



C A No. Applied for
Complaint No. 150/2022

In the matter of:

AnilComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat A Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. S.R. Khan, Member (Technical)

Appearance:

1. Mr. Vinod Kumar, Counsel of the complainant
2. Ms. Ritu Gupta, Mr. R.S. Bisht & Ms. Shweta Chaudhary, On behalf of BYPL

ORDER

Date of Hearing: 30th May, 2023

Date of Order: 06th July, 2023

Order Pronounced By:- Mr. Nishat A Alvi, Member (CRM)

1. This complaint has been filed by Mr. Anil, against BYPL-KWN.
2. The brief facts of the case giving rise to this grievance are that complainant Mr. Anil applied for new electricity meter vide request no. 8006150054 at house no.A-33/3, GF, Kh. No. 48, Street No. 1, Johripur Extension, Delhi-110094. He also submits that respondent rejected his application for new connection on the pretext of premises found in UP Area and no BYPL network exists near the premises.

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3. The respondent in reply briefly stated that the complainant applied for grant of new electricity connection at premises no. A-33/3, GF, Khasra No. 48, Street no. 1, Johripur Extension, which is claimed to be part of Delhi.


OP further submitted that site of the complainant was visited and it was found that applied premises in issue is still under construction and falls in UP.

It is also their submission that 9th Bi-annual report dated 10.07.2009 for the period 01.01.2009 to 30.06.2009 issued by the Electricity Ombudsman; NCT of Delhi under paragraph 3 had recorded as under:

(3) New connections in Border Villages and Colonies

In the case Smt. Yashoda Devi Vs. BYPL, the consumer requested for gratn of a new connection in an authorized colony named Kardam Farm in Johripur Extension, on the Delhi-U.P. Border. Evidently, part of the colony is in Delhi and part in UP. The BYPL has already sanctioned about 700 connections and many of these have been given to consumers located in the UP area. Some distribution infrastructure has also been laid in the UP area. As a result, a number of new consumers, reportedly in UP are agitating for new connections. Some have also produced Ration Cards and Election Cards wrongly issued to people living in UP.

This matter is required to be settled once and for all with the help of the Revenue Department of Delhi & UP, so that no consumer living beyond the boundary of Delhi is given a connection, and existing connections wrongly given, are also withdrawn. In future greater care should be exercised in grant of connections in border villages and colonies.

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4. In rejoinder to OP's reply, complainant reiterating his stand further states that he himself is not claiming that the subject premises falls in Delhi jurisdiction but for the reason that Khatauni of this property is of Delhi. Furthermore OP has recently released its connection in nearby premises vide CA No. 1536815 on 10.05.2022. Regarding construction complainant states that the same has since been completed. With respect to Bi-annual Report, complainant states that it does not pertain to present matter. In rejoinder to plea of requirement of sanctioned plan it states that the area is an unauthorized colony. Theft plea of OP is also denied stating that no theft bill or theft case is pending or initiated against the complainant before any court or authority. Regarding network rejoinder states that the property wherein the complainant's premises situate also have OP's network while there is no UP network.
5. Heard both the parties and perused the record.
6. The main issue in the present case is whether the premise of the complainant falls in Delhi area or UP Area. If in Delhi then can the electricity connection applied for by the complainant be granted.
7. Going through the documents placed on record by the complainant i.e. Aadhar Card, Voter ID Card etc. we observe that the same have been issued by Delhi Authorities. OP itself states in its reply that no demarcation has been done of the area but claims hat the same falls in UP but despite so many opportunities no documentary proof for the same is placed on record by it, in support of the claim except stating that oral evidences of people well conversant with the area so state,

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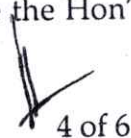
While as per Provisions of the Evidence Act, onus to prove a fact lies only on the person who takes a particular plea. Not only this but also OP has failed to controvert the evidence placed on record by the complainant in the form of Aadhar Card and Voter I card. Now OP claims the area being in UP jurisdiction, therefore, it becomes its duty to prove its case which OP has failed to. Further, since OP has also failed to prove that the Aadhar Card and Voter I Card have wrongly been issued by Delhi Authorities, we have no option but to rely on the only evidence we find on record. Not only this, OP's plea of establishing its network in the year 2007 further strengthened complainant's case that OP's network/jurisdiction extends to complainant's premises. Now only question, The Forum has to decide, remains, as to whether as per Electricity Act, Rules and Regulations concerned another connection in the applied premises is feasible or not. If feasible in our considered opinion complainant is entitled to the connection applied for.

8. We have also gone through various orders/judgments passed by various forums and Courts. In Ram Kumar Vs BSES Yamuna Power Limited, appeal no. 2/2021 Hon'ble Ombudsman has dealt with the same dispute of Jurisdiction particularly of Johripur Extension of Karawal Nagar Area of Delhi. Learned Ombudsman has observed that none of the two parties were able to produce Revenue record, further observing in Para-7 of its order that " the denial of the electricity connection by the Discom is purely based on conjectures, since they don't have any authenticated record to prove that the area lies in the state of U.P. Not only this, the order further states in the last of Para-7 that "the Discom also needs to look into the matter rather seriously and they can't deny the connection purely on the basis of hearsay, that the area lies in U.P. It is also observed that issue of demarcation of this area is still pending before the Hon'ble High Court.

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In another case namely Human Fundamental Rights Association (Regd.) & Others Vs Union of India & ors W.P. © 6211/2012 Hon'ble High Court of Delhi has dealt with the question of jurisdiction. Facts of the case were the area in dispute had been developed as a colony of Delhi. As such its residents were issued Delhi I-cards, water connections, BSES electricity connection. Later on, demarcation took place, whereby about 209 of properties fall, partly in UP and partly in Delhi. Therefore, Discom disconnected the connections of premises which were falling in U.P. area. Aggrieved **complainant** challenged demarcation process by way of this writ petition, wherein Hon'ble High Court by way of interim order not only stayed disconnections but also allowed BSES-YPL to allow applications for new connections in the alleged UP area itself on pre-paid meters till proper demarcation took place.

In the light of above two judgments we observe that connection of electricity can't be rejected unless and until something concrete is brought forward to establish jurisdiction of a particular state. Discom can't take plea of jurisdiction unless a clear cut proof is provided by it to justify that area concerned is out of its jurisdiction.

In another case titled as Dilip (dead) LR Vs Satish SCC online SC810 dt. 13.05.22, Hon'ble Supreme Court has held that electricity is a basic utility, which person cannot be deprived off.

9. On the basis of above findings we reach to the conclusion that only conclusive evidence to decide jurisdiction is Revenue record of a particular state. Thus to produce the said record lies on both the parties. Here only complainant has filed khasra Girdhwries/khata, issued by revenue authorities of Delhi. But OP has produced no such documents of U.P. state to establish the claim of premises to be falling in U.P.

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Electricity is a necessity as also held by various courts and it cannot be denied merely on none- clarity of jurisdiction. One who take the plea of no jurisdiction has to produce concrete/substantial proof thereof and cannot deny relief on the basis of hearsay only


On the basis of aforesaid findings and in the light of order passed as aforesaid in out considered opinion OP has no substantial ground to reject complainant's application for new connection on the pretext of jurisdiction.


Complaint is allowed. Respondent is directed to release the connection applied for by the complainant in his premises, bearing no-A-33/3, GF, Kh. No. 48, Street no. 1, Johripur Extension, Delhi-94 on pre-paid meter basis, after completion of all the commercial formalities subject to the condition, that grant of connection is feasible, keeping in view all the safety measures required as per Central Electricity (measures relating to safety and electricity supply) Regulations 2010, particularly after ensuring that no connection belonging to U.P. Discom exists in the said premises and OP shall be entitled to disconnect supply if later on Revenue Authorities after demarcation come to conclusion that the address concerned falls in U.P.


The case is disposed off as above.

No order as to cost/Compensation.


(NISHAT A ALVI)
MEMBER (CRM)


(P.K. AGRAWAL)
MEMBER (LEGAL)


(S.R. KHAN)
MEMBER (TECH.)


(P.K. SINGH)
CHAIRMAN

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