

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. 31/2023
(Against the CGRF-BYPL's order dated 28.07.2023 in Complaint No. 161/2023)

IN THE MATTER OF

Shri Arun Kumar

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Shanky R.S. Gupta, Advocate

Respondent: Ms. Shweta Chaudhary, Legal Retainer, Ms. Amita Sharma
and Ms. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 12.10.2023

Date of Order: 13.10.2023

ORDER

1. Appeal No. 31/2023 has been filed by Shri Arun Kumar, R/o Part of 1/3256, Old No. 1413-1/112, Street No. 6, Ram Nagar Extension, Shadhara, Delhi - 110032, through Shri Shanky R.S.Gupta, Advocate, against Consumer Grievance Redressal Forum's (CGRF-BYPL) order dated 28.07.2023 in Complaint No. 161/2023.

2. The background of the case is that the Appellant applied for a new electricity connection on a number of occasions but the same was rejected by Discom on the ground that the subject premises was found in MCD's objection list. On 10.03.2023, the Appellant approached the CGRF and stated that he has been harassed and discriminated against by the Discom. The Appellant further stated that he had checked the status of his premises bearing No. 1/3256 (1/2) out of Khasra No. 147, Ram Nagar, Extension, Shahdara, Delhi – 110032, with the Sub-Registrar Office, Nand Nagri, Delhi, who informed that the said premises is not booked under unauthorized construction, even though it is in his



name. The Appellant also submitted certified copy of sanctioned building plan of the premises which is also approved and stamped by MCD and further stated that portion of the property is gifted to him by his mother through a gift-deed dated 14.10.2015. The Appellant further stated that he is a legal occupier of the said premises and even one electricity connection is already energized vide CA No. 152133721 on 20.03.2017 by the Discom and requested his grievance be redressed as per DERC's Supply Code, 2017 with immediate effect. Moreover, the Appellant also claimed that the portion where the electricity connection is sought has been regularized and certified vide Resolution No. 1423/STG dated 09.11.1981, but no such communication has been placed on record. The Appellant also submitted that the part of property which is in the east might have been booked.

3. The Discom in its letter dated 03.04.2023 refuted the contention of the Appellant and claimed that as per MCD's (erstwhile EDMC) objection list vide letter No. EE(B)-II/Sh-N/2018/D-1507 dated 28.09.2018, S.No. 53, the subject premises had been booked for "unauthorized construction in the shape of foundation of column (200 sq. yds). The said booking is in the name of the Appellant. The Discom also submitted that as per site visit report, a copy of which is not placed on record, building status is ground plus three floor and two electricity connections bearing Meter No. 70091936 (CA No. 101334267) and 70173219 (CA No. 152216377) are already existing and were energized in the year 2007 and 2017 respectively. The Discom further submitted that new connection is provided only as per regulations framed in DERC' Supply Code, 2017. In terms of Regulation 10, new electricity can be provided on duly filled form as approved by DERC. In this said form, the applicant undertakes that the building has been constructed as per prevalent building bye-laws. Thus, where the premises is booked by MCD, then prima facie the said undertaking is false and accordingly in such cases applicant is asked to submit either 'No Objection Certificate' or 'Building Completion Certificate' from Municipal Corporation of Delhi. The Discom also referred various judgements passed by the Hon'ble High Court of Delhi, viz Parivartan Foundation Vs South Delhi Municipal Corpn & Others W.P(C) 11236/2017 dated 20.12.2017 and in terms of objection list circulated by the MCD, and stated that they are refrained from granting fresh electricity connections and or restore electricity of premises which are in the MCD objection list. Accordingly, in this case also fresh electricity connection cannot be granted in view of MCD objection list.

4. The Forum in its order dated 28.07.2023 considered and referred to DERC (Supply Code and Performance Standards) Regulation, 2017, regulation 10 (3), which says that for the new connection, proof of ownership or occupancy is required and, observed that the contention of the complainant regarding sanctioned building plan itself, as the proof of building construction as per plan



cannot be accepted. The Forum clarified that submission of sanctioned building plan, does not prove that the building is built-up, as per sanctioned plan. The 'Building Completion Certificate' (BCC) will only prove that the building is constructed as per the building plan. Moreover, building in this case was booked by MCD at the initial stage of construction when columns were being laid. The complainant has neither submitted any documents to prove that the objections were removed nor the 'Building Completion Certificate' was submitted by him. The premises booked under MCD's objection list is in the name of the complainant itself, thus, the possibility of booking on the other part of the property is also not sustainable. Therefore, on the basis of safety and security, the rejection of new electricity connection is justified.

5. Aggrieved from the order dated 28.07.2023 passed by the Forum, the Appellant preferred this appeal dated 06.08.2023 on the grounds given as under:

- (i) That he has relevant documents, viz; Building Sanction Plan dated 12.07.2019, as per DERC's regulations.
- (ii) That sanctioned building plan revokes the MCD list for disconnection of supply.
- (iii) No Architect/Structural Engineer/professional is debarred for the sanction building plan, and, therefore, no question arises for not granting an electricity connection.
- (iv) That applied premises is constructed as per Master Plan of Delhi (MPD) in 2021 and having up to 15 meters height.
- (v) That the Discom did not disconnect the supply as per MCD's objection list, hence, there is deficiency in services on part of the Discom.
- (vi) That the Discom releasing 90% of the connections without taking sanctioned building plan/building completion certificate.
- (vii) That the CGRF-BYPL's order is not reasoned at all.
- (viii) That the Hon'ble High Court of Delhi's judgement in WP(C) 11236 dated 20.12.2017, in the matter of Parivartan Foundation vs SDMC & Others, ordered BSES-BRPL for disconnection of supply, if connections were given in the buildings which have violated the law. Therefore, CEO of Discom is accountable.

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- (ix) That the above cited writ petition had also been dismissed on 12.03.2018 stated that not providing electricity and water connection are not in public interest nor bonafide to entertain because the said petition was only for 14 properties subject to BSES Rajdhani Power Ltd. in South Delhi Municipal Corporation and not in BSES Yamuna Power Limited.
- (x) That the CGRF-BYPL has erred in para 8 of its order dated 28.07.2023 by mentioning the order of the Hon'ble High Court of Delhi in WP(C) 2453/2019 in the matter of M/s Azra, because neither there is any outstanding dues nor the building height is above 15 meters.
- (xi) That earlier also, the Forum ordered in the similar matters, viz; CG Nos. 169/2022, 184/2022 & 190/2022, that after taking an affidavit "whenever MCD will take an action, BSES can disconnect the supply", so he can undertake the similar followed by the doctrine of precedent in law.
- (xii) That the Hon'ble Electricity Ombudsman in its order dated 15.06.2023 in Appeal No. 13/2023, in the matter of Shri Rashid Ahmed vs BYPL ordered that "if the MCD does not reply within seven days for the booked premises mentioned in the list, the connection be released by the Discom without obtaining 'NOC or BCC'. Therefore, he prayed for similar relief in the interest of natural justice.
- (xiii) That as per Article 21 – right to life of one, Constitution of India, electricity is basic and necessary amenity which cannot be denied.

6. The Respondent in their written submissions dated 04.09.2023 before this office reiterated the same as submitted before the CGRF. In addition, the Discom submitted that the Appellant stated that new connections are permissible on the basis of new connection form, i.e. on submission of sanctioned building plan with the application of new connection. The Appellant also contended that sanction building plan revokes the MCD list and for this he relied on Section 332 of DMC Act 1957, which is quoted below for reference:

"332. Prohibition of building without sanction No person shall erect or commence to erect any building or execute any of the works specified in Section 334 except with the previous sanction of the Commissioner, not otherwise than in accordance with the provisions of this Chapter and of the bye-laws made under this Act in relation to the erection of buildings or execution of works."



The Discom further submitted that issue is not that whether the plan was approved or not but the issue is that whether the property has been constructed as per the said approved plan or not. The factum is that property, in question, is booked by the MCD at the stage of laying of the foundation of the column itself. Therefore, to establish that property which is booked by the MCD for unauthorized construction, is finally constructed as per the sanctioned plan, the Appellant is required to submit either Building Completion Certificate (BCC) or 'No Objection Certificate' from MCD.

With regard to disconnection of the electricity connections as per the MCD's objection list, the Discom submitted that they cannot carry out the disconnection operation alone, it can only be performed in the form of joint action along with concerned authorities, viz; MCD, DDA, Police staff, etc. Discom has already forwarded a letter to EDMC vide No. FD Head (Dilshad Garden)/2018-19/106 dated 12.03.2019. Regarding the orders passed by the CGRF as mentioned in point (xii) of para 5 supra, the facts and issue were different compared to the present case.

7. The appeal was admitted and taken up for the hearing on 12.10.2023. During the hearing, the Appellant was represented by Shri Shanky R S Gupta, Advocate and the Respondent was represented by their Counsel/Authorized Representatives. An opportunity was given to both to plead their case at length.

8. During the hearing, the Counsel of the Appellant reiterated the same as submitted in his complaint before the Forum and appeal before this court. In response to a query raised by the Ombudsman, the Counsel accepted that the MCD has raised the objection on the basis of unauthorized construction vide their letter dated 28.09.2018, whereas, sanctioned building plan was got approved on 12.07.2019. When further asked to the Counsel, whether the Appellant approached the MCD, to know the current status of his building and on what basis two connections were released in 2007 and 2017, at the same premises prior to building completion/construction. The Counsel of the Appellant could not answer it.

9. The Advocate of the Respondent submitted that the release of two connections, prior to receipt of MCD objection list, may require a review. The Respondent further submitted that the connection can be approved only after verification of 'Building Completion Certificate' and completion of commercial formalities.

10. The matter has been considered. There is no dispute that the property, in question, is in MCD's objection list as Entry No. 53 in the letter dated 26.09.2018. The fact that a building plan was got approved only on 12.07.2019



establishes that the earlier construction booked by the MCD was not in conformity with any sanctioned plan and hence unauthorized. The sanctioned plan alone cannot become the basis for validation of any unauthorized construction. It is not the claim of the Appellant that he has taken corrective action in respect of the objections, it requires to be supported by the BCC issued by MCD.

The building sanction plan subsequently obtained per se cannot erase unauthorized construction carried out earlier and action in conformity with the plan, duly certified by the MCD can only form the basis for release of the requested electricity connection. Even though the building height is below 15 meters, Azra case judgement of Delhi High Court becomes relevant where it was held that the Court cannot be a party to a continuing wrong. Hence, connections released wrongly in the vicinity of the premises applied for cannot become ground for compounding the wrong, if any, done earlier. The Discom is expected to follow the directions of the High Court and to that extent, a duty is cast upon the CEO to take effective steps. However, the decisions of CGRF and the Ombudsman, referred are not relevant in the facts and circumstances of this case.

The Supreme Court of India in the matter WP(C) 4677/1985 (M C Mehta Vs UOI) vide order dated 24.04.2018, expressed its concern on constructions in unauthorized colonies, and directed that construction activity be stopped with immediate effect. Concerned authorities were directed to ensure compliance and a task force was constituted for removal of encroachment and unauthorized construction and implementation of bye-laws.

The Supreme Court in the matter "Supertech Vs Emerald Court Owners Resident Welfare Association (2021) 10 SCC I observed that unauthorized construction destroys the concept of planned development and places unbearable burden on basic amenities provided by local authorities. It was imperative for the public authorities to not only demolish such construction but also to impose a penalty on wrong doers involved.

11. This Court has heard both the parties, perused their respective appeal and written statements. This Court has also gone through the relevant provisions of the regulations and is of considered opinion that the premises, in question, at entry no. 53 is in the list of unauthorized construction and, therefore, directs as under:

- (a) The order dated 28.07.2023 passed by the CGRF-BYPL is upheld and the appeal is dismissed as devoid of merit.



- (b) CEO of the DISCOM is directed to take effective steps in consultation with the MCD, SDM and Delhi Police for action in respect of 97 properties listed in the letter dated 26.09.2018 of the MCD, to ensure that action is initiated for disconnection in compliance with the directions in Parivartan Case by Delhi High Court and the direction by the Supreme Court, in numerous cases. The validity of the two connections which existed prior to September, 2018 may also be reviewed and action initiated accordingly.
- (c) Since the sanction plan was issued on 12.07.2019 and MCD's objection list is dated 26.09.2018, it will be open to the Appellant to obtain a 'NOC' from the MCD within two weeks' time and submit the same to the DISCOM. Thereafter, the new connection may be released after completion of commercial formalities.

The case is disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
13.10.2023