

Office of 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 No.: 32506011, Fax No.26141205)

Appeal No. F. ELECT/Ombudsman/2009/313

Appeal against Order dated 13.08.2008 passed by CGRF-NDPL in CG.No. 1764/06/08/KPM.

In the matter of:

Smt. Seema Gupta

- Appellant

Versus

M/s North Delhi Power Ltd.

- Respondent

Present:-

Appellant Shri Ravi Gupta, husband of the Appellant
Shri Ketan Kumar, and
Shri. Ambika Roy, Advocates attended on behalf of the
Appellant

Respondent Shri Ajay Kalsi, AGM, NDPL
Shri M.S. Saini, commercial Manager,
Shri Praveen Chawla, Associate HRB
Shri S. Nandrajyog, Sr. Advocate
Ms. Mohita Mehta, Advocate and
Shri Vivek, Manager (Legal) all attended on behalf of the
NDPL

Dates of Hearing : 26.05.2009, 05.06.2009, 09.06.2009,
25.06.2009, 16.07.2009, 29.07.2009

Date of Order : 16.09.2009

ORDER NO. OMBUDSMAN/2009/313

1. The Appellant Smt. Seema Gupta, has filed this appeal against the orders dated 13.08.2008 passed by the CGRF-NDPL in the case CG No. 1764/06/08/KPM with the following prayer:

It may

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(a) To set aside the order dated 13.08.2008 passed by the Lt. Consumer Grievance Redressal Forum - NDPL in the case CG No. 1764/06/08/KPM to the extent of deposit of bill for the assessment for the six month period i.e. 27.03.2004 to 27.09.2004;

(b) To direct the Respondents (NDPL) to withdraw the letter dated 28.07.2006 or to quash the same.

2. The background of the case as per the contents of the appeal, the CGRF's orders and documents submissions of both the parties is as under:

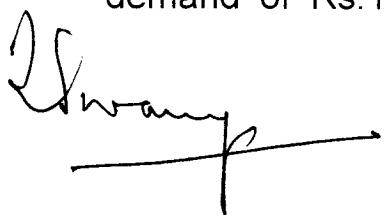
- i) An electric connection vide K.No. 32102138305 is installed in the premises of the Appellant in the name of M/s Rajdhani Masala Chakki at G-1/51, Lawrence Road, Industrial Area, with a sanctioned load of 88.79 KW for industrial purposes. The application for the connection was made by Shri Arun Kumar S/o Smt. Asha Rani, Proprietor M/s Rajdhani Masala. The Appellant, Smt. Seema Gupta, had purchased the said property on 22.10.2004 from Smt. Asha Rani.
- ii) The earlier owner/consumer informed the NDPL vide letter dated 08.09.2003 regarding the improper functioning of the meter and had requested for its replacement. The Respondent however replaced the meter on 27.09.2004, i.e. nearly after one year, and during the intervening period, ten provisional bills

based on the average consumption were issued. Eight of these were paid by the consumer, as no readings were taken upto 03rd May 2004.

iii) On 14.02.2004, a team of NDPL officials visited the Appellant's premises and after inspection prepared a report indicating that the meter is found to be in order. Thereafter, the Respondent sent a bill dated 31.05.2004 indicating a consumption of 23341 units for the period 29.06.2003 to 03.05.2004 with 'okay meter' remarks. The scrutiny of bills indicates that the Respondent also reflected a credit of Rs.4,93,395/- (not Rs.7,86,728/- as stated by the Respondent in their submissions) in the May 2004 bill. This bill was based on the actual reading for the period 29.06.2003 till 03.05.2004. This credit amount was arrived at as the eight provisional bills paid by the consumer for a total amount of Rs.6,25,110/- were for a higher amount than the reading based bill. The credit was continuously adjusted also in subsequent bills raised for the months of June 2004 to May 2005.

iv) The Appellant Smt. Seema Gupta purchased the property from the earlier owner on 20.10.2004 and kept on making the payment as per the bills received till 20.06.2006, and these did not reflect any arrear claim. In fact the balance credit was shown as adjusted against the bills based on reading basis after October 2004 and upto May 2005.

v) On 21.06.2006, the Appellant received the bill dated 07.06.2006 wherein the Respondent all of a sudden added an arrear demand of Rs.13,63,423.51 for earlier dues, without showing



the consumption period and the actual consumption etc. The Appellant filed a written complaint against the said demand of arrears and was verbally informed that during the period 29.06.2003 till 03.05.2004 the earlier owner/ consumer was short charged, which was detected by the Account Review Team. On 28.07.2006, the Respondent sent a disconnection notice asking the Appellant to make the payment within 15 days.

- vi) Thereafter the Appellant filed a writ petition before the Hon'ble High Court of Delhi in August 2006. The writ petition was disposed off vide order dated 11.05.2008, permitting the Appellant to approach the CGRF, and directing that the electricity connection of the petitioner shall not be disconnected pursuant to the impugned demand in bill dated 7th June 2006 for the next four weeks.
- vii) Accordingly, the Appellant filed a complaint before the CGRF on 29.05.2008 with the request that the NDPL be directed to withdraw the notice dated 28.07.2006 or to quash the same.

3. The NDPL stated before the CGRF that:-

- a) The electric meter installed against the connection recorded low consumption during the period 29.06.2003 to 27.09.2004 being faulty, as was also admitted in the complaint of the consumer M/s Rajdhani Masala. This was further confirmed by checking by the Enforcement Team on 26.07.2006 when the meter was found sticky.
- b) The inspection carried out on 14.02.2004 was a routine exercise for checking different connections installed in the



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area and the Enforcement Department in such cases checks the electric connections only for DAE, and to see whether meter seals are found tampered with or direct theft is taking place. The working of the meter is not checked for accuracy.

- c) In the reading based bill dated 03.05.2004 the reading of 41597 was wrongly reflected, and the automatic computerized billing system generated a bill indicating a credit of Rs.7,86,728/- in favour of the consumer, since for the same period, 10 provisional bills were earlier raised.
- d) The NDPL stated before the CGRF that the Appellant's meter was replaced on 27.09.2004 and the 'meter defective' period (15 months) viz. 29.06.2003 to 27.09.2004 was assessed on the basis of the six months average consumption recorded by the old meter prior to 29.06.2003, and six months period after installation of new meter in Oct. 2004 (base periods I & II). The supplementary demand for Rs.13,63,423/- was therefore raised in the bill dated 07.06.2006.

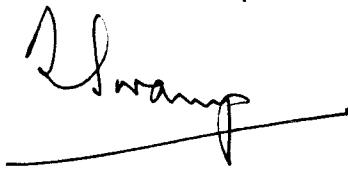
4. The Appellant stated before the CGRF that as per the orders passed by the Hon'ble High Court of Delhi in the matter of H.D. Shourie Vs. MCD, it was the duty and obligation of the licensee to maintain and check the meter and in case a defective meter is not replaced, the consumer should not be unduly penalized at a later point of time, and the demand raised in respect of the consumption through a defective meter cannot be raised for more than a six month period.

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5. The CGRF observed and concluded that:

- i) The meter replaced on 27.09.2004 had a final reading of 422132 and the reading recorded on 29.06.2003 was 392630 indicating that only 29502 units were consumed during the 15 month period, giving an average consumption of about 2000 units per month. The consumption recorded by the new meter for the 12 month period after 27.09.2004 showed an average consumption of more than 15000 units per month. The vast difference in the consumption pattern indicates that the actual consumption of electricity during the assessed period was much higher.
- ii) The Respondent has explained that the reason for allowing a credit in the bill dated 31.05.2004, was that the billing software had extended the credit inadvertently on the basis of the reading of 41751 recorded on 03.05.2004. It is also a fact that even after getting the information regarding the faulty meter in September 2003, the meter was replaced by the Respondent only in September 2004 i.e. almost a year later.
- iii) The CGRF also observed that in the instant case the meter cannot be taken to have stopped, as on an average 2000 units per month were consumed during the assessed period. Such a meter falls under the category of a 'slow meter'. The CGRF ordered that the assessment should be restricted to a six month period only i.e. from 27.04.2004 till 27.09.2004 on the basis of the average consumption recorded during the undisputed periods 28.12.2002 to 29.06.2003 and 27.09.2004



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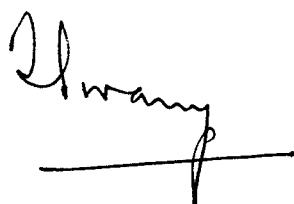
to 07.03.2005. The Respondent was directed to revise the bill accordingly and to also adjust the sum of Rs.2,00,000/- already deposited by the Appellant.

Not satisfied with the above order of the CGRF, the Appellant has filed this appeal.

6. After scrutiny of the contents of the appeal, the CGRF's order and the submissions made by both the parties, the case was fixed for hearing on 26.05.2009.

On 26.05.2009, the Appellant was present through Sh. Ketan Kumar, Proxy Advocate. The Respondent was present through Sh. M.S. Saini, Commercial Manager, Sh. Praveen Chawla, Associate HRB and Sh. Vivek, Manager (Legal). Both parties argued their case at length. The Appellant, Smt. Seema Gupta was directed to file the last paid bill before purchase of the property. The Respondent was asked to produce the meter test report for the old meter, to give the reason for the two year delay in raising the assessment bill, and to produce the file relating to refund to the earlier owner, and finally to give details of meter readings between June 2003 to October 2004. The case was fixed for production of record and for further arguments on 05.06.2009, but was re-scheduled for 09.06.2009.

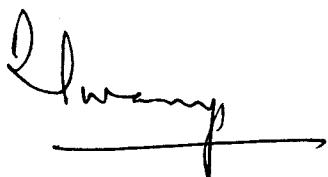
7. On 09.06.2009, the Appellant was present through Sh. Ketan Kumar, Advocate. The Respondent was present through Sh.



Sh. Ketan Kumar

Vivek, Manager (Legal), Ms. Mohita Mehta, Advocate and Sh. S. Nandrajyog, Sr. Advocate. The Appellant filed copies of the paid bills for the period June 2004 to October 2004 which were taken on record. The Appellant wanted time to file the documents relating to the ownership and sale of the premises by the registered consumers, M/s Rajdhani Masala. The Respondent's case is that the registered consumer continues to be M/s Rajdhani Masala and the sale of the premises is not of any consequence for billing purposes. The Respondent admits several lapses on behalf of the Discom in not changing the faulty meter promptly, in wrongly raising a credit of Rs.7,86,728/- lakhs etc. and for delay in raising the assessment bill. The case was fixed for further arguments on 25.06.2009.

8. On 25.06.2009, the Appellant was present through counsel Sh. Ambika Roy. The Respondent was present through Sh. Nandrajog, Sr. Advocate, Ms. Mohita Mehta, Advocate, Sh. Vivek, Manager (Legal), Sh. Ajay Kalsi, AGM, Sh. M.S. Saini, Manager (Commercial) and Sh. Praveen Chawla, Associate HRB. Both parties presented their arguments. The Appellant wanted sometime to file the documents relating to sale and ownership of 'M/s Rajdhani Masala' and other records sought, upto 07.07.2009. The Respondent was directed to produce the K. No. files of the connections. Since these had not been produced so far. The case was fixed for further hearing on 16.07.2009.



9. On 16.07.2009, the Appellant was not present, however, her husband Sh. Ravi Gupta was present. The Respondent was present through Sh. Ajay Kalsi, AGM, Sh. Vivek , Manager (Legal), Sh. M.S. Saini, Commercial Manger and Sh. Praveen Chawla, Associate HRB. The Respondent sought 10 days time to file written arguments. The Appellant was sent a notice to file their written arguments and to appear at the next date of hearing, fixed for 29.07.2009.

10. On 29.07.2009, the Appellant was present through counsel. The Respondent was present through Sh. Nandrajyog, Sr. Advocate, Ms. Mohita Mehta, Advocate, Sh. Vivek, Manager (Legal), Sh. Ajay Kalsi, Sr. Manager, Sh. M.S. Saini, Commercial Manger and Sh. Praveen Chawla, Associate HRB.

The written arguments of the Respondent were taken on record. The counsel of the Appellant completed his oral submissions and wanted 7 days time to file his response to the written arguments of the Respondent. Time was given upto 06.08.2009 for filing of their response. The Appellant did not file any response in writing to the arguments of the Respondent.

11. Observations

It is observed from the material on record that the dispute has arisen mainly because of numerous lapses on the part of the Respondent as given below:-

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a) The Appellant did not record any meter readings between 29.06.2003 to 03.05.2004 and during this period 10 number provisional bills were raised consecutively based on average consumption. This was in violation of the DERC Regulations (Performance Standards and Metering & Billing) Regulation 2002 Clause 18 (I) & (III). As per clause 18 (i) the consumer meter is to be read once in every billing cycle and it was the duty of the licensee official reading the meter, to check the seals and the condition of the meter. As per clause 18 (iii) in case the meter is not read during any billing cycle, the licensee is to send a provisional bill based on the average consumption and such provisional billing is not to continue for more than two billing cycles at a stretch.

b) From 29.06.2003 to 03.05.2004 only 23341 units were recorded as consumed by the meter and a reading based bill was raised for this period of about 10 months. The past average consumption was more than 15000 units per month. This sudden low consumption and the consumer's complaint of the meter being defective dated 08.09.2003, were ignored. In May 2004 the provisional bills raised earlier were withdrawn and revised by charging only for 23341 units, resulting in a net credit of Rs.4,93,395/- being the excess amount paid against the provisional bills. From 03.05.2004 onwards also the Respondent continued to bill the consumer on the basis of unusually low consumption

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of about 2000 units per month recorded by the meter upto 27.09.2004, when the meter was replaced. Surprisingly the meter was not checked / tested before replacement as is evident from the meter change report dated 27.09.2004 in which the meter status is reported to be 'ok' and the seals were found to be intact.

- c) In May 2004, the Respondent revised the provisional bills and raised a bill based on only one actual meter reading recorded on 03.05.2004 which resulted in a refund of Rs.4,93,395.18, being the excess amount charged through provisional bills. Such revision should have been done after properly testing the meter.
- d) On receipt of the consumer's complaint dated 08.09.2003 regarding the meter not working properly / having stopped, the Respondent did not check or test the meter and it took almost one year to replace the alleged defective meter on 27.09.2004. As per the DERC Regulations 2002 clause 20 (ii) (a), the Respondent was to check the meter and if it was found to be defective, the meter was to be replaced within 30 days of the receipt of the complaint. Surprisingly, the meter was also not checked/ tested before replacement as is evident from the meter change report dated 27.09.2004 in which the meter status is reported to be 'ok' and the seals were found to be intact.
- e) The Respondent's Account Review Team detected that the Appellant was charged for unusually low consumption recorded by the meter between 29.06.2003 to 27.09.2004

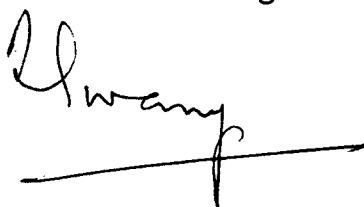
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(period of 15 months). Thereafter the Respondent raised the assessment demand of Rs.13,63,423/- in the June 2006 bill for the period 29.06.2003 to 27.09.2004. Against the said bill the Appellant made a written representation dated 20.06.2006 stating that the Respondent team had earlier checked the meter which was found to be alright. Therefore, he is liable to pay only the current demand and not the arrears now raised for an earlier period.

From the records it is also seen that the Respondent had raised the assessment demand of Rs.13,63,423/- in the June 2006 bill, whereas the meter was checked / tested on 26.07.2006. Thus, the Respondent raised the assessment demand earlier in June 2006, when the meter was tested later i.e. on 26.07.2006.

f) During the hearing, the Respondent was asked as to how such a huge refund was reflected in the May 2004 bill, and who was responsible for according the approval for refund. The Respondent stated verbally, as well as in writing, that no regular readings of the faulty meter were taken, and provisional bills were sent to the Appellant. However the meter reading taken on 03.05.2004 was 415179 and the said figure was entered in the computerized billing system and the electricity bill dated 31.05.2004 was generated wherein the amount of refund was reflected. The Respondent stated that the computerized billing system is designed in such a manner that whenever a consumption



reading which is higher than the last figure is entered, it automatically presumes that the meter is in working condition, and the difference between the provisional demand raised earlier and the actual consumption, is shown as refundable by the system.

12. The above submissions of the Respondent were found to be contrary to the facts contained in the documents made available. It is noted that these documents were also not placed before the CGRF. The contradictions noted are:

- a) On 14.02.2004 a team of Respondent officials checked the meter and recorded that the meter was found to be 'okay' along with the control wiring. Thereafter, on 28.04. 2004, the earlier consumer made a complaint in writing to the Respondent stating that she is getting provisional bills on average consumption, and requested for reading based bills. The Respondent officials checked the meter on 03.05.2004 at the reading 415971 and recorded that the meter was 'okay' and the disc was found working in the right direction at load, and the seals were in place and advised for ignoring the meter "suspected faulty" (S/F) remarks in the April 2004 bill.
- b) The Respondent official again checked the meter on 28.05.2004 at the reading 417244 and recorded that the meter disc was found moving in the right direction at load, and recorded that the bill be revised as per reading. The

said report dated 28.05.2004 was put up to AMC (Assistant Manager-Commercial) who recorded "please ignore S/F" under his signature. Both these vital documents were not furnished before the CGRF.

c) It is evident that as per directions of the AMC dated 29.05.2004, the May 2004 bill dated 31.05.2004 was issued based on the meter reading 415971 dated 03.05.2004, as the meter was found to be okay. In the said bill the provisional demand raised earlier was withdrawn and a net refund of Rs.4,93,395.18 was reflected in the May 2004 bill. The bill showing the refund amount was not generated inadvertently as stated by the NDPL officials.

13. Conclusion

a) It is evident from the records that the meter had recorded a low consumption of 29502 units during the period of 15 months between 29.06.2003 to 27.09.2004, against the average consumption of more than 15000 units per month. The Respondent officials had not followed the procedure laid down in the DERC Regulations 2002 for testing the meter in time and quantifying the degree of slowness. The CGRF has rightly observed in its order that the said meter cannot be taken as a stopped meter. Such a meter falls under the category of 'slow meter'. Relying on the consumption pattern, the CGRF had correctly ordered that

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the assessment should be restricted to a six month period i.e. only from 27.03.2004 to 27.09.2004, on the basis of average consumption recorded during the undisputed periods 28.12.2002 to 29.06.2003 and 27.09.2004 to 07.03.2005. The Respondent should comply with these directions.

b) As per the Statement of Account furnished by the NDPL, the earlier consumer Smt. Asha Rani had made a payment of Rs.6,25,110/- towards eight number provisional bills raised between 28.07.2003 to 25.02.2004. As per the CGRF's order, the NDPL has worked out the assessed demand for the period of six months for the faulty meter from 27.03.2004 to 27.09.2004 to be Rs.6,27,527/-. The consumer i.e. M/s Rajdhani Masala, through the earlier owner Smt. Asha Rani, had made a payment of Rs.6,25,110/- against eight provisional bills raised earlier. Therefore, neither the earlier owner nor the Appellant were entitled for any refund/adjustment of dues.

c) In view of the above, NDPL is entitled to raise/ recover the following demands:-

- i. Demand for the period 29.06.2003 to 27.03.2004 based on the consumption recorded by the meter which was finally replaced on 27.09.2004.
- ii. As per the CGRF's order, the assessment demand for the period of six months from 27.03.2004 to 27.09.2004, based on the average consumption recorded for the undisputed period of six months

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prior to meter becoming defective i.e. 28.12.2002 to 29.06.2003, and six months after the replacement of the meter on 27.09.2004 i.e. 29.09.2004 to 07.03.2005.

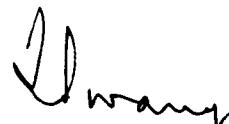
- iii. While raising the revised demand for (i) and (ii) above for the period 29.06.2003 to 27.09.2004, the payments made by the registered consumer during this period be adjusted.
- iv. From 27.09.2004 onwards the registered consumer be billed on the basis of the readings recorded by the new meter installed on (27.09.2004) and all the refunds / adjustment wrongly allowed be withdrawn.
- v. The record reveals that, Sh. Arun Kumar son of Smt. Asha Rani, had earlier obtained the electric connection in the name of M/s Rajdhani Masala in the premises no. G-1/51, Lawrence Road industrial Area, being the proprietor. From the copy of agreement of sale and purchase of the industrial property, it is observed that Smt. Asha Rani became the absolute owner in possession of such property through the registered relinquishment deed dated 16.12.2003. Smt. Asha Rani decided to dispose off / sell the said industrial property which was purchased by the Appellant Smt. Seema Gupta on 22.10.2004. The said industrial property and the electricity connection is being used under the same name viz. M/s Rajdhani Masala. The refunds wrongly given by

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the Respondent were credited in the name of M/s Rajdhani Masala prior to 20.10.2004, and even after the industrial property was purchased by the Appellant, upto May 2005. The Appellant who purchased the industrial property on 22.10.2004 is continuing the same business by using the electricity connection in the name of the registered consumer M/s Rajdhani Masala, and has also received the benefit of refunds in her monthly bills upto May 2005. Therefore, it is clearly the liability of M/s Rajdhani Masala through its present owner Smt. Seema Gupta, to pay back the excess refund received through adjustment in the electricity bills between May 2004 to May 2005.

The above directions contained in para 13 above may be complied with, within a period of 21 days from the date of this order.

16th September 2009


Suman Swarup
(SUMAN SWARUP)
OMBUDSMAN