



C A No. 100996112
Complaint No. 53/2020

In the matter of:

Rajesh Kumar SharmaComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

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

Appearance:

1. Mr. Rajesh Kumar Sharma, Complainant
2. Mr. Imran Siddqi & Ms. Ritu Gupta, On behalf of BYPL

ORDER

Date of Hearing: 01st February, 2021
Date of Order: 02nd February, 2021

Order Pronounced By:- Mr. Arun P Singh (Chairman)

Briefly stated facts of the case are that the respondent added Rs. 27700/- as arrears in the bill month of July 2020 and also sent him a disconnection notice.

It is his submission that he had paid all the bills till June 2020, suddenly, in the bill for the month of July 2020 respondent added an amount of Rs. 27700/- as arrears without any explanation and then he approached respondent but received no satisfactory reply.

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Thereafter, the complainant filed writ petition in Hon'ble High Court and same was decided on 31.08.2020 in which stay on disconnection for granted for one week and also directed to file a complaint with CGRF-BYPL. Therefore, he requested the Forum to direct the respondent for removal of illegal dues transferred to his account so as to enable him to continue paying his genuine consumption bill.

Notice was issued to both the parties to appear before the Forum on 05.10.2020.

The respondent submitted their reply stating therein that an amount of Rs. 28868.32/- was added on account of transfer of dues. It was also their submission that on 12.02.2020, site verification was carried out at the premises of the complainant. On site visit it is found that premises bearing no. 12/433, Block-H, No.5, Sabarkar, Shakarpur, wherein one disconnected electricity connection bearing no. 100868360 existed in name of Kamla Devi, was now providing electricity through meter no. 55223414 i.e. the live connection which was only for first floor of the property. The said connection of Kamla Devi was disconnected on 27.04.2011 on account of outstanding dues of Rs. 28868.32/- . Accordingly, registered consumer of live connection i.e. the complainant was served notice dated 13.02.2020, and was asked to stop illegal extension failing which the outstanding dues would be transferred to live connection in term of Regulations 52 (3) of Supply code 2017.

Respondent further added that a re-inspection was also done on 03.03.2020 and again illegal extension was found. Another show cause notice dated 15.06.2020 was sent to complainant, where he was asked to attend personal hearing on 29.06.2020, but the complainant failed to attend the personal hearing. As such dues were transferred on 30.06.2020.

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The matter was heard on 05.10.2020, when the Forum ordered that the amount of Rs. 27,700/- will be kept in abeyance and supply of the complainant should not be disconnected till the final orders of the Forum.

On hearing dated 18.11.2020, the complainant was directed to pay the current dues of the connection. Both the parties were directed to find an amicable settlement.

Respondent submitted their additional submissions stating therein that present submissions are limited to the point of rising of misuse bill or to say bill on account of unauthorized use of electricity (UUE) in respect of CA NO. 100868360 (which is already disconnected) registered in the name of Smt. Kamla Devi. The said connection was sanctioned for domestic purpose but was used for commercial purpose as such under Section 126 of the Electricity Act 2003, a case of UUE was made out. In terms of Section 126, a bill for approximately one year i.e. from April 2009 till April 2010 was raised for misuse and thereafter bills were raised on misuse tariff as the misuse continued.

The complainant also filed his written submissions, wherein he submitted that he is regularly paying bills against CA No. 100996112. In accordance with limitation Act 1963, no claim of recovery of money shall be entertained after the expiry of limitation period which is three years as prescribed by law. Hence, the claim made after 10 years is completely illegal and liable to be rejected. The dues against CA No. 100868360, in the name of Kamla Devi, at 12/433, Shakarpur, Delhi pertains to different address lying on the backside road of the complainant's property, which has been physically divided for more than 20 years and the said property is closed for almost 10 years.

Matter was finally heard on 01.02.2021, when arguments of both the parties were heard and matter was reserved for orders.

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

The respondent has tried to recover dues against CA No. 100868360 in the name of Kamla Devi, permanently disconnected on 27.04.2011 (after removing the meter on 29.10.2010) from the complainant, who owns a portion of the property where the connection in the name of Kamla Devi was installed by way of Dues Transfer and disconnection notice issued almost after ten years from the date these dues became first due against Kamla Devi. Hon'ble Supreme Court in Civil Appeal no. 1672 of 2020 (arising out of SLP (Civil) no. 5190 of 2019) titled Asstt. Engineer (D1) Ajmer Vidyut Vitran Nigam & Ans Vs Rahamatullah Khan alias Rahamjulla has concluded that

"If the licensee company to be allowed to disconnect electricity supply after the expiry of the limitation of two years after the sum became first due, it would defeat the object of Section 56 (2) (of the Electricity Act)" Section 56 (@) of the Indian Electricity Act is as under:-

56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Thus the action of the respondent to recover dues of April 2011 in the year 2020 by way of threatening disconnection of supply to the complainant was unfair and unlawful.

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Scrutiny of account statement submitted by the respondent for CA No. 100868360 in the name of Kamla Devi, shows that the respondent continued to raised bill at the double of tariff rates for four months after assessment for the period 07.04.20019 to 21.04.2010 under section 126 of the Act (for UUE-actual usage in different category than the sanctioned one - in the present case commercial use on domestic connection), which in our opinion is wrong as the licensee is not authorized to allow UUE even if consumer agrees to pay at double/triple rate. They should have disconnected the connection immediately as per Regulations 60 of DERC, Regulations 2007, which is reproduced below:-

60. Default in payment of assessed amount or installments thereof.

In case of default in payment of the assessed amount whether in full or in agreed installments as the case may be, the Licensee shall, after giving a fifteen days' notice in writing disconnect the supply of electricity, remove the meter and service line.

This issue has also been clarified in Regulation 55 (7) of the DERC Regulations 2017 as under

"In case the UUE is finally established, the licensee shall change the category of supply of the consumer from the date of Inspection and shall raise the bill as per normal applicable tariff."

Hence the due shown against CA NO. 100868360 in the name of Kamla Devi are not as per the tariff order and provisions in Regulations. It appears the same was revised and the respondent accepted the payment of Rs. 8120/- in September 2010 (as shown in the account statement). The complainant has also attached a copy of final (disconnected) bill for supply of electricity for CA NO. 100868360 showing payable amount as NIL (Annexed at sl. No. 5 in the complaint). Otherwise also, provisions for recovery of arrears in the DERC Regulations 2017 are as under:-

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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.*

Accordingly the licensee has forfeited its right to claim or recover the more than nine years old outstanding dues against CA No. 100868360.

Further, as per records submitted by the respondent, the connection having CA No. 100868360 in domestic category was energized on 01.01.1990 in H.No. 45, 12/433, Block Savarkar, Shakarpur, Delhi-110092. This connection was permanently disconnected on 27.04.2011 after removing the meter on 29.10.2010. At the time of inspection by the respondent in 2020. This property

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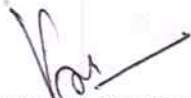
had been sub-divided in three portions with three live connections CA No. 100996112 in the name of complainant. CA No. 100958740 in the name of Devendra Kumar and CA No. 101031950 in the name of Suresh Kumar Gupta. Under these circumstances notice of extension of supply by the complainant to the non-existent connection CA no. 100868360 (permanently disconnected on 27.04.2011-nine years ago), is frivolous and incorrect and liable to be quashed.

On the basis of the above analysis and facts, the respondent is directed to withdraw the dues transferred to the complainant's electricity connection CA no. 100996112, amounting to Rs. 27,700/- (Rupees twenty seven thousand seven hundred only) alongwith charged LPSC amounts and provide revised bill within two weeks 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.


(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN