

124

Office of the Electricity Ombudsman

(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act, 2003)

B-53, Paschimi Marg, Vasant Vihar, New Delhi – 110 057

(Phone-cum-Fax No.: 011-26141205)

Appeal No. 800/2017

IN THE MATTER OF:

Smt. Sunita Goyal - Appellant

Vs.

M/s BSES Rajdhani Power Ltd. – Respondent

(Appeal against order dated 06.09.2017 passed by CGRF- BRPL in CG No.83/2017)

Present:

Appellant: Shri Chander Pal & Shri Dhruv Chauhan on behalf of the Appellant

Respondent: Messrs Anupam Varma, Nikhil Sharma, Shreya Khanna
(Advocates) and Messrs Piyush Agarwal, DGM (Legal), Navin Garg,
DGM (EHV TRL(S), Pramod Kumar Pali, DGM (EHV-P&C) and
Manoj Kumar, DGM (KCC) – on behalf of the Discom

Date of Hearing: 22.11.2017

Date of Order: 24.11.2017

ORDER

1. This appeal (800/2017) has been filed by Smt. Sunita Goyal, R/o Building No. 57, Ring Road, Lajpat Nagar – III, New Delhi-110024, against CGRF-BRPL's order in CG No. 83/2017 dated 06.09.2017. Her plaint arises from the CGRF's order declining to adjudicate on her complaint on the ground that the Forum lacks jurisdiction to address the issue on which she has sought redress.

2. The issue, in brief, revolves around the demand of the Appellant that the 33 KV line and tower belonging to the Discom (Respondent) and located immediately in front of her property, be removed/shifted by the Discom without imposing any costs on the Appellant. Her further demands include, inter alia, the issue of directions to the Discom to revise the costs estimated by them after factoring in the actual lengths and capacity of the cables required, adjustment of depreciation charges after taking into account the useful life of the cables, direct the Discom to explain the reasons for discriminating against her by insisting on her paying a "malicious" demand of about Rs. 3 crores while exempting other owners whose properties also fall along the 33 KV line's alignment.

3. The genesis of the problem arise from the fact that a 33 KV HT line runs along the service road dividing her property in Lajpat Nagar – and that of other properties adjoining hers – from the major artery of Ring Road. One of the line supporting towers happens to be located right outside her property's frontage. The Appellant, who says she is residing in the upper floors with the ground floor let out to a commercial enterprise, had been granted a sanction dated 27.11.2015 by the Assistant Engineer (Building), Central Zone, South Delhi Municipal Corporation (SDMC) to construct her building subject to the condition that such construction should not violate the minimum safety clearance/distance from the HT line prescribed under law. The Appellant, nevertheless, continued with the construction of her property resulting in the present



structure ending up in violation of safety distance prescriptions. Following her representations, the Discom raised a demand note for the shifting/alteration of the HT line amounting to a little over Rs. 3 crores which has been disputed and agitated on various grounds before various authorities by the Appellant.

4. The Discom's response is that the 33 KV transmission line has been in existence for more than four decades, having been erected/installed at a time when the level of urbanization was far less than what is today and that the Appellant's building has been constructed now after the demolishment of an earlier building on the site and in direct violation of the building plan sanctioned by the SDMC which specifically provided for minimum safety clearance from the HT lines to be maintained. None of the other properties, which fall along the same service lane as the Appellant's property, are in violation of minimum safety clearance and she cannot seek the shifting of a line which has been in position of many years before her structure came up and which is servicing a very large number of consumers. Finally, the Discom has stated that the issues raised by the Appellant can only be adjudicated upon by the Electrical Inspector under Regulation 63(3) of the Central Electricity Authority's notification dated 20.09.2010 on Measures Relating to Safety and Electric Supply and that the CGRF and the Ombudsman lack jurisdiction to take cognizance of the present matter.

5. I have considered all the material on the record running into numerous pages and annexures, viewing the videography of the environs of the property and tower related to the dispute as well as hearing the extended oral submissions of both parties lasting two hours. In my considered opinion, the basic issues to be adjudicated upon by the Ombudsman reduce 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 adduced by the parties for the sake of record.

6. The Appellant's representative has argued that his client's appeal is admissible before the Ombudsman in terms of the definitions contained in Regulation 3(f) of the DERC's Notification dated 11.03.2004 which define a complaint as any grievance which, inter alia, alleges an unfair trade practice or a restrictive trade practice on the part of the licensee with the present demand note raised by the Discom constituting such a practice. After an exposition of the history of the development of the colony where the property is situated, he has advanced an argument that Regulation 11 of the CEA's notification referred to above is attracted under which the Discom is constrained to draw up a detailed plan for electricity supply and which, inter alia, has to be amended periodically to keep in synchronization with changing patterns of usage and urbanization. Section 68 of the Electricity Act, 2003 has also been invoked by him to argue that the existing 33 KV transmission line has outlived its utility and only a surgical change is required to address the immediate proximity problem being faced by the Appellant whereas the Discom is intent on retiring the entire line.

7. In addition, he has mentioned Regulation 24 of the DERC's Supply Code & Performance Standards Regulations, 2017, which provides for the shifting of an electric line for genuine purposes, arguing that only the Appellant is being made liable to pay by the Discom whereas other properties on the same service road are also guilty of projecting beyond their boundaries. In further support of the Appellant's contentions, a judgement of the Hon'ble Madras High Court (Writ Appeal 932 of 2010) in a case involving the Tamil Nadu Electricity Board has been quoted in which it had been held, inter alia, that a landlord cannot be expected to pay the expenses for shifting electricity poles situated on his property if such poles have been erected without obtaining the consent of the previous owner of the land. Finally, objections of a highly technical nature have been raised regarding the alteration/shifting of the tower and the cables it carries including their dimensions, load carrying capacity and alignment as well as cost estimates after factoring in depreciation and whether all these are in conformity with the rules governing the works of licensees.



8. The entire line of reasoning followed by the Appellant's representative can best be described as an inverse logic whereby he has sought to transfer the blame for the current state of affairs to the Discom, having first contributed to it in no small measure by violating the safety terms and conditions prescribed by law. It was the Appellant's bounden responsibility to ensure that the property being constructed by her took into account the prior existence of the tower in question and the building conditions/restrictions imposed by the SDMC's sanction with construction proceeding in a manner which avoided transgressing any law, prescription or condition. On the contrary, what is evident is a building which has been newly constructed after the demolition of the previous structure and is clearly fully constructed now with a jeweller's name on it and protruding into the service road, thereby encroaching upon the prohibited zone around the tower in the process. None of the other properties along this service road and falling along the alignment of the power line are in violation of the prescribed safety distances. If one is to go by the Appellant's line of reasoning, it is the Discom's fault that the tower happens to be located just there. The judgement of the Hon'ble Madras HC quoted in support is not applicable to the present case at all as it was delivered in the context of shifting of electrical poles situated on private land and without the consent of the previous owner having been taken. Neither is Regulation 24 of the DERC's Supply Code of 2017 applicable as that provision only concerns an owner of a piece of land who has given a right of way for the construction of a line on his land and later wishes to have it shifted for genuine purposes. The tower, in this case, happens to be located on public land abutting the service road and belonging to the SDMC and not in the possession of the Appellant. The various arguments advanced by the Appellant's representative, including objections to the cost estimates and bringing in technical issues including rules governing the works of licensees are more in the nature of an attempt to obfuscate the core issue at hand than anything else.

9. Without engaging further in a detailed rebuttal of each and every argument advanced, it is sufficient to note here that while the DERC's notification of March, 2004 (which sets out the functions and responsibilities etc of the institutions of CGRFs and Ombudsman), does provide for an unfair trade practice on the part of the Discom to be treated as a complaint under Regulation 3(f), it is not applicable to the present case which happens to be one of a violation of minimum safety distances prescribed by law. Furthermore, the nature of the cases within the remit of the CGRFs/Ombudsman is further qualified by sub-sections (j), (k) and (l) of Regulation 3 of the same notification whose reading clearly shows that the subject matter of the appeal does not fall within any of the categories contained in these sub-sections. These sub-sections explicitly provide that subject matters which can be agitated before the CGRFs and the Ombudsman cover issues relating to deficiencies in electricity service to consumers by Discoms and attendant sub-services like power supply failures, voltage complaints, metering and billing problems, connections and disconnections and violations of the prescriptions contained in the DERC's Supply Code & Performance Standards Regulations, 2017.

10. The Discom's contention that the subject jurisdiction in this specialised issue/case lies with the Electrical Inspector under Regulation 63(1) and its sub-clauses of the CEA's Regulations of 2010 (referred to in paragraph 4 supra), as amended from time to time, is perfectly correct. While the CGRFs and the Ombudsman exercise general jurisdiction relating to consumer complaints pertaining to deficiencies in the provision of services by the Discoms, specialised jurisdiction to admit cases of the present nature lie only with the Electricity Inspector under law and he is the only authority who possesses the necessary domain knowledge and technical expertise to examine and adjudicate upon such cases. Furthermore, the Appellant is in direct violation of both the safety distance requirements contained in the CEA's prescriptions as well as the conditions imposed by the SDMC's building sanction issued to her. It is not within the remit of the CGRF or the Ombudsman to encroach upon the jurisdictional domain of these authorities or try to issue directions to Discoms which

132

may impinge on public safety issues when they are not technically competent or empowered to do so. It would be pertinent to note here that the Appellant has already kept the Electrical Inspector in the loop by endorsing a copy of her letter to the BRPL dated 28.03.2017 to the Electrical Inspector of NCT Delhi and seeking his "intervention and appropriate action" with a further copy endorsed to the Commissioner of the SDMC. It is further noted that the property, which has been granted only a temporary electricity connection for construction purposes, has already been served with notices of violation by the Discom – it is up to the latter to pursue whatever course of action is prescribed under law for dealing with such cases.

11. No intervention with the verdict of the CGRF is warranted and the appeal stands dismissed as being unsustainable before the Ombudsman on grounds of both maintainability and jurisdiction, thereby rendering unnecessary any adjudication on the relative merits or demerits of the numerous arguments advanced on behalf of the Appellant. The Appellant will necessarily have to and is free to pursue the remedies / course of action prescribed under the CEA regulations of 2010 referred to in paragraph 4 supra.


(Sundaram Krishna)
Ombudsman
24.11.2017