

OFFICE OF ELECTRICITY OMBUDSMAN

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

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Appeal No. 25/2024

(Against the CGRF-BYPL's Order dated 05.08.2024 in Complaint No. 322/2024)

IN THE MATTER OF

Shri Rohit Bansal

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Neeraj Kumar, Advocate, on behalf of the Appellant

Respondent: Shri Ravi Kumar Tiwari, Shri Nishant Kumar, Ms. Chhavi Rani, Legal Retainer and Shri Akash Swami, Advocate, on behalf of BYPL

Date of Hearing: 14.11.2024

Date of Order: 18.11.2024

ORDER

1. Appeal No. 25/2024 dated 05.08.2024 has been filed by Shri Rohit Bansal, R/o 6, Sreshtha Vihar, Delhi - 110092, through his Advocate Shri Neeraj Kumar, against the Consumer Grievance Redressal Forum – Yamuna Power Limited (CGRF-BYPL)'s order dated 05.08.2024 in Complaint No. 322/2024.

2. The case background is that the Appellant approached CGRF-BYPL for release of a new non-domestic electricity connection for his factory located at 520/1 & 2, First Floor, Mahalaxmi Compound, Dilshad Garden Industrial Area, Delhi -110095. The Appellant argued before the Forum that a site visit was conducted on 09.05.2024, and all the objections raised were addressed. Additionally, the MCD's reply dated 08.05.2024 to his RTI request (vide Receipt No. 140935 dated 03.05.2024 confirmed



that the property at 520/1 & 2, Mahalaxmi Compound, G.T.Road, Dilshad Garden Industrial Area, Delhi – 110095, has not been booked against unauthorized construction at First Floor and Second Floor, in the name of Shri Rohit Bansal”. Even then, the Discom has not released the connection citing that premises is in “MCD Objection” list. The Appellant requested the Forum to release the required non-domestic electricity connection in his name in the interest of the justice. In support of his contention, the Appellant also submitted copy of Forum’s order dated 23.11.2020, in the matter of Shri Indraj Singh vs BYPL, where a connection was directed to be released after taking an Affidavit/Undertaking from the complainant.

It is relevant to also mention that the Discom had released a non-domestic connection (CA No. 154037765) to the Appellant, Shri Rohit Bansal for the subject premises bearing No. 520/1 & 2, Mahalaxmi Compound, Dilshad Garden Industrial Area, following the direction of the CGRF-BYPL’s order dated 09.01.2023 in Complaint No. 219/2022. At that time, the premises where the connection was released was also included in the MCD’s objection list. On the other side, the Forum denied the non-domestic connection to Shri Shyam Sunder Dua, C/o 5/520, Mahalaxmi Compound, Dilshad Garden Industrial Area, Delhi -110095, on the ground of the premises being in MCD’s objection list. The Forum’s order was challenged before the Ombudsman (in Appeal No. 24/2023) by Shri Shyam Sunder Dua who stated that when the premises No. 520/1 & 2 had also been in MCD’s objection list, then how the Forum ordered for release of connection in the name of Shri Rohit Bansal (now Appellant). Accordingly, the Ombudsman in his order dated 01.09.2023 in Appeal No. 24/2024, titled “Shri Shyam Sunder Dua vs. BYPL”, directed that the connection of Shri Rohit Bansal be disconnected since he has failed to respond to BYPL’s notice dated 02.08.2023, which sought clarification regarding MCD’s letter No. EE(B)-1/SH-N/2022/D-268 dated 09.09.2022. Consequently, the connection at premises No. 520/1 & 2 registered in the name of Shri Rohit Bansal was disconnected by the Discom on 12.09.2023.

3. The Discom before the Forum submitted that the reasons for denial of applied connection were (a) the premises in question stands booked by MCD, as intimated



vide their letter dated 09.09.2022 due to unauthorized construction, a fact that has been confirmed by the Forum as well as the Ombudsman in Appeal No. 24/2023 titled as Shri Shyam Sundar Dua vs BYPL, and (b) the case is subject to the principle of "Law of Res-Judicata". Upon inspection of the said premises, it was revealed that there are multiple deficiencies, which are violation of the DERC's Supply Code, 2017. Further, the complainant has also concealed the previous round of litigation qua the aforesaid premises which was decided by the Forum vide Order dated 01.03.2024 in CG No. 454/2024, whereby he requested for restoration of disconnected supply but the Forum dismissed the complaint due to finality of earlier proceedings.

4. Further, the complainant placed on record an RTI reply received by him from the MCD which is completely misconceived. There is contradiction regarding status of the premises. While the MCD has admitted that the premises is booked and demolition has to be carried, the RTI response provides inconsistent information regarding the status of the said premises. Therefore, in such ambiguous and disputed facts the submission of the valid BCC duly issued by the competent authority would resolve the issue. To verify the authenticity of MCD's reply to the complainant's RTI, the Discom sent an e-mail to MCD on 27.05.2024 seeking confirmation. The MCD, vide its e-mail reply dated 03.07.2024, confirmed that the reply to RTI application was issued by their office.

5. The Appellant subsequently filed a rejoinder, contesting the contentions of the Discom as averred in their reply and clarified that that his application for a new connection was for first floor and referenced an RTI reply dated 08.05.2024, which mentioned that the premises located at 520/1 & 2, first and second floor are not booked in the name of the Appellant.

6. In its order dated 05.08.2024, the CGRF-BYPL considered that the property in question was booked by MCD vide their letter No. EE(B)-I/SH-N/2022/D-268 dated 09.09.2022. This letter clearly states that properties No. 520/1 & 2, 520/5, 520/6, 520/7, 520/10 and 520/12, located at Mahalaxmi & Ganpati Compound, G.T.Road, Dilshad Garden, Delhi, are booked due to unauthorized construction. The MCD's



response to the complainant's RTI does not substantiate the claim that property is not booked, as it only specifies that the first and second floors are not booked in the name of Shri Rohit Bansal. Therefore, the complainant should have provided a 'Building Completion Certificate' or 'No Objection Certificate' from MCD to support his contention.

7. The Forum referred to Regulation 10(3) and 11(2)(iv)(c) of DERC's Supply Code, 2017 – which pertain to the proof of ownership or and load sanction for new connections, respectively. Additionally, the forum referred the High Court of Delhi case in the matter of Parivartan Foundation vs. South Delhi Municipal Corporation & Others {WP(C) 11236/2017 dated 20.12.2017}. Regarding the judgement of the Ombudsman in the matter of Imran vs BYPL, the Forum stated that both the cases are entirely different. In that case, Shri Imran had provided a 'Building Completion Certificate' which the Discom was required to verify with the MCD, whereas in this case the complainant has not submitted any 'BCC' or 'NOC' from the MCD.

8. Based on the aforementioned view, the Forum concluded that the Respondent has rightly rejected the application for a new connection and dismissed the complaint. However, it was also mentioned if in future the complainant submits Building Completion Certificate, the Discom should release him new electricity connection, subject to fulfilling other required commercial formalities.

9. Dissatisfied with the Forum's order dated 05.08.2024, the Appellant has filed this appeal and reiterated his stand as before the Forum. The Appellant's main contention is that despite submitting the MCD's reply dated 08.05.2024 to his RTI application, which confirmed that the premises in question is not booked for unauthorized construction in his name, his request for a new non-domestic connection was denied by the CGRF-BYPL. Further, the Forum did not consider that several connections have already been granted on the basis of RTI's reply, 'NOC' verification emails, e-BCC letters issued by the MCD and an undertaking/affidavit submitted by the complainants. Furthermore, he was not informed of the date and time, for the site inspection as per Rule 11(2)(iii) of DERC 's Supply Code, 2017, leading him the assert



that the report was entirely false and fabricated. The Appellant invoked "Article 14 of Constitution of India – Equality before the Law" and requested to release of the connection.

The Appellant prayed for (a) to set-aside the CGRF-BYPL's order dated 05.08.2024, (b) to direct the Discom for release of new connection and (c) any other order may deem fit and proper.

10. The Respondent, in its written submission dated 18.09.2024, reiterated its submissions as before the Forum. Furthermore, the Discom submitted that the issue of the MCD objection had already been considered by the Ombudsman in its order dated 01.09.2023 in the titled case – Shri Shyam Sundar Dua vs. BYPL (Appeal No. 24/2023). In response to the Appellant's claim on equality under Article 14 of the Constitution of India, the Discom has referred to several judgements of the Supreme Court. Additionally, the Discom has emphasized that each situation should be evaluated on its own merits and context rather than drawing broad conclusions from isolated incidents. The Supreme Court has been categorical on the aspect "there is no negative equality". The Court has inter-alia held as under:

"It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other case. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality of for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible."



11. The appeal was admitted and fixed for hearing on 14.11.2024. During the hearing, the Appellant was represented by Shri Neeraj Kumar, Advocate and the Respondent was represented by its authorized representatives/Advocate. An opportunity was given to both the parties to plead their respective cases at length.

12. During the hearing, the advocate appearing on behalf of the Appellant reiterated that although the MCD has clarified in response to their RTI application that first and second floor of building located at 520/1 & 2, Mahalaxmi Compound, G.T.Road, Dilshad Garden Industrial Area, Delhi – 110095 were not booked in the name of Shri Rohit Bansal, the Discom failed to release the connection. The Advocate for the Discom however stated that in the light of the controversy arising on account of booking during 2022 and reply to RTI application by the MCD, it was essential to have BCC/NOC from the MCD for facilitating release of the connection. The Ombudsman asked the Appellant to indicate the reasons for disconnection of the earlier connection released in the name of Shri Rohit Bansal, but he could not receive the requisite response from the Appellant. However, from the record of Shri Shyam Sunder Dua (Appeal No. 24/2023) it became apparent that a show-cause notice dated 02.08.2023 was issued to the Appellant before disconnection in the light of the booking of the premises by the MCD. On his failure to respond and on the direction of the Ombudsman, the connection stood disconnected by the Discom. Attention was also invited to the conditions mentioned in the form of application (Annexure –I) for release of a new connection, duly approved by the DERC, wherein requirement of submission of 'BCC/NOC/sanctioned building plan was necessary for release of new connection. The contention of the Advocate for the Appellant about release of other various connections on the basis of Affidavit/Undertaking could be of no avail, since the Supreme Court had in a series of decisions categorically mentioned there could be no "negative equality" and that the Court could not be a party to a continuing wrong. The representative of the Appellant could also not provide any details of demolition, if any, carried out, for bringing the premises in conformity with the sanctioned building plan.



13. Having taken all factors, written submissions and arguments into consideration, the following aspects emerge:

- (i) The factum of booking of property at 520/1 & 2 and others for unauthorized construction by the MCD, Shahdara North Zone, vide its communication dated 09.09.2022, seeking police force for special demolition/sealing action is not in dispute.
- (ii) There is no BCC/NOC from the MCD on record. Applicant for an industrial connection is required to produce 'occupancy-cum-completion certificate/Sanctioned Building Plan' from MCD, at the time of applying for the connection.
- (iii) The CGRF has examined all the relevant aspects while rejecting the complaint.
- (iv) Reliance by the Appellant on a series of decision by the CGRF, allowing release of connection on the basis of an undertaking/Affidavit for disconnection on the basis of MCD action in future, cannot be of any avail in the light of decision by the Delhi High Court in Ms. Azra's case (Court cannot be a party to a continuing wrong), besides any enabling provision in the DERC's Supply Code, 2017.
- (v) There is no evidence/mention of the factum that the Appellant has demolished the unauthorized part of construction/compounded and there is a 'BCC/NOC' from MCD to this effect.

14. In the light of the above, this court directs as under:

- a. Having regard to the absence of clarity on the status of the premises 520/1 & 2, first floor and conflicting communication dated 09.09.2022 and RTI reply dated 08.05.2024, it is imperative for the Appellant to submit before Discom, either 'BCC' or 'NOC' from the MCD for release of the connection.
- b. The Discom shall release the connection within a week of production of the 'BCC/NOC'



15. This order of settlement of grievance in the appeal shall be complied within 15 days of the receipt of the certified copy or from the date it is uploaded on the website of this Court, whichever is earlier.

The parties are hereby informed and cautioned that the Order of Settlement of Grievance raised in the appeal is, as per Regulation 65 of DERC's Notification dated 24.06.2024, final and binding on the parties.

The case is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
18.11.2024