

**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)

(Against the CGRF-BYPL's order dated 13.12.2024 in Complaint No.476/2024)

**Appeal No.04/2025**

**IN THE MATTER OF**

**Shri Subhash Chandar**

**Vs.**

**BSES Yamuna Power Limited**

Present:

Appellant: Shri Subhash Chander along with Advocate, Shri Neeraj Kumar

Respondent: Ms Shweta Bist, DGM, Ms Chhavi Rani, Legal Retainer and  
Shri Akash Swami, Advocate, on behalf of BYPL

Date of Hearing: 16.04.2025

Date of Order: 17.04.2025

**ORDER**

1. Appeal No. 04/2025 dated 02.01.2025 has been filed by Shri Subhash Chander, R/o US-19, Ground Floor, Gali No.1, Uttri School Block, Mandawali Fazalpur, Near Railway Pooliya, Delhi – 110092, through his advocate, Shri Neeraj Kumar, against the Consumer Grievance Redressal Forum – BSES Yamuna Power Limited (CGRF-BYPL)'s order dated 13.12.2024 passed in Complaint No. 476/2024.

2. The background of the case is that the Appellant had applied for a temporary electricity connection (NX category), vide order no.8007093333, in his name for reconstruction purposes at the aforesaid old premises, after demolishing the old structure. The construction, the Appellant undertakes, would be done in line with safe distance as per Central Electricity Authority (Measures relating to Safety and Electric Supply), Regulations, 2010. His plea was rejected by the Respondent with deficiencies, i) premises with inadequate / unsafe clearance from HT lines, ii) multiple Enforcement



Dues exist for the site. The Appellant asserted that a domestic electricity connection CA No.151601067 (4 KW), energized on 30.09.2015, in his name, already existed at site, supported by a relevant bill. Later, the same was disconnected in August-2019 due to non-payment of dues. As far as enforcement dues were concerned, these were settled in Permanent Lok Adalat (PLA) and duly paid by him.

3. In rebuttal, the Discom, in its written submission dated 01.10.2024 before the CGRF, submitted that upon inspection of the applied premises, the request for a temporary connection (NX category) was rejected on the grounds, viz. i) premises does not maintain the requisite distance from the High Tension (HT) lines, ii) the instant complaint was hit by law of 'Res Judicata' as his previous complaint/plea for the same premises under DX category had been dismissed, vide CGRF's order dated 04.07.2024 passed in Complaint No.23/2024. Therefore, it was an attempt of hit and trial before the CGRF by filing the complaint again, seeking for connection by changing the category only from DX to NX. Moreover, no documentary proof was placed on record by him for clearance on admitted enforcement dues on the applied premises. Thus, the connection could be released only after removal of aforesaid objections, in the light of the Regulation 11 (2) (iv) (c) of DERC Supply Code, 2017 which states as under:

*"(iv) The Licensee shall not sanction the load, if upon inspection, the Licensee finds that; .....*

*c. the energization would be in violation of any provision of the Act, Electricity Rules, Regulations or any other requirement, if so specified or prescribed by the Commission or Authority under any of their Regulations or Orders."*

4. CGRF-BYPL, in its order dated 13.12.2024, endorsed the rejection of the application for the new temporary connection (NX category), applied for construction purposes, in the light of the admitted fact that the HT line was having its right of way through the premises of the Complaint, as is evident from the available photographs, in addition to the absence of the NOC or permit of the competent authority for reconstruction of his premises, as per Regulation 16 (4) of DERC Supply Code, 2017.

As far as legal position is concerned, CGRF relied upon Chapter 2, Regulation 5 'Safety of electrical installations' of DERC Supply Code, 2017 read with Regulation 61 of CEA's Safety Regulations, 2010, together with Regulation 16 supra which stipulates that the applicant shall give a declaration that requisite NOC or permit is available for the activity. In the present case, the Complainant could not place on record any NOC or permit in this regard.



5. Aggrieved by the CGRF order dated 13.12.2024, the Appellant has preferred this appeal through his advocate Shri Neeraj Kumar, reiterating his stand as before the CGRF. In addition, the Appellant has asserted that since 2015, the date of installation of earlier domestic connection at the applied premises till its disconnection in 2019, no accident had occurred to any of the family member while living there. Apart from that numerous connections have been released under the HT line by the Respondent in the area. However, he was denied deliberately despite the fact that no enforcement dues were pending as these were settled. The temporary connection (NX category) was required for construction of his premises with adequate safe distance as per CEA Regulations, 2010.

Moreover, if electricity was catered from any another source, a heavy penalty on account of misuse / direct theft would be imposed to him by the Respondent. The Appellant has further asserted that an undertaking with respect to non-extension of building structure, without taking prior permission from BYPL/DTL jointly, would also be given by him for releasing of requisite connection.

The Appellant prayed to (i) set-aside, cancel and quash the CGRF-BYPL's order dated 13.12.2024, (ii) release the requisite temporary connection, (iii) any other or further order that this court may deem fit and proper.

6. The Discom, in its written submission dated 28.01.2025, reiterated its stand as before the CGRF. In addition, the Discom emphasized that during inspection, the issue of premises, under the HT line, has been reported twice; firstly, the application of DX category connection was dismissed in Complaint No.23/2024 but it was never challenged. Secondly, the application of NX category connection under Complaint No.476/2024 was further dismissed by the CGRF, meaning thereby the law of Res-judicata is applicable. Moreover, under the circumstance of reconstruction purposes, it is mandatory to place on record the requisite sanctioned plan, approval from the concerned agency etc. Absence of any record has the effect of discrediting the entire stand of the Appellant. Reliance was taken upon Regulation 16 (4), Regulation 5 contained in Chapter – II of DERC Supply Code, 2017 and Regulation 61 (1) contained in CEA Regulations, 2010 which states, "*An overhead line shall not cross over an existing building as far as possible and no building shall be constructed under an existing overhead line.*" together with a judgement passed by Hon'ble Apex Court in the matter of R. Muthukumar vs. The Chairman and Managing Director TANGEDCO, (2022 SCC OnLine SC 151), on the aspect of negative equality.

.



7. The appeal was admitted and taken up for the hearing on 16.04.2025. During the hearing, the Appellant was present in person along with the Advocate, Shri Neeraj Kumar and the Respondent was represented by its authorized representatives/counsel. An opportunity was given to both the parties to plead their cases at length and relevant questions were asked by the Ombudsman and Advisors, to elicit more information on the issue.

8. During the course of hearing, the Advocate appearing for the Appellant reiterated the contentions as in the appeal. The Advocate submitted that he had applied for a temporary connection for enabling him to dismantle the existing old premises which was in a dilapidated condition and to take up reconstruction of the premises. In response to a query by the Ombudsman, the advocate conceded that there was no sanctioned building plan for reconstruction of the premises. It was also admitted that the premises was adjacent or under HT line and while carrying out reconstruction, the requisite distance would be maintained.

9. In rebuttal, the Advocate appearing for the Respondent reiterated its contentions as in the written submission. In response to a query by the Advisor (Engineering) regarding voltage profile of the line, crossing over the applied premises, the officer present apprised that the premises is under 66 KV line. Photographs of the said HT line were shown for perusal by the Ombudsman wherein guard wire (earth wire) was nowhere visible. Regarding release of the connection during 2015 in the name of the Appellant, despite existence of prevailing safety regulations, 2010, requiring maintenance of requisite laid down distance i.e. vertical or horizontal, no satisfactory response could be provided by the Advocate and the officers present. It was, however, mentioned that notices dated 09.04.2025 were issued to many persons/residents of the locality on the encroachment, invoking Section 68 (5) of the of Electricity Act, 2003 with a copy to the Sub-Divisional Magistrate (SDM) concerned. This action has been initiated in the month of April and no response from the concerned SDM had yet been received. It was agreed by all that there could be no compromise with the safety requirement and the distance mentioned in the CEA (Safety) Regulations, 2010 as well as in the prevailing regulations of 2023.

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

- (a) Perusal of available photographs of site confirms that the applied premises i.e. Ground Floor & First Floor is under the HT line. However, the basis for release of connection CA No.151601067 in the name of Shri Subhash



Chander on 30.09.2015 at the same premises which was later disconnected in August-2019, is not borne from the record, particularly when the premises is below HT line.

- (b) The connection cannot be released in violation of CEA (Safety) Regulations, 2010, as well as CEA (Safety) Regulations of 2023, particularly Regulation 63, which requires both vertical and horizontal clearance for buildings constructed under existing overhead line with voltage exceeding 650 V, as well as guidelines for release of temporary connection in Regulation 16, particularly 16 (4), which requires submission of NOC from the competent authority in respect of activity for which connection is applied.
- (c) Release of other connections below the HT line in the area is a matter of concern and is in blatant violation of CEA Safety Regulations, 2010 / 2023. There cannot be a compromise with safety of people, particularly on account of 'strict liability' doctrine recognized by Supreme Court.
- (d) Moreover, no record was available to establish that the duly settled enforcement dues have been cleared by the Appellant.
- (e) Hon'ble Supreme Court in a landmark decision has addressed the issue of constructing houses under high-tension (HT) lines, emphasizing that while the right to construct property is a fundamental right, it's not absolute and can be subject to reasonable restrictions. Specifically, the court has highlighted that construction under HT lines can be deemed illegal and may not be eligible for electricity connections if it violates the right of way specified by the CEA Regulations, 2010. The court has also recognized the "public trust" doctrine, meaning the government holds certain resources like air in trust for public, and this can be relevant to restrictions on construction under HT lines.

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

- (i) The order of the CGRF-BYPL is upheld.
- (ii) During the proceedings, it has been reported that multiple connections have been released under the HT line in the area. The CEO of Discom is required to get this fact verified and take necessary corrective action as violation of CEA (Safety) regulation and subsequent release of connection(s) on the part of the Discom is fraught with disastrous

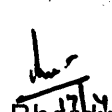


consequences and has the potential of putting the lives/property of residents to danger. This is required to be undertaken on priority and action taken report be sent to this office within a period of 30 days.

- (iii) Discom will ensure proper functional guard wire (earth wire) be laid over the HT line (66 KV line) along with pilot wire for communication and monitoring.
- (iv) While the above activity at point (ii) & (iii) is undertaken on priority, the CEO may also get an enquiry initiated to know the circumstances under which the connection in the year 2015 was released to the Appellant, in violation of CEA (Safety) Regulations, 2010.

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. Bhardwaj)  
Electricity Ombudsman  
17.04.2025