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.744/2016

IN THE MATTER OF:

Shri Lalit Kapoor - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent
(Appeal against Order dated 15.03.2016 passed by the CGRF- BRPL in CG No. 210/2015)

Present:

Appellant:	Shri Lalit Kapoor
Respondent:	Shri Vikram Narula, DGM (B), Shri Prashant Saxena, Manager and Ms. Monika Sharma, Legal Retainer, authorised representatives of BRPL along with their advocates Shri Arav Kapoor and Shri Aditya Gupta
Date of Hearings:	23.08.2016 & 05.09.2016
Date of Order:	09.09.2016

ORDER

1. Appeal no.744/2016 has been filed by Shri Lalit Kapoor, C-2, Bhagwan Dass Nagar, East Punjabi Bagh, New Delhi – 110026, against CGRF-BRPL's order in CG No.210/2015 dated 15.03.2016.

2. The brief background is that the Appellant was served with a bill amounting to a little over 9 lakhs in May, 2015 covering a period from June, 2004 onwards in one go in May, 2015. The Appellant has questioned the issue of a bill by the Discom (Respondent) after 11 years with no bill being received by him during the intervening period despite several representations made by him to the Discom. In his present appeal, inter alia, he has invoked Section 56 (2) of the Electricity Act, 2003 to claim that a limitation comes into effect on account of the Discom not having issued regular bills and that he should be compensated for non-performance on the part of the Discom as well as the mental agony caused to him.

OFFICE OF THE ELECTRICITY OMBUDSMAN * B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057 *

3. The Discom, in its response, has reiterated the stand they took before the CGRF, namely that the Appellant had applied in May, 2004 for a change of name and an enhancement of the load from 2 to 11 Kw with an amalgamation of his two meters. Due to a technical error, however, the particulars of the new meter installed was not entered as the Discom was in the process at that time of transferring data to their new computerised system following the unbundling of the erstwhile Delhi Vidyut Board (DVB). This inadvertent error resulted in the Appellant not being billed for the period under reference although the consumer was using the electricity. The Discom has further argued that Section 56 (2) is not applicable in the instant case and that the arrears/charges are recoverable under the demand of "escaped billing", quoting several Court's decisions in support of their contention that they are within their right to recover legitimate dues for electricity consumed. The Discom has also pointed out that there has been negligence on the part of the Appellant as well and that he should have approached them for the issue of duplicate bills as provided for under Regulation 44(iv) of the DERC's Supply Code & Performance Standards Regulations, 2007 which he failed to do.

4. The CGRF, when considering the Appellant's plea, has held that the issue of limitation under Section 56(2) referred to above did not come into the way of the issue of the bill as it had been raised for the first time without any LPSC, having become "First Due" only from the date of issue of the first bill even though the billed amount was for a period covering 11 years. At the same time, the CGRF has upheld the complainant's contention that the Discom has been deficient in providing proper services by not issuing the bill within the time frames stipulated in the DERC's Regulations of 2007, and has accordingly awarded a compensation of Rs.27,600/- based on rates prescribed in Schedule III of the said Regulations. Further, as the complainant was a "good consumer" who had made efforts in vain to obtain a bill from the Discom between 2004 to 2007, he was entitled to a compensation of Rs.75,000/- from the Discom for mental agony caused to him. Additionally, the Forum has permitted the payment of the bill in ten equal monthly instalments without an LPSC be levied against the deferred arrears.

5. I have considered the material on record and have heard the parties at length. The Appellant has essentially raised the same issues which he had before the CGRF, namely the applicability of limitations under the Limitation Act, 1963, cancellation of the bill issued to him, an enhanced compensation from the Discom for non-performance and mental harassment, increasing the number of instalments payable for the remainder of the bill, and award of costs incurred by him on this litigation. The Appellant also deems the compensation of Rs 27,600/- awarded by the CGRF under Schedule III of the Regulations of 2007 as inadequate and asked for an enhancement.

6. On the question of the applicability of the Limitation Act, the CGRF has interpreted the case histories placed before it to conclude that a limitation cannot be invoked and that the charges for the electricity consumed by the Appellant are recoverable under the demand of "escaped billing". Since the Appellant has made the issue of limitations central to his plaint, the matter warrants further elaboration.

7. Several case histories have been cited by both parties in support of their respective positions and which have been touched upon by the CGRF. The Appellant's principal line of defence is Section 17 of the Limitation Act, 1963 which, inter alia, mentions suits or applications for relief from the consequences of a mistake, arguing that he is not liable to be billed for a period beyond three years as the Discom failed to provide a bill despite his multiple letters and visits to them for a resolution. He has also questioned the applicability of the case histories cited by the Discom and has argued that while no time limits were specified by the previous Electricity Act of 1910, this is not the case since the coming into force of the Electricity Act of 2003. Among other references he has made to buttress his case is to Regulation 41 of the DERC's Supply Code etc of 2007 which specifies the modalities of billing by a Discom, the applicability of the Appellate Tribunal for Electricity decision (Appeal No. 74 of 2007) and the non-applicability of the HD Shourie vs MCD case of 1987. He has also argued that none of the cases cited by the Discom are applicable to his appeal.

8. On the other hand, the Discom has cited several cases to justify their position including Rototex Polyester case (WP No.7015 of 2008 before the High Court of Bombay), Tata Steel Ltd. vs. Jharkhand SEB (Oct, 2007 in the High Court of Jharkhand), Jingle Bell Amusement Park (P) Ltd. vs. North Delhi Power Ltd. (WP (C) 8647/2007 in the High Court of Delhi), HD Shourie vs. MCD (AIR 1987, Delhi 219, in the High Court of Delhi) and Ajmer Vidyut Vitran Nigam Ltd. vs. Sisodia Marble & Granites Pvt. Ltd. & Others (Appeal Nos. 202 & 203 of 2006 before the Appellate Tribunal for Electricity).

9. The case histories which have been cited by the Appellant contain the judgements and observations made by the learned Courts in the context of the specifics of the particular case they have adjudicated upon and may not necessarily be applicable uniformly across all classes of cases without attempting to examine their applicability. Several interpretations of the same order, therefore, may be possible depending upon the peculiarities of the case under consideration. In fact, this dilemma was touched upon by the Forum of Regulators in a workshop on protection of consumer interests when it observed that:

> *"Multiple interpretations are possible regarding the provisions of sub-section 2 of section 56 of the Act and there as orders of the High Courts of various states which have given divergent decisions. The issue is whether limitation of two years would apply from the date when the amount became first due or from the date when the amount was first shown in the bill."*

10. At another point in time, the Hon'ble Supreme Court had, 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."*

11. Keeping these observations in mind, I have gone through the case histories cited by both parties. It would be counterproductive and unnecessary to attempt discuss and agree or disagree with each and every argument or counter argument put forward by the parties as the appeal has also to be viewed in its totality and not just limited to narrow perspectives.

12. On the question of whether limitations can be invoked and interpretations of Section 56(2) of the Electricity Act, 2003, it is observed that the section in question refers to disconnections of supply in cases where there has been default in making payments. The first part of the section prescribes procedures for disconnections in the event of default and the subject of limitation comes up for mention only in Clause (2) which clarifies that the coercive method of disconnection will not be available after a period of two years from the date when such sum becomes first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

13. It is certainly correct, as the Appellant has argued, that the subject of limitations or a time frame finds mention only in the Electricity Act, 2003. But a closer reading of the portion of section underlined above clearly mentions that no sum can be recovered from a consumer after a period of two years from when the sum first became due unless the sum has been reflected continuously as recoverable arrears. The principle of res judicata can be invoked as far as the meaning of the words "first due" is concerned – it has been settled in the HD Shourie vs MCD 1987 Delhi 219 case in which the Hon'ble High Court had ruled that electricity charges become "first due" after bill is sent to the consumer and not earlier with the liability to pay becoming due and payable only when the liability is quantified and a bill is raised. In another case, BSES Rajdhani Power Ltd vs CGRF and Nalin Chandok vs BSES Rajdhani (WP(C) 13556/2006 and WP(C) 14873/2006 which were adjudicated upon together), the Hon'ble High Court, in its order of April, 2008, had referenced the HD Shourie case, observing that *"it is well settled that normal law of limitation is not applicable for recovery of electricity dues"* before giving an extended quote from the operative portion of that case, to wit:

> *There is no provision either under the Municipal Corporation Act or under the Electricity Act which provides the period within which a bill for electricity charges must be sent. According to the Conditions of Supply the bill is to be sent monthly or bimonthly but if no bills sent who is the loser. The loser obviously is the respondent-licensee who is entitled to receive money for the electricity consumed by a consumer but is not in a position to receive the same unless and until it sends a bill. It is true that considerable hardship may be caused to a consumer if a bill for the electricity charges is sent after lapse of a number of years and the consumer is asked to pay a large amount in one lump sum, but it must not be forgotten that for all this period of time the consumer uses the money which would have been legitimately due and payable to the licensee for the electricity admitted consumed. I am quite sure that if and when occasion arises and such large sums of money are demanded, the respondents would act reasonably and allow sufficient time to the*

consumers to pay the amount so demanded. Unless and until a statute clearly limits the right of an authority to assess, compute or to send a bill, it cannot be said that the authority loses its right to recover the money due to it by sending a bill within three years. Where, however, once a bill has been sent then the period of limitation for recovery of the same would commence and if payment is not made within three years, the right of the respondents to file a suit would be lost...For the aforesaid reasons, it must follow, therefore, that the respondents are at liberty to send a bill for consumption of electricity even three years after the electricity has been consumed.

14. The same subject was adjudicated upon by the Hon'ble High Court of Jharkhand in October, 2007 in the case of Tata Steel vs Jharkhand SEB (AIR 2008Jhar99) wherein the learned bench had relied on the HD Shourie judgment and concluded that:

...after hearing the parties, we are of the view that when the consumer consumes electrical energy, he becomes liable to pay the charges for such consumption but, thereafter, when the Board raises bills as per the tariff, making specific demand from the consumer for payment of the amount for consumption of electrical energy then only amount becomes "first due" for payment of such consumption of electrical energy...In view of the above findings, we further hold that the period of two years as mentioned in Section 56(2) of the Electricity Act, 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of electrical energy."

15. This finding also came in for mention in the Jingle Bell Amusement Park Ltd vs North Delhi Power Ltd (WPC(C) 8647/2007) in which the Hon'ble High Court of Delhi, in its judgment of April, 2011, referenced the HD Shourie case supra, noting that *"the question as to when the electricity charges become first due is no longer res integra"* and concurring with the finding in that case that electricity charges become due and the limitation for recovery thereof commences only when the bill therefore has been raised and further noting that the Division Bench in appeal (MCD vs HD Shourie MANU/DE/0503/1993) had reiterated that the liability to pay accrues when the liability is quantified and a bill is raised.

16. The objective of this extended exposition is that, in the present case, the arrears due were never reflected continuously as recoverable arrears from 2004 to 2015 as the very existence of the Appellant's meter escaped the notice of the Discom as a result of an error/oversight during the process of migrating the data from the records of the erstwhile DVB to their new computerized database of BSES-BRPL, the present Discom. During this interregnum, electricity was being consumed by the Appellant – a fact he could not have been oblivious to - but was not registered by the Discom who recognised the existence of the meter only in 2015 and proceeded to issue a bill for the first time for the electricity consumed during the above period. The amount thus became "first due" only in 2015 and not earlier and could not, therefore, have been reflected as recoverable arrears at any point of time before this.

17. In my considered opinion, therefore, the Appellant cannot escape his liability to pay for the electricity he has consumed by invoking the Limitation Act, 1963 and taking shelter behind a narrow interpretation of law. This case falls in a distinct category of its own as "escaped billing" or whatever adjective one wishes to ascribe to it. In the case histories quoted by the Appellant as vindicating his contention that limitations apply, the issues adjudicated upon revolved around disputes concerning faulty meters, burnt meters, incorrect readings etc, or, as in the APTEL case (Appeal No. 74 of 2007), a dispute between two state government entities under which one entity had billed the other for arrears after adopting a revised computing procedure. The present case, however, is unique unto itself in that the meter in question did not even exist in the Discom's records till its discovery, so to speak, in 2015, thus precluding the possibility of the bill being raised earlier. The Discom's own culpability in this regard and its failure to take cognizance of the Appellant's representations between 2004 and 2007 are discussed below.

In my assessment, there are two sides to this case.

18. On the one side, the DERC's Regulations of 2007, referred to in the paragraphs above, specify performance benchmarks for the Discoms within specified time frames. In the instant case, the Discom has clearly been negligent in not raising a bill for 11 years. The defence they have offered – that the details of the consumer's meter were omitted inadvertently during the migration of data from the erstwhile DVB to their new computerized database – is plausible enough since errors during computerization and data migration from one entity to another are not uncommon and need not necessarily be attributed to malfeasance.

19. At the same time, while the excuse of an oversight over a period of even a few years could still be believable, its credulity is stretched to the breaking point when a period of more than a decade is involved and the fact of the existence of the Appellant's meter is claimed to emerge only after a so-called "random check" in May, 2015 - after a lapse of 11 years. All monitoring systems incorporate – or are at least supposed to incorporate – mechanisms for checks and balances wherein an error, if not caught by the primary path, should become apparent through a secondary or even a tertiary path. If the records of the meter had been lost during the process of data migration, surely there should have been some other redundant mechanism, not dependent on computers, to establish its existence. Clearly, this has not been the case here.

20. The matter becomes all the more intriguing given the fact that there were other meters installed in the Appellant's premises and which were being billed regularly. Just how the physical presence of the meter under question escaped the notice of the meter reader is simply beyond comprehension. Any number of speculative inferences are possible ranging from the Discom's field staff not conducting any site visits, physical verifications or checks at all between 2004 and 2015, remaining idle or estimating readings of the other meter installed in the Appellant's premises remotely without anyone actually visiting the site, the latter being something one would logically expect to form part of their charter of duties.

21. How the Discom and its field staff remained blissfully unaware of the existence of the meter under question requires a far more convincing answer than what has been forthcoming. While the Discom has harped continuously on its rights to recover their dues during the hearings, it has done nothing to cast any light on this oversight. Admittedly, the Appellant did make repeated attempts to bring the issue to the notice of the Discom between November, 2004 and July, 2007 as borne out by the seven letters he wrote to them during this period apart from several personal visits. For some strange reason, the Discom remained unresponsive. Their counter that there is nothing on record by way of receipt numbers or diary entries to prove that the Appellant had indeed taken up the matter in writing with them repeatedly is frivolous and worthy of dismissal.

22. All that the Discom has managed to highlight remarkably well is the complete disconnect that seems to exist between its supervisory mechanisms and field staff. It may be worthwhile for the Discom to examine whether it's field staff are actually performing the duties they are presumably being paid to do so that the culpability of those guilty of dereliction of duty in this case, who have caused a pecuniary loss to the company as well as considerable inconvenience to the Appellant, are suitably penalized so that the possibility of such situations arising in future is obviated.

23. On the other hand, having concluded that there has been a clear negligence on the part of the Discom, I am also constrained to point out that Clauses 44 (iv) and 47 (i) of the DERC's Supply Code & Performance Standards Regulations, 2007 do place a certain onus of responsibility on a consumer in situations like this where bills have not been received by him, to wit:

> *44 (iv). In case of non-receipt of bills by the consumer, the consumer shall approach the licensee who shall furnish a duplicate bill immediately with due date for payment extended as above and no late payment surcharge shall be leviable if the complaint is correct.*
>
> *47 (i). In case of non-receipt of bills, the consumer may deposit a self–assessed bill in the format prescribed in Annexure VIII ... for the period for which the bill has not been received .... The payment so made by the consumer shall be adjusted in the next bill.*

24. Although the Appellant did take up the issue with the Discom in writing on seven occasions between 2004 and 2007, he evidently chose not to pursue the matter any further with the necessary vigour with the Discom for the next 8 years from 2007 to 2015. This is something difficult to understand as he could not have been oblivious to the fact that he was consuming electricity against that meter all these years and that he had a civic responsibility to pay for that consumption. This is particularly so given the erudition and social status of the Appellant and the commendable diligence and scholarship he has displayed in compiling case studies from across the country in support of his contention that his liabilities are limited. During the interregnum of about 8 years between 2007 – when he says he wrote the last letter to the Discom calling their attention to the problem – and 2015, when the Discom's inspection brought the problem to light, there has been a strange silence on his part.

25. Surely it could not have escaped his notice that there was clearly an anomalous situation in the making - that he was consuming electricity during all these years for which he was under a legal obligation to pay the Discom, but for which he was not receiving bills, whatever be the reason. Even granting that he had not received a positive response from the Discom to his complaints between 2004 and 2008, prudence should ideally have dictated that he continue pursuing the matter with the Discom under Clause 44(iv) while taking suo moto action as enjoined upon him as a consumer by Clause 47(i) instead of allowing this unfortunate situation – which was clearly not in his own interests - to fester. The question which begs an answer is why did the Appellant allow the bills to accumulate while consciously using electricity with the full knowledge that they would eventually have to be paid for.

26. Clearly, therefore, there has been contributory negligence on the part of the Appellant as well which has resulted in the development of this unfortunate situation and he cannot absolve himself of this responsibility completely. In an obvious reference to Clause 44(iv) supra concerning issue of duplicate bills, the Appellant, in his written submission during the second hearing, states that *"the question of a duplicate bill comes only when the original bill is raised. Is the respondent trying to tell that the original bill was raised but we failed to obtain a duplicate bill?"* It would not be out of place to point out here that the word "duplicate bill" has to be read in the context of the entire sentence and the meaning and intent being conveyed by the clause in its entirety. A narrow interpretation that a duplicate bill can only follow a bill which precedes it may be grammatically correct but, in the context of this case, only amounts to hair-splitting and cannot be sustained.

27. My final conclusion is that both parties – the Appellant and the Discom – have contributed in equal measure to the development of this unfortunate state of affairs. Accordingly, I am not inclined to interfere with the order of the CGRF which has been more than generous in allowing compensation of Rs 75,000/- over and above the Schedule III compensation of Rs 27,600/- apart from waiving the LPSC as well as permitting the arrears to be paid in instalments. The Appellant's plea for a further enhancement of this compensation is, therefore, not accepted.

28. As far as the Appellant's plea to increase the number of instalments in which the bill raised is payable, it is observed that the Forum has already permitted it to be made in ten instalments without the imposition of LPSC and that the cumulative effect of the compensations granted by it are equivalent to more one full instalment. It would not be out of place to mention that the legitimate revenues of the Discom have also remained blocked during this intervening period, not through a premeditated act but sheer negligence. As far as the culpability of the Discom is concerned, they have admitted their lapse and have been penalized appropriately through the imposition of two types of compensations to be paid by them, waiver of LPSC and receipt of arrear payments in instalments only. Considered globally, the cumulative financial impact of the CGRF's awards on the Discom is not insubstantial when the lost interest on deferred payments and the payouts are also factored in. The fact that an oversight on the part of the Discom has taken place – and admitted by it – does not extinguish its rights as a commercial entity to demand and receive payment for services which it has already rendered or provided just as it imposes a concurrent liability on consumers to pay for services or consumables which they have

consciously used. The Discom has gained nothing through its oversight and no malfeasance is proved. The CGRF's award, therefore, is generous enough and the Appellant's plea for increasing the number of instalments payable is hereby disallowed.

29. Finally, the Appellant has asked that the Discom provide him with the complete, year-wise details of the power consumed by him during this period and the tariff rates applicable/charged. Although this issue was neither raised before the CGRF nor touched upon in its order, it is a reasonable request. The Discom is accordingly directed to furnish the Appellant, without any delay, the complete data he has asked for with the observation that he is at liberty to approach the CGRF in the event of any grievances he may have with regard to this.

With this proviso, I find no grounds for interfering with the award of the CGRF which may stand as it is with the Appellant's appeal being disallowed.

7/9/16

(Sundaram Krishna)
Ombudsman
09.09.2016