

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. 09/2022

(Against the CGRF-BRPL's order dated 22.02.2022 in CG No. 154/2021)

IN THE MATTER OF

Shri Vinod Kumar Bansal

Vs.

BSES Rajdhani Power Ltd.

Present:

Appellant: Shri Vinod Kumar Bansal

Respondent: Shri Manish Kumar, DGM, Shri S. Bhattacharjee, Sr. Mgr.
and Shri Deepak Pathak, Advocate, on behalf of BRPL

Date of Hearing: 18.07.2022

Date of Order: 19.07.2022

ORDER

1. Appeal No. 09/2022 has been filed by Shri Vinod Kumar Bansal, R/o E-1/18, Vasant Vihar, New Delhi - 110057, against the order of the Forum (CGRF-BRPL) dated 22.02.2022 passed in CG No. 154/2022.

2. The issue in the Appellant's grievance is regarding the change of category from non-domestic to domestic of electricity connection bearing CA No. 153181709, which is being used in the basement of the above said premises. In this regard, the Appellant approached the Respondent through e-mail dated 4.7.2021 but a delayed and unsatisfactory response was received on 29.09.2021, almost after a lapse of two months.

3. Then, the Appellant approached the CGRF for change of category from non-domestic to domestic of the subject connection as the basement is an integral part of his residential premises and was also being solely used for storage of household goods and recreational purposes, which were specifically



permitted under Master Plan Delhi, 2021 (MPD-2021) and the Unified Building Bye-Laws for Delhi, 2016 (UBBLD-2016):

“the basement cannot be used for residential purpose i.e. for habitation of human beings. However, under the same provisions, the basement is permitted to be used for storage of households and for recreational purposes. There is also no directive or guidelines in public domain which specifies that even if the “basement” is being used for permitted purposes, a domestic connection cannot be given.

4. The CGRF in its order concluded that it is clear from the provisions of the MPD-2021 and Unified Building Bye-laws, 2016 that specific category has not been assigned to the connection for the “Basement” in Tariff Order, hence, any activity not covered under any category in DERC's Tariff Order shall attract non-domestic category. Hence, the request of the complainant to change the category of his non-domestic connection for the “basement” to domestic cannot be acceded to.

With regard to refund of excess security amount, because the category change is not admissible, therefore, the complainant is not entitled for refund of excess security amount.

5. Aggrieved from the order of the CGRF the Appellant filed this appeal claiming that:

(a) The area of the ‘basement’ being not included in the FAR of a residential house cannot be deciding factor to classify basement as a non-residential floor.

(b) The South Delhi Municipal Corporation (SDMC) computed the basement of his house as residential and charged property tax accordingly.

(c) Though as per MPD-2021, basement cannot be used for living but on the other side is permitted to be used as storage, etc. I reconfirmed that the basement is being used for storage of household goods etc.



(d) As per DERC Supply Code & Tariff Order for 2021-2022, lists Under 1.1. - Domestic lighting, Fan and Power (Single Point Delivery and separate Delivery Points/Meters) are available to residential consumers. The basement being one of the floors of a residential house, hence, where is the need for it being listed separately.

(e) The CGRF in its order does not give specific reference of any clause/provision in either MPD-2021 or or Unified Building Bye-laws of Delhi, 2016, which specifies that the "basement" of a residential premises used for storage of household goods is to be recokned as non-domestic.

And prayed that:

- Change the category of connection from non-domestic to domestic
- Refund difference in security deposit.

6. The Respondent in their written submission reiterated the same as before the CGRF that the High Court of Delhi's Order dated 30.01.2018 passed in WP(C) No. 4349 dated 2017 titled as "Court on its own motion vs Govt. of NCT of Delhi & Ors." observed as follows:

"It is directed that before sanctioning an electricity connection, the concerned electricity company shall ensure that the connection provided in any premises can be only for a user of the premises as is permitted by MPD-2021 as well as UBBLD-2016."

Hence, as per Schedule of Charges, any other category of consumers not specified/covered in any other category in this Schedule shall be charged under Non-domestic category.

7. The above appeal was admitted and the date of hearing was fixed for 18.07.2022. During the hearing, both the parties were present in person and through their Counsel. On the date of hearing, an oppourtunity was given to both the parties to this appeal.



8. The Appellant submitted his contention based on Master Plan Delhi, 2021 (MCD'21) and Unified Building Bye-laws and conveyed that the basement is very much an integral part of the residential accommodation and according to the MPD'21 and Unified Building Bye-laws of Delhi, 2016, basement could be used only for (a) storage of house hold goods (b) parking (c) air-conditioning and other equipments and (d) recreational purposes. The Appellant further submitted that he has been using the basement for these purposes only and asserted that the basement only could be approached from the ground floor of house (occupied by him) and from the stilt parking and not from the outside. The Appellant also submitted that even the house tax of Municipal Corporation of Delhi is computed while taking the basement as residential. The Appellant also conveyed that his letters/e-mails were also not responded appropriately and in time.

9. On the other hand, the Respondent reiterated their stand that they are following the tariff order for 2021-22 passed by the DERC and referred to the Clause 2 (o) where it has been provided that any other category of consumers not mentioned in the tariff order under domestic category would be charged as non-domestic connection. The Respondent confirmed that they have responded to the e-mails/letter appropriately and in time. The Counsel of the Respondent asserted that the MPD'21, Unified Building Bye-laws and DERC's tariff order has to be read in conjunction and the interpretation would lead to only conclusion that basement have to be charged as non-domestic connection.

10. Both the parties were heard with their respective contentions and relevant questions asked and queries raised to elicit more information from them. While answering one of his queries, the Respondent conveyed that the decision of charging the basement on non-domestic connection basis was taken in the year 2019 and it was through an executive decision. Prior to 2019, the basement was invariably charged on the basis of domestic tariff only. The Respondent also conveyed that it was based on the interpretation of the MPD'21, Unified Building Bye-laws and DERC's Tariff Orders read in totality. The Respondent further apprised that there are two sets of consumers i.e. prior to 2019 and post 2019, who were charged differently. No intelligible differentia could be pointed out by the Respondent in support of their case, as may justify the difference in treatment. This prime facie indicates arbitration, denial of equality and fairness in the absence of any contrary law laid down.



11. I have gone through the appeal, the contention of the Appellant, the written statement of the Respondent and heard their respective arguments. I have also gone through the MPD-2021, UBBLD-2016 and the DERC's Tariff Order 2021-22 very minutely. After going through the above in detail, I am of the considered opinion that basement is required to be treated an integral and ancillary part of the residential accommodation provided:

- a) the approach to the basement is through the residential quarter.
- b) there is no entry/exit from/to the street
- c) it is not used for commercial purposes and used only for
 - i) storage of household goods
 - ii) recreation
 - iii) Air-conditioning equipment and other machines used for services and utilities of the building and
 - iv) parking space

12. In the instant case the basement fits under the criteria mentioned above and is complying with the provisions of building bye-laws and the master plan.

13. As per the statement made by the Respondent also that prior to 2019, the basements were charged as per the domestic tariff but subsequently seeing the misuse (basement used for commercial activities), the company brought about a change in the policy and started treating the basements as non-residential and tariff were levied accordingly while quoting the residual clause i.e. 2(o) of the Tariff Order. This court doesn't agree with the above change in the policy by treating all the basements as non-residential even though these being used exclusively for the defined purposes. This Court also does not agree that all basements be provided with connections with non-domestic tariff. The Court, based on the observations made by the Apex Court, (Chairman, M.P. Electricity Board vs Shiv Narayan & Ors.) and the material available on record opines that the decision with regard to tariff should be taken on the basis of usage/structure of basement and not otherwise. It is for the Discom to devise a mechanism (should be there) to visit the place, inspect and recommend on the basis of the structure, usage etc. whether the domestic or non-domestic tariff would apply. It has to be case specific rather than omnibus.

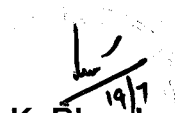


14. In view of the above deliberations, Respondent is directed to undertake the following actions:

- (a) Take an undertaking from the Appellant with regard to structure and usage of the basement.
- (b) Change the category of the basement connection from non-domestic to domestic accordingly.
- (c) To refund the excess security amount after changing the tariff accordingly.
- (d) To devise a suitable mechanism for inspection of the basement on application and making recommendations thereto on the basis of inspection whether the basement is complying with the MPD-2021 and UBBLD-2016) and also with regards to its usage.

However, if the Appellant decides to extend the existing connection at Ground Floor owned and occupied by the Appellant), the Respondent should not have any objection.

The compliance of the above action be undertaken within the fifteen (15) days on receipt of this order. The appeal is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
19.07.2022