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. 14/2018

IN THE MATTER OF:

Smt. Anokhi Devi- Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. – Respondent
(Appeal against order dated 08.03.2018 passed by CGRF- TPDDL in CG No. 7599/03/17/SKN)

Present:

Appellant: Smt. Anokhi Devi and Shri Sanjay (son)

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

Date of Hearing: 28.06.2018

Date of Order: 02.07.2018

ORDER

1. This appeal by Smt. Anokhi Devi, r/o House No. 10483-84, First Floor, Katra Chajju Pandit, Manakpura City, Delhi- 110005, has been filed through her son Shri Sanjay Kumar, in connection with the verdict of the Consumer Grievance Redressal Forum–Tata Power Delhi Distribution Ltd. (CGRF-TPDDL) cited above.

2. The case originates from the transfer of dues amounting to about Rs. 1.13 lakhs (Rs. 46,444/- as principal and Rs. 67,134/- as late payment surcharge or LPSC) from a disconnected connection (CA No. xxx 3244, disconnected in April, 2008) by the Discom (Respondent) to her active connection (CA No. xxx 3011) which the Appellant has disputed. Her contention is that the disconnected connection pertained to a tenant on the first floor of her residence who had vacated the place without intimation and whose whereabouts were not known. Nevertheless, her son, Har Kishan, had paid up Rs 55,000/- in September, 2009 to clear these dues on the demand of the Discom. While granting a fresh connection to her premises subsequently in the same month, the Discom did not raise any issues about pending dues which they have now raised after a lapse of about 7 years. The CGRF, while holding the Discom guilty of a deficiency of services by raising the bill of arrears after a lapse of many years, waived the LPSC, a verdict with which the Appellant has no issue per se but the Discom has raised a further sum claiming that it is the balance of the principal, hence this appeal.

3. The Discom's response is that the dues pertaining to the disconnected connection (No. 3244), which stood in the name of one Shri Riazuddin, had been transferred to the Appellant's live connection because site visits in January and November, 2016 had revealed that the portion of the premises earlier supplied through the disconnected connection was being supplied through the Appellant's active connection (No. 3011). The Discom has also stated that the dues pertaining to the disconnected connection had been transferred to the Appellant's son, Shri Har Kishan, who had made a part payment of Rs. 55,000/- in September, 2009 which represented only about half of the dues. The

remaining amount had been transferred to the Appellant's active connection as the owner of the premises with their action being in accordance with Clause 49 (ii) of the DERC's Supply Code & Performance Standards Regulations, 2007 after the service of two show-cause notices in October & November, 2016.

4. I have heard both parties and considered the material on record. The Appellant's son, who argued on her behalf, held that his brother, Har Kishan who had been served with a bill of arrears pertaining to their erstwhile tenant, had paid up a sum of Rs. 55,000/- in September, 2009 on the demand of the Discom while being given to understand that the LPSC would be waived. Subsequent bills issued by the Discom did not show any pending amounts, a statement supported by a copy of the bills on record. While a fresh connection was sanctioned by the Discom in September, 2009 without raising any issues about pending dues, a fresh demand for about Rs.1.10 lakhs was put forward by them in November, 2016 claiming them to be remaining unpaid arrears pertaining to their former tenant. The CGRF, which was approached by the Appellant, waived the LPSC as unjustified but the Discom again raised a demand for Rs. 44,000/- following the CGRF's order, disconnecting his electricity supply and restoring it only after he deposited the sum on 15.05.2018 under protest.

5. The Discom's version is that the amount of Rs. 55,000/-, paid by Shri Har Kishan, represented only a part payment of the amount actually due and that with the CGRF waiving only the LPSC, the balance of principal still remains outstanding. As to why the question of pending dues were not raised at the time of sanction of fresh connection to the Appellant (CA No. xxx 3011) in 2009, the Discom has explained it as being due to the fact that it was released in an "instant camp" held for clearing pending applications and that a full verification had not been carried at that time. The delay of so many years between 2009 and the service of a new bill for arrears in February, 2017 has been explained as being the result of site visits having been carried out in 2016 only which revealed that another portion of the Appellant's premises, earlier served by the disconnected connection, was now being served by the active connection. Since the Appellant had deposited a further sum of Rs. 44,000/- in May, 2018, no dues were pending at the moment.

6. After evaluating all facts and circumstances carefully, I am unable to find any cogent justification for the Discom's actions. The CGRF's verdict suffers from a defect in that the Forum has merely held the Discom responsible for a deficiency in service while waiving the LPSC but without going into the question of whether the Discom was justified in the first place in offloading a demand after a lapse of so many years.

7. Firstly, it is difficult to accept at face value the Discom's explanation that the issue of arrears was not raised at the time of the release of a fresh connection in September, 2009 as the sanction had been issued in an "instant camp" without verification. A common practice in such "camps" is to issue initial sanctions on a provisional basis subject to the fulfilment of basic eligibility criteria. As a matter of abundant precaution, the Discom should have carried out at least some form of an elementary verification or inspection to establish the applicant's eligibility or the existence of any issue concerning accounts before releasing the connection. This lapse cannot be used by the Discom as an excuse to justify their failure to discover that arrears were allegedly pending against the Appellant's premises.

8. Secondly, it is not clear, either from the records or verbal depositions, that Shri Har Kishan was ever informed in explicit terms that the amount of Rs. 55,000/- he was depositing represented only a part payment and that further amounts remained pending for payment. To compound this oversight, subsequent bills show no arrears pending for payment till the time a fresh demand was raised in February, 2017 on the basis of the site visits. Thirdly, no clear, cogent explanation whatsoever is forthcoming for the complete absence of affirmative action on the part of the Discom between 2009 and 2017. It is obvious that they remained moribund during this interregnum and would

have continued to do so had not an inspection/visit happened to be initiated – more by chance than by design.

9. I also hold that the Discom's action in disconnecting the Appellant's electricity supply and restoring it only after he had deposited their fresh demand is tantamount to the employment of coercive tactics. Furthermore, the CGRF's verdict is deficient in that the Forum has not even considered possibility of the applicability of limitations in a situation where a demand for dues is raised after a lapse of many years with the Discom's contribution to the development of the situation being glossed over. The Discom's culpability in this regard cannot be ignored. There is no evidence to suggest that the lapses on the part of the Discom were 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. 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.

10. Given the above exposition, the requirements of natural justice, in this case, clearly calls for the invocation of Section 56(2) of the Electricity Act, 2003 read with Regulation 42 (2) of DERC's Supply Code & Performance Standards Regulations, 2017 and the additional claims raised by the Discom stand debarred from recovery accordingly, coming as they do after a lapse of so many years and without the arrears position ever having been made clear beyond doubt to the Appellant at any point in time. While the subject of the payment of Rs. 55,000/- already made in September, 2009, shall not be revisited here, the amount of Rs. 44,000/- paid up by the Appellant under duress after disconnection of her electricity supply shall be refunded forthwith to her by the Discom within one week from the date of receipt of this order and a compliance report submitted.

(Sundaram Krishna)
Ombudsman
02.07.2018