

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-cum-Fax No.: 011-41009285)

Appeal No. 18/2022

(Against the CGRF-BYPL's order dated 12.05.2022 in Complaint No. 67/2022)

IN THE MATTER OF

Smt. Indu Gautam

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Smt. Indu Gautam

Respondent: Shri K. Jagatheesh, DGM, Shri Imran Siddiqi, Senior Manager, Shri Rajan Pasan, Commercial Officer and Mrs. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 10.08.2022

Date of Order: 11.08.2022

ORDER

1. Appeal No. 18/2022 has been filed by Smt. Indu Gautam, against the order of the Forum (CGRF-BYPL) dated 12.05.2022 passed in Complaint No. 67/2022. The issue concerned in the appeal is regarding disconnection of electricity connection bearing CA No. 152903159 registered in the name of Shri Kalyan Dutt Gautam installed at Plot No. 10, Block No. 30, Gali No. 6, Naiwara, Vishwas Nagar, Shahdara, Delhi - 110 032.

2. The background of the case, as stated by the appellant, is that the Respondent had installed an electricity connection bearing CA No. 152903159 in the name of Shri Kalyan Dutt Gautam (father-in-law of the Appellant) at the above said premises in the year 2019. The Appellant stated that this property was sold by Smt. Ram Shree, (her mother-in-law) in the name of her three



daughters-in-law including herself (the Appellant) in the year 2009. Smt. Ram Shree died in the later years. The other two daughters-in-law sold their portion to the outsiders. As such, she is the sole owner of the said premises.

3. In 2019, Shri Kalyan Dutt Gautam applied and obtained an electric connection vide CA no 152903159 by submitting the property papers of the year 1972. The 1972 sale deed was in name of late Smt Ramshree (wife of Shri Kalyan Dutt Gautam). The respondent provided this connection relying upon the invalid and outdated documents. She approached Respondents vide her numerous complaints to get the unauthorized electric connection removed from her premises. When the Respondent did not heed to her pleadings for removal of the said connection, the Appellant filed a complaint before the CGRF-BYPL.

Shri Kalyan Dutt Gautam vide his letter dated 9.5.2022 to the CGRF-BYPL requested not to disconnect his electricity connection as he is a senior citizen and staying there since 1972. Whereas, Smt. Indu Gautam (wife of his son Shri Hari Om Gautam) is not residing on the said address since 2004.

4. The CGRF in its order stated that as per Section 43 of the Electricity Act, 2003 - "Duty to supply on request", the Respondent has a duty to provide the electricity to the person who is in occupation or in possession of the property. In this regard, the CGRF also mentioned following orders:

- Shri Abhimanyu Mazumadar & Others v/s The Superintending Engineer & Others
- Amarendra Singh V/s Calcutta Electric Supply dated 10.01.2008
- Gaurav Sharma V/s UP State - 18.09.2018, etc.

The CGRF further stated that they are of the opinion that the complaint of Smt Indu Gautam, has no substance because Shri Kalyan Dutt Gautam, father-in-law of Smt. Indu Gautam, is in occupation and possession of the property since 1972 after the purchase of the property in the name of his wife Late Smt. Ram Shree from his own earnings and savings. He was a teacher in a Government School. His wife (Late Ram Shree) sold this property to three daughters-in-law with love and affection. Electricity connection does not create any right over the property and it is a case of family dispute as it seems by the record of the complainant. Also, as decided by Himachal Pradesh High Court



in the matter of Madan Lal Vs State of Himachal Pradesh & Ors, where it was stated that the right to water and electricity supply is an integral part of right to life under Article 21 of the Constitution of India. So, the CGRF directed the Respondent not to disconnect the electricity because it does not create any right over the property. Shri Kalyan Gautam had purchased the said property in 1972 and since then has been living there.

5. Being aggrieved with the order of the CGRF, the Appellant filed this appeal on the following grounds that:

- (a) The Forum entertained Shri Kalyan Dutt Gautam's application after the date of final hearing, which is deliberate violation of the procedure adopted in the Court of Law.
- (b) The Forum stated that there is a property dispute pending in the Court of Law while there is no property dispute pending before any Court.
- (c) The Forum directed the Respondent not to disconnect the electricity connection on the basis of old Sale-Deed executed in 1972 which was redundant in 2009 due to transfer of ownership and the property was never in the name of Shri Kalyan Dutt Gautam. Hence, use of it is illegal and void *ab initio*.
- (d) The Forum admitted that the execution of sale-deed in 2009 by Late Smt. Ram Shree in favour of her three daughters-in-law (including herself) but out of love and without the sale consideration. But the Forum ignored that the sale consideration is an essential ingredient of the sale-deed.

And prayed (i) to disconnect the illegal electricity connection CA No. 152903159 installed in the name of Shri Kalyan Dutt Gautam in her property and (ii) to take strict action against the Respondent's officers.

6. The above appeal was admitted and the hearing was fixed for 10.08.2022. Shri Kalyan Dutt Gautam was also impleaded as a party. During the hearing, both the parties were present in person, However Shri Kalyan Dutt Gautam did not turn up. On the date of hearing, an opportunity was given to both the parties to present their case at length.



7. Appellant submitted that she did not receive her portion of the property through the Gift Deed. The property was purchased from Smt. Ram Shree, wife of Shri Kalyan Dutt Gautam, after paying an amount of Rs.3,23,000/- vide Sale Deed executed in 2009. After purchasing the property, a connection was installed by the Respondent in her name on the basis of ownership proof i.e. Sale Deed executed in 2009 in her favour. As she had already shifted to Rohini in 2004 and nobody lived there, so there was no need for any electricity, therefore, as per her request, the connection was disconnected in 2010. She does not know the exact date when Shri Kalyan Dutt Gautam occupied her premises. She is the sole and lawful owner of the premises through the Sale Deed, executed in 2009. She had filed a police complaint against him in regard to illegal occupancy. She stated that no case is pending in any court of law on this issue or ownership of the property.

8. In rebuttal, Ms. Ritu Gupta, the advocate for Respondent, reiterated their stand as before the CGRF and in their W.S. She submitted that the connection was granted to Shri Kalyan Dutt Gautam after considering the Affidavit and Sale Deed of the property which was executed in 1972. She approached the CGRF sought for relief of disconnection as she did not get any response from the Respondent. The factum of Shri Kalyan Dutt Gautam being in possession of the subject property, as admitted by the Appellant herself before the CGRF, is not in dispute. In the instant case, the adjudicating body i.e. CGRF has passed an order not to disconnect the connection. Respondents are bound to comply with it. Advocate further submitted that there are so many judgements of the Hon'ble High Courts and the Hon'ble Supreme Court which say that even an illegal occupant can obtain an electricity connection, the electricity being necessity of life.

9. After hearing the both sides following moot questions arise, which need to be addressed

- (a) Whether the connection CA no 152903159 was correctly and right fully released by the Respondents.
- (b) If the connection has been given on outdated and invalid documents, Should it be disconnected and Shri Kalyan Dutt Gautam be denied electricity



- (c) Whether a wrong has been done to Smt Indu Gautam, the legal and rightful owner of the subject property. If yes how can she be compensated for her sufferings at the hands of the respondent
- (d) What corrective measure should be taken to ensure that respondents do their duty diligently so that the consumers and the public doesn't suffer because of their commissions and omissions.

10. It is abundantly clear from the documents on record and the proceedings in this court, that Mrs Indu Gautam is the owner of the property since 2009. It is also admitted fact that Shri Kalyan Dutt Gautam is the occupant in the said premises and such entitled for electricity, which has been accepted as integral part of Right to Life by the Hon'ble Supreme Court. The respondents while being in the knowledge that the CA number 121016250392 existed at the said property in 2009-10, failed to exercise the due diligence and provided the electric connection to Shri Gautam in 2019, based on the sale deed of 1972. This could also be called deficiency in service. Despite the application by the Appellant and subsequent reminders, Respondent didn't take any action for correcting the wrong.

11. The second question could be answered by saying that his connection given on the basis of outdated / invalid documents is not legal and should be disconnected. Yet as Kalyan Dutt Gautam is an undisputed occupier of the house, he could not be denied electricity.

12. Certainly wrong has been committed by the Respondent on following counts i.e. (i) by giving connection on the basis of outdated and invalid documents; (ii) not doing due diligence and (iii) by not entertaining / reacting to the complaints / reminders given by the Appellant. She should be compensated for her mental agony and the sufferings caused by the Respondent. Unfortunately, acts of commission and omission, were not even admitted by the Respondent in the written statements categorically and were acting as nothing wrong has been done by them and the officers present during the hearing were justifying their acts.

On the basis of above deliberations, I am of the considered opinion that the order passed by the CGRF is not based on the principles of natural justice, equity and suffers from lack of application of legal prudence. Hence, the order passed by the CGRF is set-aside with the following directions:




- a) The impugned connection be disconnected after giving 15 days notice to the present RC, Shri Kalyan Dutt Gautam, and would be disconnected only when the new connection is there in place in the name of the Appellant. Subsequent payments of usage of electricity will be paid by the user.
- b) Appellant be asked to apply for a new connection in her name and complete the commercial formalities in these 15 days.
- c) Respondent to ensure that the occupier is not denied electricity as right to electricity is integral part of right to life. This has been enshrined in various judgements of Hon'ble High Courts/Supreme Court.
- d) A compensation of Rs.5,000/- be given to the Appellant for the pain/suffering caused to her by not responding to the complaints/reminders. This be considered deficiency in service.
- e) Three sets of the officers of the Respondent have not done due diligence on following counts, i.e.
 - (i) Who didn't check the validity/authenticity of documents as the earlier connection taken in the year 2009 was in the name of Appellant which was disconnected in 2010.
 - (ii) Who carried out the site visit and didn't care to bring certain facts to the notice of the decision maker for taking the right decision?
 - (iii) Who submitted the para-wise comments to this office as written statement and who kept on insisting that Discom has done no wrong?

In view of the above, this Court also thinks it proper to ask the Respondent to identify the above sets of officers after conducting enquiry. Departmental proceedings may be initiated against these officers so that these acts of omission and commission are not repeated. This exercise should be undertaken in next one month and the Ombudsman be intimated accordingly.



The above orders may also be brought to notice of CEO of the Discom so that the top management brings about betterment in the system / processes to bring down the hardships caused to public.

The appeal is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
11.08.2022