

OFFICE OF 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. 22/2023

(Against the CGRF-BYPL's order dated 17.04.2023 in Complaint No. 92/2023)

IN THE MATTER OF

Ms. Shweta Kumari

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Vinod Kumar, Counsel of the Appellant and
Shri Rupesh Kumar

Respondent: Ms. Seema Rawat, Senior Manager, Ms. Shweta Chaudhary,
Legal Retainer and Ms. Ritu Gupta, Advocate, on behalf of
BYPL

Date of Hearing: 17.08.2023

Date of Order: 18.08.2023

1. Appeal No. 22/2023 has been filed by Smt. Shweta Kumari, r/o House No. 978/1 (Old Plot No. 348/1) Upper Ground Floor (Right Side), Saraswati Gali, Mandawali, Delhi -110092, through Shri Vinod Kumar, Advocate, against the Consumer Grievance Redressal Forum - Yamuna Power Limited's (CGRF-BYPL) order dated 17.04.2023 in Complaint No. 92/2023.

2. The background of the case is that the Appellant applied for a new electricity connection vide Request No. 8006133267 at the above mentioned premises, which was rejected by the Respondent (Discom) vide deficiency letter dated 27.01.2023 on the grounds i.e (a) fire safety clearance required as the building height is more than 15 meters (ground plus four floors including mezzanine floor) and (b) electric pole found encroached by the applicant.



3. The Appellant approached CGRF-BYPL and contended that the subject building was constructed fifteen years ago. There are ten dwelling units in the entire building, and except for her flat, all the occupants have electricity connections. One domestic connection (CA No. 153594630) had been installed recently, i.e. on 13.12.2021. The Appellant prayed for the release of the electricity connection to her on the lines, other occupants got their connections.

4. In rebuttal, the Discom contended that (a) the building height is more than the permissible limit of 15 meters, and as the building happens to be commercial, therefore, fire safety clearance was asked for, (b) the building has been constructed in violation of provisions of Regulation 60 & 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and Section 53 and 68 (5) read with Section 161 of the Electricity Act, 2003 and (c) the floor where the new connection is sought has encroached upon the electricity pole and the requisite distance required for safety has not been maintained. Photographs to this effect were also submitted before the CGRF-BYPL. The Discom also submitted that they have issued 'accessibility notices' to all the ten Registered Consumers of the said building on 03.03.2023 regarding violations of the minimum clearance of electrical lines/installation from building/structure/balconies/ verandas/roof/Chajja etc.

5. The CGRF-BYPL, in their order, elaborated on the Regulations as mentioned in the above paragraph in detail and concluded that the complainant has encroached upon the pole and taken it within the chajja of their dwelling. The building is commercial and has a height of more than 15 meters, hence, it requires fire clearance certificate from the concerned authority for the release of new connection. Further, with regard to several connections given in this building in violation of Rules and Regulations, the CGRF-BYPL referred to the Delhi High Court's order dated 06.12.2019 in WP(C) 2453/2019 titled Ms. Azra vs the State (Govt. of NCT Delhi & Ors). The CGRF-BYPL rejected the Appellant's complaint and directed that to get the new connection, the complainant has to fulfill the requirements of the Discom. The complainant also has to remove the encroachment around the pole and produce a fire clearance certificate as the height is more than 15 meters.

6. Aggrieved by the order dated 17.04.2023 passed by the CGRF-BYPL, the Appellant filed the present appeal on the grounds:

(a) That since the building is a residential building and not business, as per Regulation 3 of the Sixth Amendment, the Appellant is entitled to get the electricity connection which states that - "*in case of residential building, for release of electricity connection, the Distribution Licensee shall not insist for Fire Clearance Certificate for the residential building having a height up to 15 meters without stilt parking and up to 17.5 meters with stilt parking.*"



(b) That the Discom has released numerous connections at the other sites where the pole touched in the similar circumstances.

(c) That the pole touches the common stairs of the premises in question and is in common use for the other owners/consumers.

(d) That the premises is consists of ten flats which are in front of each other on each floor, and all the flats are electrified except the flat of the Appellant.

(e) That electricity is an essential part of life and that she is in dire need of electricity in her premises.

The Appellant prayed to direct the Respondent to release the electricity connection and pay compensation for the unnecessary harassment.

7. The Respondent, in their written submission reiterated that the building in question has been constructed in violation of the provisions of Regulations 60 and 61 of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 and Sections 53 and 68 (5) read with Section 161 of the Electricity Act, 2003. Since the floor wherein a new connection is sought has encroached upon the electricity pole and the requisite distance of 1.2 meter is not maintained, a new connection cannot be granted until the unauthorized construction is removed and the requisite safety distance is maintained. With regard to the existing ten electricity connections, the Respondent submitted that the building is residential and has two dwelling units on each floor from Upper Ground Floor to Fourth Floor. On the ground floor, there is a single dwelling unit, whereas the other portion of the ground floor is being used as parking. The list of connections in this regard is mentioned below:

| Meter No. | DOE |
|-----------|------------|
| 35734951 | 13.12.2021 |
| 35471186 | 06.01.2018 |
| 35448737 | 08.11.2017 |
| 35324931 | 17.05.2017 |
| 35314149 | 27.04.2017 |
| 25311808 | 09.11.2016 |
| 35233987 | 25.11.2016 |
| 35256562 | 28.12.2016 |
| 35256559 | 28.12.2016 |
| 35656608 | 10.12.2010 |



8. Further, there is encroachment upon the pole on the right hand only. The Appellant has applied for the connection in a flat on the upper ground floor on the right hand side whereas the connection was released in the year 2021 for a dwelling unit on the left hand side. The Respondent also submitted that for all ten connections, accessibility notices dated 03.03.2023 have been issued to all the consumers, but till date, they have not received a reply from any of them. As such, the Respondent has now initiated steps to issue disconnection notices. Regarding other cases referred in the appeal, the Respondent submitted that in none of the cases pole has been encroached.

9. The appeal was admitted and taken up for the hearing on 17.08.2023. During the hearing, the Appellant was represented by her counsel and the Respondent was represented by their authorized representatives/counsel. An opportunity was given to both to plead their cases at length.

10. During the hearing, the Appellant reiterated his stand as before the Forum and in the appeal. When asked, whether the pole touched the premises or inside the floor, as contended, the Counsel for the Appellant admitted that the pole is inside the premises. On being asked why the premises, in question, was purchased when it had encroached the pole, the Appellant submitted that he purchased the said property without noticing it as numerous connections were already existing in the building. When further asked, whether the pole was fixed before construction of the building or after, the Appellant replied that the subject premises had been constructed 15 years ago, so the pole appears to have been installed thereafter. The Appellant proposed that if the required distance is not maintained as per regulations, the Respondent is free to shift the pole at the requisite distance. This proposition was not found feasible, since the onus of removing unauthorized construction remained with occupants.

11. The Respondent, in rebuttal, submitted that the pole was correctly positioned, chajja was extended later, pole encroached and taken within the premises. The Respondent was asked (i) why ten connections were released when the pole was in an encroached condition, which is dangerous, and violated safety parameters? (ii) Why alleged connections were not disconnected hitherto despite serving notices to them? (iii) Why was it not noticed by any official of the Discom at the time of the release of said connections? (iv) Why no FIR has been registered and the matter has not been taken before the SDM's Court against illegal encroachment? In response, the Respondent submitted that though the "accessibility Notices" were issued against all ten connections in the subject premises on 03.03.2023, but they have not received any response from them. Therefore, no further action has been taken at their end. The Respondent further conceded that the un-authorized construction of the building



should be demolished and pending such action, the ten electricity connections should be disconnected.

12. The matter has been considered in the light of the material on record and the rival contentions by the parties.

13. It is apparent from the record that in the light of the erroneous submission by the Respondent before the CGRF, the CGRF-BYPL took a view that the building was a business building having more than 15 meters in height and that fire clearance was required for the release of the connection. However, the other aspect of the violation of horizontal clearance of 1.2 meter as required vide Regulations 60 and 61 of Central Electricity Act (Measures relating to Safety & Electric Supply) Regulations, 2010, remains. The floor where the connection is sought had encroached upon the electricity pole and required safety distance has not been maintained. The CGRF to this extent, rightly rejected the application in its order dated 17.04.2023.

14. The contention of the Appellant that other connections in the building have been released from time to time, the last one on 13.12.2021, the CGRF has rightly rejected the contention based on the ruling by the Delhi High Court in the matter of M/s Azra vs. State of NCT of Delhi, WP(C)453/2019, where the Court held that *"merely because some of the occupants of the building have wrongly been given electricity connections, it cannot be a ground for the Court to direct the Respondents to further compound the wrong act and direct granting of a new connection to the premises of the petitioner."*

15. It is also clear from the list in para '7' that since the first connection was released in 2010, the pole existed on that date. Subsequently, encroachment took place and the connections were released despite the encroachment.

16. The requirement of safety as envisaged in Section 53(a) & (b) of the Electricity Act, 2003, cannot be compromised by the DISCOMs. The Respondent has stated that accessibility notices dated 03.03.2023 have been issued to all ten registered consumers (occupants) for violation of the minimum clearance of electrical lines/installation from the building/structure/balconies/varanda/roof/chajja, etc. The Respondent is contemplating to issue disconnection notices as the Respondent has not received any reply from them. However, no further action has been taken so far, which is clearly violative of the provisions of Section 68 (5) of the Electricity Act, 2003. It was enjoined upon the Discom to have conducted proper field visits and release new connections on the basis of their field visits and in this case, connections should not have been released as encroachments had taken place which was clear hazard to safety of the residents as contemplated in Section 53 of the Electricity Act, 2003.



17. In the light of above discussion, this Court, therefore, decides as under:-

- (i) The appeal is dismissed as devoid of merit.
- (ii) It will be open to the Appellant to approach the DISCOM for release of the connection, once the objections/deficiencies are removed.
- (iii) The DISCOM is expected to take further action, as contemplated in Section 68(5) of Electricity Act, 2003, against the ten (10) other registered consumers in the building.
- (iv) CEO of the Discom may bring to the notice of all concerned about the responsibilities contemplated under section 53 and 68(5) of the Electricity Act, 2003, for strict compliance.

The case is disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
18.08.2023