

(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 against Order dated 21.10.2008 passed by CGRF–NDPL in CG.No. 1872/09/08/SMB.

Shri Sunder Lal Jain - Appellant

M/s North Delhi Power Ltd. - Respondent

Respondent Shri Rajeev Gupta-Commercial Manager,
Shri Pramod Kuamar – S.O.
Shri Vivek, Assistant Manager (Legal) attended on behalf
of the NDPL

Date of Order : 31.03.2009

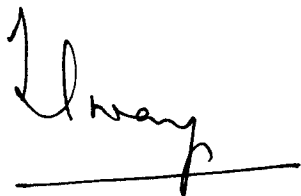
295

1. The Appellant Sh. Sunder Lal Jain has filed this appeal against the orders of CGRF-NDPL dated 21.10.2008 in the case CG No. 1872/09/08/SMB in which the CGRF decided that the Appellant's case falls under the category of sub-letting and thus rightly warrants levy of misuse tariff.

Shuang

2. The background of the case as per the contents of the appeal, the submissions of the Respondent and the CGRF's order is as under:

- i) The dispute is regarding application of misuse tariff by the Respondent in the bills raised between 02.09.1999 to 29.07.2003 on the basis of the inspection by the Enforcement unit on 02.09.1999
- ii) As per the inspection report dated 02.09.1999, the electricity connection K. No. 45100905002 registered in the name of Shri Sunder Lal Jain, installed at 44, Rajasthani Udyog Nagar, G.T. Karnal Road, Delhi-110033 was found being used by M/s. Sachdeva Print Art Pvt. Ltd. The Appellant was asked to show a valid MCD license and proof of being the actual user in 7 days.
- iii) The Appellant has stated that despite the valid MCD license shown at the Shankar Road office of the Respondent, wrong bills were issued between the period 02.09.1999 to 29.07.2003 by applying misuse tariff instead of charging the applicable industrial tariff.
- iv) The Appellant filed a complaint before the CGRF-NDPL against the levy of wrong tariff based on the Enforcement unit's inspection on 02.09.1999.
- v) The Respondent stated before the CGRF that higher tariff on account of misuse of electricity for the period 02.09.1999 to 27.09.2003 had been levied assuming subletting of the connection as per provisions of law prevailing at the time. The Respondent stated before the CGRF that the connection is registered in the name of Sh. Sunder Lal Jain which was sub let to M/s. Sachdeva Print Art Pvt. Ltd. which is a corporate body constituted and registered under the Company's Act 1956. The Respondent stated that the provisions of clause 25 B-3 Hand Book of Commercial Practices (1992) of DESU/DVB define categories of cases that fall in the purview of levy of misuse charges on account of sub-



A handwritten signature in black ink, appearing to be 'Umay', with a horizontal line drawn underneath it.

letting. The case of the Appellant is covered under the category of misuse.

- vi) The CGRF in its order decided that the present case falls under the category of sub-letting and thus rightly warrants levy of misuse tariff.

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

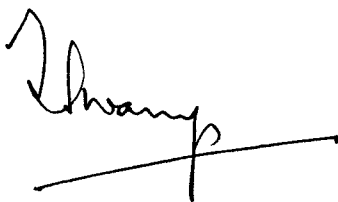
3. After scrutiny of the contents of the appeal, the CGRF's order and the replies submitted by both the parties, the case was fixed for hearing on 03.02.2009.

On 03.02.2009, Sh. Sunder Lal Jain was present through Sh. Tarun Ahuja, Advocate. The Respondent was present through Shri Rajeev Gutpa, Commercial Manager, Sh. Pramod Kumar S.O. and Shri Vivek AM (Legal).

Both the parties were heard. The Appellant was asked to file copies of the disputed bills and details of the disputed amounts, including an affidavit that the matter is not pending before any other Forum. The Respondent was asked to file copies of ledger / statement of account showing payments made between September 1999 to July 2003, including arrears, if any. The case was fixed for further hearing on 11.02.2009.

4. On 11.02.2009, Sh. Sunder Lal Jain was present through Sh. Tarun Ahuja, Advocate. The Respondent was present through Shri Rajeev Gutpa, Commercial Manager, Sh. Pramod Kumar S.O. and Shri Vivek AM (Legal).

Both parties have filed their documents which were taken on record. Copies of the documents filed by them were given by the parties to each other also. The case was fixed for arguments on 20.03.2009.



- 61
5. On 20.03.2009, Sh. Sunder Lal Jain was present through Sh. Tarun Ahuja, Advocate. The Respondent was present through Shri Rajeev Gutpa, Commercial Manager, Sh. Pramod Kumar S.O. and Shri Vivek AM (Legal).

Both parties argued their case at length. The Appellant stated that there was no sub-letting as Sh. Sunder Lal Jain, the registered consumer is the Director of the firm M/s. Sachdeva Print Art Pvt. Ltd. As such the registered consumer and user of the electricity was one and the same person. Sh. Sunder Lal Jain is representing the company in the capacity of Director of the company which is evident from the MCD license also. The Respondent had stated before the CGRF that as per provisions of clause 25 B-3 of Hand Book of Commercial Practices (1992) of DESU/DVB the case falls under the sub-letting category. As misuse tariff was levied from 02.09.1999 to July 2003, the tariff leviable in 1999 was required to be followed, and not the guidelines given in the Commercial Practices Hand Book of 1992.

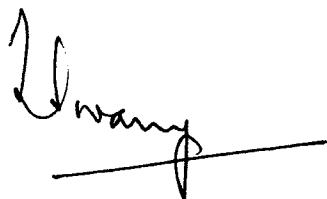
The Respondent stated that as per the tariff order of 1997-98, applicable also in 1999, the MCD license produced by the Appellant had been considered as not valid.

The Respondent's Enforcement Team inspected the premises of the Appellant on 02.09.1999 and recorded that Shri Sunder Lal Jain is the registered consumer but the user is M/s. Sachdeva Print Art (P) Ltd. The Appellant was asked to show a valid MCD license and proof of being the actual user. As per the Appellant, despite producing a valid MCD license in the office of the enforcement department at Shankar Road, 'misuse' industrial tariff was not withdrawn. The Appellant produced a copy of the representation dated 04.05.2000 addressed to XEN (D), Rajasthani Udyog



Nagar, G.T. K. Road, Delhi in this regard, alongwith copies of the representations dated 22.06.2002, 30.07.2004, 23.02.2005 and 28.01.2008 submitted to Respondent, before filing the complaint before the CGRF on 04.09.2008.


6. After hearing the parties and seeing the documents on record, it is observed that Shri Sunder Lal Jain is the registered consumer of electricity connection K. No. 4510090502 installed at 44, Rajasthani Udyog Nagar, G.T. K. Road, Delhi. The MCD license is issued in the name of Shri Sunder Lal Jain, Director of M/s. Sachdeva Print Art (P) Ltd.. The Respondent's contention that as per provisions of Clause 25 B-3, Hand Book of Commercial Practices (1992 of DESU / DVB), the case of the Appellant falls under subletting does not appear to be correct. For levy of any penalty on the basis of the Enforcement inspection dated 02.09.1999, the tariff orders of 1998 will be applicable. As per Clause 8(iii) of General Conditions of Supply of 1997-98, in the tariff orders applicable in the year 1998-99 also, "the use of industrial load without license or if license granted has not been renewed by the licensing department within the grace period, the use of supply shall be considered as violative of tariff and conditions of supply and shall be billed on higher rates as per provisions of tariff under the relevant category."
7. I am of the view that there is nothing wrong if a registered consumer is using the supply for a firm of which he is a Director as is clearly evident from the MCD license and also from Form No. 32 indicating that Shri Sunder Lal Jain, was appointed as a Director of the Company M/s. Sachdeva Print Art (P) Ltd., w.e.f. 01.04.1999. This is not therefore a case of subletting, attracting levy of 'misuse' charges.



The Respondent is therefore directed to revise the bills issued after levy of misuse tariff between 02.09.1999 and 29.07.2003, and to revise these on the basis of applicable industrial tariff.

The CGRF-NDPL's order is accordingly set aside.

31st March 2009.


(SUMAN SWARUP)
OMBUDSMAN