

OFFICE OF ELECTRICITY OMBUDSMAN

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)

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Appeal No. 13/2024

(Against the CGRF-BRPL's Order dated 16.04.2024 in CG No. 12/2024)

IN THE MATTER OF

Shri Dayanand Tagra

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Shri Dayanand Tagra, along with Shri Sanjeev Kumar and Shri Rajesh Monga

Respondent: Shri S Bhattacharjee, Sr. Manager, Shri Yogesh K Yadav, Assistant Manager and Shri Shreyek Gupta, Advocate on behalf of BSES-BRPL

Date of Hearing: 18.07.2024

Date of Order: 19.07.2024

ORDER

1. Appeal No. 13/2024 has been filed by Shri Dayanand Tagra, R/o C-59, Second Floor, Kirti Nagar, Delhi – 110015, against the CGRF-BRPL's order 16.04.2024 in CG No. 12/2024.

2 In the instant case an industrial electricity connection bearing CA No. 100018433 initially having 95 kVA load in the name of Shri Ishar Dass, (died on 30.01.1993) was installed at Rajdhani Rubbers, 10 Industrial area, Tilak Nagar, Near Santpura, Delhi – 110018. The load was reduced to 34 kVA in January, 2020, on the request of the Appellant, Shri Dayanand Tagra, the son of the registered consumer (Late) Shri Ishar Dass. Currently, the connection is still in the name of the Appellant's father (Late) Shri Ishar Dass.



The Appellant again applied for load reduction from 34 kVA to 11 kVA in October, 2023, on the ground that since last 2-3 years, the factory/premises, in question, was lying in-operational and MDI is 'zero'. Therefore, he is forced to pay Rs.10,000/- to Rs.11,000/- each month without any use of power. The Discom declined his request and advised him to get the name of registered consumer changed for further processing of his request, as "consumer" could only apply for reduction of load etc. When the Discom did not reduce the load, the Appellant approached the CGRF for relief of reduction of the load to 11 kVAs.

3. The Discom stated before the CGRF that on his first application (No. ALTGN101023218) an appointment was scheduled on 13.10.2023, for verification of documents, but he did not attend the scheduled appointment, resulting in cancellation of the application. The Appellant again applied for load reduction (vide Application No. OLTGN20112232595) on 20.11.2023. it was noticed that instead of submitting the registered consumers documents, viz, ID proof, Aadhar card, etc. the Appellant submitted his own documents along with death certificate of the registered consumer, (Late) Shri Ishar Dass. The Discom communicated this discrepancy to the Appellant and advised him to get the name changed in the electricity connection before applying for getting the load reduced. The Discom further submitted that earlier due to Covid-19 period, the Discom facilitated load reduction from 94 KW to 32 KW, for senior citizen consumers on humanitarian grounds. But currently, they are unable to process applicant's load reduction request.

3. The CGRF-BRPL in its order duly elaborated the Regulation 17(1) & (3) of DERC (Supply Code and Performance Standards) Regulations, 2017 in respect of - Transfer of Connection and Load Reduction on the request of consumer, respectively and held that the complainant has no locus standi as the connection is in the name of his father (Late) Shri Ishar Dass, who passed away about three decades ago, which is also the submission of the complainant in his complaint. As such, he has no authorization to represent the case before the Forum, hence, request for load reduction is not tenable. The request for the load reduction can be entertained only when the complainant gets the connection transferred in his name and on completion of other commercial formalities.

4. Not satisfied with the order dated 16.04.2024 passed by the CGRF-BRPL, Appellant preferred this appeal and reiterated his submissions as before the CGRF. Additionally, the Appellant submitted that the order passed by the Forum is, prima facie, patently illegal and unsustainable in law, particularly as it is affected by the doctrine of promissory estoppel. There appears to be no logical basis or reasoning behind the reduction in load from 95 kVA to 34 kVA in January, 2020, especially



considering that there has been no change in the name of the registered consumer. Moreover, the factory, in question, is currently in-operational, and there is no consumption of power. Despite the Respondent claiming to have shown a humanitarian approach towards the Appellant, it is evident that this has not been consistently applied, particularly in light of the Appellant's advancing age. The Forum's failure to acknowledge the lack of a factual basis for the load reduction during the COVID-19 pandemic, as the load was reduced in January, 2020 and the first lockdown was announced on 24.03.2020. The Forum also ignored his request to give direction to the Discom to produce records in respect of similar load reductions for other senior citizens without the name change. Furthermore, the lack of prior notice or communication regarding visits to the premises and the use of the Appellant's personal email for load reduction applications raises further questions about the transparency of the process. Moreover, there has been no dispute regarding the status of the original registered consumer, Shri Ishar Dass, who has since passed away, and the Appellant is the surviving legal heir, without any contra claim thereto in any such regard.

5. Finally, the Appellant prayed before the Ombudsman for (i) to set-aside the CGRF's order dated 16.04.2024, (ii) to reduce the sanctioned load to 11 kVA w.e.f. dated 10.10.2023, when the first time applied for reduction of load, (iii) waive off fixed charges and charge only the 11 kVA load bill w.e.f. 10.10.2023 and (iv) to award a compensation of Rs.1.00 lakh on account of delay/harassment.

6. On the other hand, the Discom in its written submissions reiterated their stand as before the CGRF-BRPL. In addition, the Discom stated that on the direction of the CGRF, an immediate action was initiated and the Appellant was again informed about the load reduction process and house visit permission was sought from him. Further, in December, 2023, the Appellant himself informed that he has no occupancy proof/ownership documents in his favour. Therefore, home visit assistance not provided due to non-availability of proper documentation. In its support, the Discom placed all the relevant documents along with their written submission. The Discom has also submitted that the complainant has no locus standi because the connection is in his deceased father, Mr. Ishar Dass's name, and, therefore, lacks authorization to represent the case before this Forum.

The Discom also submitted that the Appellant's complaint before the CGRF was for reduction of sanctioned load with immediate effect, which would have meant from the date of the CGRF's order, whereas, in the present appeal the same has been sought to be reduced w.e.f. 10.10.2023. The Appellant cannot change the relief sought at the appeal stage.



The Discom also admitted that the sanction load was reduced from 95 kVA to 34 kVA in January, 2020 during Covid-19 on humanitarian ground considering the advanced age of the Appellant.

The Respondent clarified that load reduction applications can only be given by the registered consumer, the complainant's father, Mr. Ishar Dass, who passed away in 1993.

Regarding claim of compensation, the Appellant has not pointed out any deficiency in service by BRPL and himself guilty of not following the process because he has not produced any ownership documents of the premises, in question, either in his name or in his father (Late) Shri Ishar Dass. The premises may in all likelihood be in illegal occupation.

8. The appeal was admitted and fixed for hearing on 18.07.2024. During the hearing, the Appellant was presented in person Shri Dayanand Tagra, along with Shri Sanjeev Kumar and Shri Rajesh Monga and the Respondent was represented by its authorized representatives/counsel. An opportunity was given to both the parties to plead their case at length.

9. During the hearing, the Appellant reiterated his stand as submitted in the appeal with the reiteration of the prayer clause. In response to a query by the Ombudsman, it was revealed by the Appellant that there is a property dispute over possession/eviction of the premises, which has been pending before the Civil Court in Delhi for the last 5-6 years. While the original lessor has already died, the appellant, the joint lessee and being a tenant/occupier also claimed that he is paying the rent to two persons who are residing in the USA and attending the hearings in India from time to time.

10. In rebuttal, the Advocate for the Respondent raised preliminary objections on the different prayer submitted by the Appellant as before the CGRF and the one before the Ombudsman, stating that different relief can not be claimed at appellate stage. While reiterating the submissions made in the pleadings before the Ombudsman, the Advocate pointed that since one lessee i.e. Registered Consumer of the subject connection out of the two joint lessees had already expired and the other i.e. the Appellant was surviving, the surviving lessee could obtain a Surviving Member Certificate from the Jurisdictional Sub Divisional Magistrate (SDM) office and seek transfer of the connection as well as load reduction based on documents including the Surviving Member Certificate, the lease deed, death certificate of the deceased RC etc. However, possession being in dispute, the option for reliance on rent receipts as proof of ownership became futile since the certificate from the



deceased owner could not be produced in support of tenancy in view of Regulation 10 (3) of DERC Regulations, 2017.

11. This Court has gone through the appeal, written submission and heard both the parties. The relevant provisions of CEA and the Regulations were also perused very minutely. The following aspects emerge for consideration:-

(a) Regulation 2(6) of DERC's Supply Code, 2017, defines applicant to mean an owner or occupier of any premises who files an application before the licensee in accordance with the Provision of Law (Act, Rules, Regulations, Orders) for (i) supply of electricity, (ii) increase or reduction of load, (iii) change of category, (iv) issue relating to billing, (v) disconnection or reconnection of supply and (vi) termination of agreement.

(b) Regulation 17 (1) and 17(3) of the DERC's Supply Code, 2017, deal with transfer of connection and load reduction request by consumer. The Consumer is defined in Section 2(15) of Electricity Act, 2003. Regulations 10(2) & 10(3) of the Supply Code, 2017, deal with proof of identity and proof of ownership or occupancy of the premises for new or existing connection. Inaction by the Appellant for transfer of connection for over thirty (30) years, of the premises after demise of his father on 30.01.1993, before the applied load reduction, raises the issue of his locus standi to apply for load reduction. Since, he is not a consumer as is required by Regulation 17(3). It is only the consumer, as defined, who can make an application for reduction. The Discom clearly erred in allowing load reduction from 95 kVA to 34 kVA, during January, 2020, as it is not in conformity with the regulations.

(c) Regarding promissory estoppel claimed by the Appellant, the law is settled by Orissa High Court in the case Jatindra Prasad Das vs State of Orissa "estoppel cannot arise against statutes and statutory provisions. Statutory provisions cannot be disregarded in any case. Even the Delhi High Court in Ms. Azra's case decided on 06.02.2020 held that Court cannot be a part to a continuing wrong.

(d) It is evident from the record that from August, 2022 to September, 2023, MDI is 'zero' against the said connection and the Appellant is paying fixed charges along with other surcharges as per tariff, while energy charges are 'zero'. Though the Appellant's request for load reduction is genuine but as per the Regulation 17(1) & (3) DERC's Supply Code, 2017, which the CGRF-BRPL elaborated in detail, in its order dated 16.04.2024, the Appellant has to apply for transfer of the connection in his name.



(e) Further, since Covid-19, lockdown was announced on 24 March, 2020, as such, the Respondent plea for consideration of load reduction on humanitarian ground is not sustainable because load got reduced before lockdown was declared by Government of India. Therefore, an enquiry needs to be carried out, how the load was reduced from 95 kVA to 34 kVA on 07.01.2020, while the registered consumer Shri Ishar Dass had expired on 30.01.1993 without proper verification of the documents? It is a matter on record that no contrary guidelines had been issued by the Discom for action on humanitarian grounds ignoring the explicit provisions of the Regulations.

(f) It cannot be disputed that erroneous load reduction has resulted in loss of revenue to the exchequer during the period from 2020 till date.

12. Upon consideration of various aspects, this court (i) concurs with the order of CGRF-BRPL that the load reduction could not be done as the Appellant is not a consumer/occupier as per Regulation 10(3) and is not eligible for submitting application and (ii) directs that an enquiry be undertaken to fix responsibility for reducing the load on 07.01.2020 leading to loss of revenue on account of erroneous reduction of fixed charges and other associated charges with it. The reduction of load was not as per the extant regulations.

The appeal stands disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
19th July, 2024