

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/2009/338

Appeal against Order dated 30.07.2009 passed by CGRF-BRPL in case no. C.G.No.141/2009.

In the matter of:

Shri Kewal Anand

- Appellant

Versus

M/s BSES Rajdhani Power Ltd.

- Respondent

Present:-

Appellant The Appellant Shri Kewal Anand was present in person

Respondent Shri Avinash Kumar, DGM,
Smt, Nirmal Marwah, Sr. Manager,
Shri Dhiraj Kumar, Legal Retainer and
Shri Ashish Verma, Counsel, attended on behalf of the
BRPL

Date of Hearing : 06.10.2009, 23.10.2009, 18.01.2010

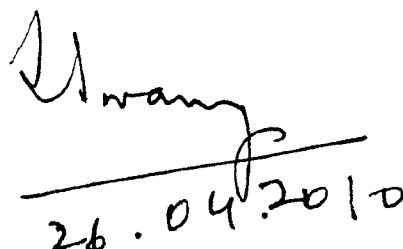
Date of Order : 28.01.2010

Date of Corrigendum : 26.04.2010

CORRIGENDUM

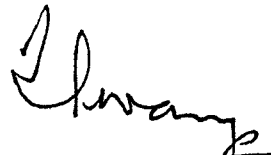
ORDER NO. OMBUDSMAN/2010/338

The BSES-BRPL in its submission dated 17.12.2009 had stated that an amount of Rs.1,95,293/- was refunded to the consumer vide cheque No. 007567 dated 07.11.2008 drawn on Centurion Bank of Punjab Ltd., Nehru Place. However, inadvertently the refunded amount


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has been mentioned differently on pages 2,3,4,5,7 and 8 of the above order. The mistake is corrected and wherever the amount refunded to the consumer occurs in the order, the same be read as Rs.1,95,293/-. There is no other change in the order and the operative para 4.0 remains intact.

26th April 2010 -


(SUMAN SWARUP)
OMBUDSMAN

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BRPL

Date of Hearing : 06.10.2009, 23.10.2009, 18.01.2010

Date of Order : 28.01.2010

ORDER NO. OMBUDSMAN/2009/338

1.0 Shri Kewal Anand, the Appellant, on behalf of Shri Mulk Raj Anand, has filed this appeal dated 01.09.2009 against the order of the CGRF-BRPL in the case No. CG-141/2009 dated 30.07.2009. He has prayed for award of interest on the excess amount paid by him to the BSES-BRPL (Respondent) and


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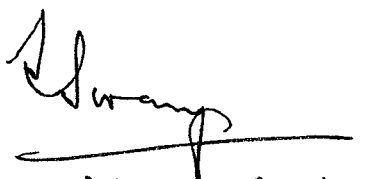
compensation for harassment caused to him in pursuing his case over the last twelve years.

1.1 The brief facts of the case as per the records and averments of the parties, are as under:-

(i) The Appellant has been pursuing his case in various Forums for refund of the excess amount paid by him to the Respondent for the past 12 years but without success. The 'Bijli Vivad Samadhan Committee' (constituted by the Respondent) decided to resolve the issue. Consequently, the parties reached a mutual settlement according to which the Respondent has given a refund of Rs.1,94,293.54 to the Appellant, through the cheque dated 07.11.2008 in respect of the excess amount paid by him

(ii) The Appellant vide his letter dated 18.11.2008 requested the CEO of BRPL for payment of interest @18% per annum on the excess amount of Rs.1,95,293.54, which was unjustifiably retained by the Respondent for the last twelve years. The Appellant has justified his claim for interest @ 18% per annum on the grounds that the Respondent also charges penalty @ 1.5% per month from the consumers on delayed payments of the electricity bills. However, there was no response from the Respondent.

1.2 The Appellant filed his complaint before the CGRF requesting for payment of interest @18% per annum on the excess amount of


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Rs.1,95,293.54, which was retained by the Respondent for the last twelve years, and sought compensation for the harassment caused to him.

The CGRF, in its order dated 30.07.2009, after taking into consideration the material on record and the submissions made by both the parties, decided that as the case had been settled mutually before the 'Bijli Vivad Samadhan Committee' on 03.05.2008, where the Appellant was also a party, the appeal could not be entertained.

1.3 The Appellant, being aggrieved by the aforesaid Order of the CGRF dated 30.07.2009, has filed this appeal on 01.09.2009, praying for (a) interest @ 18% per annum on the excess amount of Rs.1,95,293.54 refunded to him, (b) removing FEA, and (c) compensation of Rs.50,000/- per month for the ten months he was without electricity and on account of mental tension and harassment caused to him by the Respondent for twelve years.

2.0 After seeking the required clarifications, a preliminary hearing in the matter was fixed on 06.10.2009. The Appellant was present, in person, and the Respondent through Shri Avinash Kumar, DGM and Smt. Nirmal Marwah, Sr. Manager.

The Appellant stated that he was entitled to interest @18% per annum for the last twelve years on the refunded amount of Rs.1,95,293.54. He clarified that during deliberations at the Bijli Vivad Samadhan Committee, he could not claim the interest

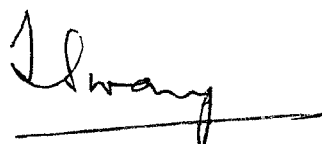

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because the amount to be refunded was not known to him. It was only when the Respondent sent him the revised bill that he came to know the exact excess amount wrongly retained by the Respondent.

The Respondent, on the other hand, stated that the refund of Rs.1,95,293.54 became due only after the basis of refund was mutually accepted by the parties in May 2008 before the 'Bijli Vivad Samadhan Committee', and, therefore, no interest prior to this date was payable. After hearing both the parties, the Respondent was directed to forward a month-wise break-up of the amount of Rs.1,95,293.54 refunded, alongwith the dates from which the amount became due to the Appellant from, 1993 onwards. The next hearing in the case was fixed on 23.10.2009.

- 2.1 At the hearing on 23.10.2009, the Appellant was present in person and the Respondent through Shri Avinash Kumar, DGM and Smt. Nirmal Marwah, Sr. Manager.

It was observed that the statement of the amount refunded, alongwith the calculation details, submitted by the Respondent, lacked the complete information sought. The Respondent was, therefore, again directed to file the required statement giving month-wise break-up of the refunded amount alongwith, the dates from which the amount became due to the Appellant from 1993 onwards, by 30.10.2009, with a copy being supplied to the Appellant for his comments, if any: The Appellant submitted an Interim Application, in which he sought to re-open the issue

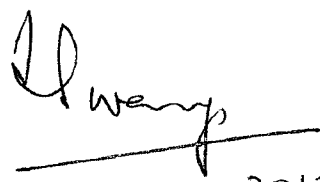

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regarding the FAE bill raised in 1997, in addition to reiterating the issues already raised in the appeal. The application was not considered as the FAE bill was not the subject matter of the appeal, and the issue of the excess amount paid by Appellant, stood mutually settled.

The detailed statement from the Respondent was again sought. Meanwhile the Respondent, sent further written submissions dated 17.12.2009 for consideration, reiterating that the Appellant and Respondent are bound by the terms of the mutual settlement entered into, and acted upon.

- 2.3 A final hearing was fixed on 18.01.2010 for supply of statement of excess amounts paid by the Appellant. The Appellant was present, in person. The Respondent was present through Smt. Nirmal Marwah, Sr, Manger, Shri Dhiraj Kumar, Legal Retainer and Shri Ashish Verma, Counsel.

The Appellant reiterated his plea for payment of interest on the excess amount paid by him from 1996 onwards, alongwith interest at 18% per annum. The Respondent argued that as both the parties had reached a settlement on 03.05.2008 and the amount of Rs.1,95,293 had already been paid, and was duly accepted by the Appellant, no further claim for interest or compensation may be entertained. The Respondent also submitted a copy of the Supreme Court's judgement in Anderson Wright & Co. versus Amarnath Roy and Others [(2005) 6 Supreme Court case 489] to substantiate their arguments.


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- 3.0 It is a matter of record that the settlement before the 'Bijli Viwad Samadhan Committee' dated 03.05.2008 was arrived at by and between the parties, and in token of their acceptance, duly signed by Shri Kewal Anand (the Appellant), Shri Asit Kr. Tyagi (Branch Manager, Hauz Khas), Shri Anurag K Gupta (Secretary), Shri V.P. Sharma (Chairman) and Smt. Nirmal Marwah, (Sr. Manager).
- 3.1 The Respondent vide letter dated 20.10.2009 had submitted a statement of calculations which, though incomplete, shows the following excess amounts of the Appellant being retained by the Respondent at different points of time, between 25.04.1996 and 02.04.2008. In the absence of a more comprehensive statement being supplied by the Respondent, it is proposed to rely on the following data:

TABLE

Period		Amount in Rupees
From	To	Excess amount paid by the Appellant
25.04.1996	13.08.1996	1,34,593.53
13.08.1996	21.12.1996	44,850.57
19.12.1997	18.11.2000	57,543.81
15.05.2002	25.11.2005	34,592.38
08.05.2007	04.08.2007	8,757.92
04.08.2007	02.04.2008	38,126.56
02.04.2008	04.08.2008	7,778.36

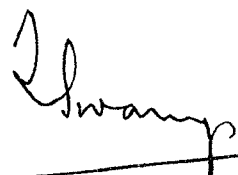
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The argument of the Respondent that the agreement of settlement arrived at before the 'Bijli Vivad Samadhan Committee' between the parties is final and cannot be reopened, has force. At the same time, it is a settled law that an agreement which is against a law or statute, is null and void. However, the agreement of settlement between the Appellant and Respondent does not fall in this category. The Appellant has accepted the refund of Rs.1,92,293.54 paid through cheque dated 07.11.2008 and has thus accepted implementation of the agreement of settlement. The settlement does not however cover the issue of payment of interest on the excess amount retained by the Respondent. It is also noted that the aforesaid Hon'ble Supreme Court judgment cited by the Respondent is not relevant in the facts and circumstance of the present case.

3.2 It is pertinent to note that Section 62(6) of the Electricity Act, 2003 provides for payment of interest on the excess amount charged by the licensee from the consumers. The section states as under:

"If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."


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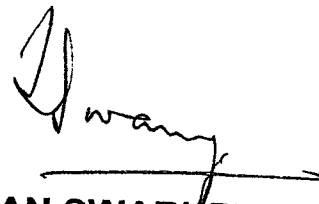
From the details of calculations of amount payable by the Appellant and attached to the agreement of settlement, it is seen that no interest has been paid to the Appellant while refunding the amount of Rs.1,94,293.54, being, the excess amount retained by the Respondent, and refunded only in November 2008.

- 4.0 In view of the above observations, it would be just and fair to award interest at the current bank rate to the Appellant on the excess amounts retained by the Respondent. The Respondent is, therefore, directed to calculate and pay to the Appellant simple interest at the current bank rate, on the excess amounts received from the Appellant as shown in column 3 of the above table (in para 3.1), for the periods shown in columns 1 & 2 of the same table.

A compensation of Rs.10,000/- is also awarded to the Appellant for undue harassment.

The appeal is accordingly disposed of. Compliance of the order may be reported within 21 days of this order.

28th January 2010


(SUMAN SWARUP)
OMBUDSMAN