

## **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.770/2017**

#### **IN THE MATTER OF:**

M/s M.G. Motors - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 30.11.2016 passed by CGRF- BRPL in CG No. 49/2016)

#### **Present:**

Appellant: Shri Abhinav Sanghi, Business Head, M/s MG Motors

Respondent: Shri Manish Srivastav, Advocate  
Shri Parshant Kumar, Manager, BRPL  
Shri Avinash Kumar, ASVP (KCC), BRPL

Date of Hearing: 17.02.2017

Date of Order: 21.02.2017

### **ORDER**

1. Appeal No. 770/2017 has been filed by Shri Ajay Sanghi, Managing Partner of M/s MG Motors at B-13/3, Asaf Ali Road, Delhi – 110002, against CGRF-BRPL's order of 30.11.2016 in CG No. 49/2016.

2. According to his plaint, the Appellant had applied for a new commercial connection in April, 2012. Although the meter was finally installed only in June, 2015 after about 39 months, the Discom (Respondent) nevertheless billed him from October, 2012 onwards, subsequently revising it from July, 2014. The CGRF, whom he had approached, did not accept his appeal for the withdrawal of charges levied as arrears before the installation of the meter by holding him solely responsible for the delay in the submission of a "No Objection" certificate from the Chief Electrical Inspector, Government of Delhi, which was a mandatory requirement for the connection.

3. The Discom's position has been the same as the one they took before the CGRF, namely that their action has been taken in pursuance of an agreement signed between them and the Appellant in July, 2013. According to them, Clause 4 of this agreement provided that the consumer would commence availing of their electricity

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supply within two months of being intimated by the Discom that the supply had been made available. Furthermore, the date of commencement of supply for the purposes of this agreement would be taken as the date on which the consumer's installation was connected to the Discom's supply system or the two-month period mentioned above, whichever was earlier. The Discom has also alleged that, despite repeated reminders and being warned that billing for fixed charges would start from July, 2014, the Appellant failed to complete the necessary formalities for the release of the connection including submission of an NOC from the Electrical Inspector. The Discom has also claimed that the commencement of billing from July, 2014 has been done by them as a gesture of goodwill although it was within their rights to start charging the consumer from a much earlier date. Regarding the levy of charges for the period October, 2012 to June, 2014, the Discom admits that these were inadvertently levied from the date of issue of the demand note, with the error being noticed in October, 2015 and corrected. Eventually, on completion of formalities, his load was released with the meter being installed on 16.06.2015.

4. I have heard both the parties and examined the material on record. The sequence of events, in brief, emerges as follows:

1. 09.04.2012 – Appellant applies for a 350 KW commercial load.
2. 27.08.2012 – Discom sends letter conveying technical and statutory requirements as well as a demand note with conditions of execution including clearance from an electrical inspector for HT electrical installations to be obtained by the Appellant.
3. 25.09.2012 – Appellant pays the demand note through two demand drafts dated 22.09.2012.
4. 23.10.2012 – Appellant arranges to procure packaged sub-station costing Rs.15 lakhs.
5. 05.06.2013 – Ring Main Unit (RMU) energized at site.
6. 13.06.2013 – Discom reminds Appellant to complete necessary commercial formalities for processing the case further before release of load including notarized NOC from Electrical Inspector of GONCT, Delhi.
7. 11.07.2013 – Agreement signed between both parties which includes the clause "Commencement of Supply" on the basis of which Discom has raised the bill disputed by the Appellant.
8. 03.12.2013 – Appellant deposits fee to seek NOC from Electrical Inspector.
9. 10.02.2014 – Discom again reminds Appellant to complete pending formalities before release of load including notarized NOC from Electrical Inspector.



10. 28.05.2014 – Discom writes letter accusing Appellant of intentionally delaying submission of documents including NOC while RMU stands energized at site and states that billing for fixed charges will start on applied load if NOC is not submitted within 15 days.
11. 14.06.2014 – Appellant replies that they are suffering for no fault of theirs as the Electrical Inspector has not yet issued the NOC and requests the Discom to lend assistance in facilitating the process. Appellant also indicates that they may have to resort to legal action if arbitrary bills are issued without providing electricity.
12. 11.02.2015 – Discom writes inviting Appellant's attention to expenses incurred by the Discom as per the 50% cost-sharing formula in the demand note and Clause 4 of the agreement signed between the parties. Discom declines to accept Appellant's reasons for non submission of NOC and states their intention to start billing for fixed charges for sanctioned load w.e.f. 01.07.2014.
13. 20.02.2015 – Appellant responds stating that they have not been able to obtain an NOC for reasons beyond their control and again warns Discom of legal action if billed arbitrarily.
14. 11.03.2015 – NOC for electrical equipments installed at Appellant's premises finally issued by Dy. Electrical Inspector, GONCT, Delhi and submitted to the Discom.
15. April, 2015 – Discom asks for a notarized copy of the NOC which is submitted by the Appellant in the first week of April.
16. 19.05.2015 – Discom informs Appellant that the connection applied for is being released for energization.
17. 16.06.2015 – Meter installed and electric supply starts.

5. The background above makes it clear that the basic dispute revolves around the date from which the Appellant is to be billed. It is a matter of record that a demand note was issued by the Discom and the necessary charges paid by the Appellant. Furthermore, it is evident that the connection could not be released in the absence of an NOC from the office of the Chief Electrical Inspector, Government of Delhi. The latter is a statutory authority under the Electricity Act, 2003, and over whose functioning the Appellant can have no control. It would not be entirely out of context here to note that under Clause 16(x) of the DERC's Supply Code & Performance Standards Regulations, 2007, the licensee (Discom) is indemnified from responsibility for delays in the provision of new connection if they are on account of circumstances over which the Discom has no control. There is no valid reason why this same basic principle of natural justice cannot be extended to the Appellant. I, therefore, hold that the Appellant cannot be held responsible for the delay in the issue of an NOC by the Office of the Electrical Inspector.

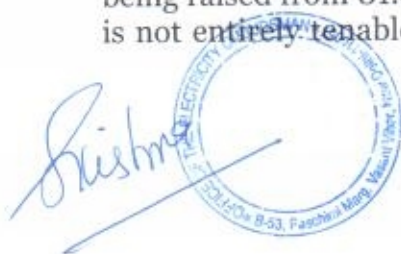
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6. The CGRF's observation that the Appellant intentionally delayed the procurement of an NOC by holding that he had utilised a very small load for a year after installation of the meter in June, 2015 and not drawing any power since June, 2016 is out of context and not entirely relevant to the issue at hand as it is based on conjecture and surmise which cannot form the basis for reaching such a conclusion. No motives can be or should be attributed to the consumer in the absence of specific corroborative evidence – circumstantial or otherwise – for the delay in obtaining the NOC. It is a fact that the business environment in our country is not exactly known for facilitating the process of release of numerous certifications and NOCs from an equal number of inspectors. How a business operates or grows also depends on the economic conditions prevailing from time to time. The use of a small load for a year and none thereafter cannot necessarily be used as an indicator of an assumed motive. It would also be relevant here to note that the Discom could not have been entirely unaware of the delay in the acquisition of the NOC as they had been informed of it by the Appellant. In its letter dated 11.02.2015 to the Appellant, the Discom has made a passing reference to the effect that they have been able to obtain NOCs from the same authority, clearly imputing that they see no reason why the Appellant cannot do the same. A question then arises as to why the Discom could not have been proactive enough to lend assistance to the Appellant in expediting the NOC, particularly so when he had made a specific request to that effect through his letter of 14.06.2014. The Discom is supposed to be consumer friendly and this affirmative action on their part would not have cost them anything but earned goodwill instead.

7. Regarding the issue of determining the date of commencement of electricity supply for the purposes of billing, the Discom has referred to Clause 4 of the Agreement entered into by them with the Appellant. As per the agreement, this date would commence two months from the time the Discom communicated that the supply was available or from the time the consumer's installation is connected to the load, whichever date was earlier. An examination of the timeline of events listed above shows that although the RMU was installed on 05.06.2013, the Discom communicated the completion of formalities for the release of the load on 13.06.2013, signing the agreement on 11.07.2013 but intimating the installation of the RMU only on 28.05.2014, i.e. almost a year later. This is clearly inconsistent with the intentions behind Regulation 17 of the DERC's Supply Code & Performance Standards Regulations, 2007 which requires that the time schedule for energisation of the connection shall commence on completion of all formalities. Technically, therefore, Clause 4 of the Agreement between the Discom and the Appellant comes into operation only after all formalities have been fulfilled as required by Regulation 17 which is the overarching legal provision. Clause 4 of the agreement is only to safeguard the commercial interests of the Discom to be invoked in the event of a failure on the part of the consumer to avail of the supply even after the completion of all formalities by both sides. In the present case, the Discom communicated the completion of all formalities and their intention to release the connection only on 19.05.2015 which would mean that the operation of Clause 4 can come into effect only from this date.

8. The Discom has contended that even though the RMU was energised and ready for the exclusive use of the Appellant as far back as 05.06.2013, the billing is being raised from 01.07.2014 only as a gesture of goodwill on its part. This argument is not entirely tenable - if they had indeed being ready to release the connection on



05.06.2013, then why did it take more than three months for its release on 16.06.2015 when the NOC itself had been finally issued by the Electrical Inspector on 11.03.2015? Clearly, on the face of it, the Discom was in no hurry to expedite a connection which had already undergone delays on account of the non-receipt of an NOC due to circumstances beyond the control of the Appellant. It may also be noted that the Discom had initially raised a bill from 12.10.2012 to 01.04.2015, correcting it only after the Appellant had complained. A final observation is appropriate in this context – if the connection could not have been released to the Appellant for reasons attributable to him, as alleged by the Discom, then they could have certainly cancelled the demand note, refunded the money paid against it thereby bringing the matter to a close and telling the Appellant to file a fresh application for a connection once he was in a position to comply with all necessary formalities. Nothing on record or in the hearing did one get any indication of a proactive attitude on the part of the Discom.

9. During the hearing, the Discom drew attention to two judgements of the Hon'ble Supreme Court to buttress their position that they are entitled to recover minimum guaranteed charges. An examination of both citations (Verdict dated 24.11.1989 in civil appeal 220 of 1987 of Bihar SEB vs Green Rubber Industries and verdict dated 16.11.2000 in CA numbers 4218-4219 of M/s Raymond Ltd vs Madhya Pradesh SEB) reveals that while the former pertained to the levy of minimum guaranteed charges even when the electricity supply was irregular, the second involved the levy of such charges even after the supply had been disconnected by the Discom. Neither of these citations have a direct bearing on the present case whose circumstances are different.

10. In conclusion, therefore, it is held that the Appellant cannot be held liable for either the delays – which had taken place on account of circumstances beyond his control – or to pay for electricity which he has not consumed. Accordingly, the order of the CGRF directing the Appellant to pay Rs 5,85,386/- for the period 01.07.2014 to 16.06.2015 is hereby set aside with the Discom being directed to refund the amount to the Appellant within fifteen days from the date of issue of this order.

The appeal stands disposed off accordingly.

  
  
**(Sundaram Krishna)**  
**Ombudsman**  
**21.02.2017**