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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 – 110 057
(Phone No.: 32506011 Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2005/53

Appeal against Order dated 29.11.2005 passed by CGRF – BYPL on
Complaint No.: CG-305/09/2005.

In the matter of:

Shri O.P. Verma - Appellant

Versus

M/s BSES Rajdhani Power Ltd - Respondent

Present:-

Appellant Shri O.P.Verma

Respondent Mrs. Renu Antony, Additional Manager –Customer Care,
Shri V.K.Sharma, Business Manager,
Shri Biswajit Biswas, Commercial Officer and
Shri Balak Ram, Section Officer on behalf of BRPL.

Date of Hearing : 28.02.2006 & 18.4.2006

Date of Order : 07.06.2006

ORDER NO. OMBUDSMAN/2006/53

Shri O.P. Verma, Appellant has filed this appeal against the orders dated 14.10.2005 of CGRF-BRPL in CG No. 646 / 2004. In the appeal Appellant has stated that he had following 5 number connections for domestic use installed in different houses with 1 KW sanctioned load for each connection :-

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S.N	New K.No.	New meter No.	Old meter No.	Premises No.
1	2510 N 588 0149	23180948	E 3258637	246 A
2	2510 N 588 0144	13185302	E 3237602	246 A/G/F
3	2510 N 588 0045	23180948	E 3067691	244 A
4	2510 B 588 0317	23180951	E 96610956	246 B
5	2510 N 588 0316	13239882	E 96110654	202 A

The details in brief in respect of each connection as stated by the Appellant are as under :-

(1) **K. No. 2510 N 588 0149**

Meter was installed on 24.9.91 and from the date of installation itself, it was not recording actual readings. Appellant made numerous complaints for replacement of the defective meter on 1.5.97, 17.4.03, 22.4.04 and 23.4.04 but respondent did not take any action for replacing the defective meter. It was finally replaced on 24.3.05. Actual reading bills were, therefore, never issued to the Appellant.

(2) **K. No. 2510 N 588 0144**

In this case also meter remained defective and Appellant made numerous complaints for replacement of the defective meter. His numerous complaints are dated 20.12.1994, 28.4.1999, 12.4.2003, 22.2.2003 and 23.4.2004 but no action was taken on these complaints. Actual reading based bills were not issued. Bills were issued on provisional / average base and last payment was made in 1994.

(3) **K. No. 2510 N 588 0045**

Meter of this connection was installed in 1990. The bills were regularly paid. The building was in dilapidated condition beyond repairs as a result of which meter got damaged. A part of building collapsed and meter remained defective from 1996 to 1999. After the repair of building, Appellant applied for installing meter but instead of replacing the meter, old meter was removed from site in 2000 and no meter is installed till date.

(4) **K. No. 2510 N 588 0316**

(5) **K. No. 2510 N 588 0317**

The meters of these connections remained unattended and unused as these were lying dead since long. Appellant made written complaints on 17.4.2003 and 22.5.2003 but no action was taken. Even bills were never issued against these connections. The defective meters were replaced on 28.4.2005 and 24.3.2005 respectively.

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The final orders of the CGRF dated 14.10.2005 are as under :-

"This is a case where the opinion of the two members i.e. Member (NGO) and Chairman has been indicated on page 7 to 11. Dissenting note of Member (Legal) is available at page 11 to 16. In accordance with Regulation 10 of DERC Regulations notified on 11.3.2004, the opinion of the majority is to be taken as orders of the Forum".

CGRF-BRPL in its majority order dated 14.10.2005 has observed that officials of DESU / DVB / BRPL did not perform their duties in a proper manner as a result of which bills continued to be sent on average basis w.e.f. 1994 onwards. The defective meters were also not replaced for a long time thereby aggravating the situation with regard to issuance of provisional bills. CGRF-BRPL has also observed that it is not understood as to why supply was not disconnected at appropriate time when the complainant had not been making payment against the bills raised by the licensee. **CGRF-BRPL has passed orders in respect of each of the five connections as under-**

(1) K. No. 2510 N 588 0149

As the recovery could not be effected from the complainant, this will have to be restricted for a period of three years reckoned back w.e.f. 24.3.2005 when meter was replaced in accordance with the Laws of Limitation. Accordingly, necessary assessment for a period of three years will be required to be done on the basis of consumption recorded by the new meter for the period 24.3.2005 to 24.9.2005

(2) K. No. 2510 N 588 0144

In this case also, assessment will be required to be made for a period of three years reckoned back w.e.f. 31.3.2005 when meter was replaced in accordance with the Laws of Limitation. Accordingly, necessary assessment for a period of three years will be required to be done on the basis of consumption recorded by the new meter for the period 31.3.2005 to 30.9.2005.

(3) K. No. 2510 N 588 0045

The supply against this connection was reported to have been disconnected on 25.4.1996 as per report of Business Manager, Division Alaknanda at reading 26374. The consumer has not paid any dues w.e.f. 1997 onwards. Now, the only option is to insist upon him to make the payment for a period of 3 years in accordance with the Laws of Limitation.

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- (4) **K. No. 2510 N 588 0316**
(5) **K. No. 2510 N 588 0317**

The meters were replaced against these connections on 28.4.2005 and 24.3.2005 respectively. The consumer had agreed to make the payment on the basis of consumption recorded by the new meters even for the previous period assessment will have to be restricted for a maximum period of 3 years as per Laws of Limitation on the basis of consumption recorded for a period of 6 months. This is being suggested in view of the fact that no record of past consumption is available for the period prior to 28.4.2005 and 24.3.2005.

Against the above orders of CGRF-BRPL in respect of 5 connections, consumer has filed appeal in respect of each connection as under :-

K. Nos. 2510 N 588 0149 & 2510 N 588 0144

The bills were never raised for more than 3 years before the date of filing the complaint. Therefore, any claim whatsoever is barred under section 56(2) of the Electricity Act and provisions of Limitation Act 1914. The bills of provisional or average basis could not be issued for more than 2 billing cycles according to the regulations issued by DERC. The meters were defective since installation and defective meters were not removed therefore licensee cannot claim for more than 6 months u/s 26 (6) of Electricity Act, 1910. But meters were continued to be defective till last, hence he ceased to be liable for any dues whatsoever u/s 26(2) of the Electricity Act, 1910.

On above grounds, claims if any of the respondent is liable to be set aside and the impugned orders in respect of above connections may be declared illegal.

K. No. 2510 N 588 0045

By the impugned order dated 14.10.2005, the liability of the consumer has been ordered for payment of past 3 years dues according to section 56 (2) of the Electricity Act which fact is totally unwarranted and without jurisdiction. The meter of this connection was removed in the year 1999-2000. Since then, no bills were issued. Hence the claim is barred by the period of limitation u/s 56 (2) of the Electricity Act.

K. Nos. 2510 N 588 0316 & 2510 N 588 0317

These connections have been taken back and facts and circumstances are similar.

Grounds of appeal –

- (1) The majority view is so much biased and one-sided with the appellant's case, therefore, they have imposed liability for payment of dues without explaining any reason whatsoever;

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- (2) That even Business Manager, Division Alaknanda admitted in reply that no records is available in respect of these connections. There is no proof with the respondent that these meters were ever functional. Under such circumstances, the appellant cannot be compelled to pay for no fault from his side.
 - (3) That the opinion of the Minority Member is more explicit and unambiguous than the Majority View, hence the former will prevail.

The appellant has sought relief from the Ombudsman as follows :-

- (1) The impugned order dated 14.10.2005 passed by the CGRF may be set aside in toto and the appellant may be set free from payment of 3 years dues reckoned back w.e.f. 24.3.2005 in respect of K. No. 2510 N 588 0149 and K. No. 2510 N 588 0144;
- (2) The majority order in respect of K. No. 2510 N 588 0045, 0136 & 0137 may be set aside and rejected, and the minority view of these connections may be allowed to prevail;
- (3) The appellant may be allowed to revive electric connection with K. No. 2510 N 588 0045 after following commercial formalities as the same has become dormant due to the lapsed of more than 6 months;
- (4) The appellant may be allowed refund of the excess amount deposited by way of cheque payment;
- (5) The appellant may be allowed compensation for harassment and inconvenience caused him for a sum of Rs.10,000/- for each connection;
- (6) The appellant also appeals for imposition of penalty upon the respondent so that it may create an example for not repeating the mistake; and
- (7) Any other relief, as may be deemed appropriate.

The hearing of the case was fixed for 7.2.06 which was postponed to 28.2.2006 on the request of BRPL. On 27.2.2006, another request was received from advocate of BRPL requesting to extend the time for filing reply and defer hearing by 4 weeks as he has been recently engaged and needs time to prepare the case. Advocate had not submitted any authority letter of BRPL.

However, hearing was held on 28.2.2006. Shri V.K. Sharma, Business Manager and Shri Biswajit Biswas, Commercial Officer alongwith Mrs Renu Antony, Additional Manager attended on behalf of BRPL. Shri O.P. Verma, appellant attended, in person. Both parties put forth their arguments. BRPL officials were asked to submit the details of pending dues prior to replacement of meters of all connections and of K. No. 2510 N 588 0045 upto the date of disconnection + 6 months of MG basis by 10.3.2006. The reply submitted on 9.3.2006 needed corrections and BRPL officials were asked to resubmit the detailed calculations indicating year-wise tariff made applicable and credit given for the payments made by the consumer.

On receipt of the details, hearing was re-fixed on 18.4.2006 which was attended by the appellant personally and Shri Biswajit Biswas, Commercial

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Officer, Shri Balak Ram, Section Officer alongwith Mrs Renu Antony, Additional Manager on behalf of BRPL.

Based on the presentations / arguments made by both the parties and documents produced, the decision taken in respect of each connection is as under –

K. No. 2510 N 588 0149

It remains a fact that respondent has failed to replace the defective meter for a number of years and had been raising bills on provisional basis. Consumer produced a copy of the bill for the month of October 1994 issued on provisional basis and fully paid by him. BRPL officials produced another copy of the bill for December 2003 and October 2004 raised on misuse tariff and containing arrears for the past period alongwith a statement of accounts indicating that bills have been raised in the past. Since the bills were being raised in the past containing arrears which were not paid by the consumer, after October 1994, on the plea that the bills were not on actual reading basis, as such Section 56(2) of the Electricity Act 2003 is not applicable here. Now bills are required to be revised on domestic tariff w.e.f. Nov 1994 onwards on 1 KW load basis as was done earlier but without misuse tariff etc. Meter was replaced on 24.3.2005, as per clause 26(6) of Electricity Act 1910 the assessment is required to be made for a period of 6 months from the date of replacement of meter i.e. 24.3.2005 based on average consumption of new meter for 6 months period as average consumption prior to replacement of meter was not available.

K. No. 2510 N 588 0144

Appellant produced a copy of April 1994 bill whereby Rs.4300/- was paid as a part payment. Respondent produced copy of December'03 and October'04 bill raised on 1 KW load basis on misuse tariff. Since the bills were being raised in the past containing arrears which were not paid by the consumer, on the plea that the bills were not on actual reading basis, as such Section 56(2) is not applicable here. Now bills are required to be revised on domestic tariff w.e.f. May 1994 onwards on 1 KW load basis as was done earlier but without misuse tariff etc.

Meter was replaced on 31.3.2005 as per clause 26(6) of Electricity Act the assessment is required to be made for a period of 6 months from the date of replacement of meter i.e. 31.3.2005 based on average consumption of new meter for 6 months period as average consumption prior to replacement of meter was not available.

K. No. 2510 N 588 0045

Appellant produced a copy of the paid bill of October 1994. Payment was made up to the reading of 21210. Business Manager informed that supply was disconnected on 25.4.1996 on reading 26580. Business Manager produced a copy of October 2004 bill raised on misuse tariff indicating arrears of Rs.46,784/-.

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No details produced how such demand has accumulated against disconnected connection. The demand w.e.f. reading 21210 dated 22.10.1994 to the last reading 26580 on 25.4.1996 (date of disconnection) may now be raised on domestic tariff without misuse etc. with 6 months MG/MR after date of disconnection after giving due credit to the amount paid by the appellant during this period.

K. No. 2510 N 588 0316 & 317

The meters against these 2 connections were installed on 20.5.1996 as recorded in the CGRF order. Bills against these connections had not been raised earlier as informed by Business Manager. Connection data has been fed to the system on 27.4.2005 and meters were replaced on 28.4.2005. Since the bills had not been raised earlier nor any arrears were intimated to the consumer, therefore, as per section 56 (2) of the Electricity Act, the arrears for the past 2 years are only recoverable. The meters of both the connections were found not working at the time of replacement of meter. As such assessment is required to be made for a period of 6 months prior to replacement of meter on the basis of 6 months average consumption of the new meter. For the remaining past 18 months period, the bills may be raised on load basis of 1 KW on domestic tariff.

महेश मेहरा
(Asha Mehra)
Ombudsman