# 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. 783/2017

**IN THE MATTER OF:**

Sh. N.C. Bansal - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 28.02.2017 passed by CGRF-BRPL in CG No. 116/2016)

**Present:**

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|---|---|
| Appellant: | Shri Sameer Bhatnagar, Advocate on behalf of the Appellant |
| Respondent: | Shri Bhupendra Singh, Commercial Officer, BRPL and Shri Deepak Pathak, Advocate |
| Date of Hearings: | 21.06.2017 |
| Date of Order: | 29.06.2017 |

## ORDER

1. Appeal No. 783/2017 has been filed by Shri N.C.Bansal, R/o 21 NWA, Club Road, 2nd Floor, Punjabi Bagh Extn., New Delhi - 110026 against CGRF-BRPL's order cited above.

2. The complaint involves two separate billing issues, one dating from the year 2005 and the other relating to the year 2011-12. Till the filing of the present appeal, the case has traversed a long and convoluted path, first coming up before the CGRF which passed a verdict in January, 2006 on the first billing issue. The Appellant then approached the Consumer Disputes Redressal Forum (CDRF) in the same year where it remained pending for an abnormally long period of eight years before it was dismissed as withdrawn in April, 2014. The Appellant then approached the Public Grievance Cell (PGC) in December, 2014 which took more than a year to advise him in February, 2016 to approach the Ombudsman for redress which he did in April, 2016.

3. When this appeal of April, 2016 was examined from the viewpoint of maintainability, it was noticed at that time that two separate billing issues had been raised by the Appellant in his plaint. The earlier one of 2005 had already been adjudicated upon by the CGRF in January, 2006 in which his plaint had been declined. The second billing issue dated to 2011-12 and involved a dispute revolving around the Appellant's tenant which was being brought up before the Ombudsman for the first time. Since the Ombudsman's remit was only to hear appeals against verdicts of CGRFs and not take up cases directly, the Appellant was advised to approach the CGRF first which he did. The CGRF, in its order of 28.02.2017, has declined his plaint, thereby resulting in the present appeal before the Ombudsman which raises both the billing issues again.

4. I have heard both the parties and considered the material on record. The first issue involves the Appellant's complaint that he had been subjected to over-billing by the Discom (Respondent) for an inflated average consumption between May and October, 2005 as compared to the previous period as a result of which he had to pay an excess amount of Rs.99,420/- under duress. The CGRF has taken a fresh look at this issue and declined the Appellant's plaint, noting that the Forum had already adjudicated upon it almost a decade ago in January, 2006 and that its own order could not be reviewed. As noted by the Forum, instead of filing an appeal before the Ombudsman as provided for under rules, the Appellant traversed a long path through the CDRF and PGC before bringing this issue up again now.

5. Having considered the matter carefully, I find no cogent grounds to differ with the earlier verdicts of the Forum. The initials spike in consumption level was corrected through the replacement of the meter by the Discom. The higher meter readings as compared to the earlier consumption levels which were registered again despite the meter's replacement had arisen on account of some fault in the wiring of the Appellant's premises. As the complaint to the Discom did not receive a response, the Appellant had his premises checked by an authorized electrician who rectified the fault following which consumption readings returned to acceptable levels. The principal issue here relates to just where the electrical fault lay. The Discom's responsibility and liability is up to and including the meter while the wiring and distribution beyond this is the responsibility of the consumer. The fact that the readings came down after an electrician had carried out repairs in the Appellant's house is indicative enough of the fact that the fault lay beyond the meter and within his area of responsibility. There were five other meters co-located in the Appellant's premises and the others did not exhibit similar behaviour, i.e. excessively high readings, which would indicate that the problem was specific to the Appellant's connection and not a general supply issue under the jurisdiction of the Discom.

6. As noted above, the Discom's responsibility for repair and rectification is only up to and including the meter and they cannot be held liable for faults beyond it. As to whether the Discom promised to resolve the problem within 18 days but failed to do so is immaterial in the light of the fact that they were not liable in the first place for the correction of a fault which lay outside their jurisdiction. Electricity was consumed, albeit at an enhanced rate due to the fault, but that cannot absolve the

Appellant of the responsibility to pay for what was consumed. There is no logic under which the Discom can be made liable to refund payments against bills raised on the basis of what had been consumed. I also see no valid reason to revisit the issue and would agree with the Discom's position that the principle of res judicata is attracted as the issue has already been adjudicated upon by the competent authority and has attained finality. It cannot be re-agitated after a lapse of twelve years plus.

7. The Appellant's counsel has argued during the hearing that limitations are not applicable in this case as it has been under agitation before various forums without attaining finality. While it is not possible to comment or speculate on why the Appellant's case lingered on before the CDRF for eight long years and then for an year plus before the PGC, the apparent lack of any initiative or affirmative action on the part of the Appellant to do something about the apparent stagnation does seem a bit odd. Surely he had access to legal advice and need not have waited passively for so many years to elapse before raising the issue again in 2017. I am, therefore, not inclined to accept the implied contention on the part of the Appellant that matters were entirely out of his hands. This is only an observation as the appeal on this issue of a demand for a refund has not been found to be sustainable on merits as noted in paragraph 6 supra.

8. The second issue relates to the billing for the supply of electricity to the second floor of the Appellant's premises which he had been rented out to a company through a lease deed dated 05.03.2011. Under Clause 2(c) of this tenancy agreement, the actual electricity and water consumption during the tenancy period were to be paid according to the meter reading of the sub-meter installed. It is pertinent to note here that the installation of sub-meter is the responsibility of the registered consumer which, in this case, was the Appellant. The Discom, for its part, has to charge for and receive payments for the electricity consumed as registered by the main meter which is in the name of the registered consumer. The Discom's version is that, as per a letter dated 19.06.2012 from the Appellant, he informed that for the first time (after more than a year) of the existence of the tenancy, saying that he would be not responsible for the violation of any laws and non-payment of dues and that he had come to know about an outstanding amount of Rs.37,300/- with bills from December, 2011 having not been paid by his tenant. He accordingly asked the Discom for a disconnection of his connection. According to the Discom, however, their records showed an amount of Rs.66,320/- as having been paid on 16.01.2012, another Rs.66,320/- on 15.02.2012 and further Rs.49,960/- on 22.06.2012. No bills were pending on the date of his application and, therefore, no action on the part of the Discom was called for. The Discom has further mentioned that cheques given by the Appellant on four occasions had bounced and the supply has been disconnected on three occasions due to defaults in payment.

9. The Appellant's main grouse is that his letter of June, 2012 to the Discom was not acted upon by them. For its part, the Discom pointed out during the hearing that there were no arrears in payment as far as the Discom was concerned and the connection could not have been arbitrarily disconnected. According to them, the Appellant has brought up the case well after the exit of the tenant and questioning a bill issued for the period when the tenant was there.

10. This issue has also been looked into in detail by the CGRF and I find that its verdict on this issue cannot be faulted. The Appellant himself has noted that, as per the lease agreement dated 05.03.2011 executed with his tenant, the latter was liable to pay for the electricity bills which he consumed as registered by the sub-meter which metered his consumption. If there were indeed differences with his tenant, he should have invoked the relevant clause of the lease agreement which provided for a dispute resolution mechanism and settled the problem directly with his tenant. It is not possible to drag the Discom into an issue which concerned a landlord – tenant relationship. The Discom's sole responsibility was to bill and receive payments for the electricity consumed as registered by the main meter standing in the name of the registered consumer, in this case, the Appellant.

Given the above exposition, I am of the considered view that no intervention is possible with the CGRF's verdict which may stand as it is. The appeal hereby stands disallowed.

**(Sundaram Krishna)**
**Ombudsman**
**29.06.2017**