

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/2009/309

Appeal against Order dated 01.01.2009 passed by CGRF–BRPL in case no. CG/216/2008.

In the matter of:

M/s ENN BEE Enterprises

- Appellant

Versus

M/s BSES Rajdhani Power Ltd.

- Respondent

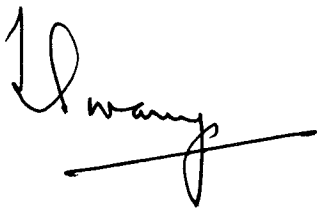
Fixed for Hearing on : 17.04.2009

Date of Order : 28.05.2009

ORDER NO. OMBUDSMAN/2009/309

1. The Appellant has filed this appeal against the order dated 01.01.2009 passed by the CGRF-BRPL in the case CG No. 216/2008. The Appellant in his appeal has made the following prayers:

- (i) to set aside the order dated 01.01.2009 and 29.01.2009 passed by the CGRF;
- (ii) to set aside and quash the impugned supplementary bill amounting to Rs.2,64,139/- and to adjust the amount of Rs.25,000/- paid by the Appellant pursuant to the order of the CGRF dated 08.12.2008; and



(iii) any further relief that is deemed fit and proper under the facts and circumstances of the case.

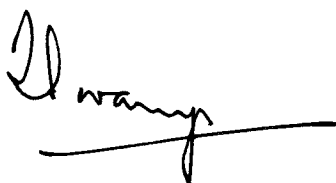
2. The background of the case as per the contents of the appeal, the CGRF's order and the submissions made by both the parties is as under:

- (a) the Appellant filed a petition before the CGRF-BRPL against the supplementary bill dated 12.11.2008 raised by the Respondent for assessment amounting to Rs.2,64,139/- against connection no. 26100A130043 existing at his premises, BE-227, Ground Floor, Hari Nagar, New Delhi – 110064;
- (b) the aforesaid electric connection is registered in the name of M/s. ENN BEE Enterprises with a sanctioned load of 7.71 kw (9 HP) obtained in August 1995. The load was got enhanced from 9 HP to 15 HP in December 1995. The bills, however, continued to be issued showing a sanctioned load of 7.71 KW. The Appellant made a request for change in this regard on 03.10.2003;
- (c) the old electro mechanical meter was replaced with an electronic meter bearing no. 27024442 on 20.06.2003. From the date of installation of this electronic meter, the Respondent has been raising the bills on KWH reading basis and the Appellant had been making the payment of such bills regularly. The last bill amounting to Rs.22,710/-

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was paid for consumption up to the reading of '63825', as on 25.09.2008;

- (d) On 30.10.2008, the Appellant's premises was inspected by the Enforcement Department of BRPL, when the three phase electronic meter bearing no. 27024442 was found installed against the connection no. 26100A130043 in favour of M/s. ENN BEE Enterprises. The supply was found being used by one, Shri Virender, with a connected load of 27.077 KW for industrial purpose. The reading of the meter was found to be 65679.4 KWH and 135351.6 KVAH. On checking, it was observed that the Appellant was paying regular bills on KWH reading basis, though as per provision of the tariff, the bills were required to be raised on KVAH reading basis; and
- (e) as per the Electronic Billing System (EBS) record the meter had recorded a consumption of 132103 units KVAH on 24.09.2008, and 135064 KVAH units as on 24.10.2008. The Respondent revised the bill on KVAH basis, and the actual consumption bill on KVAH units basis worked out to be Rs.6,19,605/- upto the reading of 135064 units as on 24.10.2008. This reflected the consumption for the period from 20.06.2003 to 24.10.2008. For this period, the Appellant had made a payment of Rs.3,55,466/- on KWH basis. As such the Appellant was asked to make the payment of the balance amount of Rs.2,64,139/- as per provisions of the tariff;

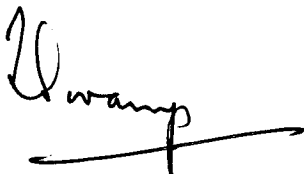


3. The CGRF in its order relied upon the order of the Hon'ble High Court of Delhi dated 01.04.2008 in the matter of BSES Rajdhani Power Ltd. Vs. CGRF and Mr. Nalin Bhushan Chandhok , in Writ Petition No. 13556/2006 and recorded that, "it is well settled that the normal law of limitation is not applicable for recovery of electricity dues. In this case, the bills are found to have been issued contrary to the provisions of the DERC approved tariff. "

3.1 After hearing both the parties, the CGRF concluded that the supplementary bill already issued, needed amendment. The CGRF directed that the amended bill may be allowed to be paid by the Appellant in ten installments and also directed that a token compensation of Rs.2500/- may be awarded to the Appellant for harassment and inconvenience caused to him on account of issuance of bill on KVAH basis after a long period of about five years.

4. Not satisfied with the above order, the Appellant has filed this appeal on 17.02.2009, vide letter dated 20.02.2009. The Appellant was asked to deposit 1/3rd of the demand raised as per the CGRF order, which is mandatory for admitting the appeal. The Appellant was also asked to submit the receipt of the payment made by 02.03.2009, for further processing of the case.

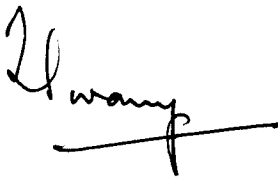
4.1 The comments alongwith relevant documents were received from the Respondent on 06.04.2009 and a notice dated 08.04.2009 was issued to the parties for hearing the appeal on 17.04.2009.



- 4.2 On 15.04.2009, the Appellant submitted an application for withdrawal of the appeal informing that in the meantime he has settled the case before the Hon'ble Lok Adalat on 15.03.2009 and he is required to pay now Rs.75,000/-, as per the settlement which has been paid to the Respondent. The Appellant also enclosed a copy of the order of the Hon'ble Lok Adalat dated 14/15 – 03-2009.
- 4.3 The Appellant had moved an application before the Lok Adalat with regard to bill no. AGENR 1211 2008 0025 against K. No. 26100A130043 in the name of Shri Virender for an amount of Rs.2,64,139/-.
- 4.4 The cognizance of the case was taken by the Hon'ble Lok Adalat in terms of Section 20(2) of the Legal Services Authorities Act, 1987 on the application moved by the Appellant, under Section 19 (5) of the Legal Services Authorities Act, 1987:

“Hon'ble Lok Adalat shall have the jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of -

- (i) any case pending before; or
- (ii) any matter which is falling within the jurisdiction of, and is not brought before, any court for which Hon'ble Lok Adalat is organized. “



Section 20 of the Legal Services Authorities Act 1987 relates to cognizance of cases by the Hon'ble Lok Adalat. Section 20 (1) stipulates that –

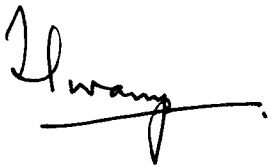
“Where in any case referred to in clause (i) of sub-section (5) of section 19 –

- (i) (a) the parties thereof agree; or
(b) one of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
- (ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat. “

5. In this case, the Appellant had placed his grievance before the CGRF set up under section 42(5) of the Indian Electricity Act 2003 and the Forum had passed its orders on 01.01.2009 against which the Appellant has filed this appeal.

5.1 It seems that the Appellant while moving his application before the Hon'ble Lok Adalat, has concealed the following legal position:..

- (i) The forums of the CGRF and the Electricity Ombudsman have been constituted under Section 42 (5) and Section 42 (6) of the Indian Electricity Act, 2003 for redressal of grievances of electricity consumers. In



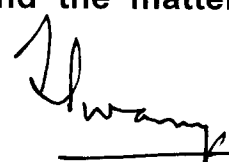
this case the consumer sought redressal of his grievance by the CGRF and the Electricity Ombudsman, and later on filed an application before the Hon'ble Lok Adalat for settlement. The right course was that the Appellant should have moved an application before the Electricity Ombudsman seeking withdrawal of the appeal before filing his case before the Hon'ble Lok Adalat for settlement.

(ii) The Respondent also failed to apprise the Lok Adalat that the case had already been decided by the CGRF and the appeal of the Appellant was pending before the Electricity Ombudsman.

6. Considering the fact that a mutual settlement has already been arrived at before the Hon'ble Lok Adalat by both the parties in terms of the consent order dated 14.15.2009, it is no longer necessary for this forum to hear and decide this appeal of the Appellant on merit. The Respondent has informed this forum vide letter dated 22.04.2009 that complete facts were not placed before the Hon'ble Lok Adalat. If they so desire the Respondent may bring the complete facts to the notice of the Hon'ble Lok Adalat for review of the settlement arrived at.

The appeal is dismissed as withdrawn and the matter is treated as closed.

28th May 2009.


(SUMSN SWARUP)
OMBUDSMAN