

**OFFICE OF ELECTRICITY OMBUDSMAN**  
**B-53, Vasant Vihar, New Delhi-110057**

Appeal No. F.ELECT/OMBUDSMAN/2004-05/1/64

In the matter of . Appeal against Order No. CGRF/f2/230  
dated 29-9-2004 in case No.  
CG/2004/100 passed by Hon'ble  
Consumer Grievance Redressal Forum  
(BRPL) Pushp Vihar, New Delhi-17, Meter  
K.No. 2610H\_0200143 (Old K.No. 9JP  
803153909)

AND

In the matter of	Dr. R.K. Bhutani	Appellant
	<b>Versus</b>	
	BSES Rajdhani Power Ltd.	Respondent

Present: 1. Dr. R.K. Bhutani, Appellant  
2. Sh. Vishal Goyal, Chief Manager on behalf of the Respondent

**ORDER NO.OMBUDSMAN/01/2005/001**

1. The appeal has been submitted by Dr.R.K.Bhutani on 25<sup>th</sup> October 2004. After going through the relevant records of the CGRF and its order passed on 29.09.04, in the above matter, and the appeal filed against it, detailed letters, dated 4<sup>th</sup> November '04 were sent to the licensee (the respondent) and the Appellant, seeking information with documents and /or evidence by 20.11.04 for further action in the matter. A copy of the appeal was also sent to the respondent. After the information called for was received from both the parties, the case was fixed for hearing on 21<sup>st</sup> December, 04, at 11.30 a.m.

2. On the 21<sup>st</sup> December' 04, the Appellant, Dr. Bhutani, attended in person. But nobody attended on behalf of the respondent. When contacted, the Respondent requested, for deferring the hearing to the afternoon or some

other date, so that the concerned official could be deputed. Appellant agreed and the case was adjourned to 2.30 p.m on the same date. The hearing resumed at 02.30 p.m. Shri Vishal Goyal, Chief Manager Janakpuri attended on behalf of the respondent.

3. The prayer of the Appellant is as follows:-

(a) Quash the impugned order of Consumer Grievance Redressal Forum (BRPL).

(b) Direct the respondent to waive misuse charges with effect from 10-7-2002 on the following grounds:-

- i) On 10-6-2002, I had deposited fees of Rs.60/- for Inspection to prove that the premises were lying totally vacant and as such the question of Misuse did not arise. Unfortunately BRPL did not get the Inspection done.
- ii) On 10.7.2002 itself, I had also written a letter to AFO concerned that premises A-36 F.F. at Rajouri Garden are lying vacant and therefore only Meter Rent should be charged. I had also requested AFO in the aforesaid letter to remove misuse charges. The aforesaid letter was duly acknowledged by AFO's office vide Facsimile bearing Receipt No. 9530 dated 10-7-2002.
- iii) No misuse notice was received by me.

(c) Assessment Bill: In the bill of February, 2003 a sum of Rs.7,75,313-16 has been added for assessment of the period from September 1996 to January 1999. The aforesaid amount of Rs.7,75,313-16 is not chargeable on the following grounds:-

On 3-9-1996, I had written a letter to DESU in informing them that the Meter No. 30365 installed in my premises A-36, FF Rajouri Garden, New Delhi is not working for the last few days. I had requested in that letter

that either the Meter should be repaired or it may be changed at the earliest. A copy of the aforesaid letter is attached.

Unfortunately no action was taken for change of Meter till 4-12-1998 despite the fact that I had sent a Reminder on 8-1-1997 and 22-7-1998.

(d) The bill for assessment for the period from September 1996 to January 1999 ought to have been raised in 1999 itself or at the most in the year 2000. Unfortunately the assessment bill of fantastic amount of Rs.7,75,313.16 was raised in February 2003. The demand made after 4 years is obviously time-barred under Law of Limitation.

(e) Load of Meter: The sanctioned load of meter is only 12 KW and not 24 KW as wrongly deposed by Respondent before Hon'ble CGRF. Therefore all Bills (past and future) should be based on 12 KW.

(f) Assessment for the period after meter was stolen in August 2003:-

On 22-8-2003, I had written a letter to Executive Engineer, BSES, Hari Nagar that my premises had been lying vacant for the last two months and it has been found that all Water and Electric Meters, alongwith Cables and doors and other attachments had been stolen. I had also enclosed with that letter a copy of Police Report lodged by my wife, SHO, Rajouri Garden on 22-8-2003 (Ex H). The aforesaid letter was duly received in the office of Executive Engineer as per facsimile affixed thereon. In view of this the words "No Meter" should have been fed in the Computer, and the billing ought to have been cancelled after 22-8-2003. Site visit was not done and therefore LPSC had been wrongly charged.

3.1 In the circumstances explained above Bill of Rs.480/- per month raised after 22-8-2003 and LPSC levied for the period after 22-8-2003 should be cancelled.

3.2 Prior to 22-8-2003 I had submitted an application to the Respondent on 12-3-2003, for disconnection of Meter, but no action was taken on my application. Therefore no tariff should be charged w.e.f. 12-3-2003.

Misuse charges:

4. The issues arising from the above prayer are dealt with as under:-

4.1 The application relates to the first floor of the premises at A-36, Ring Road, Rajouri Garden, New Delhi. It is stated that this premises was let out from 1.10.1998 to 31.03.2002 to different tenants, and thereafter the entire first floor was lying vacant. Hence misuse charges should be removed after 31.03.02.

4.2 The Respondent in his letter dated 30.11.04 has stated that misuse charges were levied from 03.12.93 based on the inspection report dated 03.06.94 of the Meter Reader evidencing commercial use of the domestic electrical connection. It was further stated that a Registered Show Cause Notice was issued to the consumer on 23.12.94, which was not responded to by the consumer. Accordingly misuse charges were levied w.e.f. 03.12.93 as per guidelines, after taking approval from the Competent Authority. It was further stated in the said letter that after the consumer's letter dt. 12.03.03, informing vacancy of the premises, inspection of the premises carried out on 16.05.02, still showed misuse for a cyber café and also for Modicare. However after receipt of the consumer's letter date 10.07.02 and his depositing the visiting charges of Rs.60.00, the Meter reader on 11.07.02 inspected the site.

4.3 The Meter Reader, vide his inspection report has reported the premises to be vacant and the electricity supply not in use. On a careful consideration of the facts, and the respondent's own admission that the premises under consideration was vacant on 11.07.2002 and that the electricity supply was not in use, **levy of misuse charges is not called for, after 11.07.02.** Hence levy of misuse charges after 11.07.02 are to be deleted.

Non working Meter:

4.4 It is submitted by the Appellant that on 03-09-1996 he wrote to DESU that meter no 30365 installed at A 36 FF, Rajouri Garden has not been working for the last few days and should be repaired or replaced. However no action was taken despite reminders dated 08-01-97 and 22-07-98. The meter was finally replaced on 4<sup>th</sup> December 1998. It is submitted in his letter dated 18-11-2004, that the premises were vacant during the period August 1996 to September 1998. To substantiate this, it was stated that the premises were found locked during this period by the Meter reader. It is further submitted that the bill for the period September 1996 to January 1999 ought to have been raised in 1999 itself or at the most in 2000. Unfortunately the assessment bill for a huge amount of Rs.7,75,313.16 was raised in February 2003 when the Appellant sent a letter dated 12.02.03 requesting for removal of the meter since his premises was lying vacant since August '02 .He also requested for charging of meter rent only for this period .The fees for the same was duly deposited.

4.5 Reliance is placed on section 26(6) of the Indian Electricity Act,1910 and section 56(2) of the Electricity Act 2003 and also the Law of Limitation by the Appellant for claiming that the assessment for the period 1-08-1996 to 04-12-1998 could have been completed in January, 1999 when the meter was replaced or in June 1999. But unfortunately the assessment Bill was raised in August 2003, that is after 4 years and two months and no arrears for ~~to~~ the period 01-08-1996 to 04-12-1998 were reflected in those bills.

4.6 Section 56 (2) of the Electricity Act, 2003 reads as under:-

"Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

4.7 Section 26 (6) of the Indian Electricity Act, 1910 reads as under:-

"Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct, such Inspector shall estimate the amount of the energy supplied to the consumer or the electricity quantity contained in the supply, during such time, not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount of quantity:

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days notice of his intention so to do."

4.8 It is stated that on 3-9-1996, the Appellant wrote a letter to DESU intimating that the Meter was faulty. This letter was followed by him, by personal visits and written complaints dt. 7-1-1997 and 22-7-1998 etc. but no action was taken by DESU for replacement of the Meter. If they had replaced the Meter in 1996, then he would have been liable to pay charges for a period of six months preceding the date of replacement of Faulty Meter in first week of January 1999 as per DVB office order No. CO II P.21/2000/26 dt.10-5-2000. According to Section 26(6) *ibid* no tariff is chargeable for the period before July 1998, only MG is leviable for the period prior to July, 1998.

4.9 The contention of the Appellant has been examined, as also the Section 56 (2) of the Electricity Act 2003 and Section 26 (6) of Indian Electricity Act 1910. Section 56 (2) of the Electricity Act 2003 gives the Licensee a period of 2 years to recover its dues. Section 26 (6) of the Indian Electricity Act, 1910 permits assessment of a prior period of six months after rectification/replacement of the faulty meter. The Law of Limitation allows

recovery for a period of 3 years and not beyond that. It appears that the faulty meter was replaced on 4-12-1998, the Respondent was, therefore, entitled to make a revised assessment for a six month period when the meter was defective (1-8-1996 to 4-12-1998) within a period of two years from the date when such sum first became due. The bills were raised after four years in August 2003 when the recovery was barred by Law of Limitation. **Accordingly, the Respondent Company is not entitled to raise revised bills in March 2003 for the period 1-8-1996 to 4-12-98** in view of Section 56 (2) of the Electricity Act 2003. The recovery is also barred by Law of Limitation.

4.10 The Respondent Company was asked to submit a revised working by 3-1-2005 keeping in view the following directions:-

- (i) no levy of misuse charges after 11-7-2002 and
- (ii) no revised assessment bills for the period 1-8-96 to 4-12-98.

Load of Meter:

4.11 The Appellant has stated that the sanctioned load of meter was only 12 KW and not 24 KW as deposed by the Respondent before the CGRF. It is submitted by him that all past and future bills should be based on 12KW. The Respondent in its letter dt. 30-11-2004 to the Ombudsmen stated that the consumer had applied for enhancement of load from 12KW to 24KW under **Self Declaration Scheme** of the Electricity Department in January 1996. As the application of load enhancement was under **Self Declaration Scheme** where the consumer declared that he was already using this load of 24 KW, no action was needed for enhancement of load, except for rectification of the records.

4.12 In view of the above statement of the Respondent Company, the prayer **of the Appellant in this regard is without substance and is, therefore, dismissed.**

Levy of minimum charges:


4.13 The Appellant has stated that on 12-3-03 he had applied to the Respondent Company for disconnection of his meter as the premises was lying vacant. In view of the above, bill of Rs.480/- per month and the late payment surcharge (LPSC) levied after this period should be cancelled. The above contention of the Appellant was examined and after hearing both the parties and after scrutiny of the record it emerged that the Appellant wrote a letter dated 12-3-2003 to the Respondent stating that the premises was lying vacant since August 2002 and therefore the meter may be disconnected.

4.14 Copy of Appellant's letter dt. 12-3-2003 is also placed on record and the Respondent does not dispute these facts. In view of the above, there is no case **for minimum charges levied beyond March 2003. However, the minimum charges will be levied as are applicable to a load of 24KW.**

4.15 The Appellant ~~on 24-2-2005~~ <sup>on 03.01.2005</sup> and the Respondent attended the proceedings. The Respondent submitted a revised working of the demand due from the Appellant on the basis of directions given above in para 4.10 on 21-12-2004. **The working is annexed as Annexure 'A' of the Order. According to the revised working, the Appellant is entitled to a refund of Rs.16,961-99 (Rupees Sixteen thousand nine hundred sixty one and ninety nine paise only). The Respondent is directed to give effect to this Order within 15 days.**

5. The Order of CGRF, Pushp Vihar dt. 29-9-2004 is set aside and the matter is disposed of.

Date: 10-01-2005

  
(Asha Mehra)  
Ombudsman