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OFFICE OF THE ELECTRICITY OMBUDSMAN
(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)
B-53, Paschimi Marg, Vasant Vihar, New Delhi – 100 057
(Phone No.: 39506011 Fax No.26141205)

Ref: E.OBM/A/05/28

Dated: 8th December, 2005

Appeal No. F. ELECT/Ombudsman/2005-06/28

Appeal against Order dated 14.7.2005 passed by CGRF – NDPL on CG No.:0297/04/05/BDL.

In the matter of:

Smt. Kishni Devi
M/s. International Industrial Coprn - Appellant

Versus

M/s NDPL - Respondent

Present:-

Appellant Shri Ganga Dutt Gupta, husband of the appellant

Respondent Shri Suraj Das Guru, Legal Advisor, Shri Abhinav Aggrawal, HOG (R&C) (D), BDL of NDPL and Shri Jaswant Rai Grover, Advocate for NDPL

Date of Hearing : 25.10.2005, 10.11.2005
Date of Order : 08.12.2005

ORDER NO. OMBUDSMAN/2005/28

The appellant is a consumer in respect of electricity connection bearing K. No: 41300 127913 installed at B-8/4, Phase – I, Badli Industrial Area, Delhi – 110 042 in the name of M/s International Industrial Corporation. The appellant filed a petition in the Office of Electricity Ombudsman against the CGRF-NDPL's Order dated 20.6.2005 & 14.7.2005. The appellant has grievances on the following three issues pertaining to K.No: 41300 127913F:

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- i) Non-refund of excess charges of Rs.4762.50 levied on account of sub-letting/shunt capacitor charges detected on 13.11.1990
 - ii) Non-refund of Rs.64,621.10 levied on account of 6% slowness of the meter for the period 2.8.1995 to 30.9.2002
 - iii) Non-refund of Rs.51128.37 levied on account of 33.91% slowness of meter detected on 27.9.2003.

After examining the contents of the appeal and the replies submitted by the appellant and the Discom to the queries raised by the Office of Electricity Ombudsman, the case was fixed for hearing on 25.10.2005.

Shri G.D.Gupta, husband of the appellant attended the hearing. Shri Suraj Das Guru, Legal Advisor and Shri Abhinav AGrawal, HOG (R&C) (D)-BDL of NDPL and Shri Jaswant Rai Grover, Advocate for NDPL attended the hearing on 25.10.2005.

The appellant as well as the respondent company were heard on all the above three issues one by one and decisions taken are as under:

Issue No: (i) Non-refund of excess charges of Rs.4762.50

The appellant has already been given relief by Delhi Vidyut Board's Bijli Adalat vide its order dated 24.10.1994. The appellant stated that for the remaining 50 days period Rs.4762.50 is to be refunded by the respondent company as he had submitted the application for compromise and on verbal assurance of the respondent company's officials, he had withdrawn the court case in this regard. The respondent company informed that no such compromise was reached with the appellant. Appellant could not produce any document of compromise having been reached between him and the respondent company. **As such I see no sufficient reason to disagree with the decisions already taken by CGRF-NDPL on this issue.**

Issue No: (ii) Non-refund of Rs.64,621.10

The appellant stated that Rs.64621.10 has been charged in the bill of December 2002 under Clause 33 towards 6% slowness of meter during the period 2.8.1995 to 30.9.2002 whereas said charges towards slow meter are required to be withdrawn in the light of Bijli Adalat's order dated 6.10.2001 and on the instructions of Bijli Adalat he had withdrawn the case from State Commission. It is pertinent to mention that the appellant had filed an appeal no: 3352/2000 before State Commission against CDRF Order dated 25.10.2000 who had observed that there are not sufficient grounds to cancel the inspection report dated 1.3.1994 (which states that meter was found **stopped on one phase & 35% slow**) and bills raised on this basis.

Perusal of case records however reveal that on several occasions, the appellant's meter was tested/inspected and on each of such dates the meter was found slow (33% to 35% slow)

- i) the appellant's meter was tested on 1.3.1994 by the then DESU's Meter Testing Department (MTD) and meter was found **stopped (not working) on one phase and Meter Testing Team recorded in its report "meter needs replacement"**.
- ii) On 17.7.1994, the same meter was again tested and found stopped on one phase.
- iii) On 3.8.1994, the meter was tested by MTD's team and found stopped on one phase (35% slow) and meter needs replacement.
- iv) On 27.9.2003 also same meter was inspected by the Discom officials and was found 33.91% slow. The slow meter was ultimately replaced on 27.9.2003.

Though the meter was repeatedly found stopped on one phase and despite testing team's remarks on the report, the appellant's meter was not replaced for years together for the reasons best known to the respondent company's officials. This meter was changed on 27.9.2003 when it was again found 33.91% slow.

The appellant has been disputing the issue of accuracy of meter at various levels like Bijli Adalat, CDRF, State Commission etc..

In one of the Senior Level Circle Bijli Adalat this issue was heard when XEN(D) – Bawana informed that working of Pilot Meter has been compared with the old existing meter and old meter found 6% slow. **Bijli Adalat by its order dated 11.6.1997 ordered that bill for slowness of meter be raised within 15 days and meter be replaced.**

The same issue was again listed in the Senior Level Circle Bijli Adalat who observed in its order dated **24.12.1997** that its earlier decision dated 11.6.1997 should be implemented. **Surprisingly, Bijli Adalat decision was not implemented by the respondent as neither bill for slowness was raised nor meter was replaced.**

After about three years, the appellant then filed the case before the CDRF who observed in its order dated **25.10.2000** that there are no sufficient grounds to cancel the inspection report dated 1.3.1994 (meter found stopped on one phase) and bills raised thereon. Thereafter, the appellant filed appeal before State Commission against the above order of CDRF and also filed a case before Lower Level District Bijli Adalat stating that CDRF's order has not been complied with. The Meter Testing Team's report of **meter stopped on one phase found on three different occasions in 1994 and the decisions of Senior Level Bijli**

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Adalat that meter was found 6% slow was neither apprised by the respondent nor by the appellant to the District Level Bijli Adalat on 6.10.2001. By doing so officials of the Discom seem to have shown undue favour to the appellant. The Senior Level Bijli Adalat comprises of Chief Engineer (Distribution), Additional Chief Engineer and two external independent members of repute. By not apprising correct facts to the District Level Bijli Adalat, appellant managed to get relief from the District Bijli Adalat based on which the case was withdrawn from State Commission. However, records reveal that decision of senior Bijli Adalat dated 11.6.1997 and 24.12.1997 has never been challenged so far at any Forum. The appellant had taken up the issue of inspection report dated 1.3.1994 (meter stopped on one phase) before CDRF who did not allow any relief on that account, and, thereafter, the appellant filed an appeal before State Commission. (Had this decision of Senior Level Bijli Adalat been apprised to the Lower Level Bijli Adalat of XEN Level, they would not have given relief to the appellant as Lower Level Bijli Adalat would not have overruled the earlier decision of Senior Level Bijli Adalat) on the same issue.

It appears that the appellant is in the habit of raising disputes about the functioning of the meter and electricity bills at different Forums and Courts.

Thus, it remains a fact that meter was repeatedly found defective/slow from 1.3.94 onwards and despite reports of Meter Testing Department and order of Senior Level Bijli Adalat, this slow meter was not replaced for years together to the advantage of the appellant. The collusion of the officials of Discom and the appellant cannot be ruled out as the same old meter when replaced on 27.09.2003, was again found 33.91% slow.

After privatization of DVB, respondent company raised a bill for the period 2.8.1995 to 30.9.2002 for Rs.64621.10 on account of 6% slow meter (in December 2002). Keeping in view the two decisions of Senior Level Bijli Adalat the bills should have been raised earlier and slow meter replaced but respondent company failed to take any action in time.

As per Section 56(2) of the Electricity Act 2003, no sum from the consumer can be recovered after a period of 2 years from the date when such sum first became due, unless such sum has been shown continuously as recoverable arrears and electricity is not disconnected. However, in the present case the Discom raised bills in December 2002, (for the period 02.08.1995 to 30.09.2002) relating to the period prior to coming into force of the Electricity Act, 2003. As such Section 56(2) of the Electricity Act 2003 would not apply. In this case the provisions of Limitation Act 1963 would apply and the maximum period of limitation for raising bills by the Discom would be three years. Therefore, the respondent company is directed to raise a bill for the period 30.9.1999 to 30.9.2002 for 6% slow meter. The respondent company has also raised a bill

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on 6% slow meter for the period 30.9.2002 to 26.03.2003, the date up to which bills have been raised on the basis of inspection made on 27.9.2003. The detailed calculation in this regard submitted by the Discom on 5.12.2005, shows Rs.59491/17p as payable for the period 30.9.99 to 31.03.03; as against Rs.64621/- paid by the appellant. He is therefore to get refund of Rs.5130/- on this account.

Issue No: (iii) Non-refund of Rs.51128.37

The CGRF order on this issue is well reasoned. Therefore, there is no reason to disagree with the same.

The conduct of the appellant is not above board. The appellant has been raising frivolous and vexatious issues before different adjudicating forums. The respondent company has also failed in its duty to point out before the forums important decisions by Senior Bijli Adalat thus allowing frivolous issues to be raised by the respondent company due to which the case has been lingering on for years. This has caused drain of valuable manpower and resources of different adjudicating forums.

CGRF order is upheld on Issue No. (i) & (iii), as explained above. As regards Issue No. (ii) the excess amount of Rs.5129.93 (Rs.64621.10 – Rs.59491.17) be refunded/adjusted in the appellant's next billing cycle. Compliance in this regard be sent within 15 days.

The order of CGRF-NDPL is set-aside to the extent indicated above.

अशा मेहरा
(Asha Mehra)
Ombudsman