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Office of Electricity Ombudsman

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

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

Appeal No. F. ELECT/Ombudsman/2006/94

Appeal against Order dated 19.05.2006 passed by CGRF – NDPL on CG.No. 0719/04/06/MGP (K.No. 42300188040)

In the matter of:

Shri R.K. Suhag

- Appellant

Versus

M/s North Delhi Power Ltd.

- Respondent

Present:-

Appellant Shri R.K. Suhag

Respondent Shri Jitender Kapoor, District Manager, District Mangolpuri
Shri Sachin Kaul, HOG Revenue and Collection
Shri Suraj Das Guru, Executive (Legal) all on behalf of NDPL

Date of Hearing: 13.10.2006

Date of Order : 23.10.2006

ORDER NO. OMBUDSMAN/2006/94

The Appellant is a proprietor of M/s Micron Finishers, registered consumer of electricity connection bearing K. No. 42300188040 for industrial use with sanctioned load 18.46 KW at his premises B-16, DSIDC Engg. Complex, Ph-1, Mangolpuri Industrial Area, Delhi. The appellant in his appeal against CGRF order dated 19.5.2006, stated that prior to the above connection, a temporary connection vide K. No. FT/515/253 was installed on 11.8.1998 and meter of said connection was removed on 9.10.1999 after all the dues with regard to the temporary connection were paid. The last received bill of the temporary connection i.e. for the month of September, 1999 was fully paid upto reading of 33910 units for Rs.9323/-. The said meter was removed at reading 35020 and bill for 1110 units was adjusted from the Security Deposit of temporary connection. Thus, it is stated that the bills of temporary connection were fully settled and no dues were pending against this connection.

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The appellant then applied for permanent connection by depositing the necessary charges on 25.8.1999. New meter for regular connection K. No. 42300188040 was installed on 9.10.1999 after verification of all dues of temporary connection having been paid. Regular bills of new connection were paid regularly. Bills upto the month of November, 2005 were fully paid. The appellant's supply was disconnected on 15.11.2005 under order of DPCC and restored on 8.2.2006. Bills for December, 2005, January 2006 and February 2006 were not received. However, the bill for March 2006 was received for the current demand of Rs.53,288/- and arrears of Rs.1,41,693/- without giving any details of the arrears.

Under protest the appellant was allowed to deposit the current demand of Rs.53,290/-. The appellant protested that the arrears amount was not payable by him but the bill was not corrected despite his representations and another bill was raised including the arrear amount. On enquiry, the appellant learnt that arrears were on account of transfer of amount from temporary connection which had been disconnected in October, 1999 i.e. after about 6½ years. Despite representations by the appellant, when the arrears were not deleted, he filed a complaint with CGRF-NDPL.

Before CGRF, the Respondent Company stated that the amount shown as arrears is on account of three cheques which bounced in 1999. No documents were filed by the Respondent Company to substantiate its claim. The Respondent did not file the bounced cheques or bank return memo or any other evidence with respect to bouncing of cheques when asked by the CGRF.

In a subsequent hearing before the CGRF, the Respondent Company produced copy of some ledger with entries made in hand with regard to bounced cheques. The appellant also was unable to furnish any documents since the case was very old and he was not able to obtain the certificate from the bank that the three cheques which were given to the Respondent Company were credited to the account of Delhi Vidyut Board. The CGRF on the basis of the ledger book records which indicated the remarks "No cheque payment against the said K. No. passed the order that the amount of Rs.92033/- is payable by the complaint as he has not been able to produce adequate proof of payment having been made.

It is against this order of the CGRF that the appellant has filed the appeal before the Ombudsman. In the grounds of appeal, the appellant stated that:

- a) Respondent is trying to impose a demand which is seven years old and is required to give very strong and valid reason to substantiate it.
- b) No solid reason given, copies of old ledgers with some scribbling in hand can hardly be accepted. No supporting document is given and scribbling in hand has no meaning.
- c) CGRF put onus on the appellant to prove years old payment whereas onus should have been on the Respondent and undue protection is

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given to the Respondent who feels at ease in raising any demand any time.

- d) CGRF failed to appreciate that permanent connection was given only after complete dues of temporary connection were cleared. Had hand written details been there, permanent connection would not have been released / installed without clearing pending dues.
- e) Respondent failed to produce bounced cheques or bank return memo or any primary evidence. Moreover, old demand is not chargeable under section 56 (ii) of Electricity Act, 2003.

After obtaining clarifications from both the parties, the case was fixed for hearing on 13.10.2006.

The Appellant Shri R.K. Suhag attended in person. Shri Jitender Kapoor, District Manager, Mangolpuri, Shri Sachin Kaul HOG(Revenue and Collection) and Shri Suraj Das Guru, Executive Legal Cell attended on behalf of the Respondent.

From the submissions made by both the parties, it is learnt that three cheques are stated to have been bounced as follows:

Sl No.	Bill Amount	Date and amount of bounced cheque	
1.	63,647.00	63,647.00 + 200	26.4.99
2.	15,195.35	15,195.35 + 200	31.8.99
3.	12,591.00	12,591.00 + 200	30.9.99

During the hearing the Respondent was asked whether any notice for disconnection/notice, for taking legal action against the appellant consequent to bouncing of cheques was taken. If so, evidence thereof may be produced. If any other action was taken for disconnection because of bouncing of cheques and therefore non payment of bills was taken by the Respondent consequent upon bouncing of cheques on 26.4.1999. The officials of the Respondent Company submitted that no such notice was sent to the appellant either for (i) informing the appellant that the cheques had bounced (ii) Disconnection of electricity supply and (iii) No notice was sent for taking legal action against the appellant for bounced cheques.

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It is also admitted that no other document is available with the Respondent by way of memo from bank for bounced cheques or any such document in original to show that these three cheques had bounced.

It is interesting to note that if the above cheques had bounced in April 1999 and August 1999, there would have been outstanding dues against the appellant on his temporary connection, then why a permanent connection was given in October 1999 to the Appellant when the Respondent Company had the information that the previous cheques had bounced and there were dues outstanding against the temporary connection. It is admitted by the representatives of the respondent Company that a permanent connection is not given if there are outstanding dues against temporary connection.

Since the Respondent was not able to produce any document by way of bank memo or any other notice issued to the appellant for bouncing of cheques, the respondent Company was asked whether the ledger of 1999 would show that the cheques have bounced and dues are outstanding against the temporary connection. It is informed that the ledger of 1999 does not show any such bouncing of cheques or outstanding dues against the appellant. However, officials of the Respondent Company submitted a photo copy of ledger of 2001 showing some outstanding dues on account of bouncing of cheques. **It is surprising to note that the cheques which are stated to have bounced in 1999 show no narration (of such bouncing of cheques) in the ledger of 1999 but show some scribbling in hand in the ledger of 2001.** There is no document/nor any explanation whatsoever to substantiate why it is mentioned in the ledger of 2001 when the cheques are stated to have bounced in 1999. It is well known that when a cheque bounces the bank informs the sender/depositor of the cheque within a couple of days that the cheque has bounced. The bank does not inform after two years and therefore the ledger of 2001 (after a period of two years after so called the bouncing of cheques) can not be accepted as valid evidence in this regard.

It was further argued by the appellant that had the cheques bounced the amount which would have become due from the Appellant (on bouncing of cheques) would have been shown as arrears in the bill for the month of May 1999 and June 1999 (in regard to Rs.63,647/- which is stated to have been bounced on 26.4.1999.) This amount and the other bounced cheques would have appeared as arrears in the bills of the following months in 1999/2000/2001 onwards. This amount has not been shown as arrears in the bills of the months following the so called bounced cheques.

During the hearing, the original electricity bills for the month of May 2003, April 2003, and February 2004. November 2004, December 2004 onwards were seen and none of these showed any arrears brought forward. Therefore, under these circumstances the Licensee company's action of including the arrears of Rs.1,41,693/- in the bill of March 2006 can not be supported. The officials of the Respondent Company argued, during course of hearing that the appellant also

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has not been able to produce evidence that it has made the payment to the Respondent Company for the disputed period. It was argued that the appellant had made all the payments against the temporary connection and only after all payments had been made, and verified by the Respondent Company, the permanent connection was given to him. Since the Respondent Company claimed that the cheques have bounced the onus rests with Respondent to produce evidence that the cheques have infact bounced. No documentary evidence is produced by the Respondent Company either by way of bank memos/ or any notices issued to the appellant to inform that the cheques have bounced. No legal notice for action to be taken against the appellant for bouncing of cheques was also produced. No evidence is produced that any steps were taken for disconnection of supply for failure of payment if the cheques had bounced. No other evidence to substantiate the claim that the cheques have bounced is produced by the Respondent Company.

Since, the Respondent failed to substantiate its claim, and since these amounts have not been demanded as arrears in the electricity bills of May /June 1999 and later bills of 1999, its demand for arrears on account of bounced cheques in March 2006 is not a valid claim and cannot be enforced. The Respondent Company can not now demand the amount in 2006 in view of the Section 56(ii) of the Electricity Act. The Licensee Company is directed to delete the arrear demand and revise the bill accordingly.

The CGRF order is set aside.

अशा मेहरा
(Asha Mehra)
Ombudsman