

Office of the Electricity Ombudsman

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

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Appeal No. F. ELECT/Ombudsman/2014/620

Appeal against the Order dated 10.03.2014 passed by CGRF–BRPL in CG.No.577/2011.

In the matter of:

Shri Charan Singh - Appellant

Versus

M/s BSES Rajdhani Power Ltd. - Respondent

Present:-

Appellant: Shri Charan Singh was present in person alongwith advocate, Shri S. Satyanarayana.

Respondent: Shri Prashant Saxena (Nodal Officer), Shri Ajay Sharma (DGM (B) – Div. TGN) & Ms. Sarita Singh (CO (B) – Div. TGN), attended on behalf of the BRPL.

Date of Hearing : 18.06.2014, 13.08.2014

Date of Order : 08.09.2014

ORDER NO. OMBUDSMAN/2014/620

The appeal has been filed by Shri Charan Singh, S/o Shri Charat Ram, R/o WZ-48, Plot No.3, Ground Floor, Part-A, Village Khayala, New Delhi, against the order of the Consumer Grievance Redressal Forum – BSES Rajdhani Power Ltd. (CGRF-BRPL) in which his request for not transferring of dues of M/s Modern Industries (his proprietorship firm) to the connection in his personal name by the DISCOM has not been agreed to.

The brief facts of the case are that a commercial connection was installed in the name of M/s Modern Industries of which appellant was a proprietor. This

connection was disconnected in February, 2008 with outstanding dues to the tune of Rs.7,46,782/-. Later on a new connection was released on 21.05.2010 in the name of the appellant in the said premises. Subsequently, the outstanding dues of M/s Modern Industries were transferred to the connection of the appellant after service of a notice and issue of a speaking order.

Aggrieved by the action of the BRPL (DISCOM), the consumer approached the CGRF which decided the case in the favour of the DISCOM and the request of the appellant was declined. The consumer prayed that this demand cannot be included into his account on the plea that it is in contravention of the provision of 56 (2) of the Electricity Act, 2003.

On going through the details of the case, it is observed that a new connection was released on 21.05.2010 in the name of Shri Charan Singh, the appellant. On scrutiny of the record by the DISCOM, it was found that an old connection in the name of M/s Modern Industries was existing in the said premises. This connection was disconnected on 20.02.2008 with outstanding dues of Rs.7,46,782/-. Accordingly, a notice was served on the appellant for clearance of the said dues within 7 days, or appear for a personal hearing on 02.12.2011. Neither was the amount deposited nor did the appellant, or his representative, visit the office for the personal hearing. Subsequently, this amount was transferred under Clause 49 (ii) of DERC Supply Code and Performance Standards Regulations, 2007 to the appellant's electricity account after issuing the speaking order.

Now the complainant has preferred this appeal in which his contention was that only one theft case was registered against him bearing No. CC-64/2010, vide order dated 16.05.2013 and he was acquitted in the same.

The DISCOM has opposed the appeal reasserting its earlier contention before the CGRF and adding that the notice for transfer of dues was issued to the complainant on 17.11.2011. According to it, the DISCOM had rightly



transferred the dues under Clause 49 (ii) of DERC Regulations, 2007 after passing the speaking order.

A hearing was held on 18.06.2014 when the complainant was absent. He asked for another hearing on 01.08.2014 which was held on 13.08.2014. Both the parties were heard and the record was perused. A bare reading of the Clause 49 (ii), shows that the following conditions must be fulfilled before transferring the dues under this Clause:-

1. Inspection by the DISCOM showing that the supply of electricity was being done from a live connection to some other dead connection.
2. Show cause notice to a consumer and proper service of it to stop the supply.
3. Re-inspection by the DISCOM showing stoppage /non-stoppage of such supply again proved through another inspection report.
4. Passing an order transferring the dues under Clause 49 (ii).

In the present case, the DISCOM has not filed, either before the CGRF or this office, a copy of any inspection report as mentioned in point 1 above. It had never mentioned that it had conducted any inspection. In absence of any inspection report, this provision cannot be invoked.

Regarding Point No.2, the alleged copy of notice does not fulfill the criteria of Clause 49 (ii) as it does not warn the complainant to stop the supply.

Regarding point No.3, the DISCOM has not made any re-inspection to show as to whether supply from a live connection to a disconnected connection was stopped/not stopped.



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This is in line with the judgment dated 09.07.2010 of the Hon'ble Delhi High Court in W.P. (C) No. 6812/2008 in case of Sh. Harpal Singh Vs. NDPL, in which it was held that:

"If the notice dated 25th March, 2008 was intended to be in the nature of a stop/desist notice only as contemplated in Regulation 49(ii) (supra), the respondent thereafter ought to have again carried out the inspection to verify whether the petitioner had stopped and desisted from the supply."

This was not done in the present case.

In absence of all this, the alleged speaking order passed by the DISCOM is of no consequence.

The complainant has already mentioned that the theft case booked against him, resulted into acquittal. Once he was acquitted no adverse inference can be drawn against him.

The mere allegation that two other connections were also being used by the complainant is of no consequence.

At the fag end of the arguments, the DISCOM has pressed Clause 15 of the DERC Supply Code and Performance Standards Regulations, 2007 to buttress the arguments that the amount may be treated as "dues on premises".

A perusal of Clause 15 shows that this can be applied only where applicant has purchased a new property on which some dues are pending. In that case, the DISCOM can deny him a new connection unless dues of the former disconnected connection are paid. In the present case, the appellant has not purchased a new property, in fact, he was already occupying this

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property earlier, in which the disconnected connection existed. Therefore, the DISCOM cannot press this Clause against the appellant herein.

Lastly, but not the least, there are some important points to be considered for the purpose of settling the dispute. These are:

1. According to the DISCOM, the first connection No.100165204 was disconnected in 2008 with pending dues in the appellant's proprietorship firm's name.
2. When the dues were pending on the complainant, how was another fresh connection released in 2010 (after just two years) in the appellant's personal name without payment of the alleged previous dues.

It shows that the DISCOM was lethargic in recovering its dues at the right time when recovery from the defaulter would have been possible.

In view of the above discussion, the order the CGRF cannot be sustained. The DISCOM is prohibited from recovering the pending dues, if any, from the appellant herein by way of operation of Clause 49 (ii) and Clause 15 of the DERC Supply Code and Performance Standards Regulations, 2007. The DISCOM shall, however, be at liberty to recover its pending dues from the defaulter, as per law, if it so decides. Since the demand is not validly raised the effect of Section 56 (2) of the Electricity Act, 2003 is not being looked into in this order.

With the above orders the appeal is accepted and the order of the CGRF dated 10.03.2014 is set-aside.


(PRADEEP SINGH)
Ombudsman



September, 2014

