

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

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

(Tel. No. 3250 6011 Fax No.2614 1205)

Appeal No. F.ELECT/Ombudsman/2009/312

Appeal against Order dated 06.02.2009 passed by CGRF-NDPL in the case CG.No. 1950/12/08/RHN.

In the matter of:

Praqtasheel Nagrik Co-op Housing Society - Appellant

Versus

M/s North Delhi Power Ltd. - Respondent

Present:-

Appellant Shri O.P. Madan, Advocate and
Shri R. K. Varshney, Secretary of the Society

Respondent Sh. Gautam Jaiprakash, Manager (KCG)
Sh. Hari Bhushan Prasad, AM (KCG)
Sh. Vivek, Manager (Legal) and
Shri Ajay Kalsi, Senior Manager, attended on
behalf of the NDPL

Date of Hearing : 19.05.2009

Date of Order : 22.05.2009

ORDER No. OMBUDSMAN/2009/312

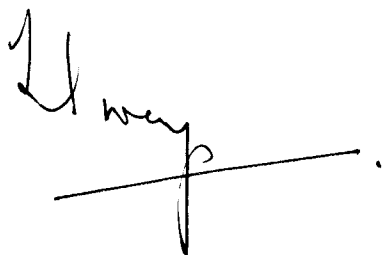
1. The Appellant has filed this appeal against the orders dated 06.02.2009 passed by CGRF-NDPL in the case CG. No. 1950/12/08/RHN. The Appellant through its Secretary, Sh. R.K. Varshney, has prayed that the orders of the Hon'ble Forum may be

Wang

set aside and the Respondent may be directed to refund the amount of Rs.8,42,637/- from the date of receipt of charges alongwith interest @ 18% per annum, and has also prayed for compensation for deficiency in services by the Company.

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

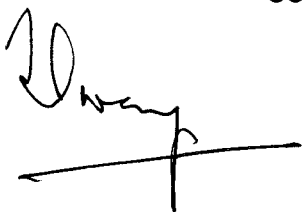
- (a) The President of the Pragatisheel Nagrik Co-operative Housing Society, applied for electric connections for the members of the society in the year 1995. The then Delhi Electricity Supply Undertaking (DESU) prepared a scheme for electrification of the society for providing individual connections to the members at an estimated cost of Rs.27,93,373/-, of which Rs.14,95,978/- was the share of the society. The said amount was deposited by the society in two installments on 02.02.1995 and 18.05.1995.
- (b) As per the electrification scheme, the Respondent was to provide one no. HT 11 KV 4 panel board and two numbers of 630 KVA distribution transformers alongwith other allied equipments. The electrification work was stated to have been completed in 1996 but only one transformer was installed instead of two numbers as provided in the scheme.
- (c) The Appellant filed a complaint before the CGRF seeking refund of Rs.8,42,637/- towards the cost of the material i.e. one number transformer not installed so far, with 18% interest thereon.



- (d) The Appellant stated before the CGRF that the matter for refund of the excess amount was taken up earlier also with DESU/DVB and placed on record a copy of the letter dated 29.09.2005 addressed to the NDPL in this regard. The NDPL vide letter dated 09.12.2005 informed the Appellant that since the works were executed during the DVB period, it would not be possible to refund any amount which was paid to DVB.
- (e) The Respondent filed another reply dated 31.12.2008 in which they took the stand that since the electrification work was carried out in the year 1995 and a dispute is being raised after 13 years period, the same is time barred. The Respondent further stated before the CGRF that an additional transformer as per the scheme shall be installed, if the need arises, due to increase in occupancy / load, free of cost.
- (f) The Respondent referred to Clause 9 of the Shared Facilities Agreement (Capital Works in Progress) stating that according to this clause their liability is restricted to the capital works in progress or nearing completion or yet to commence, whereas in the present case the work for electrification of the society was completed in the year 1996.

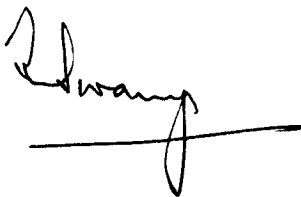
3. The CGRF in its order observed that:

- i. The Society did not raise any objection to the estimated cost nor lodged any protest after completion of the

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

electrification scheme by the then DESU. The Society first took up the matter in writing with NDPL only in the year 2005 and it further waited for a three year period to serve a legal notice to the licensee.

- ii. Clause 9 of the Shared Facilities Agreement applies only to the capital works under progress, nearing completion, or yet to commence, and that such works below 33 KV voltage shall be in the account of DISCOMs. This clearly implies that for the agreement entered into in the year 1995, the DISCOM does not become accountable.
- iii. Clause 5(2) of the Delhi Electricity Reforms (Transfer Scheme) Rule 2001, on which the complainant has laid stress, provides that the licensee shall be liable to discharge the liabilities towards the contracts etc. to which the Board was a party in the same manner as the Board was liable, immediately before the date of transfer. The word "immediately" acquires significance when read with Clause 9 of the Shared Facilities Agreement which pertains to works under progress.
- iv. Even if it is considered that as per the provisions of Clause 5 (2) of the Transfer Scheme, the licensee is responsible for all contracts etc. in the same manner as the board was liable before the date of transfer, the



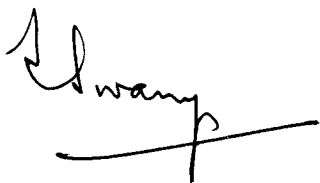
board was under obligation to provide a second transformer, if so needed due to increase in occupation / load, instead of the liability for refund of the cost of the transformer.

4. The CGRF in its order concluded that the present licensee is not liable to refund the cost of the transformer not installed by DESU. However, in case the load demand warrants augmentation of the transformer capacity, the Respondent would provide the additional transformer without payment of any cost by the society, even though the prospective cost of the transformer may be much more than originally realized by the DESU / DVB.

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

5. After scrutiny of the contents of the appeal, the CGRF's order and the submissions made by both the parties, the case was fixed for hearing on 19.05.2009.

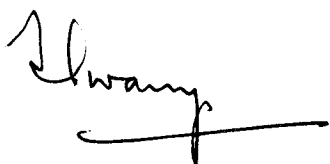
On 19.05.2009, the Appellant was present through Sh. O.P. Madan-Advocate, and the Secretary of the Society, Sh. R. K. Varshney. The Respondent was present through Sh. Gautam Jaiprakash- Manager (KCG), Sh. Hari Bhushan Prasad -AM (KCG), Sh. Vivek- Manager (Legal) and Shri Ajay Kalsi Senior Manager.



Both the parties were heard. The Appellant re-iterated the submissions already made in their appeal. It was confirmed by the Respondent that all the electricity sub-stations are designed normally with two number transformers, keeping in view the future load requirements. Two transformers are also provided so that in case one transformer is out of service, the supply can be immediately restored through the second transformer. This helps in reducing the duration of interruption of supply. The Society had also accepted the design of the sub-station with two no. transformers, and had deposited the necessary charges without raising any objection in 1995.

6. After hearing the parties, it is clear that the Respondent had not completed the work in 1996 as stated. Till the second transformer is installed, the work cannot be stated to have been completed. The Respondent also confirmed that accounts for the project were yet to be finalized and completion certificate had not issued. It is clearly the responsibility of the Respondent to now complete the work by installing the second transformer. The Respondent officials were asked to indicate a definite date by which the second transformer would be installed and the work completed.

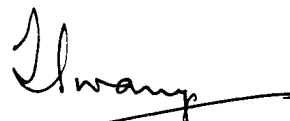
7. The Respondent officials agreed to install the second transformer of the capacity as per original design, and within the original estimates by 31.07.2009. No further amount will be payable by the



Society on account of the higher cost of the transformer to be installed now. The Respondent was asked to complete the work latest by 31.07.2009 and to report compliance within a week thereafter.

The orders of the CGRF are accordingly set aside.

22nd May 2009.


(SUMAN SWARUP)