

## Office of Electricity Ombudsman

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

**B-53, Pashimi Marg, Vasant Vihar, New Delhi- 110057**

(Phone No. 32506011, Fax No. 26141205)

**Appeal No. F.ELECT/Ombudsman/2007/191**

Appeal against Order dated 05.07.2007 passed by CGRF – BRPL in Case No.CG/80-07/F2/767

In the matter of:

Shri Dev Arora

- **Appellant**

Versus

M/s BSES Rajdhani Power Ltd.

- **Respondent**

Present :

**Appellant** : Shri Dev Arora attended in person alongwith his advocate  
Shri S.C. Nigam

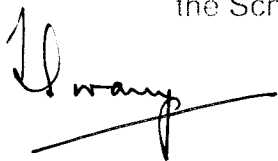
**Respondent** : Shri Y.M. Saxena, AGM  
Shri Ashok Ahuja, DFO  
Shri B.N. Jha, Business Manager.  
Shri Akash Supakar and  
Ms. Neetu Bhatia

**Date of Hearing:** 19.10.2007, 25.10.2007, Documents submitted on 01.11.2007

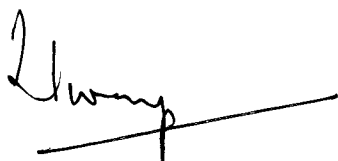
**Date of Order** : 19.11.2007

### ORDER NO. OMBUDSMAN/2007/191

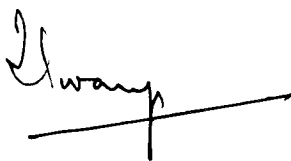
1. The brief facts of the case are that the Appellant had a connection K.No. 2660 W0570020 (Old K.No. 9PM0011357347) with a sanctioned load of 14.92 KW (20 HP for industrial use) for running a small scale industry in premises Kh.No 189 Kakraula, Najafgarh Road, New Delhi from 1993 onwards. The DESU announced a scheme in December 1995 for installation of energy meter commensurate with the connected load in Lal Dora, adjoining areas, urbanized villages and other areas. Under this Scheme for the interested consumers who could voluntarily declare their commercial or industrial connected load, DESU was to provide the service line and meters in consonance with the declared connected load, on completion of required formalities under the Scheme. As per the Scheme, valid for a limited period, the formal sanction of the declared load and execution of an agreement were dispensed with in the case of consumers who voluntarily wanted to avail of the benefits under the Scheme.



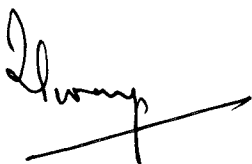
- 1.1 The Appellant, in pursuance of the said Scheme, declared his connected load to be 90 KW (120HP) and also deposited a sum of Rs.97,612/- in two installments, towards development charges and cost of service line and meter etc. without sanctioning of the enhanced load and execution of the statutory agreement as per schedule (IV) (1) (a) of the Electricity Act, 1910. The Appellant has since then been paying the bills issued, on the basis of the sanctioned load of 14.92 KW, as per the consumption recorded by the meter.
- 1.2 The Respondent replaced the service line and meter almost after eight years in July 2002 and subsequently issued a bill for Rs.12,17,041.63 for the month of January 2003 on the basis of the declared load of 90 KW, which contained arrears on account of minimum charges from August 1996 onwards.
- 1.3 The Respondent disconnected the electricity supply on 07.03.2003 and the Appellant filed Civil Writ Petition no. 173/2003. The Hon'ble Delhi High Court on 13.03.2003 directed restoration of supply on deposit of Rs.3 lacs with the Respondent, which was to be refunded with 12% interest on the petitioner being successful. The Hon'ble High Court on 20.02.2007, while disposing of the Writ Petition, directed the Appellant to approach the CGRF for the redressal of his grievances.
- 1.4 The Appellant filed his complaint before the CGRF on 27.02.2007, challenging the legality of the Scheme of Voluntary Connected Load Declaration (Scheme) as ultra vires the Electricity Act 1910, and the rules and regulations framed there-under. He contended that the Scheme being void could not be implemented.
- 1.5 The CGRF vide its majority order of 2:1 dated 05.07.2007 disallowed the Appellant's contentions and dismissed the complaint. The Legal Member in his order, however, upheld the contention of the complainant and granted relief in toto, except the deposit of Rs.97,612/-.
- 2 The Appellant has filed this appeal against the order of the CGRF dated 05.07.2007 in case no. CG/80-07/F2/767 with the prayer that the majority order be set aside and the demand of Rs.12,17,041.63/- made by the Respondent vide bill dated 20.01.2003 be quashed. He has also prayed that the amount of Rs.97,612/- deposited by him in 1996 be refunded alongwith 12% interest till repayment, and the amount of Rs.3 lacs deposited as per the direction of the Hon'ble High Court of Delhi dated 13.02.2003 in Civil Writ no. 1793/2003 be refunded to him along with 12 % interest till the date of refund.
3. After scrutiny of the appeal, the records of the CGRF and the reply/comments submitted by the parties the case was fixed for hearing on 19.10.2007. Shri Dev Arora Appellant was present in person alongwith his advocate Shri S.C. Nigam. The Respondent was represented by Shri Y.M. Saxena, (AGM), Shri Ashok Ahuja (DFO), Shri B.N. Jha, (Business Manager), Shri Akash Suparkar and Ms. Neetu Bhatia.



- 3.1 During the course of hearing the Appellant's advocate Shri Nigam stated that the Scheme is in direct conflict with the provisions of Section 22, Clause 6 of the schedule of the Electricity Act 1910, Electricity Supply Condition no. 8 framed under Section 21 (2) of the Indian Electricity Act 1910, Rule 27 of the Electricity Rules 1958, and Clause (C) of DECO framed under Section 22(B) of the Act. He contended that any amendment in law can be issued only by the State Government and not by orders of its officer. He further stated that neither the required load of 90 KW was sanctioned nor any agreement was signed between the parties. As such, the Scheme had no genesis in law and on the face of it was illegal and unenforceable.
- 3.2 The Respondent, on the other hand, stated that the Scheme was as per law in force at that time. The required amendment of Clause 4 (D) of the Delhi Electricity Control Order 1959 was made by the Lt. Governor of the National Capital Territory of Delhi and the Notification dated 06.10.1995 was issued by the Joint Secretary (UD). Respondent further clarified that the Scheme did not require any sanction of the declared load and execution of agreement with the parties. He also submitted that the Scheme was given wide publicity through press advertisement. Those consumers who voluntarily wanted to declare that they were using more than the sanctioned load and wanted their Service Line and meters changed, availed of the Scheme. The Appellant had also applied under the Scheme by declaring a load of 90 KW and depositing the required amount towards development cost, consumption deposit, service line charges etc. Appellant also completed other formalities under the Scheme, including a fresh Test Report from an authorized wiring contractor, regarding the declared connected load. He was, therefore, bound by the terms and conditions of the Scheme.
- 3.3 The Appellant stated that he had declared the 90 KW load in anticipation that after change of the service line and meter, he would be in a position to expand his business and use the 90 KW load. However, he could not consume the declared load as the service line and meter were not changed. He pointed out that despite his completing the commercial formalities, the Respondent failed to provide the service line and meter as per the declared load till July 2002. Moreover, the Respondent also failed to raise the bills based on the declared 90 KW load from 1996 to 2002.
- 3.4 Shri Y.M. Saxena, AGM, on behalf of the Respondent informed that the service line and meter required for the 90 KW load were provided in July 2002 and the bills based on a 90 KW load for the entire period 1996 to July 2002 were raised in January 2003.
- 3.5 The Respondent, when asked, whether the installed infrastructure for 14.92 KW load could bear the load of 90 KW, admitted that the service line and meter provided for the 14.92 KW load could not technically bear the declared load of 90 KW, but could bear the load of upto 47 KW as is seen from the consumption pattern of the Appellant.



- 3.6 The Respondent submitted the Appellant's consumption pattern from 1996 till June 2002, which clearly indicated that he had used a load in excess of 14.92 KW but far less than 90 KW. He clarified that for industrial use, against a load of 1 KW, the monthly consumption is estimated to be 150 units. The Appellant's consumption pattern from 1996 to June 2002 showed that he had consumed 3000 to 5000 units per month on several occasions and has consumed 7071 units in February 2001 against the estimated consumption of 2250 units for use of 14.92 KW load.
- 3.7 After hearing both the parties, it emerges that though consumer had declared voluntarily his connected load to be 90 KW but he could not avail of the benefit of the enhanced load as the Service Line and meter were not replaced promptly. However even with the existing sanctioned load he has consumed as high as 7071 units (47 KW) in February 2001, by overdrawing the power. It was, therefore, directed that the Respondent will prepare a statement giving the revised amount payable based on a 47 KW load i.e. the highest consumption between December 1995 to July 2002 (7071 units) because the Appellant could not have technically drawn a load of 90 KW with old small size service line and meters but has drawn upto 47 KW. The Respondent was accordingly directed to submit the revised statement of account on next the date of hearing i.e. 25.10.2007.
- 3.8 The Respondent submitted the revised statement of account on 25.10.2007. The Appellant however, reiterated his earlier arguments. He also sought permission for submitting copies of decided cases to substantiate his points. He was allowed and he submitted five judgments on 29.10.2007.
4. During arguments the Appellant stated that the Scheme of Voluntary Connected Load Declaration of DESU was illegal on the ground that the declared load was never sanctioned nor any agreement was executed between him and the Respondent. In support the Appellant has submitted copies of the following cases in support of his contention:
- (i) (1990) 1 Supreme Court Cases 731
  - (ii) AIR 2001 Supreme Court 238
  - (iii) AIR 2004 Supreme Court 3285
  - (iv) AIR 1975 Supreme Court 915
  - (v) 136 (2007) Delhi Law Times 613
5. Perusal of the above cases indicates that these are relevant to the case of application and sanction of electrical load / connection in normal course as per the prescribed rules and regulations. However, in the present case the Appellant had himself declared his connected load under a special Scheme announced by DESU in 1996 after due amendment was made in DECC 1959 with the approval of Lt. Governor of Delhi, the competent authority. Under the Scheme of Voluntary Connected Load Declaration, sanction of

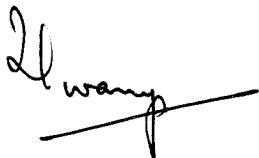


load and signing of agreement was not required. This Scheme was available for a limited period only to those consumers who were using a load in excess of their sanctioned load so that their service lines and meter could be changed according to the declared load. The above cited cases, therefore, are not relevant in the present case covered under the Special Scheme of 1995. The following observation has, however, been taken into consideration:

"As a matter of general principle, any stipulation for payment of minimum guarantee charges is unexceptional, in a contract of this nature wherein, the Board which undertakes generation, transmission and supply of electrical energy has to, in order to fulfill its obligation lay down lines and install the required equipment and gadgets and constantly keep them in a state of good repair and condition to render it possible for the consumer to draw the supply required at any and all times". **(Para 19 in M/s Rayond Ltd. Vs. M.P. Electricity Board).**

6. The Appellant has contended that he could not, use the load above the sanctioned load of 14.92 KW as the service line and meter was not changed to permit him to use the 90 KW load declared in 1996. The consumption record of Appellant's connection for the period 1996 to June 2002 however shows that he has been using a load in excess of the sanctioned load of 14.92 KW. The consumption possible for a sanction load of 14.92 KW (only 15KW) load comes to 2250 units per month, @150 units/KW/month as per the DERC prescribed formula for assessment of consumption on load basis. The formula is based on an assumption of 25 working days in a month, 10 hrs./day and 60% load factor. Based on this formula the consumption for 1 KW load comes to 150 units/month (1 KW x 25 days x 10 hrs. x 0.6 load factor = 150). The consumption record of the Appellant's connection clearly shows that the Appellant had consumed 3000 to 5000 units per month on a number of occasions between 1996 to 2002 and had the highest consumption of 7071 units in the month of February 2001. This consumption corresponds to a use of 47 KW load.
7. The main contention of the Appellant is that the Scheme is null and void ab-initio and, therefore, it could not be implemented by the Respondent. Moreover, there was no agreement between the parties on the terms and conditions of the Scheme. Though this is not the appropriate forum to challenge the validity of the Scheme, yet it is obvious that the Appellant had accepted and complied with the terms and conditions of the Scheme. It is a matter of record that the Appellant in pursuance of the said Scheme, declared a connected load of 90 KW (120HP) and also deposited a sum of Rs.97,612/- in two installments. The Appellant had since then been regularly paying the bills issued on the sanctioned load of 14.92 KW, as per the consumption recorded by the meter. As such, there is no merit in the contention of the Appellant that the Scheme is void and could not be implemented. The Scheme accepted by him did not require signing of any agreement, and, therefore the contention of there being no agreement between the parties is not valid.

- 7.1 The Respondent has failed to take timely action in replacing the Service Line and Meter. As such, demanding and enforcing unwarranted amount of

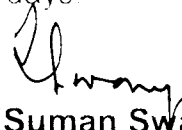


minimum guarantee charges for 90 KW load would be unfair on the part of the Respondent because the higher load of 90 KW, over and above the sanctioned load of 14.92 KW, could not be technically drawn by the Appellant.

8. In conclusion it is seen that the Appellant had wrongly declared in 1996 that he was using a 90 KW connected load. In his petition he has clearly stated that he has paid all the bills based on actual consumption on 14.92 KW sanctioned load basis, without raising any dispute. The dispute arose when the declared load of 90KW was taken as the basis by the Respondent for billing purpose (instead of 14.92 KW sanctioned load) as he was liable to pay minimum charges for the declared connected load of 90KW @ Rs.200/KW, or the actual consumption bill, whichever is higher. Under the Scheme the 90KW load minimum charge bill exceeded the actual consumption bill, therefore now the Appellant has disputed this bill.

8.1 The consumption record reveals that the Appellant has not confined his load within the sanctioned limit of 14.92 KW and has used the connected load of upto 47KW. Therefore, it will be just and fair that the Appellant pays the minimum charges bill based on a 47KW load, which he has actually used, instead of the 90KW load, which he could not use in the absence of higher capacity service line and meter.

8.2 It is therefore directed that Respondent should raise a revised bill assuming a connected load of 47 KW instead of 90 KW, for the period December 1995 to June 2002, which should be paid by the Appellant after adjustment of amounts already paid, including Rs.3 lakh deposited in pursuance of the directions of the Hon'ble High Court. The amount of Rs.97,612/- deposited by the Appellant in 1996 be also reduced assuming that the declared load Under the Scheme is 47 KW and not 90 KW, and the excess amount adjusted against payments due. This order should be implemented within a period of 21 days

  
(Suman Swarup)  
Ombudsman

19.11.07