



C A No. Applied For
Complaint No. 374/2023

In the matter of:

Ram Kishan TiwariComplainant

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. Rohit Sain, Counsel of the complainant
2. Mr. R.S. Bisht, Mr. Nandan Bangari, Ms. Shweta Chaudhary & Ms. Chhavi Rani, On behalf of BYPL

ORDER

Date of Hearing: 18th January, 2024
Date of Order: 22nd January, 2024

Order Pronounced By:- Mr. H.S. Sohal, Member

1. This complaint has been filed by Sh. Ram Kishan Tiwari, against BYPL-MVR I&II. The brief facts of the case giving rise to this grievance are that complainant applied for new connection vide request no. 8006539903, 8006539900, 8006539893 and 8006539897 at her premises no. 36/100, 1st floor, Trilok Puri, Near Gurudwara, Delhi--110091.

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Secretary
CGRF (BYPL)

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He further submitted that respondent rejected his application for new connection on the pretext of pole encroachment and LT pole illegally shifted.

2. The respondent in reply briefly stated that the complainant is seeking new electricity connection for various floors against request no. 8006539903, 8006539900, 8006539893 and 8006539897 at premises bearing no. 36/100, Trilok Puri, Delhi-110091. The complainant is GPA holder with respect to subject property and the applicants are tenants of the complainant.

On routine inspection dated 13.01.2023 the sub-division team observed that one LT pole (MVRF112) was shifted approximately 2 feet towards road side from original alignment at subject premises. The electricity supply system of the respondent network was also found to be tempered. Accordingly, accessibility notice dated 13.01.2023 was issued to the complainant and thereafter when no action was taken by the complainant, a police complaint in the concerned police station i.e. PS Mayur Vihar-I was also lodged on 27.01.2023.

3. Counsel of the complainant in its rejoinder rebutted the contentions of the respondent as averred in their reply and stated that they have never shifted the LT pole. The complainant denied accessibility notice dated 13.01.2023 received by him and as far as the police complaint is concerned, he never received any notice or any action is taken against the complaint by the police.
4. Heard both the parties and perused the record.
5. The issue is (a) whether the pole was shifted by the complainant, and (b) 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.

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6. The relevant provision for this complaint are of DERC Regulations 2017 are narrated below:

Regulation 11(2)(iv)(c) the energization would be in violation of any provision of the Act, Electricity Rules, Regulations or any other requirement, if so specified or prescribed by the Commission or Authority under any of their Regulations or Orders.

7. 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".

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[Handwritten signatures]

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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.

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:-

- The complainant applied for new connection vide application no. 8006539903, 8006539900, 8006539893 and 8006539897. 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 Forum in its earlier orders has 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.


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. Other electricity connections have been given from the same pole as is evident from photographs.

Hence, on this very ground complainant cannot be deprived of the electricity connection. Any action which police takes in the complaint of pole shifting will be independent of this order.

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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 not 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.

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 and if in future police investigation proves complicity of the complainant, the OP is free to take action accordingly, after following due procedure as per law.

The case is disposed off as above.

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



(S.R. KHAN)
MEMBER-TECH



(NISHAT AHMAD ALVI)
MEMBER-CRM


(P.K SINGH)
CHAIRMAN

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Secretary
CGRF (BYPL)


(P.K.AGRAWAL)
MEMBER-LEGAL


(H.S. SOHAL)
MEMBER