

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. 06/2022

(Against the CGRF-TPDDL's order dated 29.10.2021 in CG No. 25/2020)

IN THE MATTER OF

**M/s D D Chains Pvt. Ltd
(Through Shri Gaurav Gambhir, Director)**

Vs.

Tata Power Delhi Distribution Limited

Present:

Appellant: Shri Gaurav Gambhir and Shri Thakur Sumit, Advocate on behalf of the Appellant

Respondent: Shri Ajay Joshi, Sr. Manager (Legal), Shri Kundan Singh Rawat, on behalf of TPDDL

Date of Hearing: 24.05.2022

Date of Order: 25.05.2022

ORDER

1. The Appeal No. 06/2022 has been filed by Shri Gaurav Ghambir, Director of M/s D.D. Chains Pvt. Ltd., against the order of the Forum (CGRF-TPDDL) dated 29.10.2021 passed in CG No. 25/2020. The issue concerned in the Appellant's appeal is for refund of amount of Rs.1,66,105/- and Rs.3,05,176/- paid against the electricity connection bearing K.No. 31100135330 (CA No. 600060337190) on account of outstanding dues during the pendency of complaint before the CGRF.



2. The background of the case is that the Appellant applied for the electricity connection in the year 2018 and again on 2019, but the Respondent had denied the same on the ground that an amount of Rs.25,58,331.39 and Rs.13,94,986.00 respectively was outstanding against the electricity connection bearing CA No. 600060337190 (permanent disconnected on 15.09.2006), installed at A-34, G.T. Karnal Road, Delhi - 110033.

Initially, the Appellant approached the CGRF-TPDDL on 28.01.2020 with prayer for settlement of electricity dues and release of new electricity connection, but at a later stage the Counsel of the complainant appeared in November, 2020, and raised the issue of limitation under Section 56(2) of Electricity Act, 2003. The Respondent brought to the notice of the CGRF that the matter is pending before the Hon'ble Permanent Lok Adalat (PLA) vide Case No.: PLA-2381 of 2020 and listed for hearing on 11.03.2020. The Forum proceeded with the case after complainant filed a copy of order of the PLA dated 11.03.2020, whereby the case was dismissed due to pendency of the case before this Forum. Later, on 14.03.2020, the CGRF gave a direction to the Respondent to release the connection after depositing 50% of Rs.1,66,105/- within four days and remaining 50% in two installments subject to completion of commercial formalities by the complainant, as a measure of interim relief.

3. The complainant argued the following points before the CGRF:

(a) The electricity connection bearing K.No. 31100135330 was sanctioned in the name of M/s D D Chains Pvt. Ltd. At the same address another factory of the complainant by the name of Ms/ D D Gears Pvt. Ltd. was also located. M/s D D Gears Pvt. Ltd was shut down on 13.01.2000, due to labourers' dispute. In this regard a case was filed before the High Court of Delhi and a final order of closure of this unit was passed in the year 2015. At that time there was HT connection of 700 KW existing in the name of M/s D D Gears Pvt. Ltd., which was settled and paid off in the year 2008.

(b) Due to labour dispute in the factory, M/s D D Chain Pvt. Ltd. also closed its factory on 13.01.2000, where the said LT connection having CA No. 60006047190 of 89.52 KW existed. This connection was not in use after 13.01.2000.



- (c) During the course of the efforts to revive the unit, the complainant came to know that the said connection in name of M/s D D Chains Pvt. Ltd. was alive even though no payments were made after December, 1999. In spite of efforts made in 2003 to revive the factory, it finally was closed in the year 2005, and the matter of payment etc. went to Debt Recovery Tribunal.
- (d) The bills for the meter bearing K. No. 31100135330 in the name of M/s D D Chains Pvt. Ltd. were being done provisionally and a dispute existed since 1996. A copy of internal note of the Respondent dated 30.06.2004 on the subject "settlement of outstanding dues of K. No. 31100135330" was also placed on record by the complainant. He stated that during the years 2003 to 2005 he had approached several times for correction of bills but did not get proper response. Also, all the bills received till January, 2004 shows the meter is faulty.
- (e) In the bill for the month of January, 2004, the Respondent showed new meter No. 0302267751 with remarks 'Meter Changed' whereas, the bills raised for the period August, 2003 to December, 2003 mentioned old Meter No. viz 0890919 with remarks "Suspected Faulty". Even after change of Meter in January, 2004, reading is not shown in the bills from February to May, 2004, it is reflected only from June 2004 onwards. From June, 2004 onwards appropriate bills were received with new meter number mentioned on it. The said bill shows a reading of 92910 (on 24.12.2003) to 28235 (on 03.06.2004) alongwith LPSC.
- (f) After shut down of the unit in 2005, the Oriental Bank of Commerce (OBC) had taken possession of the assets through Debt Recovery Tribunal (DTR) orders as litigation was going on between the Management and the OBC Bank due to closure resulting in default of payment to the bank. The Firm approached 'Mega Lok Adalat' held on 21.2.2010 in the Hon'ble High Court of Delhi, to have settlement on the disputed erstwhile NDPL connection. The Respondent promised to settle the case amicably and provided a "Zero Due" bill for the Bill Month of March, 2006. Thereafter the Appellant closed the file as a 'Zero Due' bill was received by him from the Respondent.



(g) Since then the premises was under possession of OBC Bank until 2012 and thereafter possession was handed to IDBI Bank through orders of the DRT Court. The issue was finally settled in 2019. The Appellant also stated that in all these years, there was no electricity connection in the said premises

4. Since his issue had not been resolved at the Respondent office, therefore, he represented his case before the CGRF and prayed the following:

(a) That the unit was closed for more than 15 years due to labour dispute, their financial condition was very week, hence, requested not to charge LPSC amounts on such computation as this could have been calculated by the Respondent in 2004 only, the issue would have not dragged so long. Secondly, financially they were not in a position to pay any LPSC charges.

(b) That there is no electricity connection in the premises from past so many years and the Respondent is not releasing new connection due to pendency of dues. Therefore, instruct the Respondent to release the new connection in the name of M/s D.D. Gears Pvt. Ltd. as per Request no. 2022439762 already pending with the Respondent.

(c) Also request to resolve the issue for a better tomorrow.

(d) Later, the Appellant pleaded that impugned demand is barred under Section 56(2) of the Electricity Act, 2003, hence, the same is not maintainable under law.

5. In rebuttal, the Respondent stated the following brief facts before the CGRF:

a) That the electricity connection bearing K.No. 31100135330 was installed in favour of M/s D.D.Chains Pvt. Ltd. at A-34, Ground Floor, GTK Road, Delhi with sanctioned load of 90 KW for Small Industrial Power (SIP) purpose.

b) That till 05.08.2003, supply to the connection was connected through Meter No. 0890919, after that replaced with new Meter No. 0302267751.



c) That new meter no. 0302267751 was not updated in the billing system inadvertently although bills after 05.08.2003 were being raised on the basis of reading obtained from the new meter.

d) That as per 'Meter Book Sheet', it has been revealed that meter reading on 02.04.2002 was 29980 and on 27.06.2003 it was 39980.

e) That after change of the meter on 05.08.2003, there was incremental reading on the meter as follows:

<u>Date</u>	<u>Readings</u>
- 29.08.2003	19850
- 29.09.2003	49450
- 23.10.2003	69430
- 21.11.2003	78900
- 22.12.2003	92910

f) That the 'Meter Book Sheet' reveals that the bills raised after 05.08.2003 cannot be on the basis of old meter as old meter already had the reading of 39980 on 27.06.2003.

g) That based on the above mentioned facts, the Respondent submitted the following outstanding dues against the said connection:

Principal Amount	Rs. 7,76,508.00
LPSC (Upto 31.03.2010)	Rs. 6,18,457.90
LPSC (1.4.2010 to 17.3.2020)	Rs.13,93,126.00
Total	Rs.27,88,091.90

6. The Respondent further stated that the detailed break-up of outstanding dues calculated upto 26.07.2018 amounting to Rs.25,58,331.39 was intimated to the complainant during the email exchange between both of them. The arrears upto 30.06.2002 (up to billing month April & May, 2002) have already been withdrawn under Delhi Vidyut Board (DVB) "Dues Waiver Scheme". The Respondent has not received any request for permanent disconnection from the complainant, which is proof of the fact that the complainant had no intention of stopping the usage of the electricity connection.



The Respondent further submitted that the updation of new meter was not done till January, 2004, hence, old meter number was getting reflected in the bill of the connection till December, 2003. However, despite the inadvertent error in the meter number on the bill, billing as per actual recorded reading of the new meter number 0302267751 started after 05.08.2003 and in all such bills 'Meter Change' mentioned, which has also been corroborated by the incremental readings.

Further, the Respondent stated that for the period February to May, 2004, readings were not available, hence, bills were raised on provisional basis and the same had been adjusted in the bill for the month of June, 2004. After receiving an e-mail dated 20.09.2019, It had been clarified that the meter was changed on 05.08.2003 and not in December, 2003. Though the meter reading was taken from new meter but inadvertently new meter number was not changed in billing system, hence, the same was not reflecting on the bill.

7. In addition to above, the Respondent further placed on record billing details of the connection, in question, in response to the specific issued raised by the complainant. A summarized calculation is placed below:

Summarized Calculation - For the Period July, 2000 to March, 2006

S.N.	Description	Bill Amount	Payment Received
1.	Bill on the basis of reading - 1.7.2002 to 01.07.2003	25,956.86	1,00,000.00
2.	Assessment for the period 02.07.2003 to 05.08.2003 on the basis of average consumption from 05.08.2003 to 24.12.2003	1,07,277.50	2,56,000.00
3.	Bill of the basis of Reading - 05.08.2003 to 22.11.2003	3,76,899.58	
4.	Bill on the basis of Reading - 23.11.2003 till removal of meter	6,22,374.45	
5.	LPSC upto 31.03.2010	6,18,457.90	
6.	Up-to-date LPSC from 01.04.2010 to 26.07.2018	11,63,365.11	
	Total	29,14,331.40	3,56,000.00
	Payable Amount	25,58,331.40	



8. The Respondent further stated that the Appellant was unable to provide any documentary evidence in support of (a) any document which substantiate the settlement before the Mega Lok Adalat (b) the process vide which he obtained the bill dated March, 2010 for the bill month of March, 2006 as stated in Para 4(f) supra.

The Respondent also stated that though the meter remained non-functional from 2000 to 2003, the complainant himself stated that to revive the factory, work started in July, 2003, hence, there is possibility of meter being faulty and necessity of its replacement immediately in August, 2003 would have been arisen and the same was carried out. 'Meter Book' clearly indicates and supports the reading and fact of meter replacement in August, 2003.

9. Regarding 'Zero Due' bill issued consequent to 'National Lok Adalat' Settlement. The Respondent said that notices had been dispatched to all the defaulters having dues through Delhi High Court Legal Service Committee with an opportunity to settle their dues. The complainant had not paid his outstanding dues in March, 2010, hence, entire dues were parked in New Connection (NC) JAM account head with the remarks that dues to be recovered from the consumer at the time of giving new connection. In accordance with provisions of Regulations, the consumer needs to apply for finalization of account and seek 'No Dues' against the disconnected connection but the complainant did not approach for finalization of account/'No Dues' against the said premises. Further, the complainant was in regular touch with their Billing Department for billing issues and settlement which further substantiate that no settlement was done in 2010. The dues were shown outstanding when the complainant applied for new connection on two occasions. This further substantiated that the dues were continuously being shown as recoverable against the premises.

10. With regard to applicability of Section 56(2) of the Electricity Act, 2003, the Respondent stated that in the present case, the complainant approached the Respondent for release of connection and the outstanding dues against the disconnected connection on the applied premises were being shown outstanding and demand therefore of Section 56 (2) of Electricity Act, 2003 is not applicable in the present case. On the contrary, the present matter is to be dealt with in accordance with the provisions of the DERC – Supply Code and Performance Standards Regulations, under the following clauses:



A. DERC (Performance Standards - Meter & Billing) Regulations, 2002

- Regulation 24 - Reconnection

B. DERC Supply Code, 2007

- Regulation 15 (ii) - New Connection
- Regulation 27 (i) & (iii) - Termination of Agreement
- Regulation 51 - Reconnection

C. DERC Supply Code, 2017

- Regulation 10(4) (i) & (ii) - Sub-Divided Property
- Regulation 10 (5) (i) to (v) - Reconstruction of Existing Property
- Regulation 17 (iii) - Existing Connection
- Regulation 19 - Termination of Agreement

11. The CGRF came to conclusion that the dispute is mainly on the bills for the period 02.07.2003 to 22.11.2003 (the bill for the period 22.11.2003 to 24.12.2003 mentioned the new Meter No. with bill basis as 'Normal' for consumption of 14010 units and as such cannot be disputed). The Respondent has failed to place on record the meter replacement protocol and has issued bills with old meter number with remarks 'Suspected Faulty/Provisional' for the period 02.07.2003 to 22.11.2003, an assessment bill be raised by the Respondent for this period, based on average consumption recorded during the period 23.11.2003 to 03.06.2004. Based on this revised bill, the Respondent to also issue a Final Bill for March, 2006, after adjustment of payments received earlier, the security deposit along with interest and an amount of Rs.1,66,105/- subsequently paid by the complainant based on the CGRF's direction for getting the connection pending settlement of the case.

The Forum also states that none of the parties sincerely tried to resolve this dispute and continued to find faults with each other, due to which the complainant continued to enjoy uninterrupted power by making ad-hoc payments. On the other hand, the Respondent did not take any effective steps in accordance with the DERC (Supply Code & Performance Standards) Regulations, in vogue.



The Forum further opined that the plea of complainant disputing the date of replacement of meter and the bills raised from July, 2003 to 24.11.2003 can be accepted on benefit of doubt due to the reason explained in earlier paras and in the interest of equality & justice to both parties. The Forum do not find any cogent reason to accept the genuineness of 'Zero Dues' bill (March, 2010) and found no merit in the claim of the complainant to this effect. Further, the Forum has taken cognizance of the fact that the Respondent failed to initiate any appropriate step to recover the unpaid dues and remained negligent and waited for indefinite period for new occupant to apply for new connection by parking the dues or NC(JAM) and recover dues along with LPSC, and that the complainant also suffered a huge financial loss on account of long pending industrial dispute, therefore, took a lenient view and order complete waiver of LPSC accrued on the disputed dues and directed the Respondent to prepare a final bill for the period July, 2002 up to date of permanent disconnection after adjustment of payments received so far and security deposit along with interest accrued thereon as well as amount of Rs.1,66,105/- subsequently paid by the complainant in pursuance to interim directions of Forum for release of applied electricity connection.

The Respondent is directed to prepare a detailed final bill on the above lines within 15 working days of issue of order and the complainant be allowed further 15 working days for its payment. In case the complainant fails to make payment against the final bill so prepared within the stipulated time, the relief extended to the consumer by way of waiver of 100% LPSC be treated as withdrawn, the Respondent shall be at liberty to take appropriate action as provided for in the DERC Supply Code and Performance Standards Regulations, 2017.

12. Being aggrieved with the order of the CGRF-TPDDL, the Appellant filed this appeal on the following grounds:

- (a) That in view of Section 56(2) of the Electricity Act, 2003 the alleged arrear of unpaid electricity charges has become time barred.
- (b) That the electricity connection, in question, was disconnected in the year 2006 and last electricity bill was issued prior thereto. Thereafter the Respondent neither demanded/raised any bill nor did the Respondent take any steps to recover the same. Thus, the alleged arrear of unpaid electricity charges, if any, has become time-barred.



- (c) That complaint filed by the Appellant cannot be treated as the recovery proceedings initiated by the Respondent for recovery of alleged arrears of unpaid electricity charges.
- (d) That the issue of alleged arrear of electricity charges was resolved way back in March 2010 by issuing 'Zero Due' electricity bill dated 31.03.2010. Moreover, the said 'Zero Due' bill also confirms that the alleged arrears of electricity charges were not continuously shown as recoverable from the Appellant.
- (e) That the Respondent has failed to explain as to why they had not taken any steps in accordance with the law to recover the alleged arrears of unpaid electricity from the Appellant. Since the 'Zero Due' bill was issued by the Respondent, hence, there was no cause of action by them to pursue the issue of alleged arrears of unpaid electricity charges.
- (f) That the Respondent has issued the Final Bill dated 22.12.2021 in violation of the Direction of the Hon'ble CGRF contained in the impugned final order dated 29.10.2021.
- (g) That after pressing hard the Respondent amended the Final Bill on 03.02.2022 but still has not provided reversals of Security Deposit and interest thereon.

Hence, the Appellant prayed to:

- (i) Allow the present appeal and quash/set-aside the impugned final order dated 29.10.2021 passed by the CGRF-TPDDL.
- (ii) Allow refunds of amounts paid to the Respondent during the pendency of case before the CGRF, i.e. Rs.1,66,105/- and amounts paid on 21.02.2022 of Rs.3,05,176/- towards final bill.
- (iii) Pass any other order(s) which this Court may deem fit and proper in the facts and circumstances of the case in favour of the Appellant and against the Respondent.



13. The appeal was admitted and subsequently date of hearing was fixed for 24.05.2022. Meantime, the Respondent also submitted their written statement in response to the appeal filed by the Appellant. On 24.05.2022, both the parties were present and were represented by their respective Counsel and Legal Advisor to place their arguments before the Ombudsman. During the proceedings, the counsel of the Appellant put forth the following contentions:

(a) That recovery of amount had become time barred in view of Section 56(2) of Electricity Act, 2003 and the payments made by the Appellant during the proceedings of the hearing before the CGRF be refunded to him.

(b) The proceedings before the CGRF could not be considered as recovery proceeding by the Respondent for the unpaid electricity consumption charges.

(c) The Respondent had issued a 'zero due' electricity bill dated 31.03.2010 for the period shown as March, 2006.

(d) There was no intimation by the Respondent with regard to recoverable dues to be paid by the Appellant.

(e) In the final bill, there is no mention of reversal of security deposit and the interest thereon.

(f) There was a delay for issuing the final bill by the Respondent despite clear directions of the CGRF.

14. Opportunities were also provided to the Respondent to respond to the above contentions of the Appellant, who countered the above contentions by conveying:

(i) That the recoverable amount was parked in their NC(JAM) account but "payment overdue (59 months)" also reflected in the bill, hence, it does not attract the provision of Section 56 (2) of the Electricity Act, 2003.

(ii) That 'zero due' electricity bill is not issued by them and have no record of such bill.



(iii) That they have rightfully raised the issue of recoverable dues at the time of new connection at the same premises.

(iv) That the final bill prepared by them was contested by the Appellant and accordingly correct bill was given to the Appellant.

15. During the hearing on 24.05.2022, relevant questions were asked by the Advisor (Law) and the Ombudsman to elicit more details about the issue, in question. I had gone through the appeal, written statement and the CGRF's order in minute details. I am of the considered opinion that issues raised by the Appellant during the hearing before CGRF have been appropriately addressed by CGRF and I have no intention to interfere with the order of the CGRF. The order specifically dealt with the issues raised by the Appellant in great details and provided all the answers to the points raised by the Appellant with relevant case laws also. It is a recorded fact that the Appellant used electricity in their premises for production of goods since 1996 till 2006, when it got disconnected. It is also a recorded fact that there was long standing dispute which was not addressed by the Respondent at the right time. It is further noted that the disconnection was due to non-payment of electricity consumption charges. Certainly, it is for the Respondent to recover the dues but it is also incumbent on the part of the Appellant to pay the dues in time or after disconnection to get 'no dues' for their premises where the connection was installed. If there was a limitation clause for the Respondent there is certainly same clause applicable for the Appellant also. As electricity is national resource, it is also the responsibility of the Appellant/consumer to not only conserve this national resource but also pay their dues in time rather than creating dispute and subsequently approach the Grievance Redressal Forum. The CGRF was right to waive-off LPSC completely which was huge amount due to the Appellant. Apart from the above relief given by the CGRF, I also intend to provide further relief in the form of reversal of security deposit and also giving credit to the Appellant for the interest on security deposit for all the years, if not done earlier. This exercise may be undertaken by the Respondent positively within 10 days from the date of receipt of this order and credit the amount to the account of Appellant.

16. On the basis of the representation, contentions, documents on records, I have some important observations to make:

(a) The system and process in place of the Respondent require lot of improvement. It is seen from the records available that the Respondent is



found casual and negligent as most of the bills sent to the Appellant were provisional, adjustment etc. and not based on actual readings.

(b) There is no record of replacement of meter and even after replacement of meter the bill was showing the old meter number with remarks "faulty meter".

(c) The system of placing the recoverable amount in NC (JAM) account is not considered logical. The Respondent is inviting disputes because there would be an exorbitant amount as LPSC once the Appellant or anybody applied for a new electricity connection at the same premises after a lapse of time. In the present case the Appellant applied after 12 years.

(d) There is no notice of disconnection under Section 56 (1) of the Electricity Act, 2003 and no subsequent efforts by the Respondent to recover the dues. The provision of issuing final bill after six months of disconnection was also not adhered to.

(e) The episode of 'zero due' and subsequent denial by the Respondent also shows lot of in-coordination in various sections/departments of the Respondent.

Had the above lacuna/lapses were not in their system and process, the dispute would not have been arisen. I am certain that because of above observations there would be plenty of disputes which would not come to this stage. The Respondent is required to take a serious look at the above observations through their senior most functionaries and take corrective action immediately. I would urge that the above exercise be undertaken at the earliest (within 3 months of the issue of this order) and result of the exercise be shared with this office.

The appeal is disposed off accordingly.


(P.K.Bhardwaj)
Electricity Ombudsman
25.05.2022