

OFFICE OF ELECTRICITY OMBUDSMAN

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

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

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Appeal No. 01/2024

(Against the CGRF-BRPL's Letter No. 2023/F5/81 dated 14.09.2023)

IN THE MATTER OF

Smt. Prabha Singh

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Shri Shashi Bhanu, Husband of the Appellant along with
Shri kartiekay Mathur, Advocate

Respondent: Shri Manish Kumar, DGM (PS), Shri S Bhattacharjee, Sr. Manager,
Shri Jai Gopal Gautam, C.O.O., Shri Arav Kapoor, Advocate
and Shri Surender Kumar, legal Retainer, on behalf of BSES-BRPL

Date of Hearing: 20.03.2024 & 24.04.2024

Date of Order: 25.04.2024

ORDER

1. Appeal No. 01/2024 has been filed by Smt. Prabha Singh, R/o House No. 1/1073, A-2/C-1, Sondhi Apartments, Mehrauli, New Delhi – 110030, through her spouse Shri Shashi Bhanu, against the CGRF-BRPL's letter, as cited above.

2. The instant case is that the Appellant is the owner of House situated at C-25/A, Second Floor, Panchsheel Vihar, Khirki Village, New Delhi – 110017, where an electricity connection bearing CA No. 102257883 already existed. The said premises was rented out to the tenant, Ms. Amita Singh, vide lease deed dated 26.07.2018, who was using the said connection and later, due to non-payment of outstanding dues to the tune of Rs.48,231.00, the electric supply was disconnected on 19.01.2022. On 21.04.2022, the Enforcement Team of the Discom visited the premises where theft of electricity without meter was deducted and theft case was booked against Shri Manoj



S/o Shri Ram Lal and Ms. Neha (Ms. Amita), Second Floor, C-25/A, Panchsheel Vihar, Khirki, New Delhi – 110017. The tenant, Ms. Amita Singh vacated the premises without paying rent and electricity bills. The Appellant applied for a new electricity connection vide Application No. 008006097981 dated 02.01.2023. The Discom issued letter dated 10.01.2023 pointing out deficiencies in form of outstanding dues, installation of ELCB, 'NOC; from MCD or completion-cum-occupancy certificate. Since the deficiencies were not met, the application was rejected while ignoring the representation dated 08.02.2023. Subsequently, the Appellant approached the CGRF and submitted that her application for new connection was rejected without considering the fact that it was under tenancy and theft was committed by her tenant, namely, Ms. Amita Singh, and requested that the Discom be directed to either release a new electricity connection or restore the old connection (CA No. 102257883) at the premises No. C-25/A, Second Floor, Panchseel Vihar, Khirki Village, New Delhi.

3. The CGRF-BRPL observed that there is an outstanding bill for direct theft of electricity on the same property and rejected her complaint vide its letter No. 2023/F5/8 dated 14.09.2023, stating "as per Clause 13(2) of Delhi Electricity Regulatory Commission's Regulations, 2018 & Awareness Bulletin -13, which stipulates "the Forum shall not entertain grievances falling under Sections, 126, 127, 135 to 139, 142, 152 and 161 of the Act".

4. Not satisfied with the reply dated 14.09.2023 of CGRF-BRPL, the Appellant filed this appeal and reiterated her stand as before the Forum. In addition, the Appellant also submitted that electricity is a basic necessity and cannot be denied because of criminal action committed by some other person and prayed for a new connection or restoration of the disconnected connection, i.e. CA No. 102257883.

5. The Discom, in its reply dated 06.02.2024 to the appeal, submitted that the Appellant applied for a new connection, which was rejected on the following grounds, and she was duly informed of all the deficiencies in writing.

- (a) There were outstanding dues amounting to Rs. 48,231.15 (energy bills) against disconnected connection (CA No.102257883) and an Enforcement Bill against CA No. 401508277 amounting to Rs.9,05,523/-.
- (b) Earth-leakage circuit breaker (ELCB) was not available at the site
- (c) The said premises was booked by MCD vide its letter dated 27.03.2018. As such, 'No Objection Certificate' from MCD or 'Building Completion Certificate' (BCC) is required.
- (d) Original copy of the Test Report issued by a Licensed Electrical Contractor is required as per Measures relating to Safety and Electric Supply.



When the Appellant did not respond to the intimation notice dated 10.01.2023 within the prescribed time limit, her application got cancelled. In their support, the Discom also submitted copies of the Inspection Report dated 07.01.2023 and MCD's notice dated 27.03.2018.

6. The Discom further submitted that against the disconnected connection (CA No. 102257883), the last payment of Rs.2,690/- was made on 08.04.2021 'against the bill raised for March, 2021 by the Appellant. Thereafter, two provisional bills for the months of April and May, 2021 were raised due to Covid-19. After that, the actual bill for these two months was generated in the month of June 2021, with a meter reading for the period 24.03.2021 to 22.06.2021. The Discom further submitted that since April, 2021, no payment has been made by the Appellant. On 10.12.2021, some part payment of Rs.25,000/- was made through cheque which got dishonoured due to "insufficient funds". Therefore, after being served multiple notices to the Appellant, the meter was disconnected on 19.01.2022 due to non-payment of accumulated dues since June, 2021. The Discom also offered a settlement amount of Rs.35,000/-, against the final bill raised on 26.07.2022 of Rs. 46,231/- which too was not accepted by the Appellant.

7. Moreover, it is the duty of the Appellant to make payment of bills as at the time of granting connection, she had entered into the contract/agreement with the Discom and, not her tenant Ms. Amita Singh. Therefore, the condition for clearance of dues cannot be termed as 'unreasonable or arbitrary'. In this regard, the Discom referred to the Hon'ble Supreme Court of India's judgement dated 07.11.2008 in the matter of Paschimanchal Vidyut Vitran Nigam Ltd. & Ors vs. DVS Steels and Alloys Pvt. Ltd & Ors. Further, as per Regulation 19 of DERC's Supply Code, 2017, - any application for revival of the connection after permanent disconnection shall be treated as an application for a new connection and would be processed only after clearance of all outstanding dues applicable. Therefore, the disconnected connection (CA No. 102257883) cannot be revived as it remained disconnected for more than six months and has outstanding dues on it.

8. The appeal was admitted and fixed for hearing on 13.03.2024, but later adjourned for 20.03.2024 on the request of the Respondent. During the hearing, the Appellant was represented by her spouse, Shri Shashi Bhanu, along with Shri Kartiekay Mathur, Advocate and the Respondent was represented by its authorized representatives/counsel. An opportunity was given to both the parties to plead their case at length.

9. During the hearing, the Appellant asserted that she has no liability to pay for the theft committed by the tenant.



10. In rebuttal, the Respondent relied upon Supreme Court case law which states that upon transfer of ownership, the liability to pay outstanding dues vests in the new owner. It is a matter of record that in response to the application for new connection No. 008006097981 by the Appellant, the deficiency letter dated 10.01.2023 did not mention any outstanding dues on account of theft.

11. The matter was taken up for hearing again on 24.04.2024 when the husband of the Appellant submitted that his family was staying in Mehrauli area and the premises in question had been let out. While Ms. Amita was staying in the premises under the tenancy agreement, Shri Manoj was a frequent visitor. He had made verbal complaint to the Discom's Adhchini Branch about misuse of the electricity and also submitted an email dated 14.09.2020 to the Discom about non-payment of the bills by the tenant. The premises was finally vacated during January, 2023.

12. The Advocate for the Discom reiterated the liability of the Appellant to pay for the theft committed, based on the decisions by Delhi High Court in 2009, while interpreting Regulations 15 of the DERC's Supply Code, 2007, as well as reliance placed on Supreme Court's decision in Paschimanchal Vidyut Vitran Nigam Ltd. vs. DVS Steels & Alloys Pvt. Ltd. and Ms. Azra case WP(C) 2453/2019 decided by Delhi High Court on 06.02.2020. In response to a specific query raised about any enabling provision in the DERC's Supply Code, 2017, laying down the liability of the owner on account of theft committed by the tenant, the Advocate could not point out any such provision in the Regulations. The issue of compliance pertaining to the procedure for Assessment Bill for theft of electricity as laid down in Regulation 63 of DERC (Supply Code and Performance Standards) Regulations, 2017, was also discussed.

13. On the basis of an inspection on 21.04.2022, a bill of supply of electricity (Assessment of Direct Theft) for the period 22.04.2021 to 21.04.2022 was sent to Shri Manoj and Ms. Neha for payment of Rs.9,05,523/-. This bill does not refer to the involvement of the Appellant in any capacity in the commission of theft and could not be the basis for disconnection of electricity for non-payment, which had already happened on 19.01.2022. The Discom has not thrown any light, as to how Shri Manoj and Ms. Neha came to be in occupation of the premises, when the tenancy of the Appellant was with Ms. Amita Singh under a rent agreement for 11 months, on 25.05.2020. Moreover, in respect of the said premises, after issue of a notice to the tenant on 01.10.2020, the Appellant filed a Civil Suit CSDJ No. 226/2021 on 12.04.2021 against Ms. Amita Singh before the Court of Additional District Judge (South), Saket Courts and obtained an eviction order dated 07.09.2022 with recovery of possession and recovery of rent.

14. Since the ownership of the property has not been in dispute and there is no change in ownership, by virtue of any sale of property and the defined liability of the new owner for the outstanding dues, the reliance placed by the Respondent on the



decision by the Supreme Court in the case; Paschimanchal Vidyut Vitran Nigam Ltd., 2008 (12) SC672 is irrelevant. Further, DERC (Supply Code and Performance Standards) Regulations, 2017, the Regulations 50 to 52 and 54, provide for disconnection if the consumer defaults in payment and allows reconnection only on payment of past dues. The word 'Consumer' is as defined in Section 2(15) of Electricity Act, and primarily involves person supplied electricity, or whose premises is for the time being connected for the purpose of receiving electricity. The expression "owner" or "Registered Consumers" is not used in Section 2 (15). The liability of Smt. Prabha Singh, as owner, can therefore be restricted to payment of Rs. 48,231.15 for obtaining reconnection, in the light of the provisions of Regulations 42(1) of Supply Code, 2017, for payment of dues before restoration. The Regulations do not define any liability of the owner for theft. The Discom never raised the aspect of criminal conspiracy involving the owner. Section 135 of Electricity Act, while defining theft, makes the act of use, as defined, a punishable offence. There is no concept of vicarious liability of the owner, unless common intention u/s 34 IPC is invoked. Notices issued on 14.12.2021, 12.08.2021, 07.09.2021, 08.10.2021, 06.11.2021, as well as dated 06.01.2022 sent to Ms. Prabha Singh and enclosed in reply dated 06.02.2024 by the Discom do not refer to Section 135 at all. Her name also does not appear in the Electricity Assessment of Direct Theft based on inspection dated 21.04.2022. Even the Regulations of 2007 (Regulation 15) does not expressly define any onus of the owner of the property for any dues accruing on account of theft by the tenant. Hon'ble Supreme Court in the case; M/s Isha Marbles Vs. Bihar State Electricity Board decided on 03.02.1995, relied upon by the Discom, in Para 55 expressly held that there is no charge on the property where the premises comes to be owned or occupied by an auction purchaser, when such purchaser seeks supply of electricity, he cannot be called upon to clear past arrears as a condition precedent to supply. The Court noted that when auction purchaser comes to purchase property after disconnection, they cannot be 'consumer' or 'occupier' within the meaning of the provisions, till a contract is entered into. The Court in Para 26 recognized that the right to disconnect electric supply is without prejudice to the right to file a suit. As provided for in the Regulation 62 of DERC's Supply Code, 2017, the Appellant has neither been issued any notice nor any prosecution launched against her for theft U/s 135 of the Electricity Act, 2003. She was neither the 'consumer' nor 'occupier' nor 'user' for the purpose of theft. The Discom is barred by the provisions of the Regulations of 2017, already in force, which do not contain any provision for fixing responsibility of an owner for a theft committed by a tenant.

15. In the case Ms. Azra Vs. State of NCT of Delhi (WP-C 2453/2019) before Delhi High Court decided on 06.02.2020, the Court considered the following aspects:

- (i) In the background of height being more than 15 meters merely because some occupants of the building have been wrongly given an electricity



connection and cannot be a ground for the Court to direct the Respondents to further compound the wrong.

- (ii) Where outstanding dues were payable in respect of the premises and the petitioner and his family members were consuming electricity illegally by theft, their liability to pay arose.
- (iii) The dictum of Supreme Court in Paschimanchal Vidyut Vitran Nigam Ltd vs. M/s DVS Steels & Alloys Pvt. Ltd., lays down liability of the purchaser of sub-divided plot to pay outstanding dues on the property. It lays down the duty of the purchaser/occupants of the premises to satisfy by themselves that there are no electricity dues before purchasing/occupying a premises.

16. The DISCOM, in compliance with the ruling in Ms. Azra case, duly booked Sh. Manoj and Ms. Neha for theft of electricity, as user, in accordance of the Provision of Section 135 of Electricity Act, and also served an Assessment Notice for Rs.9,05,523/-. The other aspects of the judgement are not relevant to the present case, since it does not involve any sale of property/change of owner.

17. It also needs to be noted that the Supreme Court in K.C. Ninan vs. Kerala State Electricity Board, Civil Appeal 2109-2110 of 2004 decided on 19.05.2023 has recognized the power to initiate recovery proceedings by filing a civil suit against the defaulting consumer, independent of the power to disconnect supply as a means of recovery u/s 56 of Electricity Act, 2003.

18. It is open to the Discom to recover the due amount from Shri Manoj and Ms. Neha, through the criminal proceedings already instituted/civil action against them for recovery. The Discom, has however a duty cast by Regulation 63 of 2017 Regulations to comply with the laid down procedure.

19. Having considered the various aspects of the matter, the Discom is directed to release the connection applied for by the Appellant within a week of clearance of the outstanding dues of Rs.48,231.15 by the Appellant and completion of other commercial formalities. Action taken report is to be submitted within four weeks of receipt of this order.



(P.K. Bhardwaj)
Electricity Ombudsman
25.04.2024