

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram  
Shri V.S.Verma, Member &  
Adjudicating Officer**

**Adjudication Case No. 5/2009**

**In the matter of**

Non-compliance with the directions of Northern Regional Load Despatch Centre (NRLDC).

**And in the matter of**

Uttar Pradesh Power Corporation Limited, Lucknow ...**Respondent**

**The following were present:**

Shri Rahul Srivastava, Advocate, UPPCL  
Shri V.P. Trivedi, UPPCL  
Shri V.K. Agarwal, NRLDC  
Shri S.R. Narasimhan, NRLDC  
Ms. Jyoti Prasad, NRLDC

**ORDER  
(DATE OF HEARING: 28.8.2008)**

Northern Regional Load Despatch Centre (NRLDC), under its letter No. NRLDC/Grid Security/Petition/1655 dated 1.12.2008 addressed, among others, to the respondent, furnished the instances of non-compliance of its directions by the Load Despatch Centres in the States of Rajasthan, Punjab, Uttar Pradesh, Delhi and Jammu & Kashmir issued under Section 29 of the Electricity Act, 2003 (the Act) read with para 5.4.2 (b) of the Indian Electricity Grid Code (the Grid Code).

2. According to NRLDC, the Load Despatch Centres of the States named did not take action on its directions to curtail over-drawals from the regional

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grid. Based on the details furnished by NRLDC, proceedings were taken against the State Load Despatch Centre in the State of Uttar Pradesh, under Section 29 of the Act in Adjudication Case No. 1/2008. Shri S Jayaraman, Member, was appointed as the Adjudicating Officer under Section 143 of the Act for holding an enquiry.

3. During the course of the proceedings in Adjudication Case No 1/2008, it came to the notice of the Adjudicating Officer that the Load Despatch Centre had not been established by the State Government of Uttar Pradesh as required under section 32 of the Act. It further came on record that for reason of non-establishment of the Load Despatch Centre in the State, the load despatch functions were performed by the respondent. In the proceedings, Shri Ashok Kumar, the then Chief Engineer, (Power System) and overseeing the load dispatch functions in the State, stated on affidavit that he was subjected to the orders passed by, *inter alia*, the Principal Secretary/Secretary Energy Department, Government of Uttar Pradesh, the Chairman, the Managing Director, and the Directors of the respondent corporation. Based on the evidence, the Adjudicating Officer concluded that in the circumstances, the ultimate responsibility to ensure compliance of the directions of NRLDC rested with the respondent. He, by his order dated 31.3.2009 dropped the proceedings initiated in Adjudication Case No 1/2008 and directed that the matter be placed before the Commission for taking a view in the matter.

4. The Commission, vide its order dated 17.6.2009 directed that the proceedings be taken against the respondent in accordance with the prescribed procedure. I was accordingly appointed me as the Adjudicating

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Officer under Section 143 of the Act for holding an enquiry into the allegations against the respondent.

5. With a view to curtailing over-drawal and ensuing grid discipline, NRLDC has, in consultation with the constituents of the region, including the respondent, has evolved a scheme of issuing messages to the erring constituent. The following are the broad features of the scheme of issuing messages applicable at the relevant time:

(a) Category 'A' message was issued to the over-drawing constituent to carry out load shedding when the frequency was below 49.0 Hz.

(b) Category 'B' message was issued for intimating that the State constituent had violated clause 5.4.2(a) and 6.4.4 by continued over-drawal at frequency below 49.0 Hz. This category of message sought immediate action by the over-drawing constituent for restriction of over-drawal in order to avert threat to system security.

(c) Category 'C' message was issued intimating that the State had violated clause 5.4.2(b) of the Grid Code and sub-sections (2) and (3) of section 29 of the Act. The message also urged the concerned constituent to take most urgent action in the interest of grid security.

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6. The details of category 'B' and 'C' messages issued by NRLDC during the period 30.9.2008 to 26.10.2008 in accordance with the agreed procedure are given in the Annexure attached to this order. NRLDC vide its letter No. NRLDC/Adj-I/2008/740 dated 25.5.2009, furnished the status of drawal by the respondent 20 minutes before the issue of the respective message and 30 minutes thereafter. The Annexure also incorporates the status of overdrawals by the respondent before and after issue of the messages by NRLDC.

7. The necessary details of category 'B' and 'C' messages as also the copy of the report received from NRLDC under letter dated 25.5.2009 ibid were forwarded to the respondent in the Commission's order dated 17.6.2009.

8. By my order dated 16.7.2009, the respondent was directed to show cause. The respondent furnished its detailed reply under affidavit dated 3.8.2009, sworn by Shri V P Trivedi, Chief Engineer (Power System) with the respondent. On consideration of the cause shown, I decided to hold enquiry into the allegations of non-compliance of the directions of NRLDC by the respondent. Therefore, the case was fixed for oral hearing. During the course of hearing it transpired that copy of the reply-affidavit submitted by the respondent had not been served on NRLDC at whose behest the proceedings were initiated. The copy of the reply-affidavit was supplied to NRLDC in the court. NRLDC has since filed its response.

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9. I was required to complete the proceedings within a period of 60 days from the date of my appointment by order dated 17.6.2009. However, the period stands extended by another 60 days with the approval of the Commission.

10. Having gone through the pleadings and heard learned counsel and the representatives of the parties, I proceed to consider the matter.

11. The respondent has raised a preliminary objection in regard to maintainability of the present proceedings. According to the respondent, over-drawals during the period 1.10.2008 to 26.10.2008 involving it was the subject matter of proceedings in Petition No 117/2008. Similarly, over-drawals during the period 1.9.2008 to 5.10.2008 was also the subject matter of the proceedings in Petition No.152/2008 (*suo motu*) against the respondent and its then Managing Director. It has been argued that in view of these facts, the present proceedings are barred by *res judicata*. It has been further urged that in the earlier proceedings the respondent was found guilty and punished. Therefore, according to the respondent, the present proceedings involving the respondent are barred by Article 20(2) of the Constitution of India.

12. In response to the preliminary objection, NRLDC has argued that against thirty five instances of violation of its directions under investigation in the present proceedings, only the following four instances were the subject matter of the earlier proceedings: The instances common to both the proceedings, according to NRLDC, are as under-

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Reference No.	Date	Time	Quantum of over-drawal	Frequency in Hz.
NRLDC/OD/Message-B/169	13.10.2008	2200 hrs	1427	48.20
NRLDC/OD/Message-B/177	14.10.2008	2201 hrs	1404	48.90
NRLDC/OD/Message-C/36	13.10.2008	2206 hrs	1357	48.75
NRLDC/OD/Message-C/41	14.10.2008	2225 hrs	1398	48.80

13. NRLDC has further submitted that the proceedings in Petition No 152/2008 were under Section 142 of the Act for contravention of the provisions of the Grid Code. On the other hand, the present proceedings, it has been urged are under Section 29 of the Act which are distinct from the proceedings under Section 142 of the Act, earlier taken against the respondent. NRLDC has further pointed out that Section 142 of the Act specifically provides that action thereunder is “without prejudice to any other penalty” to which the person might be liable under the Act. It has also been pointed out that proceedings under Petition No 117/2008 did not culminate in the imposition of any penalty.

14. In view of the significance of the preliminary objection raised by the respondent, I consider it necessary to examine it in some detail.

15. Clause (2) of Article 20 of the Constitution enacts as under –

*“(2) No person shall be prosecuted and punished for the same offence more than once.”*

16. Clause (2) of Article 20 protects against double jeopardy. The conditions for application of clause (2) of Article 20 are –

(a) There must be previous proceedings against the person concerned.

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- (b) The previous proceedings were before a court of law or a judicial tribunal of competent jurisdiction.
- (c) The person concerned must have been prosecuted and punished in the previous proceedings.
- (d) The offence which is the subject matter of the second proceeding must be the 'same' as of the first proceeding in which he was earlier 'prosecuted and punished'..

17. The interpretation of the phrase 'same offence' has been an issue in a number of proceedings before the Hon'ble Supreme Court. In State (NCT of Delhi) v. Navjot Sandhu [(2005) 11 SCC 600] the Hon'ble Supreme Court ruled as under -

*"It becomes at once clear that the emphasis is on the words "same offence". It is now well settled that where there are two distinct offences made up of different ingredients, the bar under Section 26 of the General Clauses Act or for that matter, the embargo under Article 20 of the Constitution, has no application, though the offences may have some overlapping features. The crucial requirement of either Article 20 of the Constitution or Section 26 of the General Clauses Act is that the offences are the same or identical in all respects."*

18. Similarly, in State of Rajasthan v. Hat Singh, [(2003) 2 SCC 152 ], the Hon'ble Supreme Court held that

*"8. Article 20(2) of the Constitution provides that no person shall be prosecuted and punished for the same offence more than once. To attract applicability of Article 20(2) there must be a second prosecution and punishment for the same offence for which the accused has been prosecuted and punished previously. A subsequent trial or a prosecution and punishment are not barred if the ingredients of the two offences are distinct."*

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*“11. The leading Indian authority in which the rule against double jeopardy came to be dealt with and interpreted by reference to Article 20(2) of the Constitution is the Constitution Bench decision in Maqbool Hussain v. State of Bombay. If the offences are distinct, there is no question of the rule as to double jeopardy being extended and applied. In State of Bombay v. S.L. Apte the Constitution Bench held that the trial and conviction of the accused under Section 409 IPC did not bar the trial and conviction for an offence under Section 105 of the Insurance Act because the two were distinct offences constituted or made up of different ingredients though the allegations in the two complaints made against the accused may be substantially the same. In Om Parkash Gupta v. State of U.P. and State of M.P. v. Veereshwar Rao Agnihotri it was held that prosecution and conviction or acquittal under Section 409 IPC do not debar the accused being tried on a charge under Section 5(2) of the Prevention of Corruption Act, 1947 because the two offences are not identical in sense, import and content. In Roshan Lal v. State of Punjab the accused had caused disappearance of the evidence of two offences under Sections 330 and 348 IPC and, therefore, he was alleged to have committed two separate offences under Section 201 IPC. It was held that neither Section 71 IPC nor Section 26 of the General Clauses Act came to the rescue of the accused and the accused was liable to be convicted for two sets of offences under Section 201 IPC though it would be appropriate not to pass two separate sentences.”*

19. In State of Bombay v. S.L. Apte, (1961) 3 SCR 107 the question that fell for consideration was that in view of earlier conviction and sentence under Section 409, IPC, a subsequent prosecution for an offence under Section 105 of Insurance Act, 1935, was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution. The Court observed:

*“To operate as a bar the second prosecution and the consequential punishment thereunder, must be for ‘the same offence’. The crucial requirement therefore for attracting the article is that the offences are the same, i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out. . . .”*

20. The above decisions of the Hon’ble Supreme Court lay down that the test to ascertain whether two offences are the same is not the identity of the

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allegations but the identity of the ingredients of the offences. Now I proceed to consider the preliminary objection of the respondent in the light of the law declared by the Hon'ble Supreme Court.

21. Petition No 117/2008 was filed by NRLDC praying, *inter alia*, to "initiate suitable actions against the respondents for violation of Section 5.4.2(a), 6.4.4 and 5.4.2(b) of the Indian Electricity Grid Code (IEGC) and Section 29 (2) of the Electricity Act 2003". The present respondent, in addition to other State utilities in Northern Region were impleaded as respondents. This petition was disposed of by the Commission by its order dated 7.1.2009 after taking note of the fact that the proceedings (Adjudication Case No 1/2008) already initiated against the Load Despatch Centre in the State of Uttar Pradesh under Section 29 of the Act and the Chief Engineer were pending. As noticed above, the proceedings in Adjudication Case No 1/2008 were dropped as the Load Despatch Centre in the State of Uttar Pradesh was not established by the State Government. Thus, the respondent was neither 'prosecuted' nor 'punished' in the proceedings under in Petition No. 117/2008. Therefore, bar of clause (2) of Article 20 of the Constitution is not attracted as no penal proceedings were taken against the respondent in Petition No.117/2008.

22. Next I consider the applicability of clause (2) of Article 20 of the Constitution in proceedings in *suo motu* Petition No 152/2008. These proceedings were taken against the respondent under Section 142 of the Act for non-compliance of the provisions of the Grid Code specified by the Commission by virtue of clause (h) of sub-section (1) of Section 79 of the Act

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during certain time-blocks on 13.10.2008 and 14.10.2008. The respondent, on consideration of the defence, was found to be guilty of contravention of para 5.4.2 of the Grid Code and was penalized. Section 142 of the Act is extracted hereunder –

**“142. Punishment for non-compliance of directions by Appropriate Commission:** 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 thereunder, 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 a 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.”

23. Section 29 of the Act, which is the charging section for the present proceedings, provides for punishment for non-compliance of the directions of the Regional Load Despatch Centre. For facility of reference, Section 29 is reproduced below -

**“29. Compliance of directions: ---** (1) *The Regional Load Despatch Centre may give such directions and exercise such supervision and control as may be required for ensuring stability of grid operations and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.*

(2) *Every licensee, generating company, generating station, sub-station and any other person connected with the operation of the power system shall comply with the directions issued by the Regional Load Despatch Centres under subsection (1).*

(3) *All directions issued by the Regional Load Despatch Centres to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centres shall ensure that such directions are duly complied with the licensee or generating company or sub-station.*

(4) *The Regional Power Committee in the region may, from time to time, agree on matters concerning the stability and smooth operation of*

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*the integrated grid and economy and efficiency in the operation of the power system in that region.*

*(5) If any dispute arises with reference to the quality of electricity or safe, secure and integrated operation of the regional grid or in relation to any direction given under sub-section (1), it shall be referred to the Central Commission for decision:*

*Provided that pending the decision of the Central Commission, the directions of the Regional Load Despatch Centre shall be complied with by the State Load Despatch Centre or the licensee or the generating company, as the case may be.*

*(6) If any licensee, generating company or any other person fails to comply with the directions issued under sub-section (2) or sub-section (3), he shall be liable to a penalty not exceeding rupees fifteen lacs.”*

24. The necessary ingredient of the offence under Section 142 of the Act is contravention of the provisions of the Act, the rules or the regulations made thereunder or any order or direction of the Commission. On the other hand, the ingredient for proceeding under Section 29 of the Act is the non-compliance of the directions of the Regional Despatch Centre. The basis for directions of the Regional Despatch Centre may be the order of the Commission or violation of provisions of the regulations. In that sense there may be overlapping of facts to some extent. Nevertheless, contraventions under Sections 29 and 142 of the Act form two separate and distinct offences. The ingredients of two offences cannot be said to be identical or 'same'. In these circumstances it does not seem possible to say that the offence of non-compliance of directions of NRLDC under Section 29 of the Act is the 'same offence' for which the respondent was penalised on the complaint of NRLDC charging it with an offence under Section 142 of the Act. I also find merit in the submissions of NRLDC that the instances overlapping of facts in the two proceedings is to an extremely limited extent. Against thirty-five reported

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instances of violation of directions of NRLDC there were just 4 instances that were the basis for proceedings under Section 142 of the Act in *suo motu* Petition No.152/2008.

25. I, therefore, do not agree with the contention of the respondent that bar of clause (2) of Article 20 of the Constitution is attracted in the present case. I have no doubt whatsoever that the offence under enquiry or adjudication in the present proceedings is distinct, different and diverse from the one considered in *suo motu* Petition No. 152/2008.

26. For parity of reasoning, the plea of *res judicata* taken by the respondent is not maintainable, particularly when such a plea is admissible in civil proceedings and in the proceedings which are quasi criminal in nature.

27. On merits, main plank of the respondent's submission is that SLDC has not been constituted in the State. The respondent has also referred to the letter dated 13.10.2008 by the then Chief Engineer (Power System), Shri Ashok Kumar who has since retired from service on 30.6.2009, seeking permission for night power rostering in the Divisions and Mahanagars. The respondent has also mentioned in its reply that in response to the directions by NRLDC it had taken action by opening some lines.

28. The technical plea taken by the respondent is regarding non-establishment of the Load Despatch Centre by the State Government lack merit. The respondent has placed on record a sheath of documentary

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evidence to support this fact. In my considered view such a defence is not available to the respondent. There is no denial of the fact that in the absence of the Load Despatch Centre in the State, the load despatch functions are being performed by the respondent itself. This fact situation enjoined upon the respondent itself to ensure compliance with the directions of NRLDC issued under Section 29 of the Act. Non-establishment of the Load Despatch Centre by the State Government does not absolve the respondent of its responsibility to ensure compliance with law.

29. The respondent in its reply has not denied receipt of category 'B' and 'C' messages issued by NRLDC, the details of which were contained in the Commission's order dated 17.6.2009. The respondent has not shown by evidence that it took any action to curtail load on receipt of these messages. On the contrary, there is implied admission of guilt as it has tendered an apology for its inaction, though the apology is somewhat qualified. On perusal of the evidence on record it gets established that over-drawals by the respondent were continuing from the previous time-blocks and in many cases they were on increases in subsequent time blocks despite the SOS messages from NRLDC. Thus, there exists on record an overwhelming amount of incontrovertible evidence that there was no let up in over-drawals.

30. The respondent has further submitted that over-drawals during the relevant period were attributable to adverse weather conditions, obligations to make continuous and uninterrupted supply of above 800 MW to Trapezium zone as per the directions of the Hon'ble Supreme Court and the unforeseen shortfall in supply from Himachal Pradesh. These circumstances do not in any

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manner mitigate the culpability of the respondent. I do not consider the grounds urged by the respondent afford any valid justification for non-compliance of the directions of NRLDC which it is duty bound to comply with in view of the mandate of Section 29 of the Act.

31. The respondent has submitted the details of action by it during the period from December 2008 to August 2009. On the contrary, NRLDC in its reply has stated that the situation deteriorated in April 2009. In these proceedings I do not take cognizance of the submissions made by either party as these are not germane to the main issue of non-compliance of directions of NRLDC from 30.9.2008 to 26.10.2008, proceedings for which are being conducted by me pursuant to my nomination by the Commission as the Adjudicating Officer.

32. The respondent also made certain submissions seeking issue of directions to NRLDC relating to synchronization of Eastern and Western grid with Northern grid, which again are outside the purview of the present proceedings.

33. Based on the above discussion, I am satisfied that the respondent has failed to comply with the directions of NRLDC though mandated to do so by virtue of sub-sections (1) and (2) of Section 29 of the Act on each of the thirty-five instances listed above. The violations of the directions are of repetitive nature that put the security of the grid in jeopardy, besides resulting in unlawful gain by the petitioner and unlawful loss to other states because of

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deprivation of their legitimate share. Considering the totality of the circumstances, I impose total penalty amounting to Rs. one crore and seventy-five lakh on the respondent @ Rs. 5 lakh (against the maximum imposable penalty of Rs 15 lakh) for each instance of non-compliance with the directions of NRLDC.

34. The penalty shall be deposited before 10.11.2009

**Sd/-  
(V S Verma)  
Member &  
Adjudicating Officer**

**New Delhi, dated the 14<sup>th</sup> October 2009**

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## ANNEXURE

S. No.	Reference No.	Date	Time	Quantum of over-drawal (MW)	Frequency in Hz.	Status of over-drawals				
						Before message		After message		
						20 minutes	10 minutes	10 minutes	20 minutes	30 minutes
1	NRLDC/OD/Message-B/71	30.9.2008	2237 hrs.	740	49.00	596	612	607	580	469
2	NRLDC/OD/Message-C/17	1.10.2008	0108 hrs.	299	48.98	-	82	310	349	390
3	NRLDC/OD/Message-B/100	3.10.2008	1015 hrs.	635	48.80	133	233	642	804	977
4	NRLDC/OD/Message-C/19	3.10.2008	1139 hrs.	740	48.89	906	856	604	809	932
5	NRLDC/OD/Message-B/105	4.10.2008	0004 hrs.	1247	48.87	1199	1234	1180	1330	1231
6	NRLDC/OD/Message-C/22	4.10.2008	0047 hrs.	1358	48.87	1326	1231	1372	1265	1189
7	NRLDC/OD/Message-B/109	4.10.2008	0200 hrs.	1466	48.87	1379	1439	1491	1647	1627
8	NRLDC/OD/Message-C/24	4.10.2008	0225 hrs.	1648	48.95	1409	1636	1613	1596	1571
9	NRLDC/OD/Message-B/125	4.10.2008	2005 hrs.	645	48.90	436	581	653	757	629
10	NRLDC/OD/Message-C/25	4.10.2008	2055 hrs.	848	48.99	629	780	852	854	931
11	NRLDC/OD/Message-C/26	4.10.2008	2156 hrs.	1212	48.83	1014	1020	1244	1487	1361
12	NRLDC/OD/Message-B/131	5.10.2008	0156 hrs.	898	48.91	563	810	927	1134	886
13	NRLDC/OD/Message-C/28	5.10.2008	0205 hrs.	1105	48.86	610	625	1134	888	1024
14	NRLDC/OD/Message-C/29	5.10.2008	0256 hrs.	1055	48.77	1024	1107	1055	1151	1199
15	NRLDC/OD/Message-B/140	11.10.2008	1227 hrs.	1027	49.06	779	905	1005	1003	989
16	NRLDC/OD/Message-C/30	11.10.2008	1243 hrs.	956	48.94	972	1005	989	825	537
17	NRLDC/OD/Message-B/154	11.10.2008	2217 hrs.	1404	48.85	711	1029	1410	1390	1393
18	NRLDC/OD/Message-C/31	11.10.2008	2232 hrs.	1324	48.84	1313	1417	1341	1399	1387
19	NRLDC/OD/Message-B/156	12.10.2008	0000 hrs.	1120	48.81	1129	1146	1116	929	868
20	NRLDC/OD/Message-C/32	12.10.2008	0036 hrs.	910	48.90	1017	952	899	787	854
21	NRLDC/OD/Message-B/160	12.10.2008	1108 hrs.	889	48.96	854	904	860	710	526
22	NRLDC/OD/Message-C/33	12.10.2008	1321 hrs.	960	48.99	883	915	954	965	999
23	NRLDC/OD/Message-B/163	13.10.2008	1541 hrs.	652	48.85	506	800	644	788	508
24	NRLDC/OD/Message-C/34	13.10.2008	1808 hrs.	455	48.82	131	74	591	563	321
25	NRLDC/OD/Message-B/169	13.10.2008	2200 hrs.	1427	48.80	942	817	823	718	761
26	NRLDC/OD/Message-C/35	13.10.2008	2050 hrs.	800	48.84	890	936	1424	1274	1334
27	NRLDC/OD/Message-C/36	13.10.2008	2206 hrs.	1357	48.75	908	907	1350	1301	1337
28	NRLDC/OD/Message-B/171	14.10.2008	1224 hrs.	339	48.88	363	317	426	732	758
29	NRLDC/OD/Message-C/37	14.10.2008	1240 hrs.	735	48.85	326	283	734	794	835
30	NRLDC/OD/Message-B/175	14.10.2008	1733 hrs.	260	48.80	235	69	188	289	417
31	NRLDC/OD/Message-C/38	14.10.2008	1752 hrs.	367	48.81	85	205	297	501	565
32	NRLDC/OD/Message-B/177	14.10.2008	2201 hrs.	1404	48.90	902	892	1423	1466	1482
33	NRLDC/OD/Message-C/41	14.10.2008	2225 hrs.	1398	48.80	1234	1489	1404	1331	1219
34	NRLDC/OD/Message-B/215	26.10.2008	0106 hrs.	720	48.96	702	782	728	752	781
35	NRLDC/OD/Message-C/44	26.10.2008	0437 hrs.	995	48.97	788	915	1007	817	220



