

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. 22/2022

(Against the CGRF-BYPL's order dated 28.03.2022 in Complaint No. 14/2022)

IN THE MATTER OF

Smt. Tasleema & Ors.

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Smt. Tasleema along with Shri Mohit Tiwari, Advocate

Respondent No. 1: Shri K. Jagatheesh, DGM, Shri Ravi Tiwari, Manager,
Ms, Shweta Choudary, Legal Retainer, and Ms. Ritu Gupta,
Advocate, on behalf of BYPL

Respondent No. 2: Shri Mohd. Tauseef along with Shri Vinod Kumar, Advocate

Date of Hearing: 09.09.2022 & 22.09.2022

Date of Order: 26.09.2022

ORDER

1. Appeal No. 22/2022 has been filed by Smt. Tasleema, W/o Late Shri Mohd. Yunus, R/o T-273, Qasab Pura, Idgah Road, Sadar Bazar, Delhi - 110006, through her Advocate, Shri Mohit Tiwari, against the order of the Forum (CGRF-BYPL) dated 28.03.2022 passed in Complaint No. 14/2022. The issue concerned in the Appellant's grievance is regarding non-release of domestic electricity connections by the Discom (Respondent).

2. The background of the case is that Smt. Tasleema & Ors. had applied for the domestic electricity connections at the above said premises, as per details given below:



S.N.	Name of the Applicant	Application No(s)/Date.	Floor where connection were applied
1.	Ms. Tasleema	8005074705 / 11.08.2021	First Floor
2.	Ms. Heena	8005078329 / 12.08.2021	Fourth Floor Back Side
3.	Ms. Nagma	8005078339 / 12.08.2021	Fourth Floor Front Side
4.	Mr. Mohd. Sadiq	8005074666 / 11.08.2021	Second Floor

The Respondent rejected these connections on the grounds of (a) outstanding energy/enforcement dues, (b) ownership dispute/court case, (c) premises in the Municipal Corporation of Delhi's objection list, and (d) 'No Objection Certificate' required from the Fire Department.

3. Against this, the Appellant approached the CGRF-BYPL with the prayer to release the new electricity connections against Application Nos. mentioned in para 2 supra. In the meantime, Shri Mohammad Tauseef, son of the Appellant, Smt. Tasleema submitted an application before the CGRF to also make him a party and objected that the property, where connections are sought is booked by North Delhi Municipal Corporation (NDMC) and have an ownership dispute case in Civil Suit No. 1154/2020 pending before the Tis Hazari Court. He further submitted that there are already two commercial connections in the subject property, thus making the property commercial and non-residential. He further contended that the rates applicable for commercial establishment should be applied.

4. The CGRF ordered that if the complainant is ready to make payment of outstanding dues against the subject property without LPSC, the Respondent was directed to release the new connections to the complainant within three working days after receipt of payments.

Meanwhile, the Respondent submitted before the CGRF that on site visit, it was found that two commercial electricity connections are already there, hence, the building is commercial. It was also submitted that on re-visit on 14.02.2022, the height of the building was found to be 16 meter. Accordingly, the CGRF advised the Respondent that every aspect of the building whether commercial or residential should be clarified. The Respondent was also asked to release the connections, if the complainant submits the 'No Objection Certificate' from the Fire Department and completes commercial formalities as per the DERC's guidelines, 2017. The CGRF



did not however consider the completion-cum-occupancy certificate dated 06.09.2021 available on record.

5. Aggrieved by the order dated 28.03.2022 passed by the CGRF, the Appellant filed this appeal on the ground that the CGRF has not considered the fact that the building completion certificate had already been sanctioned by the Building Department of MCD vide No. 10091412 dated 06.09.2021. On the direction of the CGRF, the Appellant approached the Fire Department to get the 'NOC', but the officials of the concerned department informed that once the building completion certificate is issued, there is no need to get the Fire Department's 'NOC' for electricity connection purposes. The Appellant further stated that there are two stages of taking 'NOC' for the building (i) before the commencement of construction and (ii) before the occupancy of the building. But, in this case, the building has already been constructed and floors are already occupied, hence, no 'NOC' can be issued by the Fire Department.

6. The Appellant further stated that the CGRF failed to consider that the height of the floor is less than 15 meters, where connections have been sought. The rejection of the Respondent for not providing electricity connections is arbitrarily/discriminatory and against fundamental rights because electricity is a basic requirement of a person as per Article 21 of the Constitution of India. The Appellant is also ready to pay entire dues against the building raised by the Respondent.

7. In view of the above, the Appellant prayed:

(i) The order dated 28.03.2022 in CG No. 14/2022 passed by the CGRF may be modified and the condition for getting 'NOC' from the Fire Department may kindly be waived so that electricity connections are installed in the interest of justice.

(ii) Any other order which deem fit and proper in the facts of the case may also be passed.

8. The case was taken up for the hearing on 09.09.2022. During the hearing, all the parties were present, in person. An opportunity was given to all the parties to plead their case at length.

9. During the hearing, the Appellant reiterated the same as before the CGRF and contended that though she had submitted all the relevant documents including the completion-cum-occupancy certificate dated 06.09.2021, the Respondent did



not release the connection nor the CGRF issued any such direction. When asked, who is owner of the premises, the Appellant replied that Delhi Development Authority had allotted a land to her husband, who was now deceased, and now she is the owner of first and second floor. Second and third floor were constructed by his younger son Shri Mohd. Tauseef (Respondent No. 2). Later on, she had purchased Fourth Floor from his younger son (Respondent No. 2) and gave it to her two daughters, viz namely Ms. Heena and Ms Nagma.

10. The Respondent reiterated the same as before the CGRF in their written statement submitted in this office. The Respondent, however, did not in their pleading invite specific attention to the No Objection-cum-Completion Certificate dated 06.09.2021 produced by the Appellant. The fact that the above certificate also dispenses with the requirement of a fire clearance and still the connections could not be released.

During the course of hearing on 09.09.2022, Respondent filed a copy each of the demolition order dated 01.10.2019, Notice dated 20.07.2020. copy of vacation notice dated 21.02.2021 and copy of notice dated 24.12.2021 (issued by NDMC (now MCD)). The first three documents were also a part of record in the CGRF's file along with the notice issued to the Secretary, CGRF, by the Advocate Shri P.K.Gupta for Shri Mohd. Tauseef.

11. Respondent No.2 (Shri Mohd. Tauseef) pleaded for not to release the connections in the name of Smt. Taslemma & others in view of pending litigations between him and the Appellant on the issue of ownership etc. However, he also prayed as under:

- (i) To install an electricity connection in his name (Mohd. Tauseef) on the third floor, being in his possession, as electricity is an essential part of life and he is in dire need of that.
- (ii) To dismiss the appeal of the Appellant in the interest of justice.

12. After hearing the arguments of all the parties, in detail, the Hon'ble Ombudsman allowed some time for the parties to mutually settle the matter between the Appellant and Respondent No. 2 (Shri Mohd. Tauseef). It was also required to prove the authenticity of the Completion Certificate dated 06.09.2021, in the light of the notice dated 24.12.2021 issued by the MCD. The matter was listed for 22.09.2022 at 2.30 PM.



13. During the hearing held on 22.09.2022, the Respondent No. 2 stated that the MCD had declined to withdraw their notice, and advised to carry out the necessary repairs and to apply afresh.

I have gone through the appeal and written statement of the Respondent very minutely. I have also heard the arguments of all the parties. Relevant questions were asked and queries were raised by the Ombudsman, Advisor (Engineering) & Advisor (Law) to get more information for clarity. Although, the notices issued from NDMC (MCD) were addressed to Shri Mohd. Tauseef, no action was apparently taken by him in the matter of show-cause for unauthorized construction, structural audit to make building seismically compliant, and to respond to notice issued on 24.12.2021.

14. Upon consideration of the submissions made by the Appellants, the Respondent No.1 (BSES-BYPL) and Respondent No.2 (Shri Mohd. Tauseef), it has become apparent that the Completion-cum-Occupancy Certificate vide File / Plan No. dated 06.09.2021 issued by the SDMC to the Appellant had already been submitted by her during the pendency of the matter before the CGRF. The said letter itself mentions, *"For the fire-safety the same has been based on the clearance given by the Chief Fire Officer, Government of NCT of Delhi"*. It is also noted that the Relinquishment Deed was executed on 05.05.2010 by all sons (including Respondent No.2) and daughters of the Appellant in her favour with regard to the property situated at 273, Qasab Pura, Idgah Road, Sadar Bazar, Delhi. Various litigations are subjudice before appropriate courts for deciding the legality over the ownership/premises. Apart from the civil matter pending in Tis Hazari, it is observed that there is no stay or status quo granted by the Court of Law. It would be relevant to note that an electricity connection is considered today as one of the basic necessities of life and constitutes only service or utility provided to a consumer by the Discom against payment. The mere provision of such connections to premises does not authorize, confer or establish any proprietary rights or titles on an occupier who happens to be residing there.

15. On the basis of the above deliberations, I am of the considered opinion that there was a complete failure on the part of the Respondent to not consider documents submitted by the Appellants and rejecting the connections for want of the Fire Department's 'NOC'. The Respondent, in its written statement, has denied the applications of the Appellants for releasing of connections for domestic use on the ground of non submission of Fire NOC / Fire Clearance Certificate (FCC) as the height of the building is more than 15 meters. The Respondent insisted upon the same in-view of Supply Code, 2017 read with Regulation 2.0 (3)



of DERC (Sixth Amendment) order, 2021 dated 15.04.2021 and Central Electricity Authority's Safety Regulations, 2010, totally ignoring the NOC issued by the Municipal Corporation for the said property. There is also no rebuttal on the validity of this document by the Respondent.

16. While issuing the structural Audit notices to make building seismically complaint on 24.07.2020 and 24.12.2021, the North Delhi Municipal Corporation (now MCD) has taken into account the directions issued by the Delhi High Court on 07.02.2018 in the matter WP(C) 4534/2015 - Arpit Bhargava vs NDMC and others for ensuring that in future, no buildings are constructed within their respective jurisdictions which do not comply with the requirements of Seismic Zone IV as per National Building Code, 2005.

The High Court of Delhi, also in the case of Parivarthan Foundations Vs DMC and other - WP(C) 11236/2017, in its order dated 20.12.2021 directed the BSES and Delhi Jal Board to ensure that no connections are provided and water and electricity is not provided to building constructed in violation of Law.

17. The Supreme Court in the matter of Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn., reported in (2021) 10 SCC 1, the Hon'ble Apex Court discussed the duties of civic bodies and lamented the sorry state of affairs as under:-

"167. The Court further observed that an unauthorised construction destroys the concept of planned development, and places an unbearable burden on basic amenities provided by public authorities. The Court held that it was imperative for the public authority to not only demolish such constructions but also to impose a penalty on the wrongdoers involved. This lament of this Court, over the brazen violation of building regulations by developers acting in collusion with planning bodies, was brought to the forefront when the Court prefaced its judgement with the following observations : (Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357:

(2013) 3 SCC (Civ) 89], SCC p. 363, para 1)"1. In the last five decades, the provisions contained in various municipal laws for planned development of the areas to which such laws are applicable have been violated with impunity in all the cities, big or small, and those entrusted with the task of ensuring implementation of the master plan, etc. have miserably failed to perform their duties. It is highly regrettable that this is so despite the fact that this Court has, keeping in view the imperatives of




preserving the ecology and environment of the area and protecting the rights of the citizens, repeatedly cautioned the authorities concerned against arbitrary regularisation of illegal constructions by way of compounding and otherwise.”

368. Finally, the Court also observed that no case has been made out for directing the municipal corporation to regularise a construction which has been made in violation of the sanctioned plan and cautioned against doing so. In that context, it held: (*Esha Ekta Apartments case [Esha Ekta Apartments Coop. Housing Society Ltd. v. Municipal Corpn. of Mumbai, (2013) 5 SCC 357: (2013) 3 SCC (Civ) 89], SCC pp. 394-95, para 56*) “56. ..We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The courts are also expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas.”

18. I have given a serious consideration to the matter. The MCD has provided an opportunity to Shri Mohd. Tauseef to submit response to the Notice dated 24.12.2021 along with documents to prove that the building is seismically compliant, in compliance with the directions of the High Court of Delhi in the pending petition filed by Arpit Bhargava.

19. Given the above exposition, it is directed that in the event of the compliance document submission by the Respondent No. 2 (Shri Mohd. Tauseef), and subsequent to its acceptance by the Municipal Corporation of Delhi, it will be incumbent upon the Respondent No. 1 (Discom) to release the new connections within a week thereafter.

This appeal stands disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
26.09.2022