


IN THE MATTER OF KULDIP SOBTI Vs BSES YPL, C.G. No.
66/2021

ORDER

The two Members of the Forum have given similar opinion which is different from the opinion of the Chairman (Passed the order). Hence, the majority decision shall prevail. Matter is decided and ordered as per majority decision.


... 27.8.21
(HARSHALI KAUR)
MEMBER (CRM)


27.8.21
(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN



C A No. 100072475
Complaint No. 66/2021

In the matter of:

Kuldip SobtiComplainant

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. Mr. Sunil Malhotra, Counsel for the complainant
2. Mr. Imran Siddiqi & Ms. Shweta Chaudhary, On behalf of BYPL

ORDER

Date of Hearing: 23rd August, 2021

Date of Order: 27th August, 2021

Order Pronounced by:- Mr. Arun P Singh, Chairman

Briefly stated facts of the case are that respondent raised bills on the basis of 36 KW load despite complainant's repeated requests for load reduction from 36 KW to 11 KW.

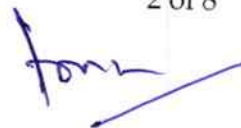
It is also his submission that CA no. 100072475 installed at his premises bearing no. 28/8, Neeti Villa, East Patel Nagar, Opposite DDA Park, New Delhi-110008, having sanctioned load of 11 KW. He further submits that the said premises were let out to M/s Panchratna Thaal, vide registered lease deed dated 01.05.2017, the tenant vacated the said premises on 30.10.2017. During the short

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period in which the said tenant remained in occupation and possession of the said premises, the complainant was sent a letter dated 27.07.2018 mentioning therein that the load of the said electricity connection had been increased to 36 KW. The complainant was receiving the bills at enhanced load of 36 KW which he was duly paying. The tenant had already vacated the premises and further the MDI was showing only 1 KVA. Complainant brought to the notice of respondent for reduction of sanctioned load to 11 KW but respondent did not paid any heed to his multiple complaints on different dates.

He further submitted that a demand to the tune of Rs. 2,93,750/- was raised by the respondent and thereafter on non-payment of said dues his supply was disconnected. Complainant wrote letter to respondent on 08.09.2020 for re-installation of electricity connection as well as for reduction of load. The complainant was advised for apply for a new electricity connection, thereafter, he did as advised and was asked to pay Rs. 60,182/- against CA No. 100072475. The complainant made the payment of Rs. 60,200/- on 21.10.2020, thereafter a fresh electricity connection was sanctioned in the name of complainant vide CA no. 100074467. Thereafter another bill amounting to Rs. 2,71,720/- was raised by the respondent the complainant also made the payment of the said bill under protest on 06.11.2020. Thereafter, a message was received from the department that a sum of Rs. 17,408.73/- was payable, same was also paid by the complainant.

To the surprise of complainant, he received a bill for Rs. 5,66,580/- with due date 01.04.2021, the billing period in the bill was shown as 03.01.2019 to 11.11.2020 in respect of earlier CA No. 100072475, sanctioned load 36 KW. Another bill for the period 12.11.2020 to 06.03.2021 in respect of CA No. 100072475 was received for an amount of Rs. 7,99,560/- wherein sanctioned load has been mentioned as 36 KW and MDI as 24 KVA. The complainant therefore, requested the Forum to direct the respondent company that the demand of Rs. 7,99,560/- be quashed as the same is contrary to the Regulations.



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He also requested the forum to restrain the officials of the respondent from disconnecting the installed at said property. Also, the excess amount paid by the complainant be refunded/adjusted in the future bills.

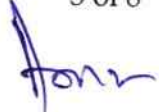

Notices were issued to both the parties to appear before the Forum on 30.07.2021.

The respondent submitted a settlement letter between the complainant and the respondent stating therein that the demand raised by the respondent, the applicant wants to settle the case of court and on approaching the respondent; they have agreed that complainant will pay Rs. 5,25,000/- in full and final settlement of the dues raised by BYPL. The complainant made payment of Rs. 3,22,000/ through cheque and balance Rs. 2,03,000/- would be paid by the complainant in instalments.

The matter was listed for hearing on 30.07.2021, when complainant filed one letter dated 26.07.2021, regarding out of court settlement. But the Forum is of the opinion that both the parties should file their affidavit of settlement before the next date of hearing as per settlement provision, i.e. CGRF Regulations 17 (2), 2018.

The respondent also submitted an affidavit submitting therein that the bill of the complainant has been revised as per settlement and copy of the revised bill amounting to Rs. 208330/- is attached herewith. Respondent also submitted calculations details of the revised bill alongwith affidavit.

The matter was again heard on 06.08.2021, when it was observed that as per the last orders of the Forum dated 30.07.2021, the complainant has to file one affidavit regarding settlement, but has not filed yet. One more opportunity was given to the complainant to file his affidavit before 20.08.2021. Respondent was also asked to file the complete details and account statement with details of payment made by the complainant including LPSC. MRI/MD data will also be filed by the respondent.

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The complainant submitted his affidavit in the Forum on 10.08.2021, stating therein that the matter has been settled between him and respondent and he is ready to pay a total sum of Rs. 5,25,000/- in respect of demand raised by respondent. He made payment of Rs. 3,22,000/- through cheque.

The respondent has raised a final bill for a sum of Rs. 2,08,330/- and against this sum he has paid Rs. 25,000/- on 04.08.2021. Remaining amount would be paid by the complainant in six monthly instalments of Rs. 25,000/- each. And the last installment would be paid for an amount of Rs. 33,330/-.

Both the parties have submitted affidavits for the settlement as required under **Regulation 17 (2) of DERC (Forum for Redressal of Grievance of the consumer and Ombudsman) Regulations, 2018, reproduced below:**

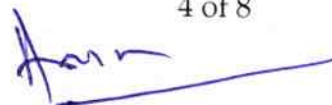
17. Reasoned Orders

(2) Reasons are to be recorded if the final orders are passed on the basis of settlement arrived at between the parties:

Provided that the settlement arrived at between the parties shall be submitted through affidavit.

A look at this settlement indicates that main request of the complainant regarding load reduction has not been accepted and the bill revision has been done on the basis of meter reading and therefore waiver of LPSC amount, that is in order but the respondent did not correct the erroneous demand due to load enhancement done in July 2018 due to deficient meter reading and violation of provisions in the Regulations for load enhancement, thus the complainant has apparently accepted the settlement under desperation as in spite of his continuous persuasion/efforts, the respondent did not redress his genuine grievance even in almost three years and if we also ignore it, and approve the settlement, it shall be failure of CGRF mechanism itself.

The main issue in the matter is that the respondent revised the sanctioned load of the complainant's electricity connection CA No. 100072475 w.e.f. 03.06.2018 (billed in July 2018) from 11 KW to 36 KW vide their notice BYPL/2017-18/MDI/LE-SLD/CA-100072475 dated 04.05.2018 mentioning that maximum



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demand recorded during four consecutive months in the FY 2017-18, are mentioned hereunder:

1. 25.22 KW during the billing period 03 May 2017 to 02 June 2017
2. 47.32 KW during the billing period 03 June 2017 to 01 September 2017
3.KW
4.KW

The provisions of the **Regulations 17 (4)** of DERC Regulations are given below:

17 (4) Review of sanctioned load/contract demand by the licensee:

- (i) For revision of sanctioned load or contract demand as the case may be, the Licensee shall take the highest of average of Maximum Demand readings recorded as per billing cycle covering any four consecutive calendar months in the preceding financial year i.e. from 1 st April to 31st March, rounded off to the lower integer as described in the illustration:

Provided that the period for billing cycle shall not exceed the period specified in these Regulations: Provided further that the minimum sanctioned load shall be 1kW. Illustration (a):- -Sanctioned load in preceding financial year : 4kW -Highest of Average of MD readings : > 4kW and < 5 kW -Rounding off for revised sanctioned load : 4 kW
Illustration (b): - -Sanctioned load in preceding financial year : 4kW - Highest of Average of MD readings : > 6kW and < 7 kW -Rounding off for revised sanctioned load : 6 kW
Illustration (c): - -Sanctioned load in preceding financial year : 4kW -Highest of Average of MD readings : > 3kW and < 4 kW - Rounding off for revised sanctioned load : 3 kW

- (ii) If the computed revised load pursuant to sub-clause (i) above exceeds the sanctioned load or contract demand as the case may be, the Licensee shall issue a separate notice to the consumer about the proposed increase in sanctioned load or contract demand. The notice

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shall contain the details of the exact readings in the consecutive billing cycle(s) taken into consideration along with details of enhanced security deposit and the differential Service Line cum Development (SLD) charges in case of change of service line, if any, for such increase in sanctioned load or the contract demand, as the case may be, in accordance with the Act to be deposited by the consumer within 30 (thirty) days from the date of receipt of notice.

- (iii) In case of domestic category consumers, if the computed load pursuant to sub-clause (i) above is less than the sanctioned load or contract demand as the case may be of the consumer, the Licensee shall seek the consent of the consumer for load reduction through a separate notice to the consumer, giving details and information that his maximum demand is less than the sanctioned load or contract demand: Provided that for domestic category consumers, having the sanctioned load upto 5kW in the last billing cycle of preceding financial year, if no communication is received from them within expiry of 30 (thirty) days from the date of the receipt of notice, the load shall be reduced automatically; and for domestic consumers having sanctioned load more than 5kW in the last billing cycle of preceding financial year, the load shall be reduced only on receipt of consent from the consumer.
- (iv) A separate notice for upward or downward revision of sanctioned load or contract demand as the case may be, shall be issued by 31st May of the financial year. No notice for upward revision shall be issued thereafter during the year.
- (v) In case a notice for downward revision pursuant to sub clause (iv) is not issued by 31st May, the Licensee shall pay compensation to the affected consumer as specified in Schedule - I of the Regulations, without prejudice to the right of consumer to reduce the load which shall be effective as per sub clause (vi) below.


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- (vi) The upward or downward revision of sanctioned load or contract demand as the case may be, shall be done once in a financial year and shall be made effective from 1st July of the financial year.
- (vii) If the load is enhanced by the Licensee pursuant to subclause (ii), the request for any load reduction shall be entertained only after expiry of 6 (six) months from the date of enhancement of load.

Accordingly the Licensee/Respondent was duty bound to give exact readings in the consecutive billing cycles, which could have been easily ascertained by MRI, but the respondent enhanced the load of averaging two reading only which is clear willful violation of the provisions in the Regulations. "In the absence of exact readings, benefit has to be passed on to the consumer and maximum demand for those months shall be taken as sanctioned load/contracted load i.e. 11 KW, thus load enhancement w.e.f. July 2018 shall be limited to 23 KW only." The respondent also ignored the repeated request of the complainant for reduction of load which was permissible w.e.f. December 2018/January 2019 under **Regulations 17 (3) of DERC Regulations 2017 reproduced below:**

17 (3) Load reduction on the request of consumers:

- (i) The Application for load reduction shall be accepted only after six months from original energisation for connections up to 100 KW, and 1 (one) year from original energisation for connections above 100 KW. Subsequent application for load reduction shall be accepted once in six-months or after lock-in period of 6 (six) months pursuant to Regulation 17(4)(vii), as the case may be.
- (ii) The applicant shall apply for load reduction to the Licensee in the format prescribed in the Commission's Orders.
- (iii) The Licensee, after verification, shall sanction the reduced load within 10 (ten) days from the date of acceptance of such application.
- (iv) The load reduction shall be reflected from next billing cycle.

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- (v) If the effective date of load reduction falls between the billing cycles, the Licensee shall raise the bill on pro-rata basis during that billing cycle.
- (vi) The reduction of load shall be limited to the highest of average of any 4 (four) consecutive months maximum demand readings of last 12 (twelve) months.
- (vii) If the load reduction is not sanctioned 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.

Accordingly we direct the respondent as under:-

1. That to revise the sanctioned load against CA No. 100072475 of the complainant to 23 KW w.e.f. July 2018 and give credit of excess demand/fixed charges charged 13KW \times 250KVA per month \times 37 (months) (July 2018 to July 2021) = Rs. 1,20,250/- (Rupees one lac sixty six thousand five hundred only) alongwith additional security/SLC amount charged. The demand of the consumer for last 2-3 months is 25-26 KW; hence you may charge additional fixed charges as per the tariff order.
2. That, modify the programme for system-generated notices under Regulation 17 (4) for review of sanctioned load for exact readings of demand. For fairness please also review the cases of other consumers affected by this incorrect program.
3. Presently the downloading reading does not include the cumulative maximum demand (CMD) and count (N); so you are directed to ensure MRI in case monthly reading download is missed due to any reason so that correct reading bills are issued.

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.

(HARSHALI KAUR)
MEMBER (CRM)

(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN

**DISSENDNG NOTE OF MEMBER (LEGAL) IN THE MATTER
OF KULDIP SOBTI Vs BSES YPL, C.G. No. 66/2021**

In the present complaint the complainant has filed the complaint before the CGRF on dated 31.03.2021 and before the first hearing of the complaint. Both the parties' respondent and complainant had settled their issue regarding the energy charges and dues out of court settlement. And the date of first hearing complainant has filed withdrawal cum settlement letter before the CGRF. The CGRF has not conducted any hearing in the present complaint and not hear any of the party. During the first hearing the Forum asked as per CGRF Regulation to file an affidavit of settlement which was done out of the court and fixed for the second date 06.08.2021 for filing affidavit by both the parties. Respondent has filed the affidavit on very next date of the hearing and complainant seeks one more date for filing an affidavit due to some unavoidable circumstances. The complainant has filed the settlement cum withdrawal letter and satisfaction of the complaint.

As per the CGRF Regulations Section 15 (15) The Forum may settle any grievance in terms of an agreement reached between the parties at any stage of the proceedings before it.

Forum has not conducted any hearing or any proceedings in the present case and neither the settlement arrived between the parties by the intervention of the Forum. On the first date of hearing the settlement cum withdrawal letter is filed before the Forum.

Dayawati Vs Yogesh Kumar of Delhi High Court by acting Chief Justice Geeta Mittal in the year 2017, it is decided "where settlement is permitted under any section or act it would be an ordered there and binding between the parties, then the proceedings will be disposed off on the terms of settlement and same is done by the Hon'ble High Court.

In the present case also the complainant has filed out of court settlement cum withdrawal letter and a satisfaction. He did not want to peruse the matter before the Forum.

As per CGRF Regulation 15 (15), it clearly indicates the Forum may settle any dispute or any grievance reached between the parties at any stage of the proceedings before it.

The Forum did not settle this dispute and it a settlement out of the Court and file a withdrawal before the Forum. The Forum has no right to intervene the terms of agreement as settled by both the parties (Complainant and Respondent) and no intervention on any stage regarding the settlement was done by the Forum.




Out of Court settlement occurs when two parties made an agreement on any claim without having a judge comes to the decision of the case. Generally out of court settlement allows one party to pay a sum of money to other party, and then other party will close their law suit. Mainly a settlement is lawfully binding agreement which end the case exclusive before going to the court, settlement is to enter into an agreement that is binding on both the parties detailing the terms of the settlement. It is possible to do an out of court settlement when a court case is going on in a court. However, most common base to reach a solution in dispute without having to go to court that is called "alternative dispute resolution."

238 the report on amendment of Section 89 of court of civil procedure "when it appears to the court that their existing elements of settlement agreement which ensure the court endeavor to facilitate out of court settlement through one of ADR. Law commission has also submits a report in this regard.

In the case Savita Chemicals Pvt Ltd., Vs Dyes and Chemical Worker Union & Ors. Supreme Court 1998 "settlement was a matter even if arising out of the settlement, was one consequence upon a settlement that is binding between the parties."

Kokkonem Vs Guardian life company of America of Supreme Court, "under accepted legal principle this settlement agreement is treated as a contract between the parties and enforceable on the same terms in the court.

My opinion is different from the opinion of Chairman (Member (Technical), once the matter is settled out of the Court, the Forum has no right to intervene the terms of settlement as decided by the parties out of court settlement. As above referred various references it is quite clear once the settlement was done between the parties and both are ready to follow it and their mutual consent is recorded in writing, so the term of settlement of the agreement cannot be amended or a fresh order in terms of the agreement will not be issued by the Forum. The Forum has only right to pass an order in terms of out of court settlement cum withdrawal letter as filed by the complainant and respondent.


(VINAY SINGH)

MEMBER (LEGAL)

IN THE MATTER OF KULDIP SOBTI Vs BSES YPL, C,G, NO. 66/2021
VIEW OF MEMBER (CRM)

In my considered view, the reasoning given by the learned Member (Law) are quite plausible. Hence, I concur with her arguments to come to the conclusion that the compliant has to be disposed off as per the settlement arrived at between the parties who have also affirmed it solemnly vide their respective affidavits filed on record.


... 27.8.21
(HARSHALI KAUR)

MEMBER (CRM)