

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. 11/2020

(Against the CGRF-BRPL's order dated 09.12.2019 in CG No. 23/2019)

IN THE MATTER OF

SHRI P S MORYA

(Director M/s EBP India Pvt. Ltd.)

Vs.

BSES RAJDHANI POWER LTD.

Present:

Appellant : Shri D.K. Sharma, Advocate along with Shri Kamal,

Respondent: Shri Brijendra Bhaskar Manager (PS), Shri Biju George,
IT Associate and Shri Deepak Pathak, Advocate,
on behalf of BRPL

Date of Hearing: 03.09.2020

Date of Order: 18.09.2020

ORDER

1. The appeal No. 11/2020 has been filed by Shri P. S. Morya, Director, M/s EBP India Pvt. Ltd., through his advocate Shri D.K. Sharma & Associates, against the order of the Forum (CGRF-BRPL) dated 09.12.2019 passed in complaint No. CG-23/2019. The issue concerned in the Appellant's grievance is regarding non-release of new electricity connections by the Discom (Respondent) in respect of his property bearing House No. 510-B-2, Gali No. 6, Govind Puri, New Delhi-110019, mainly on account of the fact that the height of the building is more than 15 meters.



2. In the instant appeal, the Appellant has stated that initially he had one temporary electricity connection installed on the property and after completion of the construction of the premises, he applied for new electricity connections in the name of M/s EBP India Pvt. Ltd. at ground, upper ground, first, second and third floors of the building on 26.04.2018, which were rejected by Discom on account of building height more than 15 meters on 08.05.2018. He further stated that he approached Discom authorities through his representation dated 26.12.2018 along with original Architect Certificate for issue of the electricity connections but they did not accept his request on the plea that re-inspection of the premises has been carried out and the height of the building has been found to be approximately 16.05 meter from the road level and 15.8 meter from ground level.

After lot of persuasion with Discom authorities, when the connections were not released by them he was forced to file the complaint with the Forum for redressal of his grievances. After hearing the arguments, the Forum dismissed his complaint on the grounds that the Appellant is unable to fulfill the condition as prescribed under the law and in the absence of the fire clearance certificate, connections cannot be released. Being aggrieved by the rejection of his complaint by the Forum, he has preferred the present appeal on the grounds that the Forum has failed to consider that the said building is constructed with stilt parking and building height is within permissible limit as is clearly mentioned in the Architect Certificate. Also, the Forum has not considered the fact that as per Clause 7.15.3 of Unified Building Bye-Laws (UBBL), of Delhi, 2016, in case parking requirements are met with by setbacks and open area then remaining parking can be accommodated in partial stilt and balance area can also be used as part of dwelling unit provided it meets the height and space requirement for dwelling unit as mentioned in table 7.1 of UBBL. Further, the Forum has also not considered the fact that Discom has discussed the matter with their Legal Department and admitted that they were ready to consider the ground floor as stilt parking and release the connections, if the shops and wall etc. are demolished.

3. In support of his argument for release of new electricity connections, the Appellant has also referred to the order of Ministry of Power, Govt. of NCT of Delhi dated 22.11.2016, directing the Discoms to immediately provide connections on demand irrespective of the fact whether the colonies are authorized or not. Further, the Appellant has also cited the order of Hon'ble High Court of Delhi, wherein it was observed that the electricity is an essential



requirement of the life, without which any person in occupation cannot enjoy the property.

During the hearing, the Appellant also argued that he had submitted the Architect Certificate for the release of electricity connections as per the prevalent practice but the connections were not released by Discom on the plea that they had stopped releasing electricity connections on the basis of Architect Certificate after 03.05.2018, and now they are releasing the electricity connections only after measurement of various heights as per the relevant building bye-laws. Further, on the one hand Discom said that they have stopped releasing connections on the basis of architect certificate on the other hand they have released several electricity connections to many others on the basis of architect's certificate only. During the hearing, the Appellant also submitted certain documents and photographs of the stilt parking which were taken on record.

In view of above, the Appellant finally concluded with the argument that he has complied with all the requirements of building bye-laws for release of the electricity connections and hence prayed to set-aside the order of the Forum and direct the Discom to release the said connections at the earliest. He also requested to direct the Discom to revisit the site for clarification of the actual site position of the said premises and for justification of the facts pertaining to stilt parking.

4. The Discom in its reply has submitted that a domestic category temporary electricity connection for construction was obtained by Shri Jay Prakash at the property bearing No. 510-B-2, Gali No. 6, Govindpuri, New Delhi - 110019 on 14.10.2017. The said property was purchased by M/s EBP India Pvt. Ltd. on 10.11.2017, but the purchaser neither applied nor obtained non-domestic temporary electricity connection in their name and started construction activity by using the already installed temporary electricity connection to avoid non-domestic tariff. The said electricity connection is still in use on domestic temporary category and tariff revision on non-domestic category basis will be carried out as per the tariff order, since the construction activity is a non-domestic one. The Appellant then applied for 24 new electricity connections at the said property on 26.04.2018, which were rejected by them on 08.05.2018 on the ground of non furnishing of 'Fire Clearance Certificate' as mandated under the law, since the height of the building is more than 15 meters as measured by them in accordance with the UBBL of Delhi, 2016.



As per directions of the Forum during the hearing, a joint inspection was carried out on 25.03.2019 to measure the height of the building. As per the 'joint inspection report' the height of building was found to be 15.7 meters from road level and 15.45 meters from the ground level, which is more than the stipulated height of 15 meters for the buildings without stilt parking and accordingly the Forum came to the conclusion that if the connection is granted to such a building without insistence of Fire Clearance Certificate, it shall risk the public at large. It is pertinent to mention here that the total building height is more than 15 meters and less than 17.5 meters but the said parking floor does not fulfill the criteria of stilt parking as provided under Clause 7.15.1 of UBBL, 2016. Discom further stated that as per the present status, the electricity connections cannot be released since the building in question is more than 15 meters in height without the existence of proper stilt parking, which requires 'Fire Clearance Certificate' from the Fire Department, as mandated under the law for buildings having height more than 15 meters.

Discom further submitted that the contention of the Appellant, that the height of building is within limits as per the certificate issued by the Architect, cannot be accepted as no such provision exists under the law. Rather Discom is duty bound to measure the various heights and the relevant dimensions of the building as per building bye-laws before deciding the release of the electricity connections. The Architect Certificate is not accepted in this regard, however, the Appellant can submit completion-cum-occupancy certificate, which can be treated as a valid document for release of electricity connections. Discom also countered the claim by the Appellant that the ground floor is a stilt parking as it consists of two shops, a flat/dwelling unit and very little portion has been left for parking. Whereas, as per the bye-laws stilt floor means non habitable portion of a building above ground level consisting of structural columns supporting the super structure with at least two sides open for the purpose of parking cars, scooters, cycles and landscaping. This provision is intended to ensure that the stilt parking should be used only for parking of the vehicles and none else. Hence, in the instant case, the ground floor cannot be called a stilt parking and the electricity connections cannot be granted in the absence of 'Fire Clearance Certificate' as per the clarifications dated 31.05.2019 issued by Delhi Electricity Regulatory Commission in this regard.

5. Discom also stated that the Appellant is having no fire clearance certificate which entitles him to the electricity connections in four storey building including basement for which applications for electricity connections were made. Further,



the Appellant had not made any efforts and taken pain to obtain the 'Fire Clearance Certificate' which would have entitled him the connections conveniently and as such it is apparent that the property is situated at such a place where 'Fire Clearance Certificate' would not be granted because of the access or safety reasons and therefore it becomes more important to examine the matter before passing any direction with regards to the installation of electricity connections which involves serious repercussions to the life and property of the public at large.

Discom also submitted that the issue of height is very important and critical in view of the safety of life and property of the public at large as any overlooking/relaxation of the same would lead to a catastrophe as happened in recent cases in Delhi. The measurement of the various heights and entrance area of the building, therefore, is a serious issue which has to be strictly adhered to in accordance with the provisions of the building bye-laws as applicable. The stilt parking and entrance of the building is not in accordance with the bye-laws as is clear from the joint inspection report. The Appellant must act fairly as the lives of the occupants and public at large cannot be compromised for the sake of electricity connections in a building. As such the proper remedy should be that the Appellant must obtain 'Fire Clearance Certificate' so as to avoid any ambiguity on the serious issue of threat to life and property because of installation of the electricity connections at a building which does not meet the requirement of the height as per law.

Discom further submitted that it is pertinent to mention here that the electricity connections have not been rejected but have been mandated as per law to produce 'Fire Clearance Certificate' from the Fire Department and as such the contention of the Appellant is highly misconceived regarding rejection of electricity connections. On the issue raised by the Appellant citing the order of the Hon'ble High Court of Delhi that electricity is an essential amenity and nobody can be deprived of the same, Discom countered the same citing another order of Hon'ble High Court of Delhi dated 25.01.2016 vide which it has been held that no electricity connection can be granted without due compliance as required under the law and since DERC has mandated a condition in the regulations that in the buildings having height more than 15 meters without stilt parking and 17.5 meters with stilt parking, the electricity connections cannot be granted without production of 'Fire Clearance Certificate'. In view of the same, Discom submitted that they cannot release the electricity connections without fulfillment and compliance of the required conditions and has to follow the law and regulations in true spirit. Discom further argued that reliance placed by the Appellant on the judgement of Hon'ble



High Court of Delhi, is highly misconceived and is not applicable as the electricity connection, unlike this case was rejected in that case because of dispute between the owner and the tenant and there was no issue of height of the building involved therein.

Further, on the issue raised by the Appellant that Discom have released several electricity connections to many other consumers on the basis of Architect Certificate, Discom submitted that the process of accepting architect's certificate regarding building height has been withdrawn and physical measurement of the building height was started w.e.f. 03.05.2018 in terms of the policy of the company based on the directions of the Hon'ble Division Bench passed in "Parivartan Foundation Vs. South Delhi Municipal Corporation & Ors" WP(C) 11236/2017 vide order dated 20.12.2017. They also confirmed that in view of above directions, the actual measurement of the height is being carried by them for release of electricity connections, which is also in accordance with the clarification order dated 31.05.2019 issued by DERC, regarding relaxation of height from existing 15 meters to 17.5 meters for the premises having stilt parking in conformity with the requirement of UBBL, 2016. Discom also confirmed by way of an affidavit dated 10.09.2020 that no electricity connection has been released by them on the basis of Architect Certificate after 03.05.2018.

In view of above, Discom finally submitted that there are no legal and factual infirmities in the order of the Forum and the present appeal of the Appellant is liable to be dismissed as there is no merit in the case.

6. After going through the material on record and hearing the arguments of both the parties at length, the basic issue which emerges is that Discom refused to release the new electricity connections to the appellant basically on the ground that the height of the building is more than 15 meters and the Appellant has failed to produce the required 'Fire Clearance Certificate' from the Fire Department as per the extant regulations.

Given the above exposition and taking all the factors into account, it is worthwhile to mention here that for the purpose of seeking new electricity connections in high rise building, the Appellant has to complete all the formalities and will have to abide by all the regulations required under the law keeping in view the safety requirements involving serious repercussions to the life and property of the public at large. However, the basic issue which needs to be decided in the instant case is whether the height of the said building and that of the ground floor conforms to the building bye-laws and other regulations for

release of electricity connections or not. In this context, the clarification dated 31.05.2019 issued by Delhi Electricity Regulatory Commission, related to grant of electricity connections in high rise buildings need to be perused in the first instance before proceeding further in the matter. The operative part of the direction/clarification issued as per the Delhi Electricity Regulatory Commission letter No. F.17(85)/Engg./Delhi Electricity Regulatory Commission 2016-17/5403 dated 31.05.2019 is quoted as under:

"Based on the above, it is clarified that the distribution licensee for release of electricity connection shall not insist for fire clearance certificate for the residential buildings having height upto 15 meters without stilt parking and 17.5 meters with stilt parking. The measurement of the height of the building shall be made in accordance with clause 1.4.16 and 7.19 of Unified Building Bye-Laws for Delhi 2016."

From the perusal of the record, it is observed that a joint inspection was carried out as per the directions of the Forum on 25.03.2019 in the presence of the representative of the Appellant and the height of the building was found to be 15.70 meters from road level and 15.45 meters from the ground level. On perusal of joint inspection report it is also observed that although it reveals the height of building but no details have been provided regarding the various heights and dimensions of the so called stilt parking, which are essentially required to ascertain whether the ground floor meets with the requirement of stilt parking as per the applicable building bye-laws or not. Although, during the hearing the Appellant submitted that the height of the stilt parking is 9 feet but still keeping in view the prayer of the Appellant and in order to doubly ensure about the status of the ground floor being stilt parking or not, Discom was asked to carry out the joint inspection of building again. The joint inspection of the site for measuring various heights of ground floor was carried out on 07.09.2020 in the presence of the authorized representative of the Appellant. On perusal of the report which was duly signed by both the parties, it is observed that the height of the ground floor from road level is 3.35 meters, whereas the height as measured from the ground level is mentioned as 3.15 meters



7. In this context, in order to decide the issue of the ground floor being stilt parking or not, it is important to peruse the Clause 7.15.1 of the UBBL of Delhi, 2016, which pertains to the provision of parking in stilt, podium and landscaping. The operative relevant part of the clause is quoted as under:

"7.15 Provision of parking in Stilts, Podium and landscaping.

7.15.1 In case a building is to be constructed on individual plot with stilt floor, a maximum 2.4m height at soffit level of beam and 2.7m height at soffit level of slab for providing parking space is permitted. In podium(s), maximum 2.4m height at soffit level of beam and 2.7m height at soffit level of slab for providing parking space can be constructed in continuation of the stilt floor having access for the parking without conflicting with the access requirement as per clause 3.7 and 8.2 from the plot line. The terrace of podium may be used for plantation, swimming pool, landscaping, other related structures and parking/entrance and exits as required."

In view of the measurement of the height of building and that of ground floor carried out in the presence of the authorized representative of the Appellant and further the perusal of the Clause 7.15.1 of UBBL of Delhi, 2016, it is held that ground floor cannot be treated as stilt parking. Also, it is evident from the two joint inspection reports and the submissions made in the foregoing paras that in the present case, these parameters are not getting fulfilled. Since the height of the building is more than 15 meters and as the ground floor also does not fulfill the criteria of stilt parking, therefore, the said building falls under the category of residential buildings having height more than 15 meters without stilt parking as per DERC's Notification dated 31.05.2019. Hence, the electricity connections to the building can only be released after the production of requisite 'Fire Clearance Certificate' from the Fire Department.

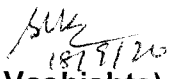
Further, the argument of the Appellant that Discom have released several electricity connections to many other consumers on the basis of Architect's certificate has no basis since Discom has submitted an affidavit dated 10.09.2020 vide which they have clarified that the process of accepting architect's certificate regarding building height has been withdrawn and physical measurement of the building height was started w.e.f. 03.05.2018 in terms of the policy of the company based on the directions of the Hon'ble Division Bench passed in "Parivartan



Foundation Vs. South Delhi Municipal Corporation & Ors." WP(C) 11236/2017 vide order dated 20.12.2017. They have further confirmed by way of affidavit that no connection has been released on the basis of Architect Report after 03.05.2018 and the connections are being released only on the basis of measurement of the height. In addition to above, some other arguments as raised by the Appellant regarding release of electricity connections, has no basis and are misconceived, since the issue of release of electricity connections cannot be decided on any other basis other than the DERC Regulations taken along with the existing building bye-laws of Delhi.

Against the above background, in order to get the new electricity connections released, the Appellant must complete all commercial and other formalities including obtaining of the necessary 'Fire Clearance Certificate' from the Fire Department as required under the regulations, which is mandatory for release of the connections as the height of the building is more than 15 meters without stilt parking.

Hence, no substantive case is made out for any interference with the verdict of the Forum and the appeal is disposed of accordingly.


(S.C.Vashishta)
Electricity Ombudsman
18.09.2020