

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. 22/2020

(Against the CGRF-TPDDL's order dated 21.09.2020 in CG No. 69/2020)

IN THE MATTER OF

SMT. RASHMI KAPOOR

Vs.

TATA POWER DELHI DISTRIBUTION LTD.

Present:

Appellant : Shri Naresh Kapoor, Husband of the Appellant along with
Shri Sanjay Chaubey, Advocate

Respondent No. 1: Shri Ajay Joshi, Sr. Manager (Legal), on behalf of the TPDDL.

Respondent No. 2: Shri Krishan Kapoor along with Shri Nitesh Kumar Singh
and Shri Arjun Kapoor, Advocates

Date of Hearing: 21.12.2020 & 18.01.2021

Date of Order: 03.02.2021

ORDER

1. The appeal No. 22/2020 has been filed by Smt. Rashmi Kapoor, w/o Shri Naresh Kapoor, through her Advocate, against the order of the Forum (CGRF-TPDDL) dated 21.09.2020 passed in CG No. 69/2020. The issue concerned in the Appellant's grievance is regarding the shifting of her meter from one location to some other location within the premises installed at House No. AL-2, Shalimar Bagh, Delhi - 110088 and change of billing address.

2. Smt. Rashmi Kapoor, the Appellant in this case is residing at the First Floor (FF) of the premises where the said connection in dispute is installed, whereas Shri Krishan Kapoor who has been made Respondent No. 2 in the present case is residing at the Ground Floor (GF) of the premises. It is noteworthy to mention here that the Registered Consumer (RC) in this case is Smt. Rashmi Kapoor whereas



the complainant before the CGRF was Shri Krishan Kapoor who is a third party and is also not the Registered Consumer of the electricity connection in dispute. In spite of this fact, the CGRF admitted the complainant of Shri Krishan Kapoor, the third party without recording the reasons for entertaining the grievance which does not meet the aforesaid requirement as per Regulation 12 of the DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2018

However, the brief background of the case is that the Appellant, Smt. Rashmi Kapoor, is aggrieved with the order of the CGRF dated 21.09.2020 vide which TPDDL, the Discom (Respondent No.1) in the present case has been directed to shift her electricity meter from the present spot located on one of the ground floor wall to another spot in the common area at ground floor only and further change the address of her electricity bills, on the basis of the complaint filed by one Shri Krishan Kapoor, the Respondent No. 2 in the present case, and the Complainant, in the CGRF. To clarify again the complainant Shri Krishan Kapoor has been residing on the ground floor of the same building where the Appellant has been residing on the first floor of the building bearing Plot No.AL-2, Shalimar Bagh, Delhi-110088. Thus aggrieved with the decision of the CGRF, the Appellant has preferred this appeal against the order of the CGRF. Further to deliberate upon the merits of the case, it is also pertinent to mention here that the flats of both the Appellant and the Respondent No.2 are located/constructed on the same plot, No. AL-2, of which the ground floor is in the occupation of the Respondent No.2 and the first floor is being occupied by the Appellant. The both meters of the GF and FF are located at a common place on the common outer wall of the plots AL-1 & AL-2. This common wall is the main wall supporting the structures of both the flats viz; GF & FF.

3. On the basis of the pleadings, contentions and submissions of all the parties i.e. the Appellant, Respondent No.1 & Respondent No.2, during the course of hearing and perusal of the documents and papers submitted by the parties as well as the order of the CGRF, the following facts have emerged. Though there have been very large submissions and contentions from both the sides, i.e. the Appellant and the Respondent No. 2 and more particularly the Respondent No. 2, for and against their claims but most of these pertain to the property disputes between the two parties. However, the relevant portions of these discussions, pertinent to the instant case, are briefly mentioned in the following paragraphs.

4. The Appellant started his case by arguing through her counsel that she has been residing on the first floor whereas the Respondent No.2 has been residing on



the ground floor. These properties were purchased by her husband viz, Shri Naresh Kapoor and Shri Krishan Kapoor through separate sale documents. The Appellant stated that her meter was installed since the year 2004 at the ground floor in the common area only as against the contention of Respondent No.2 that the meter has been wrongly installed in his portion of the flat and the same needs to be shifted to the actual common area which is not yet defined. The Appellant, further, contended that a case with regard to the dispute of the property is already pending with the Hon'ble High Court wherein a stay has been granted in her favour against an order passed in a Civil Suit by the Hon'ble Rohini Court vide judgement dated 28.09.2019. This case is pending for the demarcation of certain areas located in these two properties on the ground and the second floor. Since the dispute is already pending with the Hon'ble High Court, the Respondent No.2 cannot approach the CGRF for shifting of the meter and correction of the billing address till the final orders of the court about the demarcation and ownership of certain portions of the property of both the flats. The Appellant, further, stated that the Hon'ble High Court vide its order dated 07.09.2020 has directed to maintain the '*status quo*' regarding changes, alteration, modification etc. in the property. The Appellant further pleaded that the address mentioned in the electricity bill is genuine and correct as her husband is the owner of the first floor as well as of the common portions of the GF including the common wall of the premises where the meter is presently installed. She also stated that her family's life and safety will be in danger if shifting of the meter is carried out as they have only one way available for entry and exit.

5. On the other hand, the advocate representing the Respondent No. 2, Shri Krishan Kapoor, stated that when the Appellant's electricity meter was installed in 2004, his client i.e. Respondent No. 2 till that time was not staying there, who however shifted only in 2005 on the ground floor. The Appellant has been staying on the first floor. Both the Appellant and Respondent No.2 are the real brothers and both the flats had been purchased through separate Sale Deeds/GPA etc.. When the Respondent No. 2 shifted there, he found that the electricity meter of the Appellant was installed on his portion of the wall on which he has also installed his air conditioning unit. He contended that the meter of the Appellant should be installed in the common area/wall as she is residing on the first floor instead of on the portion of his wall which is not a common area. The Respondent No.2 also stated that a case for the partition/demarcation and permanent injunction of both the properties was filed by them before the Hon'ble Rohini Courts and the Civil Court



accordingly granted the mandatory and permanent injunction to the Respondent No.2. However, in this case no specific issue has either been raised or framed with regard to the ground floor common area by the Appellant. Accordingly, the Hon'ble Court has not considered this issue for adjudication. The Respondent No. 2 referred Section 58 of the Evidence Act with regard to the fact that the admitted facts need not be proved and therefore, the issue of common area was neither raised nor disputed both by him and the Appellant. Thus, the same cannot be disputed for shifting of the meter in that area. The Respondent No.2 has also annexed as well as submitted a self prepared sitemap of the whole building consisting of both the floors whereas the common area has been shown as demarcated which is also the passage for the first and second floors of the building. The Respondent No.2, further, pleaded that the Appellant has filed an appeal against the Civil Court Judgement dated 28.09.2019 before the Hon'ble High Court, wherein she has never denied the Respondent No. 2 i.e. Shri Krishan Kapoor's possession at the ground floor. Further, the judgement of the trial court (Rohini Court) is also in his favour. The Respondent No.2 has also contended that the dispute before the Hon'ble Court is with regard to the common area on both of the second floor and the ground floor with its mezzanine room which has already been locked by the Appellant. The Hon'ble Civil Judge of Rohini Court had ordered for the occupancy over rear half portion of second floor, occupancy of the ground floor and opening of the lock of the room of the mezzanine floor. But the Hon'ble High Court has given the stay with regard to the opening of the lock of the mezzanine floor against the appeal of the Appellant. Thus, the common area of the building remains undisputed as per the site map submitted by him and, accordingly, the electricity meter of the Appellant should be removed from his portion of the wall and be shifted to the common area. The Respondent No.2 also stated that the issue of common area of the building has not been raised either by him in the Civil Suit nor the same has also been included by the Appellant in their appeal before the Hon'ble High Court, and therefore, there must not be any doubt and dispute about the common area. The Respondent No.2, however, admitted that the property disputes between the two i.e. him and the Appellant, are also pending with the Court. Apart from the above, some complaints are also pending which have been filed by both the parties with the concerned Police Department.

Replying to the query as to why the Respondent No.2 did not raise any objection to the installation of the meter for such a long time i.e. since 2005 onwards when he shifted into his flat at GF and allowed the Appellant till 2019 to keep her



meter installed for so many years, the Respondent No.2 replied that it was a case of 'permissive possession'. The Respondent No.2, further, stated that when the Hon'ble Rohini Court passed the order in his favour vide order dated 28.09.2019, he approached the CGRF for shifting of the meter of the Appellant and change of the billing address which was wrongly reflecting the address of the Appellant as AL-2, Ground Floor instead of First Floor. In view of the above, the Respondent No. 2 submitted that the CGRF has rightly passed the order in his favour.

The Respondent No.2 further submitted that when the Discom reached the site to shift the meter in compliance of the CGRF's order, the Appellant started a fight and the Police had to be called in and after that he had to file a complaint with the Police Station on 22.10.2020 about the attack made by the Appellant and hindrances created by him for shifting the meter.

6. The Discom in its reply submitted that the instant case is related to property/family dispute between the Appellant and the Respondent No.2 and they are being unnecessarily dragged in the whole case without any fault on the part of the Discom. The Discom further stated that in brief the Respondent No. 2 had filed a complaint before the CGRF in the month of June, 2020 seeking relief that the electricity meter against C.A. No. 60011844168 registered in the name of Smt. Rashmi Kapoor the Appellant, be shifted out from private premises of the Respondent No. 2 to a place in the area of the actual consumer i.e. the Appellant. In addition to that the Appellant's billing address be also changed against the aforesaid CA No. thereby removing the words 'Ground Floor' from the said bill by replacing it with the 'First Floor'. The Discom further contended that the electricity connection in the name of the Appellant was installed/energized on 03.02.2003 and at that time the Respondent No. 2 did not raise any concern in this regard.

The Discom further submitted that as per the regulations the process for the shifting of electricity meter can be initiated only after the receipt of meter shifting request from the registered consumer (RC) of said electricity connection as only after the completion of prescribed commercial formalities by the registered consumer i.e. after submission of application form with photo and copy of identity proof, the meter can be shifted. As they did not receive any meter shifting request for connection bearing C.A. No. 60011844168 from its R.C. i.e. the Appellant, therefore in the absence of meter shifting request from the R.C. Smt. Rashmi Kapoor of CA No. 60011844168, the shifting of the said meter could not be initiated. The registered consumer of the above mentioned connection never approached the



Discom, neither for shifting of meter nor for change of supply address. The Discom also submitted that the request for making changes to the existing supply address can be processed only after the receipt of such request from the registered consumer as making any change of existing supply address is subject to fulfillment of prescribed formalities and site inspections.

The Discom further contended that they can shift the meter only on the request of the Registered Consumer (RC) in accordance with the Regulation 25 of DERC (Supply Code and Performance Standards) Regulations, 2017. In the instant case, the RC of the meter in contention is Smt. Rashmi Kapoor, hence they could not accept the request of Respondent No. 2 for shifting of the meter and change of the billing address. The Discom further stated that they have submitted a detailed report in support of non-compliance of the first part of the CGRF's order and the Discom has nothing to do with the dispute between the two parties. As regards the compliance of the first part of the order, i.e. shifting of the meter, it is again reiterated that the same could not be carried out due to the hindrances created by the parties at site but the compliance of the second part of the order i.e. rectification in address has already been carried out. The Discom further submitted that there are two addresses mentioned on the electricity bills of the consumer i.e. Supply Address and the Billing Address. The Supply Address and the Billing address mentioned in the Appellant's bill have now been changed by replacing word 'First Floor' instead of 'Ground Floor' in accordance with the order of the CGRF.

In view of facts and circumstances referred herein above, the Discom submitted that it is crystal clear that the present matter is related to property dispute between Appellant and Respondent No. 2. The present appeal pertains to *inter se* dispute between both parties and the Discom is unnecessary being dragged into it without any fault on their part. It is, therefore, most respectfully prayed to pass such other further order(s) as deem fit and proper in the facts and circumstances of the case.

7. After hearing all the parties at length on 21.12.2020 & 18.01.2021 and on perusal of the documents/papers and records as submitted by both the parties i.e. the Appellant and the Respondent No. 2, it is found that both the parties being the real brothers have been having the property disputes which they have been legally contesting too in the Courts of Law and it is quite evident that the instant case is purely based on the property dispute between the two. Accordingly, most of the



arguments of both the parties have been revolving around the property dispute only which is the subject matter for the appropriate civil courts to decide upon.

The perusal of the CGRF order reveals that the whole case has not been handled adequately and in its entirety. Before further going into the details of the case, in the first instance it will be appropriate to peruse the definition of the 'Complainant' and 'Consumer' as given under the Regulation 3(4) of Delhi electricity Regulatory Commission (Forum for Redressal of Grievances of the Consumers and Ombudsman), Regulation, 2018 and Section 2(15) of Electricity Act, 2003.

The definition of the 'Complainant' as given under Regulation 3(4) of Delhi Electricity Regulatory Commission (Forum for Redressal of Grievances of the Consumers and Ombudsman), Regulation, 2018 is reproduced as under:

Quote

"Complainant" means -

- i) *A consumer as defined under clause (15) of Section 2 of the Act; or*
- ii) *An applicant for a new electricity connection; or*
- iii) *In case a death of a consumer, his legal heir(s) or authorized representative; or*
- iv) *Any other person claiming through or authorized by or acting as agent for the consumer and affected by the services or distribution business carried out by the distribution licensee.*

Unquote

Secondly, the definition of 'Consumer' as given under Section 2 (15) of the Electricity Act, 2003 is reproduced as under:

Quote

'Consumer' means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be."

Unquote



In view of above, the complaint of Respondent No. 2 for shifting of meter should not have been entertained as the same had been filed by a third party against the electricity connection of the Registered Consumer (RC) i.e. the Appellant since the same is violative of the Regulation 3 (4) of the DERC Regulation, 2018 and Section 2 (15) of the Electricity Act, 2003. The said electricity connection whose meter is required to be shifted by the complainant in CGRF viz; Respondent No. 2 does not belong to him.

8. Further before taking up the argument of the Discom that the process for shifting of electricity meter can be initiated only after the receipt of the meter shifting request from the registered consumer of the electricity connection, the relevant Regulation 25 of DERC Regulations, 2017 has to be perused. The relevant part of the Regulation 25 is reproduced as under:

Quote

25. *Procedure for shifting of meter or service line within the premises of the consumer:-*

- (1) *The consumer shall apply to the Licensee for shifting the meter within the existing premises or for deviation of existing service line within his property.*
- (2) *The Licensee shall conduct the site inspection.*
- (3) *The charges for shifting of meter and service line for the connection on the same premises shall be as notified in the Commission's Orders.*
- (4) *If shifting requires new service line, the Licensee shall be entitled to levy the Service Line cum Development Charges.*

Unquote

In view of the above, it is observed that the most important and applicable regulation viz; Regulation, 25 of the DERC Regulation 2017, which clearly stipulates that the shifting of meter can be initiated only on the request of the RC has not been taken into consideration while deciding the case. In the instant case the complainant in the CGRF viz, Respondent No. 2 in the present appeal, who has applied for shifting of the meter in contention is not the RC under Rule 3(4) of DERC Regulations, 2018 and Section 2(15) of the Electricity Act, 2003, and hence is not



qualified as a complainant to file the complaint before the CGRF in accordance with the Regulation 25 of the DERC Regulation, 2017. Thus, the order passed by the CGRF with regards to shifting of meter becomes infructuous and void *ab initio*, as the same has not been dealt with in accordance with the laid down rules and regulations. More importantly the submissions of the Discom and their reservations in this respect for not taking any action on the complaint of the Respondent No. 2 for shifting of the meter and change of address have been overlooked. The order has nowhere taken into the account about the cognizance of the Regulation 25 of the DERC Regulation, 2017 under which the whole case must have been dealt with.

9. In the background of the aforesaid Regulations and Act as deliberated and discussed above, it is concluded that both the Appellant and the Respondent No. 2 are having the property dispute between them and have been in litigation in the Court of Law with regards to the property where the meter in question is installed. This issue, however, is not in the purview of this court to dwell upon the property dispute between these two litigants and to adjudicate upon their property rights. As far as the issue of the common area with regard to the passage and the wall where the meter is installed is concerned, the same is a matter for the appropriate civil court to decide upon as the same is beyond the jurisdiction of this court. This is a case purely pertaining to property dispute between the Appellant and the Respondent No. 2 which is already subjudice in the Court of Law and is yet to be finally decided.

It is also observed that the Respondent No. 2 in its petition before the Civil Judge had prayed for the demarcation of the property too, which, however has been rejected by the Court. This is therefore indicative of the fact that the common areas of both the properties are not yet demarcated/defined. In view of this fact, allowing the shifting of the meter of the Appellant to the common area as being claimed by the Respondent No. 2 shall tantamount to adjudicate upon that area as the common area. This is not within the purview of this Court. It is also pertinent to point out here that the Respondent No. 2 has contended that allowing the meter on the outer wall of the premises was only a 'permissive possession' and therefore in view of the same it is construed that Respondent No. 2 himself has allowed the partial possession of the wall to the Appellant. Hence, the issue of rightful ownership of the said wall falls within the purview of the appropriate court.

Further, it is also held that the Respondent No. 2 cannot be considered as the complainant in this case under Rule 3(4) of DERC (Forum for Redressal of



Grievances of the Consumers and Ombudsman) Regulations, 2018 and under Regulation 25 of the DERC (Supply Code and Performance Standards) Regulations, 2017, to file a complaint before the CGRF for shifting of the meter which belongs to a rightful owner i.e. the RC viz, the Appellant. The contention of the Discom in this respect is rightly in line with the DERC Regulations and the Electricity Act, 2003.

10. Although, in view of aforesaid facts and circumstances of the case, the order of the CGRF needs to be set aside but keeping in view of the fact that since the Supply address and the Billing address of the Appellant's electricity connection have already been changed by the Discom as per the order of the CGRF, the order of the CGRF is partially modified to the extent that the shifting of the meter cannot be done at this stage till the issue of the common area is resolved finally by the appropriate court or the RC i.e. the Appellant herself applies for shifting of the meter in question as per the provision of Regulations. Further, both the parties i.e. the Appellant and the Respondent No. 2 are at liberty to take up the issue of the 'common area' with the appropriate court for final resolution between the two if they so desire. The Discom may however process the case of shifting the said meter from one location to any other location within the premises if the Appellant applies for the same on her own, after completion of the requisite formalities in accordance with applicable DERC's Regulations.

With the above directions, the appeal is disposed of accordingly.


(S.C. Vashishta)
Electricity Ombudsman
03.02.2021