

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003
3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18
Gurugram (Haryana) 122015,
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Review Appeal No-193(R) of 2022

Date of Video Conferencing: 04.05.2023

Date of Order: 09.05.2023

M/s Bharat Sanchar Nigam Ltd.,
Puducherry.

.... Appellant

Versus

The Superintending Engineer com HOD,
Electricity Department,
Puducherry and others

.... Respondents

Parties present:

Appellant(s) Sh. Vijaya Karthic. V,
Divisional Engineer.

Respondent(s) Sh. K. Ramanathan,
Executive Engineer.



Date of Order: 09.05.2023

The Appellant has preferred a Review Appeal against the Final order of the Electricity Ombudsman in Appeal No.-180 of 2022 tiled M/s Bharat Sanchar Nigam Ltd vs Electricity Department-Puducherry. The Review Appeal was admitted on 28.03.2023, as Appeal No.193 (R) of 2022. Copy of the same as received was forwarded to the Respondents with a direction to submit their remarks/ counter reply on each of the points. The counter reply received from the Respondents was supplied to the Appellant for filing the Rejoinder, whose has filed the same.

(A) Submissions by the Appellant:

1. FACTS OF THE CASE: -

Detailed facts giving rise to the Review Appeal

- (a) The Hon'ble Electricity Ombudsman in the Order dated-26.12.2022 has directed the electricity Department, Puducherry (Respondents) to refund the one- third payment of Rs 1900925/- Paid by BSNL, but the same has not been received from the Electricity Department, Puducherry till date and the electricity Department, Puducherry has not honored the Order of the Hon'ble electricity Ombudsman.
- (b) The monthly invoice raised by the Electricity Department, Puducherry for the month of January 2023 and February 2023 are still reflecting the same data like BPSC, Outstanding arrears, etc. for period from Jan 1989 to till date.
- (c) The Electricity Department, Puducherry is refusing to accept the cheque payment presented by BSNL- Puducherry towards the monthly CC for policy No. 638842/AI.
- (d) Further, a letter was received from the Executive Engineer- Rural (North) O &M, Electricity Department- Puducherry (Licensee company) dated 09.02.2023 wherein, the licensee company is claiming Rs 35,22,166/- on account of omission of multiplication factor. The Electricity Department has unilaterally taken the liberty and adjusted the one-third payment of Rs 1900925/- paid by BSNL which has to be refunded as per the Electricity Ombudsman Order dated 26.12.2022. Additionally, the Electricity Department has threatened BSNL to pay an amount of Rs 18,15,020/-
- (e) Hence, suitable directions may be issued to the Electricity Department, Puducherry to –
 - (i) adhere to the Electricity Ombudsman Order dated 26.12.2022 (ii) to accept the cheques presented by BSNL, Puducherry towards the Monthly current Charges.
- (f) BSNL has filed the Rejoinder and submit as under: -
 - (i) The Appellant respectfully submits that, the Electricity Department, Puducherry (respondent) has dishoarded the decision contained in the

appeal No.180 of 2022 which has directed the respondent to refund the challenged Amount of Rs 19,00,925/- deposited by the appellant as explained in para- 6(h).

- (II) The final order in in Appeal No. 180 of 2022 has taken 15.03.2012 as date of first Dues. In view of Provisions of Section 56(2) of electricity Act- 2003 and section 7.40 of Supply code Regulations-2018 and the dictum of Hon'ble Supreme Court, the Period of limitation of two years commence from the date on which the charge became" First Due". The Respondents are barred by their own inactions to charge any dues from BSNL beyond two years from the date of first due i.e. from 15.03.2010.
- (III) BSNL, Puducherry was already paying the Electricity charges billed by the Electricity Department with a multiplication factor of 10, with effect from January 2011 i.e. from the month of APTS report.
- (IV) BSNL, Puducherry had obliged to the decision of the Hon'ble Electricity Ombudsman, and has requested to Electricity Department, Puducherry to refund the Challenged Amount of Rs 19,00,925/- after making adjustments for the period 15.03.2010 to 31.12.2010. (Enclosure – I).
- (V) Without considering the above facts and the decision of the Hon'ble Electricity Ombudsman in the Appeal no-180 of 2022, the Electricity Department, Puducherry (Respondent) has arbitrarily resorted to a claim of Rs 35,22,166/-.
- (VI) The Electricity Department Puducherry (Respondent) has unilaterally adjusted the challenges Amount of Rs. 19,00,925/- deposited by the Appellant, and resorted to additionally claim Rs 18,15,020/- which is in violation of the statutory provisions of the Electricity Act-2003, Supply code Regulations-2018 and Hon'ble Supreme Court Orders in apposite. (Enclosure-2).
- (VII) The monthly invoice raised by the Electricity Department, Puducherry for the month of December 2022, January 2023 and February 2023 are still reflecting the same data like BPSC, Outstanding arrears, etc. without implementing the Hon'ble Electricity Ombudsman decisions contained in the Appeal No. 180 of 2022. (Enclosure-3).
- (VIII) The JAO-Rev II, Electricity Department, Puducherry is refusing to accept the Cheque presented by BSNL, Puducherry towards the monthly CC of Policy No. 638842/AI contained in the Appeal No. 180 of 2022. A cheque for RS 1,16,247/- bearing No. 02415129 drawn on UBI was submitted in favor of junior Accounts Officers Revenue II Electricity Dept -Pondy. (Enclosure-4).
- (IX) The Electricity Department, Puducherry had earlier stated that the arrears of current consumptions charges were not traceable despite through search and the same was misplaced during the office shifting of Revenue-II Building. The respondent has not monitored the Multiplication Factor for Over 22 years till the APTS inspection. The Respondent admitted the fact

that omission of multiplication factor (10) was due to oversight of the electricity department. The responsibility of issuing correct bills lies with the respondent's organization and the respondent can't pass- on the liability on the Appellant organization for its callousness and negligence.

(X) The Electricity Department Puducherry is changing its claim on the policy No. 638842/Ai ever since the APTS report. It is pertinent to state that the respondent had arrayed to calculation of Rs 62,75,784/- initial claim in 2012, then the bills were revised to Rs 59,44,730/- in May 2013 then the claim was revised to a new amount of RS 53,94,693/- before the Hon'ble CGRF, Puducherry and then the claim was newly worked as disputed amount of Rs 51,21,438/- before the Hon'ble Electricity Ombudsman which clearly indicate that the claim of the Electricity Department , Puducherry Vide letter No.: 5356/ED/EE-R(N)/tech/F-BSNL/2022-23 dt. 09.02.2023 needs to be summarily rejected.

(XI) **The Appellant respectfully prays that:**

- (i) To refund the Challenged Amount of Rs. 19,00,925/- paid by BSNL, Puducherry after making adjustments for the period 15.03.2010 to 31.12.2010.
- (ii) To revise the monthly invoice implementing the Electricity Ombudsman Order dated 26.12.2022 and
- (iii) To accept the cheques presented by BSNL, Puducherry towards the monthly Electricity charges and thus render justice

(B) Submissions by the Respondents :

Shri. K. Ramanathan, working as Executive Engineer-Rural North O&M in Electricity Department-Puducherry, stated on oath as under: -

1. That the deponent is working as Executive Engineer, and is authorized by Electricity Department, Puducherry being Deemed Licensee vide letter no. 076/ ED/EE-R(N)O&M/ Tech/F-Omb/23-24 Date: 12-04-2023 (certified copy enclosed), to file this reply and represent on behalf of Electricity Department, Puducherry, in this case.

2. That para-wise counter reply are as under: -

- i) The Respondent respectfully submit that in compliance of the Final Order of the Hon'ble Electricity Ombudsman in Appeal No.180 of 2022, decision in para F(iii) and E 6(h) (c), the account of the appellant was revised after scrutiny of the monthly ledger records of the billing system. The Electricity Department fully honoured the order of the Ombudsman as per the decision under para F(iii) and as explained in para E- 6 (h) (c). The refund of challenged amount will arise only after adjustment of revised bill.



- ii) The Respondent respectfully submit that on scrutiny of the monthly ledger records of the computer billing system, it reveals that the meter reading is in consistence with 5-digit Havells Make Meter Sl. No.5774967 since August 1999. The continuous reading recorded in the billing system evident that the Havells Make Meter Sl. No.5774967 was in service since August 1999.
- iii) The Respondent respectfully submit that considering the above facts and in compliance of the Hon'ble Ombudsman order as per para-E- 6 (h) (c), the licensee company/ Electricity Department, has claimed additional demand beyond two years from the "first dues" and the short assessment worked out to Rs.35,22,166/- on account of omission of multiplication factor for the period from September,1999 to December 2010. After adjusting the challenged amount paid by the appellatant the net balance amount to be paid works out to Rs.18,15,020/-. The statement along with letter vide no.5356/ED/EE-R(N)/Tech/ F-BSNL/2022-23, dt.09-02-2023 has been issued to the appellatant and the compliance report also submitted to the Hon'ble Electricity Ombudsman vide no.5357/ED/EE-R(N)/Tech/ F-BSNL/2022-23, dt.10-02-2023.
- iv) The Respondent respectfully submit that the Appellant M/s. Bharat Sanchar Nigam Limited, Puducherry has not paid balance amount in order to revise the bill.
- v) The Respondent respectfully submit that the Electricity Department is ready to accept the payment for the undisputed period but the Appellant has not paid any amount. The Electricity Department has not refused to accept Cheque payment presented by the M/s. Bharat Sanchar Nigam Limited, Puducherry.
- vi) The Respondent respectfully pray the Hon'ble Electricity Ombudsman that the Appellant may be directed to make balance payment for the actual energy rightly consumed and utilized by them as per the decision and order of the Hon'ble Electricity Ombudsman and thus render justice.

(C) Orders of Electricity Ombudsman dated-26.12.2022 in Appeal No-180/2022 preferred for Review Appeal: -

DECISION: -



- (i) " For the reasons discussed above, the appeal of the Appellant is allowed without any cost.
- (ii) The orders in Complaint No- 100/2022 dated-22.08.2022 passed by the Learned CGRF-Puducherry are set aside.
- (iii) The account of the Appellant be revised for the period as applicable and as explained in para-6(h), above without levy of any late payment surcharge. The payment of of Rs.19,00,925/- as deposited by the Appellant with the Electricity Department as **Challenged Amount**, should be refunded after adjusting the amount of revised bill within 30 days from the issuance of this Order by e-mail, failing which the Respondents are liable to pay the interest at the Bank Rate declared by the Reserve Bank of India prevailing on the 1st of April for the year, payable annually.
- (iv) The Electricity Department/Licensee should submit a compliance report to the office of the Electricity Ombudsman on the action taken in this regard within **45 days** from the date of issue of this order by email.
- (v) Non-compliance of the orders of the Electricity Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Hon'ble Commission under the provisions of the Electricity Act, 2003.
- (vi) In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
- (vii) The appeal is disposed of accordingly."

(D) **Deliberation during e-hearing on 04.05.2023 :-**

1. Appellant's Submission:

- a. Sh. Vijaya Karthic .V-Divisional Engineer (outdoor) on behalf of the M/s BSNL, reiterated his version as submitted in the Review Appeal. He further submitted that Respondents have not implemented the decision in Appeal No-180/2022 in true spirit and have not refunded the balance amount out of Rs.19,00,925/-.
- b. He further submitted that Respondents are not accepting the current consumption charges since June,2022 till date and are insisting that full amount as per bill should be paid, which is against the decision of this court.

2. Respondent's Submission:

- a. Sh. K. Ramanathan -Executive Engineer for the Respondents reiterated his stand as submitted in the counter reply.
- b. He stated that they have implemented the decision of this court in totality and already intimated to the Appellant vide letter dated-09.02.2023 to deposit Rs.18,15,020/- after adjusting the amount of Challenged amount of Rs.19,00,925/-, which has not been paid yet.
- c. He declined that they are not accepting the current consumption charges and even their Junior Accounts Officer stated that they have not refused any payment. On being asked by this court regarding letter dated-03.03.2023 written by BSNL to Executive Engineer and copy of the Cheque no-02415129 dated-17.12.2022 submitted by BSNL in proof of their contention, the Respondents have no answer.
- d. On being asked by this court why the bill of December,2022 , January,2023 and February,2023 is showing Rs.47,95,992/-,Rs.49,40,854/- and Rs.50,90,023/- , respectively as arrears. He submitted that they have not corrected the bill as per decision of this court because the BSNL has not paid the amount of Rs.18,15,020/- as per letter dated-09.02.2023.
- e. On being asked by this court if every month, since 2011, the consumer/Appellant is required to visit the office of Asstt. Engineer/JAO office for acceptance of current month consumption charges, he replied in affirmative.
- f. On being asked by this Court, why surcharge is being levied on the disputed amount, even when the disputed amount was stayed in 2011 by Hon'ble High Court. He clarified that as per billing software, it is so and accordingly every month since 2011, the consumer/Appellant is required to visit the office of Asstt. Engineer/JAO office for acceptance of part payment/current month consumption charges. On further clarification, he confirmed that there is no column/row in the bill in which disputed amount can be reflected so that no BPSC (late payment surcharge) is levied on the disputed amount.

(E) Findings & Analysis: -

1. I have perused the documents on record, orders in Appeal No-180/2022 and pleadings of the parties.



2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The issues which have arisen for considerations in the present Appeal are as under: -
 - i. Whether the Review Appeal is maintainable or not?
 - ii. Whether the decision of this court has been truly interpreted and implemented correctly or not?
 - iii. Whether the Appellant is entitled for waivable of payment of BPSC (late payment surcharge) since June, 2022 as prayed for?
4. Regarding the issue no 3(i) as above, as to whether the Review Appeal is maintainable or not?

4.1 Following provisions have been provided in the Consumer Grievances Redressal Forum and Ombudsman Regulation-2019, notified by the Hon'ble Commission, regarding preconditions for Reviewing an order: -

(i) Section 37(8):-

"37(8)- The Ombudsman may, at any time, after affording an opportunity of being heard, review his Order, either on his own motion or on an application of any of the parties to the proceedings, within 30 days of the Order on –

(i) the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time the order was made;

(ii) on account of some mistake or error apparent from the face of record;

(iii) for any other sufficient reasons."

4.2 After passing the Final order on dated-26.12.2022, in Appeal No.-180/2022, this authority has become a "**functus officio**" and can Review the Appellant case, strictly as per above said Regulations of "Consumer Grievances Redressal Forum and Ombudsman Regulation-2019".

4.3 I have perused the order in Appeal No-180/2022 and its implementation by the Respondents vide their letter dated-09.02.2023 asking the Appellant (BSNL) to deposit Rs.18,15,020/- after adjusting the 1/3rd challenged amount of Rs.19,00,925/- paid by the them. In my opinion though the Electricity Department/Respondents have stated to have implemented the order but probably they have misunderstood/misinterpreted the judgement of Hon'ble Supreme Court order, in Civil Appeal No.1672 of 2020 titled Assistant

Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. Vs Rahamatullah Khan, which allow them to charge/claim the amount beyond two years. In this judgement, Hon'ble Supreme Court has held that Electricity Department can take recourse to any remedy available in law for recovery of the additional demand beyond two years from the "first dues", but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Electricity Act-2003. This clearly means that Respondents cannot recover beyond two years as per section 56(2) and therefore such an amount cannot be put in the bill for recovery. But the Respondents can take recourse to any remedy available in law for recovery of the additional demand beyond two years from the "first dues",

4.4 Therefore, in my opinion there are sufficient reasons, as required as per section 37(8)(iii) of the CGRF and Ombudsman Regulations-2019 to Review this Appeal to avoid miscarriage of justice.

5. Regarding issue no 3(ii) as above, as to whether the decision of this court has been truly interpreted and implemented correctly or not?

5.1 As explained in para 6(h)(c) of the order in Appeal No-180/2022, the judgement of Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 titled Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. Vs Rahamatullah Khan allow the Respondents to charge the amount beyond two years. Hon'ble Supreme Court has held that Electricity Department can take recourse to any remedy available in law for recovery of the additional demand beyond two years from the "first dues", other than as per section 56(2) of the Electricity Act-2003. This clearly means that Respondents cannot recover beyond two years as per section 56(2) and therefore such an amount cannot be put in the bill for recovery. But the Respondents can take recourse to any remedy available in law for recovery of the additional demand beyond two years from the "first dues". Therefore, in my opinion, Respondents have misinterpreted the orders in Appeal No-180/2022 by including additional demand in the bill for recovery.

5.2 Earlier in the Appeal No-180/2022, the Respondents were claiming short assessment on account of missing M.F. (multiplying Factor) since 1988. Now as per Review Appeal filed by the BSNL, the Respondents are claiming short

assessment on account of missing M.F. (multiplying Factor) since 1999. It means there earlier claim for short assessment for the last 10 years was frivolous and not maintainable as the disputed meter was not existing in 1988.

- 5.3 As elaborated in the orders in Appeal No-180/2022, the demand raised by the Respondents was first due on 15.03.2012. Therefore, the Respondents were entitled to recover the short assessment from 15.03.2010 to 15.03.2012 as per section 56(2) of the Electricity Act-2003. A perusal of the demand letter dated-09.02.2023 reveals that the Respondents have already rectified and recovered the short assessment of missing M.F. (multiplying Factor) from 15.01.2011 to 15.03.2012 (15 months). Therefore, only the short assessment from 15.03.2010 to 15.12.2010 (09 months) was required to be recovered as per section 56(2) of the Electricity Act-2003. Accordingly, as per the details provided by the Respondents vide demand notice dated-09.02.2023 the Respondents should have issued the first notice along with a revised bill as per Section-7.26 of the Supply Code Regulations-2018 for recovery of short assessment from 15.03.2010 to 15.12.2010 (09 months) amounting to Rs.3,49,199/- plus other applicable charges, after adjusting the 1/3rd challenged amount of Rs. 19,00,925/- paid by M/s BSNL and final amount should have been reflected in the regular bill from February, 2023 onwards for true and correct implementation of the orders passed in Appeal No-180/2022.
- 5.4 With regards to the recovery short assessment from September,1999 to February, 2010 (125 months), the Respondents should issue a second notice along with a revised bill as per Section-7.26 of the Supply Code Regulations-2018 for recovery of short assessment from September, 1999 to February, 2010 (125 months), amounting to Rs.29,36,839/- plus other applicable charges as per details provided by the Respondents vide demand notice dated-09.02.2023. If M/s BSNL refused to pay this account, then the Respondents are entitled to take recourse to any remedy available in law for recovery of this additional demand for 125 months. Therefore, this additional demand cannot be shown in the normal bill for recovery and no BPSC (late payment surcharge) is required to be charged in the regular bill



and consumer/Appellant is not required to visit the Respondents office for correction of the bills.

- 5.5 It is also true fact that regular bill reflects the true copy of the billing ledger and if this amount is not shown in the bill, its recovery cannot be ensured in future, due to routine transfer of the officers/officials. To overcome this problem the Respondents should introduce a separate cell/column say

Sub-Judiced amount/Disputed amount

in the regular bill,where any such Sub-Judiced amount or Disputed amount, can be reflected. No BPSC (late payment surcharge) or any other charge should be levied on this Sub-Judiced amount/Disputed amount, till the matter of its recovery is finally resolved by the due process of law. The Electricity Department cannot take coercive measures to recover this amount through normal bill or disconnection of supply.

- 5.6 Therefore, in view of above submission, in my opinion the decision of this court in Appeal No-180/2022 has been misinterpreted and not truly and correctly implemented by the Electricity Department-Respondents.

6. Whether the Appellant is entitled for waivable of payment of BPSC (late payment surcharge) since June,2022 as prayed for?

6.1 Following provisions have been provided in the Supply Code Regulations- 2018,as notified by the Hon'ble Commission, regarding revision of the bills: -

"7.26 If the complaint is found to be correct by the Licensee, a revised bill shall be issued within 5 working days of intimation of the same to the consumer. The consumer shall make the payment within 15 days after receipt of the revised bill. The consumer shall not be charged any late payment surcharge, if the payment is made by the revised due date."

6.2. As explained in para-5 above, the Respondents have not implemented the orders in true and correct spirit. The short assessment was stayed by the Hon'ble High Court of Madras in 2011 and the Respondents were not only reflecting the disputed stayed amount in the bill, but were also charging BPSC on the stayed amount. Therefore, every time, the bill is issued, any consumer/Appellant is required to visit the Respondents office for correction of current month bill and

allowing part-payment. The Respondents are following this irregular practice since -2011 or even before that. The monopoly approach of Respondents in accepting the part-payment at their whims and fancies cannot be ruled out. The Appellant has submitted the copy of the letter dated-03.03.2023 to the Executive Engineer regarding non-acceptance of current monthly charges/undisputed amount. The Appellant has even submitted the copy of the cheque number 02415129 dated-17.12.2022 for Rs.1,16,247/-, in favor of the Junior Accounts Officer, which was not accepted by the Respondents. Had the Respondents introduced a separate cell/column in the bill for disputed amount, normal bill could be generated and there will be no harassment to the Appellant/consumers in running from pillars to post to get the bill corrected for part payment.

6.3 The Appellant has proved through documentary evidence that Respondents were not accepting the current bills and Respondents could not produce any documentary evidence to counter this claim of the Appellant.

6.4 Therefore, till the time the Respondents truly and correctly issue a revised bill as per orders in Appeal No-180/2022 and this Review Appeal No-193(R)/2022, no BPSC should be levied.

6.5 Otherwise the Appellant is free to deposit the monthly current consumption charges by Registered post, if the Respondents refused/delayed the correction/acceptance of part-payment of the current bill. After the payment of monthly current consumption charges, it should be confirmed by Registered post/email to the concerned office of the Respondents to avoid payment of BPSC on the current bills (undisputed amount) and for records.

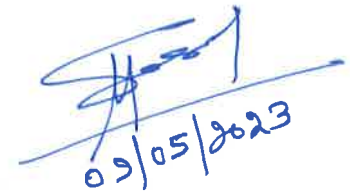
(F) DECISION

1. For the reasons discussed above, the Appeal of the Appellant is allowed without any cost.
2. The Respondents/Electricity Department should implement the orders passed in Appeal No-180/2022 and this Review Appeal No-193(R)/2022 in letter and spirit.
3. The Respondents/Electricity Department should not charge any BPSC till the submission of a revised bill in compliance of orders passed in Appeal No-180/2022 and this Review Appeal No-193 (R)/2022.



4. The Respondents/Electricity Department should introduce a separate cell/column in the bill/billing software within 30 days, which can be called Sub-Judiced amount or Disputed amount, so that no BPSC/any other charge is levied on such amount till the matter is finally resolved by the due process of law by the CGRF/Electricity Ombudsman/Competent Court.
5. In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
6. The Electricity Department/Licensee should submit a compliance report to the office of the Electricity Ombudsman on the action taken in this regard within **45 days** from the date of issue of this order by email.
7. Non-compliance of the orders of the Electricity Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Hon'ble Commission under Section -142/146 of the Electricity Act, 2003.
8. The appeal is disposed of accordingly.

Dated: 09.05.2023
Gurugram(Haryana)



09/05/2023

(M.P. Singh Wasal)
Electricity Ombudsman
For the State of Goa & UTs

