

OFFICE OF 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- 26144979)

IN THE MATTER OF

1. Appeal No. 19/2022

(Against the CGRF-BYPL's order dated 06.09.2021 in Complaint No. 84/2021)

Shri Ajay Mendiratta

2. Appeal No. 20/2022

(Against the CGRF-BYPL's order dated 06.09.2021 in Complaint No. 79/2021)

Shri Sanjay Mendiratta

Vs.

BSES Yamuna Power Limited

Present:

Appellant(s): Shri Ajay Mendiratta & Shri Sanjay Mendiratta along with
Shri Jawahar Chawla, Advocate

Respondent: Shri Prateek Pahwa, DGM, Shri Imran Siddiqui, Sr. Manager
(Legal) and Ms. Ritu Gupta, Advocate, on behalf of BYPL

Date of Hearing: 12.10.2022 & 24.11.2022

Date of Order: 25.11.2022

ORDER

1. Both the above appeals raise a similar issue, i.e. release of new commercial electricity connections on the same floor of building, i.e. Shop No. 20 & 21, First Floor, MPL 1479, 1481-1486 ES Pyare Lal Building, Bazar Chandni Chowk, Delhi - 110006, therefore, a joint hearing was conducted. As the issues are same and in the same floor/building, the Advocate was same, arguments and counter arguments by the Appellants and Respondent were also the same, the hearing was conducted on the same day, i.e. 12.10.2022 at 2.30 PM.



2. Appeal No(s). 19/2022 & 20/2022 have been filed by Shri Ajay Mendiratta and Shri Sanjay Mendiratta respectively through their Advocate, Shri Jawahar Chawla, against the orders as cited above of the Forum (CGRF-BYPL) dated 06.09.2021.

3. In the instant appeal, the Appellants contended that they had applied for a new commercial electricity connections for their Shop Nos. 20 & 21, first floor, MPL 1479, 1481-1486 ES Pyare Lal Building, Bazar Chandni Chowk, Delhi - 110006, which were denied by the Respondent for want of 'No Objection Certificate' from the Fire Department, as the height of the building was considered to be more than 15 meters. Whereas, the Appellants stated that their shop is on first floor and within the permissible norms of Sixth Amendment of Delhi Electricity Regulatory Commission (DERC)'s guidelines vide order dated 15.04.2021. The Appellants also stated that the Respondent had installed several other electricity connections on the same floor even prior to the DERC's amendment mentioned supra.

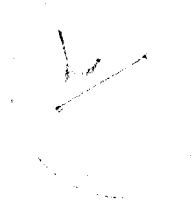
4. The CGRF ordered the Respondent to release the non-domestic electricity connections in the commercial building, upon submission of 'Fire Clearance Certificates' and fulfilling all the commercial formalities as per DERC Guidelines, 2017.

5. Aggrieved by the CGRF-BYPL's orders dated 06.09.2021, the Appellants filed the appeal on the following grounds that:

- i) The Forum passed the orders while not keeping in view facts and circumstances of the cases.
- ii) The Forum failed to consider that when the Appellants purchased the subject shops, the building was having only three floors and their shop was under the height of 15 meters. Moreover, various other electricity connections were installed after the DERC's order dated 31.08.2017.
- iii) The DERC's order dated 31.08.2017 is not applicable on the Appellants' first floor shops as they had purchased these properties in May, 2014.
- iv) The Forum failed to consider that their shops' height is 8.90 meters from the ground floor and situated on the first floor. 'Height Certificate' issued by a professional architect was also not considered.
- v) The Authorities have not notified the subject properties as multi-storey building's height is also not more than 15 meters. The Forum has

failed to consider that the Appellants had fulfilled the conditions of Clause 36(3) and they are ready and willing to fulfill all other stipulations of Central Electricity Act, 2010.

- vi) The Respondent never demanded dues on pro-rata basis against CA No. 100252270 from the Appellants. They are willing to pay the dues as and when asked for.
- vii) The CGRF has misconstrued the DERC's notification dated 31.05.2018, related to buildings having stilt parking.
- viii) The cases referred in the order are not applicable in the Appellants' case.
- ix) The energization date of CA No. 153227752 is 09.01.2021. There is no record to show that this connection existed since 1990. The CGRF also failed to admit that the Respondent granted electricity connections in the year 2015, 2016 and 2017 and no explanation had been given by them.
- x) The Appellants are being deprived of the basic amenities like electricity. The Appellant orally submitted that he is ready to furnish any kind of undertaking/document protecting interest of the Respondent in lieu of non-submission of 'Fire Clearance Certificate' because the same is to be obtained/granted for the entire building, existed much before the rules and regulations framed in the year 2015.
- xi) As many as thirty seven (37) electricity connections are already existing in the subject property.
- xii) The different benchmark cannot be set-up in similarly situated shops, four connections have been released on the same floor having same height.
- xiii) The demand of Rs.248/- dues on pro-rata basis shows that there was earlier an electricity connection in the shop, which could be restored subject to restoration charges.



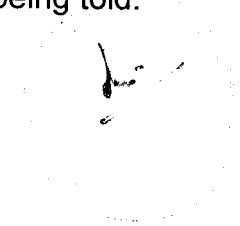
6. The Appellants further prayed:

- (a) to set-aside the CGRF's orders dated 06.09.2021
- (b) to direct the Respondent for immediate installation of commercial electricity connection and the demand of 'Fire Clearance Certificate' may kindly be rejected.
- (c) to direct the Respondent to conduct an inquiry as to how other 37 electricity connections have been granted.
- (d) To direct the Respondent to pay Rs.1.00 lakhs towards litigation cost and any other order deem fit and proper.

7. The cases were taken up for the hearing on 12.10.2022. During the hearing, all the parties were present, in person, along with their Counsels. An opportunity was given to all present to plead their case at length.

8. The Appellants through their Counsel contended the same as submitted in their appeals. The Counsel of the Appellants argued that (a) actually the subject building was a residential building, users of this building made it commercial, as such, this building should be treated as residential building instead of commercial. With regard to height of the building, they have already submitted government approved Architect's certificate mentioned therein that the building height is 14.10 meters and height of their shops from the ground floor is only 8.90 meters, (b) it is not multi-story building because the government/concerned authority never notified it (c) on what grounds/documents the Respondent released three connections after the issue of Schedule of Charges and the Procedure under Delhi Electricity Regulatory Commission (Supply Code and Performance Standards) Regulations, 2017 dated 31.08.2017, i.e., on 14.10.2017, 28.11.2017 & 23.12.2017 respectively, whereas, their requests have been declined. Even as late as on 09.01.2021, the Respondent released a new connection vide CA No. 153227752.

9. The Respondent reiterated the same as before the CGRF and in its written submissions and further submitted that (a) if the Appellants want to measure the height of the building again, they can arrange a joint inspection (b) the process of accepting the Architect's certificate regarding building height has been withdrawn and physical measurement of the building was started w.e.f. 11.11.2018 in terms of policy of the Company and three connections were released prior to November, 2018 and (c) the connection vide CA No. 153227752 was a case of name change and not a new connection as being told.

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10. After hearing both the parties at length on 12.10.2022, the Ombudsman directed the Respondent as under:

(a) *To visit the site and re-measure the height of the building in the presence of the Appellants on 28.10.2022 at 11 AM and get their signature on the Report. The measurement requires to be done in accordance with clause 1.4.16 and 7.19 of Unified Building Bye-Laws for Delhi, 2016.*

(b) *File an affidavit in respect of the "policy" of accepting the Architect's certificate regarding building height and its getting withdrawn on/after a particular date. The affidavit must have mention of change in policy with relevant order and date.*

(c) *To submit complete K.No. files in respect of the consumers who have been given electricity connections in the same building after the DERC's order No. 17(85)/Engg./DR/2017-18/5767 dated 31.08.2017.*

All the above documents should reach this office on/or before 04.11.2022. The next date of hearing was fixed for 10.11.2022 at 2.30 PM.

11. The hearing could not take place on 10.11.2022, as the Appellant filed a request for withdrawing the appeal and both the Counsels showed their inability to attend the Court citing different reasons. The request for withdrawal of appeal was placed on record and the hearing was adjourned to 15.11.2022. On 15.11.2022, the hearing was postponed as Ombudsman had to go for another meeting at the same time and hearing was adjourned to 24.11.2022. On 24.11.2022, both the parties are present. Appellant filed the request for withdrawal in person and conveyed that there was no need for joint inspection/measurement as the Respondent accepted the measurement done by approved architect and found that the height was less than 15 meters. The Respondent conveyed that in view of the report submitted by the approved architect, the connections were released to the Appellants. With regard to the Point (ii) & (iii) of the Interim Order, the Respondent did not take any action and promised to look into it. They were directed to submit the same by 30.11.2022.

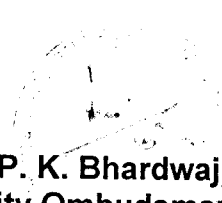
12. I have gone through the appeals, written statements of the Respondent and relevant rules minutely. I have also heard the arguments of both the contending parties. Relevant questions were asked and queries raised by the Ombudsman, Advisor (Engg.) and Advisor (Law) on various issues to get more information for clarity. On the basis of above, this Court is of the considered opinion that the Respondent have not acted in a responsive and transparent manner in the case. The Appellants (consumers) had to approach the Respondent, the CGRF, the

Hon'ble High Court and the Ombudsman to get their issue resolved. The "so called" compromise (agreement) could have been reached on day one of the filing of applications for the connections. There was sheer wastage of time and energy of various forums. It happened owing to change in "policy" every now and then. Even this court observed that the "policy" was getting changed very frequently on the whims and fancies of the officers concerned. Moreover, the term "Policy" has been used very loosely, it is Standard Operating Procedures (SOPs) which were changed very frequently. Policy changes are only undertaken by the Delhi Electricity Regulator Commission (DERC) on the basis of extensive study and responses received from various stakeholders.

The Court direct that the Chief Executive Officer, BYPL, may like to go through the system of SOP changes at frequent intervals and devise a suitable mechanism so that the consumers are not put to harassment/inconvenience as happened in the present case.

13. In view of the above deliberations and documents on records, this Court allows the withdrawal of appeal on the request of Appellants and the appeal(s) is hereby dismissed as withdrawn. The Court, however, takes into cognizance the negligent conduct of the officers in question who are found instrumental in wasting the time/energy of this court, the court of CGRF and of course of the Appellant. I, hereby, order that a vigilance enquiry be conducted against the officers involved in the above case to find out the circumstances under which there was 'U' turn on the issue of height and subsequently thereto connections were provided to the Appellants. The height which was considered not suitable for connection had become suitable after the interim order of the Ombudsman on 12.10.2022. The enquiry may also look into the aspects raised under Point No. (ii) & (iii) of the Interim Order on 12.10.2022 by Ombudsman as outlined in para 10 above. The enquiry should be conducted under the direct supervision of Chief Vigilance Officer (CVO) and action be initiated against the erring officers on the basis of outcome of enquiry. The action taken report may also be shared with this office by 01.01.2023.

The appeals stands disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
25.11.2022