



C A No. Applied for
Complaint No. 44/2020

In the matter of:

VishalComplainant

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. Mr. N.K. Ray, Counsel for the complainant
2. Mr. Imran Siddiqi & Mr. B.B. Sharma, on behalf of the respondent

ORDER

Date of Hearing: 05th October, 2020

Date of Order: 07th October, 2020

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

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

It is also his submission that he applied for new connection vide order no. 8004276498 on 23.12.2019 at D-77/A, SF, Khasra No. 426, Gali No. 2, Bhajan Pura, Delhi-110053. The said building is three years old and constructed upto Ground+4th floor.

Harshali Kaur

Imran Siddiqi 1 of 6

Complaint No. 44/2020

He further submitted that all the flats already had connection only his flat is without electricity connection. He also stated that the respondent rejected his application for new connection on the pretext of building height more than 15 metres from each side, but the building construction started 1.5 feet height above the road level. Therefore, he requested the Forum to direct the respondent company for immediate release of the new connection.

Notice was issued to both the parties to attend the Forum on 07.09.2020.

Matter was heard on 07.09.2020, when respondent filed their reply. Both the parties were directed to conduct a joint inspection and submit its report to the forum before next date of hearing.

The respondent company submitted their reply that new connection of electricity can be provided as per DERC Supply code and performance standard Regulation 2017. The new connections was applied by the complainant vide request no. 8004276498 on 23.12.19 The site of the complainant was visited, the application for grant of new connection was rejected for technical feasibility reason as the height of the building is found more than 15 metres (15.95 metre).

It was further their submission that as per DERC guidelines, the complainant has to submit fire clearance certificate for release of new connection.

Joint inspection of the premises in question was done on 09.09.2020 in the presence of Smt. Rani, mother of Mr. Vishal and it was found that the height of the building is 55 feet i.e. 16.76 metre.

During the course of hearing on 18.09.2020, it was also came to the knowledge of the Forum that respondent has released two connections in the same premises on 15.05.2018 and 22.05.2018.

Harshali

Forum 2 of 6

Vishal

Complaint No. 44/2020

The matter was finally heard on 05.10.2020, when the counsel of the complainant raised objection that the respondent has released two connections in 2018 i.e. on 15.05.2018 and 22.05.2018. He further argued that if these connections are disconnected, he will withdraw his complaint. The complainant's counsel also argued that Delhi Jal Board is giving connections in the building of more than 15 metre height. Arguments of both the parties were heard and matter was reserved for orders.

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

We have gone through the submissions made before the Forum. From the narration of facts and material placed before us we are of the

Delhi Fire Prevention and Fire Safety Act 1986-Section 3,4,5,6,7,9,10-high rise building-fire safety-safeguards for protection of life and property of residents-failure of Delhi fire Safety Service to take requisite steps and performing statutory functions and duties as required by the Bye-laws-necessary directions, for taking action promptly, diligently and efficiency to see that fire safety measures provided in a building are in accordance with the building bye-laws, Delhi Fire Prevention and Fire Safety Rule 1986, Rule 5, building Bye-laws 2, 6, 7 and Constitution of India 1950, Article 2-to-6.

The minimum standards for fire prevention and fire safety measures specified for buildings or premises shall be as are provided in the building Bye-laws in 1983 or as may be amended from time to time thereafter, relating to the following matters:-

1. Means and access
2. Underground/overhead water static tanks

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3 of 6

Complaint No. 44/2020

3. Automatic-sprinklers system
4. First aid Hose Reels
5. Fire extinguishers of ISI certification mark.
6. Compartmentation
7. Automatic fire detection and alarm system/Manually operate electrical fire alarm system.
8. Public address system
9. Illuminated exit way marking signs
10. Alternate source of electric supply
11. Fire lift with fireman switch
12. Wet riser down corner system

Also, in NDMC vs. Statesman Ltd., MANU/SC/0057/1990: AIR990SC383, the Apex Court had an occasion to consider the fire safety standards to be provided in the buildings. In that case bye-laws No. 16.4.8.1, which was borrowed from Part-IV dealing with "Fire Precautions" in the National Building Code of India, 1983 came to be examined by the Court. The Court pointed out that the National Building code of India, 1983, from which the substance of the bye laws are drawn, indicates that certain broad minimal assurances for fire safety and the better and more reliable measures ought not to be excluded.

The Apex Court in the case of M.C. Mehta Vs. Union of India SC/1123/1997 : (1997)3SCC715 pointed out the precautionary principle. With a view to protect the life of citizens, provisions of fire safety measures have been made compulsory and without the provisions no one can occupy the building where such safety is required to be provided. In the instant case it appears that despite the provision made, the authorities have allowed the builders/developers/organizers to permit the building to be occupied with essential services which ordinarily could not have been provided without occupancy certificate.

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Complaint No. 44/2020

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.

M S Azra Vs. State Govt. of NCT and ors. WP (C) 2453/2019 order dated 06.02.2020. The complainant filed a writ petition to get the electricity connection on the second floor, premises no. 3418, Gali Maliyaan, Bazar Daryaganj, Delhi. Connection was rejected by the respondent 2 & 3 because of the building height is more than 15 metres. Fire clearance certificate is required. Hon'ble High Court opined that "it is not possible for this court to direct respondent 2 & 3 to grant the electricity connection in the absence of Fire Clearance Certificate and no dues."

DERC notification dated 31.05.2019, which clearly states that , it is clarified that the distribution licensee for release of electricity connection shall not insist for fire clearance certificate for the residential buildings having height upto 15 metres without stilt parking and 17.5 meters with stilt parking. The measurement of the height of the building shall be made in accordance with clause 1.4.16 and 7.19 Unified Building bye-laws for Delhi 2016.

The forum is of the opinion, that the high rise buildings in Delhi either old or new, all the concerned authorities related to essential services shall take necessary action before granting their services to protect the human life and safety.

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5 of 6
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Complaint No. 44/2020

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 DDA Bye-laws, Master Plan Delhi 2021, Delhi Fire Prevention and Fire Safety Rules and DERC Notification 2019.

The case is disposed off as above.


9.10.20.
(HARSHALI KAUR)
MEMBER (CRM)


(VINAY SINGH)
MEMBER (LAW)


(ARUN P SINGH)
CHAIRMAN