

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. 3/2018

IN THE MATTER OF:

Shri Rajesh Tanwar - Appellant

Vs.

M/s Tata Power Delhi Distribution Ltd. - Respondent

(Appeal against order dated 21.11.2017 passed by CGRF- TPDDL in CG No. 7595/02/17/MTN)

Present:

Appellant: Shri Rajesh Tanwar

Respondent: Shri Harshendu, Senior Manager (Legal) and Shri Devkaran, S.O. on behalf of TPDDL

Date of Hearing: 27.03.2018

Date of Order: 28.03.2018

ORDER

1. This appeal, filed by Shri Rajesh Tanwar, R/o WZ-260, Basai Dara Pur, Delhi-110015, against the verdict of CGRF-TPDDL cited above concerns the transfer of dues standing against a disconnected connection to the Appellant's live connection.
2. The Appellant's position is that his father, Shri Ram Chander, had divided his ancestral property of 200 sq yards in area (not 400 sq yards as was represented before the CGRF in 2009 according to him) equally between his two sons, one of whom is the Appellant and the other, his elder brother Shri Brahm Prakash. This bequeathing was sanctified in front of the local Panchayat in 1993 through the execution of a document which, although duly witnessed, was not registered with the revenue authorities.
3. The sequence of events which have led to the present appeal are that a non-domestic connection of 11 KW was energised in February, 1996 (bearing CA No. xxxx1636) in the name of his father and installed on the ground floor on the portion of the property belonging to his brother. His own non-domestic connection of 12 KW (bearing CA No. xxxx1688) was installed and energised in his portion of the property in December, 1996. Subsequently, in June, 2005, the connection in his brother's portion was disconnected due to non payment of bills with arrears of about 2 lakhs pending against it. About two years later, in November, 2007, the Appellant's brother sold his portion of the property to one Shri Ghanshyam Sharda through a sale-deed. When Shri Sharda applied for a new connection in his name, it was denied by the Discom on grounds that dues were pending against it, prompting him to approach the CGRF in February, 2009 for a remedy arguing that he had nothing to do with a connection which had been disconnected long before he had purchased the property.
4. The Discom's position before the CGRF had been that Shri Sharda was legally liable to pay part of the dues on a pro-rata basis in accordance with Regulation 15 (iii) of the DERC's Supply Code & Performance Standards Regulations, 2007. The Discom further invoked the applicability of Regulation 20 (2) (iii) of the Code of 2007 which provides for charges on a property which remain unpaid to be transmitted to the new owner/successors-in-law. The CGRF, in its verdict of 16.04.2009, accepted Shri Sharda's contention that his liability was limited to only the 100 sq yards which he had purchased out of a total area of 400 sq yards and which he was ready to pay. The natural outcome of this verdict was that the other owner(s) of the undivided property were made liable for the clearance of the pending dues, assessed by the CGRF as Rs 2 lakhs for an area of 400 sq yards. Surprisingly, the present Appellant, Shri Rajesh Tanwar, was never impleaded as an interested/affected party during these proceedings before the CGRF.




5. Shri Sharda subsequently paid up his share of the dues as assessed by the CGRF and obtained a new connection in his name. The sequence of events since then shows that some attempts seem to have been made by the Discom to recover arrears including part of it from the present Appellant. The service of a demand of arrears on the Appellant in February, 2017, however, after a lapse of many years prompted him to approach the CGRF in March, 2017 to contest it. The CGRF, although directing a fresh site inspection to determine how many subdivisions were there in the property, nevertheless remained unconvinced of the strength of his case on the ground that it could not revisit the Forum's own order of 16.04.2009, holding him liable for part of the arrears as the matter had become a "*fait accompli*" and "*lack of jurisdiction*" (sic) with the Discom "*at liberty to initiate action as per provisions of law*" thereby prompting him to file this present appeal.

6. I have heard the parties and considered all the material on record. Even at first sight, the case suffers from some serious legal infirmities which the CGRF has clearly not taken into consideration or has overlooked. In the first place, Shri Rajesh Tanwar was never made a party to the proceedings before the CGRF in 2009 even though he was a party with a potential stake in the matter being agitated. He was, therefore, not afforded an opportunity to present his side of case in his defence, thereby violating the basic natural justice principle of *audi alteram partem*. Secondly, what is clearly apparent is that the dues purportedly liable to be paid by Shri Tanwar as his pro-rata share of the pending arrears were never explicitly reflected at any point by the Discom as continuously recoverable in the bills served on him. The sequence of recovery attempts submitted by the Discom detailing their efforts between the CGRF's verdict of April, 2009 and the serving of a bill of dues on him in February, 2017 can best be described as a confused narrative which does not bring any clarity to the issue at all.

7. In my considered assessment, the present situation is simply the outcome of a somewhat defective verdict by the then CGRF in 2009 – defective in that one of the affected parties was never impleaded in the case – and compounded by an unfocused set of actions by the Discom for recovery of dues. Above all, the Discom has been inconsistent and unfocused in its actions for recovery of dues in pursuance of the then CGRF's verdict of 2009 with the dues against the disconnected connection purportedly owed by the Appellant never having been clearly and continuously reflected as being due in the bills served on him between 2009 and 2017. The Discom cannot simply foist a bill at a time of its own choosing on an unsuspecting consumer in such an arbitrary fashion after a lapse of so many years. For these reasons, the applicability of the regulations mentioned by the Discom in support of its right to recover the dues from the Appellant, namely Regulations 15 (iii) read with 20 (2) (iii) of the DERC's Supply Code & Performance Standards Regulations, 2007, cannot be invoked.

8. In my considered opinion, the attempted recovery of purported dues pertaining to the disconnected connection from the Appellant also stands debarred by Section 56 (2) of the Electricity Act, 2003 read with Regulation 42 (2) of the Supply Code & Performance Standards Regulations, 2017 as these were never reflected clearly and continuously as recoverable from the Appellant at any point in time.

The appeal is hereby admitted and the CGRF's verdict of 21.11.2017 accordingly stands set aside.


(Sundaram Krishna)
Ombudsman
28.03.2018