



\$~15

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 25.07.2023

+ W.P.(C) 1640/2014 & CM APPL. 3420/2014

RAJEEV SHARMA

..... Petitioner

Through: Mr. B.P. Agarwal, Advocate.

versus

TATA POWER DELHI DISTRIBUTION LIMITED

..... Respondent

Through: Mr. Manish Srivastava, Mr.
Santosh Ramdurg, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

%

1. The writ petitioner has filed the present writ petition under Article 226 of the Constitution of India, against bills raised by the respondent for supply of electricity amounting to ₹ 14,16,520/-, and orders dated 28.02.2013 and 19.12.2013, passed by the Consumer Grievance Redressal Forum ["CGRF"] and the Electricity Ombudsman respectively, on his complaints.

2. The petitioner was a tenant in the premises *No. A-248, DSIDC Industrial Area, Narela, Delhi-110040*. The premises had an electricity connection in the name of his landlord, Mr. Vishal Jain under C.A. No. 60008422549. It appears that the meter was changed several times. A new meter was installed on 15.06.2011, which was also found to be

Signature Not Verified

Digitally Signed By: SHITU
NAGPAL
Signing Date: 27.07.2023
19:14:23

W.P.(C) 1640/2014

Page 1 of 8



defective on 23.12.2011. The respondent, thereafter, raised the impugned charges upon the petitioner for the period 22.06.2011 to 22.12.2011 for consumption during the period the meter was defective.

3. The only contention raised by Mr. B.P. Agarwal, learned counsel for the petitioner, before this Court is that a meter reading had been taken in the interregnum on 04.08.2011, when no allegation of defect in the meter was brought to the notice of the petitioner. It is, therefore, submitted that the disputed levy, if at all, can only be made for the period from 04.08.2011 to 22.12.2011.

4. The petitioner approached the CGRF, constituted under Section 42(5) of the Electricity Act, 2003 [“the Act”], which passed the impugned order dated 28.02.2013, upholding the contention of the respondent with regard to defect in the meter, but recomputing the amount payable by the petitioner. Before the CGRF, the petitioner’s grievance was with regard to the finding of defect in the meter, and not with regard to the period for which the impugned levy was made.

5. The petitioner carried the matter to the Electricity Ombudsman established under Section 42(6) of the Act, in appeal. At this stage also, the ground now raised was not agitated. The Ombudsman *vide* the impugned order dated 19.12.2013, upheld the decision taken by CGRF, *inter alia*, with the following observations:

“ **** **** ****

It appears that the First meter (no.02082434) was energized at the premises on 16.02.2004. This was replaced on 27.01.2005 due to DERC's requirement of installing Lag only configuration meters. The Second meter (no.04261480) lasted from 27.01.2005 to 15.06.2011 and was found faulty/burnt due to higher load reaching upto 60 KW as

Signature Not Verified

Digitally Signed By: SHITU
NAGPAL
Signing Date: 27.07.2023
19:14:23

W.P.(C) 1640/2014

Page 2 of 8



against the 8 KW sanctioned. The Third meter (no.51005473) lasted from 15.06.2011 to 23.12.2011 and was also found faulty this time with one phase current reported missing. The Fourth meter (no.51003657) was also burnt and lasted from 23.12.2011 to 27.03.2012. The Fifth meter (no.52014181) installed on 27.03.2012 was functioning normally. During this period, the consumer requested for load enhancement on 09.04.2012 which was allowed for 61 KW and the meter was replaced on 05.06.2012. Finally, the Sixth meter (no.93403058), which is still functioning as on date, had its load further enhanced upto 83 KW from 06.05.2013. The details of the meters changed and the reasons for replacement with some remarks are available in the attached Annexure 'A'.

At various points in the repeated changed of meters, the consumer was being billed amounts either based on readings or based on the estimated consumption as provided in the DERC Supply Code and Performance Standards Regulations, 2007. The CGRF has gone into the details of the different billings carried out and has come to the conclusion that the appropriate Regulations were followed at different points in time, for different periods related to each meter as it malfunctioned. They have not found any serious flaw in the action taken and have ordered the payment of the revised bill of Rs.14,07,125/-.

The above facts show that the functioning of the industrial unit over the years happened in the background of increasing electrical load which was initially at 8 KW. Repeatedly, the meters appear to have either got burnt or become faulty on about four occasions due to what appears to be a high electrical load. It is only after the installation of the fifth meter in March, 2012 that the consumer moved for load enhancement in April, 2012 which has resulted in the sixth meter, with enhanced load, functioning satisfactorily so far. The load was, further, enhanced from 06.05.2013 as mentioned above and the MDI has reportedly even touched 118 KW subsequently. The DISCOM should take appropriate action to address this issue as well under the appropriate Regulations.

Given this backdrop, the consumer cannot really raise issues about the meters going out of order and object to the estimated bills delivered to him. It is seen from the orders of the CGRF that the periods used for preparing estimated bills under different meters have been the appropriate ones as provided in the Regulations and are even favorable to the Consumer given his consumption pattern....

Signature Not Verified

Digitally Signed By: SHITU
NAGPAL
Signing Date: 27.07.2023
19:14:23

W.P.(C) 1640/2014

Page 3 of 8



*The point raised by the consumer that some extra amounts have been added to the bill given to him in pursuance of the CGRF's orders are fresh issues which he needs to take up with the CGRF again if there is a basis for it. **In so far as this office is concerned, no major flaw has been pointed out in the order of the CGRF.** Adequate time has elapsed since the passing of the CGRF order, and the granting of the stay by this office, to enable payment by the Complainant in installments. It is presumed that the Complainant has been making payments of current and old bills over this period of time. In any case the 1/3rd payment made as part of the procedure for filing this appeal will stand adjusted in the pending amount. In any case, the DISCOM can, and should, allow him a reasonable period of time in terms of installments. No specific time period has been requested and none is being fixed here. The DISCOM must bill him the amount specified in the CGRF order only. Any further amounts will have to be billed separately. The Complainant is free to approach the CGRF for this, if he is still not satisfied with the DISCOM's response.*

It is clear from the above that the DISCOM has been remiss in taking prompt action from time to time which has resulted in inconvenience to the Complainant as he did not receive regular bills and had to pay estimated bills, thus creating uncertainty in his mind. Further, he had to approach the CGRF as well as the Ombudsman to resolve the matters. Given the inadequate response of the DISCOM and the inconvenience caused thereby, it is considered appropriate that an amount of Rs.50,000/- should be paid by the DISCOM to the Consumer. With this the CGRF's order is upheld and the appeal is dismissed.”¹

6. Under the aforesaid order of the Electricity Ombudsman, the respondent was directed to pay ₹50,000/- to the petitioner, which has undisputedly already been done.
7. As recorded above, the only contention now raised by the petitioner is that charges for the period the meter was defective can only be levied for the period after the last meter reading. In response to this contention, Mr. Manish Srivastava, learned counsel for the respondent,

¹ Emphasis supplied.



states that checking and testing of meters is not within the domain of meter readers. He submits that in terms of Regulation 43 of the Delhi Electricity Supply Code and Performance Standards Regulations, 2007 [“2007 Regulations”] (which were in force at the relevant time)², the consumer is to be billed for the period the defective/stuck/stopped/burnt meter remained on site, subject to a maximum of six months, based on the estimated energy consumption, on the basis of the consumption pattern for the period of twelve months prior to the period during which the meter remained defective. Mr. Srivastava points out that the respondent’s original bill was calculated on a different basis, and the petitioner’s challenge thereto was accepted by the CGRF and the Electricity Ombudsman. At that stage, the petitioner himself sought assessment in terms of the 2007 Regulations, which he now seeks to assail.

8. The contention of the parties require reference to three provisions of the 2007 Regulations:

a. Regulation 37(i) of the 2007 Regulations provides as follows:

“37. Reading of meters. –

*(i) The meter shall be read once in every billing cycle. It shall be the duty of Licensee official reading the meter to check condition of LEDs (light emitting device) on electronic meters. **In case E/L LED indicator, provided on electronic meters, is found ‘ON’ he shall inform the consumer that there is leakage in the premises and advise him to get his wiring checked and leakage removed.** He shall also inform concerned district manager about the leakage.”³*

² Repealed on 17.08.2017 vide the Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 (Notification No. F. 17(85)/Engg./DERC/15-16/5109/999).

³ Emphasis supplied.



- b. Regulation 38 of the 2007 Regulations deals with the testing of meters. As far as slow meters are concerned, the provision for payment of difference due to defect in the meter, is in Regulation 38(f) of the 2007 Regulations, which reads as follows:

“38. Testing of meters. – *The Licensee shall conduct periodical inspection/testing and calibration of the meters as specified by the regulations framed by Authority in this regard, in the following manner:*

*(f) When the meter is found to be slow beyond the limits of accuracy, specified in the regulations framed by the Authority and the consumer does not dispute the accuracy of the test, the Licensee/consumer, as the case may be, shall replace/rectify the defective meter within fifteen days of testing. **The consumer shall pay the difference due to the defect in the meter at normal rates, based on percentage error, for a maximum period of not more than six months or less depending on period of installation of meter prior to date of test and up to the date on which defective meter is replaced/rectified.***

****⁴

- c. Regulation 43 of the 2007 Regulations provides for the manner of billing during the period defective/stuck/stopped/burnt meter remained at site:

“43. Billing during the period defective/stuck/stopped/burnt meter remained at site. –

*(i) **The consumer shall be billed for the period the defective/stuck/stopped/ burnt meter remained on site, subject to a maximum of six months, based on the estimated energy consumption by taking the consumption pattern of the consumer for the twelve months prior to the period during which the meter remained defective.** The amount already paid by the consumer for the period meter remained non-functional or defective, shall be adjusted in this bill. The assessment bill shall be raised within two billing cycles from the date of changing the meter.*

⁴ Emphasis supplied.



(ii) In cases where the recorded consumption of past twelve months prior to the date meter became defective is either not available or partially available, the consumption pattern for the next twelve months after the installation of new meter would be used for billing purposes.

(iii) In case, the Maximum Demand Indicator (MDI) of the meter at the consumer's installation is found to be faulty or not recording at all (unless tampered), the demand charges shall be calculated based on maximum demand during corresponding months/billing cycle of previous year, when the meter was functional and recording correctly. In case, the recorded MDI of corresponding month/billing cycle of past year is also not available, the average maximum demand recorded for the next six billing cycles after changing the meter shall be considered.”⁵

9. Mr. Agarwal's contention proceeds on the basis that taking of a meter reading *per se* implies that the meter is in order, and free from defects. I find no warrant for such a presumption in the 2007 Regulations. It is clear from Regulation 37(i) of the 2007 Regulations that the meter reader is obliged to inform the consumer in the event the E/L (Earth Leakage) LED indicator, provided on electronic meters is found 'ON' and there is leakage, so that the consumer can get the wiring checked and get the leakage removed. No other duty of testing or checking of meter beyond that appears to be placed upon the meter reader. The provision for "testing", as opposed to "meter reading", is provided in Regulation 38. Both Regulations 38(f) and 43(i) provide for a bill to be raised for a period during which there was a defect in the meter, subject to a maximum of six months. These are not qualified by any limitation as to the time the meter reading was last taken.

10. The bill in the present case, pursuant to orders of the CGRF,

⁵ Emphasis supplied.



relates to the period of six months, prior to the defect having been detected. This is in terms of the 2007 Regulations. In fact, even in the orders of the CGRF⁶ and the Electricity Ombudsman⁷, arguments on behalf of petitioner are noticed, that assessment must be in terms of Regulation 43(i) of the 2007 Regulations.

11. The factual situation regarding the defect in the meter has already been upheld both by the CGRF and the Electricity Ombudsman. Both the forums, in fact, granted partial relief to the petitioner in respect of the computation of dues from him. The factual findings in these two orders of statutory forums cannot be assailed in a writ petition, and Mr. Agarwal has also quite rightly not attempted to do so.

12. For the reasons aforesaid, I am unable to accept the argument of Mr. Agarwal that the period for which the impugned levy can be raised is only the period after the last reading of the meter. Such an interpretation is not borne out by an interpretation of the 2007 Regulations.

13. Accordingly, I do not find any merit in the present writ petition, which stands dismissed, alongwith the pending application.

PRATEEK JALAN, J

JULY 25, 2023/‘vp’ /

⁶ Order of the CGRF dated 28.02.2013, Annexure P-7 of W.P. (C) 1640-2023.

⁷ Order of the Electricity Ombudsman dated 19.12.2013, Annexure P-9 of W.P. (C) 1640-2023.