

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-cum-Fax No.: 011-41009285)

Appeal No. 13/2020

(Against the CGRF-BYPL's order dated 17.07.2020 in Complaint No. 13/2020)

IN THE MATTER OF

Shri Pulish Ray

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Pulish Ray along with Shri N. K. Ray, Advocate

Respondent: Shri K Jagatheesh, Sr. Manager, Shri Imran Siddiqi, Manager (Legal) and Ms. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 22.10.2020

Date of Order: 23.11.2020

ORDER

1. The Appeal No. 13/2020 has been filed by Shri Pulish Ray through his advocate Shri N.K. Ray, against the order of the CGRF-BYPL (CGRF) dated 17.07.2020 passed in Complaint No. 13/2020. The issue concerned in the Appellant's grievance is regarding non-release of the new electricity connection by the Discom (Respondent) in respect of his property bearing No. D-31, Ground Floor, Ganesh Nagar, Pandav Nagar, Delhi - 110092, mainly on account of the fact that the height of the building is more than fifteen (15) meters.

2. In the instant appeal, the Appellant has stated that he applied for a new electricity connection on 29.01.2020 on his property at ground floor in its left and back side portion, which was rejected by the Discom on account of building height more than 15 meters without stilt parking and as per the Delhi Electricity Regulatory Commission (DERC)'s guidelines 'Fire

Clearance Certificate' is required to be produced by him for release of the electricity connection. He further stated that he again approached the Discom authorities for issue of electricity connection but they did not accept his request and after lot of persuasion, when the connection was not released by them he was forced to file the complaint with the CGRF for redressal of his grievance. After hearing the arguments, CGRF dismissed his complaint on the grounds that the Appellant is unable to fulfill the condition as prescribed under the law and since the height of the building is more than 15 meters and in the absence of 'fire clearance certificate' electricity connection cannot be released.

Being aggrieved by the rejection of his complaint by the CGRF, he has preferred the present appeal on the grounds that CGRF has failed to consider the fact that the height of the said building is less than 15 meters as measured from the front side, whereas the Discom has measured the height from the back side only. Secondly, the CGRF has also not considered his plea that one electricity connection was released by the Discom on 08.05.2018 in the same building on the fourth floor and no such objection of height more than 15 meters was raised by them at that point of time. The above referred electricity connection was released by them after the implementation of new regulations of DERC, which came into force on 01.09.2017, whereas in the present case they have raised this objection in the same building having same height as it was prevailing at the time of release of the earlier electricity connection in the year 2018.

In view of the above, the Appellant finally concluded the argument with the prayer to set-aside the order of the CGRF and direct the Discom to release the said electricity connection at the earliest.

3. The Discom in its reply has submitted that the Appellant applied for a new electricity connection at the ground floor (Left & Back side) of the premises bearing No. D-31, Ganesh Nagar, Pandav Nagar, Delhi- 110092. The electricity connection to the present premises was rejected by them as the flat in issue is part of the building having height of more than 15 meters without stilt parking. As such, as per the DERC's guidelines, the Appellant was asked to provide the fire clearance certificate from the Fire Department. The Discom further submitted that as the Appellant failed to provide the fire clearance certificate till date, as such the application for grant of new electricity connection stands cancelled. The Discom also stated that in the present appeal, the Appellant has raised a fresh issue of measurement of height of the building from the front side etc. for the first time which was not raised by him earlier during the hearing in the CGRF, and accordingly he

has to approach the CGRF in review before raising this issue in the form of grounds of this appeal.

The Discom also submitted that the issue of wrong mentioning of the height in the joint inspection report or of not measuring of the height of the building from both sides of the street i.e. front as well as from the back was never raised by the Appellant before CGRF. As per the direction of the CGRF, during the course of hearing, a joint inspection was carried out on 18.03.2020 to measure the height of the building. As per the joint inspection report the height of the building was found to be 17.70 meters which is more than the stipulated height of 15 meters for the buildings without stilt parking. The measurement of the height of the building took place in the presence of the Appellant which is also evident from the inspection report duly signed by him and filed before the CGRF. The Discom also denied that the height as measured at site is not mentioned in the report as alleged by the Appellant and it is again clarified that the height of building in issue is more than 15 meters. The Discom further added that though it is not required to measure the height from both the sides yet as the Appellant has raised this issue, they have again got the height measured on 09.09.2020 and found that the building height when measured from front side was 17.70 meters and as measured from back side was 17.80 meters and further there is no place for parking in the building. The Discom also submitted a copy of the report dated 09.09.2020 for reference and record.

With reference to the plea of the Appellant regarding grant of an electricity connection in the same building on 08.05.2018, the Discom has also confirmed by way of an affidavit dated 19.11.2020 that prior to November, 2018 as a matter of policy the height of the building was not measured by the licensee and it acted on the undertaking given by the applicant in respect of the height of the building as required under the New Electricity Connection Form. However, in view of the then filed PIL's before the Hon'ble High Court of Delhi regarding unauthorised construction and illegal industrial activities wherein data was required from Delhi Discoms also and due to some apparent deviation in undertakings of the consumers and actual ground situations, BYPL started measuring height of the building through their own officials and in case the height was found to be more than 15 meters or 17.5 meters with stilt parking then the applicant is asked to provide NOC from the fire department failing which the application for the grant of new electricity connection is rejected. The Discom further confirmed that no electricity connection has been granted after November, 2018 in the said building since the height of the building is more than 15 meters without stilt parking. The Discom also confirmed that in view of the above, the actual

measurement of the height is being carried out by them for release of electricity connections, which is also in accordance with the clarification order dated 31.05.2019 issued by DERC, regarding relaxation of height from existing 15 meters to 17.5 meters for the premises having stilt parking in conformity with the requirement of Unified Building Bye-Laws of Delhi (UBBL), 2016.

In view of above, the Discom finally submitted that there are no legal and factual infirmities in the order of the CGRF and the present appeal of the Appellant is liable to be dismissed as there is no merit in the case.

4. After going through the material on record and hearing the arguments of both the parties at length, the basic issue which emerges is that the Discom refused to release the new electricity connection to the Appellant basically on the ground that the height of the building is more than 15 meters and the Appellant has failed to produce the required 'Fire Clearance Certificate' from the Fire Department, as per the extant regulations.

Given the above exposition and taking all the factors into account, it is worthwhile to mention here that for the purpose of seeking new electricity connection in high rise building, the Appellant has to complete all the formalities and will have to abide by all the regulations required under the law keeping in view the safety requirements involving serious repercussions to the life and property of the public at large. However, the basic issue which needs to be decided in the instant case is whether the height of the said building without stilt parking conforms to the building bye-laws and other regulations for release of electricity connection or not. In this context the clarification dated 31.05.2019 issued by DERC, related to grant of electricity connections in high rise buildings need to be perused in the first instance before proceeding further in the matter. The operative part of the direction/clarification issued as per the DERC's letter No. F.17(85)/Engg./DERC/2016-17/5403 dated 31.05.2019 is quoted as under:

"Based on the above, it is clarified that the distribution licensee for release of electricity connection shall not insist for fire clearance certificate for the residential buildings having height upto 15 meters without stilt parking and 17.5 meters with stilt parking. The measurement of the height of the building shall be made in accordance with clause 1.4.16 and 7.19 of Unified Building Bye-Laws for Delhi 2016."



From the perusal of the record, it is observed that a joint inspection was carried out as per directions of the CGRF on 18.03.2020 in the presence of the Appellant and the height of the building was found to be 17.70 meter from the road level. Although, the joint inspection report was duly signed by the Appellant himself yet he argued that the measurement of the building has been taken only from the back side which of course is more than 15 meters but if the same is measured from the front side, the height of the building will be less than 15 meters. In order to clear the doubt of the Appellant, the Discom revisited the site to measure the height of the building from both the sides on 09.09.2020 and submitted the report along with its written statement. As per the fresh measurement the height from the front side was mentioned as 17.70 meters whereas from the back side it has been mentioned as 17.80 meters. During the hearing, the Appellant however tried to justify that the height of the building is less than 15 meters if the store room built at the top is not taken into account.


The above argument of the Appellant has not been found to be in conformity with the existing bye-laws, thus has no basis and is misconceived. Later on, during the course of hearing the Appellant however categorically agreed that the height of the said building is more than 15 meters. In view of the joint inspection report and the submissions made in the foregoing paras, it is evident, that in the present case, since the height of the building is more than 15 meters without any stilt parking, therefore, the said building falls under the category of residential building having height more than 15 meters without stilt parking as per DERC's Notification dated 31.05.2019. Hence, the electricity connection can be released only after the production of requisite 'Fire Clearance Certificate' from the Fire Department.

Further, the argument of the Appellant that the Discom has released one connection in the same building on 08.05.2018 after the implementation of DERC's Regulations, 2017 on 01.09.2017 on the basis of undertaking given by the Appellant or Architect Certificate etc. has no basis since the Discom has submitted an affidavit dated 19.11.2020 vide which they have clarified that the process of accepting the undertakings given by the consumers in respect of the height of the building as required under the New Electricity Form has been withdrawn and physical measurement of the building height was started from November, 2018 onwards, in terms of the policy of the company based on the various PIL's filed in the Hon'ble High Court of Delhi regarding deviation in undertakings of the consumers and actual ground situation. They have further confirmed that no connection has been released in the building on the basis of undertakings after November, 2018 and the connections are being released only on the basis of actual

measurement of the height. In addition to above, some other arguments as raised by the Appellant regarding release of electricity connection, has no basis and are misconceived, since the issue of release of electricity connections cannot be decided on any another basis other than the DERC's Regulations taken along with the existing UBBLs of Delhi.

Against the above background, in order to get the new electricity connection released, the Appellant must complete all commercial and other formalities including obtaining of the necessary 'Fire Clearance Certificate' from the Fire Department as required under the regulations, which is mandatory for release of the connections as the height of the building is more than 15 meters without stilt parking.

Hence, no substantive case is made out for any interference with the verdict of the CGRF and the appeal is disposed of accordingly.


(S.C.Vashishta)
Electricity Ombudsman
23.11.2020