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**Office of 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 No.: 32506011, Fax No.26141205)

**Appeal No. F. ELECT/Ombudsman/2007/167**

Appeal against Order dated 07.03.2007 passed by CGRF – BRPL in Case No.: CG/38/2007 (K.No. 2610 H424 0270)

**In the matter of:**

Smt. Rama Behl - Appellant

**Versus**

M/s BSES Rajdhani Power Ltd - Respondent

**Present:-**

**Appellant:** Shri V.K. Behl husband of the appellant

**Respondent:** Shri Y.M. Saxena Addl. General Manager  
Shri D.C. Sharma, Dy. Manager (O&M and Business)

Date of Hearing: 15.06.2007, 20.06.2007

Date of Order : 21.06.2007

**ORDER NO. OMBUDSMAN/2007/167**

The appeal is filed by Smt. Rama Behl against the orders of CGRF dated 7.3.2007. In her appeal Smt. Rama Behl has prayed that the order of the CGRF be set aside because she was not made a party to the said decision to disconnect the electricity connection of her property. A decision has been given by the CGRF affecting her adversely without hearing her and without considering her submissions. In fact, the order has been passed behind her back. She has further submitted that the property in question is under dispute and it is sub-judice through a Civil Suit No. 1401/06 filed by Shri Raj Malhotra, the Complainant. Since the matter is pending in the Civil Court regarding legality of the property, the order of the CGRF to disconnect the electricity in the said property tantamounts to contempt of Court. Her further grievance is that the copy of the order of the CGRF was not given to her and the same was handed over unofficially by somebody at the time of disconnection of her electricity. She had no dues pending till the date of disconnection of electricity on 26.3.2007. Further her security deposit of Rs. 7,895/- dated 24.5.2006 and Rs. 3,845/- dated 9.1.2007 still continue with the Discom. It is further stated that she has inalienable roof rights in the property in

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question and the Business Manager confirmed the same before the CGRF. Since she has without doubt the roof rights in the property, she is convinced that she is entitled to an electricity connection in the said property.

After a careful scrutiny of the contents of the appeal, the CGRF records and submissions made by the concerned parties, the case was fixed for hearing on 15.6.2007. Shri V.K. Behl, husband of the appellant attended in person.

Shri Y.M. Saxena, Additional General Manager and Shri D.C. Sharma, Dy. Manager (O&M and Business) attended on behalf of the Respondent. Shri Raj Malhotra did not attend nor was there any letter from Shri Raj Malhotra for adjournment or deferment of the case. Shri V.K. Behl submitted that the appellant had not sold the roof rights of the flat no. C-4-C/100, Janakpuri, New Delhi when he sold the said flat on 28.9.2005. In fact, he produced a copy of the sale deed, which states that the vendor is the true, lawful owner of DDA's freehold flat No. 320, in Block C-4-C, Pocket-14, on first floor, category LIG at Janakpuri, New Delhi and that the vendor agrees to sell only first floor (without roof rights) of the DDA's said flat to the vendee, (Shri Raj Malhotra). Para-4 of the said deed further states **(emphasis our)** that "the Vendor has handed over all the original documents relating to the said property to the vendee at the time of registration of this Sale Deed. However, the Vendee has to produce the said documents in original as and when required by the Vendor in connection with the sale of her roof rights or any construction thereon" Para 10 of the said Sale Deed further states that "the Vendee shall become the sole and absolute owner, occupier and in possession of the said property. **However, the Vendee or his heirs or successors or legal heirs shall have no rights, whatsoever on the roof rights of the above said property or any construction thereof. The Vendee has voluntarily conceded these rights as part of the sale under registration.** That the Vendee can go to the roof / terrace of the building for maintenances and repair of his TV Antenna and Water Tanks.

Shri Behl submitted that in view of the categorical exclusion of the roof rights while selling the flat to Shri Raj Malhotra, it is not correct for the CGRF to order to the Discom to disconnect her electricity connection on the flat constructed by her using her roof rights. It is further submitted that the CGRF has admitted the complaint on the basis of false facts wherein Shri Raj Malhotra has stated that he had purchased the roof rights alongwith the flat. In the CGRF order dated 7.3.2007, it is stated that Smt. Rama Behl is reported to have raised illegal construction on the roof of the first floor flat which belongs to Raj Malhotra. It is further stated in the order that a Civil Case is reported to have been filed for demolition of the 2<sup>nd</sup> floor and MCD has already filed a written statement before the Court. It is further stated that since the property is booked for demolition, temporary electricity connection given to her was disconnected on the complaint of Shri Raj Malhotra.

Shri Behl, husband of the appellant submitted that the CGRF was aware that the matter of illegal construction on the roof of the first floor flat was before the Civil Court which will decide on the legality or otherwise of the said construction and yet it passed the order dated 07.03.2007.

Records show that the Commissioner, MCD who was also made a party to the said case (filed by Shri Raj Malhotra) has stated in his reply to the Court that Shri Raj Malhotra, the complainant has not come with clean hands and suppressed material facts. In fact, he is concealing the fact that there is unauthorized construction on his floor also.

The arguments of Shri Behl were heard and considered. Shri Y.M. Saxena, Addl. General Manager of the Discom mainly repeated what the Business Manager stated before the CGRF that temporary electricity connection has been energized on 13.1.2007 in the name of Smt Rama Behl at the second floor of C-4C/320 after the submission of affidavit and copy of sale deed of first floor. The sale deed clearly mentions that she has sold the first floor without roof rights to the complainant.

Since Shri Raj Malhotra did not attend on 15.6.2007, the case was fixed for another hearing on 20.6.2007 to give an opportunity to Shri Raj Malhotra to put forth his arguments before the Ombudsman on 20.6.2007.

On 20.6.2007 Shri R.P. Sharma, Advocate attended alongwith Shri Raj Malhotra.

Shri V.K. Behl, husband of the appellant attended.

Shri Y.M. Saxena, Additional General Manager of the Discom attended.

Shri RP Sharma, Advocate put his submissions in writing, a copy of which was given to Shri Saxena. In his submissions Shri R.P. Sharma stated that the appellant Smt. Behl has no legal rights to the property in question and therefore she is not entitled to obtain the electricity connection in it. He has further stated that the MCD has already declared the construction on the roof of the first floor of the property as unauthorized and has booked the same for demolition and is, therefore, not entitled for any electricity connection. According to him there is no term such as "exclusive roof rights" without any legal title to the property. He has prayed that the appellant can not be allowed to have electricity connection by using fraudulent manner and unfair means.

On a careful consideration of the facts of the case, CGRF records and submissions made by all the concerned parties, it is evident that the appellant Smt. Behl was given temporary electricity connection on the basis of sale deed showing that she has sold the flat without the roof rights. In fact the sale deed makes it clear that although the original documents of the flat have been handed over to Shri Raj Malhotra, at the time of registration of said flat, the original documents are required to be produced by Shri Raj Malhotra as and when required by her in connection with sale of her roof rights or any construction thereon. The undertaking given by Shri Raj Malhotra on judicial stamp paper also confirms that he or his legal heirs shall have no rights whatsoever on the sale or use of said roof rights for any construction thereof and even at a future date. In view of the above legal

documents and in view of the fact that the matter of legality of the construction on the 2<sup>nd</sup> floor by Smt. Rama Behl is pending before the Court of Law, the CGRF erred in passing an order directing the Discom to disconnect the temporary electricity connection given to Smt. Rama Behl in the said property.

It is not for the Ombudsman or the CGRF to pass any judgment on the legality or otherwise of the construction by Smt. Rama Behl on the roof of the first floor flat specially when the matter is pending before the Civil Court.

In view of the above, the order of CGRF is set aside and the status quo be maintained pending the decision of the Civil Court on the matter. **Accordingly, the Discom is directed to provide a temporary electricity connection to the appellant as was in place before the order of the CGRF.**

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(Asha Mehra)  
Ombudsman