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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. 17/2018

IN THE MATTER OF:

Shri Bijender Kumar - Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. – Respondent
(Appeal against order dated 21.05.2018 passed by CGRF- TPDDL in CG No.
7824/12/17/MGP)

Present:

Appellant: Shri Bijender Kumar

Respondent: Shri Harshendu Kumar, Senior Manager (Legal) and Shri Ashok Mann, Manager, on behalf of TPDDL

Date of Hearing: 11.07.2018

Date of Order: 18.07.2018

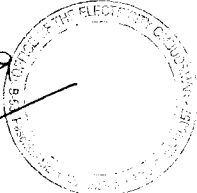
ORDER

1. This appeal has been filed by Shri Bijender Kumar, Khasra No. 30/22/21, Harijan Basti, Mangolpur Kalan, Delhi- 110083, against the verdict of the Consumer Grievance Redressal Forum-Tata Power Delhi Distribution Ltd. (CGRF-TPDDL) cited above.

2. The appeal concerns the transfer of dues amounting to about Rs. 8.67 lakhs pertaining to an inactive connection (CA No. xxx 600 869) to the Appellant's active connection (CA No. xxx 682 434) which the latter disputed before the CGRF unsuccessfully, hence, this appeal. His contention is that he had already paid amounts against the disconnected connection on three occasions in 2004 but the Discom (Respondent), which did not raise any issues at that time, transferred the amount mentioned above (consisting of about Rs.2.79 lakhs as principal and about Rs. 5.88 lakhs as a late payment surcharge) to his active connection in September, 2017. Furthermore, the Discom also did not bring up the subject of pending payments while sanctioning a fresh connection to him in 2008 but have opted to do so now, after a lapse of 14 years. He has also alleged that the security deposit of Rs 80,000/- paid against the disconnected connection has not yet been refunded by the Discom.

3. The Discom's response is that both non-domestic connections - the disconnected as well as the active connection - stand registered in the name of the Appellant. The 45 KW industrial light (SIP) inactive connection, which was energised in November, 1995, was disconnected in December, 2005. The Appellant was sanctioned a 5 KW non-domestic connection energised in February, 2008 and presently active. According to the Discom, a verification of the premises on 06.06.2017 revealed that a portion of the premises, earlier served by the disconnected connection, was being supplied through the Appellant's active connection. Following a second site verification dated 22.06.2017, the Discom then served a show-cause notice on the Appellant for unauthorized

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reconnection followed by the transfer of dues to his active connection under Regulation 49 (ii) of the DERC's Supply Code & Performance Standards Regulations, 2007.

4. Both parties have been heard and the material on record carefully considered. It is a matter of record that both connections were/are registered in the name of the Appellant in the same premises and that he had already made payments on three occasions amounting to Rs.90,500/-, Rs.92,200/- and Rs.95,500/- in April, August and September, 2004 respectively. During the hearing, the Appellant stated that his factory had closed down in 2004 following a Supreme Court order to shut down unauthorized industrial units in residential areas. The Discom had not raised any issues pertaining to outstanding dues at that time, even sanctioning a fresh connection at his factory's new location at Bawana on the basis of the same property documentation submitted earlier. He has argued that when the inactive connection had already been surrendered in October, 2004 after full and final payment of dues against it, the raising of a fresh demand of arrears after almost 14 years is in violation of regulations. The Appellant, however, did not press the subject of a refund of the security deposit he had demanded in his written representation, saying that it had been deposited by his former tenant, now deceased.

5. The Discom's arguments – essentially the same taken before the CGRF - has been that the three payments made by the Appellant do not constitute a full and final settlement but are only part payments of actual dues which total about Rs. 1.40 lakhs, Rs. 1.44 lakhs and Rs. 1.48 lakhs respectively with the balance remaining due. As to how the figures were arrived at, the Discom has stated that as the Appellant's establishment had been operated "illegally" in a "non-conforming area", the tariff charged to him was changed to an "Industrial Power /Non-conforming" (IP/NF) basis and that the bill carried an endorsement to the effect that it can be "finalized", meaning that the dues reflected were not final. The Discom has also pointed out that the Appellant himself approached them with a letter dated 07.11.2017 in which he had agreed to pay the dues if the late payment surcharge (LPSC) was waived with the Discom consenting to waive an amount of Rs. 4.70 lakhs imposed as LPSC leaving only the balance to be paid. The Appellant vehemently denied having signed such a letter during the hearing and gave a lengthy account of the lack of attention and indifference from officials he had to endure during his numerous visits to the Discom's office for a solution to his problem. The Discom, incidentally, rebutted the Appellant's denial of being the author of the letter agreeing to pay the balance after waiver of LPSC, saying that a comparison of his signatures on different documents will prove otherwise.

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 even whether the letter of consent to pay was presumably given by the Appellant. The operative issue here revolves around the question of whether the Discom is justified in offloading bills for arrears after a lapse of about 14 years. The Discom has not been able to offer any plausible or cogent explanation for their inaction for recovery of dues between the disconnection of the inactive connection in December, 2005 and the serving of the arrears bill on the Appellant in September, 2017. It is quite obvious that they remained moribund during this interregnum and would have continued to do so had not an inspection/visit happened to be initiated on 06.06.2017 – clearly more by chance than by design. Had this inspection event not taken place as it did, the Discom would presumably have continued to remain blissfully unaware of the existence of the fact that some dues remained outstanding. As to why they remained silent about dues when sanctioning a new connection to the Appellant in 2008, an explanation offered by the Discom during the hearing was that the original data base had been migrated to a new record system with errors in the address (including the Appellant's name being spelt with a "V" instead of "B") not being detected. The Appellant countered this by pointing out that the property documents provided for his new connection sanctioned in 2008 were exactly

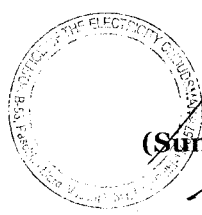
A handwritten signature in black ink, appearing to read 'Sushma', is written over a circular official stamp. The stamp is partially obscured by the signature and contains some illegible text around its perimeter.

the same as that submitted earlier in 2004. The Discom's explanation, in short, is hardly credible and carries no weight at all.

7. The CGRF's verdict in this case is deficient on more than one count. While the Forum has noted the Discom's complete lack of affirmative action in addressing the issue for so many years, the culpability of the Discom in contributing to this situation has not been looked into at all by the Forum which has treated it as a deficiency in service rather than anything else. The Forum has not even considered the possibility of and given a finding on the applicability of limitations even though the complainant had specifically invoked it in his written rejoinder before the Forum. Again, the Forum has been summary in its dismissal of the Appellant's complaint on the mere ground that he had agreed through his letter of 07.11.2017 to pay up the dues with waiver of the LPSC and that the Discom has acceded to that request. The very fact that the Appellant had opted to challenge the imposition of arrears by the Discom – his alleged written concurrence notwithstanding – should have been sufficient cause for the Forum to adjudicate upon the issue on its own merits through a speaking order.

8. Given the above exposition, it is my considered verdict that the attempted recovery of dues pertaining to a disconnected connection after a lapse of about 14 years stands debarred by statutes on limitations. Apart from the fact that these dues were never reflected clearly and continuously as recoverable from the Appellant at any point in time, 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 circumstances to consider the possibility of treating the case as one of escaped billing. To attempt to transfer the liability arising from their own administrative oversight and lapse onto a consumer at such a belated stage is unacceptable, to say the least. It would be relevant to paraphrase here, 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 and with no accountability for their own administrative and procedural lapses but with its attendant pecuniary consequences on unsuspecting consumers.

9. The appeal is hereby admitted and the CGRF's verdict of 21.05.2018 set aside with the recovery of arrears from the Appellant being 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.


(Sundaram Krishna)
Ombudsman
18.07.2018