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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9330/2024 & CM APPL. 38227/2024**

BSES YAMUNA POWER LIMITEDPetitioner

Through: Mr.Manish Srivastava with
Mr.Moksh Arora, Advs for
BSES.

versus

SMT. KAMLESH & ANR.Respondents

Through: Mr.Kshitiz Mahipal and
Mr.Neeraj Kumar, Advs for R-
1.
Ms. Sakshi Popli, SC for MCD.

CORAM:

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR
KAURAV**

ORDER

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11.07.2024

1. The petitioner appears to be aggrieved with direction no.(b) of paragraph no.14 of the order passed by the office of the Electricity Ombudsman.
2. The solitary grievance raised by the petitioner seems to be with respect to the objection of the Municipal Corporation of Delhi (MCD) regarding electricity connection sought to be granted.
3. Learned counsel for the petitioner submits that since the MCD has raised the objection with respect to grant of connection to the petitioner, therefore, the directions contained in direction no.(b) of paragraph no.14 for the aforesaid order are illegal and improper.
4. I have considered the aforesaid order passed by the concerned authority. The relevant discussion is made in Paragraph no.13 of the impugned order, wherein, it has been held as under:-



" 13. After detailed study of the appeal, written submission and after hearing the contending party, the following issues emerge:

i) It is apparent from the record that during 2022 and 2023, the connections applied for by Smt. Kamlesh were rejected on the ground that 'MCD' had booked the premises on account of unauthorized construction. However, the Discom has not produced any record to substantiate booking of any portion of the property 389/263, New Ashok Nagar in the name of Smt. Kamlesh. There is no notice on record since the purchase of 100 sq. yards of the plot in 1988, in respect of unauthorized construction at any stage from 1988 till 2022.

ii) In the case of Shri Satendra Kumar, MCD had issued Show Cause Notice on 07.11.2019, included the particulars of property in the letter dated 23.01.2020 in the name of Mahak. Even the Discom in their letter dated 23.12.2022 addressed to Shri Satender Kumar, mentioned about booking of the premises by EDMC (now MCD) for unauthorized construction and calling upon him to submit BCC. There was no action for disconnection from 2022 till January, 2024, in violation of Parivartan Case guidelines by Delhi High Court.

iii) 12 connections were released in favour of Satender Kumar during 2020 and 2021 ostensibly on the strength of an undertaking stating that the building is constructed as per building bye laws. There is no provision in DERC (Supply Code and Performance Standards) Regulations, 2017, for such an undertaking forming part of release of connection. This necessitates an in depth probe by the CEO to ascertain the back ground for release of connections, even though Show Cause Notice of 07.11.2019 for demolition and letter dated 23.01.2020 were on record, and to evaluate negligence / connivance of the officers / staff in release of the applied connections. Whether at any stage, Discern took up the matter with MCD to ascertain booking in the name of Smt. Kamlesh, is not borne from record.

iv) The CGRF has not examined the above aspects, while dismissing the complaint.

v) Going by the reply dated 27.03.2024 of the Discom, it is clear that the three connections in the name of Smt. Kamlesh were released during 1995, April, 2015 and July, 2020 since there was no booking.



vi) The status report dated 24.11.2023 submitted by the Asst. Engineer (Building-II) Shahdara (South) Zone in Civil Suit No.28/2023 filed by Smt. Kamlesh against BSES YPL before Karkardooma Courts, categorically states that the booking for unauthorized construction was in the name of Mahak Satendra Kumar, for which a show cause notice and demolition notice were issued. At no stage, therefore, any booking for unauthorized construction in the name of Smt. Kamlesh was under consideration.

vii) Regarding missing meter, Discom replied on 13.05.2024 to this office stated that, "As per the consumer, the meter no.35125424 (DX-no floor) is removed by the BSES but it was found at the opposite side of the applied premises having address B-333 New Ashok Nagar." Such shifting was contrary to Law.

5. A perusal of the impugned order would show that respondent no.1 purchased a plot measuring 100 sq. yards out of Khasra no.389/263 on 03.05.1988. She applied for a new domestic connection on 16.10.2023, however, the said request appears to have been rejected on MCD's objection on account of alleged unauthorised construction.

6. The Ombudsman has passed the impugned order bearing in mind the fact that the petitioner had failed to allude to any record which would suggest that the portion of the property in the name of respondent no.1 was booked by the MCD on account of unauthorised construction. It was further noted therein that despite there being booking in the name of Satyendra Kumar, whose property fell in the same premises, 12 new connections were released in favour of Satyendra Kumar on the strength of an undertaking that the building is constructed as per bye laws. The Ombudsman also records that no action for disconnection was taken as late as January, 2024 and the petitioner had not sought any clarification from the MCD to ascertain



the status and exact nature of booking *qua* respondent no.1.

7. It is thus seen that the concerned authority while taking note of the pending civil suit and other circumstances, including the objections raised by the MCD which was brought on record by the petitioner, has taken the impugned view. The view taken by the Electricity Ombudsman apparently hinges on the principle of non-discrimination in respect of respondent no.1, as no such action appears to have been taken against the similarly situated properties in the same premises.

8. However, the Court may not be understood to have applied any principal of negative equality. On examination of the facts, as discussed by the Ombudsman, there is nothing on record to establish that any action *qua* the petitioner is taken by the MCD. Such a view is apparently expressed in the impugned order in the following words:-

“However, the Discom has not produced any record to substantiate booking of any portion of the property 389/263, New Ashok Nagar in the name of Smt. Kamlesh”

9. Insofar as the decision rendered by the Division Bench of this Court in W.P. (C) 11236/2017 titled as **Parivartan Foundation v. SDMC & Ors.**, which has been relied upon by the petitioner, is concerned, the Court in the said case directed BSES Rajdhani Private Limited and Delhi Jal Board to ensure that no electricity was supplied to the buildings constructed in violation of law. The said decision was passed in the context of rampant illegal construction wherein status report was submitted by the South Delhi Municipal Corporation. However, the same would not aid the case of the petitioner as in the instant petition, the adjudication with respect to MCD’s objection of booking of respondent no.1’s property has already been made. In



absence of there being specific material *qua* the respondent no.1's premises, no unilateral decision can be taken to disentitle him from electricity connection. In the considered opinion of this Court, the said findings of the Ombudsman do not suffer from any perversity.

10. Therefore, under the peculiar facts and circumstances, the order passed by the Ombudsman cannot be said to be illegal and improper and therefore, the same does not require to be interfered with in exercise of powers under Article 226/227 of the Constitution of India.

11. Accordingly, the instant petition along with pending application stands dismissed.

PURUSHAINDRA KUMAR KAURAV, J

JULY 11, 2024/MJ