

Consumer Grievance Redressal Forum
FOR BSES YAMUNA POWER LIMITED
(Constituted under section 42 (5) of Indian Electricity Act. 2003)
Sub-Station Building BSES (YPL) Regd. Office Karkardooma,
Shahdara, Delhi-110032
Phone: 32978140 Fax: 22384886
E-mail: cgrfbypl@hotmail.com
SECY/CHN 015/08NKS

C A No. Applied For
Complaint No. 352/2023

In the matter of:

Hema SharmaComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

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

Appearance:

1. Mr. Imran Siddiqui, Counsel of the complainant
2. Ms. Ritu Gupta, Mr. R.S. Bisht, Ms. Shweta Chaudhary & Ms. Chhavi Rani, On behalf of BYPL

ORDER

Date of Hearing: 07th December, 2023
Date of Order: 08th January, 2024

Order Pronounced By:- Mr. P.K. Agrawal, Member (Legal)

1. This complaint has been filed by Smt. Hema Sharma, against BYPL-KWN.

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2. The brief facts of the case giving rise to this grievance are that complainant Smt. Hema Sharma applied for new connection vide request no. 8006461971 at her premises no. Prop-16C, Upper Ground floor, B-block, Amar vihar, Karawal Nagar, Delhi--110094. She further submitted that respondent rejected her application for new connection on the pretext of pole encroachment and pole touching to the new building, which is fake allegations by the OP, therefore, her complaint for new connection may be admitted.

3. The respondent in reply briefly stated that the complainant is seeking new electricity connection for first floor against request no. 8006461971 for domestic purpose at premises bearing no. Prop-16-C, B-block, Amar Vihar, Karawal Nagar, Delhi-110094. On inspection it was found that the electricity pole was encroached upon. Therefore application of the complainant was rejected. The O&M department has objected to the grant of connection as it is a case of interfering with work of licensee.

Reply further added that in past the complainant had submitted an application for shifting of pole which was rejected. Thereafter, while the subject premise was under construction pole was shifted. As a consequence on 13.03.2023 complaint was made to SHO PS Karawal Nagar, regarding illegal and unauthorized shifting of HT poles from its earlier location to another location. It has been shifted approximately one meter from the left side to right side.

Reply also added that the owner of the building wherein new connection is sought has shifted the electricity pole and interfered with the work of licensee i.e. OP herein and as pole is encroached upon as such no new connection can be granted till the unauthorized construction is removed and requisite distance is maintained.

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4. Counsel of the complainant in its rejoinder rebutted the contentions of the respondent as averred in their reply and stated that OP has not submitted any proof with regard to the application of the complainant for shifting of pole. Only an application submitted in Police Station Karawal Nagar in March 2023, is placed on record. However, no action has been taken on the same by the concerned police station.
5. LR of the OP countered the arguments of the complainant and submitted copy of application forwarded by the complainant in the office of AsVP (O&M) KWN on dated 07.02.2023 regarding relocation of an electric pole, in which it was stated that "applicant want to shift the pole at right site from existing point, there will not be proper gap due to extended balcony, so case is technically not feasible." After the application of the complainant was rejected, the complainant has itself shifted the pole.
6. Heard both the parties and perused the record.
7. The issue is (a) whether the new connection can be released to the complainant in view of pole encroachment and shifting of electric pole by the complainant as alleged by OP, and, (b) whether the pole was shifted by the complainant.
8. The relevant provision for this complaint are Section 53 and 68 (5) of Electricity Act 2003 and Section 136 and 138 of Electricity Act 2003 and Rule of DERC Regulations are narrated below:

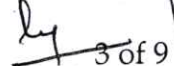
Section 53. (Provisions relating to safety and electricity supply): The Authority may in consultation with the State Government, specify suitable measures for -

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- (a) protecting the public (including the persons engaged in the generation, transmission or distribution or trading) from dangers arising from the generation, transmission or distribution or trading of electricity, or use of electricity supplied or installation, maintenance or use of any electric line or electrical plant;
- (b) eliminating or reducing the risks of personal injury to any person, or damage to property of any person or interference with use of such property ;
- (c) prohibiting the supply or transmission of electricity except by means of a system which conforms to the specification as may be specified;
- (d) giving notice in the specified form to the Appropriate Commission and the Electrical Inspector, of accidents and failures of supplies or transmissions of electricity;
- (e) keeping by a generating company or licensee the maps, plans and sections relating to supply or transmission of electricity;
- (f) inspection of maps, plans and sections by any person authorised by it or by Electrical Inspector or by any person on payment of specified fee;
- (g) specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer for the purpose of eliminating or reducing the risk of personal injury or damage to property or interference with its use.

Section 68. (Provisions relating to Overhead lines): (5) Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

Section 136. (Theft of electric lines and materials): --- (1) Whoever, dishonestly -

- (a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

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(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain,

is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under subsection (1) is again guilty of an offence punishable under that subsection, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.

Section 138. (Interference with meters or works of licensee): (1) Whoever, -

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

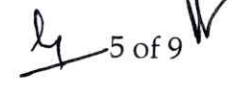
(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his

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property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

9. To sum up OP alleges that there is violation of Regulation 11 (2)(iv)(c) of DERC (supply Code and Performance Standards) Regulation 2017, hence, connection cannot be granted. As per this Regulation Licensee/OP may not sanction the load, if upon inspection, the licensee finds that the energization would be in violation of any provision of the act, Rules, Regulations or any other requirements if so specified or prescribed by the commission or Authority under any of their Regulations or order.

Going through the Regulation 60 & 61, we find that it mandates to follow a minimum horizontal and vertical clearance required to be maintained from the electricity mains/installations for any building/structure/balconies/verandas/roof/chajja where an extra high/medium/low voltage line passes above or adjacent to any building or part of the building to avoid any electrical accident. Section 53 and 63 read with Section 161 of the Electricity Act, also provide for safety measure.

Police complaint filed by OP under Section 140 of the Electricity Act 2003 includes the provisions of India Penal Code also.

Section 136 says - "whoever, with intent to cut off the supply of electricity, cuts or injures, or attempts to cut or injure, any electric supply line or works, shall be punishable with fine which may extend to ten thousand rupees". But nowhere it provides that the offender under these sections shall not be granted electricity connection if he fulfills the safety measures as per provisions of Regulations of 2010 aforesaid.

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In the present case OP has raised two fold deficiencies one of pole encroachment and other related to pole shifting against which OP has made Police Complaint but there is no outcome of the complaint yet.

During the course of arguments following facts were revealed:-

- That the pole in question is dead pole and at present there is no connection energized from this pole.
- That the application of the complainant for pole shifting was dealt with by OP and it was observed by OP that "applicant want to shift the pole at right site from existing point. There will not be proper gap due to extended balcony of adjoining premises. So case is technically not feasible."
- That OP has released connection to the adjoining building whose balcony is extended.
- The complainant applied for new connection vide application no. 8006461971. OP visited the premises of the complainant for technical feasibility and found that the complainant has encroached the electricity pole, thus application of the complainant was rejected.
- That OP failed to provide evidence in respect of their contention that the pole was shifted by the complainant.

In view of the above, we are of considered opinion that the pole in question is dead pole and at present no connection is energized from the existing pole. Also, OP has released the new connection in the adjoining building whose balcony is also extended. Forum in its earlier orders have given connections to the buildings where pole is encroached but not grabbed inside the walls of the building. Also, there is no evidence placed on record showing that the pole is shifted by the complainant.

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On that fact that even as per law as mentioned in Regulation 60 (3) of above Regulation 2010 if the distance is less than 1.2 meter, connection can be given if it is adequately insulated. There is no dispute regarding the fact that the supply of electricity is provided totally through insulated wire. Hence, on this very ground complainant cannot be deprived of the electricity connection.

Thus we are of the considered view that there is no violation of Electricity Act and Regulations of 2017 aforesaid and Regulation 11 (2) (iv)(c) of Regulation 2017 is no more a hindrance in granting the electricity connection in the applied premises. While various courts provide electricity as basic necessity as follows:

Water and electricity are integral part of right to life. Hon'ble Supreme Court in the matter of Dilip (Dead) LR vs Satish, in case no. SCC online SC810 dated 13.05.2022 has held that electricity is basic amenity which a person cannot be deprived off. Even on the principle of law there should be equity before law and equal protection of law in the spirit of constitution.

Thus, the objection of the OP is no justified and we cannot deprive the complainant of electricity. Therefore, OP is hereby directed to grant the application of the complainant for electricity connection in the applied premises.

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ORDER

The complaint is allowed. OP is directed to release the new connection to the complainant after filing an undertaking by the complainant that he would not breach the distance between his building and the pole.


The case is disposed off as above.

No order as to the cost. Both the parties should be informed accordingly.
Proceedings closed.


(P.K. SINGH)
CHAIRMAN


(S.R. KHAN)
MEMBER-TECH


(P.K. AGRAWAL)
MEMBER-LEGAL


(NISHAT AHMAD ALVI)
MEMBER-CRM

ON LEAVE
(H.S. SOHAL)
MEMBER