

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. 24/2019

(Against the CGRF-BYPL's order dated 07.03.2019 in Complaint No.04/01/2019)

IN THE MATTER OF

Smt. Bhavna Sharma

· Vs.

BSES Yamuna Power Limited

Present:

Appellant : Smt. Bhavna Sharma, the Appellant along with her spouse
Shri Ashok Kumar

Respondent (1) : Shri Vipul Suthar, Sr. Manager, Shri I. U. Siddiqui, Manager,
and Ms. Ritu Gupta, Advocate on behalf of BYPL

Respondent (2): Smt. Sangeeta Tyagi along with her spouse Shri Samay
Singh Tyagi

Dates of Hearing: 06.11.2019

Date of Order: 11.11.2019

ORDER

1. The Appeal No. 24/2019 has been filed by Smt. Bhavna Sharma, against the order of the CGRF-BYPL dated 07.03.2019 passed in Complaint No. 04/01/2019. The Appellant although is not covered under the definition of a complainant yet has made this appeal since she was made to appear before the Forum as Respondent No. 2 during the hearing in CGRF. The complaint in the Forum was however filed by Smt. Sangeeta Tyagi on the issue of non-release of a new electricity connection by the Discom (Respondent No.1) in respect of her property bearing No. F17/C, Gali No. 10, Brahmpuri, Delhi - 110053.

The issue involved in the present appeal by the Appellant Smt. Bhavna Sharma is regarding issue of necessary directions to the Discom (Respondent No.1), for not releasing the new electricity connection to the premises of Smt. Sangeeta Tyagi (Respondent No. 2) as the same is an unauthorized construction.



2. In the instant appeal, the Appellant has stated that she had raised her objection during the hearing in the Forum that since the said property on which Smt. Sangeeta Tyagi has applied for a new connection has been booked for demolition against unauthorized construction by East Delhi Municipal Corporation (EDMC) vide its letters dated 07.10.2017 and 08.01.2019 and hence, the electricity connection should not be released at her premises. Moreover, EDMC has also directed the Chief Executive Officer (CEO) of the Discom viz; BYPL, vide letter dated 12.12.2017, to disconnect the electricity supply to the property in question since EDMC has initiated an action u/s 343 & 344 of DMC Act, 1957. The Appellant further reiterated that despite her submissions as above, the Forum passed the order for release of connection to the unauthorized property of Smt. Sangeeta Tyagi and in view of the same she has preferred this appeal, with a prayer that the Discom may be directed not to release the new electricity connection to the premises of Smt. Sangeeta Tyagi and the order passed by the Forum be revoked. It has also been reiterated by the Appellant that the owner/occupier of the said property has no legal right to take any electricity connection towards its south side in Gali No. 10, Brahmpuri since according to the original registry papers of the property No.F-17, Gali no. 7, Brahmpuri, the front face of the property has the approach from Gali No.7 and not from Gali No.10.

The Appellant further submitted the copy of a letter NO. EE(B)-II/SH-N/2019/D-621 dated 02.09.2019 along with its enclosures written by EDMC to the Chairman, Public Grievance Cell, GNCTD, Delhi, vide which the said property has been reported to be resealed completely after taking part demolition action on 27.08.2019 and further an FIR has also been lodged on 27.08.2019 itself, against the owner/occupier of the property for tampering with the seal. The Appellant also submitted a copy of the FIR during the hearing, which has been taken on record. The Appellant finally submitted that in view of this latest development as reported by him, now the new electricity connection to the said property cannot be released in any case and the Discom may kindly be directed accordingly.

3. The Respondent No. 2, Smt. Sangeeta Tyagi in turn reiterated the points as already submitted in her written submission. In brief the submission made and argued by her is that she applied for a new connection on 03.05.2018 for the portion of her property at the address F-17, Gali No. 10, Brahmpuri, Delhi and in turn the Discom issued a demand note for Rs.4,200/- against the same on 18.05.2018, which was duly paid by her. She further submitted that when the officials of the Discom came to install the meter at her premises, her neighbour Shri Ashok



Sharma, lured the officials of the Discom and did not let them install the meter. The Discom thereafter issued a rejection letter dated 17.09.2018 mentioning therein that since her property is listed as unauthorized construction declared by EDMC vide letter dated 06.10.2017, hence, the connection cannot be processed. The Discom further asked her to apply for refund of the demand-note amount of Rs.4,200/- deposited by her as SLD charges and security deposit against the new electricity connection.

After failing to get the electricity connection, the Respondent No. 2, approached the Forum for release of the connection, wherein her complaint was disposed off with the direction to the Discom to release the connection subject to Respondent No. 2 furnishing an undertaking and indemnity as detailed in the order dated 07.03.2019. The Respondent No. 2 further stated that the Discom did not release the connection to her premises even after the order of the Forum and she and her family are forced to live without electricity and they cannot be denied access to the basic amenities and necessities like electricity. Finally she submitted that the Discom be directed to release the new electricity connection at her premises since it is the basic necessity of the life. However, during the hearing the Respondent No. 2 admitted that at present her property is lying sealed by the concerned authority in EDMC and she has already applied for de-sealing of the said property.

4. The Discom in their response have stated that the Respondent No. 2 applied for a new electricity connection in respect of her property bearing No. F-17/C, Gali No. 10, Brahmpuri, Delhi - 110053. However, the said connection could not be released on account of the fact that the property was booked for demolition as there was unauthorized construction and accordingly, the Respondent No. 2 was duly communicated repeatedly to seek refund of money paid against the demand-note since they cannot release the new electricity connection. The Respondent No. 2, in January, 2019 filed a complaint before the Forum for release of new electricity connection. The said complaint was disposed off vide order dated 07.03.2019 whereby the Discom was asked to release the connection subject to Respondent NO. 2, furnishing an undertaking and indemnity as detailed in the order. Discom further submitted that the Forum was of the view that since EDMC had not replied to the letter dated 15.02.2019 issued by Discom during the proceedings in the Forum, hence there shall be a deemed approval from EDMC for the release of electricity connection in the premises in issue which is however admittedly booked for unauthorized construction. They further submitted that in order to comply with the

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order of the Forum, the site was visited by them and it was found that the unauthorized construction is still existing in the premises. Since the Discom is not an adjudicating body who can decide on the issue of the unauthorized construction, accordingly, the Respondent No. 2 was asked to provide an NOC from EDMC in order to enable them to release the electricity connection. In this respect the Discom issued various letters dated 25.04.2019, 15.05.2019, 22.05.2019 & 31.05.2019 to the Respondent No. 2, but she failed to provide NOC from EDMC and as a consequence the new electricity connection has not been released till date.

The Discom further reiterated that in the mean time somewhere in April, 2019, the Respondent No. 2 herein filed an application for execution of order dated 07.03.2019 passed by the Forum. They in turn filed a reply dated 26.04.2019 to the said execution petition wherein it is evident that in case Discom would release the new electricity connection without getting the required NOC from EDMC it would amount to overreaching the order and directions passed by the Hon'ble Supreme Court of India and Hon'ble High Court of Delhi. Discom also submitted that for the grant of new connection, the applicant has to submit the application in a format which is duly approved by the Delhi Electricity Regulatory Commission (DERC) and as per the said format applicant agrees and undertakes inter alia that the building has been constructed as per prevalent building Bye-Laws. As Respondent No. 2 in spite of being repeatedly asked to submit NOC from EDMC has failed to provide the same, thus by necessary implication it is presumed that the premises in issue has been constructed unauthorizedly, more so as EDMC had issued notice to this effect in the year 2017. The Discom further submitted that it is also important to mention here that the Forum has not passed any order in execution petition till date.

In their response to the present appeal the Discom submitted that the instant appeal has been filed on behalf of Smt. Bhavna Sharma who claims to be the neighbour of the Respondent No. 2. The Appellant is seeking relief that the premises of Respondent No. 2 be not electrified as its construction is in violation of building bye-laws and it has also encroached upon the road which is the property of EDMC. The fact that the tenants of Respondent No.2 are enjoying electricity at the premises in issue which has been provided by the Discom, as alleged by the Appellant, has specifically been refuted by Discom and it has been further contended that there is no electricity connection at the said premises or any part thereof. The Appellant by way of this appeal has however sought the relief that the order of the Forum dated 07.03.2019 be revoked and they be directed not to

release the new electricity connection to the said premises. On the other hand Respondent No. 2 is insisting that the connection be released to their premises at the earliest. The Discom also vehemently denied the allegations made by Respondent No. 2 that the officials of the Discom are harassing them.

In view of the submissions made herein above, the Discom finally submitted that the electricity connection to the premises can be released only in case Respondent No. 2 fulfills all the formalities pertaining to the same and provides NOC from EDMC, as the premises in issue has been booked for unauthorized construction.

5. Having taken into consideration the pleadings, contentions and submissions by all the parties during the course of hearing and going through the documents/papers submitted by the parties i.e. the Appellant, the Discom and the Respondent No. 2, it is evident that the Discom did not release the new connection sought by Smt. Sangeeta Tyagi (Respondent No. 2) since the property has been found to be still unauthorized and till date no NOC has been received from EDMC in order to proceed further in compliance of the order passed by the Forum. The Discom is maintaining that unless the NOC as required under the extant regulation is submitted, the order of the Forum cannot be complied with and the Discom would only act on the order passed by the Forum within the prescribed period as specified in the order provided NOC is received by the Discom from EDMC.

It is also observed that notwithstanding the fact that a declaration form has to be submitted by any consumer seeking an electricity connection vide which the consumer has to indemnify the licensee against the proceedings, claims, demands, costs, damages, expenses that the licensee may have to incur by reason of a fresh connection given to the applicant, which in the instant case has been already done by the applicant viz; Respondent No. 2. In view of the above, it is held that the CGRF exceeded their jurisdiction by directing the Respondent No.2 to indemnify the licensee again on the same count and is not in order. Apparently there is infirmity in the order of the Forum.

The Hon'ble Supreme Court in a matter viz WP4677 of 1985 and the Hon'ble High Court of Delhi in a matter viz W.P. (C) 4349 of 2017 directed inter alia that the property, if found to be booked as unauthorized construction, the Discom is under obligation to disconnect the electricity or not to grant new connection unless cleared from the respective public authorities such as EDMC, DPCC etc. Keeping in view the above decision and direction of the Hon'ble Supreme Court and Hon'ble High


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Court of Delhi, the Discom has rightly acted, in the instant case by not granting the electricity connection to the premises in question in the absence of NOC which is already booked for unauthorized construction by EDMC.

The Appellant has also apprised of the latest position of the case regarding the unauthorized construction of the premises in question in her written submission and has enclosed a copy of the letter dated 02.09.2019 written by EDMC, to the Chairman, PGC, GNCTD, vide which it has been observed that the said property has been re-sealed completely after taking part demolition action on 27.08.2019 and further an FIR has also been lodged against the owner/occupier viz, Respondent No. 2 for tempering with the seal. The Respondent No. 2 has also admitted during the hearing that at present the premises/property where the new connection has been applied for has been resealed by EDMC.

In the background of the above exposition, the verdict of the CGRF-BYPL is set-aside and it is held that the electricity connection to the said property, which is already booked for unauthorized construction and has been re-sealed by EDMC, cannot be released. It may further be clarified that unless clearance is obtained from EDMC, no electricity connection can be released, especially when there exists a direction from Hon'ble Supreme Court that unauthorized construction cannot be granted electricity connection till the time the clearances are obtained from various concerned agencies. However, since the Respondent No. 2 has also admitted during the hearing that their property is lying sealed at present and they have already applied for de-sealing of the same with the concerned Authority, she is advised to liaise with EDMC and initiate action in accordance with the law to get the NOC in order to fulfill the requirements for grant of electricity connection. After receiving the required NOC from EDMC and completion of all other formulates for getting a new electricity connection, the Respondent No. 2 can take up her case for the release of the electricity connection with the appropriate Authority of the concerned Discom.

The appeal stands disposed off accordingly.


(S.C.Vashishta)
Electricity Ombudsman
11.11.2019