

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 No.: 011-26144979)

Appeal No. 04/2022

(Against the CGRF-BRPL's order dated 29.11.2021 in CG. No. 125/2021)

IN THE MATTER OF

Smt. Karuna Sharma

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Smt Karuna Sharma along with Shri Karn Kumar &
Shri Hemant Mishra, Advocates

Respondent: Shri Vivek Prasad, DGM, Shri S Bhattacharjee, Senior
Manager and Shri Deepak Pathak, Advocate, on behalf of
BRPL

Date of Hearing: 05.08.2022

Date of Order: 10.08.2022

ORDER

1. Appeal No. 04/2022 has been filed by Smt. Karuna Sharma, R/o 20-B, Top Floor, Radha Apartments, Krishna Nagar, Safdarjung Enclave, New Delhi - 110029, through Shri Karn Kumar & Shri Hemant Mishra, Advocates, against the order of the Forum (CGRF-BRPL) dated 29.11.2021 passed in CG No. 125/2021.

2. The applicant states that in January, 2021 (on 20.01.2021), the Respondent had carried out an inspection in the Appellant's premises on a complaint received that three phase meter was used for construction work at the top floor of the building, which is residence of the Appellant. On inspection, it was found that a domestic connection bearing CA No. 100139801 registered in the name of Shri Dara Singh for the address 20/5 (New No. 20-B), Ground Floor, Right Side Portion, Radha Apartment, Krishna Nagar, New Delhi -110025, was



being used for construction purpose. Therefore, a case of misuse of electricity supply was booked on the premises and subsequently after payment of Rs.1.00 lakhs (Case ID No. RS200121CA065) on account of settlement a 'No Dues' bill on 30.03.2021 was issued, under the caption "Bill of Supply for Electricity (Final Electricity Assessment of Tariff Violation)" by the Enforcement Department. Subsequently, the Respondent provided with a new C.A. No. 401300341 and also changed the category from domestic to non-domestic.

Even though the matter was settled after payment of the settlement amount and the Respondent issued 'No Due' bill, she continued to receive electricity bills on non-domestic tariff with incorrect name and address. In this regard, she had sent written requests to the Respondent on 06.04.2021 and 15.04.2021, which till date remain unresolved. Further, the electricity meter (CA No. 100139801) was stolen from the above said premises and in this regard she had lodged a complaint with the Police Station on 25.06.2021 and subsequently a FIR was registered on 08.07.2021. This incident was also intimated to the Respondent vide an e-mail dated 07.07.2021. Later, three cases of direct theft under sections 135 of the Electricity Act, 2003 were also filed with the Police Station, Sarojini Nagar, against the Appellant and are pending. She requested the Respondent for needful action but could not get any relief. Then, the Appellant approached the CGRF. The CGRF also didn't adjudicate on the matter for want of jurisdiction under Section 13 of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018. Aggrieved by the said order, the Appellant filed this appeal against the order of the CGRF and prayed for the relief on the lines of the complaint made with CGRF.

3. The above appeal was admitted. The matter was initially listed for hearing on 06.05.2022 but subsequently adjourned to 18.05.2022, 13.07.2022, and 20.07.2022 on account of administrative reasons and requests of the Appellant/Respondent.

4. Finally, the date of hearing was fixed on 05.08.2022. On this day both the parties were present and represented by their Counsels. Opportunity was also provided to them to present their respective cases. The Appellant through her Counsel contended that she was staying in the property since 2012 on rent and subsequently she purchased it in 2017. She presented a sale-deed to this effect. Subsequent to the sale-deed a rectification deed was also entered into with the landlord Shri Ved Prakash while showing one part of the portion of the terrace as a construction (house in 250 sq. Yards). In the sale-deed of 2017 this constructed structure was not there and the entire terrace (with no construction) was shown to



have been sold by the landlord. The Appellant further contended that one Shri Iqbal Singh started making complaints against her for illegal/unauthorized construction, misuse of electricity etc. because of ulterior motives. The Appellant affirmed that she has also filed a case against the above named person in the Court of Metropolitan Magistrate, for alleged harassment, etc.. The case is still pending in the Court. The Appellant further elaborated that in the month of January, 2021, the Enforcement Department of the Respondent conducted a raid and on the basis of raid a case of misuse/unauthorized use and commercial usage of electricity was filed against her, as she was allegedly drawing electricity from a connection at ground floor in the name of one Shri Dara Singh and also was using the domestic electricity for non-domestic purposes. Subsequently, the matter was settled after paying Rs.1,00,000/- (Rupees One Lakh only) in four installments and a new Customer Account (CA) No. was issued to her. She continued using the electricity under the non-domestic tariff till July, 2021 when the meter was reportedly stolen. A report to this effect was also filed with the Police Station by the Appellant. The Appellant also sent a request that her meter be installed against the stolen meter. She claimed that she was not aware of the circumstance under which the electricity was connected (without meter) and who did it. On the basis of the complaint made by Shri Iqbal Singh, SDMC, booked the property under 343/344 of DMC Act for unauthorized construction. The Appellant claims in the deposition that the Appellant is not aware of the theft case registered against the Appellant in the month of July, September and October, 2021. The Appellant is neither aware of the booking the property by SDMC or any writ petition pending in the Hon'ble High Court for demolition of the property, the Appellant is staying in.

The Appellant further contended that the complaint filed by her with the Forum was on the above grounds and asked the Forum for installation of the connection, change the tariff, refund the security deposit, refund the difference amount and compensation, etc. The Forum did not take up the as there were three theft cases registered against the Appellant and as per the Section 13 (2) of the DERC (Forum of Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018, the Forum is limited in its jurisdiction and cannot adjudicate in the case, as the premises of the Applicant/complainant has cases pending under Sections 135 of the Electricity Act, 2003.

5. The Respondent reiterated as per the written submissions and contended that the said electricity connection was installed in the year 2005 in the name of Shri Dara Singh for the address 20/5 (New No. 20-B), Ground Floor, Right Side Front Portion, Radha Apartment, Krishna Nagar, New Delhi - 110025. The



Appellant is neither registered consumer nor she is authorized user of the said electricity connection bearing CA No. 100139801. She has purchased the terrace of the third floor and record reveals that no electricity connection was released for the terrace of the third floor. The premises was inspected and it was found that the said electricity connection was being used for construction purpose, however, a case of misuse of electricity supply was booked which was subsequently settled. Again, the premises was booked for direct theft of electricity without meter under section 135 of the Electricity Act, 2003, on 08.07.2021, 04.09.2021 and 11.10.2021 by Enforcement Department.

Further, the other residents of the same Apartments have also submitted a copy of the reply of RTI stating that the premises of the Appellant was booked for unauthorized construction by the South Delhi Municipal Corporation (SDMC). In this regard, a writ petition has also been filed before the Hon'ble High Court. Hence, new connection cannot be released to her.

6. The Respondent also stated that the complaint as well as appeal makes it clear that the challenge is made to the direct theft case booked against the Appellant. The Respondent further stated that in the meantime the Appellant applied for new connection which was rejected vide their letter dated 22.02.2022 on the following two grounds:-

(i) The subject premises has been booked by SDMC under section 343 & 344 of DMC Act, 1957 vide U/c file No. 31/UC/B-I/Sz/21 dated 17.02.2021 for unauthorized construction in the shape of extension of fourth floor (part).

(ii) The height of building of subject premises is more than 15 meter without LGF + Stilt Parking and connection cannot be granted in the absence of Fire Clearance Certificate (FCC). It is admitted case that the Appellant is having no FCC, which entitles her the connection.

7. I have gone through the appeal, written statement of the Respondent, the rejoinders and the replies very minutely. Relevant questions were asked and queries raised by the Advisor (Engineering), Advisor (Law) and the Ombudsman to elicit more information and clarify certain doubts. This Court has also gone through the relevant provisions of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018. After hearing the arguments/counter arguments and going through the documents on record, the following issues emerge very clearly:



- (i) Whether the order of CGRF not adjudicating owing to the limitation under section 13 of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018 is as per the rules/regulations.
 - (ii) Whether a connection can be given to the Appellant as the property has been booked by SDMC for unauthorized construction.
 - (iii) Whether the Ombudsman can adjudicate on the issue of providing electricity connection and reliefs asked for by the Appellant, as Ombudsman is limited by Section 29(3) (v) of the DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018.
 - (iv) Whether other reliefs could be given to the Appellant like; refund of security deposit, refund of difference of the bills on non-domestic tariff, compensation and costs etc.
8. This Court would like to deal the above issues/questions in details:
- With regard to the issue No. (i), this Court is of the opinion that CGRF is right in not adjudicating under the relevant provisions. Three cases of direct theft have been registered against the Appellant and are pending investigation and the Forum has been specifically barred by Section 13 (2) of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018, which is reproduced for bringing out more clarity on the issue:

Chapter III - Jurisdiction and Proceedings of the Forum

Section 13 - Limitation of Jurisdiction of the Forum

(1) xxxx

(2) *The Forum shall not entertain grievances falling under Section 126, 127, 135 to 139, 142, 152 and 161 of the Act.*

(3) xxxx

- Deliberating on the issue of providing connection to an unauthorized building booked by SDMC under section 343/344 of DMC, it is very clear logically and also provided by the case law that connection should not be given to any unauthorized construction. The High Court in the



case M/s Parivartan Foundation vs. South Delhi Municipal Corporation has gone to the extent of directing the Chief Operating Officer, Discom/Chief Executive Officer, Jal Board, to disconnect electricity/water connection in the case the building is held illegal/unauthorized. The contention of the Appellant that they are not aware of the fact that the building has been held illegal and they cannot accept the reply of SDMC on the basis of an Right to Information (RTI) query and that too by a person who is not party in the dispute. This court is of the considered opinion that the fact has been brought on record and a notice has also been issued to the Appellant in this regard by SDMC.

In view of the above, connection cannot be released to the Appellant till the finalization of the case of unauthorized construction filed by SDMC under Section 343/344 of DMC Act.

- With regard to the (iii) issue, the provision of Section 29(3)(v) are very clear and are reproduced below:

Chapter V - Proceedings and Powers of the Ombudsman

Section 29 - Filing of representation before the ombudsman

(1) xxxx

(2) xxxx

(3) *The Ombudsman shall not entertain a representation:*

(i) xxxx

(ii) xxxx

(iii) xxxx

(iv) xxxx

(v) *where the representation by the complainant, in respect of the same grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.*

In the above provisions, it is a fact that the section provides for the representation of the complainant (Appellant). In the present case, the writ petition is filed by person other than the Appellant in which the prayer




coincides with the prayer of the Appellant. It is also a fact that the Appellant is a Respondent in the pending W.P. (C) No. 11794/2021 before the Hon'ble High Court of Delhi. The prayer in the writ petition is (i) demolition of the unauthorized structure (ii) to disconnect the electricity (iii) take action against the erring officers of SDMC/BSES (Respondent No. 1 & 2) and other prayers. The prayer at (i) & (ii) above have adverse ramification for the subject of appeal by the Appellant. This court views that the above provision bar the Ombudsman from adjudication the above issues specifically. Hence, I am of considered opinion that the Ombudsman cannot decide on the above issues till the finalization of the above court case.

- Regarding issue at (iv) above, I am of the considered opinion that the Appellant be given relief so far as refund of security deposit to the tune of Rs.42,900/- plus interest after settlement of all the dues payable to the Respondent and also difference of amount with effect from date of enforcement raid, i.e. 13.02.2021 till 24.07.2021.

9. In view of the above, the Respondent is directed to:

- a. Refund the security deposit plus interest after settlement of all the dues payable to the Respondent.
- b. Refund the difference of the amount between domestic and non-domestic w.e.f. 13.02.2021 to 25.07.2021 when the meter was allegedly stolen and a final bill was sent to the Appellant, after settlement of dues. The above amount may be refunded to the Appellant within next fifteen days of the issue of the order.

The Appeal is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
10.08.2022