

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/2006/98

Appeal against Order dated 18.05.2006 passed by CGRF – NDPL on CG.No. 0698/03/06/BDL (K.No.41300125728).

In the matter of:

M/s Neeraj Industries

- Appellant

Versus

M/s North Delhi Power Ltd.

- Respondent

Present:-

Appellant Shri Ravi Sood, Chief Executive Officer of the Appellant Company

Respondent Shri Abhinav Aggarwal HOG (R&C)
Shri S.K. Mittal, District Manager, Badli
Shri Suraj Das Guru, Executive (Legal) all on behalf of NDPL

Date of Hearing: 27.10.2006

Date of Order : 17.11.2006

ORDER NO. OMBUDSMAN/2006/98

In his appeal dated 15.06.06 the appellant has prayed for refund of excessive normative charges levied during the DVB period. He has also asked for adequate compensation for loss incurred due to deficient service from NDPL.

The Appellant filed the appeal against CGRF order dated 18.5.2006 in CG No. 0698/03/06/BDL. In an earlier complaint filed by the appellant, the CGRF vide order dated 30.08.05 ordered refund of excessive normative charges paid by the appellant on account of wrong sanctioned load appearing in the bills. The excess normative charges paid were refunded as per CGRF's order. Interest on this refund amount was allowed by the Ombudsman in her order dated 4th January 2006 when the appellant prayed for the same in his appeal before the ombudsman.

Before the CGRF, the Appellant had submitted that the normative charges levied by NDPL was on the basis of sanctioned load being 20 KW whereas the

sanctioned load in fact was 28 KW. Consequently on rectifying their error, there was a refund of excess normative charges.

In the present appeal dated 15.6.2006 now filed before the Electricity Ombudsman, the appellant stated that while the excess normative charges levied during NDPL period have been refunded with interest the excess normative charges paid much earlier during DVB period (the predecessor) have yet to be refunded. For this purpose he had filed a complaint before the CGRF.

The CGRF in its later order dated 18.5.2006 stated that the present complaint of the consumer relates to excess normative charges levied in the past as dealt in CG No. 0354 by the CGRF as well as the Electricity Ombudsman. Further it held that the consumer in his prior case before CGRF and before Electricity Ombudsman had many opportunities to bring this amount excessively charged as additional point but this was not done then. It is clear that after he has taken relief from CGRF and interest thereon from the Electricity Ombudsman, he wants to further extract advantage out of the given benefit. The CGRF also held that this claim is now time-barred by limitation as argued by NDPL. The general law of limitation restrains both the parties to claim any further relief on this issue. It also held that no specific time/period is mentioned for which the relief is sought.

Accordingly, the CGRF dismissed the case of the Appellant. It is against this order of the CGRF that the appellant has filed this appeal.

After calling for records of CGRF and the submissions made by the Appellant and the Respondent Company in response to queries raised by the Ombudsman, the case was fixed for hearing on 27.10.2006.

On 27.10.06 Shri Ravi Sood, CEO of the Appellant Company attended.

Shri Abhinav Aggarwal, HOG (R&C), Shri S.K. Mittal, District Manager, Badli, attended alongwith Shri Suraj Das Guru, (Executive Legal Cell) on behalf of the Respondent Company.

Before the Electricity Ombudsman, the Appellant stated that this is a fresh complaint having no relation with the earlier complaint which relates to refund of excess normative charges levied by the DISCOM during the period May 2002 to June 2003 whereas the present complaint relates to excessive normative charges levied during the a prior period (DVB). The present complaint, therefore, according to Appellant "pertains to a different period and a different cause of action."

Apart from his submissions regarding non applicability of provisions of Rule 2(2) of CPC he further stated that he was not aware about the concept of normative charges at the time of filing the first complaint. Therefore, it can not be said that he has omitted or intentionally relinquished any portion of his claim as was argued by the Respondent.

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The Appellant further stated that he is not trying to extract an advantage because he is merely appealing for refund of excess payments charged from him by the erstwhile DVB. The Appellant further submitted that his present appeal is for refund of excessive normative charges levied on him wrongly by the DVB on the same logic as excessive normative charges levied by NDPL have been refunded to him. This overcharging has taken place apparently due to wrong feeding of computer data pertaining to the sanctioned load of the consumer. While one may cite several laws but the complainant strongly feels that the law of natural justice and fair play supersedes any other law and the complainant accordingly, pleads before the hon'ble Ombudsman to see to it that justice is given to him and charges wrongly levied upon him are refunded back to him with interest at the same rate as charged by the Respondent Company and his predecessor for delayed payment as prevailing at that time. The above and other submissions of the appellant sent on 9/11/06 have been considered.

During the hearing before the Ombudsman, DISCOM argued that the Appellant has now approached for refund of excess normative charges levied in the past electricity bills even prior to the period for which he had approached the CGRF earlier in its complaint and got relief. The present complaint referring to the same issue for an earlier period is clearly time barred.

It may be observed that although the present complaint pertains to different period yet cause of action is the same-viz, the excess normative charges levied by the Respondent Company on a mistaken notion that the appellant had a lesser sanctioned load than it actually had.. The CGRF also stated that the Appellant had many opportunities to bring this issue as additional point but this was not done then. To this, the Appellant replied that he was not aware of the concept of normative charges at the time of filing the first complaint.

It is a fact that the Appellant had in his earlier complaint claimed refund of excess normative charges levied w.e.f. May 2002 to June 2003 and refund was allowed by CGRF but without any interest. Appellant thereafter filed an appeal before Ombudsman claiming interest on refundable amount allowed by CGRF and claim of interest was upheld in the appeal. Even though the appeal to the Ombudsman was filed at a later point of time after receipt of the order of CGRF in which he had received refund of excess normative charges, this issue of excess normative charges during DVB time was not prayed for by him. In view of the preceding facts, it cannot be said that the appellant was not aware of the concept of normative charges.

The provisions of Civil Procedure Code though relied upon by the Respondent Company and argued at length by the Appellant that it is not applicable to the proceedings before the Electricity Ombudsman may not be considered here, because Regulation 9 (xi) of the DERC Regulations 2003, specifically provides that "the Forum shall not be bound to follow the procedure prescribed in the Civil Procedure Code 1908 (Act 5 of 1908). Subject to these

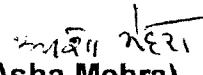
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Regulations the Forum may evolve procedure conforming to the principles of fair play and justice for efficient discharge of its functions". The appellant himself has stated that the Forum and the Ombudsman have been set up to provide justice and quick relief to common consumer like the appellant. The very nature and purpose of such forums is to bring justice within the reach of the common man.

Suffice it to say that the appellant agrees that the Forum/Ombudsman are not bound by the procedure prescribed in the CPC and is meant to provide quick relief to consumers on the basis of principles of fair play and justice. It is also common knowledge that relief once provided for a later period can not lead to unspecified relief for much earlier period when the facts were known to the consumer/appellant. When the complaint was filed before the Forum, the appellant prayed for refund of excessive normative charges collected from him by the DISCOM. He is now praying for refund of excess normative charges levied during the DVB time. In fact, it is the same cause of action for much earlier period which as respondent argued he could have claimed as an additional point before the Forum/Ombudsman.

There is no doubt that the Law of Limitation applies whether the case is settled by a court of law or by the Forum/Ombudsman. While seeking relief on recoveries claimed by the Licensee Company, the Law of Limitation is invoked for not permitting it to collect the dues beyond the limitation period. Similarly, any relief prayed for is also subject to the law of limitation. On this very ground the appeal of the Appellant fails and is rejected. The judgments relied upon; by the appellant do not help him as they are not on all fours with the facts of his case.

The appeal is rejected. The order of the CGRF is upheld.


(Asha Mehra)
Ombudsman