

OFFICE OF THE ELECTRICITY OMBUDSMAN
(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)
B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057
(Phone No: 011- 26144979)

Appeal No. 05/2021

(Against the CGRF-TPDDL's order dated 05.11.2019 in CG No. 124/2019)

IN THE MATTER OF

SHRI RAJESH KUMAR GARG

Vs.

TATA POWER DELHI DISTRIBUTION LTD.

Present:

Appellant : Shri Rajesh Kumar Garg

Respondent: Shri Ajay Joshi, Sr. Manager (Legal) and Shri Chiranji Taneja,
Sr. Manager on behalf of the TPDDL.

Date of Hearing: 17.06.2021

Date of Order: 06.07.2021

ORDER

1. The appeal No. 05/2021 has been filed by Shri Naveen Kumar Tayal, Advocate, as an authorized representative on behalf of Shri Rajesh Kumar Garg, against the order of the Forum (CGRF-TPDDL) dated 05.11.2019 passed in CG No. 124/2019. The basic issue concerned in the Appellant's grievance is regarding the refund of security deposit deposited by him in the form of Bank Guarantee, against electricity connection, bearing CA No.60015784220, installed at Plot No. F-19, Ground Floor, Pocket F, Sector 5, DSIDC Industrial Area, Bawana, Delhi - 110039, in the name of Shri Mukesh Kumar Tayal, the Registered Consumer.

2. The brief back ground of the appeal arises from the facts that the Appellant was a tenant at the aforesaid address and the electricity connection installed at the premises is in the name of Shri Mukesh Kumar Tayal, the Registered Consumer. As per the Appellant, he was paying the bills of the said connection regularly having a sanctioned load of 80 KW since 01.07.2017. He was having two units at the same premises and the load of his electricity connection was enhanced from 80

KW to 88 KW on 30.11.2018 by the Discom (Respondent) and as per the demand-note of Rs.36,000/- + Rs.2,180/- i.e. Rs.38,180/- raised by them, the same was duly paid by him at that time. He further submitted that subsequently one of his units became sick and accordingly it was shut down in November, 2018. Thereafter load as per the MDI's recorded on the connection remained at a level of around 71 to 72 KW per month and accordingly he was paying the regular bills of the same.

Further, in the month of July, 2019, he received a bill dated 13.07.2019 whereby a demand of Rs.85,500/- on account of extra load charges of 19 KW and fixed charges, for a total MDI of 113 KW instead of 72 KW was levied upon him in the said bill. He further submitted that since his load did not increase after November, 2018, therefore, he is not liable to pay the same. Since, the Appellant did not get any relief from the Discom, therefore he approached the CGRF, wherein he sought a refund of extra load charges of Rs.36,000/- and to make the necessary correction in the bill. He also prayed for the grant to stay from disconnection, which was granted to him by the CGRF, but only after a payment of Rs.1,73,260/- is made by him. The Appellant stated that during the hearing in the CGRF, the Discom took their objections that the connection is in the name of Shri Mukesh Kumar Tayal, whereas the Appellant is not a registered consumer and secondly the Appellant is seeking the refund/recovery of the amount, already paid by him, which is not as per the regulations and finally that in compliance to stay order issued by the CGRF, the Appellant has not deposited the required amount of Rs.1,73,260/- and in view of the same his complaint is liable to be dismissed.

3. The Discom further contended that on 01.07.2019, the Appellant's load was increased from 94 KW to 113 KW on the basis of his previous consumption as per the Regulation 17 (4) of DERC Regulations, 2017, and hence additional security charges of Rs.85,500/-, being the differential security deposit were raised and are therefore payable by him. The Discom also filed the details of the MDI readings of the last year on the basis of which his load was enhanced. Accordingly, on the basis of pleadings of the parties, the CGRF passed the order dated 05.11.2019, thereby directing the Discom to consider the request of the Appellant for load reduction from October, 2019. The CGRF further directed the Discom that in case the Appellant has made the payment of the current demand, a revised bill be prepared after adjusting the payments received after waiver of LPSC. The revised bill should also include the differential security amount of Rs.85,500/-, which the Appellant shall have to pay within 15 days of the receipt of the bill. The CGRF, however, gave the liberty to the Appellant to pay the security amount through a Bank Guarantee, if he so desires.

Feeling aggrieved with the order of the CGRF upto the extent of depositing of Rs.85,500/- in the form of Bank Guarantee in favour of the Discom, the Appellant filed a review petition on 03.12.2019 before the CGRF, showing his inability to pay the amount due to the huge financial loss in his business. He also informed the CGRF that he has already vacated the premises in question and also not running any unit from the said premises. He also raised his concern that in case he deposits the bank guarantee of Rs.85,500/-, then his money will be blocked, as he will not be able to utilize the same for him which is essentially required by him since his business has been closed. He further submitted that no time limit has been specified in the order of the CGRF regarding return of Bank Guarantee by the Discom. Vide this review petition, he requested the CGRF to impart the necessary directions to the Discom to specify a time frame within which the said amount of Rs.85,500/- will be refunded to him. The Appellant submitted that after considering the review petition, the same was dismissed vide CGRF's order dated 14.01.2020.

4. In view of the above, the Appellant has preferred the instant appeal against the impugned order dated 05.01.2019 and 14.01.2020 on the grounds that the CGRF has failed to consider that on account of closing down of one unit there was a downfall in his consumption. The consumption of his unit was limited to 71-72 KW only but the Discom has demanded for an increased consumption of 113 KW instead, which was non-existent. Secondly, the CGRF has not fixed any time limit for the return of the bank guarantee submitted by him. The Appellant has finally prayed to set aside the orders of the CGRF and direct the Discom to refund the amount of Rs.85,500/- lying with them in the form of Bank Guarantee and Rs.24,825/- of PPAC or in alternate direct the Discom to give a time frame within which this amount will be refunded.

5. The Discom in its reply vide submission dated 12.03.2021 submitted that the Appellant had filed the complaint before the CGRF with respect to the bill dated 13.07.2019 received against electricity connection bearing CA No. 60015784220 wherein security amount of Rs.85,500/- was added on account of differential enhanced load of 19 KVA on account of enhancement of load from 94 KVA to 113 KVA. It is further added by the Discom that the sanctioned load against the Appellant's connection was enhanced from 94 KVA to 113 KVA on the basis of recorded MDI (Maximum Demand Index) in accordance with DERC Regulations, 2017. Accordingly, they have raised the additional Security Deposit Charges of Rs.85,500/- (19* Rs,4,500/-) on account of differential Security Deposit for 19 KVA in the said bill. The MDI recorded in the year 2018 are depicted as under:

Table - I	
Load Enhancement Details of C.A. No. 60015784220	
Reading Dates	MDI - KVA
15.07.2018	108.9
10.08.2018	119.2
13.09.2018	108.82
08.10.2018	115.3
Average MDI	113.06
Revised Sanctioned Load	113

The Discom further submitted that the CGRF vide its final order dated 05.11.2019 held that since the business of the Appellant had shut down since 02.10.2019, therefore, as a special case the request of the Appellant for load reduction from October, 2019 be considered. In addition to above, waiver of complete LPSC was also given to the Appellant. Directions were also passed by the CGRF that the revised bill shall include the differential Security Amount of Rs.85,500/-, which the Appellant shall pay within fifteen days of its receipt. However, it was also directed that the Appellant is at liberty to pay the security amount through a bank guarantee, if he so desires. Further, on 03.12.2019, the Appellant filed a review petition on the ground that he was suffering heavy financial loss due to closure of his business and his machinery was also laying under lock by his landlord, furthermore he alleged that he had already vacated the premises and apprehends that in case he deposits the bank guarantee of Rs.85,500/- as per the impugned order then his money will be blocked as he will not be able to utilize it for himself. The CGRF vide their Order dated 14.01.2020 dismissed the review petition and held that relief sought by the Appellant cannot be granted to him as it is outside the purview and further such a relief cannot be claimed based upon hypothesis of the Appellant.

6. The Discom further stated that in compliance to the CGRF's final order dated 05.11.2019, the load of the Appellant was reduced from 113 KVA to 94 KVA with effect from October, 2019. Later on in July, 2020, security amount was credited in the accounts of the Appellant on account of reduction of load and fixed charges were also revised and a credit of Rs.8,207.29 with effect from 02.10.2019 to 13.11.2019 along with credit of LPSC of Rs.5,017.33 was also given to him.

Replying to preliminary objections, the Discom submitted that the Appellant does not have any locus-standi as the electricity connection is registered in the

name of Shri Mukesh Kumar Tayal, Proprietor of M/s Mukesh Plastic Udyog, while the Appellant before the CGRF and the present appeal has been filed by Shri Rajesh Kumar Garg. The Discom had taken the objection in this regard before the CGRF at initial stage of hearing, however the CGRF proceeded with the matter. Secondly, the security amount of Rs.88,538/- was added in the bill dated 13.11.2019 but the Appellant did not make any payment against this added amount. Finally, on account of load reduction as per the direction of the CGRF, this amount was withdrawn from the accounts in July, 2020. During the period from November, 2019 till July, 2020, the Appellant cautiously merely made payment of current bills, at sometimes no payment and on two occasions part payment only. Since the Appellant did not make any payment of security amount and this amount already been withdrawn, hence, there is no cause arises for demanding the refund of security amount. The present complaint is liable to be dismissed summarily on this count only being frivolous and vexatious in nature.

In addition to above, the Discom further stated that the said electricity connection was initially energized on 06.10.2012 for a sanctioned load of 87 KW for SIP (Small Industrial Power) in the name of Shri Mukesh Kumar Tayal and in the year 2018, load was enhanced from 87 KVA to 94 KVA w.e.f. 01.07.2018 and accordingly an amount of Rs.36,000/- was added in the accounts towards the security deposit for a differential load of 8 KVA @ Rs.4,500/- per KVA. The enhancement of load has been carried out strictly as per the Regulation, 17 of DERC (Supply Code and Performance Standards) Regulations, 2017 and is thus payable by the Appellant. Thus, on the basis of maximum demand, upward revision from 87 KVA to 94 KVA was carried out for the financial year 2017-18, which was effected from 01.07.2018 and accordingly the security deposit of Rs.36,000/- was updated in the records. Similarly, on the basis of maximum demand recorded in financial year 2018-19, load from 94 KVA to 113 KVA was updated in July, 2019. However, in compliance to the CGRF order dated 05.11.2019, the load was again reduced to 94 KVA with effect from October, 2019.

In addition to above, the Appellant during the course of hearing mentioned that he had shutdown his business due to the Government Policy of ban on plastic with effect from 02.10.2019, thereupon, the CGRF extended the benefit of reduction of load from October, 2019 onwards. Whereas, the reduction of load is applicable after six months from the date of enhancement of load, that is, after December, 2019, however, the CGRF treated this as a special case and directions were passed to consider his request of load reduction from October, 2019 itself. This makes it clear that the contention/claim of the Appellant with respect to refund of security

deposit does not have any force and liable to be rejected. The Discom further denied all claims and contentions of the Appellant having no substance and merit.

7. Since the Discom later on found some discrepancies in their earlier reply as explained above, therefore, they vide their additional submission dated 28.04.2021 explained and clarified the main issue of the Appellant regarding Bank Guarantee again. The copy of the additional submission was also sent to the Appellant for his reference and record.

The Discom clarified that in their reply dated 12.03.2021, as submitted supra, an amount of Rs.85,500/- was added in the bill dated 13.07.2019 against the said electricity connection on account of enhancement of load from 94 KVA to 113 KVA with effect from 01.07.2019. It was further submitted that the load against the connection had already been reduced with effect from October, 2019, and accordingly the added security amount on account of enhanced load has already been withdrawn/credited. It was also submitted that the consumer did not make any payment towards security amount hence there is no cause for refund of the same.

The Discom further added that after filing the above referred reply, the fact with respect to deposit of Bank Guarantee on 03.02.2020 by the Appellant has come to their notice. It is pertinent to mention here that the Appellant has also not brought out this fact of deposit of Bank Guarantee also in his written pleadings, although he made a prayer to refund the Bank Guarantee. In order to bring the above facts on record and clarify the issue in hand, the Discom craves the leave to file this additional written submission which may be treated part and parcel of Reply filed earlier.

8. The Discom added that the load against the above mentioned connection was enhanced from 94 KVA to 113 KVA with effect from 01.07.2019 under suo-moto violation as per Regulation 17 (4). The security amount of Rs.85,500/- was added in the bill of July, 2019. This added security amount was disputed by the Appellant who is tenant in the premises and user of the above said electricity connection. As per provisions of law, the load reduction request can be accepted only after six months of load enhancement as per Regulation 17 (3). However, CGRF passed the directions to reduce the load from October, 2019. As per directions of the CGRF, the load reduction was given effect from 22.11.2019 and the difference credit of Fixed Charges between the period October, 2019 till November, 2019 was also given in the accounts. Option was extended to the Appellant to make the payment either through adjustment in the account or through bank guarantee. The Appellant

rendered the bank guarantee on 03.02.2020 for an amount of Rs.85,500/- renewable next year. In view of deposit of bank guarantee, they withdrew/given credit in accounts of earlier debited amount of security amount. It is pertinent to mention here that this bank guarantee is lying with them against the security deposit and deemed adjusted against the deficient security amount for sanctioned load of 94 KVA as per Regulation 20(5) of DERC (Supply Code and Performance Standards) Regulations, 2017 which provides that - "In case of load reduction, the Licensee shall refund the excess security deposit by adjusting the same in energy bill issued in next billing cycle. The excess security deposit shall be the difference of security deposit computed based on reduced load corresponding to prevailing rates of security deposit on the date of load reduction and actual security deposited by the consumer. In case the difference is negative, no additional security deposit shall be taken from the consumer."

The above shows that the refund of security deposit shall be given when the security deposit is in excess. In this case security amount of Rs.4,23,000/- should be deposited for 94 KVA load (@Rs.4,500/- for 94 KVA), whereas as on date the total security amount against this load with the Discom is Rs.2,41,500/- (Rs.1,56,000/- earlier deposit and Rs.85,500/- bank guarantee), therefore, no refund is extendable in favour of the Appellant.

9. The Discom further added that at the cost of repetition, it is submitted that the load enhancement from 94 KVA to 113 KVA was given effect from 01.07.2019 and accordingly an amount of Rs.85,500/- was added in the accounts which the Appellant was required to pay and after six months he was at liberty to reduce the load which was given effect in consideration of MDI recorded during that period. The CGRF passed directions to reduce the load, however, simultaneously it passed directions to make payment of security deposit. Thus, it is clear that the Appellant was required to make payment of security amount and same shall be refunded in accordance with Regulation 20 (5). It is relevant to mention here that the Appellant himself stepped into the shoes of the registered consumer and offered to make the payment of security amount therefore he is estopped from challenging the same at this stage. He would have let the amount adjusted in the accounts and let the registered consumer make the payment, however, instead of doing so he deposited the bank guarantee. The Appellant is trying to defend the registered consumer/purchaser of property by first standing in the position of his landlord/registered consumer and on the other hand safeguarding himself from paying the liability against the connection. Hence, the Appellant is not entitled to any relief as far as payment of security amount against the connection is concerned. In the given

facts and circumstances of the case, the Appellant can get the bank guarantee released conditionally, only if, he makes payment in the account or same will be adjusted as done earlier in the accounts in accordance with provisions of Regulation referred hereinabove.

Therefore the contentions and claims of the Appellant do not have merit and substance hence same are liable to be rejected at initial stage.


10. After hearing both the parties at length and considering the material on record, it is observed that the Appellant Shri Rajesh Kumar Garg is a tenant, where as the registered consumer is Shri Mukesh Kumar Tayal. It is also noted that the Appellant has vacated the premises on account of closure of his business but prior to that he had been paying the bills regularly against the said connection. He had also paid full additional security deposit of Rs.36,000/-, when his load was increased from 87 KVA to 94 KVA against the financial year 2017-2018, which was effected from 01.07.2018. However, he faced some difficulty on account of closure of his business in depositing the additional security deposit of Rs.85,500/- which became due to him on the basis of Maximum Demand recorded during the financial year 2018-2019, for an upward revision from 94 KVA to 113 KVA, which was effected from 01.07.2019.

In this respect, after perusing the details of MDI readings supra, it is held that the load was rightly enhanced upward from 94 KVA to 113 KVA by the Discom as per the applicable Regulation, 17 of DERC (Supply Code and Performance Standards) Regulations, 2017 and therefore the enhanced amount of security deposit of Rs.85,500/- is payable by the Registered Consumer of the said electricity connection. In view of above, the contention of the Appellant, that although on account of closure of his one unit the maximum demand had come down to 71-72 KW but still the Discom has increased the sanctioned load from 94 KVA to 113 KVA, is not in order and not sustainable, as the period of recorded MDI's on the basis of which his load was enhanced was for the year 2018, whereas he closed his business in the year 2019. It is also observed that the case of the Appellant was considered sympathetically by the CGRF, wherein, in addition to waiver of LPSC and reduction of load from October, 2019 instead of after six months of enhancement of load as per regulations, he was also allowed to deposit the enhanced amount of security deposit of Rs.85,500/- in the form of Bank Guarantee. The Appellant however accordingly deposited the bank guarantee with the Discom.

Now, the main issue of the Appellant which needs to be considered and decided is the return of bank guarantee lying with the Discom. The Appellant is praying for a time frame from the Discom within which his bank guarantee will be refunded. The Appellant argued that he is already suffering heavy financial losses due to the closure of his business and since he has already vacated the premises, therefore he apprehends that he will not get the bank guarantee back and rather it will be got adjusted in the accounts of the registered consumer i.e. Shri Mukesh Kumar Tayal only. Hence, he requested to direct the Discom to specify a time frame for release of his bank guarantee. In this respect under the circumstances, the Appellant has to coordinate with his landlord/the Registered Consumer, as it is matter between the two only and beyond the jurisdiction of this Court. However, the Discom is right in its plea that the Appellant himself stepped into the shoes of the Registered Consumer and offered to make the payment of security amount, therefore he is estopped from challenging the same at this stage. He would have let the amount be adjusted in the accounts and let the Registered Consumer make the payment, however, instead of doing so he deposited the bank guarantee himself. The Appellant is trying to defend the registered consumer/purchaser of the property by first standing in the position of his landlord/registered consumer and on the other hand safeguarding himself by requesting to return the bank guarantee deposited in lieu of enhanced security deposit.

In view of the above background and under the circumstances of the case, it is prudently decided that the Appellant can get the bank guarantee released only if he or the landlord of the said premises or the registered consumer makes the payment in the accounts of the Discom, in accordance with the provision of the Regulation. Hence, the relief being sought by the Appellant that the Discom be directed to give a time frame within which this amount will be refunded to him, cannot be granted to him in any case. In view of the facts and circumstances viz-a-viz the scrutiny of the available documents and against the above background it is held that there is no need to interfere with the verdict of the CGRF.

With the above order and directions, the case is disposed of on merit.


(S.C.Vashishta)
Electricity Ombudsman
06.07.2021