OFFICE OF THE 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
(Phone-cum-Fax No.: 011-41009285)

Appeal No. 03/2021
(Against the CGRF-BYPL's order dated 30.07.2020 in Complaint No. 10/2020)

IN THE MATTER OF

Shri Kamal Baluja
(The Chaplain of Delhi, St. James Church)

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri V.D. Sharma, Advocate, on behalf of the Appellant

Respondent: Shri K Jagatheesh, Sr. Manager, Shri Imran Siddiqi, Manager (Legal) and Ms. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 25.03.2021

Date of Order: 07.06.2021

ORDER

1. The appeal No. 3/2021 has been filed by Shri Kamla Baluja as an authorized representative on behalf of the Registered Consumer St. James Church (The Chaplin of Delhi) against the order of the Forum (CGRF-BYPL) dated 30.07.2020 and dated 08.12.2020 passed in CG No. 10/2020 and review petition filed by Discom bearing R.A. No. 5/2020 respectively. The basic issue concerned in the Appellant's grievance is regarding the billing dispute wherein it has been alleged that the Discom (Respondent) has charged the Appellant under Non-Domestic tariff category instead of Domestic category, against their electricity connection bearing CA No. 100031278, installed at St. James Church, Lothian Road, Delhi - 110006.

2. The brief background of the appeal arises from the fact that it came to the notice of the Appellant that they are being billed under Non-Domestic Tariff by the Discom, though the applicable tariff is Domestic for the places of worship. The Appellant vide its letter dated 01.07.2019 requested the Discom to apply the applicable domestic tariff as the Church being a place of worship. The Discom however immediately changed the tariff category to domestic from the billing month of July, 2019 onwards but no refund was given for the past period as demanded by the Appellant. The Appellant vide their letter dated 11.11.2019 requested the Discom to refund the differential/excess amount on account of charging on the Non-domestic category instead of Domestic category since the year 2002 onwards, when the Discom took over from the erstwhile Delhi Vidyut Board (DVB) in July, 2002. The Appellant asked the Discom that they should have been charged on the basis of tariff chargeable to domestic category as per the tariff orders issued by the DERC (Delhi Electricity Regulatory Commission) from time to time since 2002 onwards.

The Discom on the other hand expressed that the electricity bills cannot be rectified with retrospective effect. Aggrieved by this the Appellant approached the CGRF for redressal of their grievance and requested them to instruct the Discom to refund the excess amount charged in the electricity bills since July, 2002 by them. The CGRF vide its order dated 30.07.2020 decided the matter partially in favour of the Appellant and asked the Discom to adjust the excess amount charged in their electricity bills since 01.09.2017 onwards instead of July, 2002, as demanded by the Appellant. The Discom filed a review petition against the order of the CGRF which has also been disposed of by the CGRF vide its order dated 08.12.2020 whereby they have upheld their order dated 30.07.2020.

3. As the Appellant was not entirely satisfied with the order of the CGRF, hence preferred this appeal mainly on the grounds that the CGRF has failed to take into consideration that the Discom has billed the St. James Church on non-domestic tariff since the time they have taken over from the erstwhile DVB, although the DERC has already specified in every tariff order that the places of worship are to be billed on Domestic tariff. The Appellant further stated that the CGRF has placed the dispute under *suo motu* re-classification of the consumer category by the Discom under Regulation 17(6) of the DERC (Supply Code Performance Standards) Regulations, 2017, whereas the instant case does not fall under suo-motu re-classification of the consumer. As per the Appellant the case would have fallen under suo-motu reclassification, if they had applied for electricity connection for any other purpose and later on started using electricity for Church i.e. place of

worship. Further, since they had applied the electricity connection for Church, therefore, the onus lies on the part of the licensee/Discom to change the category after the publication of the tariff order from time to time. In addition to above, it is also submitted by the Appellant that the tariff orders of erstwhile DVB and subsequent DERC's Tariff Orders have placed the places of worship under domestic category. In view of the aforesaid, the Appellant submitted that the refund of excess amount charged must be paid back from retrospective effect.

The Appellant also raised the issue of the application of Section 45(1) and 62 (6) of the Electricity Act, 2003, in the instant case, in support of their plea that on account of the wrong application of the tariff the Discom is bound to refund the extra amount charged along with the applicable interest. The Appellant also added that since this is a case of wrong application of tariff by the Discom by not adhering to the DERC's Tariff Schedule from time to time, hence, it is a continuous violation for which the plea of limitation as raised by the Discom cannot be applied. In short, the plea of the Appellant is to deal the case under Section 45(1) and 62(6) of the Electricity Act, since this is not a case of refund rather it is a case of wrong application of tariff category by the Discom and the Discom also cannot take the plea of limitation and escape the responsibility.

4. Regarding the exclusive use of the Church for the purpose of worship, the Appellant submitted that every year the Christmas, Easter and Patron Saint Day are being celebrated in the premises where this connection has been installed and in view of the same they do not agree with the view of the CGRF that they have failed to produce sufficient documents/evidence that the connection was exclusively used for religious places/activities. The Appellant further stressed that the CGRF has wrongly concluded that the said connection did not qualify for change of category on account of mixed load.

In view of the aforesaid facts and circumstances the Appellant finally prayed to direct the Discom to correct the electricity bills for the period 01.07.2002 to 01.09.2017 in line with the DERC's Tariff Schedule issued from time to time and refund the excess amount paid by St. James Church, in the future electricity bills.

5. The Discom in its reply submitted that the instant appeal is in respect of CA No. 100031278 registered in the name of M/s Chaplin of Delhi having billing address as St. James Church, Lothian Home, Delhi - 110006. It is, however, a very old electricity connection with date of energization as 20.01.1965. The Discom further conveyed that there are seven electricity connections already

installed in the same premises and five connections out of which are registered in the same name with the same billing address, i.e. Chaplin of Delhi. The Discom has provided the details of these seven connections in their written statement and from perusal of the same, it has been submitted by them that five connections are already operating in the domestic category and one connection is operating under Non-domestic category. Whereas, the seventh electricity connection, which is under dispute, was operating on Non-domestic category and was changed to Domestic category after the request was made by the Appellant in July, 2019. The Discom further submitted that the Appellant has no dispute regarding the six electricity connections and his grievance is limited to only one connection.

The Discom further stated that the connection in respect whereof there is dispute, the Appellant had applied for change of category and completed all formalities required for category change on 15.07.2019. Thereafter, site inspection was carried on 16.07.20219 and accordingly the category was changed from non-domestic to domestic on 16.07.2019 itself. Since then the consumer is being charged for tariff applicable to domestic connections. After the change of category, the dispute was raised by the Appellant on the premise that in respect of electricity connection in issue the Discom was required to charge domestic tariff from July, 2002 onwards as the Appellant was charged under wrong category and as such he is entitled to refund of the excess amount charged since July, 2002. The Discom submitted that the dispute raised by the Appellant by way of the complaint and the present appeal is untenable and the Appellant is not entitled to refund as alleged or at all. Further, the Discom submitted that in the year 1965 when the Appellant applied for new electricity connection, the places of worship were charged under the non-domestic category. It is presumed that the Appellant must have applied for new electricity connection under category of place of worship as it is not possible to locate the documents pertaining to the year 1965. It is pertinent to note here that prior to the year 2002, there was no DERC or regulations framed by them and the various categories of tariff were provided and detailed in the tariff plan which was issued by the competent authority for each financial year. Some of them are available with them and on the basis thereof it is apparent that prior to 2002, the tariff category applicable for place of worship was non-domestic.

6. In view of above, the Discom contended that, it is apparent that in case the Appellant had applied for electricity connection for place of worship then he must have applied it for non-domestic purpose only, which is further evident from the fact that the category as mentioned on the face of bill till July, 2019 was non-domestic. Thus, it is not a case of charging under wrong category but it is a case of change of

category on account of reclassification of categories of tariff by DERC from time to time on account of amendment of Electricity Act in the year 2003. Admittedly, the Appellant applied for change of category only in July, 2019, and not prior to it. There was no provision for change of category suo motu by the Discom prior to September, 2017. As such prior to September, 2017 the responsibility of the Discom to change tariff category would arise only in case the consumer applied for the same. After 2017 also there was no occasion for them to change the category suo motu as in respect of same premises there are 4 more electricity connections for domestic purpose registered in the name of the Appellant including two for prayer halls and the other two were for residence of staff etc. There are two more electricity connections which are not registered in the name of the Appellant but admittedly are installed in the premises which are part of Church premises. The one is for the residence of father and hence is for domestic purposes whereas the other is for running an educational institution and hence is for commercial purpose.

Thus, the Discom of its own had no reason to imagine that the electricity connection in issue was used for the portion of the premises which is allegedly used as place of worship more so as admittedly there is office and the place is being used for carrying out the marriage ceremonies, birthday parties, conferences and so on. Thus, it is a matter of evidence which cannot be decided in summary manner whether the portion of the premises electrified through electricity connection in issue is used as place of worship only or is used for commercial purposes also, more so as admittedly there are two more portions of the premises which are used as prayer halls.

7. On the issue of application of Sections 45(1) and 62(6) of the Electricity Act, 2003, the Discom submitted that Section 45(1) is not applicable to the facts of the present case as it is not a case that the tariff has not been fixed as per the guidelines of DERC or that prices in excess of fixed tariff has been charged. It is a case whereby the Appellant alleges that he has been charged tariff for wrong category. Hence, section 45(1) has no application to the facts of the case. Secondly, Section 62 pertains to powers given to State Commissions, which in present case is DERC, to fix tariff. Sub-section (6) of Section 62 provides that in case distribution companies i.e. Discoms have charged in excess than the tariff fixed by the Commission then the Discoms are liable to refund the same with interest. Again it is a case where Discoms are charging in excess of tariff fixed and not a case where Discoms have charged for wrong category as alleged by the Appellant. As detailed herein above, the issue whether the Discom has charged the Appellant under wrong category or not or under the given circumstance, was it

incumbent on the Discom to change the category of tariff suo motu or not is a matter of issue to be decided after elaborate evidence. In any case Sections 45 and 62 are not applicable to the facts of the present case.

The Discom further stated that James Church is divided into various portions which are used for various different purposes and the entire Church is not used as a place of worship to the admission of the Appellant themselves. It is also denied that the portion of the premises in issue electrified through CA No. 100031278 is used exclusive as a place of worship. Only by way of evinced it can be decided whether the portion of the premises electrified through the said connection in issue is used commercially for conducting marriages, parties, conferences and so on or only as a place of worship. The Discom further submitted that K.No. file of the electricity connection in issue is so far not traced as it pertains to the year 1965. Apparently, the registered consumer applied for non-domestic connection in the year 1965, as initially for the places of worship non-domestic tariff was applicable, which is apparent from some of tariff plans available with them for the period prior to 2002. However, the same is of no relevance now as what is relevant is whether the portion of the Church, electrified through CA No. 100031278, is used as a place of worship or is being used for commercial purposes. This issue can only be decided by the Civil Court after the detailed evidence.

8. The Discom further submitted that it is not a case of billing under the wrong tariff plan as portrayed by the Appellant rather it is a case of reclassification on account of change of categorization of the tariff plan. Thus, post 2002, it was the duty of the Appellant to apply for the change of category and establish that the premises in issue was used exclusively as a place of worship. The fact that the portions of the premises, in issue, used for the purposes of holding marriages is duly admitted by the Appellant. Thus, to the knowledge of the Appellant the connection in issue was not used exclusive as a place of worship, hence they never applied for change of category. Over a period of time the condition of exclusivity was given up by the competent authority and hence the place of worship fell under the domestic category. However, it is also denied that suo motu reclassification of the consumer was introduced to check the alleged menace and high headedness of the licensee as alleged or at all. The Appellant has wrongly interpreted the various provisions of the Electricity Act and Regulations framed therein.

Further, in view of the Regulations 17 of DERC Regulations, 2017, it has been submitted by the Discom that from the bare perusal of the above referred

Regulation, it is apparent that under no circumstances the arrears and excess charges can be adjusted for more than a period of 12 months. The Discom also submitted that the claim of the Appellant is beyond the period of limitation and hence is barred by law of limitation. Limitation is to be determined as per the law of limitation as duly provided under the Limitation Act. As per the Limitation Act, in the case of recovery of funds the limitation is that of three years unless extended by admitting the liability in writing within a period of limitation. The Discom also submitted that in any case the issue qua the limitation etc. cannot be decided in summary manner hence this Forum has no jurisdiction to try and adjudicate the issue of refund as claimed by the Appellant.

In view of the submissions made herein above, the Discom submitted that the present appeal is liable to be dismissed.

9. After hearing both the parties and considering the material on record, it is observed that there are seven electricity connections installed in the said premises out of which four electricity connections are in the name of "The Chaplain of Delhi" and rest of the three are in other names. As far as categories of these seven connections are concerned, 5 connections are already on Domestic Category whereas one connection is on non-domestic category. The dispute is regarding the seventh connection only, which is also in the name of 'The Chaplain of Delhi' and was operating on non-domestic category up to 16.07.2019. It is also noted that the Discom changed the category of connection from Non Domestic to Domestic immediately as soon as the appellant applied for the change of category on 15.07.2019. This said connection was released way back in 1965 and the applicable tariff category for supply to places of worship was on non domestic category at that point of time. It is also observed from one of the tariff orders available as per the records, for the year 1997, that later on the electricity connections in various places of worship were being charged on domestic basis instead of non domestic category. The Discom (BYPL), came into existence in the year 2002 and at that time the said connection was being charged on non domestic category only. The reason for not changing the category of the said connection from domestic to non domestic prior to 2002 by DVB (Delhi Vidyut Board) cannot be ascertained at this stage. There are also no records available to prove that the Appellant ever applied for change of category prior to July, 2019 either during the DVB era or afterwards when Discom (BYPL) took over in 2002.

However, it is observed that as per the tariff orders issued since 2002 onwards, the places of worship were kept under the category of Domestic tariff.

Further, there was no provision in the Regulations till 2017 for suo motu reclassification of the category of the consumers by the Discoms and hence any inspection by the Discom for this purpose was obviously not warranted till 01.09.2017, the date on which the latest Regulations, 2017 came into force. Admittedly the appellant also did not apply for the change of category of his connection since all these years from 2002 onwards till 15.07.2019. The Discom changed the category of the appellant immediately after receipt of the request from the appellant on 16.07.2019. In view of the above, it is held that the Discom took the action of change of category of the appellant from non domestic to domestic as soon as they applied for it and hence there is no infirmity on the part of Discom on this account.

10. Now coming to basic issue of the appellant regarding the refund of differential/excess amount paid by them since the year 2002 on account of charging on non domestic category, it is held, that since the Discom was not supposed to change the category of the consumers of its own till the implementation of the Regulations, 2017 on 01.09.2017 and the appellant also did not apply for change of the category during all these year, hence they are not entitled for a refund of the excess charges paid by them on account of non domestic category since 2002 onwards upto 01.09.2017, as demanded by them. From the facts of the case, it is pertinent to mention here that it is not a case of charging under wrong category rather it is a case of change of category on account of reclassification of categories as per the tariff orders issued from time to time by the Regulator or prior to 2002 during DVB era. Hence, the contention of the appellant in this regard is not tenable since it is a case of change of category from Non-Domestic to Domestic on account of reclassification of categories as per the tariff orders and not a case of charging under wrong category.

Further as far as the plea of the appellant regarding issue of the application of Section 45(1) and 62(6) of the Electricity Act, 2003 in the instant case is concerned, it can be seen that the Section 45(1) pertains to charging of tariff by the Discoms in accordance with such tariffs as applicable from time to time. In the instant case the Section 45(1) cannot be made applicable as it is not a case where the tariff has not been charged as per the guidelines of Regulator i.e. DERC or that the prices in excess of fixed tariff has been charged by the Discom. Hence Section 45(1) is not applicable to the facts of the present case. On the other hand Section 62 pertains to the powers given to the State Commission, which in the present case is DERC, to fix the tariff and Subsection 62(6) provides that in case the Discom has charged in excess than the tariff fixed by the commission then the

Discom is liable to refund the same with interest. Again it is a case where Discoms are charging in excess of tariff fixed and not a case where Discoms have charged for wrong category as alleged by the appellant. The present case is not a case where the Discom has charged the appellant at a rate more than the tariff fixed for the category, under which their connection was operating. Hence in any case section 45(1) and 62(6) are not applicable in this instance case and the contention of the appellant in this regards is not tenable.

11. The next issue to be decided is regarding the date from which the excess charges are to be returned to the appellant if at all by the Discom after the implementation of the DERC Regulations, 2017, on 01.09.2017.

Before deliberating on the above issue, the Regulations, 17 (5) and 17 (6) regarding change of category needs to be perused. The operative part of the Regulations is given as under:

"17(5) Change of category on the request of the consumer:-

i) The applicant shall apply for change of category in the format prescribed in the Commission's Orders.

ii) The Licensee shall conduct site inspection to verify within 7 (seven) days from the receipt of application and shall record the meter reading at the time of inspection.

iii) If on inspection, the request of the consumer for change of category is found genuine, change of category shall be made effective from the date of inspection and the same shall be reflected in the next billing cycle.

iv) Arrear or excess charges shall be determined based on the actual period of earlier classification based on documentary evidence provided by the Licensee or the consumer as the case may be limited to period of 12 (twelve) months and the account of the consumer shall be suitable adjusted.

v) In case change to such category is not permitted under any law in force, the Licensee shall inform the consumer within 7 (seven) days from the date of application.

vi) *If the category is not changed within the said period, the consumer shall be entitled to seek and the Licensee shall be liable to pay the compensation as specified in Schedule-1 of the Regulations".*

"17(6) Suo-motu reclassification of consumer category by the Licensee:-

i) *If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category changed consequent to a revision of tariff order, the Licensee shall suo-motu reclassify the consumer under appropriate category.*

ii) *The consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 (thirty) days to file objections, if any.*

iii) *The Licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.*

iv) *Arrear or excess charges shall be determined based on the actual period of wrong classification limited to a period of 12 (Twelve) months or a period from the date of last inspection of the installation of the consumer by the Licensee whichever is shorter and the account of the consumer shall be suitable adjusted."*

The CGRF has rightly placed the case of the appellant under reclassification of the consumer category by the Discom under Regulation 17(6) of the DERC Regulations, 2017, wherein the Discom was supposed to change the category of the consumer / appellant suo-motu after inspection on their own. It is apparent that the Discom had no reason to change the category of tariff of its own prior to the implementation of the DERC Regulations, 2017 and the same could have been carried out only on the request of the appellant. The CGRF has ordered that the appellant's electricity connection be reclassified as domestic w.e.f. 01.09.2017 and excess amount paid by the appellant be adjusted in the future electricity bills of the

connection. But in the background of Regulations 17(5) or 17(6), it is quite clear that in both the cases i.e. where the change of category has been effected on the request of the consumer or on the basis of suo-motu reclassification of category by the Discom, the arrears or excess charges shall be determined on the actual period of wrong classification limited to a period of 12 (twelve) months only. In addition to above, there is also no provision for providing refund from retrospective effect in the Regulations. In view of above, the period of refund of excess charges other than as prescribed under the Regulations cannot be considered, since the issue of period of refund cannot be decided on any other basis other than the DERC's Regulations.

After considering all the facts and circumstances of the case, the order of the CGRF is partially modified and the Discom is directed to refund the excess amount paid by the appellant for the past 12 months only instead of from 01.09.2017 as ordered by the CGRF.

With the above direction the appeal is disposed of accordingly.

07/06/2021

(S.C.Vashishta)
Electricity Ombudsman
07.06.2021