

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. 34/2023

(Against the CGRF-BRPL's order dated 18.07.2023 in CG No. 157/2022)

IN THE MATTER OF

Shri Krishna Chandra Nauriyal

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Shri Krishna Chandra Nauriyal along with Shri Surender Pal Singh, Authorized Representative

Respondent: Shri S Bhattacharjee, Sr. Manager, Shri Manish Kumar, Advocate Shri Arav Kapoor & Others, on behalf of BRPL

Date of Hearing: 08.11.2023

Date of Order: 09.11.2023

ORDER

1. Appeal No. 34/2023 has been filed by Shri Krishna Chandra Nauriyal, R/o A-89/2, Second Floor, Phase-2, Chattarpur Enclave, Delhi - 110074, through his authorized representative Shri Surender Pal, against the CGRF-BRPL's order dated 18.07.2023 passed in C.G. No. 157/2022.

2. The background of the case is that the Appellant has been applying for a 2 KW domestic electricity connection for the last two years for his premises as cited above but the Respondent has rejected his application on all the occasions mainly on the ground that the premises bearing No. A-89/2, where connection is sought was booked by the Municipal Corporation of Delhi (erstwhile SDMC) vide their letter No. D-1287/AB(B)/SZ/2016 dated 03.10.2016, for unauthorized construction.



3. Thereafter, the Appellant approached the CGRF vide his complaint dated 20.10.2022 and stated that due to non-release of electricity connection he has to depend on others to get the electricity supply. In this regard, the Appellant through an RTI application dated 05.08.2022 sought a clarification from MCD regarding status of the building, in question, but till date no reply has been received from them. The Appellant also stated that five connections are already existing in the premises, in question. Moreover, two connections have been recently released by the Respondent. Therefore, the Appellant requested the Forum to direct the Respondent to release the connection.

4. The Respondent contended before the Forum that the complainant had applied for a new connection vide Application No. 8005495889 on 21.02.2022. The documents were verified and during the site visit the objections viz; "ELCB not installed, original test report not available and address in MCD's objection list" were found. Keeping in view the provisions of regulation 11.1(iv) of DERC's Supply Code, 2017, the objections were duly communicated to the complainant vide their letter dated 25.05.2023. The Respondent also referred to the High Court's (Delhi) orders dated 30.01.2018 in WP(C) 4349/2017 (Court. on its own Notice vs NCT of Delhi) and dated 20.12.2017 in WP(C) 11236/2017 (Parivartan Foundation Vs SDMC & Ors) and stated that after these orders no connection has been released to the buildings/properties booked by the MCD/Authorities.

Further, during the site visit it was found that there are multiple buildings and it is difficult to identify the exact booked building with available remarks in MCD notice. In this regard, the Respondent also sent a communication to the Executive Engineer, SDMC, Green Park vide letter No: GM(B) AMPS_SKT/2023-D-22 dated 18.01.2023, to conduct a joint site visit with their officials.

5. The Forum opined that ample opportunities were given to the complainant (Appellant before this court) to get the 'No Objection Certificate' from the MCD. The Respondent was also directed to follow-up with MCD regarding joint visit of the premises, booked by them. But, no reply was received from MCD in respect of authenticity of booking of property as unauthorized construction. The Forum further stated that the Respondent has already clarified the basis on which the five connections were released at the same property.

The Forum observed that the fact is that the property where connection has been sought is booked by the MCD for unauthorized construction. The complainant has already admitted in his RTI application to MCD that his property is booked by the MCD and is seeking information from them. Further, the Forum also stated that law is settled by various High Courts' judgments, where DISCOMs have been directed, not to release connections in buildings constructed in violation of law. However, the connection could



be released to the complainant on completion of commercial formalities including clearance from MCD. The Forum directed the Respondent to release the connection on completion of commercial formalities including clearance from MCD.

6. Aggrieved by the Forum's order dated 18.07.2023, the Appellant preferred this appeal on the same grounds as submitted before the Forum and prayed to direct the Discom to release the new domestic electricity connection in his name.

7. The Respondent in its written submission to the appeal submitted that the Appellant is well aware that in cases where premises/building booked under unauthorized construction, connection cannot be granted by the Discom. Further, on the direction of the CGRF vide its Interim Order dated 15.12.2022, the Discom sent a letter to MCD on 18.01.2023 to ascertain the booking status of the property, as it was becoming difficult for them to identify the exact building booked in the MCD's list. The Discom till date has not received any reply from the MCD. The Appellant was consistently informed that until he obtains a 'NOC' from the concerned authorities, the connection cannot be released.

Regarding five electricity connections released in 2017-18 at the site, in question, Discom submitted that at that time, Department of Power, Govt. of NCT Delhi, had issued a letter dated 22.11.2016, where Discom was directed to provide electricity connection to all the consumers of Delhi irrespective of the fact that the same is applied in an unauthorized colony. Regarding the new connection, which was released on 09.06.2022 as alleged by the Appellant, the Discom submitted that it was installed at a different address bearing No. A-89/3, Khasra No. 68, Phase 2, Chattarpur Enclave, New Delhi.

The Respondent further submitted that after various orders passed by the Hon'ble High Court of Delhi, they cannot release any new connection to the premises/building which is booked by the MCD. Therefore, the Appellant has to submit clearance from MCD, as his property violates Section 343/344 of the Delhi Municipal Corporation Act.

8. The appeal was admitted and was fixed for hearing on 01.11.2023, but, the Discom requested for adjournment due to unavailability of their Counsel. The matter was taken up for hearing on 08.11.2023. During the hearing, both the parties were present along with their authorized representatives. An opportunity was given to both to plead their respective cases at length.

9. During the hearing the Appellant reiterated his submission as in the appeal. The Appellant also denied any encroachment, as alleged by the Respondent. In response to a query raised by the Ombudsman, the Appellant submitted that a clarification from MCD through RTI application had already been sought but no response has been



received by him as yet. The Appellant further requested for a temporary connection, if permanent connection is not viable, as electricity is a basic necessity.

10. The Respondent also reiterated their contention as submitted in their written statement before CGRF as well as this court. When asked, in view of Delhi High Court Judgement of 2017, in case of Paraivartan, has any action been taken by the Discom. The Respondent submitted that electricity connections have been disconnected from time to time, in compliance with the orders passed by the Ombudsman. In this connection, the Discom further referred to Department of Power, Govt. of NCT Delhi's Notification dated 22.11.2016 regarding release of electricity connections in unauthorized colonies. When asked, about any provision under which temporary connection could be provided, the Respondent replied that Regulations do not allow any relief in this situation. Respondent further stated that connection cannot be released until the Appellant gets 'NOC' from the MCD.

11. Having taken all factors, written submissions and arguments into consideration, it is apparent that the Assistant Engineer, South Zone, MCD vide its communication dated 03.10.2016 informed the Additional Manager, BSES, Adhchini, as well as, Chief Engineer, Delhi Jal Board, Karol Bagh, about unauthorized construction by the owner/builder of the property at A-89/2, Second Floor, Phase-2, Chattarpur Encalve, Delhi. The MCD has however not responded to the clarification on the address booked, sought by the DISCOM. The fact remains that the property has unauthorized construction.

12. The DISCOM as well as the MCD are bound to follow the law laid down by the Delhi High Court, particularly order dated 18.01.2016 in WP(C) 4582/2003 on action on unauthorized constructions and denial of connections to unauthorized properties, besides order dated 20.12.2017 in Parivartan Case, which negates the directives of the Department of Power, NCT of Delhi, through its letter dated 22.11.2016. A duty is cast upon the DISCOM to review all connections released in violation of the law and to take appropriate action.

13. 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" observed that unauthorized construction destroys the concept of planned development and places unbearable burden on basic amenities provided by local authorities. It was directed that it is imperative for the public authorities to not only demolish such construction but also to impose a penalty on wrong doers involved.

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

- (i) The order dated 18.07.2023 passed by the CGRF-BRPL is up-held. It will be open to the Appellant to approach the DISCOM for release of the connection after getting 'NOC' from the MCD.
- (ii) As per law laid down by the Delhi High Court and relied upon by the DISCOM, CEO is directed to undertake review of the various connections in the booked premises in the area, released in violation of the dictum in Parivartan case and to take appropriate action.
- (iii) Action taken report may be submitted within the four weeks on receipt of this order.

The case is disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
09.11.2023