IN THE DELHI STATE CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Institution: 02.09.2023

Date of Hearing: 03.09.2024

Date of Decision: 21.11.2024

FIRST APPEAL NO.- 447/2023

IN THE MATTER OF

MR. PAWAN KUMAR,
3, KEWAL PARK EXTN.,
DELHI.

(Through: Hitesh Kumar Bagri, DSLSA Advocate)

…Appellant

VERSUS

NORTH DELHI POWER LIMITED,
GRID SUB STATION BUILDING,
HUDSON LINES, KINGSWAY CAMP,
DELHI-110009.

(Through: Mr. Paritosh Singh Rajput, Advocate)

…Respondent

CORAM:
HON'BLE JUSTICE SANGITA DHINGRA SEHGAL (PRESIDENT)
HON'BLE MS. PINKI, MEMBER (JUDICIAL)

Present: Appellant in person along with Mr. Hitesh Bagri, DSLSA, counsel for the Appellant.
Mr. Paritosh Singh Rajput, counsel for the Respondent.
Mr. Harish Purohit, AR of the Respondent.

PER: HON'BLE JUSTICE SANGITA DHINGRA SEHGAL, PRESIDENT

JUDGMENT

1. The facts of the case as per the District Commission record are as under:

> *"1…The complainant is seeking the direction to OP to revise the bill without LPSC, not to disconnect the electricity of supply and to pay the compensation of 50,000/- for causing mental pain and agony and harassment.*
>
> *2. In brief the facts are that the complainant is having electricity connection bearing no. K.No. 4500139567P. It is stated that a false and fabricated bill of Rs. 1,43,450/ was sent and complainant paid Rs. 1.80/- on 06.04.2004 before installation of new meter and therein compliance of old meter. It is further stated that old meter was removed on 08.03.2005 and there was no dues and new meter was also installed on the even date. The complainant paid Rs. 280/- on 07.06.2005 that was the first bill of new meter. It is further stated that thereafter OP did not sent any bill and complaint was made on 01.08.2005 vide receipt no. 92. Thereafter, a bill of Rs. 83,650/- in the month of June, 2006.*
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> *3. It is stated that at the house and one shop that is in commercial building is there also a commercial connection in the name of Ms. Usha Rani K.No. 36305041006A was*

removed on 2007. (It is stated that an application made on 28.12.2006 vide receipt no. 060729726 for correction of the bill Another application made at Keshav Puram vide receipt no. 73 dated 21.08.2007 and a complaint also made in this regard. On 17.08.2007 again complaint was made at Keshav Puram office vide receipt no. 23 and copy also sent to CEO, Kingsway Camp on 27.09.2007.

4. It is stated that Mr. Pankaj Kumar came at the house of the complainant for load checking on 27.09.2007 and told that total consumption is only of 211W and a report was given on that vary date and he assured to the complainant that consumption of 211W has been registered in the computer. It is further stated that prior to 17.08.2007 load was checked by Sh. Nagpal but report was not given. Thereafter, complainant meet to Mr. Nagpal who sent some electrician from NDPL to check the load so the inspection was done at once and complainant was in NDPL office but no report was given. The complainant paid Rs. 831 of current bill of July, 2007. Thereafter, OP did not accept the current bill.

5. It is stated that on 19.10.2007 electrician from OP came to remove the meter and request was made not to remove the meter. Thereafter an application given to CEO Sh. T.D. Negi on 20.10.2007 and an application was also given to G.M. Mr. Ajay Narula on 20.10.2007 at Keshavpuram vide receipt no. 23.

6. Written statement filed by OP. It is stated that connection no. 45100139567 sent to Mr. Pawan Kumar complainant and installed at 3 Kewal Park extension for *domestic purpose having sanctioned load of 0.25 KW. It is stated that each and every payment made by complainant had not adjusted in the account as per statement of account. It is stated that meter installed against the above connection remained faulty/defective for the period from 24.07.2004 to 09.03.2005 and replaced on 09.03.2005 with a new meter. Thereafter, the assessment was made on the basis of base period-II, post-defective from 09.03.2005 to 02.05.2006 as per DERC guidelines which is quite justified and legal. It is stated that after replacement of the meter on 09.03.2005 bill revised by charging the actual consumption units up to 09.05.2005, the net assessment debit of Rs. 41,351.49/- was debited and raised in the bill. Therefore, the demand raised by OP for faulty/defective meter is quite justified and as per guidelines issued by DERC.*

7. It is stated that consumer is liable to pay total outstanding demand including assessment demand. It is further stated that bill dated August, 2007 was amount to Rs. 1,43,455/- including unpaid arrears of Rs. 1,20,606/ with proportionate LPSC and current demand of Rs.928/ of the month. It is stated that complainant is defaulter in making payment of the regular bills since June, 2005) as per statement of account and proportionate LPSC as per tariff rule imposed. It is further stated that in the office of OP details of assessment explained to complainant whenever he visited the office. It is stated that complainant is mentioning about the letter dated 01.08.2006 regarding the non receipt of bills but silent about the non-payments of bill since May, 2005 and same transpires chat after thought of the *complainant to avoid the legitimate dues. Moreover, complainant has made payment of Rs. 25,000/- against the bill dated September, 2006 vide cheque which was dishonored on presentation and same amount carry forward in the subsequent bill as per rule.*

8. It stated that on the request of complainant accuracy of meter was checked and result was found within permissible limits i.e. 1.5%. It is further stated that meter was again checked on 13.11.2007 and result was again found within permissible limit i.e. 0.71% and copy of accuracy check is filed on record. The bill of the complainant is correct and per actual consumption. It is stated that all the allegations made against OP are wrong and false therefore denied. It is stated that complaint is liable to be dismissed."

2. The District Commission after taking into consideration the material available on record passed the order dated **21.07.2023**, whereby it held as under:

"13. The complainant put up a case that his old meter was removed in 2005 and new meter was installed on the same date. He has another commercial connection in the name of Smt. Usha Rani having. K. No. 363050068 which was removed in the year 2007. However, he has not mentioned a single fact why his old meter was removed on 08.03.2009. According to OP the meter of complainant remained faulty/defective for the period 24.07.2004 to 2005 and replaced on 09.03.2005 with new meter. The OP according to DERC guidelines to assess the defective period

consumption charges of the base period from 09.03.2005 to 02.05.2006 of the new meter. Accordingly net assessment was made of Rs. 41,351.49/- and after all adjustments as per bill dated August, 2007 the due amount was 143445 including unpaid arrear of Rs. 120606/ with proportionate LPSC and current demand of Rs. 928/. According to OP complainant made a payment of Rs. 25,000/- against the bill dated September, 2006 which was dishonored. The specific allegation made against the complainant that as per statement of account complainant failed to make payment of bill of May, 2005 that after installation of new meter. The documents filed by OP with regard to accuracy check report dated 08.11.2007 and meter testing dated 13.11.2007 found that new meter has been functioning absolutely perfect. It is pertinent to mention here that during the course of proceedings OP filed a detailed report of the dues against the complainant and also the pattern of consumption of complainant from the year 2000 to 2007.

14. A detailed report filed by OP as per directions of the Commission which shows that since January, 2000 to 2003 there was no consumption recorded and average bill was raised. The reading of the electric meter started from March, 2004 and that meter was found to be faulty and changed on 08.03.2005. Since 09.03.2005 the regular reading taken. However, in September, 2005 the reading of 2558, 6565, January 3390 and March, 3610, May 2006 2371 there after the readings are within the range of 300 till 23.10.2007. The meter testing report filed on record dated 13.11.2007 shows that meter has been functioning properly.

15. According to the staternent of account filed by OP since 10.01.2003 to 08.03.2011 shows that whatever regular consumption bill paid by complainant are shows the adjusted against the dues. The statement also reflected that cheque of Rs. 25,000/- dishonored in September, 2006. Therefore, as per record the unpaid amount of Rs. 143455/- as per demand in the bill of August, 2007 includes the defective period charges on 41351/- of unpaid bill and LPSC.

16. On the basis of above observations and discussion we do not found any justification for giving direction for revise the bill where complainant himself defaulted making regular consumption bills and a cheque of Rs. 25,000/- was dishonored. The complainant remained silent with regard to the fact with regard to regular consumption has been recorded and regularly and correctly as per the new meter installed and the accuracy report and meter testing report established without new meter installed on 08.03.2005 has been perfectly functioning perfectly. Hence, the statutory demand against the regular consumption of complainant and assessment of defective meter readings are legal, justified and payable."

3. Aggrieved by the aforesaid order of the District Commission, the Appellant/Complainant has preferred the present appeal, contending that the District Commission has failed to consider the evidence filed by the Appellant. Further, the counsel for the Appellant submitted that the District Commission failed to observe that the Respondent engaged in unfair trade practices by issuing inflated bills and ignoring the regulations set by the

Delhi Electricity Regulatory Commission. Lastly, the counsel for the Appellant submitted that the Respondent has issued the revised bill in the year 2023, which includes penalties for the period when the present issue was sub-judice before the District Commission, which is unlawful and arbitrary and thus the Appellant cannot be attributed to pay the LPSC/Penalty for that period. Pressing the aforesaid submissions, the Appellant has prayed for setting aside the impugned order passed by the District Commission.

4. The Respondent, on the other hand, denied all the allegations of the Appellant and submitted that there is no error in the impugned order as the bill was raised after the assessment made by the officials for the period during which the meter was found defective. Pressing the aforesaid, the counsel for the Respondent prayed for the dismissal of the present Appeal.

5. The parties were directed to file written arguments and the same have been filed by the Appellant and the Respondent wherein the Appellant has reiterated the facts mentioned in the present Appeal and argued that the District Commission has failed to consider the clear deficiency of service on the part of the Respondent. On the other hand, the Respondent had argued upon the maintainability of the present case and relied upon the judgment passed by this Commission in ***FA/563/2013*** titled as ***"BSES Rajdhani Power Ltd. Vs. Baba Saheb Ambedkar Ashram"*** decided on ***27.01.2022.***

6. We have perused the material available on record and heard the counsel for the Appellant.

7. Before delving into the merits of the case, we deem it appropriate to adjudicate the maintainability of the present case as to ***whether the consumer commissions can entertain complaints against the power bills assessed under the Electricity Act.***

8. To answer this question, we deem it appropriate to refer to ***U.P. Power Corporation Ltd. and Ors. vs. Anis Ahmad reported in (2013) 8 SCC 491*** wherein ***Hon'ble Supreme Court*** has held as under:

"47. In view of the observation made above, we hold that:

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined Under Section 2(1)(o) or "complaint" as defined Under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the Assessment made by Assessing officer Under Section 126 or against the offences committed Under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" Under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service

provider has charged a price in excess of the price fixed by or under any law".

9. On this issue, the law is well settled by the Apex court, which has held that consumer courts cannot entertain complaints against power bills assessed under the Electricity Act or take action against power corporations and a complaint against the assessment made by the corporation is not maintainable before the Consumer Commission.

10. In the present case also, the electricity meter in question was found to be faulty from the period starting from 24.07.2004, till 09.03.2005 which was replaced with a fresh meter on 09.03.2005, and the billing was resumed, based on actual consumption recorded by the new meter. However, since the previous meter was found defective during that period, the charges were calculated according to DERC regulations. Therefore, the main issue in the present case pertains to the assessment made by Respondent for the period when the meter in question had remain faulty which has no nexus with the deficiency of service or unfair trade practice as alleged by the Appellant before the District Commission as well as before this Commission. Therefore, in view of the abovementioned dicta, the present case does not fall within the jurisdiction of Consumer Commission.

11. From the aforesaid discussions, we are of the considered view that the District Commission has failed to consider the maintainability of the present case while deciding the case on merits. ***Since, the consumer courts cannot entertain the complaints against power bills assessed under the Electricity Act, 2003, the present Appeal stands dismissed with no order as to costs.***

12. Further, the Appellant is at liberty to file the present case before the appropriate authority in accordance with law and shall also be entitled to claim benefit of the period spent during the proceedings before the consumer Commission for the purpose of limitation.

13. Application(s) pending, if any, stand disposed of in terms of the aforesaid judgment.
14. The Judgment be uploaded forthwith on the website of the Commission for the perusal of the parties.
15. File be consigned to record room along with a copy of this Judgment.

(JUSTICE SANGITA DHINGRA SEHGAL)
PRESIDENT

(PINKI)
MEMBER (JUDICIAL)

Pronounced On:
21.11.2024

LR-AJ