

OFFICE OF ELECTRICITY OMBUDSMAN

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

(Phone-cum-Fax No.: 011-26144979)

Appeal No. 53/2023

(Against the CGRF-BRPL's order dated 18.10.2023 in C.G. No. 80/2023)

IN THE MATTER OF

Ms. Monika Mohale
(Hony. Secretary, Rohit Cooperative Group Housing Society Ltd.)

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Ms. Monika Mohale along with Shri Satyender Kumar, Shri
Kumar Manish, Ms. Divia Singh and Shri Diwakar Awasthi,
Advocates

Respondent: Shri Rajesh Anand (Sr. DGM), Shri Deepak Narway (DGM)
Shri S Bhattacharjee, Sr. Manager, and Shri Shreyek Gupta,
Advocate, on the behalf of BRPL

Date of Hearing: 27.03.2024

Date of Order: 28.03.2024

ORDER

1. Appeal No. 53/2023 has been filed by Ms. Monika Mohale, Hony. Secretary, on behalf of Rohit Cooperative Group Housing Society Ltd. (hereinafter called "the Society") Plot No. 30, Sector – 10, Dwarka, New Delhi -110075, against the CGRF-BRPL's order dated 18.10.2023 passed in C.G. No. 80/2023.

2. The background of the case is that the Appellant applied for electrification of the housing society with the Delhi Vidyut Board (DVB), the then power distribution company, in the years 1998–99. The DVB informed the Society vide their letter No. CO-III/Dev.4400/2622 dated 29.09.1999 that the cost of the electrification scheme will be



Rs.53,41,777/-. The Society was to bear half of the total cost, which was assessed as Rs.29,37,164/-. This cost estimate included the installation of two 630 KVA transformers. However, the electrification of the Society was done within four months from the date of CWO dated 03.11.1999 while installing only one transformer in place of two, after the Society deposited the amount of Rs. 29,32,164/- as per the demand letter ibid of the DVB.

The Appellant representing the Society, states that the office bearers of the Society, from time to time approached the authorities in the Discom for installation of the second transformer between 2003 to 2018 before approaching the DERC. The second transformer was finally installed on 20.03.2020. The Society thereafter made a claim for payment of interest on the amount deposited taking into account the abnormal delay. The Society approached CGRF on 07.07.2023 with the complaint that in spite of charging for the cost of two transformers, the DVB/BSES-BRPL (the current power distribution company) did not install the second transformer till 20.03.2020. During this period, the transformer also became faulty and there was disruption of supply for about 12 hours on 28.08.2018. Hence, the complainant demanded interest payment on the amount for the second transformer deposited from 09.10.1999 till 20.03.2020, damages of Rs. 2.00 lakhs for deficiency in services, and a legal cost of Rs. 51,000/-.

3. The CGRF, after hearing both parties vide its order dated 18.10.2023, observed that the DVB's Order No. CO-II/P-9/95-96/38 dated 12.12.1995 mandated that a second distribution transformer to be installed only when the first transformer has been loaded at least 70% to save investment as well as iron losses of the second transformer. This order was still in force and followed by all the Discoms of the NCT of Delhi. The Discom, on its own, cannot deviate from this order for installing a second or other distribution transformation till the first transformer is loaded with more than 70% of its rated capacity. The CGRF further observed that the complainant failed to provide any evidence/documents to substantiate its allegations regarding deficiencies in services. No details/calculations were provided by the complainant justifying the claim of Rs.2.00 lakh damages as well as the legal charges of Rs.51,000/-. The Forum further observed that the matter pertains to the period 1998-99 to 2019-20. Though the complaint was formally filed in the Forum on 20.08.2023, the DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, both of 2011 and 2018 with amendments thereof would be applicable in the matter. As per Regulations supra, the complaint is required to be filed within three months from the date of exhausting the remedy under the 'complaint handling procedure' or when no action has been taken by the authority prescribed in that procedure within the period prescribed therein. The Forum further observed that the complainant had approached it in the year 2021 twice (in October and November, 2021), and the said complaints were forwarded by the secretariat of the Forum to the Discom for furnishing an appropriate reply. From the records, it appears that no reply/action taken report was received from the Discom. The Forum has jurisdiction only with regard to the grievance defined in Regulation 3(e) & 7(2) of the DERC (Consumer



Grievance Redressal Forum and Ombudsman), Regulations, 2011, in which interest is not covered. Therefore, the Forum did not find substance in the contention of the counsel for the complainant regarding the jurisdiction of the Forum to award interest.

4. Based on the above observations, the CGRF held that the complainant failed to substantiate its case that both transformers had to be installed at the same time. The complainant had filed this complaint after the expiration of three months' time from the date the consumer exhausted the remedy under the complaint handling procedure (since the complainant had first approached this Forum only in 2021 after the installation of the second transformer on 20.03.2020. Moreover, the Forum did not find any material on records to substantiate lacunae on the part of the Respondent in providing the assigned services to the consumer. Therefore, the claimed damages of Rs.2.00 lakh for deficiency in services was not tenable and, hence, not granted. Further, from the provisions of the DERC (Consumer Grievance Redressal Forum and Ombudsman), Regulations, 2018 (with amendments thereof), the Forum had no authority/jurisdiction to adjudicate or grant either interest (as demanded) and/or legal cost (as demanded), and the case was accordingly disposed of.

5. Aggrieved from the CGRF-BRPL's order dated October 18, 2023, the appellant while referring to chronology of events, approached this Court with the prayer that (i) interest @ 18% be paid by the Respondent on amount deposited for the second transformer from 19.10.1999 till 20.03.2020 (date of installation of the second transformer), (ii) damages of Rs.2.00 lakh towards deficiency in services, and (iii) legal costs of Rs. 51,000/-, as the appellant has been waiting for justice for the last twenty years.

6. The grounds for appeal briefly are:

(a) The Forum failed to appreciate the fact that the Respondent never informed the Appellant about the internal policy for the installation of a second transformer, even at the time of taking the payment. The internal office order existed with the Respondent when they took the full payment/amount for both transformers from the Appellant.

(b) The Forum also failed to appreciate the fact that the Appellant also requested to either install a second transformer or refund the excess amount taken by them with interest therein, but no genuine efforts were made by the Respondent in this regard.

(c) The Forum also failed to appreciate that the second transformer was installed in the COVID period in 2020, after a gap of twenty years despite paying advance by the Society, which is a definite deficiency in services by the Respondent for which they are liable to pay compensation of Rs.2.00 lakh.



(iii) Regarding delay/default on the part of the Discom in the installation of the second transformer. The Discom submitted that as per Delhi Electric Supply Undertaking's Order No. CO-II/P-9/95-96/38 dated 12.12.1995 clearly states that the "second 'distribution transformer', where proposed, be installed only when the first transformer has been loaded at least 70% to save investment as well as Iron Loss of the second transformer. This norm is prevailing as of today. A copy of this order was submitted along with its written submissions.

8. The appeal was admitted and taken up for the hearing on 27.03.2024. During the hearing, the Appellant was represented by Ms. Monika Mohale, Secretary of the Society, along with Counsels, namely; Shri Satyender Kumar, Shri Kumar Manish, Ms. Divya Singh and Shri Diwakar Awasthi. The Respondent was represented by its authorized representatives/counsel. An opportunity was given to both the parties to plead their case at length

9. During the hearing, Advocates appearing for Appellant, reiterated Society's submissions, contentions, objections and prayer as submitted in the appeal. Regarding the deficiency in service, the Appellant specifically mentioned about the outage of over twelve hours on one day due to mal-functioning of only transformer during August, 2018, leading to discomfort to members of the Society. No material/submission was adduced by the Respondent in contravention of the contention. The Appellant also reiterated same stand in response to a specific query by Advisor (Engineering) in this regard.

10. In rebuttal, the Counsel for the Discom reiterated their stand/submissions/contentions/preliminary objections on maintainability and jurisdiction as submitted in reply to the appeal. Further, on being asked, when the first transformer was found to be at 70% loaded, which necessitated the installation of the second transformer, as per DESU's order dated 12.12.1995, the Respondent could not give a satisfactory reply. Even, the Discom not gave any satisfactory reply on the delay of almost twenty (20) years in installation of second transformer as compared to other societies within Dwarka area and DDA Colonies electrification, where it took only two years, to do so, and the criterion for installation of second transformer at the earliest continues to be followed. It was explained to the Respondent that the two transformers get installed as a matter of redundancy so that in the event of failure of one transformer the other transformer take over. In the month of August, 2018, it couldn't happen as there was no second transformer.

11. The matter has been carefully considered. The guidelines laid down by DESU/DVB in its order dated 12.12.1995, expressly provided for installation of the second transformer only when the first transformer had a load of 70%. This was well within the knowledge of the officers of the DVB/Discom, but in blatant violation, the scheme prepared in 1999 included a second transformer and after receipt of payment, the same was however only



installed after over twenty (20) years of the installation of the first transformer. No responsibility was fixed for the lapse. Ipso facto, the demand of money for the second transformer, when the stage was not ripe for its installation was uncalled for. The various representations during the period 2003 till 2018 failed to sensitize the officers and resultant action by them, leading to gross deficiencies of service and continuing violation of the right of the consumer. Section 3(7) of the DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman), Regulations, 2018, define grievance as under:-

"Grievance means any fault imperfection, shortcomings or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a license, contract, agreement or under the extant SOP, which are within the jurisdiction of the Forum or Ombudsman."

There was an apparent shortcoming or inadequacy in the quality, nature and manner of performance by the Discom.

12. The over dependence on the only transformer during the month of August, 2018 led to its failure in feeding 120 consumers in the Society, who faced unscheduled outage of power for about 12 hours on 28.08.2018 and entitling the Society to claim compensation for the deficiency of service. Going by the criteria defined in the DERC's Supply Code, 2017, it entails compensation amounting to Rs.57,600/- for six (6) hours denial of power supply, after excluding the six (6) hours allowed for restoration. The liability of the Discom to pay compensation remains. While the DISCOM has not submitted any rebuttal, the CGRF failed to examine this aspect.

13. As regards the limitation period for approaching the CGRF, the Regulations of 2018, expressly contain a provision for the consumer to raise his grievance within three months from the date of exhaustion of remedy under the complaint handling procedure.

The Supreme Court of India in the case State of Tripura vs Arabinda Chakraborty and Others, decided on 21.04.2014 held that the law does not permit extension of the period of limitation by mere filing of representations. The period of limitation would commence from the date on which the cause of action takes place. However, going by the decision of the Supreme Court in the matter suo moto Civil Writ Petition No. 3 of 2020, condoning the delay, and, allowing extension of the limitation period due to the impact of COVID in the country and the resultant restrictions, the limitation period needs consideration in the above background.




14. In the absence of any enabling provision in the Regulations, the claim for interest on the amount paid by the Society in 1999, due to the apparent mistake by the DVB/Discom and its utilization, cannot be adjudicated along with the claim for costs, due to lack of jurisdiction. It will be open to the Appellant to invoke the power of the civil court to seek restitution for unjust enrichment by the Discom, as per the provisions of Section 68 to 72 of the Indian Contract Act.

15. There is no material on record to substantiate that on 20.03.2020, i.e., the date of installation of second transformer the criterion of the 70% load was met. A presumption, therefore, arose that the second transformer was installed only after a communication was sent to DERC as well as CGRF by the Appellant. Even, there was no apparent justification for the delay of around twenty years for installation of second transformer, whereas payment for the same had been received by the Discom in 1999.

16. There can, however, be no dispute that the sheer negligence by the Discom caused undue harassment to the Society, besides protracted correspondence between the years 2003 to 2021. In the interest of justice and fair play this Court directs as under:-

- (a) Discom shall make payment of Rs. 57,600/- to the Society for the agony suffered by its members due to unscheduled outage of power supply during August, 2018, extending to 12 hours, as per DERC's Supply Code, 2017 - Regulation 14 (a) (iii) of Schedule- I.
- (b) Compensation of Rs.25,000/- for facing unnecessary delay in installation of second transformer, on account of apathy of the Discom, deficiency of service and a non-consumer friendly approach.
- (c) CEO is also advised to have a relook at their office order dated 12.12.1995 (DESU) regarding installation of second transformer. The order seems to be outdated and not in line with Supply Code and Performance Standards, Regulations, 2017.
- (d) Total amount of Rs.82,600/- (Rs.57,600/- + Rs.25,000/-) be adjusted against ensuing bill of CA No. 100005771.

The appeal is disposed off accordingly.


(P.K Bhardwaj)
Electricity Ombudsman
28.03.2024