

RAJASTHAN ELECTRICITY REGULATORY COMMISSION, JAIPUR

Petition No. RERC/2091/2023

Petition filed under Section 142 & 146 of the Electricity Act, 2003 for non-compliance of Section 126 (3) of the Electricity Act 2003 and Regulation 10 & 12 of the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 along with application for stay on demand of Rs. 1,64,787.05/- in January 2023 electricity bill.

Coram:

Dr. B.N. Sharma, Chairman

Hemant Kumar Jain, Member

Dr. Rajesh Sharma, Member

Petitioner : Sh. Rajendra Kumar Arora, Beawar

Respondents : 1. Managing Director, Ajmer Vidyut Vitran Nigam Limited (AVVNL)
2. Executive Engineer (Vigilance) AVVNL, Beawar
3. Assistant Engineer (CSD-II) AVVNL, Beawar

Date of Hearing : 20.03.2023 & 18.05.2023

Present : Sh. Suresh Kumar Issrani, Representative for Petitioner.
Sh. Vibhor Sharma, Advocate for Respondents.

Date of Order:

03.07.2023

ORDER

1. Sh. Rajendra Kumar Arora, (hereinafter also referred to as "Petitioner") has filed petition No. RERC/2091/2023 under Section 142 & 146 of the Electricity Act, 2003 for non-compliance of Section 126 (3) of the Electricity Act 2003 and Regulation 10 & 12 of the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021.
2. Ajmer Vidyut Vitran Nigam Limited (hereinafter also referred to as "Respondent" or "Discom" or "AVVNL") is the licensee in the area for distribution of electricity.
3. Petition has been filed in the matter of redressal of grievance under Section

142 & 146 of the Electricity Act, 2003 for non-compliance of Section 126(3) of the Electricity Act, 2003 & Regulation 10 & 12 of the RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 and also prayed to grant stay on recovery of demand of Rs. 1,64,787.05/- in January 2023 electricity bill issued by Discom.

4. The matter was initially listed for hearing on 20.03.2023. The Commission granted time to respondent to file their reply. The Respondent filed their reply on 13.04.2023 on which Petitioner also filed his rejoinder on 17.04.2023.
5. The matter was finally heard on 18.05.2023. Counsel appearing for Respondent raised issues on the maintainability of the petition before the Commission. The matter was heard on the maintainability of the petition.

Petitioner's submission:

The Petitioner in its petition, written submission and during the course of hearing(s) submitted as under:

6. Petitioner is a consumer of Ajmer Discom and has a domestic electricity connection of 10 kW sanctioned load, K. No. 110442030331 released by the Assistant Engineer, Beawar, Ajmer Discom.
7. The petitioner is operating a grocery shop in his residential premises being a commercial activity run by family members without employing other persons and is using electricity in the shop as per the directions issued by the Ajmer Discom in the tariff for supply of electricity-2021.
8. The Petitioner's residential house was checked by Respondent 2 on dated 18.07.2022 and it was told by Respondent 2 that the electricity usage in the grocery shop running in the residential premises from the domestic connection is correct and it was according to Rules and Regulations. Petitioner further submitted that no vigilance inspection report was prepared at that moment which is non-compliance of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021.
9. On 21.07.2022, the petitioner received a notice no. 87 dated 19.07.2022 indicating that vigilance has carried out inspection on 19.07.2022 and connected load was found as 2.360 kW and consuming electricity under NDS category. Accordingly, assuming unauthorized use of electricity, AVVNL has directed petitioner to deposit an amount of Rs. 1,42,728.95/-.
10. Thereafter, petitioner filed his objection to Respondent No. 2 through registered post on 28.07.2022. But opportunity of personal hearing was not offered to the petitioner by Respondent 2 till 07.09.2022 according to Section 126(3) of the Electricity Act, 2003 and the Regulation 12.3 of the

RERC (Electricity Supply Code and Connected Matters) Regulations, 2021. The Petitioner vide letter dated 08.09.2022 & 16.11.2022 requested Managing Director, AVVNL, Ajmer that petitioner be provided opportunity of hearing as per provisions of the Act.

11. Petitioner submitted that after instruction from MD, AVVNL, a notice was issued by Respondent No. 2 for hearing in the above matter on dated 13.12.2022. Petitioner through his authorized representative has submitted his objections. The Respondent has not issued final assessment order till date to the petitioner according to the section 126(3) of the Electricity Act, 2003 and Regulation 12.3 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021.
12. The petitioner also submitted that Respondent No. 2 has made non-compliance of section 126(3) of the Electricity Act, 2003 and Regulation no. 12.3(b), (c)(i) & (ii), (d) of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021 which are reproduced as under:

Section 126(3) of the Act;

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

Regulation no. 12.3(b), (c)(i) & (ii), (d) of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021;

b) Objection against notice alongwith provisional assessment: -

The consumer, on whom notice alongwith a provisional bill of assessment has been served, may file objections, if any, before the Assessing officer, within 7 (seven) days from the date of receipt of notice.

c) Personal Hearing: -

i. The Assessing officer shall arrange a personal hearing with the consumer or his authorized representative within 7 (seven) days from the date of filing of consumer's objections.

ii. At the request of the consumer, the hearing may be arranged for a future date but not later than 10 (ten) days from the date of filing of the objections by the consumer.

d)Final assessment Order: -

i. The Assessing officer shall pass a final assessment order within 30 (thirty) days from the date of service of the order of provisional assessment of the electricity charges payable by such person.

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13. Petitioner further submitted that an amount of Rs.1,42,616.37/- was added in the electricity bill for the month of September 2022 without any prior notice and in electricity bill for the month Jan'23 an amount of Rs. 1,64,787.05/- was demanded with DPS from Sep'22 month.
14. Petitioner has requested to issue stay order for not disconnecting the connection on demand of Rs. 1,64,787.05/- until the grievance is redressed.
15. Petitioner also submitted that reply, answer etc. from AVVNL may be got arranged in Hindi language.
16. With the above submissions, the Petitioner in its petition no. 2091/2022 mainly prayed that:
 - I. To admit the petition.
 - II. Issue order under section 146 of the Electricity Act, 2003 due to non-compliance of section 126 of the Electricity Act, 2003.
 - III. Issue order under section 142 of the Electricity Act, 2003 due to non-compliance of Regulation 10 & 12 of RERC (Electricity Supply Code and Connected Matters) Regulations, 2021.
 - IV. Quash the demand notice of Rs. 1,42,728.95/- .
 - V. Quash the total amount of Rs. 1,42,616.37/- which was demanded in electricity bill of Sep, 2022 along with DPS.
 - VI. Issue stay order for not disconnecting the electricity connection until the matter is pending for redressal.
 - VII. Compensation amount be provided as decided by the Commission in lieu of harassment.

Respondent's Submission:

The Respondent in its written submissions and during the course of hearing(s) submitted as under:

17. AVVNL submitted that inspection was carried out by the vigilance officers at the premises of the Petitioner and during the inspection, it was found that the Petitioner is carrying out commercial activities and the total connected load was more than total permissible limit of 2KW. Such excess connected load of electricity by the Petitioner was malpractice and unauthorized use of electricity. Thereafter, a provisional assessment cum notice was issued directing the petitioner to submit an objection or pay a sum of Rs. 142728.95/- within 7 days in accordance with Section 126 of the Electricity Act, 2003.

18. The Respondent submitted that the Petition is not maintainable under section 142 and 146 of the Electricity Act, 2003 as it is not a case of non-compliance of any order or direction passed under the Act. The petitioner has approached this Commission against the provisional assessment order issued under Section 126 alleging no final assessment order has been passed till date.
19. The Respondent further submitted that the petitioner was given an opportunity of being heard on 13.12.2022 and thereafter, as alleged no final assessment order has been passed in view of Section 126 of the Act. It is an individual consumer dispute and there is no provision under the Act to approach the Commission for a consumer dispute. There is a remedy available with the Petitioner to approach settlement committee framed under the Act and thereafter Ombudsman which is a statutory body to decide a dispute between licensee and consumer under Section 42 (5) and 42 (6) of the Act.
20. The Respondent also submitted that in Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. (2007) 8 SCC 381, it was held that Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1) (f) of the said section lays down the adjudicatory functions of the State Commission which does not encompass within its domain complaints of individual consumers.
21. In view of above, Respondent submitted that the Commission has no jurisdiction to adjudicate the present case as it does not involves interpretation of the Act or the Regulations.
22. The Respondent further submitted the legality and propriety of a final order passed under Section 126 of the Act can be challenged only in an appeal under section 127 of the Act after depositing half of the assessed amount with the licensee. During the pendency of the present petition, if any final assessment order has been passed in accordance with Section 126 of the Act, the petitioner should file an appeal before the appellate Authority for redressal of grievances.
23. In view of above submissions, the instant petition is liable to be dismissed without going into the merits of the case.

Commission view:

24. The Commission has considered the submissions, reply and oral arguments made on behalf of the Petitioner and Respondents.
25. Recently, in a similar matter in petition no. RERC/1992/2022 filed by M/s. Sayar Engineering Private Limited, while referring to the judgment of

Hon'ble Supreme Court in case of the Executive Engineer & Anr V/s M/s Sri Seetaram Rice Mill, (2012)2 SCC 108, the matter was remanded back to the MD, Ajmer Discom by the Commission for giving opportunity of hearing to the petitioner as per provisions of the Act and pass a reasoned final assessment order.

26. The facts are similar in the case in hand except that the Commission has observed that an opportunity of hearing has been provided to the petitioner after intervention of MD, AVVNL. However, a reasoned final order of assessment has not been passed in this case. The Commission also observes that some time has elapsed since the opportunity of hearing provided to the consumer. Therefore, a fresh opportunity of hearing may be provided to the consumer before passing final order.
27. After looking to submissions of the Petitioner and Respondent, Commission observes that the Discom has not followed the due procedure specified in the Act as well as the Regulations as detailed here under:
 - (i) The Discom has not issued final assessment order.
 - (ii) Due to non-issuance of final order, the consumer was not able to appeal against the same thereby depriving consumer of its right.
28. Accordingly, the Commission remands back the matter to MD, Ajmer Discom with directions to ensure:
 - i. that the assessing officer passes a reasoned final order of assessment expeditiously, after providing an opportunity of being heard to the petitioner and to file objections, if any, in response to the provisional assessment order, as contemplated under Section 126(3) of the 2003 Act.
 - ii. that the assessing officer shall pass the reasoned final assessment order after giving opportunity of hearing to the petitioner as per provisions of the Act.
 - iii. that the opportunity of appeal on final assessment order will be available to petitioner as per provision of section 127 of the Act, if the petitioner desires so.
29. MD, AVVNL is directed to ensure that the assessing officer and appellate authority follow the due process of law and adhere to time lines as per Electricity Act, 2003 and the Regulations.
30. The Commission observes that it has recently disposed a petition No. 1992/2022 in the matter of non-compliance of procedure laid and in

another petition No. 2094/2023 where also the petitioner was aggrieved by non-following of the procedure by the Discom.

31. The Commission expresses its concern about plight of consumers and observes that no person should be compelled to approach the Commission due to non adherence to the procedure laid in the Electricity Act/Regulations by the Discoms. It is the duty of the MD to ensure that its officer(s) follows the due procedure while dealing with cases u/s 126 of the Electricity Act. Accordingly, the Commission directs MDs of all three Discoms:
 - i. to monitor all such cases where due procedure is not followed
 - ii. to ensure that in all such cases;
 - a) due opportunity of hearing and filing objections against provisional assessment order be given to affected persons.
 - b) a reasoned final order is invariably issued by the assessing officer.
 - c) an opportunity of appeal against final assessment order is provided to the affected person.
32. This petition is disposed of in the above terms.
33. Copy of the order may be sent to all three Discoms, Petitioner & Respondents.

(Dr. Rajesh Sharma)
Member

(Hemant Kumar Jain)
Member

(Dr. B. N. Sharma)
Chairman