

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-cum-Fax No.: 011-26141205)

Appeal No. 19/2018

IN THE MATTER OF:

Shri Ramesh Kumar - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 08.05.2018 passed by CGRF- BRPL in CG No.42/2018)

Present:

Appellant: Shri Ramesh Kumar

Respondent: Shri Deepak Pathak, Advocate, Shri Prabhat Sharma, Sr. Manager
and Shri Prashant K. Saxena, Nodal Officer, on behalf of BRPL

Dates of Hearing: 19.07.2018

Date of Order: 23.07.2018

ORDER

1. Appeal No. 19/2018 has been filed by Shri Ramesh Kumar, R/o Plot No. 16, H. No. B-297, Gopal Nagar, Dhansa Road, Najafgarh, Delhi - 110043 against the verdict of CGRF-BRPL cited above.

2. This appeal concerns the transfer of dues pertaining to the years 2002 to 2008 in respect of a "As Is Where Is Connection" (also known as a "Kundi" connection) to the Appellant's live connection (CA No. 102563320 energized on 09.08.2008). His contention is that he had never used electricity during this period as his area was not electrified, yet the Discom (Respondent) had served an arrears bill of about Rs. 1.31 lakhs against a connection which never belonged to him and later revising it downwards to about Rs. 39,000/- which he had disputed before the CGRF unsuccessfully, hence this appeal.

3. The background to this case arises from the Appellant's contention that his area was initially unelectrified and he had to make his own ad hoc arrangements for electricity through a private contractor from the year 2002 to 2005. This contractor discontinued his operations in the middle of 2005 leaving the Appellant without electricity till August, 2008 when he was sanctioned a regular connection by the Discom. Since then he had been paying all the bills regularly with the last bill being dated 25.10.2017 for Rs. 570/-. None of the bills, including the last mentioned, showed any arrears as pending for payment. According to him, as he had not received a bill after the last one dated October, 2017, he had approached the Discom when, to his surprise, he was served with a bill dated 30.11.2017 showing dues of about Rs. 1.31 lakhs which, the Discom claimed was for a "kundi" connection registered in his name and bearing a CA No. 1025 26917 for consumption between 2002 to 2008. His contest of the bill on the ground that he did not have any such CA number in his name and that he had made his own arrangement through a private contractor during the period under reference, was not accepted by the Discom which proceeded to disconnect his regular



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connection on 14.03.2018 and reconnecting it on 23.03.2018 only after the intervention of the CGRF. His complaint before the CGRF resulted in only a partial relief in that the late payment surcharge (LPSC) amount was waived but was held liable to pay the demand raised by the Discom on the ground that his claim to have lived without electricity between the years 2005 to 2008 – when his connection was sanctioned – was not credible.

4. The Discom's version of events is that it was a fact that unmetered connections on an adhoc basis through the "Kundi" system was indeed in vogue at that time and that the Appellant had indeed used electricity up to 2005 and beyond and that his claim to have obtained his supply from a private contractor was an improvised story which he has concocted to evade payment. The Discom has also cast doubts on his claim that he had stayed without electricity between the years 2005 to 2008. On the question of why it is taken so many years for the Discom to raise a bill of arrears, the Discom has attributed it to a discrepancy in the addresses provided by the Appellant whereby he had shown his residence as falling under Phase III while the "kundi" connection's bill showed Phase II, something which took time to detect and rectify. Furthermore, the Discom has also stated that the Appellant has not been able to produce any documentary proof to support his claims.

5. I have heard both the parties and considered the material on record carefully. During the hearing, the Appellant reiterated his side of the case and insisting the electricity till 2005 had come from a private contractor arranged by the locality's local pradhan (leader) and that he had not retained any documentation from a period which dated back to so many years. As to his claim of having gone without electricity between the years 2005 and 2008, the Appellant claimed that since there were no transformers in the area, the question of his availed of electricity from some source simply did not arise. Regarding the documentation pertaining to the "kundi" connection, including the photocopy of the ration card, he has claimed that they are faked and that they carry his alleged signatures in Hindi while he always signs in English. The Discom challenged the Appellant's version of events as fabricated, holding that he had indeed used electricity which he is liable to pay for.

6. Having taken all factors and arguments into consideration, I am of the considered view that the issue for adjudication here is not really the quantum of arrears due or how they were arrived at or whether the Appellant had or had not availed of electricity supply from a private contractor or whether the documents with the Discom are faked or not or whether the Appellant has improvised and concocted his story etc. These claims and counter-claims by the two parties are issues / inferences either outside the ambit of the Ombudsman to adjudicate upon or events simply too far back in time to be amenable to establishing their veracity at this stage. None can be substantiated to a level capable of withstanding judicial scrutiny.

7. The operative issue here actually revolves around the question of whether the Discom is justified in the first place in offloading bills for purported arrears after a lapse of about nine years. The Discom has not been able to offer a sound, cogent explanation for the absence of any visible action on their part and remaining moribund between their sanctioning a new connection to the Appellant in August, 2008 and the serving of the arrears bill on him in December, 2017. While they have produced a list of ten other consumers from the same area from whom pending dues pertaining to "kundi" connections were recovered to prove that the Appellant is also liable, a closer look reveals that these recoveries were all made between 2007 and 2008 at the time of sanction of new connections to them – which is not so in the present case. The explanation proffered – that discrepancies in the address provided by the Appellant had to be reconciled – is hardly credible and carries little weight considering the time lapse of almost a decade.



8. The CGRF's verdict, which is not a speaking order, is also deficient in that, while noting the time lapse in the service of the arrears bill on the Appellant, has failed to carry that logic forward and give a reasoned finding on whether the Discom is justified in the first place in raising a bill of dues at such a belated stage. It is my considered verdict that the attempted recovery after a lapse of about nine years stands debarred by statutes on limitations. No substantive or credible evidence has been adduced by the Discom to suggest that the protracted inaction on their part has been the result of genuine errors or oversights which could have been taken as mitigating factors to buttress their case. The arrears appear suddenly without any supporting explanation in the bill dated 30.11.2017 served on the Appellant. It would be relevant here to paraphrase an observation made in the context of Appeal No. 787 of 2017 (IOCL etc vs BRPL) before the Ombudsman on the issue of limitations, namely that the very reason for the existence of laws on limitations is to afford a degree of protection to consumers – otherwise, Discoms would be at liberty to raise bills of arrears at any time of their own choosing with no accountability for their own administrative and procedural lapses but with attendant pecuniary consequences for unsuspecting consumers.

9. The appeal is hereby admitted and the CGRF's verdict set aside with the recovery of purported dues from the Appellant debarred under Section 56 (ii) of the Electricity Act, 2003 read in conjunction with Regulation 42 (2) of the DERC's Supply Code & Performance Standards Regulations, 2017.

The appeal is hereby disposed off accordingly.


Sundaram Krishna
(Sundaram Krishna)
Ombudsman
23.07.2018