

Delhi Electricity Regulatory ... vs Govt. Of N.C.T. Of Delhi And Ors on 10 July, 2024

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(C) 4276/2015 & CM APPL. 7758/2015,
DELHI ELECTRICITY REGULATORY COMMISSION

Through: Ms. Neelima Tripathi
Advocate with Mr.
and Ms. Pranjal Tripathi

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GOVT. OF N.C.T. OF DELHI AND ORS.
Through: Mr. Anil Sood,
Person.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 10.07.2024

1. The present writ petition has been filed by the Petitioner - Delhi Electricity Regulatory Commission¹, seeking a writ of certiorari for quashing of the Interim Order dated 17th April, 2015 and the final Order dated 9th May, 2015 passed by Respondent No. 3 - Central Information Commission² in complaint no. CIC/SA/C/2015/000092. Given the extensive legal proceedings spanning various judicial fora, a comprehensive understanding of the factual matrix of this case is essential.

2. The Petitioner, DERC, is the State Electricity Regulatory Commission for the State of NCT of Delhi, constituted under Section 82 of the Electricity "DERC"

"CIC"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:04 Act, 2003³. This Act mandates the Petitioner to perform various regulatory functions within the electricity sector. On 12th February, 2013, Respondent No. 4, Mr. Anil Sood -- a concerned citizen of

Delhi and a former member of the State Advisory Committee established under the Electricity Act -- submitted a Right to Information (RTI) application to DERC. This application sought detailed information on the actions taken in terms of the Distribution Transformer (DT) wise losses of Tata Power Delhi Distribution Limited⁴ based on the analyses conducted by the Executive Director (Technical) of DERC. The specific request for information was articulated as follows:

"Please provide me the following information at the earliest:-

1. The analysis carried out by ED Technical with regard to areas reported to have:-

(a) negative loss and the findings recorded by her including explanation sought from TDDPL;

(b) Having losses between 5% to 25% and the findings recorded by her including explanation sought from TDDPL;

(c) Having losses between 25.01% to 50% and the findings recorded by her including explanation sought from TDDPL;

(d) Having losses between 50.01% to 75% and the findings recorded by her including explanation sought from TDDPL;

(e) Having losses between 75.01% to 99.98% and the findings recorded by her including explanation sought from TDDPL;

2. I state that the information is not covered under the exempted u/s 8 of the RTI Act. The fee of Rs. 10/- has been paid is being paid through Postal order No. 08F-715173."

3. Mr. Anil Sood's RTI application was processed by the DERC, and through the letter dated 11th March 2013, the Joint Secretary/Information Officer responded in the following manner:

"Electricity Act"

"TPDDL"

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4. Mr. Sood, being dissatisfied with the response provided by the DERC, lodged a complaint with Respondent No. 3 -CIC, under Section 18 of the This is a digitally signed order.

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5. In his complaint to the CIC, Mr. Sood detailed the relevant facts and articulated his grievances, requesting that the CIC impose a penalty on the DERC under Section 20(1) of the RTI Act. He also recommended that disciplinary action be taken pursuant to Section 20(2) of the RTI Act, accusing the DERC of delaying and obstructing the release of information without any reasonable cause. Furthermore, Mr. Sood argued that DERC had wilfully failed to disclose information that should be publicly available under Section 4(1)(c) of the RTI Act. He contended that such non-disclosure was unjustifiable given that the DERC, as a public authority, possesses the necessary resources, including a team of experts and consultants, to comply with these provisions.

6. On 17th April, 2015, while adjudicating the said complaint, CIC passed the impugned ex-parte interim order dated 17th April, 2015, to the following effect:

"6. The Commission admits this complaint and issues notice to the respondents and directs them to extend the date of receiving objections from the consumers to a convenient date after disclosing the information under section 4(1)(c) of the RTI Act as requested by the complainant."

[emphasis supplied]

7. DERC has assailed the above order in the present writ petition, questioning the jurisdiction of CIC to issue such directions. They contend that the CIC has overstepped its jurisdiction by directing modifications to the schedule of the tariff fixation process, which is governed by the Electricity Act and the regulations made thereunder. DERC also argues that such directions fall outside the scope of the CIC's authority, questioning "RTI Act"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 the legal basis for the CIC's decision to intervene in the procedural aspects of electricity tariff determination.

8. On 30th April 2015, when this Court issued notice in the instant writ petition, it took note of the submissions made by the Senior Counsel representing DERC, that the necessary information had already been provided to Mr. Sood, who submitted his objections regarding the same before the CIC. Given that the matter was still under consideration by the CIC, this Court directed that the parties and their respective counsel appear before the CIC to expedite and conclude the hearings.

9. Thereafter the proceedings continued before the CIC and by way of the final order dated 9th May, 2015, after noting the detailed contentions of both parties, ultimately, the complaint was decided

against DERC. The final order emphasized the legal requirements for transparency and public involvement in the tariff-setting process, as mandated by both the Electricity Act and the RTI Act. The crucial excerpts from the decision are:

"27. Thus Section 86(3) of this Act mandates transparency saying "the State Commission shall ensure transparency while exercising its powers and discharging its functions". This provision gives right to information to the people as to the complete facts and circumstances forming basis for exercising powers and discharging its functions. Section 86(4) is equally important as that says: "In discharge of its functions, the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and Tariff Policy published under Section 3". The information which the DERC has to furnish before the views of the public are invited is the 'information' under Section 2(f) of RTI Act, 2005 and hence CIC can direct the DERC to provide the same to the complainant and public. Hence, the allegation of the DERC that CIC was illegally interfering is not legally tenable.

28. The thrust of the complaint is the 'executive summary' which is the information given by the Commission to the people at large to express their views on, was in contradiction to the National Electricity Policy, etc.

29. It is not legally correct to say that DERC would give information after This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 decision is taken, as it has a mandate to inform the people while formulating the tariff because DERC is seeking their objections and views, which cannot be given without complete information. It appears that because of this wrongful understanding of Section 4(1)(c), the DERC was under impression that it need not give information now, which generated this complaint before CIC. Under Section 4(1)(c) of RTI Act read with relevant provisions of Electricity Act referred above, the DERC has a responsibility to provide complete information to clarify about the tariff fixation because that straight away impacts the millions of consumers in capital Delhi. Section 64(3) of Electricity Act mandates the DERC to publish the application, in such abridged form and manner as may be specified by the Commission. This complaint before CIC is about the manner in which the application for tariff need to be analyzed and the form in which it shall be published. Agreeing with the DERC that it was not their practice to frame issues out of application, I would like to say that DERC has to specify how information has to be formulated before it is disclosed to the public at large. The CIC require the public authority to consider the issues raised in this hearing and keeping in view of these issues specify the form of information which the DISCOMs have to submit exercising their power under Section 64(3) of Electricity Act. I further direct DERC, in discharge of its duty of disclosure under RTI and Electricity Act, to explain to the public on the points

raised by complainant referred above in Paragraph 12 from (a) to (i) along with the impact of those factors on interests of consumers vis-a.-vis the profits of the DISCOMs, so that people and stakeholders can provide their views or objections based on complete understanding based on this information to be provided by DERC.

30. Hence, I require the DERC to put up information in simple language so that a common man can understand and respond, with analysis and explanations before inviting the views and objections from the public as per the scheme and procedure of Tariff fixation, with a copy to the complainant and this Commission, as soon as possible, within not more than one week from date of receipt of this order, and complete the process of tariff fixation as per their procedure. With above observations, the complaint is finally disposed of."

10. In light of the above development, DERC filed an application requesting permission to include the challenge to the CIC's final order dated 9th May 2015 in the present writ petition. The said request was unopposed by the Respondents and consequently this Court on 18 th May 2015, allowed the request. Given this new scope of the petition, the Court permitted Mr. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 Sood to submit an additional affidavit addressing the concerns raised in the final CIC order.

11. During the said proceedings on 18th May, 2015, the Senior Counsel representing DERC, informed the court that not only the petitions of distribution companies, but also the executive summary prepared by the DERC, had been uploaded on their website. In such circumstances, the Senior Counsel sought leave of this Court to continue with the exercise of tariff fixation. Therefore, considering that the tariff petitions along with executive summaries were made available to the public and uploaded on the website of DERC, this Court was inclined to grant the permission to DERC, to continue with the tariff fixation exercise.

12. Subsequently, on 12th February, 2024, the following order was passed:

"1. Learned Counsel appearing for the Petitioner has handed over an additional affidavit along with analysis stating that the ED engineering had not carried out any analysis with regard to DT negative loss recorded by Tata Power Delhi Distribution Limited (TPDDL). A copy of the same has also been handed over to the Respondent No.4, who is appearing in person, in Court today.

2. The Respondent No.4, who appears in person, states that he requires two days' time to peruse the additional affidavit and file a rejoinder to the same, if required. He is permitted to do so.

3. List on 22.02.2024."

13. In his counter affidavit, Mr. Sood has made detailed submissions contesting DERC's assertions. He has appended a copy of the Minutes of the 11th Meeting of the State Advisory Committee held on 30th November, 2012, to substantiate his claims. According to him, these minutes contradict the DERC's assertion that no analysis had been conducted regarding the DT negative losses reported by TPDDL. The minutes clearly indicate that the Executive Director (ED) of Engineering/Technical had been instructed to This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 furnish copies of the Energy Audit reports of the distribution companies to the State Advisory Committee. Furthermore, a Technical Committee of DERC was established with a mandate to deliver a comprehensive report on the same by 31st May, 2013.

14. Against the above factual backdrop, Ms. Tripathi, Senior Counsel for the DERC, has raised a three-fold submission.

14.1 Firstly, she argues that the CIC has exceeded its jurisdiction by passing the impugned interim order dated 17th April, 2015, directing the DERC to extend the timeline for receiving objections from consumers in relation to fixation of tariff for the year 2011-12. Ms. Tripathi submits that this is beyond the purview of the RTI Act and the CIC has exceeded its scope of powers while deciding a complaint under Section 18 of the RTI Act, by issuing such a direction. The powers of CIC are strictly circumscribed under the provisions of the RTI Act.

14.2 Her second point assails the CIC's final order dated 9th May, 2015, particularly in terms of the instruction as to how the Petitioner should publicize the information and data contained in the tariff petition. Ms. Tripathi asserts that while Section 4(1)(c) of the RTI Act mandates public authorities to proactively disclose all pertinent facts in their possession, it does not prescribe the manner or format of such disclosure. She argues that the CIC's prescriptive directives in terms of the presentation of information exceeds its regulatory authority and encroaches upon the administrative discretion of the DERC. She reiterates that all required disclosures, including the executive summaries prepared by the DERC, are already accessible on its website, thus complying with the requirements under the RTI Act.

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14.3 Lastly, Ms. Tripathi addresses the specific grievances of Mr. Sood regarding the non-disclosure of information on DT losses. She clarifies that at the time of the original CIC direction issued in 2013, the requisite analysis was incomplete and thus not available for disclosure. However, she confirms that this analysis has since been completed and the relevant information has since been duly provided to Mr. Sood. This, she posits, demonstrates the DERC's compliance with both the RTI Act and the directives of the CIC, albeit post facto.

15. Mr. Sood, actively engaged in the proceedings via video conferencing, and challenged the assertions made by DERC. He contends that the information purportedly furnished by DERC does not adhere to the directions issued by CIC. Emphasizing the discrepancies, Mr. Sood points to his counter affidavit, which contrasts sharply with the additional affidavit provided by DERC. According to Mr. Sood, the additional affidavit is not only incomplete but also misleading. To substantiate his claims, he references specific portions of the Minutes from the 11 th Meeting of the State Advisory Committee, which he has included in his counter affidavit, arguing that these extracts clearly demonstrate the gaps and inaccuracies in the information provided by DERC. This, he asserts, underscores the failure of DERC to comply fully and transparently with both the CIC's directives and the obligations under the RTI Act.

16. Mr. Sood also argues that, as a matter of record, distribution companies must carry out Energy Audits to assess and optimise the energy consumption within their distribution network and submit the audit report with the State Regulatory Commission, which for Delhi, is the Petitioner - DERC. Thus, DERC is supposed to analyse and consider the Energy Audit This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 findings at the time of approval of the Annual Revenue Requirement (ARR) for tariff fixation. Mr. Sood submits that the main purpose of an Energy Audit is to identify energy losses, improving efficiency and ensuring reliable power supply. It helps distribution companies enhance overall system performance, reduce wastage and ultimately benefit both, the utilities as well as consumers by promoting energy conservation and cost savings. He points out that in the 11th Meeting of the State Advisory Committee held on 30th November, 2012, the Energy Audit Report submitted by TPDDL was discussed. In the said meeting, Mr. Sood had raised an issue of 'negative losses' of distribution utilities and the ED (Engineering/Technical) was directed to provide copies of the Energy Audit Reports submitted by distribution companies to the Members of the State Advisory Committee. Further, a Technical Sub-Committee was formed to critically examine the issue related to 'Measurement of Residual Back Flow and consumption by electronic meters'. Therefore, Mr. Sood contends that the DERC is making false statement in Paragraph No. 2 of their additional affidavit, to the effect that the ED Engineering had not carried out analysis with regard to DT negative losses recorded by TPDDL. He submits that Minutes of Meeting conclusively establish that DERC was and continues to be in possession of the data on DT wise losses including negative losses caused by 'Residual Back Flow' as a Technical Sub-committee was constituted with the specific purpose of suggesting measures to neutralise the same.

17. In rejoinder, Ms. Tripathi seeks to explain the concept of DT negative losses to controvert Mr. Sood's contentions and argues that there has been no denial of information to Mr. Sood. Ms. Tripathi states that perhaps Mr. Sood's understanding of negative losses may not be correct. She explains This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 that negative losses primarily arise from administrative and operational adjustments within the

electricity distribution framework. Such discrepancies, she argues, stem from two main causes:

"a) One of the major reason for negative losses was incorrect consumer tagging/ consumer indexing since load balancing/ transfer are routinely carried out from one transformers to another depending upon the local overloading / under loading of LT lines. While consumer tagging would be to a specific DT meters however in situation like over loading or excess demand to ensure supply of electricity the consumer might be fed from another DT.

However since the consumer tagging is with the earlier DT meter as such the consumption would not be recorded in the earlier DT but electricity consumption however would be recorded in the meter installed at the place of the consumer which would result in that DT meter showing negative losses. The consumer load thus could have shifted and are being fed from other transformers and till indexing exercise shifts consumer to different DT, it continues to show in record of the previous DT.

b) In addition reading of DT meters and consumer meters are not time synchronized and therefore there would difference in meter reading of DT meter and consumer meters tagged to the said DT meter due the different period of billing resulting in negative losses."

18. Ms. Tripathi seeks to demonstrate that the apparent anomalies cited by Mr. Sood are not indicative of information withholding or inaccuracies but are rather inherent to the protocols of electricity distribution. She contends that these are technical issues inherent to the functioning of the system and do not constitute a failure to provide information as mandated by law. Ms. Tripathi reasserts the position articulated in DERC's additional affidavit dated 12th February, 2024. She maintains that at the time the information was provided to Mr. Sood, DERC had not yet conducted an analysis regarding the DT negative losses reported by TPDDL.

19. The Court has patiently heard Senior Counsel for the DERC as well as the contesting Respondent No. 4 - Mr. Sood. It is observed that the present proceedings arise from the RTI Act and therefore, the scope of Court's This is a digitally signed order.

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20. The first issue raised by Ms. Tripathi pertains to the directions issued by the CIC in the impugned interim order, which extended the deadline for receiving public objections during the tariff fixation process. The Court finds that such a direction was beyond the jurisdiction of the CIC under the RTI Act. Section 18 of the RTI Act deals with the powers and functions of the CIC to receive and inquire into a complaint from any person in relation to non-furnishing of information under the RTI Act. While adjudicating such a complaint under Section 18, if the CIC is satisfied that the conduct of the public authority was not bona fide in terms of denial/non-furnishing of

information, the CIC can impose penalties on the public authority, as provided for under Section 20 of the RTI Act. However, it is a settled position of law that under Section 18, the CIC does not have jurisdiction to pass an order directing the public authority to provide access to such information. Such power is vested with the CIC under Section 19 of the RTI Act and not Section 18. Section 19 provides the appellate procedure under the RTI Act, by allowing any person who is aggrieved by refusal of information to seek an effective redress and remedy. Section 19(1) allows any person who does not receive a decision within the time specified in Section 7 to prefer a first appeal to an officer senior in rank to the Central Public Information Officer or the State Public Information Officer. Moreover, Section 19(8) provides for the powers of the CIC while deciding an appeal under Section 19, including the power to require the public This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 19/07/2024 at 22:08:05 authority to provide access to information. Therefore, as has been held by the Supreme Court in Chief Information Commissioner v. State of Manipur & Anr. (2011) 15 SCC 1, the powers of the CIC under Section 18 and 19 of the RTI Act operate in completely different spheres. As per the scheme of the RTI Act, the Information Commissions are required to act in a fair and just manner while following the procedure laid down in Sections 18, 19, and 20 and as such, the Information Commissions cannot exceed their statutory mandate and jurisdiction under the said sections. At this juncture, it is important to note that the process of setting electricity tariffs is exclusively under the purview of the appropriate Electricity Regulatory Commission, as mandated by the Electricity Act, 2003. This regulatory framework, especially as detailed in Part VII (Sections 61 to 66) of the Electricity Act, prescribes comprehensive procedures for tariff determination.

21. Consequently, in light of the provisions of the RTI Act which provides for the powers of CIC, this Court concludes that the CIC exceeded its mandate by altering procedural timelines for receiving public inputs/objections on tariff matters, which is a statutory mandate of the Electricity Regulatory Commissions. Therefore, the directions in Paragraph No. 6 of the CIC's order dated 17th April 2015 are beyond the scope of the CIC's authority under the RTI Act and are hereby set aside. Although the tariff fixation process in question has already concluded, making this aspect of the ruling technically moot, this legal clarification holds significant value against potential jurisdictional overreach by the CIC in future similar matters.

22. Furthermore, The Court concurs with Ms. Tripathi's second argument This is a digitally signed order.

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"30. Hence, I require the DERC to put up information in simple language so that a common man can understand and respond, with analysis and explanations before

inviting the views and objections from the public as per the scheme and procedure of Tariff fixation, with a copy to the complainant and this Commission, as soon as possible, within not more than one week from date of receipt of this order, and complete the process of tariff fixation as per their procedure. With above observations, the complaint is finally disposed of."

23. The above direction to simplify the presentation of tariff information arguably extends beyond the CIC's remit, as delineated within the RTI Act. The Electricity Act, 2003, which is the governing legislation for electricity tariff determination, outlines specific procedures under Sections 61 to 63. These sections comprehensively stipulate how tariffs should be determined and communicated. The requirement to format and simplify this information for public consumption, as prescribed by the CIC, does not find basis in the statutory framework of the RTI Act. Thus, the said direction from the CIC encroaches upon the procedural autonomy of the Electricity Regulatory Commission as granted by its parent statute. DERC's methods of public engagement and information disclosure are to be governed strictly by the provisions of the Electricity Act, and the Regulations made thereunder, ensuring that regulatory compliance aligns precisely with the legislative intent and statutory obligations.

24. It is thus clear that while the CIC possessed the authority to mandate the DERC to disclose the requested information to Mr. Sood, it did not have the jurisdiction to prescribe how the DERC should conduct its tariff fixation. This is a digitally signed order.

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25. This brings us to the question of whether the information, as requested by Mr. Sood, has been provided or not. From the submissions presented by both parties, it appears that the core of the dispute revolves around the methodology for analysing DT losses. However, the scope of this inquiry, particularly the methodology of such analysis, transcends the purview of the present proceedings under the RTI Act. The objective of RTI Act is to ensure the accessibility of information, not to adjudicate on the technical adequacy of the information provided. If Mr. Sood harbours concerns about the manner or the technical specifics of how this analysis was executed, it may require scrutiny under different legal frameworks or regulatory standards applicable to the

electricity sector. Therefore, while this Court This is a digitally signed order.

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26. With the above directions, the present petition is disposed of, along with pending application(s).

SANJEEV NARULA, J JULY 10, 2024 d.negi This is a digitally signed order.

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