

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 No.: 011-26144979)

Appeal No. 25/2022

(Against the CGRF-BYPL's order dated 26.05.2022 in Complaint No. 05/2022)

IN THE MATTER OF

Shri Anil Bhutani & Shri Sandip Bhutani

Vs.

BSES Yamuna Power Limited

Present:

Appellant: Shri Sandip Bhutani along with Shri Vinod Kumar, Advocate

Respondent: Shri Vikram, General Manager, Shri K. Jagatheesh, Senior Manager, Ms. Amita Sharma, Asstt. Manager, Ms Shweta Chaudhary, Legal Retainer and Ms. Ritu Gupta, Advocate, on behalf of BYPL

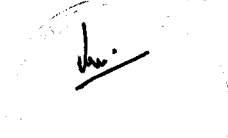
Date of Hearing: 06.10.2022 & 14.10.2022

Date of Order: 17.10.2022

ORDER

1. Appeal No. 25/2022 has been filed by Shri Anil Bhutani & Shri Sandip Bhutani, owner of premises No. B-36/9, Khasra No. 352, Gali No. 13, Jhilmil Industrial Area, Delhi - 110095, through Shri Vinod Kumar, Advocate, against the order of the Forum (CGRF-BYPL) dated 26.05.2022 passed in Complaint No. 05/2022.

2. The background of the case is that both the Appellants are brothers and had applied for new electricity connections for above premises vide Request Nos. 8005313774 and 80053133803 dated 25.11.2021, which were rejected by the Respondent on the grounds that (a) cumulative demand exceeds 100KW/108, hence, as per DERC Guidelines space for electric sub-station is required and (b) address in MCD Objection List - 'Occupancy-cum-Completion Certificate' is required. They also submitted before the CGRF that they had already submitted East Delhi



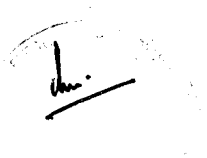
Municipal Corporation (EDMC)'s Completion-cum-Occupancy Certificate and the space for installation of new transformer was also arranged but the Respondent did not release the connections.

3. In rebuttal, the Respondent submitted a mail dated 02.04.2022 received from Executive Engineer, EDMC, mentioning therein that the Architects issued completion-cum-occupancy certificates in gross violation of Master Plan of Delhi, 2021, and Unified Building Bye-Laws, 2016. EDMC further mentioned that an enquiry has been initiated against the Architects, who were instrumental in getting the above Certificates for the Appellants. Therefore, the Respondent did not consider these Completion-cum-Occupancy certificates for the properties bearing No. B-22 and B-36.

4. The CGRF's in its order referred to the High Court of Himachal Pradesh order in the matter of Madan Lal vs State of Himachal Pradesh & Ors., in which it was stated that right to water and electricity supply is an integral part of right to life under Article 21 of the Constitution of India. Further, the CGRF directed the Respondent to release the connections to the complainants on filing the 'No Objection Certificate' from EDMC/Clarification of the order of EDMC and after completing all the commercial formalities as per DERC's Guidelines, 2017.

5. Aggrieved by the CGRF-BYPL's order dated 26.05.2022, the Appellant filed this appeal on the following grounds:

- (a) An electricity connection vide CA No. 100002935 already existed in the name of earlier owner but the same was disconnected in the year 2018 on request of the registered consumer and thereafter no dues certificate was issued by the Respondent on 06.02.2019.
- (b) The Respondent has already installed number of connections after taking 'Building Completion Certificates' in the vicinity of the area. Hence, the Respondent wrongly submitted that till date no permanent electricity connection has been given due to lack of network.
- (c) On the date of hearing 24.05.2022, the Appellant checked the status of Building Completion Certificate (BCC) and it was confirmed that BCC had not been rejected by that day also and when he wanted to place a copy of BCC before the CGRF, it was declined.



And the Appellant prayed:

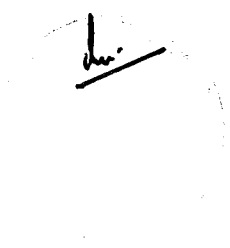
- (i) To set-aside the impugned order dated 26.05.2022 passed by the CGRF in CG No. 05.2022.
- (ii) To direct the Respondent to release new connections in the name of the Appellants.
- (iii) Pass any other relief which may deem fit and proper in the facts and circumstances of the case.

6. The case was taken up for the hearing on 06.10.2022. During the hearing both the parties were present along with their Counsels. An opportunity was given to both the parties to plead their case at length.

7. The Appellant reiterated his grievance as before the CGRF and contended that he had applied for new connections between June to November, 2019 but the same were rejected by the Respondent without giving any specific reasons in their deficiency letter till 2020. Later, in December, 2021 he received a deficiency letter mentioning "Address in MCD Objection List: Occupancy-cum-Completion Certificate is required".

On queries by the Ombudsman regarding the property, the connections, etc., the Appellant submitted that:

- (a) The property was purchased in January, 2019, jointly with his brother Shri Anil Bhutani to establish cable manufacturing unit. The property is measuring 176 Sq. meters and has been carved out of a bigger plot. Earlier, an industrial connection was installed in the name of M/s Santoshi Hyvolt Electricity Pvt. Ltd. Later the connection was surrendered by the previous owner in 2018. Subsequently, they applied for two connections for Ground Floor and First Floor as two new separate units.
- (b) The applications were rejected initially conveying that the load was not available and for augmentation of load/network, extra space is required for Electricity Sub-station (ESS). Upon providing the space the Respondent rejected their applications conveying that the premises was in the objection list of EDMC. However, there was neither any communication to the Appellants from EDMC on objection list nor any notice issued by them. Later, the Appellant claimed that the completion



certificate dated 11.11.2021 was also provided to the Respondent and despite submission of the Certificate, the connections were not released. The Appellant further claimed that the Respondent has released 335 connections from the existing transformer by adopting pick and choose policy.

8. The Respondent, in reply to the queries as to why the Appellant had to apply for the connections time and again, submitted that the premises No. B-36, is a big plot of 1252 sq. yards which has been sub-divided and sold into smaller units of less than 500 sq. yards. As per law, in case plot is sold by dividing it into smaller units, an area requires to be earmarked for space of ESS. Further, existing load capacity of the transformer is also considered before issuing of any connection. On receipt of completion certificate, the issue of objection of MCD stood resolved but till the system was augmented, no fresh connections could be released.

9. When asked, why the connection from the existing transformer was not released even though the load has been reduced from 11 Kw to 6 Kw by the Appellant. Respondent submitted that when the directions of CGRF were getting implemented, a mail was received from EDMC rejecting the Completion Certificate given to the Appellant asking the Respondent not to release connection. The mail further mentioned that an enquiry has been instituted against the Architect, who was instrumental in getting completion certificate for the Appellants in violation of laid down rules.

10. After hearing both the parties at length on 06.10.2022, the Ombudsman directed as under:

- (a) The Appellant was required to seek and submit clarification from the MCD (erstwhile EDMC) and also submit the reply to an RTI application, if received from the MCD before the next hearing.
- (b) The Respondent was directed to submit an affidavit providing details, i.e., how many connections have been provided from the existing transformer after the rejection of the Appellant's requests. What was the maximum load on transformer on the date of application? Also, Respondent was directed to seek clarification from MCD about the current status of the property.

The next date of hearing was fixed for 14.10.2022 at 2.30 PM.



11. During the hearing held on 14.10.2022, the Counsel of the Appellant submitted (a) a reply to their RTI No. 171 dated 07.06.2022 received by them from MCD stating that the property, in question, is booked under unauthorized construction, (b) the Counsel further submitted a list of owners/builders booked for unauthorized construction by the MCD and highlighted releasing of four connections in Ganpati Compound, in violation of Regulations. Both the documents were taken on record.

The Appellants' main contention is that the Respondent had granted many other connections on the basis of incomplete documents despite the fact that the premises were booked for unauthorized construction and were in MCD's objection list.

12. The Respondent submitted (a) an e-mail from MCD regarding clarification/verification of 'Building Completion Certificate' issued by Shri Amit Kumar Sharma, Architect, for property bearing No. B-22 & B-36, Jhilmil Industrial Area, was received wherein Respondent was asked not to consider "Completion-cum-Occupancy Certificate" for the subject property while releasing connections. It further stated that Shri Amit Kumar Sharma, Architect, has been debarred for indulging in gross violation against aforesaid property and (b) an affidavit stating that in the year 2019, 990 KVA transformer with 121% loading capacity was existing at sub-station B-34, which is approx. 50 meters from Plot No. B-36 and the capacity was subsequently enhanced to 1600 KVA with loading of 92% capacity (c) no new electricity connection was released after 13.11.2020 from any of the transformers at sub-station B-34. All the documents were taken into record.

13. I have gone through the appeal, written statement of the Respondent very minutely. I have also heard the arguments of the both the parties. Relevant questions were asked and queries raised by the Ombudsman, Advisor (Engineering) and Advisor (Law) to get more information for clarity.

14. Three issues come to the fore for consideration, i.e.

- (i) That there was an electricity connection already existing at the same address which was disconnected in the year 2018 on the request of Registered Consumer. There was no insistence of space for Electric Sub-Station (ESS) and no issue of availability of power till the date of disconnection.
- (ii) That many more connections have been released in the area and the Respondent has not insisted on the above condition, i.e. space for ESS as per DERC's Guidelines.



- (iii) That the Appellant had submitted the Completion-cum-Occupation Certificate issued by EDMC and also provided space for ESS with the help of local area MLA.

15. The above three issues seem to be relevant and require in-depth deliberations.

Regarding issue at (i) above, it is a fact that a connection existed at the same address before and was disconnected and there was no insistence on providing the required space. Yet, it is also a fact that in view of the increasing demand/population and lack of space/network to meet the demand Regulation 6 was added to Schedule of Charges and Procedure under DERC (Supply Code and Performance Standards) Regulations, 2017, when it was made mandatory to provide space (defined area) for installation of ESS (Sub-Regulation 4). This space as per the Regulation would become part of the building plan submitted to respective Municipal Corporation for approval in case the plot size is more than 500 sq. meters (3rd Amendment of DERC's Supply Code, 2017) or the floor area proposed is more than 1000 sq. meters. As the applications for the new connections are after the new Regulations came into force, the Appellants had to provide space for ESS to get the connection as the application covered under both the conditions i.e. his load (more than 100 KW/108 KVA) and the initial size of the Plot being 1252 sq. yards).

With regard to point No. (ii) as mentioned above, the response of the Respondent is that no new connection has been given in violation of Supply Code, 2017 and all connections quoted in the appeal are from other nearby transformer. Respondent has given specific replies to the query raised by the Appellant and also filed affidavit in this regard. Moreover, the Appellant cannot base his argument on the wrong done (if any) by the Respondent in the past and insist on doing another wrong. In a recent case of Ms. Azra vs State (GNCT of Delhi), the Delhi High Court has dealt with the issue in their judgement dated 06.02.2022 (WP(C) 2453/2019), as quoted below:


"However, merely because some of the occupants of the building have wrongly been given an electricity connection, it cannot be a ground for the court to direct Respondents No. 2 and 3 to further compound the wrong act and direct granting of a new electricity connection to the premises of the petition which is located in a building whose height is more than 15 meters."



Regarding issue at point No. 3, it is apparent that subsequent to submission of Completion-cum-Occupancy Certificate, EDMC, via mail dated 02.04.2022 has requested the Respondent not to release the connections in the building as 'Completion Certificate issued by the Architect is not as per the Master Plan of Delhi - 2021 and Building Bye-Laws - 2016 and an action has been initiated against the Architect.

16. In view of the above deliberations; I don't find any reason to interfere with the verdict of the CGRF and new connections can only be issued after clearance from the EDMC. Respondent is further directed to initiate an enquiry with the allegation that they were discriminated against and many connections were given by the Respondent by adopting pick and choose policy. The outcome of enquiry may be shared with this office by 17.11.2022.

The appeal is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
17.10.2022