

Office of Electricity Ombudsman

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

B-53, Paschimi Marg, Vasant Vihar, New Delhi – 110 057

(Phone No.: 32506011, Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2008/248

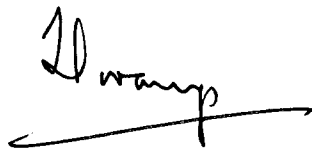
Appeal against Order dated 02.11.2007 passed by CGRF-BRPL in case No. CG/231/2007.

In the matter of:M/s SPA Yoga Pvt. Ltd. - Appellant
Mr. K.M. Parashar, Director**Versus**

M/s BSES Rajdhani Power Ltd. - Respondent

Present:-**Appellant** Shri K.M. Parashar, Director, M/s SPA Yoga Pvt. Ltd.,
Shri Manoj Randhawa, Authorised Representative,
M/s SPA Yoga Pvt. Ltd. alongwith
Mrs. Radhika Chandrashekhar, Advocate**Respondent** Col. R.S. Tondon, OSD (Enforcement),
Shri Sitaram, Business Manager (Enforcement),
Shri R.R. Panda, Business Manager (KCC)
Shri Samabh Bardopadhaya, Assistant Manager (KCC),
Shri Praveen Sen, Assistant Manager (KCC) all
attended on behalf of BRPL**Dates of Hearing :** 02.05.2008, 19.05.2008, 10.06.2008,**Date of Order :** 18/06/2008**ORDER NO. OMBUDSMAN/2008/248**

11. The Appellant company, M/s Spa Yoga Pvt. Ltd., filed a writ petition registered as WP(C) no. 9571/2007 before the Hon'ble Delhi High Court, feeling aggrieved by the order dated 02.11.2007

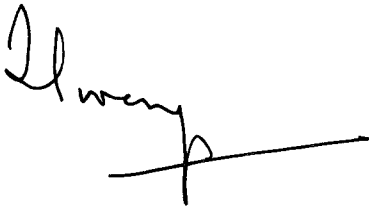


passed by CGRF-BRPL in the case no. CG/231/2007. The writ petition was disposed off by the Hon'ble Delhi High Court on 19.12.2007 with the directions to file an appeal under section 42 (7) of the Electricity Act 2003.

2. In pursuance of the directions of the Hon'ble High Court, the Appellant company has filed this appeal through Sh. K. M. Parashar, Director of the company and authorized to represent the company. The Appellant has challenged the legality and validity of the revised assessment bill no. AGENR300620060005 dated 26.11.2007 for Rs.3,71,574/- issued after CGRF's order, on the plea that the said bill is void ab-initio and is liable to be set aside.
3. The background of the case is as under:
 - i) The Appellant is a consumer of the electricity connection bearing K. No. 214010001085 installed in the premises no. B-5/15 Safdarjung Enclave, New Delhi. The Appellant is carrying on a business in the name and style of "Asian Roots-Luxury Day SPA". The Appellant has made regular payments of the electricity bills, and has never defaulted.
 - ii) The Respondents initially demanded an amount of Rs.4,28,689/- vide supplementary bill no. AGENR300620060005 with due date of payment as 10.07.2006. The Appellant filed a complaint before the CGRF and challenged this bill and orders were passed by the CGRF on 02.11.2007.



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- iii) In pursuance of the CGRF orders dated 02.11.2007 the Respondent revised the earlier demand of Rs.4,28,689/- to Rs.3,21,574/-. The Appellant has stated that this revised demand too is also totally unjustified and unreasonable, as the Respondent is imposing a penalty / charges without any mistake on the part of the Appellant and therefore, the revised demand also is liable to be quashed.
 - iv) The Appellant has also stated that the Respondent company carried out an inspection on 27.04.2006 and during the course of inspection the meter was found intact and OK. It is further stated that the inspecting team found that the meter seals were intact but still they have drawn a presumption that the meter reading is not being correctly recorded on the B-phase. The inspecting team also recorded that the CT Terminal point on B-phase was found loose and therefore the meter was not recording on that particular phase and the inspecting team had drawn a conclusion that the meter was slow by 34.65%.
 - v) Based on the above inspection report, the Respondent company issued a show cause notice to the Appellant. The matter was taken up by the assessing officer of the Respondent company who passed an order dated 09.06.2006 and held that the assessment bill be raised for the period meter remained defective and therefore the Appellant should make additional payment for the period when the meter remained defective and was slow. The Appellant's contention is that the meter was



never defective and was working properly and even the previous bills clearly show that the meter reading was being recorded for every month and only then the bills were issued. The Appellant has submitted that the observations of the officers in the order dated 09.06.2006 that the meter remained defective, is contrary to the records. The Appellant's plea is that the Respondent is unlawfully, illegally enforcing the payment of a provisional / supplementary bill for an amount of Rs.3,21,574/-.

- vi) During the hearing before the CGRF, the Respondent stated that the meter was initially installed on 03.06.2004. It was only on 27.04.2006 when the inspection was carried out that the meter was found not recording the energy consumption on B-phase, as the screw pertaining to the B-phase terminal was found loose and the defect was rectified by tightening the screw. However, this defect developed again and was noticed during another inspection on 10.10.2007.
- vii) The Respondent was directed by the CGRF to furnish a copy of the CMRI data so that the exact date when the meter developed the fault of non-recording of consumption of the B-phase after 27.04.2006, could be known. The Respondent informed that the B-phase stopped recording energy w.e.f. 26.07.2006 indicating that the fault developed again from this date. The CGRF in its order directed that a period of six months prior to 27.04.2006 i.e. 27.10.2005 to 27.04.2006 be treated as the defective meter period. Similarly, another period of six months prior to

10.10.2007 be considered as the defective meter period i.e. from 10.04.2007 to 10.10.2007.

- viii) The CGRF has ordered that assessment for these two meter defective periods be done on the basis of the average consumption recorded by the new meter installed on 10.10.2007, for a period of 12 months, as no reliable consumption period is available for the period prior to 27.04.2006. The CGRF further directed that for the time being, assessment of the defective periods be done provisionally on the basis of consumption recorded between 27.04.2006 to 26.07.2006 i.e. w.e.f. the date the fault was rectified, to the date the fault recurred.
- ix) Based on the above directions of the CGRF, the Appellant revised the bill amount from Rs.4,28,689/- to Rs.3,21,574/- with due date 26.11.2007.

Not satisfied with the above orders of CGRF, the Appellant has filed this appeal.

4. After scrutiny of the contents of the appeal, the CGRF's order and the replies submitted by both the parties, the case was fixed for hearing on 02.05.2008.

On 02.05.2008, the Appellant was present through Mrs. Radhika Chandrashekhar, Advocate and Sh. Manoj Randhawa. The Respondent was present through Col. R. S. Tondon, OSD

(Enforcement), Sh. R. R. Panda, Business Manager (KCC), Sh. Sitaram, Business Manager (Enforcement).

During the hearing, the Appellant reiterated the averments already submitted in the appeal. The Respondent stated that during the two inspections conducted on 27.04.2006 and 10.10.2007 the meter was found not to be recording the consumption on the B-phase terminal. The meter had recorded less consumption for a long period but in pursuance of the CGRF orders, the assessment has been done only for the two periods of six months each when the meter is taken to be defective. The Appellant was directed to produce details of occupation of the premises, a copy of the rent deed and details of other connections installed in the premises. The Respondent was asked to produce the Statement of Account from June 2003 onwards. Both the parties were asked to file the documents by 12.05.2008 and the case was fixed on 19.05.2008 for hearing.

5. On 19.05.2008, the Appellant was present through his counsel Sh Aditya Vikram and Sh. Manoj Randhawa. The Respondent was present through Col. R. S. Tondon, OSD (Enforcement), Sh. Samabh Bardopadhaya, Assistant Manager (KCC).

The Respondent was further directed to produce complete records regarding the consumption from the four no. meters installed in the premises earlier i.e. prior to 09.06.2004 in order to see the consumption pattern of the Appellant prior to 09.06.2004. Respondent was asked to produce documents regarding

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downloading of the consumption data of the meter no. 29005455 for 95 kw installed subsequently on 03.06.2007 after removal of the four existing meters. This would also indicate whether the new meter was recording on all phases or not. The Appellant was asked to supply a copy of the bills received and payments made. The case was fixed for further hearing on 10.06.2008.

6. On 10.06.2008, the Appellant was present in person, the Respondent was present through Col. R. S. Tondon, OSD (Enforcement), Sh. Praveen Sen, Assistant Manager (KCC) and Sh. Sitaram, Business manager (KCC).

Both parties were heard. The Appellant filed details of payments made and copies of the bills, which are taken on record. The Respondent filed a copy of the meter change report, inspection report and downloaded data of meters.

7. Based on the submissions made and documents submitted by both the parties, it is observed as under:

- a) The new electronic meter installed on 03.06.2004 was tested while installing the Automatic Meter Reading Equipment (AMR) on 27.03.2006 and was found 33.72% slow. The officials of the Respondent who tested the meter referred the case to the Enforcement Department. An the Enforcement Team carried out the accuracy check of the meter on 27.04.2006 and found the meter slow by 34.65%. During inspection, it was observed that the three phase meter was not recording on 'B' phase. The seals of the meter box were removed to check its internal status.

The CT terminal point of 'B' phase was found loose as a result of which the meter was not recording energy properly and was found 34.65% slow.

- b) The Respondent issued a show cause notice dated 27.04.2006 asking the consumer to appear for personal hearing on 01.05.2006 and to explain as to why the case of Dishonest Abstraction of Energy (DAE) should not be booked against him. During hearing, the Assessing Officer observed that as per the Enforcement Team's report, the meter seals were found OK, so the case of DAE was not made out. The Assessing Officer passed orders for raising an assessment bill for the period the meter remained defective. Thereafter, the Respondent raised the assessment bill by taking the meter as defective from the date of installation i.e. 03.06.2004 to date of inspection i.e. 27.04.2006 for an amount of Rs.4,28,689/-. The Respondent presumed that the meter was defective from day one of its installation.
- c) Against the assessment bill the Appellant filed a complaint on 16.08.2007 before the CGRF. During hearing before the CGRF, the Enforcement officials informed that the same fault has again appeared. The CGRF directed for re-inspection in the presence of the Appellant. An inspection was carried out on 10.10.2007 and the meter was found 27.79% slow. On checking, the screw of 'B' phase terminal was again found loose. On tightening the screw, the meter started recording on all the three phases

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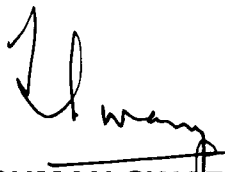
including 'B' phase. However, the screw could not be tightened properly as the threads were found damaged. The Respondents installed a new meter on 10.10.2007.

- d) Infact, the new meter should have been installed on 27.04.2006, during the first inspection, when the 'B' phase terminal was found loose. Surprisingly, the meter with a loose terminal was left as it is on 27.04.2006 and this defective meter was replaced only on 10.10.2007. OSD (Enforcement) of the Respondent submitted before the CGRF that after 27.04.2006, the meter again stopped recording on 'B' phase w.e.f. 26.07.2006 (as recorded in the CGRF order). This status of the meter is not supported by the Appellant's consumption record as 10084 units were recorded by the meter in the next month of August 2006, and 9512 units in September 2006.
- e) This is a case where the Respondent has acted in a careless manner as the defect in the meter was noticed on 27.04.2006, but the meter was replaced almost 18 months later, on 10.10.2007. There is no evidence to show that the meter had not recorded on 'B' phase at all, during the defective period. The consumption pattern being inconsistent does not support this. The downloaded record for 27.04.2006 shows the current in all the three phases. In the absence of clear cut evidence, it is difficult to evaluate the exact period when the meter remained defective. The inconsistent consumption pattern indicates that the meter remained intermittently defective, due to the loose

connection. The 3 no. meter test reports also show different results.

8. As per the DERC Guidelines / Regulations when the meter is found defective, the Respondent has to replace it within 30 days. In this case the meter was found defective for the first time on 27.04.2006 but was replaced only on 10.10.2007. In accordance with the DERC Regulations, the Respondent can raise the assessment bill for the period of six months prior to the replacement of the defective meter i.e. 10.10.2007. Since, the consumption prior to replacement of the meter is not reliable, it is decided that the period 03.06.2004 upto 10.10.2007 be treated as the meter defective period. The assessment bill for the six month period prior to 10.10.2007 should be raised, based on the consumption of the new meter for the corresponding period i.e. 10.04.2008 to 10.10.2008. Meanwhile the assessment bill be provisionally raised on sanctioned load basis since consumption pattern upto 10th October 2008 is not yet available. The CGRF's order is accordingly modified as indicated.

18th June 2008


(SUMAN SWARUP)
OMBUDSMAN