

OFFICE OF THE ELECTRICITY OMBUDSMAN

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi-110057

(Phone No.: 011-26144979)

Appeal No.07/2024

(Against the CGRF-TPDDL's order dated 10.10.2023 in C.G. No.104/2023 and Order dated 12.02.2024 in No.MA/04/104/2023 passed in the matter of Shri Sri Mohan Gupta vs. TPDDL)

IN THE MATTER OF

Sh. Bharat Bhushan Gupta

Vs.

Tata Power Delhi Distribution Limited

Present:

Appellant: Shri Bharat Bhushan Gupta alongwith Shri Alind Srivastava, advocate.

Respondent No.- 1: Shri Indresh Kumar, Executive, Shri Ajay Joshi, AGM (Legal), on behalf of TPDDL.

Respondent No.- 2: Shri Sri Mohan Gupta alongwith Shri Manish Makkar & Shri Madhur Gupta, Advocates.

Date of Hearing: 08.05.2024

Date of Order: 09.05.2024

ORDER

1. Appeal No. 07/2024 has been filed by Shri Bharat Bhushan Gupta, R/o C-6/532, Milan Vihar Apartments, Plot No. 72, I.P. Extension Patparganj, Delhi-110092, against the Consumer Grievance Redressal Forum – Tata Power Delhi Distribution Limited (CGRF-TPDDL)'s orders dated 10.10.2023 in CG No.104/2023 and dated 12.02.2024 in MA/04/104/2023 passed in the matter of Shri Sri Mohan Gupta vs. TPDDL.



2. The background of the case is that Shri Sri Mohan Gupta, had approached the Forum on 31.08.2023 for release of a new non-domestic electricity connection in his name (applied vide Application No. 2034065538) at House No.2 B, Pvt Shop No.3, Ground Floor, Right Portion, Block-B, Adarsh Nagar, Tagore Road, Delhi – 110033 which was suspended by the Discom vide Notification Suspension Letters dated 08.05.2023 and 11.05.2023 sent to the Applicant for removal of deficiencies. Further, in response to his e-mail dated 02.08.2023, complainant was informed on 05.08.2023 about rejection of his application due to non-compliance of objections/deficiencies, viz., ELCB and address mismatch from the installed connection, in 30 (thirty) days, and advised to apply afresh for a new connection. He submitted that the Discom refused to release the new electricity connection without verifying the address with the supplied or available documents. He had requested to install the requisite connection.

3. The CGRF, vide its order dated 10.10.2023, considered a site inspection report dated 29.09.2023 of Discom, mentioning that B-2, 2-B are the same plot. In the light of unambiguity of the address, the connection applied for was directed to be released within 21 days. Thereafter, requisite NDL connection, CA No.60031163649, was energized on 09.11.2023 in the name of Shri Sri Mohan Gupta (now Respondent No.2 before this office).

4. Aggrieved with the installation of the connection, Shri Bharat Bhushan Gupta (Respondent No. 2, before the Forum) who is also the brother of the complainant, filed an application dated 28.11.2023 for review of the order dated 10.10.2023 passed in CG No.104/2023. He, being the co-owner of the shop, had opposed the release of new connection, without his 'NOC', in favour of Shri Sri Mohan Gupta. He also filed a detailed objection letter dated 06.10.2023 addressed to the Commercial Manager, TPDDL, Adarsh Nagar, inviting attention to his father late Shri Sri Krishan Gupta's registered Will dated 08.10.2013 (who had expired on 21.05.2019) and stating that shop no.3, the shop, in question, was a joint property of the two brothers and that he had not granted any consent to him for the connection at Shop No.3 (joint ownership). Attention was also invited to an e-mail dated 15.10.2023 as well as legal notice dated 24.12.2021 from Ms. Sudesh Kumari Sharma, advocate, addressed to the TPDDL for non-release of connection, mentioning about the death of the father on 21.05.2019, besides the need for consent of the client Bharat Bhushan Gupta for release of connection.

5 Respondent No. 2 (Shri Bharat Bhushan) submitted before the Forum that there are three shops on the property at B-2 Ground Floor, Tagore Road, Adarsh Nagar, Delhi – 110033 i.e. Shop No. 1 - in the name of Shri Sri Mohan, Shop No.2 -



in his name (Shri Bharat Bhushan Gupta) and Shop No.3 - in joint names of Shri Sri Mohan Gupta and Shri Bharat Bhushan. Shri Sri Mohan Gupta sold the Shop No. 1 to Smt. Daljit Kaur, w/o Shri Harpreet Singh on 30.05.2023 and transferred the previous connection of the Shop No. 1, bearing CA No. 60018763338 to shop (private) no.3 and the present CA No. is 060031163649 (energized on 09.11.2023). The main reason of the Respondent No. 2, for opposing release of new connection was that his brother (Shri Sri Mohan Gupta) can sell the property after installation of the connection without his consent.

6. It is relevant in this regard that the Forum in its verdict dated 12.02.2024, elaborated the judgements, namely, Sudharshan Kumar Sharma and others vs. State of NCT of Delhi & Other WP(C) 13217/2019 passed by the Hon'ble High Court of Delhi and Dilip (Dead) through Lrs. Vs. Satish & Others, (Criminal Appeal No. 810/2022) before the Supreme Court. While allowing release of connection, the Forum also mentioned that the complainant (Shri Sri Mohan Gupta) concealed the fact of nature of ownership of property and the ensuing property dispute between Shri Sri Mohan Gupta and Shri Bharat Bhushan Gupta, as mentioned by the later in his application. The Forum was of the view that the apprehension of Shri Bharat Bhushan Gupta (R. No. -2) was ill-founded as electricity connection does not create any Right/Title or interest in the property and dismissed his application dated 28.11.2023 without merit, recognizing the possession of premises by the complainant and the right to electricity.

7. Aggrieved by the order dated 12.02.2024 passed by the CGRF-TPDDL in his review application, Shri Bharat Bhushan Gupta has preferred this appeal and submitted that the Respondent No. -2 (Shri Mohan Gupta) obtained the connection on the basis of GPA dated 14.03.2012 (after the demise of his father on 21.05.2019). Further, though Discom rejected the connection vide its communication dated 07.10.2023, but later released the connection to Shri Mohan Gupta (R. No.-2) without his knowledge/NOC, being co-owner of the shop, in question.

The Appellant also placed on record relevant documents, viz; Registered Partition Deed registered on 20.08.1996, General Power of Attorney (GPA) dated 14.03.2012, death certificate of their father dated 03.06.2019 certifying death of Sri Krishan on 21.05.2019, Notification Suspension letter dated 16.05.2023 (print date 07.10.2023) along with his appeal besides the registered Will dated 08.10.2013 of the father.

8. In his appeal, the Appellant raised the issue of illegality of the GPA, absence of his NOC for connection as co-owner and, has, therefore, prayed for disconnection



of electricity connection (CA No. 60031163649) released in the name of Shri Sri Mohan Gupta (R. No.-2 before this court) and to direct a vigilance enquiry into the circumstances under which the connection was released to him.

9. The Discom, in its reply dated 29.03.2024, while raising preliminary objections, reiterated its submissions as before the CGRF. In addition, the Discom submitted that the connection has been released as per the directions of the CGRF. Further, the prayer for vigilance enquiry was also not maintainable as the Discom merely complied with the orders passed by the CGRF-TPDDL.

10. The appeal was admitted and taken up for the hearing on 08.05.2024. During the hearing, all the three parties were present alongwith their advocates. An opportunity was given to all the parties to plead their case at length.

11. During the course of hearing, the Advocate appearing for Appellant, reiterated his submission and stated that in terms of Will, Shop Nos.1 & 2 were in possession of two brothers and Shop No.3 was under joint ownership. Later, a connection was applied by the Respondent No.2 (Sri Mohan Gupta) in 2023 on the basis of the GPA dated 14.03.2012 of the father in favour of Respondent No.2, which was not honourable on account of his death in 2019. Therefore, the relevant provisions of the Regulations 2 (7) and 10 (3) of DERC Supply Code, 2017, were violated. The Appellant, therefore, prayed for disconnection.

12. In rebuttal, Advocate appearing for Respondent No.2, asserted that the review before the CGRF was not maintainable. The power to examine ownership issues lies with the civil court. In response to a query, Advocate agreed that after demise of the executant (Sri Krishan), the GPA became infructuous. When asked why the connection was obtained on the basis of GPA instead of Will after demise of his father, Respondent No.2 submitted that the GPA was mentioned in the list of documents and demanded by the Respondent No.1 (Discom). However, Respondent No.2 could not provide a satisfactory response to a query as to why no action has been taken for probate of Will during the period from 2019 till 2024. Advocate invited attention to the settled law in particular ruling of Delhi High Court, namely, Sudharshan Kumar Sharma and others vs. State of NCT of Delhi & Other, according to which even if there was a dispute and the person was in possession, he had a right to electricity and the dispute etc. was to be settled by the Court of Law.

On the basis of a question by the Ombudsman, it was made clear that there was no dispute between the brothers in respect of the various properties including the subject property (shop no.3). However, the Appellant was not willing to have the



connection in joint names on the basis of a suggestion from the advocate of the Respondent No.2

13. In rebuttal, Respondent No.1 (TPDDL), reiterated its written submissions. Respondent submitted that the subject connection was released on the direction of the CGRF. Attention of Representative was invited to the format of Declaration attached with the Application of New Connection Form which categorically contained conditions and defining liability on the Discom in the event of false information submitted by the Applicant. Copy of application form, duly filled by Sri Mohan Gupta, was also shown to the advocate of Respondent No.2, in confirmation of the content of declaration signed by him.

14. The matter has been considered in light of the material on record and the rival contentions by the parties. The following aspects need consideration:

- a) The validity of the GPA, Partition Deed or Will relied upon by the Appellant cannot be examined by the Ombudsman, since any challenge lies within the domain of a Civil Court, which is only competent to decide the title. However, it is relevant that Section 201 of the Indian Contract Act, expressly invalidates a GPA, on the death of the executor. The advocate for Respondent No.2 also agreed that GPA became infructuous on the death of executant during 2019 as per the settled law and could not be a valid document / sole document at the time of application for connection in 2023. Whether the conditions laid down in Regulation 10 (3) supra of the Supply Code, 2017, were satisfied for release of connection, need consideration.
- b) It is evident from the record that Respondent No. -2, Shri Mohan Gupta, did not produce 'NOC' from the Appellant or disclose the property as a Joint Property. Apparently, no proper enquiry was conducted during site inspection and objections raised by the Appellant before the Discom vide his advocate's notice dated 24.12.2021 and representation dated 06.10.2023 were ignored. Even, the Discom had raised Suspension letter addressed to the Applicant informing that valid ownership proof of the applied address is required.
- c) It is relevant that a declaration signed by Shri Sri Mohan Gupta at the time of applying for connection during 2023, inter alia, contained the following:
 - i) That in furnishing the present Declaration, the Applicant has clearly understood that should any of the statements in this declaration prove to be false or incorrect at any later stage, the Licensee shall be within his lawful right to disconnect supply to the premises without any prior



notice and proceed to adjust electricity supply dues payable by the applicant against consumer security deposit and/or recover the same in accordance with Law.

- ii) In the terms of the Declaration, the Applicant made wrong declaration as per serial no.1 that no objection certificate for seeking electricity connection from the co-owner has been obtained (in case the applicant is not the sole owner of the premises).
 - iii) The Declaration in para 19 expressly also states, that the licensee may disconnect the electric supply under reference, in the event of any default, non-compliance of statutory provisions and in the event of a legally binding directive by Statutory Authority(ies) to effect such an order. This shall be without prejudice to any other rights of the licensee including that of getting its payment as on the date of disconnection.
- d) The advocate for Respondent No.2 empathetically relied upon law to emphasize that even if there is a dispute of ownership, electricity cannot be denied to the legal occupant by insisting for NOC to be furnished from person who claimed to be owner. While the judicial pronouncements relied upon are not in dispute, it is relevant that in the present case all the parties agreed that there is no dispute in respect of ownership of property etc. and that no case before any civil court has been filed by either of parties in this regard. To this extent the relied upon judgements may not be of much avail to Respondent No.2 when the Respondent No.2 agrees that GPA became infructuous in 2019 as per the settled law and it was not a valid document in terms of Regulation 10 (3) of DERC Supply Code, 2017. The Discom clearly erred in ignoring this aspect.
- e) It was the bounden duty of the Discom to verify the content of declaration with reference to record relied upon by the applicant and to take appropriate action which they failed to do.

15. In the light of above discussion and also to meet the ends of justice, this Court directs as under:

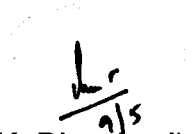
- (i) The order dated 10.10.2023 passed by the CGRF-TPDDL is set-aside.
- (ii) Since the connection has been released in blatant violation of the Declaration, as mentioned in para 14 (c) above, and the connection was released in the absence of any valid document as mentioned / contemplated in Regulation 10 (3) of DERC Supply Code, 2017, the Discom may take steps to review the connection released in the light of



para 19 of the Declaration submitted by the Applicant and take appropriate action.

- (iii) CEO of the Discom may get the matter enquired to identify the officer undertaking the perfunctionary site visit and submitting its report. Enquiry should also be done to identify officers responsible for ignoring documents on record like the notice of the advocate in the year 2021, subsequent representation by the Appellant of dated 06.10.2023, submitted to the concerned Commercial Manager specifying invalidity of GPA and the total absence of NOC from his side for electricity connection in the joint property as per Will of the late father.

The Compliance report be submitted within four weeks of this order. The appeal is disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
09.05.2024