

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. 26/2019

(Against the CGRF-BYPL's order dated 23.08.2019 in Complaint No. 36/07/2019)

IN THE MATTER OF

Smt. Surekha Rani

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Smt. Surekha Rani, the Appellant along with her spouse
Shri Raj Kumar and Father-in-Law Shri Radhey Shyam

Respondent: Shri Jagdish K, Sr. Manager, Shri I. U. Siddiqui, Manager,
and Ms. Ritu Gupta, Advocate on behalf of BYPL

Date of Hearing: 15.11.2019

Date of Order: 20.11.2019

ORDER

1. The Appeal No. 26/2019 has been filed by the Appellant Smt. Surekha Rani, R/o H.No. K-35/5, Main Road, West Ghonda, Delhi - 110053, against the order of the Forum (CGRF-BYPL) dated 23.08.2019 passed in Complaint No. 36/07/2019. Her complaint arises from the CGRF's order declining to adjudicate on her complaint on the ground that the Forum lacks jurisdiction since the complainant does not fulfill the definition of a consumer.

2. The issue, in brief, revolves around the demand of the Appellant that two electricity poles belonging to the Discom (Respondent) which are installed in front of her plot/property be shifted by the Discom. The basic cause of getting these poles shifted by the Appellant is that the lane where these poles are existing is very narrow and whenever there is a sparking on the poles, there are chances of mis-happening taking place in the nearby houses. Secondly, the Appellant has also stated that the plot belongs to three persons and each person has a front of 10 feet each, whereas both the poles have covered a length of around 8.6 feet due to which there is no sufficient space to enter the plot freely and hence it is her case that the poles be got shifted accordingly so that there is enough space available to enter the plot easily.

The Appellant further stated that she has now become the consumer of the Discom and has a connection in her name bearing CA No. 350975403 and therefore her case be adjudicated and the two poles situated in front of her plot be got shifted.



3. The Discom's response mainly revolves around the issue that the present appeal is not maintainable since at the time of filing of the complaint initially in the Forum, the Appellant was not a consumer of the Discom and therefore had no locus standi to file the complaint. The Appellant had applied for an electricity connection during the course of hearing in the Forum and later on after the disposal of the case in the Forum, became the consumer and hence on account of a subsequent event which happened after impugned order was passed, the Appellant cannot acquire the locus standi to file this complaint. In addition to above, the Discom tried to raise vaguely some other rules according to which, the Ombudsman's jurisdiction is barred to adjudicate upon the issues relating inter-alia to electricity poles, etc., which are not being considered at this stage as the issue of jurisdiction has already been settled down by the Forum in its order dated 23.08.2019

4. During the hearing in the Forum, the Discom had submitted that the Appellant is seeking shifting of double pole installed in front of Plot No. G-1/60, Gali No. 4 at Sonia Vihar, Delhi. These poles are having a 25 KVA distribution transformer installed in the year 2004 and are active since the date of installation. It was also submitted by the Discom that the front side of the plot is 30 feet and the poles covered an approximate area of 8.6 feet and further the horizontal distance of the pole from the boundary of the plot is 2.7 feet whereas the vertical distance of the distribution transformer from the ground level is 11 feet and further at present six electricity connections are energized through this distribution transformer. In turn, the Appellant stated that the Discom has recently shifted some connections on this pole in front of her plot just to make out a case to avoid shifting of poles.

5. Having considered all the material on record as well as hearing the oral submissions of both the parties, the basic issue to be adjudicated upon by the Ombudsman reduces to maintainability of the appeal and that of jurisdiction. Before giving a finding on these issues, it would, nevertheless, be appropriate to recap the main arguments addressed by the parties for the sake of record.

A hearing was held on 15.11.2019 where the Appellant argued that she had purchased the plot somewhere in January, 2018 and earlier there was only one pole installed at the site, in front of the said plot in question. After buying the plot, the second pole was installed by the Discom and the double pole was also not active till she filed the case in the Forum and only after filing the case before the Forum, a transformer was installed and some around six connections were connected to the same in order to avoid shifting of the poles. She further pleaded that even if only one pole is removed by the Discom her plot will have a fair access and her grievance will be resolved. In turn, the Discom reverted that this is a new proposal proposed by the Appellant which was not argued earlier and also the Appellant did not challenge this fact earlier that when she had purchased the plot there was only one pole at the site. The Discom further countered that the double pole was installed way back in the year 2004 and also the six connections being fed from the transformer installed on double pole are existing since long. However, the Discom has been asked during the hearing to supply the details of the years of installation of the poles and so also of the six connections being fed from the transformer within two working days with a copy to the Appellant which they have failed to do so. The




Discom also submitted that the shifting of pole is not technically feasible as there is no space available nearby where the double pole along with distribution transformer can be shifted without disturbing the continuity of the supply of the area. The Discom could not forward a suitable and satisfactory response to the specific query regarding the safety issues arising out of any sparking on the poles and minimum distance required to be maintained between the poles and the property of the Appellant, as stipulated under the provisions of Central Electricity Authority, Regulations, 2010.

6. Notwithstanding the above and without engaging further in the detailed rebuttal of each and every argument advanced, it is sufficient to note here that while the Appellant was not a consumer at the time of filing the complaint in the Forum but had applied for a connection during the hearing in the Forum. The Appellant, however, became a consumer after the issue of order of the Forum on 23.08.2019.

The Forum however admitted the case for hearing and disposed it off subsequently without adjudicating upon the basic grievance of the Appellant notwithstanding the fact that they dwelled upon the jurisdiction of the Forum against the backdrop of Discom's contention of non-jurisdiction and has upheld its jurisdiction that the safety concerns are also covered under the services provided by the Distribution Licensee under Clause 5(1) of the DERC Supply Code & Performance Standards Regulations, 2017, and further the issue of the Appellant is also not barred under Clause 13 viz, "Limitation of Jurisdiction of the Forum". Thus, despite admitting the complaint initially and disposing off the same on the ground that the complainant does not fulfill the definition of the consumer and then again addressing the same in the light of the 'Safety Concerns' without giving any order on the issue is inappropriate. Now, since the Appellant has become a registered consumer, the various aspects of the case need to be revisited de novo and require further deliberation. Thus, it would be most appropriate for the Forum to handle and enquire into the said grievance of the complainant.

7. Accordingly, this case is hereby remanded back to the CGRF with the direction to re-examine the main issue of the Appellant in the light of the Forum's ruling that the 'Safety Concerns' are also covered under the services provided by the Licensee and further in view of the fact that the Appellant is now a consumer and is thereby covered under the definition of a complainant. Further, since the Forum is not barred under clause 13 i.e. "Limitation of Jurisdiction of the Forum", from entertaining the grievance filed by the consumer, the same be taken up for decision and disposal as per the merits of the case in accordance with the law. The complainant would be entitled to file an appeal before the Ombudsman in case she is still not satisfied with the verdict of the CGRF.


(S.C. Vashishta)
Electricity Ombudsman
20.11.2019