

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.011-26141205)

Review Application No.24/2018

(In compliance with the direction of the Hon'ble High Court of Delhi in W.P.(C) 2810/2014 vide order dated 06.05.2014, Applicant Company seeking modification in the Ombudsman's order dated 09.02.2010 passed in Appeal No.2009/352)

IN THE MATTER OF

RPS FLATS RESIDENTS WELFARE ASSOCIATION (REGD.)

Vs.

BSES RAJDHANI POWER LTD.

Present:

Applicant Company : Shri Deepak Pathak (Advocate), Shri Anupam Kumar (DGM-O & M), Shri Ajay Sharma (DGM) & Shri Prashant Saxena (Nodal Officer) on behalf of BRPL.

Respondent : Shri O. Prakash (President), Shri A.N. Agarwal (Treasurer), Shri Krishan Kumar (Member & original petitioner) & Ms. Rajni Kurra (Gen.Secy.) on behalf of RPS Flats Residents Welfare Association (Regd.)

Date of Hearing: 27.09.2018

Date of Order : 27.09.2018

Final Order

1. Hon'ble High Court of Delhi in W.P.(C) No.2810/2014, whilst dismissing the petition as withdrawn directed, inter alia, to take up the cause with the Ombudsman, Delhi Electricity seeking appropriate orders in accordance with law. Consequently, the Applicant, BSES Rajdhani Power Ltd. filed the instant application in 2014, which has come up for hearing today, i.e. on 27.09.2018.

2. The Applicant Company herein is being represented by Shri Deepak Pathak, advocate and the Respondent here is the RPS-RWA Society represented by Ms. Rajni Kurra (Gen. Secy.) & Shri Krishan Kumar (Member).

3. Before the parties could commence the proceedings, Shri Deepak Pathak, advocate on behalf of the applicant company draws attention to a letter purported to have been written by RPS Vasundhara Colony Residents Welfare Association (Regd.)



addressed to Shri Anupam Kumar, DGM (O & M) of the Applicant Company, claiming their right to be the legitimate management committee to look after the RWA of the Society under reference. The same was vehemently opposed by RPS Resident Welfare Association, the Respondent herein. On being questioned, as to how such a document exists on the records of Respondent's Advocate, Shri Pathak, he admitted that he had received the said letter on 27.09.2018 but shown his ignorance of the purpose for the said letter being addressed and sent to him. He further contended that being an officer of the Court, it was his duty to assist the Forum. He requested that the said document to be taken on record.

4. I have gone through the records placed before me and I find that no such society, namely, RPS Vasundhara Colony, was ever a party to the instant litigation, in the subject case. Further, I find that it has been newly formed & registered on 10.05.2018. Notwithstanding what has been stated, the society, namely RPS-Residential Welfare Association objected to such a letter being placed on record and contended of being bona fide members of the society. I find that the credentials of the newly formed society is under challenge and it is being vehemently opposed for their being impleaded as a party in the subject case.

5. To make the record straight it is observed that a written communication was sent to Shri Sanjeev Shukla appearing on behalf of newly formed & registered society (RPS Vasundhara Colony) as aforesaid to clarify their stand as stated in their letter forwarded to Shri Anupam Kumar, DGM (O & M) of the Discom Company. Shri Sanjeev Shukla on behalf of newly formed society clarified in the open Forum that the purpose of forwarding a letter to Shri Anupam Kumar, DGM (O & M) of the Discom Company was basically to apprise him of their existence and they do not wish to get themselves impleaded in any manner whatsoever. Accordingly, he made a submission that decision as just and proper be taken for the welfare of the entire society. To this effect, Shri Sanjeev Shukla on behalf of newly formed society has submitted a document endorsing the above mentioned explanation and the same has been witnessed by two persons present in the Forum. There being no objection from any parties to the litigation, the said document has been taken on record.

6. I have heard the arguments advanced by both the parties in the subject matter. The case has a chequered history and is lingering on for one or the other reason which could have been best avoided. Record pertaining to the subject matter has been perused by me and on a close scrutiny, the proceedings since 2009 in brief is as follows:



Initial Proceedings before the CGRF in the year 2009

- i) RPS-RWA had taken up the matter on 26.02.2009 before the CGRF, protesting against the decision of the BSES-BRPL of laying overhead cables for replacing the existing underground system.
- ii) CGRF in its order dated 26.10.2009 after taking into consideration of the records and the averments made by both the parties directed the Discom Company that the work of converting the underground cable to an overhead distribution system be carried out as per the DERC's approval vide letter no.F.17(129)/Engg./DERC/2008-09/C.F.No.132/5507 dated 16.01.2009.

Representation against the orders of CGRF/ and the proceedings before the Ombudsman in the year 2010

- a. Being aggrieved by the CGRF's order dated 26.10.2009, RPS-RWA had filed a representation before the Ombudsman on 13.11.2009, requesting for replacement of the overhead electricity distribution cables by an underground LT (Low Tension) cable distribution system in the colony.
- b. The then Ombudsman had passed, inter alia, the following orders/directions on 09.02.2010:
 - i. *The upgradation of the electricity distribution system in the RPS colony be done by installing an underground distribution system. The colony originally had an underground system which should be upgraded.*
 - ii. *The existing service pillars/feeder pillars be upgraded and used to the maximum extent; and*
 - iii. *New service/feeder pillars be installed on public land at the beginning or end of lanes to avoid traffic obstruction. The Appellants will remove the encroachments on public land wherever necessary, to facilitate installation of these pillars.*
 - iv. *The Appellant has prayed for a compensation of Rs.5,000/- for each resident and Rs.20,000/- for the RWA for humiliation, inconvenience and harassment etc. No facts however have come to notice warranting grant of any compensation, either to the residents or to the RWA. Hence the prayer is not accepted.*

Accordingly the appeal was disposed off."



7. Pursuant to the order passed by the then Ombudsman, the Discom Company apparently made considerable effort in implementing the said order dated 09.02.2010. However, as per the Discom company, the order could not be enforced for the reason that the encroachment by residents had increased many folds which was causing hindrance as it required total removal which would have turned into law and order situation. This would have also adversely affected the safety and security of the residents and the property. The other reason was that there had been difference of opinion among the society members on the question of enforcement and execution of work in respect to the laying of the cables.

8. Subsequently, in 2014, the Discom Company filed a petition under Article 226 of the Constitution being aggrieved by the order of the then Ombudsman.

Proceedings before the Hon'ble High Court in the year 2014

The Hon'ble High Court passed an order on **06.05.2014** which *inter alia* held as follows:

- "1. The petitioner/Discom has filed the present petition impugning an order dated 09.02.2010 (wrongly typed as 09.02.2014 in the prayer clause) passed by the learned Ombudsman in an appeal preferred by the respondent/RWA against an order dated 26.10.2009 passed by the CGRF.
2. The main grievance of the petitioner/Discom in the present petition is that despite best efforts made by it, it has not been able to comply with the directions issued by the learned Ombudsman for upgradation of the electricity distribution system in the RPS Colony for the reason that it is facing resistance from the residents of the area and the respondent/RWA itself has not been co-operating with the petitioner/Discom for removal of encroachment on public land to facilitate installation work, apart from other technical difficulties.
3. After addressing arguments for some time, Mr Ravi Gupta, Senior Advocate appearing for the petitioner/Discom states on instructions that the petitioner/Discom may be permitted to withdraw the present petition while reserving its right to approach the Electricity Ombudsman for redressal of the difficulties expressed in the present petition and faced by the petitioner in implementation of the order dated 09.02.2010.
4. Leave, as prayed for, is granted. The petition is dismissed as withdrawn alongwith the pending applications.
5. As and when the petitioner/Discom files an application before the Electricity Ombudsman for seeking necessary directions to the



respondent/RWA for removal of the encroachment on public land to enable it to upgrade the underground electricity system in terms of the impugned order, the same may be considered by the aforesaid authority and appropriate orders passed thereon in accordance with law."

Proceedings before the Ombudsman pursuant to the Hon'ble High Court Order dated 06.05.2014

- I. Initially, in compliance of the Hon'ble High Court's order dated 06.05.2014, Discom Company had approached this forum on **20.06.2014** and reiterated their grievance as made before the Hon'ble High Court.
- II. A direction was given to Discom Company on **01.12.2014** with a copy to RWA-RPS stating, *"to hold a formal meeting and offer its technical assistance to arrive at the most feasible alternative now acceptable to the RPS-RWA. The proposed changes should be formally adopted and intimated to this office by the RWA as a modification application to enable us to proceed further in the matter"* (sic).
- III. During the intervening period, none of the parties intimated the outcome.
- IV. Discom filed the application on **29.08.2016** after a lapse of two years, reiterated their grievance for review/modification in the order dated 09.02.2010.
- V. A letter was issued to Discom Company on **13.10.2016** to intimate the following:
 - a) Action taken by Discom with regard to the letter dated 01.12.2014 issued in response to the earlier application was sought and to intimate the progress as directed.
 - b) No intimation received as sought for reminder forwarded.
 - c) Discom is also directed to mention relevant provision of the law under which the expectations can be fulfilled, so that the present impasse – which is clearly continuing – can be broken.
- VI. In response, the Discom Company had constituted a Committee on **22.09.2017** constituting of six senior officials to evaluate the subject matter and to resolve the issue by finding a comprehensive solution of mode of wiring vis-a-vis the feasibility and safety aspects.
- VII. The committee submitted a Report on **19.12.2017** concluding that because of encroachment, the underground system was not technically feasible as it raises safety issue which cannot be



compromised. The Committee opined that scheme no. KP08LT4122 pertains to over head conversion has been duly approved by DERC after examining and evaluating the technical feasibility and safety issue and same required to be adopted after due permission from the Hon'ble Ombudsman.

9. Now, after a lapse of more than a year, the Discom/BRPL has filed the instant application on 31.08.2018, *inter alia*, made the following prayers:

- a) Consider the matter afresh on the issue of Upgradation of existing cable system in the RPS Colony and also requesting to modify the order dated 09.02.2010 passed by the Electricity Ombudsman in the light of existing facts and circumstances submitted above and pass an appropriate order for the implementation of overhead system in terms of submissions made above as well as technical report submitted by the technical committee instead of underground system of cabling in RPS Colony.
- b) To pass any such other order in favour of petitioner (Discom) and against the Respondent (RPS Colony) as the Ombudsman may deem fit.

Instant Proceedings

10. Coming back to the instant proceedings, Shri Anumpam Kumar, DGM (O & M) of Discom Company, has offered a solution to resolve the long pending dispute which was not making any head way. He suggested that viewing the extensive encroachment made by the members of the society, and taking into consideration of the technical report dated 19.12.2017 submitted that underground cabling would not be possible and unless corrective action is taken on priority it would invariably impinge on the security and safety of the inhabitants of the society (RPS-RWA). Shri Deepak Pathak, advocate with Shri Anupam Kumar, DGM (O & M), suggested that the most viable solution is, to convert existing underground cabling system to the overhead cabling system. Relying on Technical Report according to him, it is apparent that,

- a. Underground system under present condition is not technically feasible.
- b. Some of the residents including former president RWA have requested to provide O/H system in the colony.
- c. As recommended, review earlier order dated 09.02.2010 and allow the Discom Company to execute the scheme no.KP08LT4122 for conversion of underground to overhead network duly approved by DERC with the direction to RWA to cooperate for the execution of the proposed scheme.



11. RPS-RWA society after extensive deliberations among themselves consented to the proposal made by Shri Anupam Kumar, DGM-O & M of Discom Company and they offered their services to extend all support and cooperation in this endeavour. Shri Anupam Kumar, DGM (O & M) of Discom Company made it clear that the work carried out in this respect would be in such a manner that the security and safety of the residents would be paramount and the cables would be secured in such a manner that it will serve the purpose as contemplated in the technical report. Both the parties decided to enter into a Memorandum of Understanding (MOU) laying down the terms and conditions, rights and obligations for carrying out the long pending project by ensuring completion of the most viable solution to the problem by allowing it to be enforced for the betterment and the welfare of the society. Accordingly, both the parties signed the MOU to abide by the terms and conditions laid down in the MOU, and the same has been taken on record.

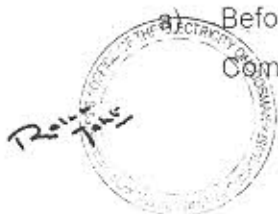
12. Shri K. K. Narang, Advisor (Engg.) of the O/o the Ombudsman reminded of the obligation of the Discom to obtain permission for undertaking OH cabling. To this effect, he suggested that since there exists a formal permission/approval by DERC vide letter dated 16.01.2009, it would suffice if the ratification of the same is being done by DERC. To this all had consented and no party had any objection whatsoever.

13. Much I would have liked to consent with the order passed by the then Ombudsman in the year 2010 but for the consideration that implementation of the said order is difficult if not impossible because of the heavy encroachment all over and involvement of safety and security aspects of men and material of the Society. It is understood that for underground cabling the entire encroachment has to be removed which if broken/removed may turn out to be law and order problem which may not serve the purpose, hence, overhead cabling.

14. It is a well establish and a known fact that the legislation in respect to such cases are welfare oriented and they are to be liberally read and interpreted rather than be read narrowly. The person who is most affected in the entire gamut of such a case is the consumer and it is essential that his welfare is looked into within the frame work of legal provision.

15. In view of the above facts and considering the case in its entirety, I modify the then Ombudsman order dated 09.02.2010 in accordance with Memorandum of Understanding (MOU) executed between the parties, and made part of the proceedings as Annexure, I hold the followings:

Before initiating/commencing overhead cabling, the Respondent Company is to ensure that the permission of the Delhi Electricity



Regulatory Commission (DERC) as has already been obtained vide letter dated 16.01.2009, is now, ratified unless DERC has some reservation. Thereafter, initiate the work of OH laying of cables in RPS-RWA, duly approved, by the DERC to ensure safety and security measures, as aforesaid. The ratification of the DERC and the entire communication could be done within 30 days. The completion report on this case is to be placed before the Ombudsman after four weeks from the receipt of this order. The implementation of the scheme should be as far as practicable and as per diagram of OH work reflected in the MOU is self explanatory. The parties may approach the Ombudsman if the grievances are not redressed amicably between the parties.

- b) If the welfare association finds that there is a lack of sincerity shown by the Discom Company in not getting the works done properly, they have liberty to take up their cause before the Ombudsman by preferring an application for the future course of action.
- c) It would be appreciable that all cooperation is provided by the management of the society/RWA in ensuring uninterrupted completion of work which is pending for the last eight years.
- d) Discom Company is to ensure that the task at hand attains finality at priority, considering and ensuring safety and security of men and material by taking precautions as necessary in accordance with law to obviate any emergence of law and order situation.
- e) Local police of the area concerned and jurisdiction is to render all assistance as and when required in accordance with law to ensure the completion of work without any hindrance and interruption.

16. Whilst I conclude, it would be worth mentioning of the knowledge and assistance provided on technical issues by Shri K. K. Narang, Advisor (Engg.) in the O/o the Ombudsman and Smt. Seema Sharda, P.A. for her untiring efforts in completion of work in time bound manner and beyond the call of duty.

17. Order accordingly.



Rakesh Mehta
(Rakesh Kumar Mehta)
Ombudsman
27.09.2017

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CORRIGENDUM

1. Reference Judgement/Order No.24/2018 passed on 27.09.2018 in the matter of M/s RPS Flats Residents Welfare Association (Regd.) vs. BSES Rajdhani Power Ltd.
2. Due to typographical error, the year of the order has been erroneously typed as 2017 whereas it should have been 2018.
3. In view of foregoing, the year of judgement passed i.e. 2017 be read as 2018.

am.
14/12/2018
Advisor (Law)
14.12.2018