

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 183 of 2010

Dated: 19th April, 2011

**Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. V.J. Talwar, Technical Member,**

In The Matter Of

**BSES Rajdahani Power Limited.
BSES Bhawan,
Nehru Place,
New Delhi-110019**

... Appellant(s)

Versus

**1. Delhi Electricity Regulatory Commission,
Viniyamak Bhawan,
Ç'Block, Shivalik,
Malviya Nagar,
New Delhi-110017**

**2. Smt. Santosh Gargya,
H.N. 39, Village- Ziya Sarai,
New Delhi-110 070**

....Respondent(s)

**Counsel for Appellant(s): Mr. Harshvardhan,
Mr. K. Datta,
Mr. Manish Srivastava,
Mr. Diggaj Pathak,**

**Counsel for Respondent(s): Ms Gayatri Verma,
Mr. Sachin Datta,
Mr. Anish Garg, Jt. Director
Mr. Mohan S. Gupta,**

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

“ What is the Procedure to be followed by the Appropriate Commissions in the penalty proceedings under Section 142 of the electricity Act, 2003?” This question is dealt with in this judgment.

2. BSES Rajdhani Power Limited is the Appellant. Delhi Electricity Regulatory Commission is the First Respondent. Smt. Santosh Gargya, the Complainant, is the Second Respondent.

3. The State Commission, the first Respondent by the Order dated 22.7.2010, imposed penalty of Rs.1,00,000/- on the Appellant under Section 142 of the Electricity Act, 2003 for the violation of the Regulations 52 (viii) of the Delhi Electricity Supply Code. Aggrieved by the same, the Appellant has filed this Appeal.

4. The short facts are these:

(i) The Appellant is a Distribution Company engaged in the business of distribution and retail supply of electricity in the South and South West area of National Capital Territory Region of Delhi.

(ii) Smt. Santosh Gargya, the second Respondent is the consumer of the Appellant. She was using the electricity connection with sanctioned load of 10 KW for non domestic

purpose as well as the sanctioned load of 0.5 KW for domestic purpose.

(iii) The Appellant carried out an inspection on both the electricity connections on 5.1.2008. During the inspection, it was found out that the Respondent No.2 was indulging in theft of electricity and the Report was sent to the Appellant. On the basis of the report of the inspection team, the Appellant issued 'Show Cause Notice' to the second Respondent. Accordingly, Second Respondent appeared and submitted her response to 'Show Cause Notice' After considering the submissions of the parties and evaluating the evidence available on record, the Assessing Officer came to the conclusion that the Respondent No.2 was indulging in dishonest abstraction of electricity. Hence, the bills of Rs.2,20,184/- and Rs.1,03,987/- were issued against the 2nd Respondent in terms of the Electricity Act, 2003. The Respondent No.2 paid up and settled the bill relating to the domestic connection.

(iv) There upon, the Second Respondent, the consumer, filed a Petition (Complaint) in April, 2008, under Section 142 of the Electricity Act before the State Commission praying for the reassessment of the bill and for further directions.

(v) Upon receipt of the Petition filed under Section 142 of the Electricity Act, the State Commission issued a notice to the Appellant on 21.5.2008 directing the Appellant to file its reply to the said complaint within 15 days. Accordingly, the Appellant filed its reply to the Petition denying the factual allegations made by the Respondent against the Appellant. Again, another notice was issued by the State Commission on 27.10.2009, directing the Appellant to appear before the State Commission for hearing on 17.11.2009. Accordingly, the Appellant filed his 2nd reply and appeared before the Commission. On that day, two issues were framed by the State Commission for

adjudication of dispute between the parties. They are as follows:

(a) Whether the inspection report had been delivered to the consumer through the post as the consumer had not signed in the inspection report ?

(b) Why assessment bill has been raised on sanctioned load i.e. 10 KW and not on connected load i.e. 0.5 KW?

5. After hearing the parties on these issues, the State Commission passed the impugned order finding the Appellant guilty for violation of 52 (viii) of the Supply Code Regulations 2007 and imposed penalty of Rs. 1,00,000/-. Hence this Appeal.

6. The Learned Counsel for the Appellant submitted that failure to issue show cause notice while initiating the proceedings under Section 142 of the Act and finding the

Appellant guilty for the charge which had not been framed in the proceedings would vitiate the order impugned.

7. On the other hand, the Learned Counsel for the State Commission (R-1) argued in justification of the impugned order. Though notice was served in this Appeal on the second Respondent, nobody has entered appearance on behalf of the second Respondent.

8. In the light of the submissions made by the parties, we deem it fit to frame two questions that may arise for consideration in this Appeal. Those questions are as follows:-

(a) Whether it was mandatory upon the State Commission to issue and serve a show cause notice on the person concerned with specific allegations while initiating the proceedings under Section 142 to enable him to give reply to those allegations ?

(b) Whether the State Commission could find the Appellant guilty for the charge which is different from the charges framed by the State Commission ?

9. Let us deal with the 1st question:

10. According to the Appellant, the State Commission did not issue the show cause notice containing the specific allegations and the failure to issue the same would vitiate the impugned order. The Petition under Section 142 of the Act, 2003, was filed in May, 2008 by the 2nd Respondent before the State Commission as against the Appellant. On 21.5.2008, the State Commission issued notice to the Appellant directing him to file the reply to the said Petition within 15 days. Accordingly, the Appellant filed the reply denying the factual allegations mentioned in the petition. Thereafter, the State Commission issued the 2nd notice to the Appellant on 27.10.2009 asking the Appellant to appear on 17.11.2009 before the State Commission for hearing. The Appellant filed the 2nd reply and appeared

before the State Commission. On that day, two issues were framed. On these two issues, the Appellant as well as the consumer were heard.

11. Ultimately, the State Commission passed the impugned order on 22.7.2010 finding the Appellant guilty and imposing penalty under section 142 of the Act.

12. In the light of the above, we have to find out as to whether these notices are show cause notices containing the specific allegations.

13. Let us now quote the 1st notice dated 21.5.2008:

“

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, C'Block, Shivalik Malviya Nagar, New Delhi-110017

Ref. No.F 7(25)/2008-09/DERC/(xxxx) May 21, 2008

In the matter of: Complaint under Section 142 of the Electricity Act, 2003

*Smt Santosh Gargya
H.No.39, Village Ziya Sarai,
New Delhi*

....Complainant

Versus

BSES Rajdhani Power Limited

.....Respondent

To,

*BSES Rajdhani Power Limited
Through its: CEO
BSES Bhawan,
Nehru Place,
Delhi-110019*

NOTICE

Whereas the Complainant above named has filed a complaint before the Commission on the above mentioned subject. Copy enclosed.

The Respondent is directed to file their replies within 15 days from the date of issue of this notice and serve a copy of the same on the Complainant.

Take notice that in case, the Respondent fails to file the reply within the time and manner prescribed above, it shall be presumed that they have nothing to say and the matter shall be proceeded in absence of such replies.

*Sd/-
(Ajay Kr. Arora)
Bench Officer
”*

Encl: As above.

14. The reading of the wordings containing in this notice would reveal that this is the general notice issued by the State Commission in pursuant to the Petition under Section 142 of the Act 2003 filed by the Consumer, the 2nd Respondent to the

Appellant directing to file the reply for the complainant within 15 days. Admittedly, there is no reference calling upon the Appellant to show cause as to why the proceedings under Section 142 should not be proceeded as against him. Similarly, there are no specific allegations of violations of provisions or direction referred to in the said notice so as to enable the Appellant to know as to what sort of allegations he has to meet. Therefore, this can not be construed to be the show cause notice.

15. Let us now quote 2nd notice dated 27.10.09:

“

DELHI ELECTRICITY REGULATORY COMMISSION
Viniyamak Bhawan, Ç'Block, Shivalik Malviya Nagar, New Delhi-110017

Ref. No.F 11(465)/2008-09/DERC/3030

October, 27, 2009

Petition No.62/2008

In the matter of: Complaint under Section 142 of the Electricity Act, 2003

And

In the matter of:

Smt Santosh Gargya
H.No.39, Village Ziya Sarai,
New Delhi

....Complainant

Versus

*BSES Rajdhani Power Limited
Through its: CEO
BSES Bhawan,
Nehru Place,
Delhi-110019*

.....Respondent

NOTICE FOR HEARING

Whereas the Petitioner above named has filed a petition before the Commission regarding above mentioned subject.

The Commission has decided to hold a hearing on dt. 17.11.2009 at 3.00 P.M at the Commission's Office and the parties are directed to appear before the Commission on aforesaid date and time.

Take notice that in case, the parties fails to appear before the Commission on the aforesaid date and time, the matter shall be decided in absence of such parties as per the provisions of law.

*Sd/-
(M.S. Gupta)
Dy. Director (Law)/Bench Officer*

*Copy to:-
Shri Manish Kumar Choudhary, Advocate,
E-5/1, 3rd Floor,
Malviya Nagar,
New Delhi-110 017*

”

16. This notice also does not show either the reference to the show cause notice asking for the explanation or the nature of allegations leveled against the Appellant. It simply directs the Appellant to appear on 17.11.2009 for hearing. So this is also not a show cause notice. These things would make it clear that enquiry was conducted and concluded under Section 142

of the Act without issuance of show cause notice giving the details of allegations.

17. It cannot be debated that Section 142 proceedings are penalty proceedings. Let us now see whether issuance of show cause notice is a condition precedent in the 142 penalty proceedings. While dealing with this question, it would be appropriate to refer to the settled law on this issue:

18. With reference to the importance regarding the issuance of show cause notice and necessity to follow the principles of natural justice in the penalty proceedings, the Hon'ble Supreme Court has specifically held that unless the mandatory procedure of issuance of show cause notice containing the specific allegations and of failure to give opportunity to meet the said allegations is followed in the penalty proceedings, it would tantamount to violation of principles of natural justice which will vitiate the entire proceedings. Those decisions are as follows:

19. In the AIR 2009 SC 2375 Uma Nath Pandey vs State of UP, the Hon'ble Court has held as follows:

“Natural justice is another name for commonsense justice. Natural justice is the administration of justice in commonsense liberal way. Justice is based on natural ideals and human values. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. The adherence to principles of natural justice is of supreme importance than quasi-judicial body embarks on determining disputes between the parties. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. Justice should not only be done but should manifestly be seem to be done. (Emphasis added)

20. In the 2007 (5) SCC 388 Commissioner of Central Exercise vs. Brindavan beverages (P) Ltd , the Hon'ble Court has held as follows:

“A show cause notice is the foundation on which the Department has to build up its case. If the allegations in the show-cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the notice was not given proper opportunity to meet the allegations indicated in the show cause notice”. (Emphasis added)

21. In the 2004 (2) SC 783 Karnataka Rare Earth and Another vs. Senior Geologist, Department of Mines & Geology and another the Hon'ble Court held as under:

“An order imposing penalty for failure to carry out the statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation.”.

22. The Hon'ble Supreme Court in these decisions has culled out the following mandatory requirements to be satisfied especially in the penalty proceedings:

- (i) It is quite essential that a party facing the penalty proceedings should be put on notice of the case before any

adverse order is passed against him. This is one of the most important principles of the natural justice.

(ii) A show cause notice is the foundation on which the Department has to built-up its case. Therefore, a show cause notice shall contain the allegations. If the allegations in the show cause notice are not specific, or vague or unintelligible, then that can be taken as a ground to hold that the said notice was not legally valid as it had not given adequate opportunity to the person concerned to meet the allegations indicated in the show cause notice.

(iii) The first and foremost principle is what is known as audi alteram partem rule. The notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively the case he has to meet. Adequate time has to be given to the person concerned so as to enable him to make his representation to meet the allegations contained in the notice. In the absence of the

notice of the kind and such reasonable opportunity, the final order passed becomes wholly vitiated.

(iv) The principles of natural justice are those which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

23. In the light of the above principles, we shall consider the issue relating to the show cause notice in the proceeding under Section 142 of the Act, 2003.

24. Let us quote Section 142 of the Electricity Act, 2003:-

“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

there under, 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 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 added)

25. The perusal of this section would reveal that the State Commission should follow the following procedure before finding the person guilty of violation of provisions or directions and imposing the penalty as contemplated under Section 142 of the act:

“(i) When a complaint or a Petition is filed by a person before the Appropriate Commission against a person for taking action under Section 142 of the Act or when an information is received, the Appropriate Commission has to first find out as to whether there are prima facie

allegations in the petition or complaint or information received, that the person has contravened the relevant provisions or violated the directions issued by the Appropriate Commission. In other words, the Appropriate Commission, before entertaining the petition or complaint for taking action under Section 142 of the Act, at the outset has to satisfy itself by applying its mind as to whether the allegations contained in the said Petition or complaint or information would constitute contravention or violation of any of the provisions of the Act or rules or regulations made there under or directions issued by the Appropriate Commission which necessitates the issuance of show cause notice to conduct inquiry under section 142 of the Act. Thus, the satisfaction to entertain the complaint is first and foremost requirement.

(ii) After arriving at such a satisfaction, the Appropriate Commission shall entertain the petition and issue notice

to the person concerned intimating that the Appropriate Commission is satisfied with the particulars of the specific allegations that the person concerned has violated the provisions or directions and calling upon him to show cause as to why that person be not proceeded with under section 142 of the Act and why the penalty be not imposed upon him for such allegation of the contravention or a violation thereby, the Appropriate Commission is mandated to give opportunity to the said person to offer his explanation through his reply to the charge leveled against him referred in the show cause notice by giving sufficient time.

(iii) On receipt of the said explanation offered by the person concerned, the Appropriate Commission has to scrutinize and find out as to whether his explanation is satisfactory or not. If it is satisfied, it may drop the proceedings under Section 142 of the Act. On the other hand, if the Appropriate Commission feels that the

explanation is not satisfactory, the Appropriate Commission can summon him to appear before the Commission and frame the specific charges in his presence and intimate him that the Appropriate Commission propose to conduct inquiry with regard to those charges and give opportunity to the person concerned of hearing to offer his further explanation and to produce materials to disapprove those charges.

(iv) After considering the reply and evidence available on record and after hearing the parties, the Appropriate Commission then has to find out as to whether those charges framed against him have been proved or not in the light of the submission and the evidence produced by the person concerned. If the Appropriate Commission is of the opinion that the charges framed are not proved, the proceedings at that stage can be dropped. On the contrary, if the Appropriate Commission is satisfied that

those charges have been proved, it may find him guilty and impose penalty.

26. The above procedure in penalty proceedings would clearly indicate that the State Commission shall first find out the prima facie satisfaction and then issue show cause notice to the person concerned who has to file reply and thereafter the State Commission has to frame charges and give further opportunity to the person concerned to place materials to disprove the charges and then decide the case on the basis of the evidence available on record.

27. From the above, it is clear that the State Commission has to arrive at prima facie satisfaction, that it is a fit case for initiation of Section 142 of the proceedings and then it has to record its satisfaction in the show cause notice in respect of the specific allegations and send it to the person for the purpose of giving an opportunity to such a person to defend or rebut such specific allegation. These procedures are contemplated to

follow the principle of natural justice by giving full opportunity to the Appellant to defend the allegation.

28. Thus, there are two phases. (i) One is to arrive at a satisfaction to issue show cause notice while initiating penalty proceedings and (ii) Next is, after issuance of the show cause notice, the person must be heard to arrive at a satisfaction whether such contravention has actually been committed or not. Only then, the State Commission can come to the conclusion whether to find him guilty or not under Section 142 of the Act. Thus, it became evident that the show cause notice should contain (i) specific allegations of violation, (ii) prima facie satisfaction over the said allegations (iii) issuance of show cause notice in respect of specific allegations by way of giving an opportunity to the concerned person to rebut those allegations. All these three ingredients must find place in the notice which is a show cause notice.

29. A bare perusal of Section 142 of the Act, 2003 reveals that a specific notice under Section 142 is a mandatory requirement to be issued by the Commission to the licensee specifying the alleged particulars of the violations. Admittedly, in the present case, only general notices were issued merely asking the person to file reply and to make appearance. They are not the show cause notices, as the 3 requirements referred to above are absent in those notices. The State Commission ought to have issued mandatory show cause notice under Section 142 stipulating its intention of initiating proceedings against the Appellant and then framed the charges relating to the alleged violations of Regulations or directions to enable the Appellant to rebut the same and support its defence. Admittedly, the allegations relating to violation of Regulations along with the expression of its intention to proceed under Section 142, was never intimated by the State Commission to the Appellant in the present case.

30. (a) In the absence of any such allegations in the notices, could the Appellant rebut the allegations of violations?
- (b) When those notices dated 21.5.2008 and dated 27.10.2009 do not contain the specific allegations, how could they be treated as show cause notices in respect of the violations?
- (c) When those notices cannot be construed to be the show cause notices, would it not mean that there is a failure to follow the principles of natural justice?

31. In the instant case, as indicated above, the said mandatory procedure had not been followed and on the other hand general notice dated 25.7.2005 and 27.07.2009 were sent to the Appellant. Admittedly, no prima facie satisfaction was recorded by the State Commission in the notices nor specific charges were incorporated nor about the same to intimated by the Appellant through the said notices. Thus, it is clear that final decision has been taken under Section 142 of the Act, 2003 by the State Commission without issuing show cause notice

contemplated under Section 142 of the Act and without giving opportunity to reply which is a mandatory procedure.

32. Therefore, it has to be held that the impugned order finding that there is a violation of the provisions itself is in violation of the Principles of natural justice as such it is illegal in the light of the absence of the issuance of the show cause notice. This 1st point is answered accordingly.

33. The next question is this: Whether the State Commission could find the Appellant guilty for the charge which is different from the charges framed by the State Commission ?

34. As indicated above, the State Commission issued a first notice on 21.5.2008 along with a copy of the complaint. After receipt of the reply from the Appellant, the second notice was issued on 27.10.2009 by the State Commission calling upon the Appellant to appear before the State Commission for hearing on

17.11.2009. In both the notices, as we held above all the three ingredients referred to in the earlier paragraphs were absent.

35. We will now come to the next phase. On receipt of the 2nd notice, the Appellant filed its 2nd reply and appeared on the 17.11.2009. On that day the State Commission, after considering the Petition and reply, framed these two issues:-

(a) Whether the inspection report had been delivered to the consumers through the post as the inspection report had not been signed by the consumer?

(b) Why assessment bill has been raised on sanctioned load i.e. 10 KW and not on connected load i.e. 0.5 KW?

36. It is evident that in this case the Appellant was not found guilty of the above charges framed but he was found guilty only for the violation of Regulations 52 (viii) of Regulations 2005. This violation has neither been mentioned in the Petition or

referred to in the notices on 21.5.2008 and 27.10.2009 nor in the charges which have been framed on 17.11.2009.

37. As mentioned above, the State Commission issued general notices on two dates i.e. first notice on 21.5.2008 and the second notice on 27.10.2009. In both the notices, no particulars regarding the violations have been furnished. But when the Appellant appeared on 17.11.2009, two charges were framed as under:

- (a) Whether the inspection report had been delivered through the post as inspection report had not been signed by the consumer?
- (b) Why assessment bill has been raised on sanctioned load i.e. 10 KW and not on connected load i.e. 0.5 KW ?

38. These two charges only relate to the absence of the delivery of the inspection report and the issuance of the assessment of bill with reference to the sanctioned load instead of connected load. Strangely, the Appellant was not found

guilty for these charges which were framed but found guilty of the violation of the Regulation 52 (viii) of the Supply code which was not framed. Curiously, the State Commission had not dealt with in respect of the alleged two violations which were framed nor given any finding. On the contrary, the State Commission held that the meter was segregated and it was not sent to the NABL accredited laboratory which is the violation of the Regulation 52 (viii) of the Supply Code. This finding on this charge was given by the State Commission without framing this charge and without giving opportunity to the Appellant to meet the said charge.

39. It is not disputed by the State Commission that the Appellant was never called upon or put on notice to rebut this charge. In the light of the admitted fact situation as pointed out by the Appellant, the State Commission ought not to have found the Appellant guilty of this charge without framing the said charge and without allowing the Appellant to present its defence for this charge. The failure to follow this procedure in our view,

is a serious violation of Principles of Natural Justice. The State Commission should have confined itself to the charges framed by the Commission and should not have travelled beyond the pleadings and the charges in question.

40. One more thing which has been brought to our notice by the Appellant to hold that the finding is wrong is to be referred to. The Regulations 52 (viii) of the Supply Code mandates that the licensee shall send the meter after inspection to NABL accredited laboratory for testing. According to the State Commission, in this case the Appellant did not send it to the NABL accredited laboratory and the failure to send it to the NABL accredited laboratory is a violation of Regulation 52 (viii) of the Supply Code and therefore, he was found guilty of the said case by the State Commission. Let us quote the findings of the State Commission on this charge:

“Regulation 52 (viii) of the Commission’s Supply Code and Performance Standards Regulations-2007 clearly prescribe the procedure in such cases, which reads as under:

In case of suspected theft, the Authorised Officer shall remove the old meter under a seizure memo and seal it in the presence of the consumer/his representative. The Licensee shall continue the supply to the consumer with a new meter. The old meter shall be tested in a NABL accredited laboratory and the laboratory shall give a test report , in writing, which along with photographs/video graphs shall constitute evidence thereof. The list of NABL accredited laboratory shall be notified by the Commission. The authorized Officer shall record reasons to suspect theft in the premises in his report

The meter was not sealed nor tested in NABL accredited laboratory as required under the above Regulations, but was segregated at site during inspection, which is in violation of the Commission's Regulation for which a penalty for Rs.1 lakh is imposed upon Respondent Discom, under Section 142 of the Act"

41. These findings relating to the failure on the part of the Appellant to send the meter to NABL accredited laboratory is utterly wrong for the following reason.

42. Admittedly, in the present case, the inspection was carried out on 5.1.2008 and till then, no NABL accredited laboratory for testing the meter for tampering had been notified by the State Commission. As a matter of fact, NABL accredited

laboratories was notified only in June, 2008 long subsequent to the inspection. In the absence of the said notification the Appellant could not have sent it to the NABL accredited laboratory. If the State Commission had given opportunity to the Appellant to give explanation to this charge after framing the same, the Appellant would have brought it to the notice of the State Commission that the said violation can not be attributed to the Appellant for not sending the meter to the notified NABL accredited laboratory in terms of Regulations 52 (viii) as it could not be complied with for the reasons mentioned above. In that event, the State Commission could not have found the Appellant guilty for this violation.

43. In view of the above, Appellant can not be found guilty for the failure to send the meter after inspection to the State Commission's approved NABL accredited Laboratory which was not in existence. Therefore, the findings by the State Commission on this charge is wrong on this ground as well.

44. **Summary of Our Findings**

(i) A show cause notice is the foundation on which the charge has to be built-up. Such show cause notice should contain specific allegations. If there is no show cause notice containing the specific allegations, it is tantamount to not giving the opportunity to the person concerned to meet those specific allegations. Therefore, the failure in issuing show cause notice in the penalty proceedings which is the mandatory procedure and the failure to give opportunity to the person concerned to meet those allegations would amount to the failure to follow the principles of natural justice. This failure in the instant case would make the impugned order vitiated.

(ii) In the present case, two charges were framed on 17.11.2009 which relate to the absence of the delivery of the inspection report and issuance of the assessment bill with reference to the sanctioned load

instead of connected load. The State Commission instead of giving findings on these charges has found the Appellant guilty of the charge regarding the violation of Regulations 52 (viii) of Supply Code. Admittedly, this charge had not been framed and opportunity had not been given to the Appellant to meet this charge. Therefore, the State Commission could not find the Appellant guilty for the charge not framed and as such the impugned order finding the Appellant guilty for the charge not framed without giving the opportunity, cannot legally be sustained.

45. In view of our above findings, we think it fit to set-aside the impugned order. Accordingly, the same is set aside. The Appeal is allowed. There is no order as to costs.

(V.J. Talwar)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 19th April, 2011

REPORTABLE/NON-REPORTABLE