

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, UdyogVihar - Phase IV, Sector 18,
Gurugram (Haryana) 122015,
Phone No.:0124-4684708, Email ID: ombudsmanjerc@gmail.com

Appeal No.124 of 2020

Date of Video Conferencing : 04.06.2020

Date of Order: 11.06.2020

Shri .Gopal Dass Gupta
Chandigarh

....Appellant

Versus

The Superintending Engineer,
Electricity Department, Chandigarh
and others

....Respondent

Parties present:

Appellant

1. Shri K.L. Kohli –Advocate/Appellant Representative
2. Shri Gaurav Gupta-Advocate/Appellant Son

Respondent(s)

1. Shri Chander Sekhar
Executive Engineer
2. Shri Vijay Kumar
Assistant Executive Engineer



Date of Order: 11.06.2020

The Appellant has preferred an Appeal against the order of the Hon'ble CGRF, Chandigarh in C.C. No.-CJ-86/2018 dated 14.06.2018. The Appeal was admitted on 06.03.2020 as appeal No.124 of 2020. Copy of the same as received was forwarded to the respondent with a direction to submit their remarks/ counter reply on each of the points. A copy of counter reply was supplied to the Appellant.

(A) Submissions by the Appellant:

Appellant submitted the brief facts as under:-

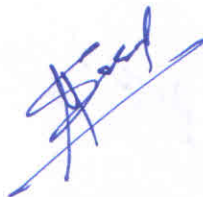
Application No-1

(I). Subject: - Application for condonation of delay of 580 days in filing the representation.

1. That the applicant is filing the attached representation after a delay of 580 days beyond the limitation of 30 days, the contents whereof, which may be read as a part of this application, make out a prima facie case in favour of the applicant, which is likely to succeed.
2. That the Ombudsman acts in aid of a consumer of the electric energy who has a grievance against the electricity department, and who has not got the relief from the Consumer Grievances Redressal Forum and the present representation is made in that context.



3. That the Consumer by a misunderstanding attempted to obtain the relief from the Lok Adalat by filing a complaint under Section 22-C of Legal Services Act, 1987, dated 24.08.2019, but upon knowledge that it was not maintainable withdrew it on 24.09.2019 with liberty to approach the appropriate Forum. The applicant spent one year in pursuing the proceedings before the Lok Adalat.
4. That it is common knowledge that that Ombudsman has been making a justifiable liberal approach in matters instituted before him.
5. That ordinarily a consumer does not stand to benefit by lodging a representation late.
6. That refusing to condone delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.
7. That when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
8. That there is no presumptions that delay is occasioned deliberately, or on account of capable negligence, or account of malafide. A consumer does not stand to benefit by resulting to delay in fact he runs a serious risk.



9. That it is grasped that Ombudsman is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.
10. That the law on the subject of condonation of delay by the adjudicative authorities is crystallized by the Apex Court in the case Manoharn versus Sivarajan & Ors., Civil Appeal No. 10581 of 2013 decided on 25.11.2013 wherein a delay of 31 years was condoned, and it was observed that the usual practice is to use the discretion in favour of the litigating parties unless there are manifest grounds of malafide, and the adjudicating authorities should decide the matter on merits unless the case is hopelessly without merit, and it is the duty of the adjudicating authorities to see that justice is meted out to people irrespective of their socio economic and culture rights.

It is therefore most respectfully prayed that this application may kindly be accepted and the delay of 580 days in filing representation may kindly be condoned, in the interest of justice.

Application No-2

(2). **Subject:** **Representation against the order of the Consumer Grievances Redressal Forum, UT, Chandigarh, dated 14.06.2018.**

Details of the grievance are as under:



That the consumer has been a subscriber to the electricity connection for the 30-35 years, and until the present dispute arising in August 2013, he paid the bills in time. The site is an agriculture land and no commercial activity is carried on there. The site is not the consumer's residence and only a farm house with a caretaker living there and maintaining a few cows for milk supply to the consumer under the partial supervision of the consumer's son Gaurav Gupta, who is also an advocate. NO appliance of high consuming electricity is installed. The average bill has been Rs. 1000/- 1100/- per cycle. The problem started when the consumer's son Gaurav Gupta fell ill and was operated upon in PGI and plastic surgery was done upon him in April 2013, and the farm was neglected for about 5 months of April 2013 to August 2013. The meter reader without taking the actual meter reading raised bills of high amounts of Rs. 5000/- each for three times consecutively. The consumer moved the applications for the correction of the bill but no action was taken thereon and bills kept on coming with heavy arrears and penalties. The consumer has been approaching the electricity office regularly for the correction of the bills but the problem was not solved. Ultimately a team of JE visited the site and took the load report which came to only .75 KW and also changed the mechanical meter without noticing any fault therein and replaced it by a digital meter. Thereafter, the bill started coming for Rs. 1800-2200 for a bill cycle along with high arrears and penalties. The consumer prayed for issue of a justified, rightful and correct bill without unnecessary penalties and unjustified arrears. The consumer therefore took up the matter before the Forum, and thereafter before the Permanent Lok Adalat.



In view of above facts it is requested:--

- i. That the decision of the Forum may kindly be set aside.
- ii. That a direction be issued to the licensee to recast the disputed bills as well as all the future bills without imposing the component of surcharge over surcharge, for under Section 56 of the Electricity Act 2003, the recovery of the amount unreasonably claimed, on the expiry of a period over two years, requires justification in a Court of law.
- iii. That in fairness, the disputed bills may kindly be got recast excluding there from the component of surcharge over surcharge, which component is illegal.
- iv. That any coercive action, including disconnection of the electricity supply, may be stayed during the pendency of this representation, in the interest of justice.
- v. That any other relief which the Ombudsman deems fit and proper in the facts and the circumstances of the case may also be granted to the consumer.

(B) **Submissions by the Respondents :**

The Executive Engineer, on behalf of Superintending Engineer, respectfully submit the following for the consideration:-



Preliminary Objections:

1. That the appellant has filed the present appeal after a gap of more than one and half year, whereas as per the order dated 14.06.2018 of the Hon'ble Chairman CGRF, U.T., Chandigarh, it has been clearly mentioned that in case, the complainant if aggrieved by non redressal of his grievance by the Forum may make a representation / appeal against this order before the electricity ombudsman of Hon'ble JERC within one month from the date of receipt of this order.
2. That the delay of more than one and half year is totally intentional, as the appellant is not having any valid reason of filing the present appeal after a gap of more than one and half year. That after getting the relief from the Hon'ble CGRF vide order dated 14.06.2018, the appellant filed the complaint before the Hon'ble Permanent Lok Adalat for Public Utility Services, U.T., Chandigarh for the same cause and later on withdrawn the same vide order dated 24.09.2019 (Annexure R-1).
3. The appellant is well aware that he can only file the appeal against the order of CGRF before the Hon'ble Ombudsman, but he intentionally filed the complaint for same cause before the Permanent Lok Adalat to delay the payment of pending electricity bills. Hence, the application filed by the appellant for condonation of delay may please be dismissed.
4. That the appellant is intentionally not making the payment of pending electricity dues and creating the unnecessary dispute time and again for the same cause. The disputed electricity bills of the appellant had already been revised / corrected



during the year 2014 and the necessary credit / allowance of Rs. 10,028/- had already been given in the electricity bill issued for the month 29.09.2014 to 27.11.2014. It is further submitted that the electricity bills of the same period are again revised as per orders of the CGRF being the previous record could not be correlated while filing the reply to the complaint before the Hon'ble CGRF. As a result, the appellant gets refund / adjustment of the same period twice, which needs to be charged again.

On Merits:

1. That as per the record of the office of respondents, the electricity connection at the premises of the complainant is released on 01.01.2003 vide application and agreement no. 62159 dated 26.12.2002 in the name of Sh. Gopal Dass Gupta, Village Khuda Alisher, U.T., Chandigarh under the domestic category bearing A/c No. 102/AS51/104800G with sanctioned load of 0.720 KW.
2. That the electricity bills were being regularly issued to the appellant on the basis of meter reading up to 27.07.2012 as shown by the electricity meter installed at the premises of the appellant, but during the period 27.07.2012 to 27.09.2013 the electricity bills were issued on the basis of average on 'D' code put by the meter reader.
3. The electricity meter of the appellant's premises was replaced on dated 16.01.2014 vide MCO No. 20/219 dated 09.01.2014 being mechanical and showing less consumption. The photocopy of CA-22 defective is attached herewith as annexure R-2.



4. That after replacement of the meter the disputed electricity bills of the appellant were also revised by charging average for the period 27.07.2012 to 16.01.2014 on the basis of future consumption of new meter w.e.f. 16.01.2014 to 27.09.2014 i.e. 218 units per month and a sum of Rs. 10,028/- has been refunded / adjusted in the electricity bill for the period 27.09.2014 to 27.11.2014 of the appellant vide sundry item no. 12/67 dated 28.11.14. The refund was duly audited by the Internal Auditor of the Sub Division. The photocopy of the relevant pages sundry register is attached as annexure R-3. It is pertinent to mention here that the appellant has not made the payment of any of the electricity bills during the period 25.06.2013 to 05.06.2018 and the bill amount was accumulated to the tune of Rs. 1,40,245/- upto 27.03.2018 by adding surcharges due to non-payment of bills. The appellant has made the part payment of Rs. 25,000/- on dated 05.06.2018. The detail of the consumption as well as bill issued and payment made by the appellant / consumer is attached as annexure R-4.
5. That in the year 2018, the appellant filed a complaint before the Hon'ble Chairman, CGRF, U.T., Chandigarh vide complaint no. CJ/86/2018 regarding correction of electricity bills. The office of the respondent has filed the reply to the complaint, but in the reply, it was wrongly submitted that the electricity bills of the appellant for the period 07/12 to 09/13 are required to be corrected / revised. On the basis of the reply submitted by the office of respondent, the Hon'ble Forum has passed the order dated 14.03.2018 to revise the bills of the said period on the basis of future consumption of the appellant. Accordingly, the office of the respondent has revised the bills of the said period as per orders dated



14.03.2018 and an sum of Rs. 16130/- has been refunded / adjusted in the electricity bill of the appellant for the period 27.05.2018 to 27.07.2018 vide sundry item no. 20/88 dated 13.07.2018 (annexure R-5), whereas the office of the respondent had already revised the electricity bills of the said period in the year 2014 and necessary refund had already been given in the bill issued for the period 29.09.2014 to 27.11.2014 as explained in the para no. 4 above. Hence, the refund wrongly given as per orders dated 14.03.2018 of the Hon'ble CGRF, needs to be charged.

6. That after scrutiny of the record of the consumer regarding electricity bills, it has been observed that the electricity bills are correctly issued to the appellant as per the consumption / reading shown by the electricity meter installed at the premises of the appellant. The amount of the bills is accumulated due to non-payment of bills by the consumer / appellant. It seems that the consumer / appellant is avoiding making of payment very cleverly by raising unnecessary disputes time and again.

In view of the above, it is respectfully prayed that the appeal of the appellant along with his application for condonation of delay may please be dismissed being having no merit and the office of the respondents may please be allowed to charge the refund of Rs. 16,130/- wrongly given to the consumer / appellant in the electricity bill issued for the period 27.05.2018 to 27.07.2018.

(C) CGRF Chandigarh ,Order dated 14.06.2018 , preferred for Appeal:



“

ORDER

1.
2.
3. The hearing in the case was fixed for 30.05.2018, when both the parties were present. The case was deliberated in detail and decided to be taken up in the next hearing on 13.06.2018. On 13.06.2018 both the parties were present and the Forum observed that meter remained defective from 07/12 to 01/14 and for rest of the period billing done by the department is okay. Forum decides that the defective period from 07/12 to 01/14 may be overhauled on the basis of consumption from 05/14 to 01/15.
4. The complaint is disposed off with above observations.

“The Complainant, if aggrieved, by non-redressal of his grievance by the Forum may make a representation/appeal against this order, before the Electricity Ombudsman for JERC for the State of Goa and UTs, “Vanijya Nikunj”, HSIIDC Office Complex (2nd Floor), Udyog Vihar, Phase-V, Gurgaon- 122016 (Haryana), Phone No.0124-2340954, Mob: 09871588333, E-mail id- ombudsmanjerc@gmail.com within one month from the date of receipt of this order.”

5.

”

(D) Deliberations during Video hearing on 04.06.2020 :

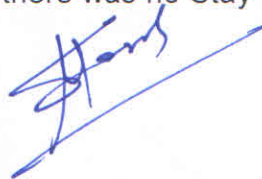
1. **Appellant submission:**
 - a. The Appellant reiterated his version as submitted in appeal.
 - b. Shri K.L. Kohli ,Advocate/Representative , submitted that the delay of 580 days in filling the appeal be condoned as his client Sh.

Gopal Dass Gupta is a handicapped due to stroke and various old age ailments . Copies of few Hospital Discharge Reports have been attached with appeal. He further submitted that his case of delay is squarely covered, as per judgment of Hon'ble Apex Court in Civil Appeal no-10581 of 2013 titled Manoharan vs Shivarajan & oths :

- c. Shri K.L. Kohli further submitted .that if he is not paying the Electricity Bills, his connection should have been disconnected.
- d. He further submitted that he is ready to pay the due amount, if surcharge over the surcharge is not charged and correct bill is issued by the Electricity Department.
- e. On being asked to clearly specify the Act/ Regulations, under which the respondents cannot charge surcharge over already pending surcharge. He contended that surcharge over surcharge is not liable to be charged as per Section-56(2) of Electricity Act-2003
- f. Respondents through email dated-04.06.2020 submitted the Regulations, regarding charging of surcharge over surcharge and a copy of the same was supplied to the Appellant on 04.06.2020 through email , to file a rejoinder within 4 days . However no rejoinder was filed.

2. Respondent Submission:

- a. The respondents reiterated their version as submitted in reply to the appeal and requested to dismiss the appeal.
- b. They further stated that supply was not disconnected as every time consumer informed that he has a dispute and case is pending in court.
- c. On being asked, if there was any Stay Order, Respondents confirmed that as per record, there was no Stay Order.



- d. During video conferencing, Respondents submitted that their billing is computerized and they do not have the Regulation/Tariff Order right now regarding charging of surcharge over surcharge/arrears, but assured to supply/email the same after video hearing.
- e. Respondents accordingly through email dated-04.06.2020 submitted that during the hearing of the case, the appellant has objected to the delayed payment surcharge charged in his electricity bills since the year 2013 to till date, whereas the same has been rightly charged as per the rules of the Department provided under the tariff approved by the Hon'ble JERC under the provisions 10.3 (7) of the general conditions of HT and LT supply which is reproduced as under:

“Delayed payment surcharge shall be applicable to all categories of consumers. Delayed payment surcharge of 2% per month or part thereof shall be levied on all arrears of bills. Such surcharge shall be rounded off to the nearest multiple of one rupee. Amounts less than 50 paise shall be ignored and amounts of 50 paise or more shall be rounded off to the next rupee. In case of permanent disconnection, delayed payment surcharge shall be charged only up to the month of permanent disconnection.”

In view of the above, the claim of the appellant is not justified and do not have any merit so the same may please be dismissed.

(E) Analysis & Observations:-

1. I have perused the documents on record and pleadings of the parties.
2. Following provisions have been notified by Hon'ble JERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations -2019:-



“ 33. Pre-conditions/Limitations for entertaining complainant’s representation:-

(1)(f) the complainant has filed the representation before ombudsman within 30 days from the date of receipt of the decision of the Forum or the date of expiry of the period within which the Forum was required to take a decision or the date of expiry of period within which the distribution licensee was required to implement Forum’s order whichever is applicable:

Provided that the Ombudsman may entertain a representation after the expiry of the said period of thirty days if the Ombudsman is satisfied that there is sufficient cause for not filing it within that period. ”

3. I have noted the following orders passed by the Hon’ble CGRF, Chandigarh vide order dated-14.06.2018 :-

“ The Complainant, if aggrieved, by non-redressal of his grievance by the Forum may make a representation/appeal against this order, before the Electricity Ombudsman for JERC for the State of Goa and UTs, “Vanijya Nikunj”, HSIIDC Office Complex (2nd Floor), Udyog Vihar, Phase-V, Gurgaon- 122016 (Haryana), Phone No.0124-2340954, Mob: 09871588333, E-mail [id-ombudsmanjerc@gmail.com](mailto:ombudsmanjerc@gmail.com) **within one month** from the date of receipt of this order. ”



4. The Appeal was received in the Ombudsman office on 03.03.2020, and therefore there is a delay of 628 days, since passing of order by Hon'ble CGRF on 14.06.2018 and the number of days taken by the Appellant in filing appeals with different Forums/Authorities are summarized as under:-

Sr. No	Event	Period	Days
1	Time taken to file Appeal in PLA	14.06.2018 to 24.09.2018	102
2	Time taken in PLA	24.09.2018 to 24.09.2019	365
3	Time taken to Appeal to Ombudsman	24.09.2019 to 03.03.2020	161
TOTAL			628

5. Following Hospital Discharge Reports has been submitted in respect of Sh. Gopal Dass Gupta :-

Sr. No.	Period of admission in Hospital	Nos. of days
1	05.01.19 to 05.02.19	30
2	06.04.19 to 07.04.19	1
3	02.07.19 to 03.07.19	1
4	02.07.19 to 03,07.19	1

6. Following facts as stated by Appellant in his representation (Annexure-IV) to the Ombudsman at Sr. No. 7 are reproduced below :-

“The site is not the consumer’s residence and only a farm house with caretaker living there and maintaining a few cows for milk supply to the consumer **under the partial supervision of the consumer’s son Gaurav Gupta who is also an Advocate..... ”**

7. Following facts as stated by Appellant in his representation to the Permanent Lok Adalat are reproduced below :-

“Before the Permanent Lok Adalat Chandigarh
Gopal Dass Gupta R/O Village Khuda Ali Sher.....
.....
.....
Sd/- Sd/-
(Gaurav Gupta & GD Gupta)
ADVOCATES
Chandigarh
Dated-24/9/2018
Counsel for the Appellant ”

8. The order of Hon’ble Permanent Lok Adalat as submitted by the Appellant is reproduced Below:-

“
Application No-1540/2019
Gopal Dass Gupta vs Exe Engineer Electy Deptt. Chd.
Present:- Sh. K.L.Kohli Adv; counsel for petitioner
Sh. Satish Kumar, RA for respondent
Learned counsel for the petitioner submits at this stage that his client has instructed him to **withdraw this case** with liberty to approach the

appropriate Forum for redressal of his grievance.

In view of this, this application stands dismissed of as withdrawn at this stage with liberty as sought by the applicant to approach the appropriate Forum. Copy of this order be given to the parties. File be consigned to record room.

Announced-24.09.2019. ”

9. I have perused the Annexure-R-4 submitted by the respondents regarding complete billing details from 27.12.2012 to 27.01.2020 (7 years 1 month=85 months), whereas the Appellant disputed in August 2013 regarding higher charging on defective meter from 27.07.2012 to 27.11.2013 (1 year 4 months=16 months). The details are summarized as under:-

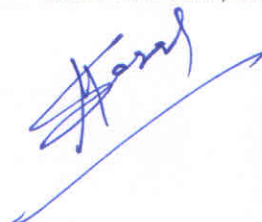
Sr. No.	Period of Billing (7 years 1 months = 85 months)	Nos. of Bills raised by the Respondents (Bi-monthly)	Nos. of Bills Fully paid by the Appellant	Nos. of Bills Partially paid by the Appellant	Nos. of Bills NOT paid by the Appellant	Amount of Current charges raised by the Respondent from 27.07 .2012 to 27.11.2013 (Disputed Period)	Amount of REFUND given by Respondents during the from 27.09 .2014 to 27.11.2014 and 27.05.2018 to 27.07.2018
1	2	3	4	5	6	7	8
1	27.07.2012 to 27.01.2020	45	1	8	36	Rs.24,713/-	26,158/-

A perusal of above Table reveals that in the name of dispute, the Appellant is negligent in not paying the due money for about 72 months and continuously from 27.07.2013 to 27.03.2018 (56 months). The Respondents were also failed to disconnect the supply during this period.



In fact against the sum of Rs.24,713/- demanded by Respondents during the period from 27.07 .2012 to 27.11.2013 , Appellant is able to get the REFUND of Rs.26,158/- from the SDO office as well as from the CGRF. Thus the Appellant on one hand was successful in getting extra REFUND and on the other hand he is not paying the public money, due to negligence of Respondents in not recovering the public money as per Rules There was no stay order for not recovering the Govt. money utilized by the Appellant in the shape of consumption of Electricity.

10. The Appellant has failed to prove any sufficient cause for not filling the appeal **FIRSTLY** in 102 days and **SECONDLY** for 161 days, as enumerated in para-4 above. The Hospital Discharge Reports of Sh Gopal Dass Gupta in facts falls within the period when the case was under consideration with Hon'ble PLA.
11. As enumerated in para-6,7and 8 above , the Appellant Sh.Gopal Dass Gupta, his son Sh. Gaurav Gupta and his representative Sh. K.L. Kohli are all learned Advocates and it is hard to believe that they are not aware of the "**Alternative Remedy**" provided under statue / Electricity Act-2003 .Even if it is believed that they were not aware of provisions in statue , they were duly notified by CGRF Chandigarh, in its order dated- 14.06.2018 as enumerated in para-3 above that appeal can be filed with the office of Ombudsman within 30 days and details of address of Ombudsman , email etc. were also intimated .However the Appeal was filed in PLA , whereas the Appellant being Advocates, must have known



that Hon'ble Supreme Court and Hon'ble High Court in numbers of judgments has held that before filing any writ the "**Alternative Remedy**" provided in statute ,should be availed/exhausted first .

The Hon'ble Supreme Court in a case titled Punjab State Electricity Board vs Ashwani Kumar, JT 1997(5) SC 182 and Hon'ble Madras High Court in the case of K.Ananthi vs Tamil Nadu Generation and Electricity Distribution Corporation Ltd in W.P No-23847 of 2018 has held that "**Alternative Remedy**" of appeal provided under Statue, Rules/ Electricity Act should be exhausted first .

Therefore, I do not find any justification in filing the appeal in PLA, then withdrawing it of its own after 365 days and thereafter requesting this office to condone the delay of 365 days.

12. The Appellant is himself a Learned Advocate and is taking the help of his son Sh. Gaurav Gupta, Advocate as well as Sh. K.L.Kohli Advocate and they are well aware of the period of limitation. The judgment quoted (supra) by Learned Representative of the Appellant is of no assistance, as in the present case, the Appellant cannot be said to ignorant about law/procedure, rather they are well qualified in Law. Appellant has not been able to justify the delay for any sufficient reasons for condoning the of delay of 102 days and 161days. Similarly there is no cognizable justification of 365 days as explained in para-11 above.



13. In view of the above observations, I do not find there are any sufficient and justifiable grounds for condonation of delay of 580 day as requested by the Appellant , against the provision of 30 days, notified by Hon'ble Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019 and the maintainability of this Appeal.

(E) DECISION

- (i) For the reasons discussed above, if at this stage, in such circumstances, the inordinate delay is condoned unmindful of the lackadaisical manner in which the appellant has proceeded in the matter, it would also be contrary to public interest. Accordingly the appeal of the Appellant is rejected and the order passed by Hon'ble CGRF Chandigarh, dated 14.06.2018 in CC No-CJ-86/2018 is upheld.
- (ii) Since the Appeal has been rejected being not maintainable on account of abnormal delay, therefore I do not propose to take up the other grounds raised by Appellant/Respondents in this Appeal.
- (iii) The Electricity Department/Licensee is directed to investigate the matter as to why the supply was not disconnected for non -payment of Electricity Bills , as per Regulations/Tariff Orders issued by the Hon'ble Joint Electricity Regulatory Commission and take corrective measures to ensure that such incidents are not repeated in future .



- (iv) 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.
- (v) The appeal is disposed of accordingly.



11/6/2020

(M.P. Singh Wasal)

Electricity Ombudsman

For Goa & UTs (except Delhi)

Dated 11.06.2020