

C A No. 100031278
Complaint No. 10/2020

In the matter of:

St. James ChurchComplainant
(The Chaplin Of Delhi)

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. Arun P Singh (Chairman)
2. Mrs. Vinay Singh, Member (Legal)
3. Dr. Harshali Singh, Member (CRM)

Appearance:

1. Adv. Vishnu Sharma, Counsel of the complainant
2. Mr. Imran Siddqi, Ms. Ritu Gupta, Mr. Jagatheesh Kannan & Mr. B.B. Sharma, On behalf of BYPL

ORDER

Date of Hearing: 21st July, 2020

Date of Order: 30th July, 2020

Order Pronounced By:- Mr. Arun P Singh (Chairman)

Briefly stated facts of the case are that respondent charged the non-domestic tariff from July 2002 to June 2019, to the place of worship.

It is also their submission that the respondent was raising electricity bills on non-domestic tariff till July 2019. On 01.07.2019 the complainant applied for change of category from non-domestic to domestic being a worship place and

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the respondent changed the tariff category from the billing month of July 2019, without giving refund of the previous period.

Complainant further added that respondent in their tariffs since 2002 has clearly mentioned that power supply to place of worship be billed on domestic tariff. Complainant also mentions the Regulations of different tariff orders.

Therefore, they requested the Forum to direct the respondent company for correction of bills for the period 01.07.2002 to 30.06.2019 in line with DERC tariff schedule issued from time to time. And refund of excess amount paid by St. James Church in future electricity bills.

Notice was issued to both the parties to appear before the Forum on 05.03.2020.

The respondent company submitted their reply stating therein that consumer made request for change of category from non-domestic to domestic for the CA No. 100031278 and completed all the formalities required for category change on 15.07.19. It was also their submission that by following the due procedure as per DERC Regulations 2017, the site inspection was done on 16.07.2019 and subsequently the category was changed from Non-Domestic to Domestic w.e.f. 16.07.2019.

It was further added that as per Regulation 17 (5)(iii) the category of the complainant was changed to domestic from non-domestic since the day of inspection.

During the course of hearing the Authorized representative of the Chaplain of Delhi was present and stated that they are running a small office in the church complex and marriage functions are held in church, the Forum directed them to present supportive document of the last five year for their submission. The respondent was also directed to produce the tariff order of 1998-99. Respondent was also directed to submit a reply in view of Section 45 (i) and 62 (6) of the Indian Electricity Act for their defense.

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The complainant submitted their rebuttal refuting there in contentions of the respondent company as averred in their reply and reiterated their original complaint. Complainant added that this case is of wrong application of tariff by BYPL by not adhering to DERC Tariff Schedule from time to time. For continuing violation, the plea of limitation can't be applied. *They also submitted citation of Hon'ble Supreme Court in the matter of Firm Ganpat Ram Rajkumar V. Kalu Ram AIR 1989 SC 2285.* It was further their submission that the said connection is installed since 20.01.1965 and there are six other connections inside the premises. It was also their submission they are claiming for the excess amount charged for the period 01.07.2002 to 30.06.2019 in line with DERC Tariff Schedule issued from time to time.

Due to Covid19, Forum was closed and hearing is now conducted on 21.07.2020 through video-conferencing. All the parties were issued notices through e-mail and messages.

The respondent company submitted their additional reply stating therein that the complainant claims from the respondent on account of alleged delay in change of tariff category. As per the complainant, it was obligatory on the part of the respondent to change tariff from non-domestic to domestic w.e.f. July 2002 and as such respondent has charged them in excess by claiming non-domestic tariff from July 2002 till June 2019.

Respondent further stated that prior to 2002 the place of worship was charged on non-domestic tariff as per the tariff order applicable during the relevant time. Thereafter, place of worship was shifted to domestic category tariff subject to condition that the place of worship was used for the purpose of worship only. Thereafter again tariff was changed and now as per the tariff rule the place of worship is charged on domestic tariff.

Delhi Electricity Regulatory Commission came into existence in year 2002. The regulations were framed by them for the first time in year 2002 and till 2017 there was no regulation which empowered DISCOM to change the tariff

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category Suo moto. The said powers were conferred on DISCOMS for the first time w.e.f. 01st September 2017 by way of Regulation 17 (6). The Regulation 17 (5) provides for change of category on the request of consumer. The said Regulations are quoted below:-

17 (5) Change of category on the request of consumer:-

- (i) The applicant shall apply for change of category in the format prescribed in the Commission's Orders.
- (ii) The Licensee shall conduct site inspection to verify within 7 (seven) days from the receipt of application and shall record the meter reading at the time of inspection.
- (iii) If on inspection, the request of the consumer for change of category is found genuine, change of category shall be made effective from the date of inspection and the same shall be reflected in next billing cycle.
- (iv) Arrear or excess charges shall be determined based on the actual period of earlier classification based on documentary evidence provided by the Licensee or the consumer as the case may be, limited to a period of 12 (twelve) months and the account of the consumer shall be suitably adjusted.
- (v) In case change to such category is not permitted under any law in force, the Licensee shall inform the consumer within 7(seven) days from the date of application.
- (vi) If the category is not changed within the said period, the consumer shall be entitled to seek and the Licensee shall be liable to pay the compensation as specified in Schedule-I of the Regulations.

17(6) Suo-motu reclassification of consumer category by the Licensee:-

- (i) If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the Licensee shall suo-motu reclassify the consumer under appropriate category.
- (ii) The consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 (thirty) days to file objections, if any.
- (iii) The Licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.

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- (iv) *Arrear or excess charges shall be determined based on the actual period of wrong classification limited to a period of 12 (twelve) months or a period from the date of last inspection of the installation of the consumer by the Licensee whichever is shorter and the account of the consumer shall be suitably adjusted.*

It was also submitted that DERC Supply Code 2017 has no retrospective effect. Reference in this regard be made to judgment bearing citation 2009 (11) SCC244. Respondent further added that prior to September 2017 the category of tariff could be changed only on the request of the consumer. Admittedly in the present case the consumer applied for the category change from non-domestic to domestic for the first time in July 2019 which was carried out immediately. They also submitted that even after incorporation of Regulation 17 (6), respondent had no reason to exercise its right under said Regulation.

On the issue of application of sections 45 (1) and 62(6) of the Electricity Act 2003, it is submitted that Section 45 (1) is not applicable to the facts of the present case as it is not a case that the tariff has not been fixed as per the guidelines of DERC or that prices in excess of fixed tariff has been charged. It is a case whereby consumer alleges that he has been charged tariff for wrong category; hence Section 45 (1) has no application to the facts of the case. Therefore it is apparent that respondent had no reason to change the category of tariff of its own. The same could have been carried out only on the request of the applicant.

Section 62 pertains to powers given to State Commissions, which in present case is DERC, to fix tariff. Sub-section 6, provides that in case Distribution Company has charged in excess than the tariff fixed by the commission then the discoms are liable to refund the same with interest.

The complainant also submitted their written submission to the oral arguments of the respondent. The respondent raised the issues i) whether an office exists

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inside the Church building?, ii) whether marriage and functions are organized in the Church building?

They submitted that office in the Church building is Vestry in Church parlance. The vestry is an integral part of the church building and is found in all churches big or small, new or old.

Functions in the church building: - in the last five years total of five marriages of the members have taken place in their church. In the Christian Community most of the marriages are held in the Church to which either the bride or the bridegroom belongs, the church forming an integral part of the marriage ceremony.

Besides marriages, Religious functions take place in the Church building basically on three occasions during the year these are:-

- i) On Christmas
- ii) On Easter
- iii) On their Patron Saint Day (in July)

They also submitted that as above, they have not violated the terms and conditions of the tariff, as laid down by the Hon'ble Delhi Electricity Regulatory Commission. This is a wrong application of tariff by BSES Yamuna Power Limited. Though the electricity supply was given to a place of worship i.e. Church, yet they were billed wrongly under non-domestic tariff.

Complainant also submitted that BYPL has corrected their tariff category to 'Domestic' with effect from July 2019, which should have been done with retrospective effect from July 2002 in line with DERC Tariff orders from time to time.

Matter was heard at length on the final day of hearing. Submissions made by both the parties were taken on record. Both the parties were also given opportunity to file any additional submission, within a week's time.

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The respondent company submitted their written submissions reiterating their earlier reply. The respondent also submitted that from the registered name of consumer it cannot be presumed that the premises in issue are a place of worship. They also submitted that the claim of the complainant is beyond the period of limitation and hence barred by law of limitation. Limitation is to be determined as per the law of limitation as duly provided under the Limitation Act. As per the Limitation Act in the case of recovery of funds the limitation is that of three years unless extended by admitting the liability in writing within a period of limitation. It was also submitted that in any case the issue qua the limitations etc. cannot be decided in a summary manner hence this Hon'ble forum has no jurisdiction to try and adjudicate the issue of refund as claimed by claimant.

Respondent further submitted that they reserves its right to reverse the category of connection in issue to its original one i.e. Non-domestic, in view of the fact as duly admitted by the Secretary/representative in the last date of hearing that the complainant used to organize marriages and other parties of church members at premises which is electrified through the connection in issue and also used church office for booking/fixing the programmes and also maintain a register for this effect in the office.

It was also their submission that the relief of refund of excess amount as claimed by the complainant is a matter of evidence which cannot be granted in a summary manner and hence is beyond the jurisdiction of the Forum.

We have gone through the submissions made by both the parties. From the narration of facts and material placed before us we are of the opinion that when the complainant applied for category change on 15.07.2019, the site inspection was done on 16.07.2019 and from 16.07.2019 the respondent started billing complainant on domestic tariff.

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The said electricity connection was released in 1965 and the applicable tariff category for supply to places of worship was non-domestic at that time, but later on (as per the records available) the electricity consumption in various religious institutions such as Mandir, Masjid, Gurudwara and church etc were chargeable at domestic rates as per office order no. 113 dated 15.04.1997 of Electricity Department, New Delhi, Municipal Council. BYPL-the respondent company came into existence in 2002 and as per records handed over to them by the transferor discom DVB showed the billing of the said electricity connection in Non-Doemstic (NX) category, for which there are two possibilities, either the then Discom (DVB) didn't care rather omitted changing the category for billing purpose as per the tariff orders or the complainant's said electricity connection didn't qualify to this change due to mixed use.

Though the tariff orders since 2002, the year in which respondent Discom BYPL took over electricity distribution business in the area, the supply to places of worship was to be billed on domestic tariff. There was no provision in the Regulations till 2017, and tariff orders for suo-moto reclassification of the supply to the complainant and any inspection by respondent for that purpose was obviously not warranted. Admittedly complainant also did not point it out and no request was there from them for changing their billing from non-domestic to domestic. So onus to prove that electricity on this connection was exclusively used for religious places/activities during the period 2002 to 01.09.2017 (the date on which Regulation 2017 came into force) is on the complainant but complainant failed to produce sufficient documents and evidence to prove it.

However, as per provisions of Section 17.6 of the DERC Regulations 2017 (effective from 01.09.2017) suo-moto reclassification of consumer category necessitated immediate action by inspection on their own by the respondent, which was admittedly not done by them. Proactive compliance of the provision

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(in favour of consumers) required such inspection/action by the respondent in September 2017 itself. Later on the category was changed to domestic by the respondent after inspection on 16.07.2019, on complainant's request under provisions of clause 17.5 of the DERC Regulations 2017.

Hence we are of the considered opinion, that the complainant's electricity connection vide CA No. 100031278 be reclassified as domestic w.e.f. 01.09.2017 and excess amount paid by the complainant be adjusted in the future electricity bills for the connection.

With the above directions the case is disposed off as above.

No order as to the cost. Both the parties should be informed accordingly.
Proceedings closed.


(HARSHALI KAUR)
MEMBER (CRM)


(ARUN P SINGH)
CHAIRMAN


(VINAY SINGH)
MEMBER (LEGAL)