



C A No. Applied For
Complaint No. 51/2021

In the matter of:

Anshuj AroraComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. Arun P Singh (Chairman)
2. Mrs. Vinay Singh, Member (Legal)
3. Dr. Harshali Kaur, Member (CRM)

Appearance:

1. Mr. Manoj Banka, Counsel for the complainant
2. Mr. Imran Siddiqi, On behalf of BYPL

ORDER

Date of Hearing: 30th June, 2021

Date of Order: 02nd July, 2021

Order Pronounced by:- Mrs. Vinay Singh, Member (Legal)

Briefly stated facts of the case are that the complainant applied for new electricity connection but the respondent rejected his application for new connection.

The complainant further submitted that he is owner of property bearing no. 1058, GF, Pan Mandi, Sadar Bazar, Delhi-110006. The said building is very old constructed with Ground Floor, First Floor, Second Floor, Third Floor and Fourth floor.

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Already many meters were installed by the respondent at the above mentioned premises. Complainant applied for new electricity connection vide application no. 8004738071 on 18.01.2021. The respondent company on 25.02.2021 sent him rejection letter and mentioning reasons for rejection of his new connection application as under:-

Pro-rata of Rs. 5500/- required to be paid against CA No. 100473980,
Pole encroachment;
and building height nor measured.

The complainant further submitted that he approached division office of the respondent but no one paid any heed to his complaints. Therefore, he requested the Forum to direct the respondent company for release of new electricity connection.

Notices were issued to both the parties to appear before the Forum on 23.04.2021.

Due to an upsurge in Covid-19 second wave hearings in the Forum could not be conducted during the period 20.04.2021 to 10.06.2021.

The respondent submitted their reply stating therein that the complainant applied for new electricity connection for NX category against application no. 8004738071 on 18.01.2021 at premises no. 1058, Pan Mandi, Sadar Bazar, GF, Delhi. The said application for new connection was rejected due to being address of the premises for which the new connection applied; height of the building is 18.25 mtr. As per DERC Guidelines fire clearance certificate is required and removal of temporary meter is required.

The matter was listed for hearing on 18.06.2021, when respondent raised objection on granting the connection on the basis of bill on pro-rata, building height more than 15 meters and pole encroachment. Respondent was directed to file height measurement afresh.

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Respondent company submitted site visit report dated 02.03.2021, where in it is submitted that building height more than 15 meters and site is vacant.

The matter was finally heard on 30.06.2021, when respondent filed measurement of the building dated 01.03.2021, in which height is shown more than 15 meters (18.25 meter). Arguments were heard and matter was reserved for orders.

The main issue in the present case is whether the connection can be released or not.

We have gone through the submissions made by both the parties from the narration of facts and material placed before us we find that the complainant applied for commercial connection at the ground floor of the said premises where the height of the building is more than 18.25 meters.

In the High Court of Delhi in the matter of Vikas Singh Vs. Lieutenant Governor and Others in W.P. (c) 1476/2014 date of decision 20.01.2016, which is reproduced as under:-

As per Rule 27 (2) of the Delhi Fire Services Rules, 2010 on the ground of the same being not in consonance with the amendment vide Notification dated 23.09.2013 of the Master Plan for Delhi (MPD)-2021.

The petition came up first before this Court on 07th March 2014, when the counsel for the respondents No. 1 to 3 i.e. Lieutenant Governor of Delhi, Govt of NCT of Delhi (GNCTD) and Director, Delhi Fire Services (DFS), GNCTD appearing on advance notice was directed to file an affidavit indicating the position with regard to fire safety clearance of buildings upto 15 metres in height and beyond 15 metres in height. It was further directed that the said affidavit shall also indicate, as to whether there is need for changing the cap of

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15 metres as stipulated in Rule 27 (2) supra, on account of change in the Master Plan whereby the maximum height for residential buildings with stilt parking has been increased to 17.5 metres from the erstwhile limit of 15 metres.

According to Delhi Development Act 1957, bye-laws 2.58 whereof defines "Parking Space" as an area enclosed or unenclosed, covered or open, sufficient in size to park vehicles, together with a driveway connecting the parking space with a street or alley and permitting ingress and egress of the vehicles.

Appendix J whereof containing "Relevant Extracts from MPD-2021 regarding Development Control Regulations" provides the maximum height of constructions of residential plotted development, of 15 metres and further provides that if the building is constructed with stilt area of non-habitable height (less than 2.4 metres), used for parking, such stilt area shall not be included in FAR but would be counted towards the height of the building.

Bye-laws 6.2.4.1 of the Building bye-laws.....has demonstrated that the building plan for such multi-storied/special buildings has to show inter alia the location and size of fire lift, smoke exhauster system, access to fire appliances/vehicles with details of vehicular turning circle and clear motorable access way around the building etc.

Bye-laws (vi) (iii) that the Section 32 thereof requires only the "multi-storied buildings" to be governed by the provisions for the fire prevention and fire safety measures stipulated therein.

As per Delhi Fire Services, laws

7. (D) that from fire ground operation point of view, the building beyond 15 metres in height irrespective of type of occupancy, pose different challenges in rescue and fire fighting operations; floors above 15 metres are beyond the reach of the non-self supported ladders (portable manual ladders) and require operation of hydraulic platforms (aerial ladders) for fire-fighting and rescue purposes necessitating 6 metres motorable road around the building

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As per Master Plan Delhi 2021 provision 4.4.3(A) (iii), it is clear that buildings taller than 15 metres are not exempt from seeking clearance from Fire Department; further, as the buildings have to comply with Part IV Fire Protection of NBC, as stipulated in Building bye-laws 17.1, it is clear that MPD-2021 provisions read with building bye-law provisions do not exempt the buildings from the mandatory requirements of setbacks, access etc.

(v) Laws and NBC, by not considering residential buildings upto 17.5 metres with stilt" as high rise buildings", such buildings are nowhere exempted from the mandatory fire protection requirements related to the setbacks, access, alternate stairs etc:

(vi) that the safety of human life is paramount and all the provision regarding development control norms and other requirements for buildings should be followed invariably;

Similarly, in the **Howrah Municipal Corporation Vs Ganges Rope Co. Ltd. (2004) I SCC 663**, it was held that the considerations of regulatory provisions for construction activities are public interest and convenience and on the subject of seeking sanction of construction, no vested right can be claimed by any citizen divorced from public interest or public conveniences.

Division Bench of High Court of Delhi in the matter **Dr. B.L. Wadhwa Vs. Govt. of NCT of Delhi (2003) 105 DLT I**, in the context of fire safety to be provided in high rise buildings held that fundamental rights are placed beyond the reach of ordinary legislations and directed the authorities **not to supply essential services unless and until the building is compliant with fire safety norms**. The petition was dismissed by the Hon'ble High Court because it does not cover all the aspects.

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From the above pleas we are of the considered opinion that the height of the building is 18.25 meters, this is the major hindrance in releasing the connection in the said building. The stilt parking area should be open from all the sides this is as per the fire safety requirements of DFS who is the competent body to attend exigencies in case of fire.

In view of above, the Forum directs the respondent as follows:

1. The respondent is directed to release the connection if the complainant fulfils all the formalities of above stated DDA Bye-laws, Master Plan Delhi 2021, Delhi Fire Services, Regulations, clear all the irregularities related to Pole Encroachment and DERC Guidelines 2017 & DERC notification 2019.

No order as to the cost. A copy of this order be sent to both the parties and file be consigned to record room thereafter.

The order is issued under the seal of CGRF.

The compliance should be reported within 30 days. The order is issued under the seal of Consumer Grievance Redressal Forum (BYPL).


(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN