

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/2013/556

Appeal against the Orders dated 20.02.2013 passed by CGRF-BRPL in CG.No.97/2012.

In the matter of:

Shri L. V. Kumar

- Appellant

Versus

M/s BSES Rajdhani Power Ltd.

- Respondent

Present:-

Appellant: Shri L. V. Kumar was present in person.

Respondent: Shri Amit Kumar (Div. Head), Ms. Payal Sethi (Commercial Officer - Business) and Shri Manish Srivastava (Advocate), attended on behalf of the BRPL.

Date of Hearing: 01.05.2013, 29.05.2013

Date of Order : 03.07.2013

ORDER NO. OMBUDSMAN/2013/556

This is an appeal filed by Shri L.V. Kumar, resident of W-136, Greater Kailash-I, New Delhi – 110048, in relation to property at 13/10, Punjabi Bagh, against an order of the Consumer Grievance Redressal Forum – BSES Rajdhani Power Ltd. (CGRF-BRPL) dated 20.02.2013 holding that the Appellant was liable to pay the dues accumulated by the erstwhile tenant of the above property and whose cheque issued for full payment of these dues was dishonoured.

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The Appellant has argued that the BRPL (DISCOM) should have taken action under the relevant provisions of the Negotiable Instruments Act, 1881 (NIA) and the civil procedure court to recover money from the issuer of the bounced cheque. There was, apparently, a background of landlord-tenant dispute as well as a background of other infringement committed by the tenant over the years which led the Appellant to inform the DISCOM of the tenancy dispute and impending eviction of the tenant to the DISCOM in October, 2011 requesting recoveries to be made from the tenant. Some action appears to have been taken which is why the tenant issued a cheque of Rs.1.38 lacs for the total amount of arrears recoverable on 09.11.2011 which was dishonoured vide letter dated 14.12.2011 presumably from the bank which led to disconnection of electricity on 09.01.2012. The Appellant also raised the issue of why dues were allowed to mount up to such a huge sum and why his alleged past history of defaults in payments to the DISCOM and alleged theft of electricity were not taken into account so that the electricity could have been disconnected at a much earlier date to not allow the dues to accumulate. The Appellant was unhappy with the order of the CGRF asking him to pay the amount due and wanted the company to recover the amount from the person who issued the dishonoured cheque. (

A hearing was held on 01.05.2013 and the DISCOM was asked to submit a written legal advice on whether they have any legal duty to recover the dues from the ex-tenant directly. In the next hearing on 29.05.2013, the DISCOM filed a written submission but merely stated that under the Act and Regulations it is the responsibility of

the registered consumer (RC) to ensure that the electricity dues have been fully paid by the tenant and that in the absence of this the consumer is liable to pay. The DISCOM mentioned that they had issued a notice under section 138 of the NIA upon dishonour of cheque but that this being a criminal proceeding would not lead to any recovery of money for which the RC would remain liable. The liability of the RC is reinforced by the fact that the payments made by the tenant towards consumption of electricity are on behalf of the consumer and not in the tenant's personal capacity and the receipts are issued in the name of the consumer and not that of the tenant. Further, the Appellant did not ask for a final reading to be taken so that he could recover the amount from the tenant before vacating the premises as required under clause 46 of the DERC Supply Code & Performance Standards Regulations of 2007.

The facts/issues raised above by the Appellant do not in any way assist in his argument that the burden of recovering money against the bounced cheque is on the shoulders of the DISCOM. All the DISCOMs allow payment to be made in cash, by draft and by cheque issued by the RC, or any other party, whether tenant or a third person, as long as the payment is accompanied by the relevant bill so that a record can be made about the account against which payment is to be adjusted as well as the period for which the payment is offered. Receipts are, typically, issued against the name of the RC. It would be for the RC to have a system or understanding with his tenant on the method of being kept informed about the payments been made against the electricity consumption given the large sums of money which can potentially be involved. It would appear that landlords could insist on the receipts issued in their name being passed on to

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them on a monthly basis by way of proof of payment. The argument of the DISCOM that ultimate responsibility for payment of electric dues is that of the RC cannot be controverted in law by the argument raised by the Appellant in this case and the DISCOM would not be under any obligation to recover money from the erstwhile tenant on the ground that it had accepted a cheque issued by him which later bounced.

It also appears that under the NIA, a criminal complaint can be lodged, in case of a bounced cheque, if the cheque was issued by the person whose liability it is under the Electricity Act, 2003 to pay the bills, which implies action only against a bounced cheque issued by the RC. Therefore, a cheque issued by the tenant or a third party, even if it bounces, may not allow the DISCOM to file a criminal complaint against the tenant/third party. This is, therefore, a gray area in terms of criminal liability. In any case filing a criminal complaint by the DISCOM does not automatically lead to recovery of dues for which separate proceedings will have to be undertaken even if a criminal conviction results. Thus DISCOM would, in all cases, have recourse to the provisions of the Electricity Act, 2003 and the Regulations framed under it for this purpose. Thus no fault can be found in the order of the CGRF dated 28.02.2013 asking the Appellant to pay the dues accumulated by the erstwhile tenant at the above property.

This does however raise some issues which need to be looked at by the DISCOMs and perhaps by others as well. The fact that criminal complaints can only be filed if the dishonoured cheque had been issued by the RC may, perhaps, call for the DISCOM to accept cheques only from the RC so that no tenant or anyone else can

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avoid being penalized for issuing such cheques. Further, in cases, where DISCOMs are aware of the existence of tenants, through due intimation by the RC, the receipts issued should invariably be sent to the RC by post etc. with only copies being issued to the tenant/third party carrying out the payment. This would allow the RC to be always in the picture regarding accumulation of unpaid dues or delayed payment of dues. This would also imply that the RCs always receive electric bills, or copies thereof, wherever the existence of tenants has been intimated to the DISCOMs. In cases where arrears do accumulate with tenants and DISCOMs are involved in arrangements like allowing payment on installments etc. it should be compulsory for the RC to be kept informed at each stage. In fact, in such cases the primary negotiations/discussions should be with the RC.

The above suggestions should be considered by all the DISCOMs with a view to avoid situations like in the present case from arising with tenants being able to exploit the lack of information with the RC and vacating the premises without discharging their full financial responsibility.

With the above observations, which are being circulated to all DISCOMs & CGRF's, the appeal is dismissed & the order of CGRF dated 20.02.2013 stands.


(PRADEEP SINGH)
Ombudsman

3rd July, 2013

