

## **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.774/2017**

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

Shri Santosh Gadia, Director, Premium Estates Pvt Ltd - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 09.01.2017 passed by CGRF- BRPL in CG No. 78/2016)

#### **Present:**

Appellant: Smt. Archana Kalra & Shri Akhil Kundra, Authorised Representatives

Respondent: Shri Navdeep Arora, DGM (B), Shri Vivek Prasad, DGM (F), and Shri Deepak Pathak, Advocate on behalf of BSES - BRPL

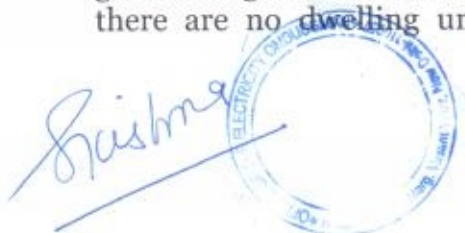
Date of Hearing: 17.04.2017

Date of Order: 21.04.2017

### **ORDER**

1. Appeal No. 774/2017 has been filed by Shri Santosh Gadia, Director, M/s Premium Estates Pvt Ltd, Khasra Nos. 568, 587 & 602, Village Ghitorni, New Delhi – 110030 against CGRF-BRPL's order of 09.01.2017 in CG No. 78/2016.

2. The brief background is that the Appellant has stated that he has had an electricity connection at his premises since 1994 under the agriculture category. According to him, he was coerced into getting this category changed to a domestic one following a visit by the enforcement team from the Discom (Respondent) in April, 2015. He then approached the Discom/CGRF with a request to charge an agriculture category tariff from May, 2016 onwards and refund the difference between the domestic and agricultural tariff categories amounting to Rs. 74,330/- for the intervening period 10.06.2015 – the date till when the agriculture tariff rate was charged – to May, 2016. The Appellant has justified his request by stating that his land has and is being used for the cultivation of crops, vegetables and fruits as well as grass and greens for feeding cattle and some floriculture. He has further said that there are no dwelling units constructed on this land with only three sheds for





housing cows and two godowns for storing harvested crops and pasture apart from three small rooms for housing workers engaged for carrying out agricultural activities and looking after the cows with a toilet block for the workers under the PM's "Swachh Bharat Abhiyaan" programme. There has no change in the land use of the property since its purchase by the Appellant.

3. The CGRF-BRPL has, however, not accepted his plea on the ground that a perusal of the documents on record and the report on the site visit indicates that most of the farm land is a well-maintained lawn belonging to M/s Premium Estates Pvt Ltd and that nothing was found to be growing or being cultivated except for a few vegetables as is usually done in kitchen gardens with no crops in evidence. The CGRF has also not accepted the Appellant's contention that grass is being grown for fodder on the ground that only a couple of cows can be seen in the photos of the area, concluding that the tariff category should remain as domestic as the place is evidently being used as a personal recreational farm.

4. The Appellant has, therefore, filed the present plaint, reiterating that the change in the tariff category from agriculture to domestic was done under duress following the visit of the Discom's enforcement team with his billing being changed to domestic from June, 2015. He has further added that the CGRF has failed to appreciate the revenue records (khasra girdawari) dated 11.12.2015 and 10.06.2016 which clearly show the land use as agriculture.

5. The Discom's response is that they had changed the tariff category on the connection from agriculture to domestic in April, 2015 on the basis of a request from the Appellant through his authorized representative. In May, 2016 however, the Appellant requested for a reversion back to the agriculture category which was rejected after an inspection as the property was found to be under use for non-agricultural activities. Two site visits on the direction of the CGRF by the Discom's officials on 28<sup>th</sup> Sept and 7<sup>th</sup> Oct, 2016, when photographs and videos were taken, showed that only a small portion of the land was being used for agriculture and structures found at this site suggested that the premises might have been used for commercial purposes. The Discom further claims that during a joint inspection on 7<sup>th</sup> October, the Appellant had arranged two cows on the site to manipulate the evidence and that he himself had admitted the structure on the site were being used for housing labourers which was not an agriculture activity. The Discom has, therefore, opposed the Appellant's plaint.

6. I have heard the parties and gone carefully through the material on record. The basic issue revolves around the nature of the land use of the premises in question for determination of the applicable tariff category. As a matter of abundant precaution and to afford the benefit of doubt to the Appellant, the Discom was directed to conduct yet another field visit to the site to clarify the nature of its use and to file an affidavit on the outcome. The Discom has submitted video recordings of this field visit which took place on 21.03.2017 on a DVD disk (consisting of five files carrying filenames VID20170321113008, 3622, 0315, 20405 and 20458). The Appellant has also submitted two videos recorded by them (carrying filenames VID\_20170321\_114702 and 120446) with some photographs, expressing an apprehension that the Discom may edit their own recordings in their favour as they had allegedly done during the hearings before the CGRF. The video recordings

submitted by both parties and the photographs have been viewed and examined at length along with other materials on record with the findings as enunciated below.

7. The sum total of the evidence adduced and what was stated by the parties during the hearing does not point to any substantial reason to differ with the findings of the CGRF. The video recordings made by both the parties clearly show that most of the area consists of well-manicured lawns. The crops, vegetables, flower beds and some fruit trees are confined to a rather small area on one side (as already brought out earlier by the site visit of 28.09.2016) and which certainly lends itself more appropriately to a description as a kitchen garden rather than crop land, orchard etc. In other words, the balance of the evidence does not indicate any activity on a scale sufficient to lend itself to a categorisation as agriculture but clearly leans more towards a purpose suited to large scale social gatherings or recreation. This was also the conclusion reached by the Discom's official who conducted the September, 2016 site visit. No conclusion of a bias or selective editing can be drawn from the Discom's recordings – for that matter, the photographs submitted by the Appellant during the hearing focus selectively on the limited area where the crops, vegetables and fruit trees are located to the exclusion of the other areas of the estate.

8. Taken together, the sum total of all the pieces of data do not lend credence to or buttress a claim of the property being devoted exclusively to agricultural activities and to no other purpose. For instance, the toilet block located on one side of the lawns is something of an anomaly, being as it were a modernistic architectural edifice with the lawns seamlessly going over the roof of the structure. The fixtures within the gender-segregated washrooms, which can certainly accommodate at least a dozen persons at a time, are modern in design with Western-style commodes and wash basins, toilet paper rolls and air fresheners, geysers, etc. It certainly strains credulity to be told to accept that it is merely for the use of labour working on a farm as also the contention that it is part of the national "Swachh Bharat Abhiyaan" initiative. The other explanation offered by the Appellant's representative during the hearing that groups of school children are taken on educational visits to the estate and who need such facilities sounds quite unconvincing and clearly more of an afterthought rather than a plausible reason. The presence of a few cattle roaming around on well-maintained lawns looks positively contrived as also the claim that grass is being grown as fodder – the latter is an inevitable by-product whenever lawns are mown.

9. The Appellant has produced a circular of the Jaipur Vidyut Vitran Nigam Ltd. bearing No. 832 dated 3.5.2013 (which was not produced before the CGRF) which states that if connections in farm houses are being used for agricultural purposes, they may be converted and billed under the relevant tariffs for agriculture and that if the connections are being used for other purposes, then the tariff category is to be decided depending on its use. Firstly, this is only a clarificatory circular issued by the state authorities and applicable to Rajasthan - not a law applicable across states. Secondly, this circular does not have a direct bearing on this case given the finding above that the activity does not appear to be purely agricultural in nature.

10. It would be relevant here to note that Regulation 9 (i) under Chapter II of the Delhi Electricity Regulatory Commission's "Supply Code & Performance Standards Regulations, 2007" which covers classification of electricity supply, states in no unequivocal terms that "connections under agriculture category are provided for tube-wells for irrigation, threshing and kutti-cutting in conjunction with pumping

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*load for irrigation purposes and for lighting load for bonafide use in Kothra*". This Regulation is the overriding legal provision which governs the categorization of the purpose for which electricity is supplied and billed. Rule 5 of the DMC (Property Taxes) is not applicable in this case as claimed by the Appellant. The video recordings of the site visit show only one small bore-well pump (which is not situated in a pump house either) and only one fodder cutting machine, neither of which are consistent with a claim of exclusive agricultural activity on this large estate. The Discom has given the load report as part of the site visit ordered by the Ombudsman – they may, in consultation with the Appellant, segregate those items which would qualify for an agricultural connection under the provisions of Regulation 9 (i) supra and arrange for their separate consumption metering and billing.

11. Finally, the Appellant has placed a premium on the revenue records (khasra girdawari) to show that the land is ostensibly under the cultivation of crops and vegetables and the land-use is, therefore, agricultural and saying that the CGRF failed to take this into proper consideration. While the khasra girdawari is certainly an official, government-issued land-use document, conclusions cannot be drawn by relying solely on that paper and conveniently ignoring all the other items of the documented data enumerated above. Other materials produced by the Appellant - like the report of a licensed electrician showing the total connected load as 8.35 KW and their claim that there are actually five cows and not four as mentioned by the Discom's site visit and their production of a medical certificate from some gaushala that three of the animals were undergoing treatment at the time of the inspection - are irrelevant and immaterial and more of an attempt to obfuscate the core issue at hand which is the applicable tariff category. There is a point beyond which credibility cannot be stretched and, at the risk of sounding repetitive, the sum total of the material / evidence on record is palpably inconsistent with the claim that the primary land-use pattern is purely agricultural.

Against this background, the considered conclusion is that no interference with the verdict of the CGRF is warranted and the appeal is hereby disallowed as being devoid of merit.



*Sundaram Krishna*  
**(Sundaram Krishna)**  
**Ombudsman**  
**21.04.2017**