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OFFICE OF THE ELECTRICITY OMBUDSMAN
(A Statutory Body of Govt. of NCT of Delhi Under the Electricity Act, 2003)
B-53, Paschimi Marg, Vasant Vihar, New Delhi – 110057
(Tel. No. 32506011, Fax No. 2614 1205)

Appeal No. ELECT/OMBUDSMAN/2010/351

Appeal against Order dated 25.09.09 passed by CGRF-BYPL in complaint No. CG-105/07/09 (K. No. 113037310128)

In the matter of:

Shri N.K. Kapoor

- Appellant

Versus

M/s BSES Yamuna Power Ltd.- Respondent

Present:-

Appellant

: Shri Arun Kumar, and
Shri Parimal Kumar, Advocates
attended on behalf of the Appellant

Respondent

: Shri Sunil Gajbhaiye, GM (Business)
Shri Mukesh Tyagi, Manager (Commercial)
Shri Pawan Kumar Mahur, Legal Retainer
attended on behalf of the BYPL

Date of Hearing: 03.02.2010

Date of Order : 26.02.2010

ORDER NO. OMBUDSMAN/2010/351

- 1.0 The Appellant, has filed this appeal against the order of CGRF-BYPL in complaint No. 105.07.09 dated 25.09.2009. He has prayed for setting-aside the order of the CGRF and withdrawal of misuse charges levied against the domestic electricity connection

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K. No. 113037310128 installed at premises A/4, Desh Bandhu Gupta Road, Pahar Ganj, New Delhi – 110 055, and now disconnected. He has also prayed for cancellation of the notice transferring the dues of this disconnected connection K. No. 11303731128 to his live connection K. No. 11300C020756 in the same premises. He also sought a compensation of Rs.1 lakh on account of harassment, and Rs.10,000/- for litigation charges.

1.1 On the basis of records and the averments of the parties the brief facts of the case are as under:

- i) The Appellant, Shri N.K.Kapoor, is the registered consumer for K. No. 113037310128 installed at A/4, Desh Bandhu Gupta Road, Pahar Ganj, New Delhi – 110 055. This connection was disconnected on 16.03.2009 due to non-payment of the outstanding dues amounting to Rs.2,29,123/-, and a final notice was issued to the registered consumer on 14.07.2009 for transfer of these dues to the live connection K. No. 11300C020756.
- ii) The Appellant has stated that misuse charges were wrongly levied on his domestic connection K. No. 113037310128 since 1991 and he had been representing since 1994 for withdrawal of these charges. The misuse charges were finally withdrawn in the year 2004, but, the bills prior to 2004 were not revised on the basis of domestic tariff. It is also his contention that finally his supply was disconnected under

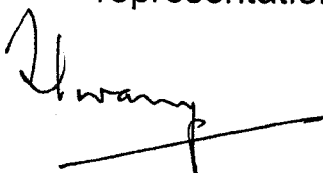
Shri N.K. Kapoor

section 56(1) of the Electricity Act, 2003 in the month of March, 2009, and the final notice for transferring the dues, including misuse charges for the disconnected connection, to the live connection, was issued by the Respondent. He has pleaded that he had also deposited Inspection fees on 06.04.1994, 14.03.1997 and 28.08.2002 for inspection and withdrawal of misuse charges, but no action was taken. He also filed a copy of a report of the Assistant Engineer of the Department dated 08.11.1997, mentioning that the supply is being used for domestic purpose from K. No. 113037310128.

- iii) The Respondent disconnected the electricity connection K. No. 113037310128 in March 2009 and sent a final notice transferring the dues of the disconnected connection to his live connection.

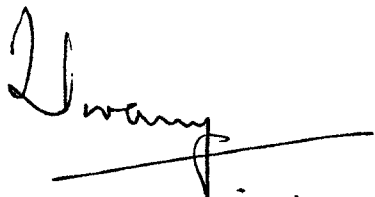
2.0 The Appellant filed a complaint on 20.09.2009 before the CGRF-BYPL praying for revision of the bill on domestic rate/tariff since the date of levy of misuse charges, for installation of the meter for connection K. No. 113037310128 immediately, action for cancellation of the notice for transferring of the dues of the disconnected connection, to the live connection, and payment of compensation of rupees one lakh on account of harassment and Rs. 10,000/- for payment of litigation charges.

2.1 The Appellant stated before the CGRF that he had filed several representations since 1994 and had deposited Inspection fees on



06.04.1994, 14.03.1997 and 28.08.2002. The Respondent had wrongly charged misuse charges against the electricity connection K. No. 113037310128, since 1991.

- 2.2 The Respondent submitted before the CGRF that the Forum had no jurisdiction to entertain the complaint as the same pertained to misuse of electricity, which is dealt with under Section 126 of the Electricity Act, 2003. The complaint is also barred by the law of Limitation, as the alleged cause of action arose prior to 1991 and the complainant had never approached any court of law, including the Bijli Adalats, which were being held during the DVB period.
- 2.3 The complainant refuted this contention of the Respondent before the CGRF, stating that misuse charges had been levied since 1991 and the provisions of the Electricity Act, 2003 would not apply to the instant case. It was also stated that the complainant was not served any show-cause notice under section 126 of the Electricity Act, and misuse charges were not levied after following the procedure laid down under section 126 of the Electricity Act, 2003. It was also contended that provisions of the Limitation Act, would not apply in the present case since the complainant had been pursuing the matter, although the cause of action arose in 1991.
- 2.4 After hearing the parties, the CGRF concluded that the matter pertained to levy of misuse charges since 1991, and the counsel of the complainant could not provide any documents to show as to why no action was taken by him since 1991. The Forum finally

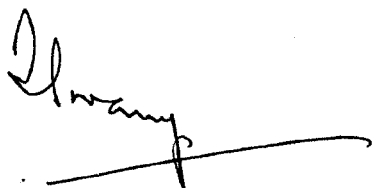


held that it lacks the jurisdiction to decide on the subject of levy of misuse charges and the complainant is free to take up his grievance at the appropriate Forum/Authority.

Against the above order of the CGRF-BYPL, the Appellant has filed the appeal praying for setting-aside of this order.

- 3.0 After going through the records, the contents of the appeal and the comments filed by the parties, the first hearing in the case was held on 03.02.2010. The Appellant, was present through counsels Shri Arun Kumar and Shri Parimel Kumar. The Respondent, was present through Shri Sunil Gajbhaiye, GM (Business), Shri Mukesh Tyagi, Manager (Commercial) and Shri Pawan Kumar Mahur, Legal Retainer.

At the outset, the Respondent raised a preliminary objection stating that this Forum has no jurisdiction to entertain the appeal as the matter pertained to misuse of electricity. The Appellant was also barred by the law of Limitation, as the alleged cause of action arose prior to 1991 and the Appellant had not approached any Court of Law for eighteen years including the Bijli Adalat, held during the DVB period, for redressal of his grievances. The Appellant had also, been paying the bill on higher tariff without seeking any proper remedy before any court of law, including the Bijli Adalat, held during the DVB period. The Respondent stated that misuse was withdrawn from August, 2003 after the Appellant deposited inspection fees on 28.08.2002. The present appeal for



withdrawal of charges prior to 2003 had been filed after a period of seven years of withdrawal of the misuse charges w.e.f. August 2003, and was time barred.

3.1 The Appellant drew attention to a copy of the report of the Assistant Engineer dated 08.11.1997 recording that the electricity connection K. No. 113037310128 was being used on the first floor, for domestic purpose. The Appellant also stated that this case was not covered under Section 126 of the Electricity Act, 2003, as the misuse charges were levied prior to the coming into force of the Act. The Appellant also stated that in the Regulations of the DERC, nowhere is it mentioned that misuse cases could not be dealt with by the CGRF. No provision of the Limitation Act can also apply in the present case as the cause of action arose in 1991 and the complainant was regularly pursuing the matter with the Respondent on frequent intervals. The Respondent had also accepted that the bills after August 2003 were being issued on domestic rates, but the demand for misuse charges between 1991 and August 2003 had not been withdrawn.

3.2 After hearing both the parties, on the preliminary issue of jurisdiction, it is seen that misuse charges have been levied on the Appellant since 1991, and these had been regularly paid upto August 2003 by him. The recent inspection report dated 14.07.2009 also shows that the supply of the live electricity connection K. NO. 11300C020756 installed at A/4, Desh Bandhu Gupta Road, Pahar Ganj, New Delhi was found extended to K. No.

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113037310128, the disconnected connection in the same premises, whose supply was disconnected due to non-payment of a bill amounting to Rs.2,29,123/-, since 16.03.2009. It is evidently a case of unauthorized use of electricity by the Appellant from K. Nos. 113037310128 and 11300C020756 and provisions of section 126 of the Electricity Act, 2003, are clearly attracted in this case.

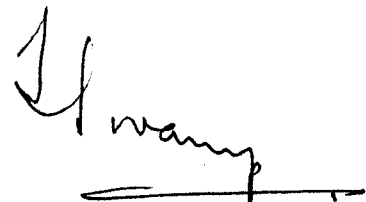
Clause 8 of the Delhi Electricity Regulatory Commission's Notification dated 11.03.2004 lays down as under:

"the Forum shall take up any kind of grievance concerning electricity supply to the consumers except the grievances arising under Sections 126, 127, 135, 139, 143, 152 and 161 of the Act".

The CGRF has therefore rightly held that this matter does not fall in its jurisdiction. The appeal also cannot be adjudicated upon by this Forum. The Appellant may approach the appropriate Forum for any relief that he requires.

The appeal is accordingly disposed off.

26.02.2010.


(SUMAN SWARUP)
OMBUDSMAN