

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/2009/327

Appeal against speaking order dated 04.01.2008 passed by CGRF-BRPL in case no. C.G.No.220/2007.

In the matter of:

Shri Sanjay Khullar - Appellant

Versus

M/s BSES Rajdhani Power Ltd. - Respondent

Present:-

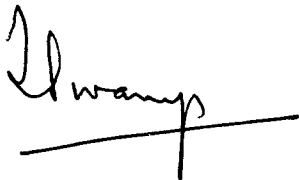
Appellant The Appellant was present through his Counsel
Shri Manish Kumar Chowdhary, and
Ms. Kanchan Chowdhary, Junior Counsel

Respondent Shri Amrish Pandey, DGM, (Business),
Shri Sita Ram, DGM (Enforcement) and
Shri Nishikant Gupta, Sr., Manager (Enforcement)
attended on behalf of the BRPL

Dates of Hearing : 26.08.2009, 09.09.2009, 11.09.2009
Date of Order : 23.09.2009

ORDER NO. OMBUDSMAN/2009/327

1.0 The Appellant has filed this appeal against the supplementary order dated 04.01.2008 passed by CGRF-BRPL in CG No. 220/2007 stating that the CGRF recalled its earlier order dated



19.10.2007 and passed a supplementary order dated 04.01.2008 in violation of the law and rules there under.

1.1 The appeal is based on the following grounds:-

- (a) The impugned order dated 04.01.2008 is wrong illegal, unlawful, unprecedented and against the settled principle of law.
- (b) The Ld. Forum erred in setting aside its own order without having any new material on record. It is submitted that as apparent from the deliberations dated 18.12.2007 and 03.01.2008 no new facts were put forth by the Respondent which led to recalling of the said order.
- (c) The Respondent has not approached the Ld. Forum with clean hands which is apparent from the fact that instead of filing an appeal before the Ombudsman, the Respondent filed a review petition before the Ld. Forum, which is itself illegal and the petition is liable to be dismissed as the Ld. Forum has no power to recall its own order.
- (d) That in view of the aforesaid submission, the order dated 04.01.2008 passed by the Hon'ble CGRF, Delhi is liable to be set aside.

1.2 The Appellant has also prayed as under:-

- (i) For condoning the delay in filing the appeal in the interest of justice.

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- (ii) To allow the appeal of the Appellant by setting aside the order dated 04.01.2008 passed by the CGRF.
- (iii) To pass an order directing the Respondent to revise the bill as per the CGRF's order dated 19.10.2007 etc.

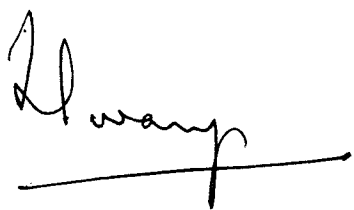
2.0 The background of the case as per the submissions of both the parties is as under:

- i) The Appellant has an electricity connection bearing K .No. 2510 N063 0407 for a long time and has been paying the bills raised by the Respondent. The Appellant applied for the change of name in the month of October 2001 and for enhancement of load from 2 Kw to 15 Kw and for which he deposited Rs.61,815/- on 04.10.2001.
- ii) The Respondent started raising bills without any basis as there was no readings mentioned in the bills. Thereafter, the Appellant made several visits and representations before the Respondent, but all in vain. The Appellant requested for actual reading based bills vide letter dated 04.02.2006.
- iii) The Respondent officials tested the meter on 10.02.2006 and the meter was found to be 'okay'. Subsequently the meter was stated to be replaced on 02.06.2006, and was again changed on 31.08.2006. In fact the meter was not changed, as recorded in the meter change report, but only resealing was done.
- iv) Thereafter, the Respondent sent a notice dated 27.02.2007 asking the Appellant to make the payment of Rs.5,70,180/-



against the assessment bill. Being aggrieved, the Appellant approached the Hon'ble High Court of Delhi vide Writ Petition no. 5440/2007. The Hon'ble High Court vide order dated 20.07.2007 directed the Appellant to approach Hon'ble CGRF.

- v) Thereafter, the Appellant filed a complaint before the CGRF. The Respondent stated before the CGRF that the meter was defective since 28.06.2003 and was replaced on 02.06.2006, therefore, an assessment bill amounting to Rs.5,70,180/- was raised.
- vi) The CGRF in its order dated 19.10.2007 directed that the assessment period be restricted to a period of six months prior to 02.06.2006 i.e. from 02.12.2005 to 02.06.2006, and the assessment be done on the basis of the consumption recorded by the meter for the period 03.01.2003 to 28.06.2003 as base period-I, and 02.06.2006 to 13.02.2007 as base period-II.
- vii) The CGRF further directed that the minimum guarantee charges / fixed charges, be recovered for the period 28.06.2003 to 02.12.2005.
- viii) The Respondent filed an application before the CGRF for review of its orders dated 19.10.2007.
- ix) The CGRF passed the supplementary orders dated 04.01.2008 and directed that:-
- The defective period of the meter will continue to be restricted to a maximum period of six months prior to 02.06.2006 as already mentioned in the earlier order dated 19.10.2007.

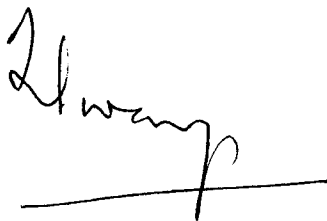


- As regards the period from 05.08.2005 to 02.12.2005 when the supply remained in use but was being reflected as disconnected in the system erroneously, and bills were also not issued during this period, only fixed charges be recovered as per legal provisions.
- As regards the period from 28.06.2003 to 05.08.2005 when provisional bills were issued, no change be made and the Appellant will be liable to pay only on provisional basis.

2.2 Not satisfied with the above orders, the Appellant has filed this appeal stating that instead of filing an appeal before the Hon'ble High court, the Respondent filed a review petition before the CGRF which itself is illegal and the review petition is liable to be dismissed, as the CGRF has no power to recall its own order.

3.0 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 26.08.2009.

On 26.08.2009, the Appellant was present through Ms. Kanchan Chowdhary, Junior Counsel for Sh. Manish Kumar Chowdhary. The Respondent was present through Shri Nishikant Gupta, Sr. Manager, Enforcement.

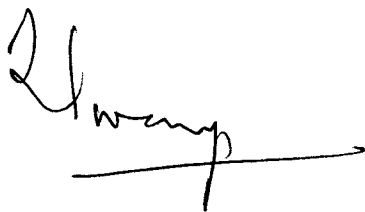


The Appellant's counsel was busy and was not present to make his plea. The Respondent official could not produce the relevant documents to establish the stated facts. The concerned officers of the Respondent were asked to be present along with documents for corroborating their plea on the next date of hearing i.e. 09.09.2009.

The case was re-scheduled for hearing on 11.09.2009.

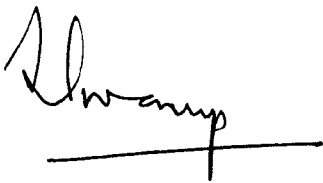
4.0 On 11.09.2009, the Appellant was present through Sh. Manish Kumar Chaudhary, Advocate. The Respondent was present through Sh. Amrish Pandey, DGM (Business) and Sh. Sita Ram, DGM (Enforcement).

Both the parties argued their case. At the outset the Appellant stated that the CGRF has no power to recall its own order and to issue supplementary orders. The Appellant also stated that the Respondent has wrongly termed their own Meter Test Report dated 10.02.2006 as fake. However, he is willing to pay the dues upto February 2006 as per readings indicated in the Meter Test Report dated 10.02.2006. The reading chart produced by the Respondent indicates that the last reading 43710 was recorded on 28.06.2003 and thereafter no readings were recorded till 22.05.2007.

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4.1 The Respondent stated that the meter became defective after the 28.06.2003 reading of 43710, and was replaced only on 02.06.2006. The remarks "reading not visible" are recorded in the meter change report dated 02.06.2006. The Respondent further stated that a copy of the Meter Test Report dated 10.02.2006 produced by the Appellant is fake. The original meter readings book produced by the Respondent indicates that after 28.06.2003 two more readings were recorded on 16.08.2003 as '50608' and reading '54360' on 22.09.2003. The Respondent officials could not explain why the readings recorded in the meter reading book had not been reflected in the computerized reading chart prepared and produced.

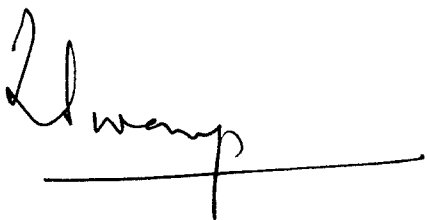
4.2 It is evident that the meter was working after 28.06.2003 and readings were recorded in the meter book upto 22.09.2003, and thereafter the Discom ceased to maintain meter books. The readings recorded in the meter book were not fed/ reflected in the computerized record. Thus the plea of the Respondent that the meter became defective after 28.06.2003 is found to be wrong. The Respondent officials could not produce any other record to establish when the meter actually became defective. Had the readings been recorded regularly and even after the meter became defective, the same reading would have appeared consistently in the record, which is not the case.

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The Appellant stated that the Meter Test Report dated 10.02.2006 is not fake and he is willing to pay as per the reading '83377' recorded therein. It is mentioned in the Respondent's own correspondence record dated 08.09.2007 that the signature found on the meter test report matched with the testing engineer Sh. Amit Kumar's signature, who was not with MLCC after 02.12.2005, as he had been transferred from the testing department. Thus it becomes an admitted fact that the meter test report proforma dated 10.02.2006 belongs to the Respondent and was signed by an official of the Respondent.

4.3 No satisfactory explanation could be given by the Respondent officials for treating their own meter test proforma as fake. If their own serial numbered printed proforma was misused by their official, some action should have been taken against him and to set right the records, the meter should have been re-tested.

4.4 The Appellant further stated that for change of name and for enhancement of load from 2 Kw to 15 Kw he had submitted an application and paid a huge amount (Rs.61,815/-) in October 2001 but the Respondent had not effected the name change and enhanced the load from 2KW to 15Kw till date. To this there was no satisfactory explanation given by the Respondent, however, they assured prompt action will be taken now.

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4.5 The Respondent further stated that the connection is a commercial connection though industrial tariff has been levied all along. The Appellant stated that he has got an industrial license for the said premises. The Appellant was directed to produce the copy of industrial license. The Appellant submitted the copy of the industrial license having permanent registration no. 4894/19 dated 27.05.1999 which stands renewed upto 31.03.2009.

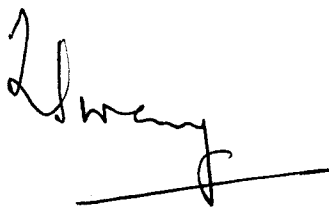
5.0 Conclusion

5.1 It is my considered view that the CGRF has no powers to recall its own orders until and unless some new facts are revealed which were not known or were inadvertently not submitted earlier, and justify the remedial action.

5.2 The Respondent officials have admitted their lapse in not effecting the name change and in not enhancing the load from 2 Kw to 15 Kw, despite having received the required payment along with an application on 04.10.2001. The Respondent is therefore directed to effect the necessary changes without further delay, and not later than in 2 weeks of this order.

5.3 The Appellant may be charged for consumption of electricity upto the reading 83377 as recorded in the Meter Test Report dated 10.02.2006.

5.4 In the Meter Change Report dated 02.06.2006 the remarks "reading not visible" are recorded against the old meter, while

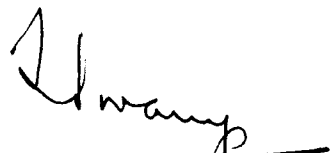
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in the Meter Test dated 10.02.2006 the reading of '83377' is recorded. It appears that the meter actually became defective after 10.02.2006. As such the meter defective period appears to be 10.02.2006 to 02.06.2006 and an assessment demand be raised for this period, based on the consumption recorded by the new meter installed on 02.06.2006, for the corresponding period 10.02.2007 to 02.06.2007.

5.5 The Respondent officials in their written submission on 25.08.2009, have stated that the supply of the connection was found being used by M/s Black & Decker, through their proprietor Sh. Rajesh Kumar, for industrial purpose. The Appellant has also submitted a copy of the industrial license, as such the levy of industrial tariff is in order and shall continue.

5.6 The CGRF's order is modified to the extent above.

23rd September 2009


(SUMAN-SWARUP)
OMBUDSMAN