

# NOTE ON ELECTRICITY DISPUTES

By Hon'ble Mr. Justice Sat Pal (Retd.)

## Nature of Disputes

The electricity disputes can broadly be divided into the following heads:

- A. Theft and unauthorized use of electricity
- B. Commercial Disputes
- C. Metering Disputes
- D. Billing Disputes

### **A. Theft and unauthorized use of electricity**

The theft of electricity can be divided into two heads; Theft by tampering the meter which is called **DAE** and **Direct Theft**.

Before coming into operation the Electricity Act, 2003, the theft of electricity through tampering of meters was called Fraudulent Abstraction of Energy (FAE). The settlement of such cases was governed under circular dated 10.03.1999 issued by the then Delhi Vidyt Board (DVB). In terms of the said

circular, if no FIR had been registered against the user/consumer the FAE bill could be settled under 4x3 formula and in case the FIR had been registered, the FAE bill could be settled under 6x3 formula. The said formula used to be **LxDxHxF.**

- L** : Connected Load (found at the time of inspection/raid at site)
- D** : No. of Days (30 in case of Domestic Connection, 25 in case of Non-domestic (commercial and industrial connection))
- H** : No of Hours (8 in case of Domestic, 11 in case of non-domestic (commercial) and 10 in case of Industrial; in case the industry was running double shifts, the no. of hours will be doubled.
- F** : Factor (40% in case of domestic, 60% in case of commercial and industrial.

During the course of settlement of cases, it was observed in certain cases certain officers of the DVB lodged the FIR immediately after the inspection/raid was carried out and as such no opportunity could be granted to the consumer to deposit the amount of the theft bill under 4x3 formula. Accordingly, another **circular dated 31.03.2000** was issued by the then DVB wherein it was stated that

in such cases where no opportunity was granted to the consumer to deposit the amount under 4x3 formula, the cases could be settled under the same formula even if the FIR was lodged.

After the Electricity Act, 2003 came into force, the theft of electricity is governed under Section 126 and Section 135 of the said Act. The said two sections of the Act were amended w.e.f. 29.05.2007. Section 126 of the Act deals with unauthorized use of the electricity. Prior to the amendment of 29.05.2007, the unauthorized use of electricity under this Section meant the usage of electricity (i) by any artificial means or (ii) by means not authorized by the concerned authority or the E or (iii) through a tampered meter or (iv) for the purpose other than for which the usage of electricity was authorized. By virtue of amendment which came into force on 29.05.2007, another sub-clause was added namely if the usage of electricity is for the premises or areas other than those for which the supply of electricity was authorized.

Under Section 12 6 of the Act the procedure for assessment for the unauthorized use of electricity has also been provided. As per the unamended Section the assessment could be made for a period of 3 months immediately

preceding the date of inspection in case of domestic or agricultural services and for a period of 6 months preceding the date of inspection for all other services. Sub-section (6) provided that the said assessment would be made at a rate equal to 1.5 times the tariff application for the relevant category of services. However, by virtue of amendment which came into force w.e.f. 29.05.2007, the rate of 1.5 times was substituted with the words twice and the period of assessment was substituted as 12 months preceding the date of inspection for all categories of services. Under the unamended Section 126 in case the Distcom company raised an assessment bill for the unauthorized use of electricity and the payment of such bill was made by the consumer within the due date, such assessment could not be revised subsequently by the concerned Distcom. However, by virtue of amendment which came into force w.e.f. 29.05.2007, this subsection has been deleted.

The procedure for booking a case for pilferage of energy has been provided in DERC (Performance Standards – Metering and Billing) Regulations, 2002. These regulations were, however, amended by DERC Supply code and Performance Standards Regulations, 2007 w.e.f. 18.04.2007. As per un-amended regulation no.26 (ii), in case of suspected DAE, if consumption pattern for the last 1 year was reasonably uniform and was not less than 75% of the assessed consumption when the meter was less than 10 years old and not less than 65% of

the assessed consumption when meter was more than 10 years old, further proceedings were dropped and final assessment was not raised. Un-amended regulation 26(iv) provided that in case the DAE was established, the Distcom company could raise the assessment bill under 6x5 formula. That is to say 5 times of the amount calculated on the basis of LDFH formula and for the period of 6 months prior to the date of inspection. Under the amended regulations of 2007, in terms of the Regulation no.52, if the consumption pattern for the last 1 year is reasonably uniform and is not less than 75% of the assessed consumption (irrespective of the fact as to whether the meter is more than 10 years old) no further proceedings can be taken and the provisional DAE assessment bill if raised, shall be withdrawn. The said regulation further provides that the assessment bill will be raised for the past 12 months as per the assessment formula prescribed in annexure 13. In annexure 13 the details of LDFH formula have been given.

Regulation no.30 of the DERC regulations 2002 provided that “*While making the assessment bill, the licensee shall give credit to the consumer for the payments already made by the consumer for the period of the assessment bill. The assessed bill shall be prepared after excluding the consumption recorded by the meter.*” From the above regulation it is clear that while preparing the assessment DAE bill, the consumer was to be given the adjustment of the units recorded as per

meter for the period of 6 months for which the DAE bill had been raised. In spite of this clear language of the regulation, it was noticed that the Distcom companies while raising the DAE assessment bill were giving the adjustment of the value of the units consumed from the amount calculated under 6x5 formula. This point was examined by the Hon'ble Delhi High Court in the case of **Bimla Gupta Vs. NDPL**, 134 (2006) DLT 174. In this judgement it was held that the Distcom company was bound to first calculate the total actual consumption in terms of units consumed and paid for, exclude them while computing consumption in terms of the Regulation 24 (iv) and thereafter appropriate factor should be applied on the balance units. The above interpretation given by the Hon'ble Delhi High Court, however, has been frustrated after the new regulations of 2007 came into operation w.e.f. 18.04.2007. Regulation no.56 of 2007 now provides "*While making the assessment bill, the licensee shall give credit to the consumer for the payments already made by the consumer for the period of the assessment bill.*"

Section 135 of the Electricity Act, 2003 provides that the person who commits theft of electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. The term "**Theft of Electricity**" was defined as follows prior to the amendment of 29.05.2007:

*Whoever dishonestly (a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cable or service wires of a licensee or supplier; (b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with the accurate metering of electric current or otherwise results in a manner whereby the electricity is stolen or wasted; or (c) damages or destroys an electric meter apparatus equipment or wire as to interfere with the proper or accurate metering of electricity.*

However under the amendment effective from 29.05.2007 two new clauses have been added under the definition of theft of electricity which are as under:

- (d) Whoever uses electricity through a tampered meter or
- (e) Whoever uses electricity for the purpose other than for which the usage was authorized.

Thus, it will be seen from above, that even the use of electricity for the purpose other than for which it is authorized (which was earlier known as misuse of supply), has been included under the definition of theft of electricity w.e.f. 29.05.2007. Prior to the amendment of May, 2007, a consumer was charged 1 ½ times of the consumption charges as misuse penalty for use of the electricity

for a purpose other than for which it was sanctioned. But now after the amendment of May, 2007, a consumer can be charged under LDHF 12x2 formula like in a case of theft of electricity. The said amendment appears to be quite harsh.

After the privatization and after strict provisions in respect of theft and misuse of electricity have become operational under the Electricity Act, 2003 as amended in 2007, it has been noticed that the Distcom companies have started raising inflated theft bills in some cases. In certain cases it was observed that in case the consumer failed to make the payment of the theft bills within the due date, the Distcom companies immediately filed criminal complaints in the court of Learned Special Judge, (Electricity Matters) and the Learned Special Judge would grant interim bail only if the consumer deposited substantial amount against the theft bills. In respect of many such cases the consumers who were asked to deposit substantial amount against the theft bills to obtain interim bail challenged such orders in the Hon'ble High Court. The Hon'ble High Court quashed the condition with regard to the deposit of the substantial amount in many such cases which are reported in Vol. 145 (2007) DLT 101, H.S.Pannu Vs. Govt. of NCT of Delhi, The Hon'ble High Court of Delhi has rendered some other judgements also to protect the interest of the consumer keeping in view the stringent provisions in respect of theft of electricity. For instance in the case of Harvinder Motors, 135 (2006) DLT

198, It was held that the consumption pattern must be examined properly by the Assessing Officer before passing the order of assessment. Similar view was taken in the case of *Udham Singh Vs. BSES*, 136 (2007) DLT 500 and *Kanhiya Lal Sharma Vs. DVB*, 139 (2007) DLT 81. In the case of *Jagdish Narain Vs. NDPL*, 140 (2007) DLT 307, the Hon'ble High Court granted relief to the consumer as there was no indication from the inspection report that any device/film was used to slow down the meter. In the case *Radhey Shyam Vs. NDPL*, 143 (2007) DLT 598 (DB), it was held by the Hon'ble Delhi High Court that in case consumer makes a request to cross examine the witness including member of inspecting team, the adjudicating authority should pass a reasoned order if such a request is rejected.

**Cognizance of Offences with regard to Theft of Electricity:** In case of theft of electricity the Distcom companies raised the DAE/Direct Theft bills and in case the consumer does not make the payment of the said bills, the concerned Distcom can file a complaint in writing as provided in Section 151 of the Electricity Act, 2003. Such complaint is filed in the Special Courts constituted under Section 153 of the Act. In case the offence is proved, such a consumer can be awarded imprisonment up to 3 years or with fine or with both. Under Section 154 (5) of the Act, the Special Courts shall also determine the civil liability against such a consumer and that amount shall not be less than the amount equivalent to 2

times of the tariff rate applicable for a period of 12 months preceding the date of detection of theft of energy or the exact period of theft, if determined, whichever is less.

It may also be relevant to note here that the first offence of theft of energy is compoundable and the procedure for the compounding of the offence has been provided in Section 152 of the Electricity Act. Under Section 152 of the Act, the compounding can be done by the appropriate Government or any officer authorized by it in this behalf.

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**B. Commercial Disputes:**

The commercial disputes can be broadly divided into the following heads:

1. **New Connections:** The grant of new connection is governed under Regulation NO.15 & 16 of DERC Supply Code and Performance Standards Regulations, 2007 (hereinafter referred to as the regulations). The procedure for submitting the applications for new connections has been given in details in

Regulation No.16. Regulation 15 provides that where an applicant has purchases existing property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all the dues and has obtained No Due Certificate from the Distcom. In the case of Madhu Garg Vs. North Delhi Power Ltd. 129 (2006) DLT 213 (DB), it was held by the Hon'ble Delhi High Court that even if the purchaser was not aware about the outstanding electricity dues against previous owners, dues have to be paid by the new owner/occupant before supply can be continued/restored. This regulation also provides that where a property has been sub-divided, the outstanding for the consumption of energy on such premises, if any, shall be divided on pro-rate basis.

2. **Temporary Connection:** Temporary Connections can be released for short term requirements such as marriages, religious functions, construction activities, exhibitions, cultural functions and the procedure for grant of temporary connection has been provided in Regulation No.19.

3. **Transfer of Connection:** The procedure for change of a consumers name due to change in ownership/occupancy of the property has been provided in Regulation No.20. The application for change of name is to be accompanied by

copy of the latest bill duly paid, proof of lawful ownership/occupancy of property. For cases involving transfer of deposit in the name of the applicant, NOC from the registered consumer is also required. The procedure for transfer of consumers name to legal heirs has also been provided under Regulation No.20.

4. **Load Reduction & Load Enhancement:** The procedure for load reduction has been provided under Regulation NO.21. An application for load reduction can be made only after 1 year from the original energisation for connection up to 100 KWs and 2 years from the original energisation for connections above 200 KWs.

The load enhancement is governed by Regulation No.23. As per this regulation, the security deposit shall be taken at the prevailing rates for the increase in load.

5. **Change of Category:** The procedure for change of category has been provided under Regulation No.22. The change of category will be allowed by the respondent distribution company only if the change to such category is permitted

under the law in force. Further, the distribution company shall inspect the premises within a period of 10 days from the date of receipt of the application and change of category shall be effective from the billing cycle succeeding the billing cycle of change or lapse of 30 days whichever is earlier.

6. **Large Industrial Power (LIP) Tariff:** In case the Maximum Demand Indicator (MDI) of the consumer shows more than 100 KW on any date of the month, such consumer is liable to pay under LIP/LT tariff for the whole month.

7. **Low Power Factor Penalty (LPF):** An Industrial consumer is required to maintain 0.85 or above factor. To maintain this, such a consumer is required to install shunt capacitors of adequate capacity. Earlier where factor goes below 0.85, LPF penalty was levied, but now in such a case consumption becomes higher under KVA units.

8. **Recovery of Arrears:** Section 56 (2) of Electricity Act, 2003, stipulates that no sum due from any consumer shall be recoverable after the period of 2 years

from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

It may be relevant to note here that in terms of the office order no.CO/II/P-29/2000/10, dated 09/10.03.2000, issued by the then Delhi Vidyut Board, no minimum charges/LPSC and Meter Rent were leviable after six months from the date of disconnection of supply against the domestic connection.

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### **C. Metering Disputes:**

The metering disputes can be divided under the following categories:

1. **Testing of Meter:** The procedure for testing of meters has been provided under Regulation No.38. In case a consumer disputes the accuracy of the meter, he may approach the Distcom concerned and after paying the prescribed testing fee, have the meter tested. This checking is called Acquacheck. In case such a consumer is not satisfied with the Acquacheck of the meter, he can approach the Public Grievances Cell, Department of Power, Government of NCT of Delhi and get the meter tested from an independent agency. It may be relevant to note here that

under the Regulations, if a meter is found running slow or fast less than 3%, it is within the permissible limit.

2. **Slowness of Meter:** When a meter is found to be slow beyond the permissible limit of 3%, the Distcom, shall replace the defective meter within 15 days of testing and shall adjust/refund the excess amount collected based on percentage error for a maximum period of 6 months.

3. **Meter Not Recording Consumer:** If the meter is stuck/not recording consumption as reported by the consumer, the concerned Distcom shall get the meter checked within a period of 15 days thereafter, in terms of Regulation No.39. Similarly, if the Distcom observes that the meter is not recording any consumption for the last two billing cycles, such a meter shall be replaced within 7 days.

4. **Burnt Meter:** Regulation 40 provides that if a meter is found burnt upon inspection by the Distcom, on a consumer's complaint or otherwise, the concerned Distcom shall restore the connection in six hours upon receiving the complaint by bypassing the burnt meter and new meter shall be provided within a period of 3 days. In case upon inspection of the consumers installation and subsequent examination of the meter, it is established that the meter got burnt due to reasons attributable to the consumer, the consumer shall bear the cost of procuring and installing the new meter. In case there is reason to believe that an official of the

Distcom gave a direct connection, pending replacement of burnt meter, a case of theft of energy shall not be booked in terms of regulation 40. The Hon'ble Supreme Court in the case Bombay Electric Supply and Transport Undertaking Vs. Laffans (I) Pvt. Ltd held that in a case where reading could not be recorded when meter was burnt, the Distcom could raise demand based on average consumption for similar period during previous year.

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#### **D. Billing Disputes:**

The billing disputes can be broadly divided into the following heads:

1. **Non-receipt of Bills:** The procedure for lodging complaint in respect of the consumption bills of the consumer is provided in Regulation No.44. In case of non-receipt of bill, the consumer shall approach the Distcom which shall furnish duplicate bill, immediately, with due date for payment extended and No LPSC shall be leviable if the complaint is corrected.

2. **Inflated/Wrong Bills:** In case a consumer feels that the consumption bill received by him is not based on correct consumption, he may lodge the complaint with the concerned Distcom and on receipt of such complaint, the issue shall be resolved and result intimated to the consumer within 30 days of the receipt of the complaint. Regulation 44 also provides that till the complaint on the bill is resolved, the consumer shall pay the amount bases on average consumption of last three consecutive undisputed bills and the amount so recovered shall be subject to final adjustment on resolution of the complaint.

3. **Billing During the Period Defective/Stuck/Stopped/Burnt Meter:** The Regulation No.43 provides that the consumer shall be billed for the period, the defective/stuck/stopped/burnt meter remained on site, subject to a maximum of 6 months based on the estimated energy consumption by taking the consumption pattern of the consumer for the 12 months prior to the period during which the meter remained defective. Regulation 43 further provides that in case where the recorded consumption of past 12 months is either not available or partially available, the consumption pattern for the next 12 months after the installation of new meter would be used for billing purposes.

4. **Disconnection due to Non-payment:** Regulation 49 provides that the Distcom may issue a disconnection notice of 15 clear days to the consumer who defaults on his payment of dues and thereafter, the company may disconnect the supply of the consumer on expiry of the said notice period.

5. **Disconnection on Consumers Request:** Regulation 50 provides that in case a consumer desires his meter to be disconnected, he shall apply for the same and on receipt of such application, the Distcom shall carry out a special reading and prepare final bill including all arrears up to the date of such billing within 5 days from the receipt of the application. Upon payment of the final bill, the concerned Distcom shall issue the receipt and this receipt shall be treated as No Dues Certificate.

6. **Limitation for Recovery of Dues:** Section 56 (2) of the Electricity Act, 2003 provides that no sum due from any consumer shall be recoverable after the period of 2 years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. The words “first due” stated in Section 56(2) have been interpreted by

the Hon'ble Supreme Court in Civil Appeal No.13164/2007 decided on 17.05.2007 in M/s. Sisodia Marbles & Grenites Vs Ajmer Vitram Nigam. The Hon'ble Supreme Court has held that the words 'first due' shall come into operation only after the bill or demand is raised by the licensee for consumption of electricity.