

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.733/2016

IN THE MATTER OF:

Mukesh Kumar - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against Order dated 27.11.2015 passed by the CGRF- BRPL in CG No. 790/2013)

Present:

Appellant: Shri Mukesh Kumar

Respondent: Shri Sudip Bhattacharya, DGM (Enforcement), Shri Prashant Kumar Saxena, Manager, Shri Arav Kapoor (Advocate) and Shri Surender Kumar (Legal Retainer), Authorised Representatives of BRPL

Date of Hearing: 13.07.2016

Date of Order: 15.07.2016

ORDER

1. Appeal No.733/2016 has been filed by Shri Mukesh Kumar, S/o Shri Phool Singh, R/o H. No.69-C, Taimur Nagar, New Delhi-110065, against the order of CGRF-BRPL dated 27.11.2015 in CG No.790/2013.

2. The Appellant is aggrieved by the order of the CGRF in which his plea for compensation has been disallowed. The Discom has opposed the Appellant's present plaint on the ground that no claim compensation was raised by him at the CGRF and that he cannot raise a new issue at the appellate stage. This has been expressly denied by the Appellant who has said that he had indeed raised the issue before the CGRF.

3. It is necessary to go into the history of this case to determine if the compensation claimed is due in the first place, and, if so, its quantum. The background is that meter of the Appellant got burnt on 24.09.2011 (a Saturday) with a complaint being lodged with the Discom on 26.09.2011 (Monday). The Discom

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restored the electricity supply by bypassing the meter. Almost a month later, an inspection of the premises was carried out by the Discom on 17.10.2011 when a case of direct theft was booked against the Appellant on the ground that the supply was found running without meter. The Discom then raised an assessment bill of Rs.5,50,025/- against the appellant.

4. The Discom also filed a criminal complaint on 28.02.2012 against the Appellant before the Special Court of Electricity in Saket as the Appellant had failed to make any payment or file any representation before the Discom against the assessment. Subsequently, the Special Court, through an order dated 28.08.2012, closed the case in view of a settlement which had been arrived at between the parties through which it was agreed that a bill on the basis of an average consumption for the period 26.09.2011 to 17.10.2011 - the period between the burning out of the meter and the Discom's site inspection - would be issued by the Discom to the Appellant. The theft case against the Appellant was, accordingly, withdrawn by the Discom.

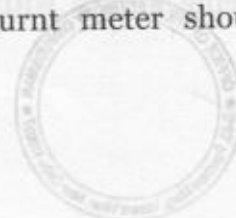
5. No bill on the basis of an average consumption was, however, raised by the Discom as per the agreement and in compliance with the Special Court's orders. Instead, the Appellant's premises were again subjected to another site inspection on 02.07.2013 - after a lapse of something like 11 months following the Special Court's order - when the supply was still found running directly. The Discom then booked another theft case against the Appellant, raising an assessment bill of Rs.7,62,833/- against him. It was only when the Appellant approached the Discom on 09.07.2013 and demanded compliance with the Special Court's order that a revised bill based on an average consumption basis was prepared which he duly paid. The Discom also issued a "No dues certificate" to the Appellant.

6. The cause for the present case has arisen through a complaint filed by the Appellant before the CGRF on 13.09.2013 stating that the Discom had committed an illegality by booking a case against him on the basis of the second site inspection carried out by them on 02.07.2013, thereby violating the terms of the agreement which had been settled through the Special Court's order almost 11 months earlier and failing to prepare a revised bill for the period 26.09.2011 to 17.10.2011 (the period between the burning out of the meter and the first site inspection) or installing a new meter.

7. It was only on the intervention of the CGRF that a new meter was installed at Appellant's premises on 18.11.2013 and the second theft case booked against him based on the second inspection carried out on 02.07.2013 withdrawn along with the assessment bill for about Rs 7.62 lakhs. A revised bill dated 14.09.2015, in compliance with the directions of the CGRF, was issued and the excess payment made by the Appellant, amounting to Rs. 11,081/-, refunded to him. The CGRF then held that since all the Appellant's grievances had been attended to and resolved, he was not entitled to any compensation, and closed the case.

8. On a reading of the sequence of events expounded above as well as the material on record, it is evident that the Appellant's meter got burnt on 24.09.2011 (a Saturday) with a complaint being registered with the Discom two days later on 26.09.2011. In terms of the provisions of Schedule III of the DERC Supply Code and Performance Standards Regulations, 2007, the burnt meter should have been

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replaced within three days. Inexplicably, the Discom, instead of replacing the burnt meter as per the prescribed time schedule, booked a case of theft of energy against the Appellant. This lapse was compounded by the Discom again when, instead of complying with the Special Court's order of 28.08.2012 again, subjected the Appellant's premises to a second site inspection on 02.07.2013 and, ignoring the terms of the settlement arrived at, booked another direct theft case against him, withdrawing it and issuing a revised bill only after the intervention of the CGRF.

9. It is abundantly clear that the Discom is guilty of gross negligence, firstly, by not replacing the burnt meter of the consumer as per the time schedule prescribed by the DERC Regulations of 2007 cited above, and secondly, compounding it by lodging a second direct theft against the consumer, thereby violating the terms of the settlement arrived at and the Special Court's order and acting only after the CGRF directed them to do so. No adequate or convincing explanation has been forthcoming from the Discom for this lapse of reason, either in their written depositions or during the hearing. The only inference which can be drawn is that either there has been a serious failure in the Discom's complaint redress mechanism or that an element of vindictiveness against the consumer has played a role. It is hoped that the latter is not the case and the Discom would do well to establish that beyond doubt.

10. The Appellant stated during the hearing that he had sought compensation before the CGRF which was disallowed. The Discom has taken the stand that the Appellant did not raise the issue of compensation before the CGRF and cannot, therefore, agitate a fresh issue before the Ombudsman. Having considered the issue at length, I find no reason to disbelieve the Appellant's contention that he had raised the compensation issue before the CGRF. The concluding sentence of the Forum's final order dated 27.11.2015 clearly states "Since all the grievances of the complainant has [sic] been resolved and [sic] complainant is not entitled for any compensation". The use of the word "compensation" here is sufficient indication that the issue had indeed been considered by the Forum which then declined it on the ground that the Appellant's grievances had already been resolved.

11. Given the clear provisions providing for compensation in the DERC's Regulations of 2007 cited in paragraph 7 above, I am of the considered opinion that the CGRF has erred in ignoring these provisions and disallowing the plea of the Appellant for the grant of compensation merely on the ground that the Appellant's grievances have already been addressed. The contention of the Discom that the Appellant is trying to raise a new issue before the Ombudsman which did not figure earlier before the CGRF is hereby dismissed as frivolous and without substance.

12. In summary, I hold that there has been a serious lapse on the part of the Discom in attending to the Appellant's grievances and that he is entitled to compensation as per the scales prescribed in Schedule III, ("Guaranteed Standards of Performance and Compensation to Consumers in Case of Default") of the DERC's Supply Code and Performance Standards Regulations, 2007. Entry No. 5 of this Schedule on "Meter Complaints" provides for replacement of burnt meters with a compensation from the time of the initial complaint to its resolution at a rate of Rs. 50/- for each day of default. Accordingly, the Appellant is entitled to compensation from the Discom of an amount of Rs. 33,600/- calculated for 672 working days - and

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excluding holidays - out of the total delay of 784 days from the time of his initial complaint to its final resolution. An additional compensation of Rs. 10,000/- over and above this sum is also awarded to the Appellant on account of gross deficiency and service and negligence by the Discom which allowed such a situation to develop in the first place. Both payments are to be made to the Appellant within a period of two weeks from the date of issue of this order.

Sundaram Krishna

**(Sundaram Krishna)
Ombudsman
15.07.2016**



10. The Appellant stated during the hearing that he had sought compensation before the GRL which was disallowed. The Discom has taken the stand that Appellant did not raise the issue of compensation before the GRL and hence, therefore, raises a fresh issue before the Ombudsman. Having considered the issue at length, I find no reason to disallow the Appellant's contention that he had raised the compensation issue before the GRL. The concluding sentence of the Forum's final order dated 27.07.2015 clearly states "Since all the provisions of the complaint have been resolved and final compensation is not entitled for any compensation". The use of the word "compensation" here is sufficient reflection that the issue had indeed been considered by the Forum which then declined it on the ground that the Appellant's grievance had already been resolved.

11. Given the clear provisions providing for compensation in the DEERC Regulations of 2007 cited in paragraph 7 above, I am of the considered opinion that the GRL has erred in ignoring these provisions and disallowing the plea of the Appellant for the grant of compensation merely on the ground that the Appellant's grievances have already been addressed. The contention of the Discom that the Appellant is trying to raise a new issue before the Ombudsman which did not figure earlier before the GRL is hereby dismissed as frivolous and without substance.

12. In summary, I hold that there has been a serious lapse on the part of the Discom in attending to the Appellant's grievances and that he is entitled to compensation as per the scales prescribed in Schedule III (Consumer Standards of Performance and Compensation to Consumers in Case of Default) of the DEERC Supply Code and Performance Standards Regulations, 2007. Entry No. 2 of this schedule on "Meter Complaints" provides for settlement of meter meters with a compensation from the time of the initial complaint to its resolution at a rate of Rs. 50/- for each day of default. Accordingly, the Appellant is entitled to compensation from the Discom of Rs. 38,000/- calculated for 762 working days - and

