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
(Phone No.: 011-26144979)

Appeal No. 33/2022

(Against the CGRF-BYPL's order dated 06.10.2022 in Complaint No. 142/2022)

IN THE MATTER OF

Shri Ajay Jain

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Ashish Jain, Authorized Representative, on behalf of Appellant

Respondent: Shri Rajiv Gupta, DGM(F), Ms. Shweta Chaudhary, Legal Retainer and Ms. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 22.12.2022

Date of Order: 26.12.2022

ORDER

1. Appeal No. 33/2022 has been filed by Shri Ajay Jain on behalf of his father who is a registered consumer of an industrial electricity connection bearing CA No. 10004360 installed at 36/1A, Dilshad Garden, Industrial Area, Shahdara, Delhi - 110095, against the order of the Forum (CGRF-BYPL) dated 06.10.2022 passed in Complaint No. 142/2022.

2. The instant appeal is that the appellant has been running a factory at the above-mentioned address and availing of electricity supply under the Industrial Category since the year 2004. He applied for a load reduction of the said connection from 70 KW to 51 KW under Industrial category (SIP) in March 2014. Against this, the Appellant received a notice from the Respondent vide their letter No. 217/2013-14/573 dated 18.03.2014 to submit a factory license within a year on/or before 31.03.2015 to continue the load tariff under the SIP category.

3. In 2015, the Respondent changed the electricity connection category from industrial tariff to non-domestic tariff due to the failure of the Appellant to submit the required factory license. As per the appellant, though he had submitted his renewed factory license with the Respondent on 24.07.2015, but they forgot or ignored to change the category back to industrial tariff and kept charging the high tariff (non-domestic) till December, 2021. The father of the Appellant who was running this factory, for some years could not notice this ignorance of the Respondent at that time. And finally, during the month of December, 2021, the Respondent converted the said electricity connection back to the industrial category but did not heed to the request to refund the wrongly charged tariff amount for the period from July, 2015 to December, 2021. In this regard, the Appellant produced two letters to the CGRF dated 24.07.2015 and 25.11.2017 vide Diaries No. 623 and 975 respectively which the Respondent denied on the basis of checking their 'Inward Dak Register', containing different entries bearing a different date and details. The Respondent also informed the Appellant through their e-mail dated 04.06.2022 that *"connection is billed under applicable tariff i.e. "Non-Domestic" category as factory license submitted by you has expired."*

4. Then, the Appellant approached the CGRF-BYPL for refund of the excess amount charged by the Respondent on account of wrong tariff category from July, 2015 to December, 2021.

5. The CGRF opined that though the complainant was entitled to get the bills as per industrial tariff but due to negligence on his part he was not billed as he had not submitted the required license. The Appellant did not respond to the letter dated 18.03.2014 of the Respondent for submitting the factory license after its renewal in time. In this case maxim *"caveat emptor" meaning* buyer beware was applied and because of the negligence on the part of Appellant, the required tariff was not made applicable. Hence, complainant has no right to claim any adjustment for the wrong committed by him. The Respondent had carried out their responsibility as per law. There appeared no negligence/exploitation/ill will on the part of the Respondent in not transferring back the alleged excess amount charged on account of non-domestic tariff. The industrial tariff was made applicable as soon as the Appellant completed commercial formalities. Hence, the complaint was not maintainable and therefore dismissed.

6. Aggrieved from the order dated 06.10.2022 passed by the CGRF, the Appellant preferred this appeal *inter alia* on the grounds:

- That the CGRF has applied the maxim of *caveat emptor* in its order on the basis of misrepresentation by the Respondent.

- That the Respondent had sent their letter dated 18.03.2014 to submit factory renewal license, a year in advance, and after that he had not received any notice/letter to submit the renewed licence. There was laxity on the part of the Respondent which was ignored by the CGRF.

- That the issue pertains to the deficiency in the service (after sales) by the Respondent for not giving a reasonable time notice to the complainant/Appellant before changing the tariff category to higher slab. The Hon'ble Ombudsman may therefore decide whether maxim of *caveat emptor* should apply.

- That the Respondent restored the connection back to the industrial category in December, 2021. Whereas, as per provision 6 of DERC's Tariff Order 2021-22, the Respondent was supposed to refund the excess amount charged under NDLT tariff from the date of renewal of license, i.e. 15.06.2021.

- That the CGRF ignored to consider the fact that the Appellant always had the valid requisite Factory License during the period 2015-2021, when he was being charged under NDLT tariff.

- That the CGRF has applied the *doctrine of estoppel* to deny the refund claim of the Appellant, which needs adjudication in appeal.

- That the Ombudsman may decide to adjudicate the matter of 'limitation period' and whether the claim is barred as held by the CGRF.

And Prayed that (a) relying upon the para 6 of DERC Tariff order, to pass an order to the Respondent for the refund of excess amount charged during the last three years of limitation period from 16.07.2021, the date of application on record of BYPL received from the Appellant, (b) to pay interest on assessed amount to be refunded and (c) reasonable litigation cost.

7. The case was taken up for the hearing on 22.12.2022. During the hearing both the parties were present. An opportunity was given to both the parties to plead their case at length.

8. During the hearing, the Appellant argued that though at some point of time there was deficiency on his part by not submitting valid license in time as his old father was taking care of the factory but it could have been ignored. The

Appellant further submitted that he had valid factory licence for the period 2015 to 2021 but he was charged under non-domestic tariff instead of industrial tariff and this demand to get the refund was rejected while citing irrelevant *maxim caveat emptor* and *law of estoppel*. He argued that the limitation period in this case should apply from the date of application on record i.e. 16.07.2021, hence, he is entitled for refund of excess amount charged during the last three years of limitation period. The Ombudsman explained that both these maxims could be interpreted either way.

9. In rebuttal, the Respondent contended that the Appellant admitted that the license was valid upto 31.05.2015 but failed to submit the renewed factory licence. Therefore, due to non-submission of renewed licence, the category was automatically changed to non-domestic and subsequently reflected in the bills thereafter on a regular basis. The Respondent also argued that the Appellant never approached them to change the tariff category since 2015, almost for a span of six year. Subsequently, completing the commercial formalities, the tariff category was changed from non-domestic to industrial w.e.f. 07.12.2021.

Further, the Respondent also submitted that "True Up of expenses upto 2019-20" already stands approved by the Delhi Electricity Regulatory Commission and "True Up of Expenses for 2020-21" is in process for audit purpose. On being asked, if there is any system to alert the consumers through any mode on expiry of the licence, the official of the Respondent replied that there is no such practice.

10. I have gone through the appeal, written statement of the Respondent very minutely. I have heard the arguments of the both the parties. Relevant questions were asked and queries raised by the Ombudsman and Advisor (Engineering) to get more information for clarity. I have also gone through the relevant provisions of DERC's Supply Code and Performance Standards Regulations, 2017 & DERC Tariff Orders.

11. Upon consideration of the submissions made by both the parties and after going through the relevant provisions of Tariff Order/Supply Code, the following issues emerge:

(a) Whether the notice issued by the Respondent on 18.03.2014 would be a valid notice under Section 17(6)(ii) of the Supply Code, as the notice was given in advance and that too more than a year. In view of the above notice, whether the maxim *"caveat emptor"* is applicable.

(b) Whether there was deficiency in service (after sales) as claimed by the Appellant.

(c) Whether the maxim *"estoppel"* is applicable in the case.

(d) Whether the concept *of "unjust enrichment"* enunciated under Section 72 of Indian Contract Act, is applicable in the case.

12. This Court thinks it essential to deliberate on the above issues at length. The first issue i.e. validity of issuance of notice a year in advance. Any standard dictionary would define notice as "the fact of observing and paying attention to something" or "notification or warning of something". This definition clearly spells out "immediacy" or immediate concern. A notice given in advance and that too more than a year in advance cannot be called a valid notice. On the other hand, Section 17(6)(ii) expects that the licensee (the Respondent) shall inform consumer (Appellant) of the proposed re-classification of the tariff through a notice with a notice period of 30 days to file objection. While reading the above two; i.e., definition of notice and the relevant clause in the Supply Code in conjunction, necessarily bars application of maxim *caveat emptor.* A notice issued under Section 17(6)(ii) would have held the Appellant accountable and covered under the above clause but the notice issued a year earlier would not.

This also answers the second issue. There was certain deficiency in service as the notice was not given in time. Secondly, the industry/factory was in approved industrial area, and had a license prior to 2014, and in the opinion of the Court, it was incumbent on the part of Respondent to ask for license at frequent intervals (at least once a year) rather than overcharging the Appellant deliberately and consciously. Notifying consumers is now as easy as click of button as the notice could have been sent through an SMS or e-mail instantaneously. The Government attempts to increase the manufacturing output while giving such incentive (lower tariff for industries) but this kind of attitude on the part of Respondent acts in reverse and disincentivise production/manufacturing. It calls for a forward looking/proactive approach on the part of Respondent (Discom) while looking at a bigger picture. This act on the part of Respondent also tantamounts to "unjust enrichment" as enunciated under Section 72 of Indian Contract Act which states as under:

> *"The Principle of unjust enrichment requires; first, that the defendant has been 'enriched' by the receipt of a "benefit"; secondly, that this enrichment is "at the expense of the plaintiff" and thirdly, that the retention of the enrichment be unjust. This justified restitution.*

Enrichment may take the form of direct advantage to the recipient wealth such as by the receipt of money or indirect one for instance where inevitable expense has been saved."

13. In this case, this is "unjust enrichment" on the part of Respondent. It answers appropriately the issue raised at 'c' above. Logically speaking *maxim of estoppel* is also not attracted by the above act of *"unjust enrichment"* by the Respondent. I have also noticed that the Appellant, in their desperate act of proving a point, tried to mislead CGRF by faking/forging two letters purportedly sent on 24.07.2015 and 25.11.2017. In normal circumstances this would have attracted criminal prosecution but here a stern warning would meet the ends of justice. The Appellant is warned not to repeat such illegal acts in future.

14. On the basis of above deliberations, this Court is of considered opinion that the Appellant did not submit the license despite having it and the Respondent did not send appropriate notice to the Appellant at regular intervals. This court, after considering all the facts and circumstances, order the following:

- Respondent to refund the extra charges levied from the Appellant w.e.f. 15.06.2020 for the period the Appellant had valid license as per Clause 17(6) (iv) of DERC's Supply Code, 2017.

- No interest would be charged as claimed by the Appellant.

- Respondent to devise a mechanism to notify the industries, especially in approved industrial areas about the mandatory requirement including submitting of valid licence at least once a year, in accordance with the provisions of 17(6)(ii) of DERC (Supply Code and Performance Standards) Regulations, 2017.

The appeal stands disposed off accordingly.

(P. K. Bhardwaj)
Electricity Ombudsman
26.12.2022