

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/2008/272

Appeal against Order dated 15.04.2008 passed by CGRF–NDPL in CG.No. 1662/03/08/NRL (K.No. 43200131632).

In the matter of:

Smt. Kavita Bansal - Appellant

Versus

M/s North Delhi Power Ltd. - Respondent

Present:-

Appellant Shri O.P. Madan, Advocate attended on behalf of the Appellant

Respondent Shri S.S. Antil, Commercial Manager, Distt Narela
Shri Dhananjay Kumar Singh, HOG, R&C, Distt. Narela
Shri Vivek, Assistant Manager (Legal) attended on behalf of the NDPL

Dates of Hearing : 18.12.2008, 23.12.2008

Date of Order : 30.12.2008

ORDER NO. OMBUDSMAN/2008/272

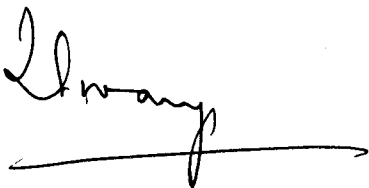
1. Earlier the Appellant Smt. Kavita Bansal had filed an appeal on 15.05.2008 against the orders dated 15.04.2008 passed by the CGRF-NDPL in the case no. 1662/03/08/NRL.
2. After hearing the arguments / submissions of both the parties on 08.07.2008, 22.07.2008, 29.07.2008, the orders were passed on



13.08.2008. Thereafter, the corrigendum dated 01.09.2008 was issued.

3. The Respondent (NDPL) in its application dated 17.11.2008 has prayed for review and recall of the orders of the Ombudsman dated 13.08.2008 and 01.09.2008, and to restore the appeal to its original position and to hear and decide the case on merits in accordance with law. The Respondent made the review application on the following grounds:

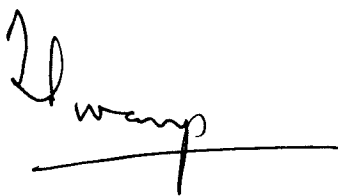
- i) That it is pertinent to mention that a Writ Petition being WP (C) No. 2974 of 2002 had been filed by the Appellant in the Hon'ble High Court of Delhi. This petition was disposed off by order dated 23.02.2004 by the Hon'ble High Court.
- ii) That the Hon'ble Ombudsman on the erroneous assumption that the matter / Writ Petition was still pending before the Hon'ble High Court of Delhi came to the conclusion that in view of the pendency of the said Writ Petition no order could have been passed by the CGRF nor can any order be passed by the Hon'ble Ombudsman. On this assumption the order passed by the CGRF dated 15.04.2008 was set aside.
- iii) That the decision of the Hon'ble Ombudsman suffers from an error apparent on the face of record as the Writ Petition filed by the Appellant had already been disposed off by the Hon'ble Court vide its order dated 23.02.2004.



- iv) The Appellant filed his complaint before the CGRF only after the orders of Hon'ble High Court and raising issues arising later.
- v) The Hon'ble Ombudsman has not found any fault with the order passed by the CGRF and has set aside the order of the CGRF only on the assumption that in view of the pendency of the Writ Petition before the Hon'ble High Court of Delhi no orders could have been passed by either the CGRF or the Hon'ble Ombudsman on the merits of the matter.
- vi) The entire basis for passing the order dated 13.08.2008 by the Hon'ble Ombudsman is the erroneous assumption that the Writ Petition is still pending before the Hon'ble High Court of Delhi. Admittedly, the said Writ Petition stands disposed off by the order dated 23.02.2004 and consequently, the very foundation and basis for passing the order dated 13.08.2008 was not in existence.
- vii) The above facts were brought to notice with a request to review the order, hear the case on merits and to pass a detailed order in accordance with the law.

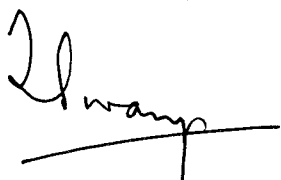
4. The brief facts of the case as per records and submissions of the parties are as under:

- a) The Appellant is the actual user of the electricity connection K. No. 4300131632 for industrial use with a sanctioned load of 52



KW, registered in the name of Shri Paras Ram Sharma at the premises on Khasra No. 91, Village Sanoth, Delhi. There was also another disconnected electricity connection (disconnected since 08.11.2002) vide K. No. 124556 for 38.790 KW for industrial power in the same premises.

- b) The Appellant Smt. Kavita Bansal, apprehended that the Respondent would transfer the dues of the disconnected connection to her live connection. The old connection K. No. 124556 was disconnected on 08.11.2002 for non payment of dues of Rs.3,55,486/-. The Appellant apprehended that if, the pending dues of this disconnected connection (if and when transferred to the bills of her live connection) are not paid, her live connection might be disconnected.
- c) The Appellant filed a complaint before CGRF for restraining the Respondent from transferring the pending dues of the connection K. No. 124556 to her live connection and from disconnecting the supply of electricity to her connection.
- d) During the earlier hearing of the appeal, it was brought to notice that the Appellant had filed a Writ Petition No. 2974/CM/12/38/2002 before the Hon'ble High Court of Delhi. The Appellant was directed to produce all the papers relating to the Writ Petition filed in the Hon'ble High Court. The Respondent was asked to produce the inspection / re-



inspection reports of the premises and details of action taken on these reports.

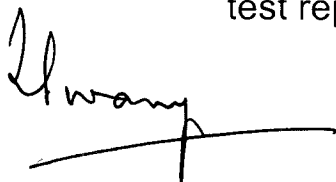
e) The perusal of the Petition filed by the Appellant before the Hon'ble High Court of Delhi dated 07.05.2002 reveals as under:

- The Petition was filed by M/s. Bansal Food Industries through its partner Shri Rakesh Kumar.
- The Petitioner industry was having three SIP connections in the premises, in the name of the following partners:

<u>Name</u>	<u>K. No.</u>	<u>Sanctioned Load</u>
Shri Anil Kumar	1244385	29.84 KW
Shri Paras Ram	131632	52 KW
Shri Paras Ram	124556	38.79 KW

The aforesaid connections were for the Dal Mill of the Petitioner.

- On 01.10.2001, officials of the Respondent (the then DVB) inspected the premises of the Appellant and a connected load of 114.7 KW was noticed and recorded against K. No. 124556.
- The Appellant applied for re-inspection of the premises and deposited the re-inspection fee on 27.11.2001, alongwith test reports.



- On 29.11.2002, the Respondent issued a show cause notice as to why LIP tariff be not made applicable to K. No. 124556, where the connected load was found to be more than 100 KW.
- Shri Rakesh Kumar (Petitioner) attended the hearing on behalf of Shri Paras Ram, the registered consumer and stated that the connected load of 114.7 KW had been wrongly mentioned, as capacity of the motors recorded is much higher than the actual capacity, and four motors have been mentioned whereas there are only three motors installed and requested for re-inspection to be carried out.
- On 08.04.2002, the Respondent passed a speaking order for levy of LIP tariff for the six months prior to the date of inspection i.e. 01.10.2001.
- Against the above contention of the Respondent, the Appellant filed a Writ petition before the Hon'ble High Court of Delhi stating that there is nothing to indicate the basis on which, the connected load was found to be beyond the sanctioned load and re-inspection cannot be denied to him by the Respondent before any liabilities are fixed on the petitioner.

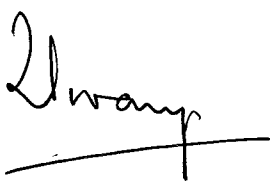
f) In its order dated 23.02.2004 the Hon'ble High Court of Delhi observed as under:

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- Learned counsel for the petitioner states that the petitioner is aggrieved by the tariff as also the re-inspection not having been carried out despite the petitioner having applied for the same. Learned counsel refers to the averment made in the counter affidavit, which is as under:
“ That on deposit of re-inspection charges by the petitioner, the respondents can re-inspect the said premises anytime within one year and on finding the load within the sanctioned limit (less than 100 kw), the respondent can withdraw the LIP charges with effect from the date of deposit of re-inspection charges.”
- Learned counsel, thus, submits that in case the aforesaid is adhered to, the petitioner would be satisfied with the same.
- Learned counsel for the respondents states that necessary steps will be taken expeditiously in terms thereof and not later than one month from today.

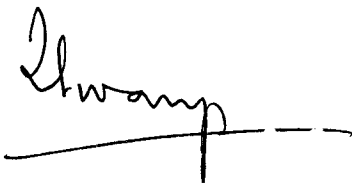
The writ petition accordingly stands disposed of.

- g) The above orders of the Hon'ble High Court of Delhi were based on the Counter Affidavit filed by the Respondent dated 26.08.2002 and the records reveal that the connection vide K. No. 124556 was alive on the date of the affidavit. The Respondent stated in the affidavit dated 26.08.2002 that they can re-inspect the said premises within one year and on finding



the load within the sanctioned limit i.e. less than 100 kw, the Respondent can withdraw the LIP charges w.e.f. the date of deposit of re-inspection fee. The record also reveals that on account of non-payment of dues the supply was disconnected on 08.11.2002. The dues at that time were Rs.3,30,594.14 plus Rs.24,892/- as stated by the Appellant.

- h) It is observed that during the course of hearing before the Hon'ble High Court of Delhi dated 23.02.2004, the Respondent did not inform the court that the supply had already been disconnected on 08.11.2002 but stated that re-inspection can be done within one year from the date of deposit of the inspection fee. Though, it was known to the Respondent that after disconnection, no inspection can be done of the premises. The reason for not bringing the correct facts to the notice of the Hon'ble High Court of Delhi are only known to the Respondent and have not been brought forth in their application for review of the order.
5. After the orders dated 23.02.2004 of the Hon'ble High Court of Delhi, the Respondent carried out the inspection on 20.03.2004 of the other live connections though the main dispute of levy of LIP was against the connection vide K. No. 124556, which was lying disconnected since 08.11.2002.

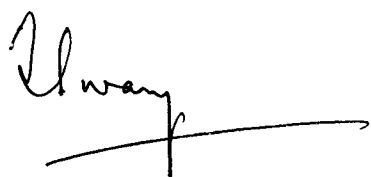


6. During earlier hearing of the appeal on 29.07.2008, the Respondent officials stated that two inspections of M/s. Bansal Food Industries were carried out, one on 01.10.2001 and another on 20.03.2004 as per the Hon'ble High Courts order and the matter is to be finalized before the Hon'ble High Court of Delhi.

In view of the above submissions made by the Respondents officials, it was decided that since the matter is pending before the Hon'ble High Court of Delhi, no action can be taken either by the Ombudsman or by the CGRF. Thus the orders of CGRF were accordingly set aside.

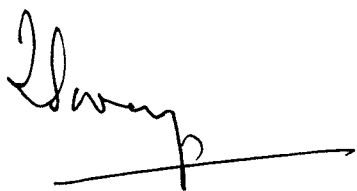
7. Now, in the review application, the Respondent has stated that the Ombudsman on the erroneous assumption that the matter / Writ Petition was still pending before the Hon'ble High Court of Delhi came to the conclusion that in view of the pendency of the said petition no order could have been passed by the CGRF nor can any order be passed by the Ombudsman. Thus, the Respondent has retracted on the statement made by the officials during the earlier hearing and has moved this review application requesting that the matter be taken up by the Ombudsman for deciding the issue on merit.

In view of the above, it was decided to restore the appeal filed by the Appellant and further hearing was fixed for 18.12.2008.

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8. On 18.12.2008, the Appellant was not present and the notice was returned unserved. The Respondent was present through Shri Vivek, AM Legal. Notice was again served through the Advocate, and through the DISCOM who were sending regular bills at the premises of the Appellant. The case was fixed for further hearing on 23.12.2008.
9. On 23.12.2008, the Appellant was present through Shri O. P. Madan Advocate. The Respondent was present through Shri S. S. Antil, Commercial Manager, Distt. Narela, Shri Dhananjay Kumar Singh, HOG R&C, Distt. Narela and Shri Vivek, AM Legal.

During the hearing, the application for review of the earlier orders was taken up. The Appellant stated that he had no objection to re-opening / review of the case as he does not wish to move the Hon'ble High Court for non-compliance of its order dated 23.02.2004. The Respondent also stated that they do not propose to move before the Hon'ble High Court of Delhi. The Respondent officials also confirmed that no inspection was carried out as per the Hon'ble High Court's direction dated 23.02.2004 as the connection K. No. 124556 was lying disconnected since 08.11.2002 and no re-inspection was possible of this connection. It is evident that the Respondent made the statement before the Hon'ble High Court on 23.02.2004 based on the facts submitted in their affidavit dated 26.08.2002 when the connection K. No. 124556 was live, although it was subsequently disconnected on 08.11.2002.



During hearing before the Hon'ble High Court on 23.02.2004, the Respondent officials should have apprised the correct position to the Hon'ble High Court that re-inspection is not possible as the connection is already lying disconnected since 08.11.2002.

The Respondent officials also stated that till date no bill had been raised after disconnection of K. No. 124556 even after the Hon'ble High Court's order. As such, no decision regarding transfer of dues of this disconnected connection to any other live connection of the same consumer is possible, since dues are not known even to the Respondent. The Appellant also confirmed that no bill for the disconnected connection has been received by him after disconnection on 08.11.2002 nor any intimation / notice for transfer of those dues to the live connection.

10. It is seen that the Respondent is yet to work out the pending dues of the disconnected connection K. No. 124556 and to raise the bill on the registered consumer or on the Appellant. The issue of transfer of dues has not arisen at all so far. Hence there is no cause of action at this stage. The earlier decision to set aside the CGRF's order stands on this ground. The earlier orders dated 13.08.2008 and 01.09.2008 are accordingly modified to the extent above.

30th December 2008.


(SUMAN SWARUP)
OMBUDSMAN