

## 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.778/2017

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

Shri Rajesh Kumar - Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. – Respondent

(Appeal against order dated 13.02.2017 passed by CGRF- TPDDL in CG No.  
7376/08/16/BDL)

#### **Present:**

Appellant: Shri Rajesh Kumar

Respondent: Shri Harshendu Kumar, Sr. Manager (Legal) and  
Shri Naresh Kumar, Manager on behalf of TPDDL

Date of Hearing: 22.05.2017

Date of Order: 09.06.2017

### ORDER

1. Appeal No. 778/2017 has been filed by Shri Rajesh Kumar of House No. G-1, 90-91, 1<sup>st</sup> Floor, Sector-16, Rohini, Delhi-110085 against CGRF-TPDDL's order in CG No. 7376/08/16/BDL dated 13.02.2017.

2. The Appellant's plaint is that dues pertaining to another consumer/connection have been incorrectly transferred to him and against which he has had to make payments under duress to avoid disconnection of his electricity supply. According to him, he had purchased the newly-built first floor of his residence at the address above in the name of his spouse from two vendors, namely Shri Mukesh Chand Mittal and Shri Krishan Kumar Mittal through a registered sale deed dated 13.10.2005. These vendors already had an electricity connection carrying CA No. 60011963752 (hereinafter referred to as simply "xx752"). Bills received against this connection were regularly paid by the Appellant but when he applied for change of name in 2012, the Discom (Respondent) declined it on the ground that, as per their records, the meter of this connection was installed on the ground floor. He then applied for a new connection at the first floor on 17.09.2015 which was also declined by the Discom on the ground that there were dues pending against the premises which had to be settled first. The Appellant's plea is that these dues pertain to another connection bearing CA No. 60011967209 installed at the ground floor in the name of Shri M.K.R. Mittal and dating back to before 2005.



According to him, the latter persons are running a general store from the ground floor using electricity from a new connection bearing No. 60001149206. The Discom and later the CGRF, before whom he had filed an appeal, have not accepted the complainant's contention that he has been wrongly billed and should be refunded the amount he has already paid to the Discom under duress.

3. For its part, the Discom (Respondent) has argued that since the complainant is not a consumer and that Shri M.K.R. Mittal is the actual registered consumer of the connection bearing CA No. xx752, the complainant has no local standi to file this appeal in first place. They have also submitted that they had conducted a site verification of a disconnected connection, namely CA No. xx209 and found it to be inactive with the same premises using the supply from CA No. xx752 as on date. According to them, both the connections, i.e. xx209 and xx752, are on the ground floor and that if the consumer has been using this supply for the first floor which he is occupying, it constitutes a violation of the terms of usage.

4. I have heard both the parties and considered the material on record. It is evident that the Discom has not acceded to the application of the Appellant for a name change on the ground that, as per their records, the meter in question is located on the ground floor whereas he has mentioned his address as being the first floor. Technically, there are no dues against the connection on the first floor and the outstanding dues, as per the Discom's own submission, pertain to the connection on the ground floor. It is also not clear as to how a second domestic connection was granted by the Discom where a connection already existed. Another inconsistency is that the connection in use by the Appellant (xx3752) was active from April, 2008 - as admitted by the Discom in its response - while the disconnected connection (xx7209) was inactive from July, 2009. Clearly, there is an anomaly here in that two connections in the same flat on the same floor cannot be operative at the same time. Again, it is difficult to understand the delay in the transfer of the outstanding dues to this second connection when - as per their own report - the Discom's surveillance team carried out an inspection of the premises on 18.01.2013, serving a notice after more than two and a half years on 16.09.2015 and finally transferring the dues to the Appellant in May, 2016 after a lapse of a further eight months. This inspection report was apparently not produced before the CGRF nor was a copy provided to the Appellant even though he was a party whose interests could be impacted even though he was not a registered consumer.

5. Further, no plausible explanation is forthcoming from the Discom - either on file or during the hearing - as to what action or measures were taken by them to recover the dues against the inactive connection (xx7209) since 26.07.2009 before finally debiting it in May, 2016 to the Appellant (who is using the supply from xx3752). During the hearing, the Appellant stated that he had already paid an amount of Rs.20,039/- under protest to avoid the electricity supply to his floor being disconnected after being advised to do so during his visits to the Discom's office to sort out the problem. He had deposited a further sum of Rs.12,000/- through a cheque in September, 2016 on the direction of the CGRF after filing an appeal before that Forum for a stay against disconnection. Following the verdict of the CGRF, which did not go in his favour, he had deposited a further sum of Rs.31,720/- to avoid disconnection of his supply as his mother was a cancer patient.

6. The Discom has argued at length that the Appellant cannot be treated as a consumer for the purposes of maintaining the appeal before the Ombudsman on the ground that he is not a registered consumer of the connection in question and that he has not produced any authorization letter from the registered consumer. They have also



stated in their response that the dues of the disconnected connection have been transferred to the live connection and both the connections pertain to the same registered consumer. This amounts to a specious argument on the part of the Discom as its own officials had advised the Appellant, when he visited their office, to deposit the disputed amount first with an assurance that the problem would be sorted out after that. In other words, the Discom has already implicitly treated the Appellant as a consumer by providing misleading advice and then proceeding to accept the payments he made under protest. This very act on the part of the Discom by itself constitutes a promissory estoppel from which they cannot try to retract now. Furthermore, the Appellant and his spouse are the legal owners of the premises they are residing in as evidenced beyond doubt by the registered sale deed of 13.10.2005 which they have placed on record. They are perfectly entitled to apply for an electricity connection or dispute an issue involving the Discom where their own interests are at stake. Any other viewpoint would run contrary to the principles of natural justice. Incidentally, neither of the vendors who had sold the first floor residence to the Appellant appeared before the CGRF or the Ombudsman.

7. The dues in question pertain to premises other than the one where the Appellant has sought his electricity connection and stand in the name of a registered consumer other than the present Appellant. These dues have been in arrears since July, 2009 when the concerned connection went inactive. The Discom took its own time before carrying out its inspection in January, 2013 after a lapse of 3 years and 5 months and then allowing another 2 years and 8 months to elapse before serving a notice in September, 2015 before finally transferring the dues to the Appellant in May, 2016 after another 7 months. No conclusion is possible other than that the Discom has been seriously negligent in attending to an issue which had the potential to develop into a problem at a future date. The Discom cannot paper over its own responsibility for having failed to take affirmative action to recover its dues for an extended period of time, waking up only when the Appellant happened to file an application for a name change etc.

8. There is, without doubt, a degree of contributory negligence on the part of the Appellant in the development of this unfortunate situation. Prudence would ideally have dictated that at the time of purchase, he could and should have ensured that a fresh connection was applied for in his own name and confirmed that there were no issues relating to any arrears by approaching the Discom. This is touched upon in Regulation 15 (ii) of the DERC's Supply Code & Performance Standards Regulations, 2007. At the same time, it would be pertinent to note that this regulation refers to cases where a property has been purchased and the connection there is lying disconnected which is not the case here. Furthermore, sub-clause (iv) provides that a discom shall not refuse a connection to an applicant only on the ground that dues on another portion premises have not been paid. In this case, the dues pertain to a registered consumer who is not even the same person as the Appellant.

9. The Discom has quoted two judgments of the Hon'ble High and Supreme Courts to buttress their contention that they have legitimately transferred the dues to the Appellant. While a technically rigid, legal position could be that arrears of payment devolve on to the purchaser of a property, it is also necessary in the interest of equitable justice to move beyond narrow interpretations of legal provisions and look at the circumstances of the case in its totality since no two cases are ever exactly alike. The Hon'ble Supreme Court had touched upon this aspect when they observed in the case of Bharat Petroleum Corp Ltd vs NR Vairamani (2004) that "Courts should not place





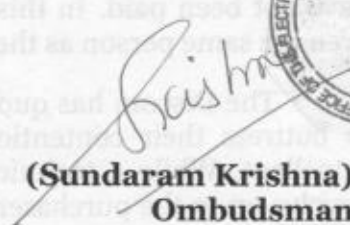
*reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of context in which they appear to have been stated. "*

10. Given the above background and exposition, and having considered the matter at length, I am of the view that the Appellant has been unnecessarily taken advantage of by the Discom while getting around a problem which they themselves are responsible for having manufactured in the first place. Having remained inactive for an extended period of several years, the Discom cannot abrogate to itself a license to target a purchaser of a property as they deem fit and at a time of their own choosing. The Discom's approach has also been quite contradictory, arguing that the Appellant cannot be treated as a consumer for the purposes of filing this appeal while, at the same time, they showed absolutely no hesitation whatsoever in giving him misleading advice to pay the arrears first and then proceeding to accept all the payments he has made under protest. A question which begs an answer here is what would the Discom have done to recover these arrears had not the Appellant happened by chance to file his application for name change.

11. In summary, therefore, it would be patently unfair and contrary to the principles of natural justice if the Appellant is held liable for arrears which remained unattended to by the Discom for quite a few years for lack of action and due diligence on its part. It would not be out of context here to remind the Discom of an order by a predecessor Ombudsman in which he had noted the need for Discoms to introduce a system of customer relations which was less bureaucratic and more personalised and which took into account the individual characteristics of the case.

12. The verdict of the CGRF dismissing the Appellant's case is hereby set aside as being in error and inconsistent with the requirements of equity and justice. The Discom cannot penalize an innocent for what is essentially a lapse on its part to take corrective action in time and that too in respect of a connection which does not stand in his name. Accordingly, the Discom is hereby directed to energise a new connection on the first floor of the premises of which the Appellant is the owner as and when he applies for it if he has not already done so. This action shall be concluded within four weeks from the date of receipt of this order. Furthermore, the Discom shall refund all the sums of money which the Appellant has paid to them under protest as well as pay a compensation of Rs.10,000/- to him for the unnecessary harassment to which he has been subjected. These payments should be effected within ten days from the date of receipt of this order. The Discom is perfectly free to recover its legitimate dues from the actual defaulter after due diligence.

The appeal stands disposed off accordingly.

  
**(Sundaram Krishna)**  
**Ombudsman**  
**09.06.2017**

