

COMPETITION COMMISSION OF INDIA

May 11, 2011

Case No. 6 of 2009

Neeraj Malhotra

Informant

Vs.

- (i) North Delhi Power Limited
- (ii) BSES Rajdhani Power Limited; and
- (iii) BSES Yamuna Power Limited

Opposite Parties

**ORDER under section 27 of the Act**

Per R. Prasad, Member (dissenting):

I've gone through the majority order of the Commission in this case as well as the dissenting order of Shri P. N. Parashar, Member. I agree with Shri Parashar on the issues discussed by him. On the other two issues, I am passing a separate order.

2. An enquiry from Central Power Research Institute, Bangalore showed that a sample survey of the electric meters was carried out in Delhi of the different discoms. The results of the sample survey of 2041 meters showed that 1847 meters had an error on the positive side. In fact 91.7% of meters had errors on the positive side. The permissible limit for an errors is  $\pm 2.5\%$  whereas in the sample many meters showed error in excess of  $+2.5\%$  on the positive side. In fact a high powered committee under the Ministry of Power considered the report and got a study conducted by CEA about 2,44,305 consumer metres and it was found that 74.38% of the meters had errors on the positive side. On the basis of the reports it can be concluded that many of the meters installed by discoms did not give accurate measurement of electricity and therefore the consumers in Delhi were put to a loss. This could result due to the low competition in the market. As the discoms were supplying electricity through meters which were not correct, it amounts to imposing unfair conditions in sale of electricity and abuse of dominance as unfair conditions have been put on the consumers.

3. The question is whether the sample size was too small to come to a conclusion of overbilling by the discoms. In this connection it would be necessary to examine the ratio laid down by the Supreme Court in the case of C.T.O. vs. H. M.



Yusufally, H. M. Abdulally 90 ITR 271. In this particular case the Commercial Tax Officer carried out a survey in the premises of the concerned party on two days he found that his sales were not properly recorded in the books of accounts. On the basis of two-day sales which were found in excess of the recorded sales, the officer rejected the books result and estimated the turnover of the party based on his findings that some sales were recorded out of books. In this particular case no doubt the sample size was very small but even then the Supreme Court upheld the findings of the C.T.O. In this case also, the sample size is small but there is no doubt that the consumers were suffering a loss as they had to pay for electricity which they had not consumed. The discoms were not bothered about the fast running meters especially as there was no competition in the market which has been allocated to the discoms. This is a serious issue and just because the sample size was too small one cannot disregard it.

4. The discoms are raising its electricity bills in 57 days in one cycle and they are also raising bills for another cycle of 63 days charging the consumers on prorata basis which in effect causes no difference on the outgoings of a consumer. The additional DG has worked out as to how the calculation on the basis of prorata billing amounts to excess charge payable by a consumer. The amount charged to the consumer may be small but it is an unfair charge and it arises mainly due to the fact that the billing is done on bimonthly basis instead of monthly basis.

5. The supply of electricity consists of three relevant markets (i) the supply of electricity. (ii) the meter market as the meters are being installed by discoms instead of by the consumers. (iii) the billing market. Abuse of dominance exists in all the three markets. The issue has got to be seen with respect to the factors mentioned in section 19(4) of the Competition Act 2002. There is no doubt that the discoms are the dominant players in the areas which has been assigned to them because in that area they are in a position of strength which allows them to affect their consumers in its favour. The factors which we have to consider under section 19(4) of the Act is (i) Market share of the enterprise – the market share of the enterprise is hundred percent as there is no competitor and it is monopoly market. (ii) Size and resources of the enterprise – compared to the consumer the size and the resources and enterprise in the monopoly market is extremely large. (iii) Size and importance of the competitors – there are no competitors as it is a monopoly market. (iv) Economic power of the enterprise including commercial advantages over competitors – as it is

a monopoly market there cannot be comparison with the competitors. (v) Vertical integration of the enterprises or sale of services network of such enterprises - the enterprises are vertically integrated as the supplier of electricity, supply of meters and the billing is all done by the discoms. (vi) Dependence of consumers on the enterprise – the consumers are totally dependent on the enterprise as there is no other competitor in the monopoly market. (vii) Monopoly in a dominant market were acquired as a result of any statute or by virtue of being a government company or a public sector undertaking or otherwise – the discoms are a monopoly and the monopoly status is given by the government. (viii) Entry barriers etc. – as it is a monopoly market all the competitors are barred from the market. (ix) Countervailing buying power – as there is no competition in the geographical area, it is not necessary to consider this aspect. (x) Market structure and size of market – the market structure and the size of market is as laid down by the government will allot an area to the discoms. (xi) Relevant social obligations and social costs – the social obligation as the discoms have to supply electricity to all its consumers. (xii) Relative advantage by way of contribution to economic development etc. – due to lack of competition in the area allotted to the discoms the total lack of competition which allows the discoms to abuse its consumers by supplying electricity overcharging the consumers and even overcharging them in billing. As the consumers are totally dependent on the discoms, there is an abuse of dominance in the relevant markets of supply of electricity, supply of meters and billing.

6. The discoms have abused their dominance in the relevant markets for supplying electricity, supply of meters and billing and there is therefore a contravention of section 4 of the Competition Act. The three discoms are therefore directed to follow the directions issued by Shri P. N. Parashar in his order. They are also directed to ensure that faulty meters are removed immediately and also ensure that such meters are not supplied to the consumers. The discoms should also follow the monthly billing system so that no prorata system of billing is followed.

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