

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. 48/2024

(Against the CGRF-BYPL's order dated 07.10.2024 in Complaint No. 361/2024)

IN THE MATTER OF

Shri Mohd. Irfan

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Nishi Kant, Counsel of the Appellant

Respondent: Shri Nishant Kumar Nain, Senior Manager, Shri Akshat Aggarwal, Legal Retainer and Shri Akash Swami, Advocate, on behalf of BSES-BYPL

Date of Hearing: 24.02.2025

Date of Order: 25.02.2025

ORDER

1. Appeal No. 48/2024 dated 16.11.2024 has been filed by Shri Mohd. Irfan, R/o House No. 833, Katra Hiddu, Farsh Khana, Delhi – 110006, through his Advocate Shri Nish Kant Ray, against the Consumer Grievance Redressal Forum – Yamuna Power Limited (CGRF-BYPL)'s order dated 07.10.2024 in Complaint No. 361/2024.

2. The background of the case is that the Appellant, who owns a shop located at 895, Mezzanine Floor, Gali Chahshirin, Farash Khanna, Delhi – 110006, had applied for a non-domestic electricity connection vide Application No: 8006894675 dated 09.04.2024. Subsequently, the Discom inspected the site and found that the premises in question had been booked for unauthorized construction, and rejected his application vide its letter dated 14.06.2024. Consequently, the Appellant filed a complaint before the CGRF-BYPL on 28.06.2024 and asserted that all other flats and shop in the building have electricity connections except his shop. Moreover, he contended that his shop



was not booked for unauthorized construction by the MCD and height of the building complied with the DERC's Regulations.

3. In rebuttal, the Discom submitted that upon inspection of the applied premises, it was found that there are multiple deficiencies viz; (a) applied premises was booked for unauthorized constructions by the MCD vide its letter No. D-226/EE(B)/CSPZ/2018 dated 23.01.2018 at Sl. No. 37 (b) building structure comprises of ground floor plus four additional floors, as a mixed use building, which requires an 'NOC' from the Fire Department and (c) height of the premises is more than 15 Meters, which mandate that an Architect Certificate along with a valid 'BCC' from the MCD is required. The Discom informed these deficiencies to the Appellant vide "Intimation of Deficiency" letter dated 14.06.2024 and asked for submission of the MCD's 'No Objection or Completion-cum - Occupancy Certificate' for release of a new electricity connection. Furthermore, during the site visit, it was noted that the applied premises consists of a total five floors, including Ground Floor + Mezzanine, First, Second and Third Floor with commercial activity on the ground and mezzanine floors and domestic activity on the rest of the floors. The Details of existing electricity connections are given:

Meter Nos.	Category	Floor(s)	Date of Energization
35100580	DX	Not Mentioned	01.01.1990
35526023	NX	Ground	25.01.2012
153157626	NX	Ground	24.11.2020

4. The CGRF-BYPL, in its order dated 07.10.2024 stated that the applied new connection for mezzanine floor was rejected due to the building booked for unauthorized construction by the MCD vide its letter dated 23.01.2018. There was a clear violation of DMC Act, 1957 and Rule 11(2) (iv) (c) DERC's Supply Code, 2017. The Forum also referred to the High Court of Delhi's order dated 20.12.2017 in the case of M/s Parivartan Foundation vs SDMC & Ors. (WP (C) 11236/2017) and rejected/dissmissed the Appellant's complaint. However, in view of the 'Re-visit Site Report' dated 20.09.2024, the Forum did not find any substance in the Discom's objection regarding height of the premises.

5. The Appellant, aggrieved by the Forum's order dated 07.10.2024, has filed this appeal reiterating his stand as before the Forum. In addition, the Appellant has contended that if the building in question has been booked by the MCD, then why the Discom did not raise any objection to the connection being released to Shri Mohd. Sajid in 2020. Further, his building bearing No. 895 was not allegedly booked by MCD.

Instead there are other buildings with different addresses, i.e. 894-895, 896, 897, etc., and out of these, building number 894-895 were booked by the MCD.

The Appellant has requested (a) to set-aside the impugned order dated 07.10.2024 passed by the CGRF-BRPL and (b) an order for the release of a new connection.

6. The Discom, in its reply to the appeal dated 18.12.2024 reiterated the submissions as before the Forum. Regarding the connection released to Shri Mohd. Sajid in 2020, the Discom clarified this was released on the direction of the CGRF-BYPL in CG No. 40/2020 and they have already initiated the remedial measures qua the said connection. With regard to Article 14 of the Constitution, the Discom cited the Supreme Court of India decisions in the case of R.Muthukumar vs Chairman & Managing Director TANGEDCO (CA 1144 of 2022) and Basawaraj and Another vs Special Land Acquisition Officer in 2013 (154 SCC 81) and asserted that the principle against 'Negative Equality' applies. Moreover, the Appellant's plea that the premises in question was not booked by the MCD, is untenable as he has failed to provide any documentary evidence to discredit the factum of MCD booking.

7. The appeal was admitted and fixed for hearing on 24.02.2025. During the hearing, the Appellant was represented by Advocate, Shri Nishi Kant Ray 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 and relevant questions were asked by the Ombudsman and Advisors, to elicit more information on the issue.

8. During the hearing, the Advocate representing the Appellant reiterated his stand as submitted in the appeal and the prayer. The Advocate submitted that objections/deficiencies were raised by the Discom in the light of the MCD booking. As per the booking list, the booked premises mentioned is 894-895, whereas in the separate adjacent building bearing No. 895, a connection stood released to one Shri Mohammad Sajid on 24.11.2020, on the direction of the CGRF's order dated 14.10.2020 (in Complaint No. 40/2020). The subject building was a three storey building in Farash Khana, and no MCD issue was raised, however, only height objection being not maintainable was raised.

9. In rebuttal, the Advocate appearing for the Respondent contended that there is no clarity on booking of the premises since the MCD's letter dated 23.01.2018 mentioned the premises No. 894-895. Therefore, there was a resultant confusion. It was observed that neither the Appellant nor the Respondent had taken any step to verify the nature of booking from the MCD and in the event of the MCD booking, no action also appears to have been taken to review the connections in the unauthorized



building. The officer of the Discom submitted that a show-cause notice was served in August, 2024 upon "Shri Mohammad Sajid" but no disconnection had been carried out so far.

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

- (a) The Appellant's request for new connection was rejected due to booking of property by MCD vide letter dated 23.01.2018. Issue of MCD's BCC/NOC and Fire Department's 'NOC' was raised, taking building height to be more than 15 meters (Ground + Four Floors – mix-use building).
- (b) The Appellant claims to have purchased the property through GPA on 09.03.2022 but no documents of ownership are placed on record.
- (c) During a Joint Inspection on 20.09.2024, the building height was found at 14 Meters. Hence, the height objection was rejected by the CGRF. However, on the basis the premises being in the MCD objection list, following Parivartan and Azra decisions by the Delhi High Court, the complaint was rejected.
- (d) Regarding connection released to Shri Mohd. Sajid on the basis of a CGRF's order on 24.11.2020, the Discom has stated that disconnection notice has been issued.
- (e) Valid, legal and verifiable BCC from MCD is required to prove/discredit MCD booking factum, particularly in the light of the stand by the Appellant that the booked premises does not pertain to him. No effort has been made, either by the Appellant or the Discom to obtain necessary clarification from the MCD on the booked premises.
- (f) There is no need of 'NOC' from Fire Department but without MCD's NOC/BCC connection can't be granted.
- (g) The Discom was in a better position to verify the status of MCD booking and to take action with due diligence in such matter. However, the Appellant was also free to obtain clarification by invoking the provisions under RTI Act in this regard.




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

- (i) The order passed by the CGRF is up-held.
- (ii) The connection applied for can only be released upon submission of 'BCC/NOC' from the MCD.
- (iii) The other connections released in the booked building be taken up for a review in the light of the settled law on the subject.

12. 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 informed that this order is final and binding, as per Regulation 65 of DERC's Notification dated 24.06.2024.

The case is disposed off accordingly.


(P.K. Bhardwa)
Electricity Ombudsman
25.02.2025