

Office of the Electricity Ombudsman

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)
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Appeal No. F. ELECT/Ombudsman/2013/546

Appeal against the Order dated 23.11.2012 passed by CGRF-TPDDL in CG.No.4441/07/12/KPM.

In the matter of:

Shri Loon Karan Jain

Appellant

Versus

M/s Tata Power Delhi Distribution Ltd.

Respondent

Present:-

Appellant : Shri Loon Karan Jain was present in person, Shri Pankaj Srivastava, Ms. Anita Ranjan, both advocates, attended on behalf of the Appellant.

Respondent : Shri Vivek, Sr. Manager (Legal) and Shri Ashish Singh (Legal Retainer) attended on behalf of the TPDDL.

Date of Hearing: 13.03.2013, 26.03.2013, 16.04.2013, 07.05.2013

Date of Order : 06.08.2013

ORDER NO. OMBUDSMAN/2013/546

This appeal has been preferred by the consumer against the order of CGRF rejecting the deletion of an amount of Rs.94,81,934/-, which was increased to Rs.1,02,51,947/- after including the interest etc. as on date, holding that the amount pertains to a theft case and that the CGRF had no jurisdiction over the matter. The CGRF also held these theft dues were outstanding at the premises, at no. 34, now owned by Shri Loon Karan Jain.

The delay of about 1 ½ month in filing appeal is condoned.

The complainant filed a case before the CGRF stating that he had purchased a property on 13.03.2008 from Smt. Sushma Gupta, bearing no. 34 near Gadaraya Wali Gali, Ram Pura, Delhi-110035. On that date there were two electricity connections, one bearing K. No. 32105001741 in the name of Smt. Sushma Gupta (the previous owner) and another bearing K. No. 32105060728, in the name of Sh. Suchendra Mishra (who was ex-tenant of Smt. Sushma Gupta). Since he was not in need of two connections, he got one connection disconnected (K. No. 32105001741 in the name of Smt. Sushma Gupta) on 08.12.2010. Later on he also got the other connection (K. No. 32105060728), in the name of Sh. Suchendra Mishra, disconnected sometime in the year 2011.

Be that as it may, the Appellant then applied for a new connection on 20.01.2012. At this the Discom asked him to pay Rs.94,81,934/- plus interest totalling Rs.1,02,51,947/- as outstanding demand on the premises no. 34 for sanctioning of the new connection. According to him, this demand pertains to one Smt. Basanti who had a connection bearing K. No. 32100543097 installed at premises no. 38 which is different from no.34. Therefore, he argues, he is not liable to pay this demand.

The Discom in its reply before the CGRF stated that it had rightly claimed this demand on two grounds, firstly, as the said connection of Smt. Basanti (K. No. 32100543097) was being fed by the live connection belonging to Sh. Suchendra Mishra (K. No. 32104060728) and that is why it had transferred the amount under clause 49(ii) onto Sh Suchendra Mishra. Secondly, both the connections (bearing K. No. 32105001741 of Smt. Sushma Gupta and K. No.32100543097 of Sh. Suchendra Mishra) were existing in the same premises and, therefore, these were dues on the relevant premises. It also placed on record the alleged inspection report, the notice under clause 49(ii) and the courier refusal receipt. It also alleged that the amount pertains to a Dishonest Abstraction of Energy (DAE) case under Section 135 of the Electricity Act, against Smt. Basanti at 38 Rampura, Main Road, Delhi-110009. The Discom further contended that the demand pertains to the same premises and the Appellant herein is liable to pay the amount as per clause

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15(iii) & 20 (2)(iii) of Delhi Electricity Supply Code and Performance Standards Regulations, 2007.

The CGRF accepted the contention of the Discom mentioning that the amount pertains to "theft dues" detected on Smt. Basanti, the registered consumer of the connection at premises no. 34 & 38. As a result the CGRF held it had no jurisdiction this being a theft case. The conclusions of the CGRF are reproduced below:

1. *The connection bearing K. No.32100543097 (CA No.60000913263) in the name of Smt. Basanti w/o Shri Mohar Singh was energized at H.No.34 as per K. No. file but Shri Jai Kishan who was authorized by Smt. Basanti got the load enhanced from 7 ½ HP to 40 HP of connection bearing K. No.32100543097 (CA No.60000913263) installed at H.No.38.*
2. *Shri Mohar Singh was the original owner of the plot which was purchased ultimately by the complainant.*
3. *The enforcement team detected in connection bearing K. No.32100543097 (CA No.60000913263) installed at H. No.38 & 34 and the amount of theft was assessed. The case was filed in civil court which was decided in favour of Respondent. The appeal was filed by Smt. Basanti but the same was dismissed in default due to non appearance of Smt. Basanti.*
4. *The dues relating to theft are outstanding at the premises against connection bearing K. No.32100543097 (CA No.60000913263) which was installed at H.No.34 & 38 and disconnected. Being the dues related to theft so the recovery of the dues cannot be commented upon by the Forum beyond jurisdiction of the Forum. The complainant is at liberty to approach appropriate Court/Forum."*

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Now the complainant has filed the present appeal in which he has reasserted his earlier contention before the CGRF and added that the alleged recovery pertains to the DVB/DESU period which is not recoverable, being already waived off by Govt. of NCT of Delhi. The Discom has opposed the appeal reiterating its contentions as before the CGRF.

Both the parties were heard and the theft case file belonging to Smt. Basanti Devi was called from the Discom to analyze the matter in a broad perspective. At the outset it is observed from this file that the impugned order of the CGRF is misconceived and the contention of the Discom is incorrect that the present case pertains to "a theft case". In fact, no theft case was booked against the complainant, or his predecessor in interest Smt. Sushma Gupta, nor against the registered consumer of the other connection in the name of Sh. Suchendra Mishra, who was a tenant of Smt. Sushma Gupta. A theft case, however, was registered against some other lady namely Smt. Basanti Devi at her K. No.32100543097 (CA No.60000913263) at plot no.38 on the basis of inspection dated 27.05.1997 & 09.01.1998. For the purpose of the Appellant herein there is no theft related demand and he has to only pay the ordinary demand raised. To argue otherwise will mean the Discom shall be at liberty to label any demand as "a theft demand" to oust the jurisdiction of statutory adjudicating bodies. In fact only when the relevant demand is being asked directly from an accused person, can this be said to be a 'theft demand'. This is not so in the present case. Therefore, both the CGRF and the Ombudsman have jurisdiction over the matter.

It is seen in the correspondence letter dated 09.05.1989 of the DISCOM, which is available at page no.213 of the CGRF file, that the address of Smt. Basanti is shown at premises no.34. There is also mention in this letter of two different connection nos. i.e. 543097 (new K. No.34100543097) & 542844 (new K. No.32100542844). This makes it obvious the lady was residing with her husband in premises no.34 and had, perhaps, rented out the premises no.38.

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To consider point No.1 supra, and to ascertain whether the disputed connection was installed at premises no.34 or at no. 38, the 'Test Report' of the DISCOM was gone through. This Test Report is available at page no.211 of the CGRF file, which shows that the inspection was done at the premises no.38 only and not at no.34. In this report, which bears no.64665, and the date 05.01.1996, Smt. Basanti had been shown as a registered consumer and Shri Jai Kishan was shown as a user only. This implies Shri Jai Kishan had applied for enhancement of load with the consent of Smt. Basanti, the registered consumer, at premises no.38 only. This cannot be read against the complainant and connection cannot be said to be existing on premises no.34. There is no documentary proof for this assumption and the proof available, i.e. "Test Report" which happens to be a site verification report from the DISCOM, shows that the connection was installed at premises no.38. **The DISCOM cannot deny its own site verification report.** No amount of correspondence can substitute for the "Test Report", which is the only and actual proof of the verification of the site. It is also observed that the "bills" of this connection were being generated and delivered at premises no.38 only. Therefore the observation made by the CGRF that "Connection no. 34100543097 was installed at premises no. 34 & 38", is erroneous. This fact is also corroborated by the fact that in the alleged subsequent inspections dated 27.05.1997 & 09.01.1998, based on which the theft was booked, the premises was shown as no.38 only. This is available at page no.122 in vol.2 of the office file.

Regarding point no.2, concerning the original owner Sh. Mohar Singh, this cannot be discussed much because the Appellant/complainant herein has purchased the premises from Smt. Sushma Gupta. Therefore, even if Shri Mohar Singh was at one time the original owner of the premises this is of no legal consequence for the purpose of determining "dues of premises".

Regarding the CGRF observation in point no.3, it is already found that the theft was booked at premises no.38 only. The CGRF has not pointed out in which document it has observed that the theft was detected at premises no.34 to be able to conclude that both the premises are linked.

Regarding point no.4, it is again erroneous to assume that the theft dues were on both the premises i.e. no.34 & 38. The CGRF cannot be allowed to work on surmises and conjecture.

Coming to the transfer of dues claim, the Discom has not shown the fulfillment of the requirements as prescribed in Clause 49(ii) of DERC Supply Code & Performance Standards Regulations, 2007 to allow it to transfer the dues. This has led them to withdraw its submission vide its application dated 09.05.2013 submitted in this office that the notice dated 01.05.2010 under clause 49(ii) is being withdrawn. A bare reading of this clause shows that three conditions should be fulfilled before transferring the dues under this clause:

1. Inspection by the Discom showing supply of electricity from live connection to a dead connection.
2. Show cause notice to a consumer and proper service of it to stop the supply.
3. Re-inspection by the Discom showing stoppage /non-stoppage of such supply.

These conditions do not appear to have been met in this case leading the Discom to withdraw its plea under clause 49(ii). It is not necessary to comment on the issue further. Only the question of "dues on premises" needs to be examined.

The impugned order of the CGRF on the point declaring that K. No. 32100543097 (CA No. 60000913263) was installed at House no. 34 & 38, dues of which are now being asked from the Appellant, is also misconceived, since a single connection cannot be installed at two houses or premises.

In the present case, the Appellant has purchased the premises no. 34 from Smt. Sushma Gupta and, as per the architect's 'blue print' available both in the file

of the CGRF and in this office, quite a distance is shown between the two premises no. 34 to 38. To counter this ground the Discom has argued that premises no. 34 & 38 are the same. The Discom has placed its reliance on a record of inspection bearing Sr. No. 7248 dated 10.02.1996, in which it is said "that the new number of premises 38 is 34" and also on a photocopy of a document dated 10.02.1996 sr. no.134720 in which the same fact is mentioned (see DVB enforcement theft case file for both). There is yet another document filed by the Discom in the file of this office bearing a date of 05.04.1975 (Page 160 of Appellate file) in which the premises no. is shown as 34. These documents belong to the Discom and, therefore, no conclusive finding can be based on these documents. **It was open for the Discom to produce other documents from a Municipal Authority to show conclusively that No.34 was changed to 38, or both were interchangeable, but it had not done so.** These points were never argued in its reply to the CGRF or in the objections filed in this office and appear to be an afterthought.

On the other hand it is found that the alleged theft case was booked at premises no. 38 against which Smt. Basanti Devi had filed a civil case before the Senior Civil Judge, Delhi mentioning the same number. This is revealed from the order of the Civil Court while dismissing the said suit of Smt. Basanti Devi. The Discom has not challenged this premises number used in the Civil Court. This information is available at page no.191 to 195 of the Appellate file. This shows conclusively, for the purpose of the CGRF and Ombudsman, that the premises of Smt. Basanti Devi bore No. 38 only.

It may be noted that after the case was dismissed by the Civil Court against Smt. Basanti Devi, the Discom did not file any recovery suit against her, the actual defaulter/accused, which ultimately led to the present case.

Further, it is observed from the sale deed available at page no. 249 of the file in this office that Shri Mohar Singh was at one time the owner of the premises at No. 34, and is said to be the husband of Smt. Basanti Devi. There is no document available on the record to show that Smt. Basanti Devi was the owner of the

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premises bearing No. 34 at any point of time. It is quite possible that she might be showing No.34 as her correspondence address as it belonged to her husband, and thus, on some papers, this number was found mentioned. **Even if, for the sake of argument, it is accepted that Smt. Basanti Devi get installed a connection no. (K. No. 542844) at premises no. 34, this cannot create a liability on the Appellant herein unless it is shown that Smt. Basanti Devi had physically sold the premises presently bearing No.34, or part thereof, to the Appellant herein.** The Discom has miserably failed to prove the complete chain of succession and interest from Smt. Basanti Devi to the Appellant herein. Even if the said Sh. Mohar Singh & Smt. Basanti Devi are husband and wife but for the purposes of the law their liabilities, and assets, are not inter-transferable and they are separate legal entities. Their debt, or any other liability, cannot be shifted from one to the other arbitrarily, merely on the ground that both were living together, because their respective ownership would be governed by the Transfer of Property Act.

The Appellant would have been liable to pay the outstanding dues of connections belonging to Smt. Sushma Gupta or Shri Suchendra Mishra, but no dues have been disclosed by the Discom on their connections and the notice under clause 49(ii) against Shri Suchendra Mishra has already been withdrawn by the Discom.

Now we can discuss the plea of the Discom regarding the clause 15(iii), 20 (2) (iii) and clause 15(ii) raised by it in the written arguments.

Clause 15(ii) of the DERC Supply Code and Performance Standards Regulations, 2007 reads as under:

"Where applicant has purchased existing property and connection is lying disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the Licensee and has obtained "no-dues certificate" from the Licensee. In case "no-dues certificate" is not obtained by the previous owner, the applicant before purchase of property may approach

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the Business Manager of the Licensee for a "no-dues certificate". The Business Manager shall acknowledge receipt of such request and shall either intimate in writing outstanding dues, if any, on the premises of issue "no-dues certificate" within one month from the date of application. In case the Licensee does not intimate outstanding dues or issues "no-dues certificate" within specified time, new connection on the premises shall not be denied on ground of outstanding dues of previous consumer".

In the present case, no disconnected connection existed at the time of the purchase of the property by the Appellant herein. In fact, both the connections in the name of Smt. Sushma Gupta and Shri Suchindra Mishra were live and, therefore, there was no question of obtaining any "No-Dues Certificate" from the Discom

Clause 15(iii) of the Regulation supra reads as under:

"Where a property/premises has been sub-divided, the outstanding dues for the consumption of energy on such Premises, if any, shall be divided on pro-rata basis based on area of sub-division".

In the present case, It has been already found that no premises or part thereof, belonging to Smt. Basanti Devi was sold in full or by sub-division to the Appellant herein. Therefore, this clause is also not applicable.

Clause 20 (2) (iii) of the Regulation supra reads as under:

"Any charge for electricity or any sum other than charge for electricity as due and payable to licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any land/premises as the case may be, shall be a charge on the premise transmitted to the legal representative/successors-in-law or transferred to the new owner of the premise as the case may be, and same shall be recoverable by the license

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as due from such legal representative or successor-in-law or new owner/occupier of the premises as the case may be".

The Discom has tried to stretch the meaning of 'occupier' in the above clause to recover the demand, as Smt. Basanti Devi might have been occupying the premises no. 34 while living with her husband. A correct interpretation of the Regulation does not support this. In fact, the word 'occupier' is used in this clause as synonymous to 'owner' as is shown by the way both these are displayed as alternatives in the Regulations. This implies that in the case of the death of the father or husband, the son or wife occupies the premises in capacity of owner itself. But during their life time, they cannot be declared to be the owner, as asserted by the Discom in this case. The alleged sale deed etc. shows that Sh. Mohar Singh was a living person, who himself sold the property.

While agreeing with the judgment of the Hon'ble High Court, in case of Shri Upender Singh Vs. BSES, in which it is held that new owner is liable to pay the dues, including theft dues, of the previous owner of the premises purchased, in the present case no such relation has been proved by the Discom between Smt. Basanti Devi and the Appellant herein. Therefore, this judgment is not applicable against the Appellant.

It is however, curious to note that a purchaser buys a property with two live connections in 2008 and surrenders both, one in 2010 and one in 2011, after which he applies for a new connection in 2012. This shows the transaction may not be as clean as is made out by the Appellant. However, in the absence of data/documents there is no other conclusion which can be drawn than the above.

In view of the above discussion, it is clear that the Discom has raised an unsupported plea of "dues on premises", which has not succeeded as No.34 & 38 are separate properties. The order of the CGRF is, therefore, quashed. The Discom is directed to expedite the processing of the application of the Appellant to release the connection without pressing any previous demand on the premises etc.

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within 30 days. The Discom shall be at liberty to recover its dues from (Smt.) Basanti Devi (actual defaulter), as per law, if so advised.

Copy of this order be circulated to all the CGRFs for a correct appraisal of the relevant provisions.


(PRADEEP SINGH)
Ombudsman


August, 2013

