

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. 04/2018

IN THE MATTER OF:

Shri Deepak Yadav - Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. – Respondent

(Appeal against order dated 09.01.2018 passed by CGRF- TPDDL in CG No.

7755/08/17/BDL)

Present:

Appellant: Shri Hanish Saharawat, Advocate and Shri Narain Singh, father on behalf of the Appellant

Respondent: Shri Harshendu Kumar, Senior Manager (Legal) and Shri Vinay Kumar on behalf of TPDDL

Date of Hearing: 05.04.2018

Date of Order: 13.04.2018

ORDER

1. This appeal, filed by Shri Deepak Yadav, S/o Shri Narain Singh, R/o Khasra No. 14/11, Industrial Area, Village Samaipur, Delhi – 110042, against the verdict of CGRF-TPDDL cited above, contests the transfer of dues to his active connection which he claims is unjust.

2. The Appellant's contention is that he has been unfairly offloaded with an inflated bill pertaining to a disconnected connection with which he has no concern. According to him, he has an industrial electricity connection bearing CA No.xxx3742 energised in July, 2004 in his premises mentioned above. He had a tenant, one Yogesh Yadav, who was granted a separate industrial connection bearing CA No. xxx2553 which was energised in July, 2005. This tenant subsequently vacated the premises with his meter being disconnected in December, 2008, assuring the Appellant that no bills were pending. The Appellant continued paying the bills pertaining to his connection regularly but was suddenly served with an inflated bill by the Discom (Respondent) amounting to about Rs.31.05 lakhs (which included arrears of about Rs.11.77 lakhs, a current demand of around Rs. 45,000/- as well as a late payment surcharge of about Rs.18.82 lakhs) which the Discom claimed to relate to the unpaid dues of his erstwhile tenant's disconnected connection. His challenge of the bill before the CGRF was not accepted by the Forum which held him liable to pay the dues, hence this appeal.

3. The Discom's position is that both the electricity connections were installed at the premises of the Appellant, one of them being his own (xxx3742) and the other (xxx2553) which had been disconnected and which carried an unpaid principal bill against it of about Rs. 11.29 lakhs. A connection verification carried out by the Discom on 11.05.2017 revealed that the portion of the premises in which the inactive, disconnected connection existed, was being supplied electricity through the Appellant's active connection in violation of law. After issuing a show-cause notice under clause 49 (ii) of the DERC's



Supply Code & Performance Standards Regulations, 2007 to the Appellant, the Discom carried out a second site verification about two weeks later and served a notice of transfer of dues from the dead connection to the Appellant's live connection, pointing out that the diversion of electricity amounted to an unauthorized use which could attract penalties under law. According to them, the transfer of dues has been done correctly under Regulation 49 (ii) of the Code cited above.

4. I have heard both the parties. The Appellant, through his Counsel, has stuck to his argument that the dues raised by the Discom do not pertain to him and that the premises concerned are two physically separate properties with independent connections, one of which had been vacated by his tenant. The Appellant has also stated in clear terms during the hearing that he stands by his letter dated 18.07.2017 that the dues pertain to Shri Yogesh, S/o Shri Rajender Yadav and that he neither knows these persons nor has ever heard of them. Furthermore, he has insisted that he has been paying the dues of his live connection all the while along with no indication from the Discom that there were dues pending and which have been raised against him suddenly and arbitrarily after nine years in July, 2017.

5. The Discom, for its part, enumerated the evidence which they argued proved that the Appellant's premises were not two distinct properties and that the other party was very much within his knowledge, pointing out that he himself had issued an NOC to his tenant, Yogesh Yadav and, furthermore, that he himself admitted before the CGRF that he was the owner of both the premises in Khasra No. 14/11, Village Samaipur. The bank cheques issued by the Appellant in payment for the connections carry serial numbers very close to each other which shows that they were in the possession of and issued by the bank to the same person. Furthermore, the same landline number figures on the Discom's records of both these consumers as also the mobile number which is common to both Yogesh Yadav and Deepak Yadav. Finally, the Discom has drawn attention to the fact that the site inspection revealed that Deepak Yadav's live connection was illegally feeding the portion of the property from where the connection had been disconnected earlier. Interestingly enough, the electricity consumption of Deepak Yadav had doubled after the above mentioned disconnection, a fact not denied by him. The Appellant's explanation for the increased consumption as being due to an increase in his factory's production rate is difficult to believe according to the Discom which has held that the Appellant, his former tenant and others are in a mutual understanding to evade paying the dues.

6. Having heard all the arguments and examined all the material on record carefully, I am not convinced of the Appellant's arguments that he has absolutely nothing to do with his erstwhile tenant or his liability to pay the outstanding dues. All the circumstantial evidence, taken together, point to a nexus between the Appellant and others to evade paying the dues. Furthermore, a fact which simply cannot be ignored is that the Appellant has been in direct violation of law by feeding the portion of his premises earlier serviced by the disconnected connection by diverting power from his live connection as evidenced by the site inspection. His argument that he has been paying all the bills raised against his live connection regularly cannot be taken as a defence to absolve himself of the fact that he is responsible for an unauthorized use of electricity in terms of Regulation 52 of DERC's Supply Code & Performance Standards Regulations, 2017. The Discom has already served a notice on him for payment of dues while indicating that it is without prejudice to any further action that may be initiated against him under section 126 of the Electricity Act, 2003 and it is up to them to pursue any action/remedy as may be prescribed by law.

7. What is abundantly clear is that the present situation has been contributed to in equal measure by both the Appellant and the Discom. The Appellant's contribution consist of a violation of law through an unauthorized use of electricity in his premises and then attempting to obfuscate facts through convoluted arguments to distance




himself from his liability to pay the arrears. It is worthwhile to note that, at no point of time, as the Appellant explicitly denied being in violation of Regulation 52 on unauthorized use. It strains credulity to believe that he remained blissfully unaware of the implications of his actions. The Discom's contribution to the situation is more serious with no adequate explanation forthcoming at all for the complete absence of any affirmative action to recover outstanding dues against the disconnected connection from the date of its disconnection in December, 2008 up to the date of service of the bill of arrears on the Appellant in July, 2017 – a lapse of nine years – which, according to the Discom, was when they first discovered through an inspection that an unauthorized diversion had taken place with dues still pending for payment. There is nothing on record to show that the Appellant was ever made aware of the existence of these dues during this interregnum. Under other circumstances, one might have looked at the applicability of the law of limitations but the circumstances of this case, involving as it does a violation of Regulation 52 mentioned in paragraph 6 supra as well as an attempt to evade liability through convoluted and irrelevant arguments leaves me with no option but to conclude that the Appellant is indeed liable to pay the outstanding dues.

8. The residual question now remains of the extent of the liability payable by the Appellant. The bill of dues served on the Appellant shows a total amount of about Rs.31.05 lakhs of which the arrears constitutes about Rs.11.77 lakhs and a current demand of about Rs.0.45 lakhs. Of this amount, the late payment surcharge component (LPSC) alone accounts for about Rs.18.82 lakhs. It is extremely difficult to find a justification for offloading this surcharge – which can only be described as ridiculous – on the Appellant, given the fact that it has been allowed to build up to such a magnitude solely on account of a complete absence of any discernable effort on the part of the Discom to address the dues recovery issue for almost a decade. On the other hand, the arrears of about Rs.11.77 lakhs represent payment due for energy supplied by the Discom and actually consumed at the Appellant's premises. The Discom, as a commercial entity engaged in the supply of electricity energy against payment, cannot be deprived of this receipt and its rights to recover payments do not stand extinguished by the mere fact of the delay in the service of the bill. I find that the CGRF seems to have taken some of these factors into consideration while generously waiving off 50% of the LPSC imposed even though the Appellant did not specifically seek that relief. Given the exposition above, my assessment however is that it would be patently unfair to offload a massive surcharge of this magnitude on the Appellant and allowing the Discom to derive an undue financial benefit as a consequence. Accordingly, it is hereby ordered that the LPSC shall stand fully and completely waived.

9. In summary, therefore, no substantive case is made out for any interference with the verdict of the CGRF holding the Appellant liable to pay the dues raised against him by the Discom except to the extent that LPSC charges on the amount payable stand completely waived.

This appeal is disposed off accordingly.


(Sundaram Krishna)
Ombudsman
13.04.2018