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. 787/2017

IN THE MATTER OF:

M/s Indian Oil Corporation Ltd and M/s United Engineers Service Station - Appellants

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 14.03.2017 passed by CGRF-BRPL in CG No. 107/2016)

Present:

Appellants:	Ms Savita Rustogi & Shri Rahul Sharma, Advocates on behalf of both parties as well as Shri Rajesh Sachdeva, M/s United Engineers Service Station.
Respondent:	Shri Arav Kapoor, Advocate, Shri Avinash Kumar, ASVP (KCC) and Shri Srajan Bhargava, DGM (KCC) on behalf of BRPL
Date of Hearings:	28.07.2017 and 04.08.2017
Date of Order:	14.08.2017

ORDER

1. Appeal No. 787/2017 has been filed by M/s Indian Oil Corporation Ltd (IOCL), the first Appellant, against the order of CGRF-BRPL cited above with its dealer, Shri Rajesh Sachdeva, the second Appellant, becoming a party to the case during the proceedings before the Ombudsman. Briefly, the case involves a billing issue in which the Appellant/s have contested the service of a bill of arrears in May and June, 2008 by the Discom (Respondent) on the basis of a revised multiplication factor followed by another arrears bill at a belated stage in December, 2016.

2. Till the filing of the present appeal, the case has traversed a long path, first coming up before the Consumer Disputes Redressal Forum (CDRF) in June, 2008 where it remained pending for 8 years before coming up before the Hon'ble High Court which disposed off his petition with liberty to approach the CGRF while withdrawing the case before the CDRF. This was done in September, 2016 with the CGRF, through an order in March, 2017, holding the arrears were liable to be paid, hence this plaint.

3. The background and issues involved in this case can best be understood by looking at the timeline of events:

- **12.02.2005** – the connected load of the non-domestic connection at the service station (a company-owned, company-operated establishment of IOCL) enhanced to 98 KW and CT (current transformer) of a rating of 200/5 installed as per the meter installation report.

- **01.10.2006** - IOCL hands over the service station to its dealer, Shri Rajesh Sachdeva, proprietor of M/s United Engineers Service Station, the second Appellant.
- **05.05.2008** – the last bill raised using a multiplying factor (MF) of 20 for an amount of Rs.57,645/- for the period 01.04.2008 to 01.05.2008 in the name of the registered consumer, namely IOCL. For the same period, another bill for Rs.1,10,390/- is raised, this time using an MF of 40.
- **02.06.2008** – a bill for Rs.1,66,199/- is raised which includes unpaid arrears of Rs.52,744/- from the previous bill was raised with an MF of 40.
- **17.06.2008** – the second Appellant disputes this bill and the use of an MF of 40 and approaches the Consumer Disputes Redressal Forum (CDRF) which restrains the Discom from disconnected the electric supply provided to the complainant deposits Rs.75,000/- towards the disputed bill. The case remains in the CDRF without a resolution for the next eight years.
- **17.08.2016** – the second Appellant files an urgent petition before the Hon'ble High Court of Delhi requesting that bills raised with an MF of 40 be declared as illegal and the Discom be restrained from disconnecting his supply for non payment of the disputed bill of Rs.1,66,199/-
- **31.08.2016** – the Hon'ble High Court disposes off writ petition with liberty to the petitioner (the second Appellant) to approach the CGRF-BRPL and to withdraw the proceedings before the CDRF which he does on 5.9.2016.
- **19.09.2016** – the second Appellant files an appeal before the CGRF requesting that all bills raised by the Discom based on an MF of 40 instead of 20 from May, 2008 onwards be declared as illegal and quashed. He further claims that bills are required to be raised on the basis of actual meter readings as per Regulation 41 (ii) of the DERC's Supply Code & Performance Standards Regulations, 2007.
- **14.10.2016** – the Discom files a written submission stating that the MF is 40 since the time of installation of the meter on 12.02.2005 and that, due to a clerical error, the MF was incorrectly entered as 20 instead of 40. An audit check in 2008 revealed this "punching" error following which corrective action was taken in May, 2008 to change the basis of billing from an MF of 20 to 40. The CGRF orders a joint site inspection to be carried out.
- **17.10.2016** – Inspection and test of the meter finds it to be functioning in order within acceptable parameters.
- **22.12.2016** – The second Appellant files an amended complaint challenging the bill of about Rs. 21.85 lakhs dated 8.12.2016 which has been served on him during the pendency of the case before the CGRF and invoking limitations under Section 56 (2) of the Electricity Act, 2003.
- **14.03.2017** – The CGRF accepts the contention of the Discom that the MF of the meter was 40 since its installation but had been incorrectly entered as 20 through a clerical error and delivers a verdict that the complainant is liable to pay the dues raised by the Discom. Late payment surcharge (LPSC) is waived with the payment to be done in 12 equal monthly instalments.
- **06.06.2017** – IOCL files an appeal before the Ombudsman against the CGRF's verdict invoking Section 151 of the CPC to justify their entry at this belated appellate stage.

4. The parties concerned have been heard and the material on record considered carefully. At the outset, the Discom raised a question of maintainability on the ground that the IOCL had not been a party to the case before the CDRF/HC/CGRF and, therefore, had no locus standi to file the present appeal. This argument is not sustainable and the IOCL's appeal bears admission as a party which will be materially affected one way or the other by the outcome of the verdict. The IOCL has invoked Section 151 of the CPC – in the interests of natural justice read with the principle of *audi alteram partem*, their plaint cannot be disallowed. The Discom's objection here is rather odd considering that the IOCL is the Registered Consumer (RC) on the Discom's record and whose name all bills have been and are continued to be issued. Yet, at no

point during the contesting of the case before the CDRF/HC/CGRF by the second Appellant, Shri Rajesh Sachdeva, did the Discom ever raise the point that he was not the registered consumer. In any case, the latter has now been impleaded as a party.

5. Despite its seeming complexity, this case reduces to two issues which have to be adjudicated upon:

a) The application of a multiplication factor (MF) of 40 by the Discom instead of 20 to calculate the amounts to be paid for the consumption of electricity since the second Appellant has challenged it as illegal null and void and demanding a reversion to an MF of 20 as the basis for bill calculation and;

b) The legality of the raising a bill by the Discom for arrears for a period between 2005 and 2008 after more than 8 years in December, 2016 and whether such a demand is barred by limitations under Section 56 (2) of the Electricity Act, 2003.

6. Regarding the first issue of the multiplication factor, the Discom has explained that the MF of the meter was 40 at the time of installation on 12.02.2005 but was incorrectly entered/punched as 20 into the computer database through an error which was eventually detected in May, 2008 during an internal audit check. The mistake was rectified by changing over to MF of 40 for the calculation of subsequent bills but, through an oversight, was not applied to the previous bills from February, 2005 to May, 2008. During the hearing (and in his written submissions as well), the second Appellant argued at length that this was incorrect and that the Discom had now raised bills on the basis of a wrong MF for which he was not liable to pay. He has also argued that the increase of the MF from 20 to 40 was arbitrary, without cogent reasons and without having the meter tested properly in an NABL laboratory to establish its actual MF.

7. This issue has also been covered in the CGRF's verdict but it would be appropriate, nevertheless, to recap the technicalities behind the multiplication factor for the sake of the record. Energy meters are generally designed to withstand a load of 440 volts and a maximum of 60 amperes current continuously. If a consumer's load is more than 60 A or the supply voltage is higher than 440 volts (98 KW/440 volts in the present case), current and voltage transformers (or CT or VT in short) are used in metering circuits to restrict the current and voltage to the rated capacity of the meter to avoid its burn-out. Accordingly, depending on the load of the establishment, step-down transformers (current/voltage) are incorporated into the meter to record the actual consumption of the consumer in the same proportion. To arrive at the actual consumption, the consumption registered by the meter is then multiplied by a proportionality factor known as the multiplication factor (MF). Thus, MF = CT ratio x VT ratio. The CT ratio in the present case is 200/5 and VT is one. This ratio is a fixed, intrinsic value which is built into the current transformer and is not a variable which can change over time.

8. The CT ratio of 200/5 (with 200 divided by 5 giving the multiplication factor of 40), as built into the meter installed at the premises of the Appellant, was established through the meter installation report of 12.02.2005 and reconfirmed through the joint inspection of 17.10.2016 ordered by the CGRF. The use of an MF of 20 between 2005 and 2008 for the calculation of the bills was a clerical error, not the result of a technical fault. It would not be out of place to mention here in passing that the same meter, installed in 2005, is still operative as of today at the Appellant's premises with bills being raised on the basis of an MF of 40 and which he is paying. During the hearings, although the second Appellant argued against the change of the MF from 20 to 40, both the Appellant/s did not press this issue further. It may, therefore, be treated as closed/settled for all practical purposes.

The principal issue for determination now remains that of the issue of limitations and whether the Discom's demand for arrears is time-barred or not.

9. A principle enunciated in an earlier judgement by this Ombudsman (Appeal 744/2016) was that there is a legal obligation on the part of a consumer to pay for the electricity consumed and the Discom, as a commercial entity engaged in the business of supply electricity as a service against payment, is legitimately entitled to be paid for the electricity which it has supplied to a consumer. Under normal circumstances, the fact of an oversight or error, which results in the unfortunate situation of the appropriate bills not being served on the consumer in time, does not necessarily extinguish its right as a commercial entity to demand and receive payment for a consumable which it has already provided.

10. But this case is materially different. The consumer here has been paying all the bills raised against him without demur. The primary responsibility of ensuring of the correctness of the bills devolved on to the Discom whose job it was to see that payments were being made on time and no arrears were pending. The Discom has clearly failed in this aspect through its inaction between 2008 and the raising of a fresh bill for arrears in December, 2016 despite the fact that the error involved in not applying the correct multiplication factor had already been discovered through an internal audit and, although reflected in two bills for May and June, 2008, was completely overlooked for the rest of the disputed period. The sudden raising of a new bill for arrears, and that too for a very significant sum, definitely has an impact on the consumer in that he is suddenly presented with a huge bill on account of a patent error committed by the Discom, an error compounded by the absence of any affirmative action on the part of the Discom to address it for almost eight years. In effect, this amounts to punishing a consumer for a lapse entirely within the Discom's domain.

11. During the hearings, both parties raised points of law and cited case histories in support of their respective positions with the Discom drawing attention to several verdicts of the Hon'ble High and Supreme Courts including the applicability of the verdicts delivered in the Paschimanchal Vidyut Vitran vs DVS Steels Pvt Ltd (Civil Appeal No. 6565 of 2008 in the Hon'ble Supreme Court) and Rototex Polyester vs Administration of Dadra and Nagar Haveli (Writ Petition No. 7015 of 2008 in the Hon'ble High Court, Bombay). The counsel for the Appellant/s countered that the case histories cited by the Discom were not attracted in the instant case.

12. It would be appropriate to observe at this point that the case histories cited contain the judgements and observations made by the learned Courts in the context of the specifics of the particular case they adjudicated upon and may not necessarily be applicable uniformly across all classes of cases. Several interpretations of the same order, therefore, may be possible depending upon the peculiarities of the specific case under consideration. This subject was, incidentally, touched upon by the Forum of Regulators in a workshop in 2016 on protection of consumer interests when it reiterated, in the context of how to determine the date on which a bill became first due, that:

> *"Multiple interpretations are possible regarding the provisions of sub-section 2 of section 56 of the Act and there are orders of the High Courts of various states which have given divergent decisions".*

In another context, the Hon'ble Supreme Court had itself observed in the case of Bharat Petroleum Corp Ltd vs NR Vairamani (2004) that:

> *"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of context in which they appear to have been stated. "*

The case histories adduced in this case have been taken into consideration with these observations in mind but with the attempt being to avoid dissecting each and every argument or counter-argument.

13. The counsel for the Discom argued that the provision for limitations under Section 56(2) of the Electricity Act, 2003 was not applicable in this case and that the Discom was legally empowered to raise the bill of arrears with the only error being that it had not been done earlier as it should have been. According to him, bills had been raised earlier with the only difference being that the actual amount of electricity consumed had not been billed inadvertently, thereby constituting an "escaped billing" which was being sought to be corrected now. He also argued that it was incumbent upon the second Appellant, Shri Rajesh Sachdeva, who had taken over the ownership of the premises from IOCL in October, 2006, to have ensured that there were no previous dues pending against the premises at that point in time. Since the second Appellant had failed to do so and had not asked the Discom to issue an NOC, the Discom could not be faulted for inaction and, furthermore, since no other supplementary demands had been raised earlier, the period of limitations, if any, would commence only from the latest bill of December, 2016. This argument, i.e. that matters might have been different had the second Appellant applied for an NOC after taking over the service station, is specious in that it tries to transfer the blame for the current state of affairs to the Appellant. It belongs more to the realm of speculation and is, therefore, not admissible.

14. Another argument advanced by the Discom is that this case deserves to be treated as one of "escaped billing" as bills have continued to be raised on the basis of an MF of 40 and being paid by the consumer but that the actual dues /rates which should have been applied had "escaped" notice and were "discovered" only later, thereby resulting in the inclusion of the "missing" portion in the bill served in December, 2016. The Discom has admitted during the hearings that they have erred in this oversight. The period from February, 2005 till the internal audit of May, 2008 - when the error came to light - may perhaps lend itself to be treated as a period of "escaped" billing since the Discom remained unaware of the error, by its own admission, during this interregnum till its "discovery", so to speak, during the audit of 2008. Incidentally, the Discom did not produce a copy of the audit report despite being asked to on the ground that it was not traceable.

15. On the question of this error, it must be noted that it was committed not just once but twice. The first time was when the multiplication factor was incorrectly punched/entered as 20 instead of 40 even though that MF was clearly indicated in the meter's current transformer as established by the inspection report of 2005 with the same meter continuing in use as of today. Such errors, though, are not uncommon and do happen when large quantities of data are being entered repetitively into computer databases. So the error in the present case cannot be attributed to any malfeasance or malafide – it is a human error and may remain as such.

16. According to the Discom, once this data entry error was discovered in 2008 after an audit pointed it out, two bills for arrears were raised in May and June, 2008 which were challenged before the CDRF by the second Appellant in June, 2008 itself. The Discom, however, proceeded to compound their initial data entry error by remaining silent during the long years of the pendency of the case before the CDRF, during the second Appellant's petition before the Hon'ble High Court and again during the initial stages of his appeal before the CGRF before suddenly waking up from their slumber to deliver a new bill of arrears of over 21 lakhs in December, 2016, thereby prompting the Appellant to amend his plaint midway through the CGRF proceedings to challenge the new bill.

17. When queried about their apparent lack of action to address the arrears issue between 2008 and 2016, the Discom has taken the plea that the matter remained sub-judice during the pendency of the proceedings before the CDRF and Hon'ble High Court, that they were waiting for the outcome, and *"...only when the matter got dismissed from both the said Forums that the Respondent raised the bill for escaped billing"(sic).* This logic is difficult to accept. Neither the CDRF nor the Hon'ble High Court "dismissed" the Appellant's petition – the Hon'ble HC only permitted its withdrawal from the CDRF and approaching the CGRF for a remedy within a month while restraining the Discom from initiating any coercive action for recovery in the

interregnum while the CDRF merely permitted the withdrawal of the petition without delivering a final verdict. Furthermore, the Discom was clearly not constrained by its own "sub-judice" argument when it did not raise the new bill of arrears of over 21 lakhs before the Appellant filed his plaint before the CGRF on 19.09.2016, inexplicably doing so about only two and a half months later on 08.12.2016, thereby prompting the Appellant to amend his plaint before that Forum during the currency of his petition to challenge the new bill.

18. The point here is that the expression "sub-judice" only implies that one or the other of the parties in litigation may not take recourse to any form of coercive action towards the resolution of the issue/s under agitation during the pendency of the case till such time as the concerned forum or court delivers its final verdict. There was absolutely no bar on the Discom taking non-coercive, administrative actions to establish the legitimacy of its claim for arrears through commonly used mechanisms like showing the arrears as "Not to be Added" (NTA) or as "withheld" on the bills or even through a letter or notice to the consumer intimating him that there were arrears in question which were being flagged but whose resolution would have to await the final verdict of the concerned forum/court. Discoms often do this where disputed arrears are involved.

19. To stretch this "escaped billing" oversight beyond 2008, subsequent to the discovery of the error through the internal audit, strains credibility. Once audit had pointed out the lapse, it was incumbent upon the Discom to act in time on it but to ignore or overlook it over the next eight years, particularly when the subject of arrears was very much alive and being agitated before three separate adjudicating authorities during this period, can only be described as negligence of a very high order. And it is a patent travesty of justice when the consequences and financial shock of such an error – for which they themselves are solely responsible - are unloaded onto the unsuspecting consumer who is suddenly saddled with a huge financial burden at one fell swoop. It is precisely to avoid such situations from arising that a provision for limitations has been legislated and incorporated into the Electricity Act, 2003.

20. Against this background, the Discom's argument that Section 56(2) of the Electricity Act 2003 on limitations would become operative only from December, 2016 since bills on the basis of an MF of 40 were being raised from May/June, 2008 (and paid for) is not sustainable unto itself. Section 56(2) very clearly provides for the arrears to shown as continuously recoverable if it is not to be invoked. The operative phrase here is continuously recoverable. In the present case, at no point in time from 2008 onwards did the Discom ever provide even the slightest hint or indication in its bills that there were other unbilled components in the billing to which they were holding the Appellant liable to pay. The only arrears they ever showed on the basis of the corrected MF were in the two bills issued for May and June, 2008 and no other - and only these arrears were being carried forward in the bills being issued from 2008 till 2016. No bills showing any other arrears were ever issued – a position verified from a representative sample of bills issued between 2008 and 2016 which the Discom was directed to produce. Even the bill dated 08.12.2016, which springs the surprise arrears of about 21.85 lakhs for the first time, contains no indication as to which period these arrears purportedly relate to.

21. At the risk of repetition, it is necessary to reiterate here that had the Discom at least shown the previous arrears they were claiming as "Not to be Added" (NTA) or "Withheld" in the bills issued to the Appellant/s – which he was paying without demur - or even issued a letter or a notice or some kind of a written intimation to him that there were unbilled amounts which were not being charged immediately but for which he was being ultimately held liable, matters would have been different and the Discom's argument that limitations cannot be invoked could have been admitted as valid. In the total absence of any evidence in any form of any affirmative action between 2008 and December, 2016 on the part of the Discom to address their own audit report highlighting the MF error, and that too even when the issue was being contested before three quasi-judicial/judicial bodies, the argument of an "escaped" billing falls flat.

22. Negligence on the part of the Discom is also manifest in its challenge before the Ombudsman that the IOCL has no locus standi to file this appeal against the CGRF's verdict since they were never a party in the proceedings before that Forum. The Discom seems to have conveniently overlooked the fact is that the Registered Consumer (RC) here, as per its own records, is IOCL Ltd in whose name the bills have and continue to be raised even though its contractor and second Appellant, Shri Sachdeva, was making the actual payments. It was Shri Sachdeva who agitated the case for 8 years before the CDRF, then the Hon'ble High Court and then the CGRF. The question which begs an answer here is why the Discom did not raise the issue of maintainability before these authorities when the case was being fought by the Second Appellant who was technically not the Registered Consumer and why did they not ask that the IOCL (as the RC) be impleaded in those proceedings? The fact that the Discom chose to raise such a basic question only when the appeal was filed by IOCL before the Ombudsman speaks of a lack of focus and attention on their part. Incidentally, for the sake of the record here, it may be mentioned that the IOCL's appeal was filed under Section 151 of the CPC as they were a party who would be materially impacted one way or the other by the outcome of the Ombudsman's verdict – thereby becoming eligible for admission.

23. The only conclusion possible under the circumstances is, therefore, that the raising of a bill of arrears at such a late stage for dues dating back a dozen years to between 2005 and 2008 cannot be treated as a period of "escaped" billing with the Discom being wholly and solely responsible for having remained moribund on the issue for a protracted number of years and allowing such an adverse situation to develop in the first place. The excuse of "escaped billing" can be admitted only for genuine reasons – it cannot be used as a shield for negligence, as is the case here, with such a specious logic being stretched beyond its modulus of elasticity.

24. Section 56(2) of the Electricity Act, 2003 explicitly provides for a limitation of two years after which no sum shall be recoverable. It introduces the concept of *"the date when such sum becomes first due"*. In short, a sum which is due can be recovered within a period of two years from the date it became first due and not thereafter. The only sum which is left out of this is the sum which is shown continuously as recoverable as arrears. In the present case, the expression "first due" became operative the moment the Discom raised bills for arrears in May and June, 2008, not when it raised a fresh bill in December, 2016. The Appellant/s are, therefore, liable to pay only the two bills which had already been raised for the months of May and June, 2008 on the basis of an MF of 40 (the use of which, as discussed in paragraphs 8 and 9 supra, stands validated) and which have been reflected in the bills issued between 2008 and 2016. No other amount/arrear was raised by the Discom for any other month/period between February, 2005 and in the bill for May/June, 2008 through its own oversight and negligence - the recovery of any arrears for this period stands barred under Section 56(2) since these arrears were never shown as continuously recoverable in any bill between 2008 and 2016. The culpability of the Discom in having contributed to the development of such a situation through its own negligence is something for which the Appellant/s cannot be punished.

25. A concluding word on the issue of limitations would be in order here. In the M/s Rototex Polyester case (Writ Petition 7015 of 2008), relied upon by the Discom to buttress its case, the Hon'ble Bombay High Court had observed that where a consumer had been under-billed on account of a clerical mistake in the application of an MF, the bar of limitation could not be raised by the consumer. It has to be remembered that the learned Court's observations were in the context of that particular case where there was truly a case of escaped billing with the Discom remaining unaware of the problem and correcting the oversight four years later when it was discovered. The observation was specific to that case and should not be taken as immutable for all times to come without examining how the facts and circumstances of individual cases – and that of the present one – have a bearing on its applicability. If that is the way it is to be interpreted, as the Discom has argued, then the very raison d'être for the existence of Section 56(2) in the Electricity Act, 2003 itself can be called into question and a Discom would be at liberty to raise a bill for arrears at any time of their choosing – even decades later - and with

absolutely no accountability whatsoever for an error they have committed with its attendant consequences on an unsuspecting consumer. Section 56(2) was obviously incorporated by the Legislature in its wisdom with a specific purpose - to provide precisely for those rare instances where it is necessary to intervene and afford a degree of protection to a consumer from a financial Damocles Sword hanging over him indefinitely for no fault of his. The present case is one of those rare cases which fall into such a category and the requirements of natural justice demand the invoking of Section 56(2) – any other course of action, in my considered opinion, would be less than fair to the Appellant/s.

26. Given the above exposition, I am of the considered view that the verdict of the CGRF is deficient in that, while narrowly focusing on the rights of Discoms to recover arrears missed as a consequence of clerical mistakes, has overlooked the requirement imposed in Section 56(2) that the arrears should have been shown as continuously recoverable in the first place as well as ignoring the culpability of the Discom in contributing to the development of such a situation.

27. In summary, therefore:

a) The verdict of the CGRF is hereby set aside with the fresh arrears demanded by the Discom in its bill of 08.12.2016 being barred from recovery under Section 56(2) of the Electricity Act, 2003 except for the sums mentioned below;

b) The Appellant/s are liable to pay only the arrears already raised in the bills for May and June, 2008 on the basis of the corrected multiplying factor of 40, with LPSC, after adjustment of payments already made. No order is being passed with regard to the respective pro-rata share/liability of the Appellant/s in these arrears.

c) The application of a multiplying factor (MF) of 40 is valid and correct;

This appeal stands disposed off accordingly.

(Sundaram Krishna)
Ombudsman
14.08.2017