

West Bengal State Electricity Board



CORPORATE OFFICE

CIRCULAR NO.11/2005

DATED: 30.06.2005

A Guideline regarding procedure for dealing with offences committed under the Electricity Act, 2003 has been communicated by the Ld. Advocate General of West Bengal vide his D.O.No.19/AG/WB/2005-06 Dated 29th June 2005, addressed to the Chairman, WBSEB.

The said guideline is enclosed and it is enjoined upon all concerned to follow the same with immediate effect in modification of all previous instructions on this score.

Encl: 1) Guidelines
2) Schedule "A"

S.K. Gupta
30.6.2005

Memo No. ULBD/T-21/1174(III) Dtd. 12/7/05 (S.K. Gupta)
Member-Secretary

Copy forwarded for information and necessary action to:

- 1). D.E., D.C.C., Uluberia(D) Divn., WBSEB
- 2). A.M. (F&A), Uluberia(D) Divn., WBSEB
- 3). S.M., Panchla/Burikhali/Uluberia/Birshibpur/
Bagnan-I/Bagnan-II/Ajodhya Gr.E/S.

S.P. Moitra
11/7/05

(S.P. MOITRA)
Supdt. Engineer (E) &
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WBSEB

Balai Chandra Ray
Advocate General, West Bengal



contents are not Verified
WBSEB
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30 JUN 2005

D.O.No. 19/AG/WB/2005-06

Dated 29th June, 2005

Dear Shri De,

I am enclosing my opinion in the case of State
Vs- Babulal Agarwal for not proceeding further in the
case.

I am also sending settled guidelines for issuing
appropriate circular for WBSEB personnel who operate
in the field.

Yours sincerely,

Balai Chandra Ray
(Balai Chandra Ray)

Encl: as above.

Shri Malay Kumar De
Chairman, WBSEB
Vidyut Bhavan
Salt Lake, Kol-91.

GUIDE LINE

PROCEDURE TO BE FOLLOWED FOR ACCESS TO CONSUMER'S PREMISES INCLUDING DEALING WITH OFFENCES COMMITTED UNDER THE ELECTRICITY ACT, 2003.

A draft guideline for issuing suitable circular in respect of the following :-

1. Inspection
2. Search and Seizure
3. Detection of theft
4. Police Investigation
5. Arrest
6. Forwarding of accused
7. Exhibits
8. Filing of Complaint
9. Compounding

1. ACCESS TO CONSUMER'S PREMISES

1.1 WBERC Electricity Supply Code Regulation 4.01, inter alia, lays down rules and procedures to be observed during inspection etc. at a consumer's premise with DUE INTIMATION.

1.1.1 Access in the interest of the consumer.

Purpose

1. Meter reading
2. Fault repair
3. Restoration of supplies
4. Delivery of Bills
5. Maintenance of service connection
6. Installation of meter.

No notice is required to be given

Inspection to be made at

Reasonable time which means ordinarily daytime near to 8 AM and 5 PM but may be extended till the work is completed.

Note is required to be prepared and served when consumer fails to provide necessary facilities. Note shall incorporate fact of such failure. Note shall be served on the consumer or his representative.

Refusal, if any, to accept should also be recorded.

Intimate a request for a future date for providing such facilities.

2. WBERC Supply Code Regulation 4.02 inter alia lays down procedure to be observed during inspection etc. of consumers premises for the following purposes that regulation grants in exercise of right of the licensee.

- (i) Inspection,
- (ii) Testing,
- (iii) Disconnection of supply,
- (iv) Installation/removing/replacement of meter,
- (v) Replacing/altering electric lines or electric plant or meter of the consumer or of any other consumer,
- (vi) Interest of the net work.

Performance Requirement:

Due Intimation shall be given preferably in a Standard Form (Schedule 'A') containing (1) object for seeking access (2) job to be done. This has to be served on the consumer or his representative at the time of entry.

3. WBERC Electricity Supply Code Regulation 4.03, inter alia, lays down rules and procedures to be observed during inspection etc. at a consumer's premise with SUITABLE INFORMATION.

Who can have access

Any WBSEB Officer authorised by an Officer of the rank of Assistant Engineer or above. In compelling circumstances an Officer below the rank of Assistant Engineer may authorise but justifying reasons must be recorded in the file of WBSEB.

Reasons for such access

1. Violation of proper usage of electricity (which will include unauthorised use),
2. Theft;
3. Tampering of meters,
4. Misappropriation of energy,
5. Et cetera in 4.03 shall include offences under Part XIV of the Electricity Act, 2003.

PERFORMANCE REQUIREMENT

At any time access will be lawful keeping in view the circumstances for which the access should be enforced. It means regard must be had to the need of the hour and nature of the breach of legal provision by the consumer.

Information to consumer or his representative:

Ordinarily should be in writing but if such written information be not feasible proof of such intimation has to be maintained. Two independent witnesses signing the document is the safest course.

AUTHORISATION:

Officer not lower than an Assistant Engineer has to authorise such required access. If compelling reasons occur a subordinate may authorise but the justifications must be recorded in WBSEB file.

Consumer Report:

After completion of work this report shall be prepared.

Contents of the Report: (a) How and to whom information requiring entry was given, (b) Consumer's comment, if any, has also to be incorporated in the report, (c) record of such work shall be witnessed by two independent witnesses putting their signatures. If witnesses are not available or if the witnesses refuse to sign the same has to be recorded and signed by the WBSEB Officer at the site.

4. WBERC Electricity Supply Code Regulation 4.04, inter alia, lays down rules and procedures to be observed during inspection etc. at a consumer's premise **WHERE ACCESS DENIED.**

4.1 Requirement

Obstruction or prevention by consumer or consumers representative to allow access to carry out functions under Regulation 4.01 and 4.02.

Disconnection: Supply of electricity may be disconnected forthwith.

Duty is to give written information to the consumer at the spot giving reasons. All written information should be witnessed.

Exception: No disconnection if consumer gives reasonable justification and affords required facilities for access. Reasonable facility must be understood as facility required by the employees require having regard to the circumstances.

Such disconnection may not be made if the consumer gives detailed and reasonable justification and affords facilities for inspection.

5. WBERC Electricity Supply Code Regulation 4.05, inter alia, lays down rules and procedures to be observed during inspection etc. at a consumer's premise and for contacting HIGHER OFFICIALS.

5.1 Performing employees having access to the consumers premises

(i) shall carry and display their photo identity card with name and designation.

(ii) carry name and phone number of the superior officers whom the consumer on demand may call over the phone,

(iii) no undue harassment and inconvenience to the consumer to the extent possible,

(iv) follow all other legal provisions.

6. WBERC Electricity Supply Code Regulation 4.06, inter alia, lays down rules and procedures to be observed during inspection etc. at a consumer's premise for contacting HIGHER OFFICIALS.

6.1 Power under Section 163 of the Electricity Act, 2003 can be exercised in addition to the powers mentioned in paragraph 4 of the Electricity Code.

Powers under Section 163 of the Act is very wide. These powers are in substance the following:

6.2 Performance Requirement u/s.163 of the Act

- (i) Employees shall be duly authorised
- (ii) Perform at reasonable time which ordinarily shall be near to 8 A.M. and 5 P.M. but may be extended till the work is complete.
- (iii) Information to the occupier of the premises. Proof has to be maintained.
- (iv) Enter premises, land under or over or along or across or in or upon which the electricity supply lines or other works have been placed lawfully by WBSEB.

For what purpose?

- (a) All the purposes covered by paragraphs 4.01 to 4.03 of the Code.
 - (b) Ascertaining the amount of electricity supplied or the electrical quantity contained in the supply,
 - (c) removing where supply of electricity is no longer required,
 - (d) all works for which licensee is authorised.
- 6.3 By obtaining order of Executive Magistrate all the above and other lawful works may also be performed.

7. SEARCH AND SEIZURE.

- 7.1 Search and seizure at the consumer's premises shall be in accordance with the provisions of the Cr.P.C. read with Section 135(3) and 135(4) of the Electricity Act, 2003 as follows :-

The occupant of the place of search or any person on his behalf shall remain present during the search. The occupant may be different from the consumer. Any one having reasonable physical control of the premises may be deemed to be the representative.

Search and seizure must be conducted in the presence of two independent witnesses wherever possible.

As a standard practice, two independent witnesses should be obtained – this should be a rule and not an exception, WB State Electricity Board personnel or relatives of the consumer are not considered as independent witnesses.

The signatures of witnesses, consumer or his representative shall be obtained on the Seizure List.

A list of articles seized showing wherefrom those have been seized shall be entered in a Seizure List which shall be signed by the occupant or his representative. (Note the use of the word occupant instead of consumer).

On conclusion of seizure formalities including labeling etc. a copy of the Seizure List shall be handed over to the occupant or his representative and a signature obtained with a note "received a copy."

Refusal by the occupant or his representative to sign the Seizure List shall be noted in the Seizure List as "occupant/representative present during inspection refused to sign."

Refusal by the occupant or his representative to sign as a token of receipt of the Seizure List or absence during seizure formalities/after or part thereof should be suitably noted in the Seizure List.

Where the occupant or his representative are both absent during the seizure formalities, a copy of the Seizure List may be pasted on a suitable place (meter, kiosk, door, wall etc.) in the presence of two independent witnesses and properly signed whose signatures have to be obtained in the Seizure List. With a suitable note in the said Seizure List – as a matter of abundant caution.

Inspection, search and seizure shall not be conducted in any domestic place or premises between sunset and sunrise, except in the presence of an adult male member occupying the premises. (This

condition is therefore not applicable to a factory, plant etc. which is not a domestic place or premise).

- 7.2 Police Officers are empowered under Section 165 of Cr.P.C. to conduct search during investigation of cases.
- 7.3 Police Officers under Section 102(1) of the Criminal Procedure Code may seize any property which may be found under circumstances which create suspicion of commission of any offence.
- 7.4 Under Section 102(2) of the Criminal Procedure Code such Police Officer, if subordinate to the Officer-in-Charge of the Police Station shall forthwith report the seizure to that officer. This Section gives police the power to seize meters etc. on suspicion of commission of any offence under any Act.
- 7.5 In terms of Notification No.341 – Power/III/3R-06/2003 dated 29th December 2003 similar powers of search and seizure have been given to the following personnel to the WB State Electricity Board:
- (i) Station Manager
 - (ii) Assistant Engineer
 - (iii) Divisional Engineer
 - (iv) Circle Manager
 - (v) Superintending Engineer
 - (vi) Addl. General Manager (F&A)

(vii) Dy. General Manager (F&A)

(viii) Dy. General Manager (P&A)

7.6 The aforesaid authorised personnel have been empowered to carry out functions mentioned in Clause (a), (b) and (c) of Section 135(2) of the Electricity Act, 2003, namely :

(i) Enter, inspect, break open and search any place or premise in which it is reasonably believed that electricity has been or is being used unauthorisedly.

(ii) Search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorisedly use of electricity.

(iii) Examine or seize any books of account or documents which shall be useful or relevant.

8. Detection of Theft:

8.1 As soon as theft is detected during inspection, testing etc., information of such detection of theft, in writing (law recognizes verbal information also), is to be given to the Police Officer

accompanying the inspection party. The information shall have to mention estimate amount of theft in monetary terms.

8.2 Information of theft will be written in a plain paper by Board Officials addressed to the Officer-in-Charge of local police station having jurisdiction, along with a copy of inspection note and seizure list in original.

8.3 Section 379 of the Indian Penal Code shall not be added while lodging such complaint.

9. Cognizable Offence :

9.1 Some of the offences under the Electricity Act, 2003 (subject to proviso thereto) are punishable with imprisonment up to three years in case of

- i) theft of electric lines and materials - under Section 136
- ii) receiving stolen property – under Section 137
- iii) interference with meters or works – under Section 138.

These offences have not been specifically declared to be cognizable under the Electricity Act, 2003. These offences, however, are cognizable and non-bailable because of the definition of cognizable

offence under Section 2(c) Cr.P.C. read with the First Schedule Part II classification of offences under other laws.

9. Police Investigation:

10.1 First Information Report is not mentioned in the Cr.P.C. But these words are understood to mean "first information" under Section 154 of the Cr.P.C. Police investigation ordinarily proceeds on the basis of "first information."

10.2 On receipt of first information relating to the commission of a cognizable offence, the police have no option but to register a case on the basis thereof under Section 154(1) of Cr.P.C. The duty to register a case is mandatory and not discretionary.

10.3 The substance, of the written complaint filed by Board Officials, is entered in a printed book known as a General Diary.

10.4 A copy of the FIR shall be given to the complainant forthwith under Section 154(2) Cr.P.C.

10.5 A signed statement (complaint) by Board Officials furnishing information revealing commission of an offence will suffice and it is not necessary to mention the relevant sections of law in the complaint.

10.6 Section 156(1) of Cr.P.C. empowers the police to investigate any cognizable case whether under the Indian Penal Code or other laws

in force. The powers of the police under the Cr.P.C. to investigate a cognizable offence are wide and unfettered, but the condition precedent for taking up investigation is that the police must have reason to suspect commission of a cognizable offence whether on information or otherwise and that can only be when FIR and other materials disclose a cognizable offence or on receiving such information otherwise. But the Board Officials as a matter of practice should lodge FIR.

10.7 Inspection Teams generally rely on police assistance when proceeding on inspections. A General Diary Entry is made at the time of departure from the Police Station. A similar entry is made on return, narrating all facts and circumstances that had occurred during such inspections. This procedure protects officials and police from vexatious litigations and should be followed whenever police assistance is sought.

10.8 On conclusion of Police investigation, a Report in Final Form under Section 173(2) Cr.P.C. is required to be submitted in any of the four formats :

- (i) Charge Sheet (CS)
- (ii) Final Report True (FRT)
- (iii) Final Report Mistake of Fact (FRMF)

(iv) Final Report False (FRF).

11. LEGAL COMPLICATIONS:
- 11.1 Legal complications arise only because the Magistrate has no right to take cognizance. Under Section 151 of the Electricity Act, 2003, the Special Court shall take cognizance of offences upon a complaint to be filed by specified officers mentioned in the section.
- 11.2 On completion of investigation the Investigating Officer has, however, to file the charge-sheet through the Officer-in-Charge of the Police Station before the Magistrate having jurisdiction. But the complication is that the Magistrate cannot take cognizance on this report in final form nor can he send the record to the Special Court.
- 11.3 The accused, however, remains either on remand in custody or on bail. The learned Magistrate is unable to send either the records or the accused to the Special Court.
- 11.4 ^{WBSEB} What the Officer has to do is to file a complaint taking the materials from the charge-sheet comprising the allegations in the complaint. The Special Court has to take cognizance on the same.
- 11.5 Even though the Special Court shall have all the powers of a Sessions Court under Section 155 of the Electricity Act, 2003, there is no direct provision in the Code under which the Sessions Judge can call for the records filed by the police in final form before the Magistrate.

11.6 But having regard to the fact that the Sessions Judge is in charge of the Sessions Division and the records lying before the Magistrate pertain to a Special Court which is deemed to be a Court of Sessions having all the powers of a Sessions Judge the Learned Judge Special Court may call for the records relevant to trial before a Special Court which is a Sessions Court from the Court of any Magistrate.

12. ARREST:

12.1 Board Officials should not take the risk of arresting any consumer etc.

12.2 Police should be involved in investigation and arrest of any person.

13. PRODUCTION IN COURT:

13.1 Under Section 157 Cr.P.C. a person arrested without a warrant shall be produced by the Police before the nearest Magistrate within 24 hours of such arrest.

13.2 Under Section 167(1) Cr.P.C., if the investigation cannot be completed within twenty four hours, the Officer-in-Charge of the Police Station investigating the cognizable case under Electricity Act, 2003 shall forward the accused along with the case records to the Magistrate.

13.3 Under Section 167(2) Cr.P.C. the Magistrate, whether he has jurisdiction to try the case or not, inter alia, may authorize the

detention of the accused in such custody as he thinks fit (police or judicial custody or enlargement on bail).

13.4 The Magistrate, without jurisdiction to try such cases, is not bound to take cognizance, (nor is he being asked to take cognizance). He is duty bound to deal with an accused produced before him in a cognizable case – even if he does not have jurisdiction to try or dispose the case.

14. SEIZED ARTICLES:

14.1 The articles seized by the Board Personnel shall be handed over to the local Police Station and a receipt obtained. The custody of articles now rests with the Police.

14.2 The tampered meter or other articles have to be sent to FSL for expert opinion being a part of police investigation.

14.3 If the local Magistrate considers appropriate (without having to take cognizance he is entitled to forward the article to FSL for examination (being a part of police investigation) -- it augurs well.

14.4 In case the local Magistrate does not forward it then a complaint has to be filed before the designated court (by Board Officials) and a prayer submitted by the Police (they are still custodian of the article) for forwarding it to the FSL. The police have special forms for

sending articles to FSL and are far more proficient in doing this than Board Officials.

14.5 The FSL in turn will send the report directly to the court which had initially sent it – either the local Magistrate or Special Court – and the Investigating Officer gets a copy.

14.6 The articles are sometimes kept in the Police Malkhana on account of space constraints in Court Malkhana. At the time of trial these are sent to the trial court from the police station.

15. FILING OF COMPLAINT:

15.1 Special Courts will only take cognizance under Section 151 of the Electricity Act, 2003 on a complaint in writing, lodged by authorised personnel of the WB State Electricity Board (being licensee) and not by the police. This complaint should be lodged after conclusion of investigation by the police (for strategic reasons) or earlier, under compelling circumstances mentioned in para 14.4. A complaint in a criminal case is what a plaint is in a civil case. A complaint and a FIR are not always identical. But the complaint need not be as elaborate as a plaint. Facts constituting the offence must be in the complaint.

15.2 On conclusion of investigation, the police may submit charge sheet (Report in Final Form) before the local Magistrate (which still will

not be considered as a complaint for taking cognizance by a designated court).

15.3 The Magistrate is empowered under Section 154(2) Electricity Act, 2003 to transfer only such cases to the Special Court for disposal as the Magistrate was trying or enquiring. But the Magistrate has no power to transfer any case of which he has not taken cognizance.

15.4 Since the case docket contains a written complaint being the first information of a Board Official (addressed to the O/C), another formal complaint has to be addressed to the Special Court and the entire case records requisitioned by the Special Court after taking cognizance. It is clearly understood that the charge-sheet submitted by the police cannot be deemed to be a complaint under Section 151 of the Electricity Act for the Special Court to take cognizance.

16. COMPOUNDING:

Section 320 (9) Cr. P. C. prohibits compounding of offences except under the provisions of Section 320 Cr.P.C.

Section 152 of the Electricity Act provides for compounding offences.

The restriction imposed by Section 320 (9) of Cr.P.C. has been explicitly removed by Section 152 of the Electricity Act by the words "notwithstanding anything contained in the Cr.P.C."

Section 152 (2) states that on payment of a sum of money in accordance with Table A of Section 152 (1) of the Electricity Act that

Any person in custody shall be set at liberty.

No proceeding shall be instituted.

No proceeding shall be continued in any criminal court.

Section 152 (3) of the Electricity Act, inter alia, lays down that acceptance of the sum of money as per Table A of Section 152 (1) of the Electricity Act, will amount to an acquittal within the meaning of Section 300 of Cr. P. C. Compounding will therefore absolve a person of all criminal liability. But what is important to note that such compounding depends upon the discretion of the WBSEB officer. The consumer can not as of right force WBSEB to compound.

Under Section 152 (4) of the Electricity Act, compounding of an offence shall be allowed only once for any person or consumer.

This implies that a person coming under subsection (1) for the second time can not have the benefit of compounding.

Schedule "A"

WEST BENGAL STATE ELECTRICITY BOARD

NOTICE

(in terms of Regulation 4 of the WBERC – Electricity Supply Code, 2004)

Consumer Name: _____
Consumer No: _____
Meter No: _____
Premises (Address): _____

Date: _____

Notice of intention seeking access to the above mentioned premise(s) is hereby given by the undersigned, being duly authorised by the West Bengal State Electricity Board for reasons mentioned herein.

The undersigned, in respect of the energy meter(s), metering system and power supply arrangement at the above mentioned premise(s), intends to conduct:

- | | | | | |
|--|----------------------------------|---|--|--|
| <input type="checkbox"/> Inspection | <input type="checkbox"/> Testing | <input type="checkbox"/> Meter installation | <input type="checkbox"/> Meter removal | <input type="checkbox"/> Meter replacement |
| <input type="checkbox"/> Replacement of electrical lines | | <input type="checkbox"/> Alteration of electric lines | | <input type="checkbox"/> Replacement of electrical plant |
| <input type="checkbox"/> Alteration of electrical plant | | <input type="checkbox"/> Other (specify) _____ | | |

for reasons given hereunder:

- | | | | | |
|---|---|--------------------------------------|---|--|
| <input type="checkbox"/> Theft of meter | <input type="checkbox"/> No display | <input type="checkbox"/> Burnt meter | <input type="checkbox"/> Low consumption | <input type="checkbox"/> Average billing |
| <input type="checkbox"/> Incorrect billing | <input type="checkbox"/> Low power factor | <input type="checkbox"/> CT reversal | <input type="checkbox"/> PT problems | <input type="checkbox"/> CT problems |
| <input type="checkbox"/> Load survey inconsistent with connected load | | | <input type="checkbox"/> Load survey inconsistent with contractual demand | |
| <input type="checkbox"/> Drawal of load in excess of contractual demand | | | <input type="checkbox"/> Other (specify) _____ | |

You or your representative are requested to be present during the inspection and on completion, a copy of the Inspection Report will be given to you or your representative. You are requested to sign the Inspection Report after noting your comments thereon, if any.

If you wish to seek any clarifications regarding providing of such access to the premise(s) or wish to lodge a complaint with higher officials, you may kindly contact the below mentioned officers on telephone.

You are requested to kindly acknowledge receipt of this notice

Yours faithfully,

Designation _____
Authorised Signatory for WBSEB

Received notice

(Consumer / Representative)
Date: _____

Contact Telephone Nos:
Divisional Manager (_____) _____
Circle Manager (_____) _____
_____ (_____) _____