

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-cum-Fax No.: 011-26141205)

Appeal No.746/2016

IN THE MATTER OF:

Shri Awdhesh Singh Yadav - Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. – Respondent

(Appeal against order dated 04.07.2016 passed by the CGRF- TPDDL in CG No. 7126/02/16/MGP)

Present:

Appellant: Did not appear despite repeated notices

Respondents: 1. Shri Vivek, Senior Manager (Legal)
2. Shri Maheshwar Chauhan, Executive

Date of Hearings: 15.09.2016, 22.09.2016, 28.09.2016

Date of Order: 03.10.2016

ORDER

1. Appeal no.746/2016 has been filed by Shri Awdhesh Singh Yadav, R/o House No.24, Plot No.42, Ground Floor, Khasra No.1236, Kirari Suleman Nagar, J-Block, Prem Nagar, Phase – 2, Delhi, user of connection No. 60016535126 in the name of Shri Kishan Narain, against CGRF-TPDDL's order in CG No.7126/02/16/MGP dated 04.07.2016.

2. Neither the Appellant nor his counsel appeared at the hearings scheduled for the 15th, 22nd and 28th of September, 2016 successively despite being notified in advance although the Respondent was present. A final attempt to contact them on 30th Sept also failed to elicit any response - hence this case is being adjudicated ex-parte.

3. The timeline reveals the following sequence of events:

a) **18.03.2013** - Commercial connection granted to appellant.

Pushma



- 271
- 192
- b) **27.01.2015** – Burnt meter replaced by Discom.
- c) **09.04.2015** - Burnt meter replaced for the second time.
- d) **June-July, 2015** – Appellant alleges inflated bill of almost Rs.63,000/- from the Discom. Appeals to Discom but to no avail.
- e) **04.09.2015** – Discom serves a bill of about Rs.1.45 lakhs.
- f) **11.09.2015** – Appellant complains again to Discom with no response.
- g) **28.09.2015** – Appellant files appeal before CGRF for quashing the bills and issue of a stay order against disconnection.
- h) **05.10.2015** – CGRF issues interim order for stay against disconnection subject to deposit of Rs.70,000/- including current demand by 16.10.2015. Appellant complies.
- i) **08.01.2016** – Discom disconnects the Appellant's electricity supply.
- j) **14.01.2016** – CGRF dismisses the appeal due to non-appearance of the Appellant despite being given three opportunities.
- k) **20.01.2016** – CGRF restores the case following a representation from the Appellant.
- l) **08.02.2016** – Appellant asks for restoration of his electricity supply which was disconnected on 08.01.2016.
- m) **11.02.2016** – CGRF agrees to restoration of supply subject to deposit of Rs.50,000/- and payment of current demand by the Appellant who complies with the direction.
- n) **04.07.2016** – CGRF issues final orders concluding that Discom's billing is correct and payable and not time-barred as argued by the Appellant.

4. The Discom's (Respondent) position is that the meter of the Appellant was replaced twice on 27.01.2015 and 09.04.2015 with 'burnt meter' remarks. Assessed amounts of Rs. 20,607/- (for the period 28.12.2014 to 26.01.2015) and Rs. 24,039/- (for the period 05.03.2015 to 08.04.2015) when actual consumption readings were not available were debited to the Appellant's account on the basis of his average consumption from 30.04.2014 to 27.12.2014 as per Clause 43 of DERC's Supply Code and Performance Standards Regulations, 2007 – an action upheld by the CGRF. Regarding the Appellant's charge that the meter was not tested by a third party testing agency, the Discom has pointed out that under Clause 38(1)(g) of the same Regulations, it is the Appellant's responsibility to approach the Discom for meter testing if he disputes its readings.

Prashma




5. The Appellant's case is that there is a violation of Regulation 43 (which refers to billing modalities during the period a non-functional meter remains on site) as well as negligence by not acting on his complaints as required under Regulation 44 apart from alleging that the meters were not sent to a third party for testing. He has also questioned the applicability of Section 56(2) of the Electricity Act, 2003 to his case, saying that the CGRF has incorrectly relied on this provision while his main plea is based on Regulation 43(i) which provides for a base period of 12 months to be taken into consideration when determining average consumption while the Discom has used only 8 months.

6. I have considered the case on the basis of the records available as the Appellant failed to appear despite several notices. At the outset itself, one issue needs to be disposed off – the Discom's contention that the Appellant has no locus standi to file this appeal in the first place since he is not the registered consumer of the connection in question which stands in the name of one Shri Kishan Narain and who has not delegated any authority to the Appellant to contest the case on his behalf. This is a de novo objection being raised by the Discom at this appellate stage – neither the CGRF nor the Discom in its submissions before the CGRF – have raised this issue. The Discom itself has contested the case as if the Appellant was the registered consumer and has also proceeded to accept the interim payments he has made against bills raised, thereby accepting him, in effect, as a bonafide and legitimate consumer for all practical purposes. Accordingly, the Discom's objection stands dismissed.

7. It is a matter of record that the Appellant's meter had burnt out twice and had to be replaced both times in Jan 2015 and again in April, 2015. The last readings before they burnt out were on 27.12.2014 and 04.03.2015. Regulation 43(i) and (ii) of the Code referred to above provide for average consumption to be calculated on the basis of a 12-month base period. Where this timeframe is either not available or partially available for a 12-month preceding the date on which the meter went defective, the consumption pattern during the 12-month period following the installation of a new meter has to form the basis for estimating the bill. In the instant case, the Discom has instead used an 8-month period from April to Dec 2014 for its assessment which is at variance with the provisions of Regulation 43. The bill, therefore, has to be reassessed using a 12-month base period.

8. The Appellant's plea that the assessment bill should have been raised within two billing cycles as provided for under Regulation 43(i) is not sustainable as his meter got burnt twice – end of January and beginning of April – as a result of which the Discom did not have the mandatory base period available for the billing exercise in the first place and there was no way in which a bill could have raised within two billing cycles. Neither are his averments on the applicability of Section 56(2) relevant as the Discom had no option but to wait for the mandatory period to elapse before estimating average consumption pattern and raising a bill on that basis. No delay in raising the assessment can, therefore, be attributed to the Discom. The CGRF has also given an extended discussion of limitation laws and case histories which need not be recapitulated – suffice to say, the provision for limitations cannot be invoked in the context of this case as the bill could not have been raised earlier but had to wait for the average consumption pattern to emerge first.

Kishna



9. The CGRF's order focuses on the non-applicability of limitation laws only but has missed the Discom's error in generating bills on the basis of an 8-month average consumption pattern instead of the 12-month period prescribed in Regulation 43 of the Code mentioned in paragraph 4 supra. The Discom is, therefore, directed to amend and revise the bill in accordance with the mandatory requirements imposed by Regulation 43.

The plaint of the Appellant stands disposed off accordingly.

Sundaram Krishna



(Sundaram Krishna)
Ombudsman
03.10.2016

It is a matter of record that the Appellant's meter had burnt out twice and had to be replaced both times in Jan 2015 and again in April 2015. The last readings before they burnt out were on 27.12.2014 and 04.01.2015. Regulation 43(1) and (2) of the Code require to provide for average consumption to be calculated on the basis of a 12-month base period. Where the information is either not available or partially available for a 12-month period preceding the date on which the meter was defective, the consumption pattern during the 12-month period following the installation of a new meter has to form the basis for estimating the bill. In the instant case, the Discom has instead used an 8-month period from April to Dec 2014 for its assessment which is at variance with the provisions of Regulation 43. The bill therefore has to be reassessed using a 12-month base period.

The Appellant's plea that the assessment bill should have been calculated on two billing cycles as provided for under Regulation 43(1) is not sustainable as his meter got burnt twice - end of January and beginning of April - as a result of which the Discom did not have the mandatory base period available for the billing exercise in the first place and there was no way in which a bill could have been raised within two billing cycles. Neither are the arguments on the applicability of Section 50(2) relevant as the Discom had no option but to wait for the mandatory period to elapse before estimating average consumption pattern and raising a bill on that basis. No delay in raising the assessment can therefore be attributed to the Discom. The CGRF has also given an extended discussion on limitation laws and case histories which need not be recapitulated - suffice it to say, the provision for limitation cannot be invoked in the context of this case as the bill could not have been raised earlier due to the meter for the average consumption pattern to emerge.



Sundaram Krishna