

The President,
Thane-Belapur Industries Association,
P-14, MIDC, Rabale,
Post Ghansoli,
Navi Mumbai 400 701

Subject: Appeal/ representation against decision of Forums and/or Ombudsman.

Ref : MERC (Consumer Grievance Redressal Forum & Ombudsman Regulations), 2003.

Sir,

A question has arisen regarding the entitlement of (a) consumers to appeal/ represent to the Commission against the decision of the Ombudsman and (b) the licensees to appeal/ represent to the Ombudsman or Commission against the decision of a Forum. I am directed to clarify that there is no provision in the Electricity Act, 2003 or the Regulations for the Commission to entertain appeals by consumers against the decision of the Ombudsman, or for the licensees to appeal/ represent to the Ombudsman or the Commission against the decisions of the Forums. The aggrieved consumer continues to have recourse to the writ jurisdiction of the High Court, or to the original jurisdiction of the Civil or Consumer Courts, as the case may be. Similarly, there is no provision in the Act or Regulations for the Licensees to appeal against the decisions of the Forums to either the Ombudsman or to the Commission. The Licensees also have recourse to the High Court and Civil Courts as above.

2. A note containing the legal position in this regard is enclosed. The concerned consumers/ Licensees may kindly be guided accordingly.

With regards,

Yours faithfully,

(A.M. Khan),
Secretary, MERC

Encl. Note as above.

Note on Right of Appeal of Licensees and consumers (Accompaniment to letter No. MERC/Review of CGRF&O/1750 August 29, 2005.

It is necessary to review the following provisions of the Electricity Act, 2003 in order to ascertain the correct position under law regarding the right of appeal.

- (i) for Distribution Licensee from order of Forum.
- (ii) for Distribution Licensee and Consumer from Order of Ombudsman.

Section 42

- (5) *Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*
- (6) *Any consumer, who is aggrieved by non-redressal of his grievance under sub-section (5), may make a representation for the Redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*
- (7) *The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.*
- (8) *The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.*

The aforesaid provisions clearly have the following elements:

- (i) the Distribution Licensee to establish a Forum for redressal of consumer grievances.
- (ii) consumers may approach such Forum for redressal of grievances.
- (iii) consumers may prefer appeal to Ombudsman for non-redressal of grievances by Forum.

It is a principle of statutory interpretation that where a statute allows appeal, the statute itself has specific provisions to that effect. The Electricity Act, 2003 does not stipulate the right of appeal:

- (iii) for Distribution Licensee from order of Forum.
- (iv) for Distribution Licensee and Consumer from Order of Ombudsman.

It may be noted that Section 42(8) of the Electricity Act, 2003 saves the right of the consumer under Constitutional law and provides as under:

"The provisions of sub-section (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

This implies that the consumer is free to invoke statutory provisions under any other law for the time being in force. Also, section 173 of the Electricity Act, 2003 provides that the Consumer Protection Act, 1986 has an overriding effect insofar as the provisions of Electricity Act, 2003 or rule or regulation made thereunder or any instrument having effect by virtue of the Electricity Act, 2003, rule or regulation, is inconsistent with any other provisions of the Consumer Protection Act, 1986. Further, section 175 of the Electricity Act, 2003 stipulates that the said enactment is in addition to other laws in force and not in derogation thereof.

Therefore, in view of the above, on first principles it appears that the consumer has the right to avail of remedies under other laws or any other right which he/ she is aggrieved by an order of the Ombudsman. This includes the right to initiate suit or proceedings in civil court (original jurisdiction), consumer disputes redressal forum/ agencies under Consumer Protection Act, 1986 (having appropriate jurisdiction) or seek recourse to the writ jurisdiction of High Court, depending upon the facts and circumstances of the case. Likewise, it appears that the Distribution Licensee upon being aggrieved by an order of the Forum or Ombudsman may initiate suit or proceedings in civil court (original jurisdiction) or seek recourse to the writ jurisdiction of High Court.