



CA No. 100990788
Complaint No. 48/2021

In the matter of:

Mohd AfsarComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

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

Appearance:

1. Mohd. Afsar, Complainant
2. Mr. Imran Siddiqi, On behalf of BYPL

ORDER

Date of Hearing: 18th June, 2021

Date of Order: 21st June, 2021

Order Pronounced by:- Mrs. Vinay Singh, Member (Legal)

Briefly stated facts of the case are that the respondent transferred dues of another connection in the bill of the complainant.

It is also his submission that respondent company transferred dues of one Abdul Rehman to his live connection having CA No. 100990788. He further submitted that he was guarantor at the time when Abdul Rehman got the connection released. He also stated that he forgot when he give the guarantee of Abdul Rehman and also did not know who Abdul Rehman is.

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On the basis of the details provided by the respondent, he himself searched for Abdul Rehman and found that he is doing business of parking and after the disconnection of CA no. 100931962, he got another temporary connection released at the same address in his name vide CA No. 350670801. Another meter with CA No. 100931962 is also installed at his residence in his name.

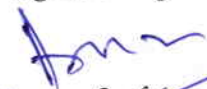


Complainant added that when two connections are available at his name then the respondent should recover dues from Abdul Rehman. Therefore, he requested the Forum to direct the respondent company for removal of transferred dues from his CA No.

Notices were issued to both the parties to appear before the forum on 29.04.2021.

Due to an upsurge in Covid-19 second wave hearings in the Forum could not be conducted during the period 20.04.2021 to 10.06.2021.

The respondent company submitted their reply stating therein that the complainant has challenged the transfer of dues of disconnected connection bearing No. 350150982 registered in the name of Abdul Rehman sanctioned for parking at Ramesh Park, Pushta, Samudai Bhawan, Laxmi Nagar Delhi to CA No. 100990788, registered in the name of complainant.

Respondent also submitted that transaction of dues transfer cannot be decided in summary manner and matter required details evidence. The transfer of dues took as per the law. The respondent carried out site inspection on 03.11.2020 and it was found that the disconnected connection was used for electrification of area situated at Ramesh Park, Pushta, Samudai Bhawan, Laxmi Nagar, being used for parking purposes.


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The said disconnected connection was sanctioned in the year 2011 on the guarantee of the complainant. As such outstanding dues of disconnected connection were sought to be transferred to the electricity connection registered in the name of the complainant in his capacity as guarantor. Accordingly, the complainant was issued show cause notice on 12.11.20, where he was intimated that dues of CA No. 350150982 are sought to be transferred to electricity connection registered in his name in his capacity as guarantor.

As complainant failed to reply or appear against the show cause notice, the dues were transferred again after verifying site position on 03.12.2020. Regarding the dues pertaining to disconnected connection the same are raised on downloaded reading.

Respondent further added that the complainant's other grievance pertaining to other connection in use by Abdul Rehman is of no consequence as it's a case of invocation of guarantee and guarantor cannot dictate terms regarding invocation of guarantee.

The matter was listed for hearing on 18.06.2021, when both the parties were present and respondent submitted that the complainant is guarantor and he has signed guarantee paper at the time of granting the connection. Dues transferred to the complainant are unjustified and not correct. Respondent will not recover it from guarantor. Complainant has also submitted the address alongwith the bill whose dues has been transferred. The respondent was directed to recover the dues from the original consumer. Matter was reserved for orders.

The respondent company submitted their additional submissions wherein they mentioned citations of various courts.

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The main issue in the present case is whether the dues are recoverable from the complainant or not.

We have gone through the submissions made by both the parties. From the narration of facts and material placed before us we find as under:

As per Electricity Act 2003, Section 48 which is narrated below:

A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept -
(a) any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;
(b) any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.

The above **section 48(b)** should be carefully noted that distribution companies can fix any term in their agreement to prevent economic loss in supply of electricity. Hence Discom is well empowered to get guarantor affidavit to **prevent any economic loss in temporary connection.**

Also, **DERC regulations section 18** stipulates that application for new connection is an agreement between utility and applicant. It also states that the agreement should not contravene Electricity Act 2003 and other rules and regulations. Now any agreement or contract should also comply the section 126 of Indian contract Act 1872 which ultimately explains the definition of guarantor and its liabilities in default of contract terms.

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In view of the above Regulations of DERC, it is clear that respondent can add clause regarding the profit in the business or to avoid any financial loses.

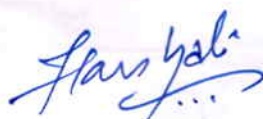
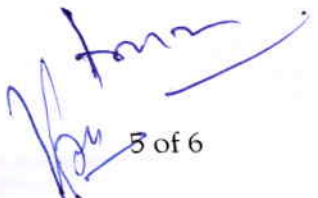
In **Jagannath Ganeshram A Garwala Vs. Shivnarayan Bhagirath and Ors. AIR (1940) Bombay 247**, a Division Bench of the Bombay High Court held that the liability of the surety is co-extensive, but is not in the alternative. Both the principal debtor and the surety are liable at the same time to the creditors.

In the present case the complainant i.e. Mohd. Afsar became guarantor of one Mr. Abdul Rehman, at the time of release of new connection. Respondent failed to recover the dues from Mr. Abdul Rehman and now have transferred the dues of the connection to the live connection of complainant (since he is guarantor).

After transfer of dues of Abdul Rehman to his live connection the complainant approached the respondent and submitted details of connections of Abdul Rehman which are still running and he is still a consumer of the respondent.

Thereafter, the complainant approached the Forum and matter was heard on 18.06.2021, where the Forum observed that there is negligence on the part of the respondent, as they should have recovered the dues from Abdul Rehman instead of complainant.

The respondent did not fulfill their duties of time realization of electricity dues and disconnection on non-payment as per provisions in regulations for very long time and didn't make any efforts to realize it from the consumer even when the details were provided to them by the complainant. The defaulter is still their consumer and living nearby which is clearly very serious lapses on the part of the respondent and also their action are arbitrary.



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In view of the above finding, we are of the considered opinion that the complainant is the guarantor or not that is the question of trial, but complainant has provided the address and connection detail of the two connections of Abdul Rehman to the respondent and Abdul Rehman is still consumer of the respondent and alive, therefore guarantor has no role in recovery of dues in the present case. Respondent has every right to recover the dues from Abdul Rehman and respondent can also take legal action or can file recovery proceedings against Abdul Rehman for recovery of dues as provided in the Act.

Now, we direct the respondent as under


- The respondent should revert back the dues transferred to the live connection of the complainant.
- The respondent is directed to recover the dues from Abdul Rehman, main user of the electricity, still alive and consumer of respondent who is still enjoying electricity through other two connections in his name.

The case is disposed off as above.

No order as to the cost. A copy of this order be sent to both the parties and file be consigned to record room thereafter.

The order is issued under the seal of CGRF.

The compliance should be reported within 30 days. The order is issued under the seal of Consumer Grievance Redressal Forum (BYPL).


(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN