

Office of Electricity Ombudsman

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)

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Appeal No. F. ELECT/Ombudsman/2006/106

Appeal against Order dated 17.05.2006 passed by CGRF – BYPL on Complaint No. CG-85/03/2006 (K.No. 1260 V670 0239)

In the matter of:

Shri Subhash Chand

- Appellant

Versus

M/s BSES - Yamuna Power Ltd.

- Respondent

Present:-

Appellant

Shri Surinder Singh Advocate for the appellant

Respondent

Shri Sanjay Rahul, Business Manager
Shri Deepak Agarwal, Commercial Officer
Shri Navin Kumar, Legal Officer all on behalf of BYPL

Date of Hearing: 01.09.2006, 11.09.2006, 13.09.2006

Date of Order : 14.09.2006

ORDER NO. OMBUDSMAN/2006/106

This appeal is filed against the order dated 17.5.2006 passed by CGRF in the case of Shri Subhash Chand in respect of K. No. 1260 V670 0239. The Electricity connection was given to the appellant for domestic use but since 1998 misuse charges are levied by the licensee. The Appellant filed a complaint before the CGRF. The CGRF after hearing both parties did not give any relief to the Appellant. Hence this appeal before Ombudsman.

The prayer before the Ombudsman is to remove misuse charges, to revise bills and award compensation. The case was fixed for hearing on 1.9.2006 after seeking clarifications from both the parties to determine whether the case pertains to 'misuse'.

(17)

After scrutinizing the contents of the appeal, the information submitted by both the parties in response to the queries raised and the discussion that took place during the hearing, the facts as emerged are as under :-

The appellant states that misuse charges have been levied since 1998 without issue of show cause notice to him. Records show that in fact misuse charges have been levied since November 1998. Copy of February 1999 bill shows levy of misuse charges. This bill also shows that there are arrears for more than 36 months. Despite the levy of misuse charges since November 1998 the Appellant admits that the first protest raised by him against such levy (of misuse charges) was filed by him on 30.5.2003 i.e. nearly 5 years after the first levy of misuse charges. Statement of account indicates that Appellant made last payment in March 2004. The above facts show the conduct of the Appellant which is important for considering his prayer.

According to the Respondent Company misuse charges were levied after following due process of law and evidence is produced to show that misuse still continues in the appellant's premises.

Photographs taken on 30.8.2006 of the Appellant's premises show a beauty parlour is being run in these premises. The site inspection report dated 16.4.2006 also shows commercial activity (beauty parlour) at the said premises of the Appellant. The site inspection report is signed by the consumer though the Appellant states that the site inspection report is a forged document and does not bear the signatures of the Appellant.

The licensee company argued that in view of the evidence produced by it viz. photographs of the Appellant's premises showing commercial activity and the site inspection report evidencing the same i.e. commercial use, this is a case of 'misuse' falling under section 126 of the Electricity Act, 2003 and, therefore, the Ombudsman has no jurisdiction over this case. The respondent company relies on the judgement of the Supreme Court in the case of Harshad Chiman Lal Modi versus DLF Universal Ltd. and another wherein it was held that "where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity".

Sub-section (1) of Section 126 of the Electricity Act, 2003 states that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in **unauthorized use** (highlighted at this end) of electricity, he shall provisionally assess to the best of his judgment, the electricity charges payable by such person or by any other person benefited by such use.

(17)

Clause (b) of Explanation to Section 126 lays down as under :-

- (b) "unauthorized use of electricity" means the usage of electricity –
- (i) by any artificial means; or
 - (ii) by a means not authorised by the concerned person or authority or licensee; or
 - (iii) through a tampered meter; or
 - (iv) for the purpose other than for which the usage of electricity was authorised.

The above explanation would show that unauthorized use of electricity means the electricity used by the consumer is for purposes other than that for which it has been authorised by the licensee company.

In the case under consideration, the licensee company gave electricity connection to the appellant for domestic purposes which is admitted (by the appellant). Evidence has been produced by the licensee company to show that the appellant is putting it to commercial use. I am of the firm opinion that this is a case of misuse of electricity. Therefore, it falls within the purview of section 126 of the Electricity Act, 2003 which is outside the jurisdiction of the Ombudsman.

Clause 8 of the Delhi Electricity Regulatory Commission Notification dated 11.3.2004 lays down as under :-

"the Forum shall take up any kind of grievance concerning with electricity supply to the consumers except the grievances arising under Sections 126, 127, 135, 139, 143, 152 and 161 of the Act".

Section 126 of the Electricity Act, 2003 being outside the jurisdiction of the Ombudsman, this case cannot be taken up for adjudication.

Relying on the Supreme Court decision mentioned above, the case of the Appellant is dismissed.


(Asha Mehira)
Ombudsman