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**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/2010/369**

Appeal against Order dated 02.02.2010 passed by CGRF-NDPL in CG.No. 2456/10/09/CVL.

**In the matter of:**

Shri Ashok Kumar Gupta

- Appellant

**Versus**

M/s North Delhi Power Ltd.

- Respondent

**Present:-**

**Appellant** Shri S.P . Gupta, Authorised Representative attended on behalf of the Appellant

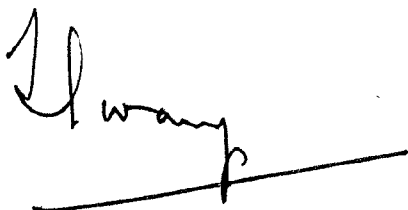
**Respondent** Shri Ajay Kalsie, Company Secretary,  
Shri Gautam Jai Prakash, Manager- KCC  
Shri Vivek, Manager (Legal) and  
Shri Krishnendu Datta, Advocate attended on behalf of the NDPL

**Date of Hearing** : 03.06.2010, 21.07.2010, 29.07.2010

**Date of Order** : 06.08.2010

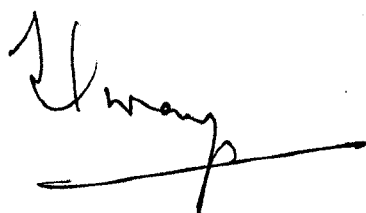
**ORDER NO. OMBUDSMAN/2010/369**

1.0 The Appellant, Shri Ashok Kumar Gupta, has filed this appeal against the order dated 02.02.2010 passed by CGRF-NDPL in the case CG No.2456/10/09/CVL.



1.1 The brief facts of the case as per the records and submissions of the parties are as under:

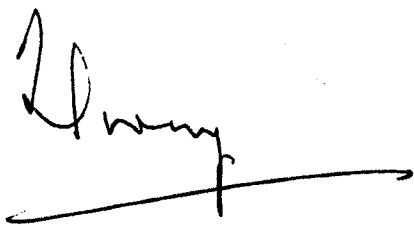
- (a) The Appellant had filed a case before the CGRF-NDPL stating that in June 2004, he had approached the Respondent for grant of new connections (8 Nos.) of 16 KW each, for separate residential units at 3 Under Hill Lane, Civil Lines, Delhi. The Appellant was asked to pay 50% of the cost of electrification amounting to Rs.7,14,016/-, which he deposited on 16.11.2004. The Appellant stated before the CGRF that the Civil Lines area was already electrified, as such, only service line charges were payable and he requested for refund of the development charges already paid by him.
- (b) The Respondent officials stated before the CGRF that the Appellant had applied for a connection on 28.08.2004 with a total load of 160 KW and had deposited an amount of Rs.10,000/- for preparation of estimates. The estimates for electrification of the area amounting to Rs.14,42,712/- were prepared and a demand-note for Rs.7,31,016/- was sent on 05.11.2004 to Shri Ashok Kumar Gupta who deposited the said amount on 16.11.2004. Shri Ashok Kumar Gupta had constructed the eight residential units as a developer, and had applied for a connection with a total load of 160 KW.
- (c) The Respondent officials placed on record before the CGRF an internal letter no.:IC-CCU/D04/1516 dated 22.05.2004, in which it was clarified that if a single point connection is taken



to the plot, the charges were to be recovered as per the norms, but all such plots that are carved out of one main plot, shall then fall under the category of 'un-electrified areas'. As such, the area of the plot at 3, Underhill Lane was categorized as an un-electrified area. Since Shri Ashok Kumar Gupta had constructed the dwelling units as a developer, the development charges deposited by him were not refundable.

- (d) The CGRF decided that Shri Ashok Kumar Gupta, was a developer, and the 50% development charges charged for electrification as per the DERC's guidelines were not refundable.

2.0 The Appellant, not satisfied with the order of the CGRF dated 02.02.2010, has filed this appeal with the prayer that the CGRF has not given any concrete/valid reason for rejection of his application for refund and the order is in total violation of the DERC's guidelines. Moreover, the area where the premises is situated was already electrified decades ago and the connections were given on LT system of supply and the connection is neither a single point delivery connection nor given on 11 KV supply. The cost of electrification was therefore not recoverable from him.

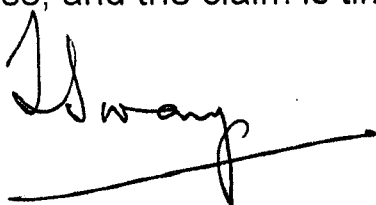


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- 2.1 After scrutiny of the contents of the appeal, the CGRF's order, and the submissions made by both the parties, the case was fixed for hearing on 03.06.2010.

On 03.06.2010, the Appellant was present through his authorized signatory Shri S.P.Gupta. The Respondent was present through Shri Krishnendu Datta (Advocate), Shri Ajay Kalsie (Company Secretary), Shri Gautam Jai Prakash (Manger –KCG Legal) and Shri Vivek (Manager – Legal).

The Appellant argued that the Civil Lines is an electrified area and cannot be treated as un-electrified merely because new constructions had come up on one plot, which was already having electricity.

The Respondent stated that the development charges were deposited in 2004 without protest by the Appellant as per the approved electrification scheme. The residential units constructed by the Appellant are already sold off. As such, the Appellant had no locus standi now to ask for the refund. The Appellant had also not lodged any protest in 2004, while depositing the amount. The amount was deposited in 2004 and the refund was asked for in September, 2009, and, the 'law of limitation' is applicable in this case, and the claim is time barred, in any case.



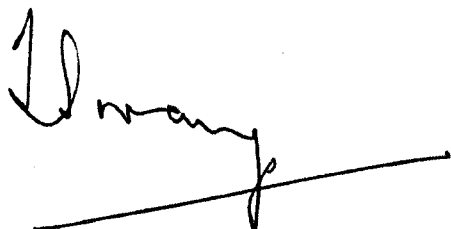
After hearing, both the parties, it was decided that the following documents be produced by them at the next hearing:

- (i) K. No. files of all individual connections granted to the new owners with billing details of individual owners.
- (ii) Copy of the scheme prepared for electrification of the area before charging 50% development costs, and the agreement arrived at with the Appellant in this regard.
- (iii) Ownership documents of the Appellant and the sale-deeds executed with buyers subsequently by the Appellant, as documentary proof of his 'locus standi' for seeking a refund at this stage.

The case was fixed for further hearing on 16.06.2010. On the request of the Appellant, the case was rescheduled for hearing on 21.07.2010.

- 3.0 On 21.07.2010, the Appellant was not present. The Respondent was present through Shri Krishnendu Datta (Advocate), Shri Gautam Jai Prakash (Manager -KCG Legal) and Shri Vivek (Manager - Legal).

The Respondent produced the file relating to preparation of the electrification scheme for the entire plot at 3, Underhill Lane. The list of individual connections indicates that twelve connections have been given in eight residential units. The Respondent argued that the law of limitation is applicable in this case and the appeal is not




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maintainable. The case was fixed for further arguments on the preliminary objections regarding limitation and the locus standi of the Appellant for seeking a refund on 29.07.2010.

- 3.1 On 29.07.2010, the Appellant was not present again. A letter has however been received from him stating that he has nothing more to add in the matter, except what he has already submitted, and he will not be able to attend the hearing on 29.07.2010.

The Respondent stated that Shri Ashok kumar Gupta applied for a single connection with a load of 160 KW and a contract demand of 120 KW. He also agreed to provide space for installation of a 400 KV transformer and substation, and paid Rs.10,000/- for preparation of estimates. A demand-note dated 05.11.2004 was sent to the Appellant based on the approved electrification scheme and he deposited 50% share of Rs.7,41,016/- on 16.11.2004. The first request for refund of the amount was received on 10.09.2009 i.e. almost five years later, and a complaint was filed before the CGRF on 26.09.2009. The Respondent stated that the electrification of the entire plot was treated at par with development work undertaken by other private developers and agencies like DDA etc. Therefore, 50% of the cost of electrification in the area was to be deposited by the Appellant as per the existing policy and the amount was not refundable. A judgment of the Appellate Tribunal (Appeal 244 of 2001) has also been filed to support this stand.



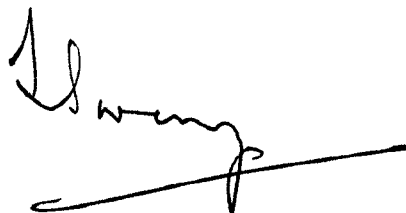
4.0 After hearing the arguments of both the parties and after scrutiny of the records produced, it has emerged that :

The Appellant, Shri Ashok Kumar Gupta, represented by the authorized signatory Shri S.P.Gupta, has not produced any documentary proof of legal ownership/occupation of the property or established his 'locus standi' to seek a refund at this stage.

The Respondent stated that the cottages built on the entire plot with an area of about 6,280 sq. yds. had already been sold off and the Appellant has now no locus standi to ask for a refund. As per the copy of the sale deed produced for one of the units, the cost of electrification has already been included in the sale price. No protest was also lodged in 2004 by the Appellant, while making the payment against the demand-note raised for electrification of the area.

4.1 The main issues for decision are:

- (a) Whether the claim of the Appellant is barred by limitation?
- (b) Whether the Appellant has any locus standi to seek a refund at this stage, having sold the units constructed to other persons?
- (c) Whether on merit the area is to be treated as electrified or un-electrified?



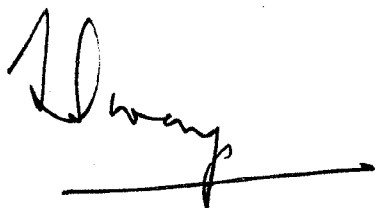
(4)

4.2 As regard the issue at (a), it is clear that the Appellant had not paid the amount under protest and had also accepted the estimates. Almost five years have elapsed after payment of the development costs and the work is also completed. The claim is evidently time barred.

As regards the issue at (b), from the sale deed produced it is seen that a number of units have already been sold off to different owners, who have already paid for the electrification costs as part of the price for the unit.

4.3 To sort out the issue at © above we have to see the definition of un-electrified area as given in the DERC's Supply Code and Performance Standards:

**"Un-electrified area** shall mean areas requiring/undergoing development including smaller pockets within larger developed areas, which themselves require/are undergoing development, such that the area does not have any existing distribution network/ appropriate transformation capacity to cater to the demand/ potential load of such area. Such areas shall continue to be treated as un-electrified till such time a distribution network has been established and electrified to cover the proposed plotting/ development layout thereof."

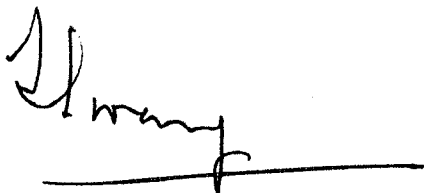




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As per the Supply Code and Performance Standards Regulations' Clause 30 (i) "For the area developed and sponsored by development agencies like Delhi Development Authority, Municipal Corporation of Delhi, Public Works Department or private developers, the electrification shall be carried out by the Licensee after charging 50% of the cost towards HT feeders, sub-station including civil works, LT feeders and 100% cost towards service line and street lights."

4.4 The Appellant got a temporary connection of 4 Kw for construction purposes and after construction of the eight cottage units, he applied for a 160 KW load with a contract demand of 120 KW. The Appellant developed the entire plot having a large area of 6280 sq. yds. and constructed the dwelling units which were sold off to individual buyers. This large plot of 6280 sq. yd earlier had only one electricity connection with a 3.73 KW load, for a single building. As such, the entire area cannot be treated as electrified as no internal distribution system or transformer capacity was in existence to cater to the load requested for. For providing a 160 KW load for all the new dwelling units and common areas, it was necessary to provide the necessary infrastructure. There are a number of such instances where larger plots have been subdivided into smaller plots, and for provision of electricity to each of the smaller plot holders, the cost of electrification has been shared by the owners on pro-rata basis. In addition, at the time of selling the built up properties the developer has already recovered the

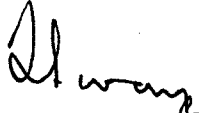


(44)

cost of electrification paid by him, from the buyers. At this stage, he is evidently not entitled to seek any refund.

5.0 Thus, there appears to be no merit in the Appellant's plea that the area was already electrified and only service line charges are payable by him. I do not find it necessary to interfere with the orders of the CGRF-NDPL. The appeal is accordingly disposed of.

6<sup>th</sup> August 2010 .

  
(SUMAN SWARUP)  
OMBUDSMAN