

CA No. 101523884
Complaint No. 120/2021

In the matter of:

Ramaotar SharmaComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mrs. Vinay Singh, Member(Law)
2. Mrs. Monika Taneja, Member (CRM)

Appearance:

1. Mr. Deepak Goel, Counsel of the complainant
2. Mr. Jagatheesh Kannan, Ms. Ritu Gupta, Mr. Deepak Jain and Ms. Shweta Chaudhary, On behalf of BYPL

ORDER

Date of Hearing: 17th January, 2022

Date of Order: 20th January, 2022

Order Pronounced By:-Mrs. Vinay Singh, Member (Law)

Briefly stated facts of the case are that respondent raised electricity bill to the complainant amounting to Rs. 13,99,873/- after a gap of more than five years and thereafter disconnected his supply on non-payment of electricity dues.

It is also his submission that complainant is using electricity through CA No. installed at his sweets shop under non-domestic/commercial category. He was regularly paying electricity bills as generated by respondent till 2016. After

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March 2016, respondent stopped sending him bill, he regularly followed with the officials of the respondent but all went in vain. In the year 2019 the complainant again went to office of respondent but this time also respondent was not able to clear the situation of generating electricity bill. In the year 2020 due to Covid-19, complainant was not opening his shop and in January 2021 he again visited the office of respondent. On 07.01.2021, the officials of the respondent installed a new electricity meter at his shop.

Thereafter in the month of July 2021, to the utter shock of complainant he received disconnected notice dated 24.07.2021 and demanding to clear outstanding bill of Rs. 13,99,873/-. He again visited the office of the respondent and requested to waive off the bill as he was not getting any bills from their department but nobody helped him.

It is also his submission that earlier also he filed suit for declaration that the alleged electricity bill shall be declared as null and void and to restrain the BYPL for disconnecting the electricity but due to technical issues, the complainant withdrew said case with liberty to file afresh before appropriate court/forum. With the fear to avoid disconnection of electricity he paid Rs. 1,00,000/- through demand draft dated 04.09.21. But on 08.09.21, BSES officials disconnected his supply and raised him a bill of Rs. 14,06,220/- includes arrears of Rs. 9,61,969/- and LPSC of Rs. 4,49,254/- and other charges of Rs. 1433/-, which are outstanding since March 2016.

Therefore, he requested the forum to direct the respondent for restoration of his electricity supply and assessment of electricity bill of Rs. 14,06,220/- as per Section 56 (2) of the Electricity Act 2003. He also requested for any other relief which this Forum deemed fit.

Notices were issued to both the parties to appear before the Forum on 17.11.2021.



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Respondent company submitted their reply submitting therein that complainant prior to filing the present complaint, filed civil suit before and learned Civil Judge wherein the respondent had filed it written statements. The complainant filed urgent application pertaining to restoration of electricity supply through connection bearing CA No. 101523884. On the said application the matter was listed before Learned Mediator where the parties appeared. During the mediations proceedings plaintiff was duly explained that as the dues outstanding pertained to regular consumption bill and were not towards theft bill as alleged by him. As such respondent can only waive 50% of LPSC and may further give rebate by accepting the balance payment in 4-5 instalments. The complainant insisted that he be given further rebate and further that the payment be accepted in installments of smaller denominations which were not acceptable to the respondent as such matter was sent back to court from the mediation centre as unsettled. The matter was again taken up on next date of hearing on 26.10.2021, where complainant in surreptitious manner withdrew the case with liberty to file the fresh one.

Respondent also submitted that Section 56 of the Electricity Act and its interpretation. Reference in this regard be made to Judgment tilted as "M/s Prem Cotex vs Uttar Haryana Bijli Vitran Nigam Ltd. & Ors." passed by Hon'ble Supreme Court of India on 05.10.2021, wherein the Judgment of **Rehmatullah Khan** as relied upon by the complainant is distinguished. The Hon'ble Supreme Court has held that even if the bills are not raised on regular basis and are raised later or to say that the bills pertained to escaped period then also the electricity connection can be disconnected under Section 56 on raising the bill for escaped period and issuing the disconnection notice. Thus, even if it is presumed that the complainant did not receive bills from March 2016 till July 2021 then also on receipt of the bill dated 06.07.2021 of Rs. 14,06,220/- with due date as 21.07.2021 and disconnection notice dated 24.07.2021, the respondent had all the right to disconnection the electricity which was finally disconnected on 08.09.2021.

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The interpretation given to proviso (b) of Section 56 (1) by the complainant is on the fact of it wrong. The said Section is quoted herein below:

Section 56 (Disconnection of supply in default of payment) :- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electricity supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

- (a) An amount equal to the sum claimed from him, or
- (b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

Whichever is less, pending disposal of any dispute between him and the licensee...."

The matter was listed for hearing on 17.11.2021, when complainant was present along with his counsel. Complainant was directed to deposit 50% of Rs. 4,58,740/- (total outstanding without LPSC by way of Bank Draft. Respondent was asked to reconnect the supply within three working days after the deposit of the said amount.

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The matter was again heard on 01.12.2021, when as per the last directions of the Forum to the complainant for depositing 50% of Rs. 4,58,740/- of the total outstanding without LPSC. But, complainant did not deposit the amount and raised that bill is incorrect/wrong and also seeks some time to file the details of incorrect billing. Respondent is also allowed to file any documents/written submissions in respect of the case.

The complainant submitted his written submissions reiterating therein his original complaint and also asked for compensation for financial loss suffered to the complainant due to no electricity in the seasonal time of Dusherra and Diwali in the SWEET SHOP of the complainant. Complainant further submitted that respondent has never sent a single bill to the respondent since March 2016 as they were facing some technical issues in generating the bill of the complainant and the same fact can be proven from the fact that the whenever complainant visited the respondent office to complain, the respondent used to reply that first a new meter will be installed in your premises then only they can sent the electricity bill to the complainant and thereafter, the respondent installed new meter on 07.01.2021 and only after that complainant started to receive bill and to utter shock the bills were of huge amount.

The matter was heard on 07.12.2021, but the coram was not complete, decision could not be taken.

The matter was again heard on 17.01.2022, when Forum viewed that as the Forum's order of hearing dated 17.11.2021, where the complainant was directed to deposit 50% of the total outstanding bill without LPSC i.e. Rs. 4,58,740/- has not been complied with by the complainant. Thereafter, the matter was listed for hearing on 01.12.2021 and till 17.01.2022; the complainant failed to follow the orders of the Forum and has not deposited the 50% of the total bill amount.

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Respondent was also directed to submit account statement within three working days. Arguments were heard and matter was reserved for orders.

There are two main issues in the present complaint, which are

- Are the dues recoverable from the complainant?
- Is Section 56(2) applicable in this complaint 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 that the complainant made complaint in the Forum that he had not received bills from March 2016 till July 2021. After perusing the account statement submitted by the respondent the bills are being regularly generated by the respondent. The complainant made last payment on 23.02.2016 for Rs. 6010/-. It is also evident from the account statement that even prior to 2016 the complainant was regular defaulter in making bill payments. Following are the details of the bill amount of the complainant financial year wise:

FINANCIAL YEAR	BILL AMOUNT
2016-2017	2,17,313.61
2017-2018	2,87,432.10
2018-2019	2,86,944.64
2019-2020	2,86,378.14
2020-2021	2,51,170.77
April 2021 till December 2021	2,39,939.42

The account statement of the complainant's connection also shows that the respondent has not raised any bill during the lockdown period i.e. from April 2020 till June 2020. Thereafter, in the year 2021 for the period February 2021 till May 2021 the consumption of the complainant is very less as compared to previous year's consumption pattern.

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Also, as per DERC Guidelines, fix charges of the lock down period has also been adjusted in the bill of November 2020.

The complainant also approached Hon'ble Senior Civil Judge, North-East Distt, Karkardooma, where the complaint submitted by complainant nowhere mention that he was not receiving the bills for a period of almost five years. In his complaint, the complainant mentioned that respondent conducted a raid at his premises and raised him a bill of Rs. 14,06,220/-.

Two different statements at two different courts show ill-intentions of the complainant. Complainant also gets into settlement with the respondent through Learned Mediator, but later on withdrew his complaint from the Court.

Section 56 (2) of the Electricity Act is not applicable in the present as decided by Hon'ble Supreme Court in the matter "M/s Prem Cotex vs Uttar Haryana Bijli Vitran Nigam Ltd. & Ors." passed by Hon'ble Supreme Court of India on 05.10.2021, wherein the Judgment of Rehmatullah Khan as relied upon by the complainant is distinguished. The Hon'ble Supreme Court has held that even if the bills are not raised on regular basis and are raised later or to say that the bills pertained to escaped period then also the electricity connection can be disconnected under Section 56 on raising the bill for escaped period and issuing the disconnection notice.

Complainant is an educated person and living without paying electricity bills and now denying paying the electricity dues. So, Section 56 (1) and 56 (2) of the Electricity Act 2003 are not applicable in the present matter.

As above, we are of the considered opinion that the dues are on the premises and complainant is owner of the entire premises and he needs to pay all the

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dues pending at the premises. As decided by Hon'ble High Court and Supreme Court in many cases that the electricity charges cannot be waived off as decided by High Court of Delhi on 02nd March 2009 in the matter of Izhar Ahmed Vs. BSES Rajdhani Power Limited which is narrated below:-

"The intent of such a regulation is to ensure that electricity companies do not have to run around to recover their dues and any person who applies for re-connection makes payment of all dues including surcharges and payment of fraudulent abstraction charges before grant of new connection or reconnection of said premises."

In BSES Rajdhani Power Limited Vs Saurashtra Color Tones Pvt. Ltd. &ors., 2006, Delhi Law Times page no. 213, stated as under:


Electricity is public property. Law in its majesty benignly protects public property and behoves everyone to respect public property. No doubt dishonest consumers cannot be allowed to play truant with the public property but inadequacy of the law can hardly be a substitute for overzealousness.

- We are of opinion that the complainant is liable to pay the energy dues consumed by him amounting to Rs. 9,23,959.92/- till November 2021.
- The respondent is also directed to waive off entire LPSC amounting to Rs. 5,04,941.66/-.
- Also, as per **Section 49 of DERC Supply code 2017**, if the complainant wants instalments, respondent is directed to allow four equal instalments to the complainant.

The case is disposed off as above.

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


(MONIKA TANEJA)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)