

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 – 110 057

(Phone No.: 32506011, Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2012/498 and 497

Appeal against the Order dated 21.05.2012 passed by CGRF–
TPDDL CG.4080/02/12/CVL & 4081/02/12/CVL.

In the matters of:

Shri Rajeev Kapoor

- Appellant

Versus

M/s Tata Power Delhi Distribution Ltd.

- Respondent

And

Shri S. K. Kapoor

- Appellant

Versus

M/s Tata Power Delhi Distribution Ltd.

- Respondent

Present:-

Appellant: Shri Harish Jain, Advocate was attended on behalf of
the Appellant

Respondent: Shri Vivek, Sr. Manager, Legal and Shri Anand
Prakash Singh, Executive – RRG, both are attended
on behalf of the TPDDL

Date of Hearing : 29.11.2012

Date of Order : 06.12.2012

ORDER NO. OMBUDSMAN/2012/498 and 497

These are two appeals filed by Shri Rajeev Kapoor of H. No. 13, Ground
Floor, Block- B, Rajpur Road, Civil Lines, Delhi -110054 and Shri S.K.Kapoor,

H.No. 13 – A, Rajpur Road, Civil Lines, Delhi – 110054, against the two separate orders of the Consumer Grievance Redressal Forums – Tata Power Delhi Distribution Ltd. (CGRF-TPDDL) both dated 21.05.2012. The commonality is that both the Appellants had purchased their kothies/houses from Shri Gaj Raj Jain, who had constructed five kothies on a plot 3000 sq. yds. and these were purchased by five different people including Shri Rajeev Kapoor (550 Sq. Yds) and Shri S.K.Kapoor (300 sq. yds.).

The issue was that Shri Gaj Raj Jain had a long term temporary connection (K.No.31207000517) for constructing these kothies which was in existence from 10.03.2004 till 07.01.2006, and had outstanding dues of Rs.6,39,612/- which were sought to be recovered from the owners of the five kothies, including the Appellants Shri Rajeev Kapoor and Shri S.K.Kapoor. It appears some of the purchasers of the kothies paid this amount and the CGRF-TPDDL took a view that the present Appellants also have to pay a pro-rata amount on the basis of the revised bill to be prepared. The Appellants have challenged these two orders dated 21.05.2012 in CG Nos: 4080/02/12/CVL and 4081/02/12/CVL respectively. The issues and the conclusions in both the orders are same and, hence, this common order is being issued.

During the hearing it emerged that the Tata Power Delhi Distribution Ltd. (DISCOM) issued a show-cause notice on 16.12.2011 under Clause 49 (ii) of the Delhi Electricity Regulatory Commission's Supply Code and Performance Standard Regulations, 2007, to both Shri Rajeev Kapoor and Shri S.K.Kapoor

arguing that the live connection of Shri Rajeev Kapoor (CA No. 60004683961) and the live connection of Shri S.K.Kapoor (CA No. 60006281780), has been found, respectively, to be feeding supply to the disconnected connection in the name of Shri Gaj Raj Jain (CA No.60007787868), and, therefore, an amount of Rs.1,15,443/- was due from Shri Rajeev Kapoor and an amount of Rs.1,15,443/- from Shri S.K.Kapoor. It is an admitted fact that the above connection of Shri Gaj Raj Jain was terminated/disconnected on 07.01.2006. The new connections (one in the name of Shri Rajeev Kapoor) were energized on 10.03.2004 and (the one in the name of Shri S.K.Kapoor) on 04.07.2005. It is a complete violation of common sense, apart from being an illegality, for a DISCOM to argue that a permanent connection for the use of a completed dwelling would, after 6-7 years of usage, somehow in 2011 be used to supply a connection lying disconnected since 2006, which was meant for the construction of these two houses, now completed, and where the Appellants are respectively living, after the purpose of the old connection has been fulfilled and it has ceased to exist.

Similarly, the observations of the CGRF in both the above orders that the pro-rata amounts of the old dues of the disconnected construction related connection are payable by Shri Rajeev Kapoor and Shri S.K.Kapoor respectively, is a complete misunderstanding of the legal facts. Regulation 49(ii) of the DERC's Supply Code 2007, does not allow the DISCOM to recover old dues of a third individual Shri Gaj Raj Jain from the two Appellants in these cases by ignoring the facts and by inverting the common-sense timeline of the construction of the

properties in question by arguing, 6-7 years after the event, that a old construction connection which had served its purpose should be shown to be live again without any rhyme or reason or logical explanation. The fact that 3 out of 5 owners of the five kothies involved have actually paid the amount claimed by the DISCOM does not imply that Shri Rajeev Kapoor and Shri S.K.Kapoor are also similarly, legally, bound to do so.

The DISCOM has also argued that in the sale-deed relating to the property purchased, there is a clause requiring the purchaser to pay up all the dues settled against the property, which includes outstanding electricity bills. Notwithstanding the fact that the Ombudsman is not the appropriate forum to enforce any conditions relating to the sale-deed, in which the DISCOM was not a party, it cannot be argued by the DISCOM that there is any "outstanding electricity bill" as the two connections released to the two Appellants, Shri Rajeev Kapoor and Shri S.K.Kapoor, did not show any outstanding amount at the time the connections were released, or even shortly thereafter. The two connections were linked in 2011 for the first time. When the connections were released the old, construction related, connection of Shri Gaj Raj Jain was still in existence, and its dues had not been transferred to the new connections mentioned above. Further, the DISCOM is not privy to any financial transactions relating to the construction related electricity connection and its dues that may have taken place outside the sale-deed clauses. It is not open to the DISCOM to enter into financial issues arising out of a sale-deed between the two parties especially since no proof is available of

any unpaid dues between two parties and claim they have to be paid by the Appellants when the dues were actually payable by Shri Gaj Raj Jain.

In its reply the DISCOM has also raised clause 15(ii) of the DERC's Supply Code 2007 that the Appellant, before purchasing the properties, should have obtained a no dues certificate from the DISCOM/Licensee, which was allegedly not obtained in these cases, and hence they now have to pay the above dues on the construction related connection. This is again an inapplicable clause in the present circumstances where, on the date of purchase, and on the date of release of new connections to Shri Rajeev Kapoor and Shri S.K.Kapoor, respectively, there were no dues relating to the construction related connection raised against the new connections as the old connection was still in existence being disconnected only in 2006.

All in all, the DISCOM is trying to invoke any and every provision, and argument, possible just to recover the dues from the Appellants for a disconnected construction related connection, while it had clearly neglected to collect the dues against it on a monthly basis while it was still operational, and where it, for unknown reasons, allowed an amount of about Rs.6.00 lakhs to accumulate on a 2 KW connection which is an indication of a complete break-down of the systemic procedures of billing and recovery within the DISCOM. For its own negligence and oversight it cannot penalize the Appellants who are honest purchasers in these cases. The final issue related to limitation applying to old dues is not being commented on, although the DISCOM has gone out of its way to cite numerous

authorities on why it is allowed to collect dues even after many years have passed, because in the present case, as has been argued above, there is no legal way for the DISCOM to connect the Appellants to the dues against the old construction related connection under any provision of the DERC's Supply Code, 2007. If, anything, the DISCOM had to proceed against Shri Gaj Raj Jain, and the purchasers of properties from him, in a separate forum/court if so advised, and not try to achieve its financial ends arbitrarily through the provisions of the Electricity Act, 2003, which is a misplaced action.

The issue of a show-cause notice under Regulation 49(ii) is clearly unsustainable and the demand to pay the amounts indicated by Shri Rajeev Kapoor and Shri S.K.Kapoor is illegal, and unjustified. The appeal is, therefore, allowed to that extent and the CGRF's orders in the two cases CG No.: 4080/02/12/CVL and CG No. 4081/02/12/CVL both dated 21.05.2012 are set-aside.


(PRADEEP SINGH)
OMBUDSMAN