appeals are disposed of in above terms.

Pronounced in open court on this 15th Day of September 2022

(Sandesh Kumar Sharma)
Technical Member

(Justice R.K. Gauba)
Officiating Chairperson

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