



Consumer Grievance Redressal Forum

FOR BSES YAMUNA POWER LIMITED

(Constituted under section 42 (5) of Indian Electricity Act. 2003)
Sub-Station Building BSES (YPL) Regd. Office Karkardooma,
Shahdara, Delhi-110032
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SECY/CHN 015/DRNKS

C A No. Applied For
Complaint No. 361/2023

In the matter of:

Suman & Others

.....Complainant

VERSUS

BSES Yamuna Power Limited

.....Respondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat Ahmed Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. S.R. Khan, Member (Technical)
5. Mr. H.S. Sohal, Member

Appearance:

1. Mr. Imran Ul Haq Siddiqi, Counsel of the complainant
2. Ms. Ritu Gupta & Mr. Akshat Aggarwal, On behalf of BYPL

ORDER

Date of Hearing: 30th May, 2024

Date of Order: 11th June, 2024

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

1. The present complaint is a joint complaint by four complainants namely Suman, Manoj Nagpal, MS Komal Rajput and Lokesh, in respect of CA no's 153771033, 150903351, 153213077 and 152640143 belonging to them, thereby complaining that the OP has transferred, dues of a disconnected connection bearing no. 100000095 of one Sh.

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Rakesh Gupta on all four consumers on pro-rata basis, out of total sum of Rs. 13,56,008/-, illegally and wrongfully without following due procedure of law, which they are not liable to pay. As per complaint the complainants were granted new connections by the OP after completing all due procedure as per Regulation. At that time OP did not claim alleged dues. The complainants have prayed for removal of that alleged dues and issuing correct bills.

2. OP in its reply states that a connection vide CA No. 100000095 installed at premises no. 507, GF, Maharathi Colony, Ram Lila Ground, Jwala Nagar, Delhi-110032, in the name of one Rakesh Gupta, was disconnected on 02.09.2008 for non-payment of outstanding dues in a sum of Rs. 13,56,008/-. Later on the complainants got new electricity connections in this very premise, by showing a different number bearing premises no. 49/2-B/3, Jawala Nagar, Shahdara, Delhi, by fraud, to bypass the formality of clearance of outstanding dues as required before seeking new connection. It was only on 30.06.2023 when the subject premises were visited by the officials of OP that they found nine meters bearing numbers 70275033, 55373735, 55373736, 55373734, 55373737, 11329096, 11978216, 11463802 & 70038837 installed in place of disconnected connection. The fact, that this very premise are actually premises no. 507, GF, Maharathi Colony, Ram Lila Ground, Jwala Nagar, Delhi-110032, came to the knowledge when its officials found a name plate, by the name Suman and Naveen Kumar, depicting their address as 507, GF, Maharathi Colony, Ram Lila Ground, Jwala Nagar, Delhi-110032. On this revelation all the nine consumers were served with notices dated 03.07.2023 and 06.07.2023.

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There being no response of notices, OP revisited the subject premises on 24.07.2023 and found that the said nine meters were still existing there and providing electricity to the disconnected connection. Therefore, all the nine consumers were issued show case notices against this supply to disconnected connection. That too were not responded to and finally outstanding of disconnected connection was transferred on all the nine connections on pro-rata basis. As per OP complainants are liable to pay the transferred dues under Regulation 52 (3) of the DERC (Supply Code and Performance Standards) Regulations 2017. OP also states that even otherwise being subsequent occupier/purchaser of the subject premises the complainants are liable to pay the same.

3. In rejoinder to the reply the complainant challenged that outstanding due as claimed by the OP, stating that apart from copy of bill of disconnected connection and a calculation sheet (Excel prepared manually on computer), OP has not been able to tell as to when this disconnected connection was installed in the said premises and what was the meter number of the said disconnected connection so installed in the Ground floor of the subject premises. Rejoinder further states that the calculations sheet filed by OP is bogus and incomplete which starts from 04.10.2004 with outstanding dues of Rs. 1,37,380/- and no previous details of these dues has been provided by OP and without the complete details the said dues cannot be justified in the eyes of law and are not recoverable. Rejoinder further states that the outstanding dues pertain to a commercial connection of 52 KW which were illegally transferred on domestic connections of complainants. Against the allegations of

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concealing premises no. 507 by the complainants at the time of getting new connections, the rejoinder states that while applying, complete documents of the premises were submitted, by the complainants which clearly shows that 507 and 49/2-B/3 are the new and old numbers of this premise. Besides, OP's officials visited the premises of the complainant's in pursuance of their applications for new connections and checked commercial as well as technical feasibility of the applied connections and did not find any pending dues on the applied premises and granted the connections. Rejoinder also states that the connection was disconnected in the year 2008 but no action to recover this huge outstanding was taken by the OP for so many years. Not only this between 2013 and 2022, OP released nine connections without raising any issue of such outstanding dues. Rejoinder also denied receipt of alleged notices and following of dues process of law in transferring the outstanding by the OP.

4. In support of their respective contentions both the parties placed on record copy of bill of disconnected connection, excel sheet, K.No. file by the OP and the sale deeds of consumers of live connections.
5. Heard and perused the record.
6. Record shows that premises bearing no. 507 and 49/2-B/3 and 49/2-D/3 are the numbers of one and the same premises i.e. the subject premises. Regarding outstanding dues of disconnected connection complainant questioned validity of existing outstanding of

disconnected connection, pleading that required documents to prove the same are lacking. However, complainant is also not able to prove that these dues are not outstanding against disconnected connection.

Thus the outstanding dues certainly pertain to the subject premises of the complainants. The only question we have to determine is as ~~due to~~ ^{whether} at this belated stage the outstanding of disconnected connection has legally been transferred on the connections of the complainants or not. Going through the pleadings we find that OP transferred the dues of disconnected connection on the complainants' connections alleging that they were supplying electricity to the disconnected connection. Hence liable to pay the outstanding dues under Regulation 52 of the DERC (Supply Code and Performance Standards) Regulations 2017. Regulation 52 stipulates as follows:

52. Prevention from Unauthorized Reconnection:-

- (1) The consumer shall not reconnect its supply unauthorisedly from the system of the Licensee or from the live connection of any other consumer.
- (2) In case the consumer indulges in unauthorized reconnection from the system of the Licensee directly, the Licensee may initiate action as per provisions of Section 138 of the Act.
- (3) In case the consumer indulges in unauthorized reconnection from the supply of any other consumer, the Licensee may initiate action as per provisions of unauthorized use of electricity against such consumer who has provided the supply:

Provided that the pending dues of disconnected connection shall be transferred to the account of consumer allowing such connection.

As per this Regulation, it relates only to the live connections of the consumers who after disconnection of a connection start supplying energy to the disconnected connection. Those live connections generally happen to be of other consumers, to supply energy to disconnected connection, by way of illegal extension.

7. But here is a different case. OP claims that the complainants got these live connections installed, by concealing premises no. of disconnected connection. Therefore, OP was not able to claim outstanding of disconnected connection at the time of release of new connection. If this plea is considered then contention of illegal extension as raised by the OP goes and the said transfer of dues cannot be covered under the provisions of Regulation 52 of the DER (Supply Code and Performance Standards) Regulations 2017.

Now we have to find out as to whether the complainants are liable to pay the transferred dues being subsequent purchaser/occupier. If we go through the Regulations concerned. Regulations 10 & 11 of DER (Supply Code and Performance Standards) Regulations 2017 deal with new connections. Sub-Regulations 5 of Regulations 10 specifically states that new connection shall be given only after outstanding dues of the premises are duly paid.

Further regulations 11 (1) (iv) & (v) are also relevant which stipulates as under:

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11. New Electricity Connection:-

(iv) The Licensee shall indicate all the deficiencies in the application form to the applicant in one go only and shall not raise any new deficiency subsequently.

(v) In case the Licensee fails to intimate the applicant about any deficiencies in his application on the spot or within the stipulated 2 (two) days in case of online application, as the case may be, the application shall be deemed to have been accepted by the Licensee on the date of receipt of the application.

8. Thus as per aforesaid Regulations, not only this that the outstanding dues are must to be cleared prior to grant of new connection but also OP has to indicate all deficiencies in one go and cannot raise any other deficiency later on. In the present case on grant of new connections, OP did not claim outstanding as deficiency and granted connection without getting cleared the outstanding dues of disconnected connection. Reason for this OP states that complainants played fraud by showing premises no. as 49/2-B/3 of the subject premises and concealed the actual no. 507 of the same. In this respect perusal of complainants' document i.e. sale deed shows that 507 and 49/2-B/3 are simultaneously specified therein as old and new numbers of the same property. Thus there is no concealment of premises numbers as alleged and OP can't be allowed, to claim that the first due as per Section 56 (2) of Electricity Act 2003 starts from the date of knowledge of concealment of address and, to claim that OP has raised this issue within limitation period of two years as stipulated under section 56 of the Act.

This bar of limitation shall not apply only if OP proved that it has complied with conditions, of the sum due, being continuously shown in the bills as recoverable arrears of charges for electricity supplied, as per this Sub-Section, which OP has failed to prove. In this reference another Provision is under Regulation 42 (2) of DER (Supply Code and Performance Standards) Regulations 2017, which deals with recovery of arrears.

42. Recovery of Arrears:-

- (1) The Licensee shall indicate all outstanding amounts whatsoever on account of demand note, assessment bills, interest or Late Payment Surcharge, as the case may be, till the date of bill raised etc. separately as arrear in the regular bill.
- (2) If a demand is raised on the consumer through a separate demand note, assessment bills etc. and the same remains unpaid, shall be included in the regular bill within next two billing cycles and the same shall be continued to be reflected in each bill unless paid. Provided 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.
- (3) The Licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest or Late Payment Surcharge, as the case may be, at the rates applicable for delayed payments from the date on which such payments became due.
- (4) Subject to Section 56 (2) of the Act, if the consumer fails to remit the amount of arrears with interest or Late Payment Surcharge, as the case may be, by the due date indicated in the bill or in the

demand notice, the Licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions.

Thus as per Proviso of sub-Regulation 2 of Regulation 42, if the outstanding dues are not reflected continuously as recoverable in the bill, the licensee shall forfeit its right to claim or recover outstanding dues.

9. On the basis of the aforesaid findings, we are of the considered view that as on date OP can't claim the outstanding dues of disconnected connection of CA no. 100000095, earlier installed in the complainants premises, being barred under section 56 (2) of the Electricity Act 2003 and after forfeiting its right to claim or recover the outstanding dues as per Proviso to Sub-Regulation 2 of Regulation 42 of DERC (Supply Code and Performance Standards) Regulations 2017.

10. However, during the course of hearing, the OP relied upon Judgment of Hon'ble Supreme Court of India in the matter of K.C. Ninan Vs Kerala State Electricity Board & Others decided on 19.05.2023. Upon analysis of law on the subject and while dealing with the aspect of liability of purchaser to pay outstanding dues, the Supreme court examined the Provision of Section 56 of the Electricity Act 2003 and held that the power to initiate recovery proceedings for filing a suit against the defaulting consumer is independent of the power to disconnect electricity supply as a means of recovery under section 56 of Electricity Act 2003. As also ruled by this Judgment and various other judgment of Supreme Court, electricity dues are statutory dues and there is no limitation to recover the same through Civil proceedings.

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ORDER

The complaints are allowed by this common order. OP is directed to withdraw the dues of Rs. 13,56,008/- transferred on live connection vide CA no. 153771033, CA no. 150903351, CA No. 153213077 and CA No. 152640143 of Ms Komal Rajput, Irfan Khan/ Suman, Manoj Nagpal/Pushpa and Lokesh, respectively the consumers, at pro-rata basis and correct/revise the bills accordingly.

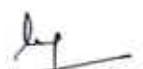
OP is further directed to file compliance report within 21 days from the date of this order.

The case is disposed off as above.

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


(S.R. KHAN)
MEMBER-TECH


(P.K. SINGH)
CHAIRMAN


(P.K. AGRAWAL)
MEMBER-LEGAL


(NISHAT AHMAD ALVI)
MEMBER-CRM


(H.S. SOHAL)
MEMBER