

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. 29/2022

(Against the CGRF-BRPL's order dated 26.07.2022 in Complaint No. 37/2022)

IN THE MATTER OF

Shri Gurdutt

Vs.

BSES Rajdahnai Power Limited

Present:

Appellant: Shri Gurdutt, in person.

Respondent: Shri S. Bhattacharjee, Sr. Manager, Shri B. Bhaskar, Senior Manager, Shri Arav Kapoor and Ms. Mridul Vats, Advocates, on behalf of BRPL

Date of Hearing: 09.11.2022

Date of Order: 10.11.2022

ORDER

1. Appeal No. 29/2022 has been filed by Shri Guru Dutt, R/o D-91/A, 100 Foota Road, Chattarpur, Opposite Aggarwal Dharamshala, New Delhi - 110030, through his authorized representative Shri Manoj Banka, against the order of the Forum (CGRF-BRPL) dated 26.07.2022 passed in Complaint No. 37/2022.

2. The submission in the instant appeal is that the Appellant being the legal owner of the above said premises had applied for new domestic electricity connections but the same were rejected by the Respondent on the grounds that the premises is in the list of unauthorized constructions of MCD vide File No. 644/UC/B-II/SZ/17 dated 18.12.2017. Subsequently an FIR vide No. 76/18 on 02.02.20218 under section 332/461, Delhi Municipal Corporation Act, was registered at Police Station, Mehrauli, South District, New Delhi, and a chargesheet was filed before the Metropolitan Magistrate Court. The Metropolitan Magistrate had disposed off the case (No. 2780/2019 dated 01.08.2019) as - "Uncontested - Cognizance Decline" on 14.08.2019.



3. The CGRF's in its order stated that though the District Court held the South Delhi Municipal Corporation (SDMC)'s concerned officials responsible and the application filed by the State was dismissed and cognizance was declined but the said order does not give any clearance against the unauthorized construction. It is established law that water and electricity connections cannot be provided to the building/premises, which are constructed in violation of law. Therefore, the complainant cannot be given connection at this stage as the premises is booked by SDMC. However, when the clearance is received from the SDMC, the Respondent should release the connections to the complainant.

4. Aggrieved from the CGRF's order dated 26.07.2022, the Appellant filed an appeal before the Ombudsman on the ground that the Saket District Court has passed the order and declined to take cognizance against in the case and as per section 471, of DMC Act, it is clearly mentioned that:

"Limitation of time for prosecution:- No person shall be liable to punishment for any offence against this Act of any rule, regulation or bye-law made thereunder, unless complaint of such offence made before a municipal Magistrate within six months..."

The Appellant further stated that the Respondent have sent letters on 24/28.09.2021, 04.10.2021 to the SDMC and a reminder on 13.06.2022, for seeking clarification on the status of the property in question, but have not received any reply from the SDMC till date.

5. The case was taken up for the hearing on 09.11.2022. During the hearing both the parties were present along with their Counsels/Representative. Opportunity was given to both the parties to plead their case at length.

6. During the hearing, the Appellant argued that the criminal case registered against him has been dismissed and in view of the dismissed case, the connection applied for, be released. When asked whether his property had been booked for unauthorised construction, the answer was in affirmative. He further reiterated that lot many connections have been released in the locality for the buildings which have been booked. He has been told that there is a mechanism to file a complaint with the Vigilance Department of the Respondent, if he finds any such violations/deviations.



7. The Respondent reiterated on the same lines as done before CGRF and also submitted the written statement. 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) & Advisor (Law) to get more information for clarity.

8. Upon consideration of the submissions made by the Appellant and the Respondent, it is apparent that the property in question where the Appellant had sought connection, i.e. D-91/A, 100 Foota Road, Chhatarpur, has been booked by SDMC for unauthorized construction. The fact that an FIR was also got registered under section 332/961 of Delhi Municipal Corporation Act also emerges from the deliberations in the Court and also from the petition, written statement of the Appellant and Respondent respectively. Another fact also emerges very clearly that the cognizance of the case was declined by the Court and the case was consigned to records. This fact has been extensively used by the Appellant in his appeal while asking for relief. The Appellant reiterated in his appeal that when the Court has declined to take cognizance of the case, factum of unauthorized construction goes away and hence he may be given the connection as applied for.

9. The above contention of the Appellant calls for a detail analysis of the verdict of the Court and also the intent behind the Court not taking the cognizance. The Court in its judgement dated 14.08.2019 had declined to take the cognizance, for the reasons as under:

(a) Lack of technical details like the date, name of Junior Engineer, Photographs of the property in question, arrival/departure entry of Junior Engineer and proof of dispatch, etc.

(b) Lack of proof of dispatch/receipt of notice of demolition.

(c) Delay in filing charge-sheet (beyond 6 months and there being no provision for condoning the delay).

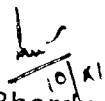
11 The above three reasons very clearly speak of carelessness on the part of Junior Engineer who conducted the inspection, reported the matter to Police, served notice to the Appellant and also served demolition order. Carelessness is also due to the Investigating Officer, who has not filed the charge-sheet within the given time frame. The Court has recommended action against the above erring officers and sent the copy of the order to Lieutenant Governor of NCT Delhi and Commissioner of Police. The above court order and its analysis clearly points out one single fact that the case was dismissed purely on the basis of technicalities and not on merit. Nowhere in the judgment, there is mention of non-existence of unauthorized



construction and the application to take cognizance was dismissed purely on technicalities, i.e., proof of visit of the Junior Engineer with name and date, proof of notice for demolition and filed the charge-sheet beyond the time limit of six months. Hence, the Appellant taking the plea that Court had not taken cognizance and thereby connection be released, is ill founded as the factum of unauthorized construction remains on the ground. The fact that there is unauthorized construction on the property and has not been demolished by the SDMC or the Appellant himself. In view of the verdict of the Hon'ble High Court of Delhi in the case titled Parivartan Foundation vs SDMC & Ors. vide orders dated 20.12.2017 in W.P(C) 11236/2017, the connection cannot be released to a building which is unauthorized. Records further convey that in view of the order of the Forum (CGRF-BYPL), the Respondent did try to find the status of the building from SDMC but there was no clarification from them. The order of the SDMC vide No. 2780/19 (in FIR No. 76/18) dated 14.08.2019 prima facie shows unauthorized construction at the address and the order has not been withdrawn.

12. In view of above discussion, this court does not intend to interfere in the verdict of the Forum (CGRF-BRPL) and further orders the Respondent to give the connection on Appellant getting no-objection from SDMC (now MCD) and completion of other commercial formalities.

The appeal is disposed off accordingly.


(P. K. Bhardwaj)
Electricity Ombudsman
10.11.2022