

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. 35/2023

(Against the CGRF-BRPL's order dated 27.07.2023 in CG No. 156/2022)

IN THE MATTER OF

Shri Deepak Kumar & Others

Vs.

BSES Rajdhani Power Limited

Present:

Appellant: Shri Deepak Kumar & Shri Raj Kumar and Shri Manoj Banka,
Authorized Representative

Respondent: Shri S Bhattacharjee, Sr. Manager, Shri Manish Kumar and
Advocate Shri Arav Kapoor & Others, on behalf of BRPL

Date of Hearing: 08.11.2023

Date of Order: 09.11.2023

ORDER

1. Appeal No. 35/2023 has been filed by Shri Deepak Kumar & Others and all are R/o House No. 555, Chirag Delhi Village, New Delhi – 110017 through their Authorized Representative Shri Manoj Banka, against the CGRF-BRPL's order dated 27.07.2023 passed in C.G. No. 156/2022.

2. The background of the case is that the Appellant, Shri Deepak Kumar along with Shri Bhushan Guliya and Shri Raj Kumar (all in blood relations), applied for 11 (eleven) electricity connections at their respective portions of the above-cited property/building from 2020 till date, but the Respondent (Discom) rejected their applications on various grounds including (a) ELCB not installed, (b) energy dues



pending against CA Nos. 150123498, 150106855, (c) Building height is more than 15 meters, hence, NOC required and (d) Applied Address/property booked by the MCD and in its objection list.

3. Against this, the Appellant(s) approached the CGRF-BRPL vide their joint application dated 26.09.2022. The Appellant(s) submitted before the Forum that one electricity connection bearing CA No. 102234262 in the name of their father Late Shri Goverdhan, was installed in the premises and Shri Raj Kumar and Shri Satish Kumar are using electric supply from this meter. After the death of their father Shri Goverdhan (on 25.11.2014), the property, where connections are being sought has been built in five portions and divided among all his five sons (legal heirs), namely, S/Shri Sohan Lal, Devender Kumar, Sushil Kumar, Raj Kumar and Satish Kumar, on mutual and verbal settlement. Later, after the death of Shri Sushil Kumar, his portion was merged with the portion of Shri Devender Kumar. Now, there are four portions, consisting of the ground floor till fourth floor. In this regard, the partition deed document executed on 27.01.2023 had also been submitted before the Forum. The Appellant (Shri Raj Kumar) submitted that in response to his RTI application dated 12.10.2021, he had received a clarification from MCD vide letter dated 05.11.2021, mentioning that the unauthorized construction was done on the ground floor and the first floor which were booked on 10.12.2013. In this regard, a civil suit was disposed of as withdrawn on 31.01.2015 on the basis of a mutual settlement. Therefore, the Appellant(s) contended that other brothers have no concern with this unauthorized construction and consequent booking, as there are already numerous meters installed and bills being paid regularly. The Appellant further stated that as per the law laid down by the High Court of Delhi, electricity is an essential requirement and he also referred CGRF-BYPL's order dated 03.03.2023 (Bir Singh vs. BYPL) wherein a connection was granted on the basis of an undertaking.

4. The Respondent before the Forum stated that after verification of documents, the site was visited, and the objections found were duly communicated to them vide their deficiency letter dated 06.07.2021. The main issue was that premises where connections were sought were booked by the MCD in 2014, for unauthorized construction. Further, on the direction of the Forum, a joint site visit was also carried out along with officials of the MCD to ascertain the authenticity of the booked premises, but it could not succeed because both the applied and booked addresses were the same. The Joint Inspection Report dated 10.02.2023 was placed before the Forum. In this regard, the Respondent referred to the High Court of Delhi's order of 2017 in the matter of Parivartan Foundation vs. SDMC & Ors, which clearly says that water and electricity be not supplied to the building constructed in violation of the law. In addition, reliance on Regulation 11.1(vi) of the DERC's Regulations, 2017



was also mentioned by the Respondent, in support of their case, emphasizing need for conformity with the law.

5. The Forum, in its order dated 27.07.2023, duly elaborated ownership of the premises for understanding the chain of property and stated that at present, there are four portions of the property in question, bearing No. 555, Chirag Enclave Village, Delhi. The Forum also agreed that the applied premises was booked by MCD in 2013 for unauthorized construction. The height of the building is also beyond the permissible limit, therefore, the connection can only be released after submission of a 'NOC' from the Fire Department/MCD. The Forum stated that the complainant himself admitted in his RTI application to MCD that his property was booked on 07.01.2014, therefore, he is seeking information on the status of the property/premises. The Respondent has not released any connection after the premises was booked by the MCD. The Forum also relied upon various High Court judgements and opined that the connection could not be released to the complainants until they got clearance from the Fire Department and MCD. However, the Respondent was directed to release the connections upon submission of 'NOC' from the concerned authorities and after completion of commercial formalities.

6. Not satisfied with the order dated 27.07.2023 passed by the Forum, the Appellant preferred this appeal on the following grounds:

- (a) The property, in question, is situated in Chirag Delhi Village and the Respondent have released numerous connections there without demanding any clearance from MCD/concerned authorities.
- (b) As per MCD's record, the property in question (No. 555, Chirag Delhi Village) has been found booked by them U/s 343 & 344 of DMC Act 1957 for "unauthorized construction in the shape of ground and first floor", but, connections were denied to other floors/buildings.
- (c) As per the site map (copy placed before CGRF as evidence), all five buildings were found with separate independent entries.
- (d) During the inspection at the site, no meter was found installed in the name of Shri Raj Kumar. The fact is that only one case was booked in the name of Shri Raj Kumar against direct theft. The supply of electricity connection bearing CA No. 102234262 was disconnected by the Respondent due to non-payment and the same was restored on 17.01.2019 after payment of dues. At that time, no clearance from any agency was required.



- (e) The Discom released two connections bearing CA Nos. 150106855 and 150123498 in 2011 in the name of Shri Devender Kumar, whose building was fully constructed from ground floor till top floor at that time. Similarly, the Respondent released three connections bearing Nos. 150537401, 150537402 and 150552607 in 2012 in the name of Shri Satish Kumar.
- (f) Shri Raj Kumar (one of the Appellants) before the Forum specifically admitted that only his portion was booked by MCD and other buildings have no concern with this MCD action.
- (g) The Respondent wrote a letter dated 20.02.2023 to MCD for a joint visit to ascertain the status of booking of the property in MCD's objection list, but, no response was received from them.
- (h) The Respondent has released several connections in un-authorized colonies without approval of competent authority.
- (i) That electricity is the main amenity but the Respondent intentionally and deliberately not releasing the electricity connections, resulting in undue mental and physical harassment to all of the Appellants.
- (j) That the Respondent rejected the connections and stated one of the reasons as the height of the building being more than 15 meters (without stilt parking), whereas the height of the building has not been measured. The Respondent admitted before the Forum that the Commission (DERC) has not approved their civil team to measure the building height. Therefore, as per DERC's order dated 15.04.2023, the Licensee shall release the connections.

The Appellant, therefore, prayed:

- (i) To set-aside the order dated 03.08.2023 passed by the CGRF.
- (ii) To direct the Respondent to release all the eleven connections.
- (iii) To award compensation for physical and mental harassment.

7. The Respondent in their written submissions dated 26.09.2023 to the appeal before this Court reiterated their version as submitted before the Forum. In addition, the Respondent submitted that all the Appellants are in blood relations and reside in four different buildings within a common campus having same address, viz; No. 555. The buildings were constructed from the ground to the fourth floor. During the site visit, it was found that the said premises/property was booked by the MCD for



unauthorized construction, but which part of premises/building booked, is not clearly mentioned by them. The Respondent further submitted that the Appellants illegally shifted the meters to another building, which was released for only one building and are trying to mislead.

Regarding the removal of three meters (in the name of Shri Devender Kumar), the Respondent submitted that these were disconnected due to non-payment of bills. The Appellant made the payment of the outstanding dues after six months, and as per DERC's guidelines, the connection becomes permanently disconnected after six months; therefore, the Appellant was advised to apply afresh. Furthermore, the Discom approached the MCD vide their letters dated 16.12.2022 and 22.02.2023 to ascertain the status of the booked/exact building. Till date, no response from MCD has been received, therefore, no new electricity connection has been released to the appellant(s).

8. The appeal was admitted and taken up for the hearing on 08.11.2023. During the hearing, both the parties were present along with their authorized representatives/counsels. An opportunity was given to both to plead their case at length.

9. During the hearing, the Appellant reiterated their submissions in the appeal. The Appellant drew a rough sketch of the property (portion-wise), in question. Shri Raj Kumar, one of the Appellant submitted that before the death of his father, Late Shri Govardhan, the property was sub-divided mutually in 2010 and five connections were obtained in 2011 and 2012 respectively. In 2013, during the construction on his (Raj Kumar) portion, the MCD had booked ground and first floor for unauthorized construction but not demolished the structure. When asked, why the Appellant(s) had not approached the MCD with this detailed sketch to resolve the issue? The Appellant (Raj Kumar) submitted that he had approached the MCD with this sketch but received the standard reply mentioned therein "premises no. 555 for ground floor + first floor was booked". The Appellant(s) further submitted that the Partition Deed was executed in January, 2023, on the direction of the CGRF-BRPL, to prove their mutually settled portion. The Appellant (Deepak Kumar) requested to release the requisite connections because presently only one connection is supplying electricity to others' portion, which is causing huge monetary loss. It was also stated by him that the earlier connections in his premises was disconnected on account of non-payment of dues and on account of expiry of a period of more than six months, no reconnection was feasible, as per the Guidelines. Therefore, he had to apply afresh for a new connection. The said connection was not being released on account of premises, being booked by MCD.



10. In rebuttal, the Respondent also reiterated their contention as submitted in their written statement to the appeal. On being asked, what was the status of the building at the time of release of five connections in 2011 & 2012? The Respondent stated that the building was constructed on ground + three floors in 2011 and ground + four floors in 2012. All the connections were issued to one premises (bearing No. 555), which later on were illegally shifted to different portions in the same campus. Further, as all the premises belong to relatives (brothers), therefore, it is not possible to identify the existing connections issued to which portion/building based on old records. There is a common entry at both ends of the campus and the complete campus is shown as House No. 555, which is booked by the MCD. The Respondent further stated that if Appellant(s) obtain a 'NOC' from the MCD or MCD identifies the exact booked portion/building, connections can be released for remaining portions/buildings. The Respondent also submitted that even after the death of Appellant(s)'s father, the name of the registered consumer is still reflected as 'Goverdhan'. Appellant(s) should apply for name change, as the onus for applying the same is upon the Appellants.

11. Having taken all factors, written submissions and arguments into consideration, it is apparent that MCD (erstwhile SDMC) vide its communication dated 07.01.2014 informed the Assistant Vice Present, (P&M) South- II, BSES, Adchini, about unauthorized construction on the property bearing House No. 555, Chirag Delhi Village. The MCD has however not responded to the query on the address booked, sought by the DISCOM. The fact remains that the property has unauthorized construction.

12. The Dictum in Parivartan Case (date 20.12.2017) mandates the DISCOMs not to release connections in unauthorized constructions. The law is also settled by Delhi High Court in Azra Case (dated 06.02.2020) WP© 2453/2019 to the effect that merely because some of the occupants of the building have been wrongly given an electricity connection, it cannot be a ground for the Court to direct Respondents to further compound the wrong and grant of new connection to the premises of the petitioner in a building in violation of the law.

13. The Supreme Court of India in the matter WP(C) 4677/1985 (M C Mehta Vs UOI) vide order dated 24.04.2018, expressed its concern on constructions in unauthorized colonies, and directed that construction activity be stopped with immediate effect. Concerned authorities were directed to ensure compliance and a task force was constituted for removal of encroachment and unauthorized construction and implementation of bye-laws.




The Supreme Court in the matter "Supertech Vs Emerald Court Owners Resident Welfare Association (2021) 10 SCC" observed that unauthorized construction destroys the concept of planned development and places unbearable burden on basic amenities provided by local authorities. It was directed that it is imperative for the public authorities to not only demolish such construction but also to impose a penalty on wrong doers involved.

14. In the light of the above discussion, this court directs as under:

- (i) The order dated 18.07.2023 passed by the CGRF-BRPL is up-held. It will be open to the Appellant to approach the DISCOM for release of the connection after getting 'NOC' from the MCD.
- (ii) As per law laid down by the Delhi High Court and relied upon by the DISCOM, CEO is directed to undertake review of the various connections in the booked premises in the area, released in violation of the dictum in Parivartan case and to take appropriate action.
- (iii) CEO may take steps for a regular interaction with MCD and other Civic Agencies for strict and uniform enforcement of the directions of the Supreme Court as well as High Court in the matters of non-release/disconnection of released connection in unauthorized constructions.
- (iv) Action taken report may be submitted within the four weeks on receipt of this order.

The case is disposed off accordingly.


(P.K. Bhardwaj)
Electricity Ombudsman
09.11.2023