OFFICE OF ELECTRICITY OMBUDSMAN
(A Statutory Body of Govt. of NCT of Delhi under the Electricity Act of 2003)
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Appeal No. 32/2023

(Against the ECGRF-NDMC's order dated 28.07.2023 in CG No.02/2023/D/ECGRF/2023 in the matter of Shri Subhash Chand Jain vs. NDMC)

IN THE MATTER OF

Shri Sanjay Kumar Jain

Vs.

New Delhi Municipal Council - Respondent No.1

Shri Subhash Chand Jain - Respondent No.2 (Complainant before CGRF)

Present:

Appellant: Ms. Deepshikha Malhotra & Shri Dhavish Chitkara, Counsels, appeared on behalf of Appellant (Shri Sanjay Kumar Jain).

Respondent No.1: Shri M. K. Poddar, Executive Engineer (Commercial), Shri Surender Bharti, Executive Engineer (D/N), Shri Balbir Singh, Asst. Executive Engineer (D/N), appeared on behalf of Respondent No.1 (NDMC).

Respondent No.2: Shri Sanchit Jain, grandson & Shri Anil Kumar Jain, son, appeared on behalf of Respondent No.2 (Shri Subhash Chand Jain)

Date of Hearing: 06.12.2023

Date of Order: 07.12.2023

ORDER

1. Appeal No. 32/2023 has been filed by Shri Sanjay Kumar Jain, R/o Flat No. 29, 10 - Haily Road, Dakshineshwar Building, New Delhi – 110001, against the order dated 28.07.2023, passed by the Electricity Consumer Grievance Redressal Forum (ECGRF) – New Delhi Municipal Council (NDMC)'s in CG No. 02/2023/D/ECGRF/2023 in the matter of Shri Subhash Chand Jain vs. NDMC. The Appellant (Sanjay Kumar Jain) was Respondent No. 2 before the ECGRF-NDMC, and a registered consumer of electricity along with M/s Jain Synthetics Agencies for connection bearing CA No. 1977515 (K. No. 182294). Brief facts of the case are hereunder:

2. Shri Subhash Chand Jain (complainant before the Forum) approached the ECGRF-NDMC for disconnection of domestic electricity connection bearing CA No. 1977515, of Shri Sanjay Kumar Jain (Appellant before this court), claiming that the connection was released on the basis of fabricated documents and a false affidavit/NOC. In support of his contention, Shri Subhash Chand Jain placed before the CGRF relevant documents, viz., a disconnection complaint dated 04.08.2021 shared with an official of the NDMC, a copy of the old electricity bill showing the original temporary connection in the name of M/s Jain Synthetic Agencies since 1989, an application form dated 26.10.2018 for the surrender of the old temporary connection and the issuance of a new one, a false affidavit which the NDMC had relied upon to issue electricity, as it declares Sanjay Kumar Jain to be the wife of Sukhbir Chand Jain, and a false 'NOC' from a non-partner and third party Rajiv Kumar Jain. Shri Subhash Jain also placed before the Forum a partnership deed of Jain Synthetic Agencies, having partners as (1) Subhash Chand Jain (himself), (2) Mohini Devi Jain, (3) Rukmani Devi Jain, (4) Shashi Kumar Jain, and (5) Shanti Devi Jain. He also provided a certificate of GST 07AAVFS4752N1Z9 of Sam Jewellers which shows that commercial activity is being conducted on a domestic connection and non-probated 'will' used by Shri Sanjay Kumar Jain is already disputed.

Furthermore, the premises, in question, is owned by Jain Synthetic Agencies, which has (five) partners, as named in the above paragraph. None of them gave 'NOC' to Shri Sanjay Kumar Jain and prayed before the Forum to take the necessary action and penalize the officer-in-charge for the release of the electricity connection and disconnect the connection bearing CA No. 4403473656 (Consumer No. 1977515) with liberty to continue to proceed with any criminal action.

3. The Forum also impleaded Shri Sanjay Kumar Jain and directed him to file his reply. Shri Sanjay Kumar Jain (Appellant before this court) filed an affidavit on 12.07.2023 before the Forum stating that he has no intention to get the new connection in his name. It was the NDMC authority who informed him that they would give him the new electricity connection in the individual name along with the firm's name. He has no objection if the connection is again transferred to M/s Jain Synthetics Agencies and his name is deleted.

4. The Forum found that during the period from 1989 to 2019, the electricity connection, in question, was solely in the name of Jain Synthetic Agencies, and a change in the electricity connection took place, while the stay order of the High Court of Delhi survived and has continued to be in effect to this date. The Forum further

observed that the act of surrendering the original connection and releasing a new connection by the Discom has been carried out on the basis of misrepresentation of facts and misleading documents. The Forum, vide its order dated 28.07.2023, therefore, directed the Discom to restore the old electricity connection (CA No. 4429769021) in the name of Jain Synthetics Agencies by disconnecting the new electricity connection (CA No. 4403473656) released in the name of Sanjay Kumar Jain.

The Forum also directed that the Discom would only accept documents for proof of ownership/occupancy of premises, which have been mentioned in Clauses I to IX of sub-regulation 3 of Regulation 10 of the DERC (Supply Code and Performance Standards) Regulations, 2017, at the time of the new connection. Furthermore, Discom was directed to strictly adhere to the norms and provisions under Regulations 13, 14 and 50 of DERC's Supply Code, 2017.

5. Aggrieved with the order dated 28.07.2023 passed by the ECGRF-NDMC, Shri Sanjay Kumar Jain (impleaded as a party before the ECGRF) preferred this appeal on the following grounds:

(a) He had never stated that he was the sole owner of the premises. He has been the legal owner, occupant, and resident of said premises since 1973.

(b) It was neither his intention to obtain a new connection in his name nor to add his name. In fact, he had made several requests for the deletion of his name from the connection. He only wants to convert the old temporary connection into a permanent connection and increase the load capacity from 6 KW to 15 KW.

(c) The new connection in his name is incorrect, in fact, it is in the name of "Sanjay Kumar Jain, M/s Jain Synthetics Agencies."

(d) The Forum was wrong in observing that the connection was obtained illegally and by making false statements. The sole intention was to convert the temporary connection into permanent and increase load capacity from 6 KW to 15 KW.

(e) The order dated 28.07.2023, has erroneously recorded the appearance of Shri Rachit Jain as the occupant of the premises.

The Appellant, prayed for:

- To grant a stay on the order dated 28.07.2023 of the ECGRF-NDMC.
- To direct the NDMC to delete his name from the existing electricity connection and reflect only "M/s Jain Synthetics Agencies" with an increased load capacity of 15 KW without reverting to the old temporary connection.
- Correct the typographical error wherein Shri Rachit Jain has been erroneously named as the occupant of the premises.

6. The response to the appeal submitted by Shri Subhash Chand Jain (Respondent No. 2, before this Court) reveals that there is a property dispute between the Appellant and Respondent No. 2. Shri Subhash Jain (Respondent No. 2) also asserted that the Appellant, Shri Sanjay Kumar Jain, wrongly mentioned that M/s Jain Synthetic was dissolved in 1994, whereas it was dissolved after April, 1996. In this regard, a Suit CS (OS) 178/1997 was filed before the High Court of Delhi for rendition of accounts and partition of properties of the said partnership firm, which is still sub-judice and stay orders dated 29.01.1997 and 08.08.2011 have been issued by the Court. These orders clearly prohibit any transfer, modification, alternation, or establishment of third-party rights in the subject properties. Shri Subhash Chand Jain, also relied on the Ombudsman's order dated 02.06.2023 in the matter of Shri Rajender Tiwari vs. BYPL (Appeal No. 08/2023) and various judgements of the High Court and Supreme Court.

7. Against the above-mentioned rejoinder, the Appellant also filed a rejoinder and submitted that Shri Subhash Chand Jain, with mala fide intention, had attempted to harass him since long ago by initiating complaints, inquiries, investigations, and litigations against him. Further, the ECGRF never came to the conclusion that he had forged and fabricated documents, flawed affidavits, and requested to allow the appeal and grant the relief as prayed for by him.

8. The Respondent No.1, in its submissions to the appeal stated that the Appellant applied for the transfer of domestic (1 DS) connection (CA No.4403473656) from Shri Sanjay Kumar Jain, M/s Jain Synthetics Agencies to M/s Jain Synthetic Agencies. He was informed vide their letter Ref. No. D-521/EE (C) dated 07.10.2020 to provide relevant documents for the transfer of connections, but no documents/response was received from him.

The Respondent further submitted that on the direction of ECGRF vide order dated 28.07.2023, the Discom has already restored the old electricity connection bearing CA No. 4429769021 in the name of M/s Jain Synthetics Agencies and disconnected the domestic (Temporary) electricity connection bearing CA No. 4403473656. In this regard, the Discom submitted relevant documents in its support.

9. The appeal was admitted and taken up for hearing on 06.12.2023. During the hearing, the Appellant was represented by his Counsels, the Respondent No.1 was represented by its authorized representatives and Respondent No.2 was represented by his grandson and son. An opportunity was given to all the parties to plead their respective cases at length.

10. During the hearing, the Counsel for Appellant submitted that with the restoration of the connection in the earlier name, the grievance stands redressed. However, the observation of CGRF in respect of misrepresentation and misleading documents was not supported by the material on record. While praying for a stay on the order by the CGRF, it was also submitted that the part of the order containing observations needed to be deleted. There was, however, no satisfactory response to the query by the Ombudsman on the locus with reference to Regulation 10 (3) and the proof of occupancy, as intended by the law. It was a matter of record that an application was submitted in the style "**Sanjay Kumar Jain / M/s Jain Synthetics Agencies**" without any authorization for the purpose by the partners of the firm. Accordingly, for the documents relied upon and submitted by the Appellant, there was no prima facie justification. As regards, increase of the load after 2019, the enhanced load of 8.1 KW (on account of amalgamation of domestic light and power connection) was sufficient and no relief in this regard was, therefore, claimed. The Appellant also could not reply to the issue of 'NOC' by Shri Rajiv Jain and the authority for issuing the NOC.

Respondent No.2 while rebutting the above contentions invited attention to documents wherein the Appellant had mentioned, in letter dated 24.01.2019, himself as "owner" of the subject premises. It was also mentioned that the civil suit between the parties was still pending adjudication by Honourable Delhi High Court and during such pendency, no right vested with the Appellant to make any claim / alteration of interest etc.

Representative / Executive Engineer of NDMC could not give a satisfactory reply on the acts of omission and commission by the officers and staff in approving the connection applied for without adherence to the laid down norms.

12. Having taken all factors, written submissions and arguments into consideration, the following facts emerge very clearly:

(i) Shri Subhash Chand Jain, a partner in the firm, M/s Jain Synthetics

Agencies made a complaint before Respondent (NDMC) as well as CGRF about unauthorized inclusion of Sanjay Kumar Jain in electricity connection which was in the name of firm earlier. Shri Sanjay Kumar Jain (Respondent No.- 2 before CGRF), had submitted an application along with fabricated documents on 26.10.2018, an Affidavit and an 'NOC' for seeking connection. The CGRF in its order dated 28.07.2023 held that connection was released in the name of Shri Sanjay Kumar Jain/Jain Synthetics Agencies at Flat No. 29, 10- Haily Road on misrepresentation of facts, and on the basis of misleading documents. The old connection was directed to be restored with the disconnection of connection installed in the name of Shri Sanjay Kumar Jain.

(ii) The supporting documents submitted along with application by Shri Sanjay Kumar Jain on 26.10.2018 mention that Shri Rajiv Jain, has no objection on transfer of connection in the name of the Appellant, without mentioning his capacity to issue the 'NOC'. Shri Sanjay Kumar Jain is depicted as w/o Shri Sukhbir Chand Jain in the Affidavit sworn on 12.10.2018.

(iii) The documents to be submitted, as per Regulation 10(3) of DERC's Supply Code, 2017, for new connection were totally ignored. In response to RTI application, NDMC, vide their letter dated 13.03.2023 has clarified that a joint application of all parties in the Proforma with ID, Proof of Partnership etc. is to be submitted for surrender of electricity connection. None of these documents were however submitted.

(iv) Neither Sanjay Kumar Jain nor Rajiv Jain is partner in the partnership-deed dated 09.11.1992 and do not have any locus standi to represent the firm

(v) A Civil Suit (OS) 178/97 for dissolution of partnership firm is pending before Delhi High Court and there are stay orders dated 29.01.1997 and 08.08.2011 explicitly prohibiting any transfer, modification, alternation or establishment of third party rights in the property.

(vi) Criminal complaint U/s 156 (3) filed by Shri Subhash Chand Jain is pending before the Criminal Court for consideration of offences of forgery, fabrication of documents and cheating.

13. This court has gone through the appeal, heard the contention of the Appellant and has also gone through the written submissions of the Respondent. Relevant questions were also asked and queries raised by Advisor (Law) & Advisor (Engineering) to elicit more information. This Court

has also gone through the relevant provisions of the DERC (Supply Code and Performance Standards) Regulations, 2017. In view of the foregoing the Court direct as under:

(a) The appeal is dismissed and the order passed by the CGRF is upheld. However, the name of Rachit Jain, in the array of parties be deleted as prayed for.

(b) It is intriguing that the temporary connection, initially taken on 31.12.1989, has continued for many years and, prima facie, in non-compliance of Regulation 16 of DERC's Supply Code, 2017.

(c) The connection has continued for years together and an increase in load over a period ought to have a bearing on the MDI. The NDMC has asserted that the load stands enhanced to 8.1 KW on account of amalgamation of domestic light & power connection. As per the guidelines and requirement of Regulation 17(4), a duty is cast upon the Discom to undertake a yearly review of the MDI for enhancement of the load. The Discom may, on priority basis consider compliance with the provisions of Regulations 17(4).

(d) CEO of the Discom may consider fixing responsibility for the purported loss to the exchequer on account of the enhancement of the load from time to time depending on values of MDI.

(e) The NDMC is directed to order a vigilance enquiry into the handling of the electricity connection matter in violation of the guidelines on the subject.

Action taken report may be submitted within the three weeks of receipt of this order.

The appeal stands disposed off accordingly.

(P.K. Bhardwaj)
Electricity Ombudsman
07.12.2023