



CA No. 100004360
Complaint No. 142/2022

In the matter of:

Ajay JainComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat Ahmed Alvi, Member (CRM)

Appearance:

1. Mr. Aashish Jain, A.R. of the complainant
2. Mr. Imran Siddiqi, Ms. Ritu Gupta, Mr. Rajeev Gupta, Ms. Amita Sharma & Ms. Katha Mathur, On behalf of BYPL

ORDER

Date of Hearing: 29th September, 2022
Date of Order: 06th October, 2022

Order Pronounced By:- Mr. Nishat Ahmed Alvi, Member (CRM)

1. As per complaint, the complainant, holder of an Industrial license, of respondent, applied for reduction of load from 70 KW to 51 KW under SIP category, against his CA No. 100004360. In response respondent vide its notice dated 18.03.2014 asked him to submit a renewed factory license prior to 31.03.2015 the date of its expiry. Somehow the complainant forgot and failed to comply the notice on the given date.

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But he submitted the license after getting it renewed, to respondent on 24.07.2015. Due to late submission of renewed license, respondent's officials forgot or ignored to revert back the said connection from non-domestic to Industrial (SIP) category. Complainant's father being old aged person, taking care of the factory, could not notice the said ignorance of respondent officials. Meanwhile respondent kept on charging for electricity under non-domestic category. When father of complainant noticed this mistake he wrote letter dated 25.11.2017 to respondent but there was no response from the side of the respondent, despite father of the complainant running from pillar to post to get the said connection changed back to industrial category. Respondent kept on over-charging the said connection. In 2018 when complainant got charge of factory from his old aged father, he could not notice the wrong committed by respondent and when so noticed, later on he submitted the required documents to respondent on 16.07.2021. Reminders whereof were also given on 27.07.2021, 03.09.2021 and 15.09.2021. Consequently, respondent vide its letter dated 23.09.2021 asked complainant to submit some more documents which complainant so submitted on 28.10.2021. Thereafter on December 2021, the category was changed back to Industrial Category. But respondent ignored to refund wrongly charged money. For said refund complainant wrote emails to respondent on 02.05.2022 and 14.05.2022. To which respondent vide its communication dated 25.05.2022 shown its inability to refund the excess charge.

Complainant has prayed for direction to respondent to refund difference of the amount charged between non-domestic category and industrial category, during the period September 2015 to December 2021.

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2. Respondent in their written statement submitted that complainant made an application for load reduction from 70 KW to 51 KW under SIP category against CA no. 10004360. In response to the application for load reduction BSES by letter dated 18.03.2014 gave a notice to complainant that his application has been released w.e.f. 18.03.2014 on Industrial tariff. Simultaneously, in the notice BSES also inform that consumer's Industrial tariff is valid upto 31.03.2015 as per MCD factory license submitted by consumer. Therefore, BSES advised consumer to file renewed MCD factory license till 15.04.2015 failing which he will be billed on NDLT tariff category.

3. Giving the proper opportunity BSES changed the category from SIP to NDLT category for want of renewed license. Respondent denied receipt of any letter dated 25.07.2015 or 25.11.2017. As per respondent it is only on 16.07.2021 that complainant requested for change of category back to industrial which was very well responded to and on 07.12.2021, the category was so changed by the respondent. Both the parties filed their respective written arguments as well as delivered their oral arguments.

4. Going through all the pleadings, documents attached therewith as well as arguments of both the parties only dispute between the parties remains as to the right of the complainant to get refund of the amount charged in excess than the charges of electricity payable/fixed for industrial category.

Regarding transfer of category after 31.03.2015 on non-submission of renewed license complainant has no objection. Only objection is as to the necessity of asking to submit renewed license about a year in advance while this notice was in response of complainant's application for reduction of load. This objection though seems bonafide but is not

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sustainable in the fact and circumstances of the case that the compliance was required only on the expiry of license and not on the date of notice. Requiring the same sooner or later has no relevance with reference to the right of the respondent to transfer the Industrial connection into non-domestic connection. It was done only when renewed license was not submitted in time and the license already on record was allowed to be expired.

5. Second question to be decided is the bonafide of the complainant's version of submitting two letters dated 24.07.2015 and 25.11.2017 thereby providing the renewed license on 24.07.2015 to fulfil condition required for industrial connection.

For this purpose, letters dated 24.07.2015 and 25.11.2017 filed by complainant and Dak Register produced by the respondent were perused.

On complainant's letters Sl.No. of receipt are given as 623 abd 975 while Dak Register shows only document at sl. No. 819, 820 and 821 as received on 24.07.2015, one is received from Sub-officer, fire smokers for non-receipt of bill. Second from some Surender Bahadur Singh for disconnection and third from Mactos Industries for meter testing.

Not only this we find seal alleged of respondent only on letter dated 24.07.2015 while letter dated 25.11.2017 has no seal whatsoever and only entry is of sl. No. given only alongwith date of letter. We also find that the seal on 24.07.2015 letter is not clear as to whose seal it is.

6. On the basis of above revelations we find that not only the Dak Register of respondent has no entry of receipt of alleged letters but also sl. Nos.

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given by the complainant and shown in Dak Register on 24.07.2015 are different. Even if we assume that respondent has deliberately not registered receipt of alleged letters, the letters themselves Prima Facie does not show that respondent has received those letters.

Going through the pleadings as well as written arguments we find that often and again, complainant himself states that he forgotten to submit renewed license prior to 15.04.2015. Not only this even after alleged submission of renewed license again he continued paying the excess bills for about two years without any objection prior to the alleged reminder dated 25.11.2017. That reminder also does not mention that the excess amount is being paid under objection. Again complainant states that not only his father forgot to raise the issue but also he himself, while took charge of the factory from his father in 2018, did not notice that the bills are being received as per tariffs leviable on non-domestic connection and it was only in the year 2021, after a long gap, that complainant vide its letter dated 14.07.2021 applied/requested for change of category back to industrial one and revise the bill accordingly. Record show that this letter was duly acknowledged by respondent vide its letter/response dated 23.07.2021, thereby asking to complete commercial formalities to get the Industrial connection back. Thereafter, we also find certain reminders by complainant dated 27.07.2021, 01.09.2021 and 15.09.2021 and letter dated 28.10.2021 thereby completing commercial formalities by submitting required documents to respondent. Perusal of these letters show that complainant was in continuous touch with respondent and there was proper response from the respondent who after completion of commercial formalities revised the connection/bill on 07.12.2021. Again perusal of aforesaid letter of complainant shows that he never mentioned letters of submission of renewed license and/or its





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reminder dated 24.07.2015 and 25.11.2017 respectively while all other letters written in 2021 are being continuously referred to by him in subsequent letters. This fact also falsify complainant's allegations that he submitted renewed license vide letter dated 24.07.2015 and also his father re-agitated the issue vide reminder dated 25.11.17.

7. Counsel for the complainant argued that seller/respondent is hit by the Maxim of Caveat Venditor. We don't find any force in this argument in as much as the Rules of Caveat emptor and Caveat venditor apply only in the context of the sufferer of the loss i.e. if buyer suffers any loss, due to his non-attention, Rule of Caveat emptor will apply and he can't blame the seller for that. On the other hand if seller suffers any loss, due to his non-attention, Rule of Caveat venditor will apply and seller can't blame the buyer for the loss so suffered by him/it.

In the present case sufferer is the complainant the purchaser that too due to his non-attention as discussed aforesaid. Hence, Rule of maxim Caveat Emptor shall apply on the complainant himself.

Even if it is assumed the respondent has charged the excess amount wrongly rule of Estoppel shall apply on him as by paying the alleged disputed amount by him for continuous period of about six years, without any protest, he is stopped to claim the same at this belated stage that too after passing a period of limitation of three years.

8. As to the Right of respondent to change the category from Industrial to Non-domestic automatically, the respondent has placed on record copy of tariff order for the years 2021.2022, passed by Hon'ble DERC. Relevant Provision 6 whereof is produced as under:-

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6. The valid Factory Licence shall be mandatory for applicability of Tariff under Industrial category:

Provided that in case where the Factory Licence has expired and its renewal application is pending with the concerned authority, the DISCOMs shall bill such consumers as per Tariff applicable under Non Domestic category;

Provided further that on renewal of the Factory Licence, the DISCOMs shall adjust the bills of such consumers as per applicable Tariff under Industrial category from the effective date of renewal of such Licence.

[Explanation - The Factory License for the purpose of applicability of industrial tariff shall mean the license or permission or authorisation or any other document issued or granted by Directorate of Industries or Ministry of Micro, Small and Medium Enterprises or MCD or any other Central or State Government Agency, as applicable, for running an Industry or Factory in respective field of operation.]


Persual of this provision shows that firstly for applicability of Tariff under Industrial category a valid factory license is must. Further, Ist Proviso thereof made it mandatory for the respondent to bill the consumer under non-domestic category in case the factory license has expired even if the application for renewal of the factory license is pending before the Competent Authority. However, IInd Proviso hereof further makes it mandatory for the respondent to adjust the bills as per Tariff under the Industrial Category from the effective date of Renewal of License. Meaning thereby the respondent is bound to refund the excess amount charged, by respondent under non-domestic category, during the pendency of the application for renewal from the very date the license is renewed.

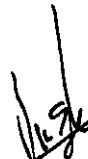




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9. On the basis of above said observations we are of the considered view that though complainant was entitled to get the industrial connection back and pay the bills as per industrial tariff. But there was carelessness/negligence on the part of complainant himself in not complying the letters of respondent dated 18.03.2014 by submitting the factory license after its renewal in time or thereafter prior to 2021. In this case maxim let the buyer beware applies. Hence, complainant has no right to claim any adjustment for any wrong committed by him, from the respondent, who had Bonafide done it as per law. We also find that there seems no negligence/exploitation/ill will on the part of respondent in not transferring back the industrial connection. Bonafide of respondent is also proved by the fact that as soon as complainant completed commercial formalities the connection was restored back to industrial category.
10. Hence, the complaint of the complainant is not maintainable and is accordingly dismissed.
11. No order as to the cost. Both the parties should be informed accordingly.
Proceedings closed.


(NISHAT AHMED ALVI)
MEMBER (CRM)


(P.K. SINGH)
CHAIRMAN
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