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**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 No.: 32506011, Fax No.26141205)

**Appeal No. F. ELECT/Ombudsman/2013/509**

Appeal against the Order dated 06.08.2012 passed by CGRF–BRPL in CG.No.72/2012.

**In the matter of:**

M/s Devgun Brothers - Appellant

Versus

BSES Rajdhani Power Ltd. - Respondent

**Present:-**

Appellant: The Appellant, M/s Devgun Brothers, was represented by Shri O.P. Ahuja, Authorized Representative.

Respondent: Shri Sudip Bhattacharya, Sr. Manager (Enforcement) attended on behalf of the BRPL.

Date of Hearing: 26.12.2012, 06.02.2013

Date of Order : 12.02.2013

**ORDER NO. OMBUDSMAN/2013/509**

This appeal has been preferred by the consumer company against the order of Consumer Grievance Redressal Forum (CGRF) in which it's contention to drop the demand as time barred, regarding Dishonest Abstraction of Energy (DAE) bill based on inspection dated 07.11.2003 for Rs.17,45,195/-, was declined.

The case of the consumer, before the CGRF, was that the Discom had raised a DAE bill for Rs. 2,45,099/-. An amount of Rs. 17,45,195/- was shown as outstanding. According to it the demand was settled with the enforcement department of the Discom as per an order of Permanent Lok Adalat (PLA) dated 27.3.2004 which was to be billed to the consumer. However, since the settled amount was never mentioned in it's bills, he contended the demand is now time barred as per Section 56(2) of the Electricity Act, 2003 read with the order of the Appellate Tribunal for Electricity in Appeal Nos.202 & 203 of 2006.

The Discom opposed this argument, by way of its reply dated 12.3.2012, mentioning that the case was pertaining to theft of electricity (DAE etc.) under Section 135 of the Electricity Act, 2003 and, therefore, was out of the purview of the CGRF with only the special court having jurisdiction.

The CGRF did not accede to the contention of either of the parties in toto and ordered that as per the settlement letter dated 12.3.2004, entered into by both the parties, an amount of Rs.12, 80,537/ becomes payable. On payment of this amount the Discom can issue a no dues certificate to the consumer for his further use.

In the present appeal, the consumer has reiterated it's contention as before the CGRF and added that CGRF has not considered an amount of Rs.5,36,186/-, already paid by the consumer, to be deducted from the total demand of the Discom.

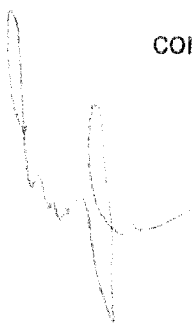
The Discom, vide objections dated 12.11.2012, has opposed the appeal stating that appeal is not maintainable as per Clause 9 (10) of the Delhi Electricity Regulatory Commission (Guidelines for establishment of Forum for redressal of grievances of the consumers and Ombudsman) Regulations, 2003. It had denied the contention of the consumer regarding an amount of Rs.5,36,186/- paid earlier and on the time barring issue.

Both the parties were heard. On the basis of the rival contentions the following points emerge to be decided in this appeal:

- i) Whether the appeal is barred under Clause 9(10) of the CGRF Regulations, 2003?
- ii) Whether the CGRF had no jurisdiction to deal with the case pertaining to DAE as the special courts have jurisdiction in the matter?
- iii) Whether the demand is barred under section 56(2) of the Electricity Act, 2003 read with order of the Appellate Tribunal for Electricity (ATE) in Appeal no.202 & 203 of 2006?
- iv) Whether the amount as decided by the CGRF is payable?

Each point mentioned above is dealt with below.

Regarding the first point the contention of the Discom is wrong that the appeal is not maintainable as per Clause 9(10). This clause operates only when a settlement (compromise) takes place before the CGRF. In the present case no compromise took place before the CGRF. The alleged settlement dated



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12.3.2004 was an out of court settlement, and does not bar an appeal by the consumer.

The contention of the Discom, on the second point, that the CGRF has no jurisdiction in the DAE case is wrong. The case had already been reduced to a normal case by way of an out of court settlement dated 12.03.2004, in which the Discom was a signatory. In this regard the contention of the consumer is also wrong that the matter was settled by the PLA. The order of the PLA dated 23.7.2004 pertains to an issue between M/s. Metlon India Vs. BRPL, another, unrelated company, and there are only a few lines at the end of the order in which an observation was made regarding M/s. Devgun Bros. that some settlement also took place in their case with BRPL before the Settlement committee, Andrews Ganj. This is only a passing observation and the settlement was never made a part of order. Therefore, this does not take away the jurisdiction of the CGRF over the matter.

Regarding the third point, I have gone through the out of court settlement dated 12.3.2004 between the rival parties (wrongly mentioned as 12.5.2004 in the Appeal memo). The last point i.e. the third point in this settlement is as follows "after correction of bill, the balance amount be paid in two installments (monthly)." A bare reading of this point shows that no time limit was fixed for revision (correction) of the bill. This was act of both the parties, mutually agreeing. Therefore, it was open to the Discom to raise the demand at any time, even today. Based upon this mutual willingness, and the "act of parties" the

Section 56(2) of the Electricity Act, 2003 does not operate, as it applies to regular demand etc.. In this connection the order of ATE in Appeal no.202 & 203 of 2006 in Ajmer Vidyut Ltd. vs. various parties, is relevant. This judgment instead of supporting the Appellant goes against him. In this order a distinction was made between 'the liability to pay' based on consumption and an amount 'becoming first due' when a bill is raised. The Hon'ble ATE held that a liability to pay is created on the date when the electricity is consumed but an amount becomes a first due only after a bill OR demand notice is sent. In the present case, if the bill/demand is not raised the limitation of 2 years did not start running. The thrust of the order of the Hon'ble ATE holds that the demand is not time barred in the present case.

Regarding the last point, I have gone through the records of the CGRF and found that the consumer has never placed any evidence before the CGRF regarding an alleged earlier payment of Rs.5,36,185/-. Even during the proceedings before me, no evidence regarding this has been shown. The DISCOM has already denied this contention. No final finding on this issue is, therefore, possible.

I do not find any infirmity in the order of the CGRF which is upheld. The appeal is dismissed.

  
(PRADEEP SINGH)  
Ombudsman

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February, 2013

