

## **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.798/2017**

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

Shri Vijay Narayan - Appellant

Vs.

M/s BSES Yamuna Power Ltd. – Respondent

(Appeal against order dated 17.07.2017 passed by CGRF- BYPL in Complaint  
No.04/02/2017)

#### **Present:**

Appellant: Shri Amit Kumar s/o Shri Vijay Narayan with Shri Mayank  
Khurana, Advocate

Respondent (1): Shri Rajeev Ranjan, Legal Officer and Shri Rajan Kumar Pasan,  
Commercial Officer – on behalf of BSES-BYPL

Respondent (2): Shri Satyapal, Shri Ranjeet & Shri Subhash Chander

Date of Hearing : 08.11.2017

Date of Order: 10.11.2017

#### **ORDER**

1. Appeal No.798/2017 has been filed by Shri Vijay Narayan, R/o 4/725, Street No.12, Bhola Nath Nagar, Shahdara, Delhi-110032 against the verdict of CGRF-BYPL in Complaint No.04/02/2017 dated 17.07.2017.

2. The immediate cause of this appeal is the verdict of the CGRF on a complaint filed by Shri Satyapal, his first cousin, against the action of the Discom in transferring pending dues amounting to about Rs.1.34 lakhs against an electricity connection of his father, Shri Jagan Nath (CA No. 1000 45599), since disconnected, to him with the CGRF impleading the Appellant as a party to the case and directing that the pending dues be shared equally between the two cousins, Shri Satyapal and Shri Vijay Narayan, on the basis of an agreement between them relating to the modalities of usage of the family property which contains, inter alia, a clause to the effect that charges for electricity and water would be borne by both parties equally. Shri Vijay Narayan has challenged this verdict in his plaint on the ground that he not liable to pay a share of the arrears as he was never a user of the electricity connection of his uncle, Shri Jagan Nath, and that the clause in the agreement for sharing of dues with his cousin is no longer relevant following the disconnection of Shri Jagan Nath's connection and that the latter's son, Shri Satyapal, is alone responsible for the repayment of the dues, if any.

3. The Discom's response argues that Shri Vijay Narayan's appeal is not maintainable on account of it being filed after a delay of more than 30 days and that too under the Consumer Protection Act, 1996 which is not applicable in this case and that the liability to pay the outstanding arrears devolves onto his cousin, Shri Satyapal and his spouse Smt. Subhawati, who also had a connection, since disconnected, in the same premises. They have further held that their action in transferring the dues to them is correct under Section 49(ii) of DERC's Supply Code & Performance Standards Regulations, 2007. Both the preliminary objections of a delay in filing the appeal and its maintainability are hereby dismissed as frivolous as it is incumbent upon the Ombudsman to admit and hear a consumer's grievances.

4. I have heard both the parties including the Appellant's cousin, Shri Satyapal, who has been impleaded into these proceedings as a concerned party as well as carefully considering the material on record. To briefly recap the background, the arrears belong to Shri Jagan Nath whose connection (CA No.1000 45599) was disconnected due to non-payment of the arrears in question amounting to about Rs.1.34 lakhs. The Discom transferred these dues to Shri Jagan Nath's son, Shri Satyapal and his spouse, both of whom had independent connections (CA Nos. 1007 26899 & 1505 22153 respectively), prompting the latter to approach the CGRF. The present Appellant, Shri Vijay Narayan, the son of Shri Jagan Nath's brother, was impleaded by the CGRF and made a party to the case filed by Shri Satyapal before delivering a verdict holding both the cousins equally liable to pay the dues.

5. I find that there are major lacunae and errors of judgement on the part of both the CGRF and the Discom in the handling of this case. To begin with, it is relevant to note that Shri Jagan Nath's connection, installed in February, 1983, was disconnected about 9 years ago in June, 2008 for non-payment of dues. The same premises, owned by the two cousins, Shri Satyapal and Shri Vijay Narayan, has had three other connections, one of them being in the name of Shri Satyapal's spouse, Smt. Subhawati. This last mentioned one was installed in September, 2012 and disconnected in April, 2016 on grounds of non-payment of dues. The connections of Shri Satyapal and Shri Vijay Narayan are both currently live - Shri Satyapal's connection (originally in the name of his paternal uncle, Shri Ram Bahl since November, 1986) having been changed to his name in April, 2010 and Shri Vijay Narayan's connection having been installed in August, 2007.

6. The first major infirmity is the factum of Shri Vijay Narayan being dragged into the case unnecessarily by the CGRF with half of the arrears being unloaded onto him solely on the basis of an agreement dated July, 2005 executed by him with his cousin, Shri Satyapal, on the modalities of sharing of the family property which happened to include, inter alia, a clause to the effect that electricity and water dues would be shared by both the parties equally. In the first place, this agreement is in the nature of a private agreement between the two cousins executed under contract laws and cannot form a legal basis for transferring arrears of payment due to a Discom to either of the parties. This action on the part of the CGRF is arbitrary and outside its remit. The CGRF's verdict becomes even more inexplicable given the fact that the Discom itself, in its written response to the present plaint, has noted that while notices for transfer of Shri Jagan Nath's arrears were served on both Shri Vijay Narayan and Shri Satyapal as well as the latter's spouse, following a re-inspection of the same premises in June, 2015 which revealed that the "actual beneficiaries" were Shri Satyapal and his spouse, fresh notices for transfer of arrears were served on the latter two only. The Discom itself has not established a nexus between Shri Vijay Narayan and the outstanding arrears of Shri Jagan Nath, a position reconfirmed during the hearing when it stated that the issue of payment of arrears was a matter between them and Shri Satyapal only and that Shri Vijay Narayan was not a party to it. It would also be relevant to note here that Shri Vijay Narayan's independent electricity connection was installed in August, 2007, almost a year before Shri Jagan Nath's connection was disconnected. The CGRF's verdict has completely failed to factor in these crucial facts. In the light of the above, my categorical finding is that Shri Vijay Narayan is not liable in any manner for payment for any part of Shri Jagan Nath's arrears.

7. The second issue relates to the question of whether Shri Satyapal can be held liable for the arrears outstanding against his father, Shri Jagan Nath. Even though Shri Satyapal is not an Appellant here, he is nevertheless, in my considered opinion, a party/consumer who has been affected materially by the actions of the Discom and the verdict of the CGRF and, therefore, eligible to have his issue adjudicated upon in the interests of natural justice. Here again, major lapses on the part of the Discom are evident. As noted in paragraph 5 supra, Shri Jagan Nath's connection was disconnected in June, 2008 for non-payment of dues with this fact being discovered by the Discom during an inspection on 05.05.2015 - in other words, after a lapse of almost seven years. The dues were transferred to Shri Satyapal and his spouse in June, 2016 with the latter being made to deposit a cheque for a sum of Rs.67,286/- under protest allegedly

*Prishma*  
OFFICE OF THE CHIEF JUSTICE  
JUDICIAL OFFICE, JALGAON



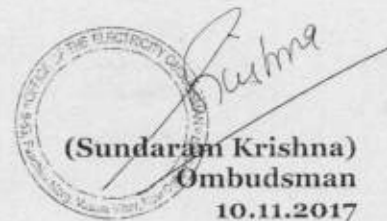
following pressure and threats of disconnection from the Discom (whose encashment, incidentally, did not take place). There is absolutely nothing on record to indicate any form of affirmative action on the part of the Discom to recover the outstanding dues from the time of disconnection in June, 2008 till May, 2015 when the inspection took place. The Discom could not provide any cogent explanation for this lack of action on their part during the hearing. Again, furthermore, there is nothing on record to show that these arrears were ever shown as continuously recoverable against any of the other connections existing in the same premises. Neither did the Discom raise the issue of pending arrears while sanctioning a new connection to Shri Vijay Narayan in August, 2007 or permitting a change of name in favour of Shri Satyapal of the connection standing in the name of his paternal uncle, Shri Ram Bahal. Similarly, the arrears issue was not brought up by the Discom while granting a new connection to Shri Satyapal's spouse, Smt. Subhawati, in September, 2012, although it was disconnected about three and a half years later due to non-payment of dues.

8. The purpose of this extended narrative is to demonstrate that the Discom remained moribund on the issue of pending arrears relating to Shri Jagan Nath for more than seven years after disconnecting his connection in June, 2008 for reasons best known to them. Their argument that they have transferred these arrears to Shri Satyapal and Smt. Subhawati as per Regulation 49 (ii) of the DERC's Supply Code & Performance Standards Regulations, 2007 is not tenable as this Regulation is applicable only to cases where a connection to a specific premises has been disconnected but the consumer has restored supply through another live connection illegally. This is not so in the present case. Furthermore, Regulation 42(2) of the new Supply Code & Performance Standards, 2017, which has supplanted the earlier Code of 2007 and has been in effect from 01.09.2017, explicitly provides that "*if the outstanding dues are not reflected continuously as recoverable in the bill, the Licensee shall forfeit its right to claim or recover the outstanding dues*". Again, Section 56 (2) of the Electricity Act, 2003, debars recovery of any sum from any consumer after a period of two years from the date when it became first due unless such a sum has been shown continuously as recoverable as arrears since then. These conditions are simply not met in the present case and the Discom cannot arbitrarily transfer the liability for the arrears to Shri Satyapal and Smt. Subhawati following an inordinate delay and after having allowed such a situation to develop through its own negligence. With the recovery time-barred under law, it is not necessary to go into the question of whether any liability for the dues devolves onto them or not as such an exercise has, in any case, been rendered superfluous. The only thing that is evident is the disconnect which seems to exist within the Discom's supervisory and oversight mechanisms and it would be worthwhile for the Discom to attend to this with the urgency that it warrants so that similar situations are not triggered in future.

9. To summarize, therefore;

1. The verdict of the CGRF is hereby set aside and the Appellant, Shri Vijay Narayan, absolved of any liability to pay any of the dues pertaining to the account of Shri Jagan Nath for the reasons explained in paragraph 6 supra;
2. The Discom is debarred from transferring of any of the dues to Shri Satyapal and his spouse, Smt. Subhawati, as such an action is time barred by limitations in terms of Regulation 42 (2) of the DERC's Supply Code & Performance Standards Regulations, 2017, read in conjunction with Section 56 (2) of the Electricity Act, 2003 as explained in paragraph 8 supra.

The appeal stands disposed off accordingly.

  
(Sundaram Krishna)  
Ombudsman  
10.11.2017