



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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**No. K/N/0120/970 to K/N/0127/977,K/N/0129/987
& K/N/ 0130/988 of 2014-15**

COMMON ORDER IN THE MATTER OF GRIEVANCE NOS. K/N/0120/970 OF 2014-15 IN RESPECT OF MAHENDRA LALAN SINGH, ROOM NO.402, K/N/0121/971 OF 2014-15, LAXMIKANT S. PANDEY, ROOM NO.305, K/N/0122/972 OF 2014-15, DEVENDRA SUKHLAL SHAH, ROOM NO. 202, K/N/0123/973 OF 2014-15, PREMCHAND K. MISHRA, ROOM NO.204, K/N/0124/974, HEMANTA KUMAR JENA , ROOM NO.201, K/N/0125/975, OMSHANKAR RAMJIT TIWARI, ROOM NO.103, K/N/0126/976, KALYANI BHOLA JHA, ROOM NO.102, K/N/0127/977, GAGAN KANAYALAL CHOURASIYA, ROOM NO.001, ,K/N/0129/987, SUSHMITA SUDHIR PATRA, ROOM NO.301, AND K/N/0130/988, MR. NIRMAY KANGLI GIRI ROOM NO.404, ALL IN JIVDANI NIWAS, BD NAGAR, OSTWAL NAGAR NALASOPARA (E) DIST. THANE-401 209, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING GIVING NEW CONNECTION REFUND OF AMOUNT DEPOSITED TOWARDS PD ARREARS WITH INTEREST SOP AND COMPENSATION.

Date of Grievance : 25/7/2014

Date of Order : 25/3/2015

Total days : 243

- | Referred as Consumer | Referred as Licencee |
|---|--|
| 1] Grievance No. K/N/0120/970/2014-15
Mahendra Lalan Singh,
Room No. 402 | Maharashtra State Electricity Distribution
Company Limited, |
| 2] Grievance No.K/N/0121/971/2014-15
Laxmikant S. Pandey,
Room No.305 | Maharashtra State Electric Distribution
Company Limited, |

**K/N/0120/970 to K/N/0127/977,K/N/0129/987
& K/N/ 0130/988 of 2014-15**

- 3] **Grievance No. K/N/0122/972/2014-15**
Devendra Sukhlal Shah
Room No. 207
Maharashtra State Electricity Distribution
Company Limited,
- 4] **Grievance No. K/N/0123/973/2014-15**
Premchand K. Mishra
Room No. 204
Maharashtra State Electricity Distribution
Company Limited,
- 5] **Grievance No. K/N/0124/974/2014-15**
Hemanta Kumar Jena
Room No. 209
Maharashtra State Electricity Distribution
Company Limited,
- 6] **Grievance No. K/N/0125/975/2014-15**
Omshankar Ramjit Tiwari
Room No. 103.
Maharashtra State Electricity Distribution
Company Limited,
- 7] **Grievance No. K/N/0126/976/2014-15**
Kalyani Bhola Jha
Room No. 102
Maharashtra State Electricity Distribution
Company Limited,
- 8] **Grievance No. K/N/0127/977/2014-15**
Gagan Kanyalal Chourasiya
Room No. 101,
(Above all in Jivdani Niwas, BD Nagar,
Ostwal Nagar, Nalasopara (E),
Dist. Thane-401 209.
Maharashtra State Electricity Distribution
Company Limited,
(In all above matter represented through
its Dy. Executive Engineer, MSEDCL,
Vasai Circle Sub/Divn,
- Date of Grievance : 11/8/2014**
Date of Order : 25/3/2015
Total days : 236
- 9] **Grievance No. K/N/129/987/2014-15**
Sushmita Sudhir Patra
Room No. 301
Maharashtra State Electricity Distribution
Company Limited,
- 10] **Grievance No. K/N/0130/988/2014-15**
Nimay Kangli Giri,
Room No. 001
Maharashtra State Electricity Distribution
Company Limited,

(Both in Jivdani Niwas, BD Nagar,
Ostwal Nagar, Nalasopara (E),
Dist. Thane-401 209.

(in above matter represented through
its Dy. Executive Engineer, MSEDCL,
Vasai Circle Sub/Divn

Appearance : For Licensee: Shri B.B.Halnoor- Exe.Engineer, Virar
Shri K.K.Mehta-Addl. Exe. Engg. Nalasopara
Shri Suhas Lakhan-Asst. Engg. Quality Control.
Shri C.N.Joshi – Accounts Manager.

For consumers: Ramchandra D. Pandey .-

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as ‘MERC’. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. Hereinafter referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] The above stated consumers approached with identical grievance on similar grounds, residing in same building i.e. Jivdani, having different room

numbers. Their grievance pertains to supply not released by the Licencee inspite of complying all the formalities and issuing release order on 8/1/2014. Hence, compensation as per SOP sought by them. In addition, for inconvenience experienced compensation is claimed. Licencee is common in all these matters. Representation of these respective parties is by same representative and Officers. Hence these matters are taken for decision by the common order.

3] Aforesaid consumers acquired rooms in Jivdani building as stated above in the title. Said building was built up by M/s. Pragati Construction Builders & Developers a partnership firm of Shri Narendra S. Singh and Mr.Achhelal C.Chaturvedi (Hereinafter said builders referred as **Narendra Singh Builder** for the sake of brevity). Narendra Singh Builder had applied for supply in the said building for 48 connections in different rooms and shops (39 rooms and 9 shops). His application was not dealt positively, hence the aforesaid consumers and some others, individually approached Licencee for supply.

As per the chronology given by Licencee initial application of builder dated 12/7/2011 was not dealt. Again applications were resubmitted individually by consumers on 12/10/2012. Estimates were submitted on 25/10/2013. Firm quotations were issued and amount was paid towards it on 25/11/2013. Temporary discharge given on 18/12/2013. Release order was issued on 8/1/2014. It is contended that till 29/1/2014, all compliances were done, fifteen meters were released by the end of January 2014 i.e. on 30/1/2014. But prior to installation of meters and connecting supply, it was reported that at the said place, there was a previous temporary connection for

construction, bearing consumer number TC-92-001921367061 and further on 31/1/2014 it was permanently disconnected. On 30/1/2014 it's last reading was noted as 17668 units. PD report was prepared on that day and bill was prepared on 5/2/2014 towards it for Rs.1,76,520/- for the previous 22 months which is reflected in the chronology of details submitted by Licencee). Though this bill was to be paid by Narendra Singh Builder, he was not able to pay it. He approached IGRC by filing his grievance on 7/2/2014, bearing No.10/2014.which was pending. Till then, these consumers though had refused to bear the said charges of previous PD connection, shown readiness and willingness, through their representative Shri Pandey, who is the present CR in the matters, to pay it as per Regulation 10.5 under protest. This was communicated through Mr. Pandey vide his letters dated 5/2/2014, 10/2/2014,12/2/2014,1/3/2014, and 24/3/2014.

Consumers then approached IGRC on 25/3/2014 and IGRC passed order on 2/7/2014, directing the Licencee to act as per the legal opinion received from Legal Advisor Kalyan and ultimately liability for last six months was worked out to the tune of Rs.70570/-. Said amount was paid on 30/7/2014 by these consumers under protest. Consumers made clear, in the letter dated 10/2/2014 that amount so deposited by them, if recovered from the builder it be refunded in cash or by issuing pay order. Whereas in the letter dated 1/3/2014 they stated that if amount is recovered from builder then it be refunded in cash /DD/pay order or by adjustment in the bills. Actually before receiving aforesaid PD bill dated 23/7/2014 consumers approached this Forum on 24/7/2014, seeking the reliefs as stated above.

On receiving the grievances, copies of those grievances with accompaniments, sent to the Nodal Officer. In response to it, Officers of Licencee attended, filed reply on 11/8/2014, date-wise details on 10/9/2014, set of consumers' application with accompaniments on and 14/10/2014 and submitted the documents pertaining to building permission etc. as directed by this Forum on 14/10/2014. Thereafter order of IGRC passed in case No.10/2014 on 3/11/2014 pertaining to Narendra Singh Builder is placed on record and bill as per the order of IGRC prepared and submitted before the Forum on 5/2/2015. As per this bill towards PD connection of Narendra Singh Builder, liability of these consumers worked out to the extent of Rs.38700/- for six months as per Regulation 10.5. CR added rejoinder on 25/8/2014 and CR claimed that as per the IGRC order in case No.10/2014, taken out by builder, Licencee worked out the dues, to the tune of Rs.38,700/-, as against it already consumers had deposited an amount of Rs.70,570/- and additional amount so paid is of Rs.31,800/-, it's refund is sought.

4] After noting the aforesaid details these grievances are to be decided under three heads:

- I] Liability of these consumers towards PD arrears and refund if any;
- II] Entitlement of consumer for compensation towards not giving supply within three months of their application.
- III] Entitlement of consumers towards SOP by way of compensation for not releasing the supply after 29/1/2014.

These are to be decided one by one.

- I] **Liability of these consumers towards PD arrears and refund if any;**

5] As discussed in above Para No.3 position is now crystallized after the order of IGRC in case No.10/2014 which was taken out by Narendra Singh Builder. IGRC by passing said order on 3/11/2014, directed the Licencee to correctly charge said Narendra Singh Builder , applying proper rates. It is necessary to mention that Mr. Ramchandra Pandey –CR of present consumers was appearing before IGRC for Narendra Singh Builder and accordingly after the order of IGRC, Officers of Licencee worked out the liability to the tune of Rs.1,76,522/- for 22 months and of Rs.38700/- for six months, as against the previous quantum of Rs.70570/- worked out for six months as per Regulation 10.5. Now, in view of this development CR submitted that these consumers have paid amount of Rs.70,570/-, hence as liability is made limited to Rs.38700/-, these consumers are entitled to refund of amount which is recovered more i.e. Rs.70,570/-, Rs.38700/- = Rs.31,870/- This factual aspect is clear, hence payment of Rs.31,870/- found paid excess and its refund is necessary.

Question comes up whether amount of Rs.70,570/- is deposited only by these ten consumers or there were other consumers who contributed. It is all the while stated that 15 consumers had approached Licencee for supply. Accordingly, refund entitlement will be of Rs.31,870/-for the persons who paid it. **The claimants are the present ten consumers. CR who represented all persons before the Officers of Licencee and IGRC claimed that he had deposited amount of Rs.70,570/- collecting from these ten consumers and only these ten consumers are entitled to refund from Rs.31,870/-which is to be**

divided equally amongst these ten persons. Said amount is required to be refunded by Licencee as it is recovered in excess, with interest as per Bank Rate from the date of payment of Rs.70,570/- i.e. from 30/7/2014 till paid.

During the course of hearing CR Mr. Ramchandra Pandey submitted that said amount be refunded by cheque to the concerned, whereas other side claimed that if there is any such refund being directed, it be allowed by adjustment in the ensuing bills of consumers. It is a fact that during pendency of this grievance, supply is released on 9/8/2014, accordingly, consumer numbers are allotted to the present consumers. However, CR insisted that illegally payment is recovered and it cannot be adjusted as submitted by Officers, but it be refunded by cheque. An unsuccessful attempt is done to throttle, the claim of consumer contending that payment is received, receipt is issued in the name of Narendra Singh Builder, then how it can be refunded to these consumers. However, from the date wise description given by Licencee on 1/11/2014 at Sr. No. 23, it is clear that said payment done by individual applicants is clarified. It is quite natural, as per the procedure of Licencee arrears or recovery if any paid, receipt is issued in the name of the person against whom arrears are outstanding. Accordingly, there is no scope for these consumers to show that payment is made payment by them personally. On the other hand, the order of IGRC in 10/2014 pertaining to Narendra Singh Builder clearly demonstrate that Narendra Singh Builder had not paid the amount. Accordingly we find these consumers are entitled to have refund. This is nothing but refund of excess recovered by the Licencee and as per letter

submitted to Licencee on 10/2/2014 by the representative of consumers, amount is to be refunded either in cash or by pay order or by cheque. Hence, we find refund of said amount is to be done by issuing cheque. This amount is to be refunded with interest as per Bank Rate from the date of deposit i.e. from 30/7/2014 till to the date of payment.

We heard CR and Officers of Licencee on 9/3/2015 pointing out that CR was representing group of 15 including the present consumers and shown readiness and willingness to pay as per Regulation 10.5 and amount of Rs.70,150/- paid. Consumers' representative submitted that in fact said amount is paid by present consumers i.e. 10 persons.

In view of the above as submitted by CR refund amount is to be equally refunded to these ten consumers.

II] Entitlement of consumer for compensation towards not giving supply within three months of their application.

In this regard, CR submitted that consumers' applied for supply, their applications were not rejected, those were not dealt in time and as per section 43 (3) of Electricity Act it was incumbent on the Licencee to provide supply within three months from the date of application. It is further contended that though each and everything was clear after 30/1/2014, releasing of supply was stalled, directing payment of arrears of PD connection which was also not correctly worked out and it was not the fault of consumer. CR quantified penalty to the tune of Rs.1,91,000/-, for individual consumer as knowingly Officers of Licencee failed to comply the things. Said period is stated by consumer starting from 29/1/2014 to

8/8/2014 for 191 days. Accordingly the figure of Rs.1,91,000/- is worked out.

6] As per Section 43(3) of Electricity Act, penalty up to Rs.1000/- may be imposed for each days default if supply is not given within the period of three months. This is a penal provision in the Act. It is not speaking about payment of penalty to other side i.e. to the consumer.

No doubt as per section 43(1) consumer Forum and Ombudsman are to function in the light of Regulation prepared by MERC U/s. 181. In this state, Hon'ble MERC framed Regulations towards it, effective from 20th April, 2006. As per definition Clause Section 2 (1) (c) grievance is defined and it pertains to different aspect, such as fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been under taken to be performed by Licencee in pursuance of contract agreement or under the Electricity Supply Code or in relation of SOP. It includes safety of distribution system and non compliance of order of Commission or action to be taken towards it. Section 142 of Electricity Act speaks about power of commission to impose penalty and additional penalty. At this stage, difference is to be made pertaining to penalty and compensation . Aspect of compensation is covered in SOP and as per the Regulation, CGRF and Ombudsman can deal with the Supply Code and SOP by giving compensation. However, question comes whether any penalty can be levied by Forum or Ombudsman. In the Electricity Act there is a provision in section 170 for recovering the penalty by way of arrears of Land Revenue. Under such circumstances question comes up whether U/s. 43 (3) penalty which may

extend up to 1000/- per day can be imposed by Forum. Reply is clear from bare reading of section 143, 144 of Electricity Act. It provides for mechanism for imposing penalty u/s. 43 (3) of Electricity Act. Further jurisdiction of this Forum and even Civil Court is barred on this aspect as per Section 145 of Electricity Act. Hence, this claim cannot be dealt by the Forum as sought by consumers.

III] Entitlement of consumers towards SOP by way of compensation for not releasing the supply after 29/1/2014;

As contended by consumers almost all requirements for taking supply from consumers' side were complied on 29/1/2014 and supply was to be released, as per the release order dated 8/1/2014. Towards its compliance meters were earmarked and taken out but actually those were not installed and supply was not connected. Officers of Licencee fairly admitted the above position, but assigned the reason that when they were to install the meters, their staff members, on 30/1/2014 verified and learnt the previously connection was therein and arrears were on it. It was shown as temporary disconnected in the record but was continuing and actually on 30/1/2014 it was inspected, reading was noted, it was made PD and report of PD was prepared. On the basis of reading available on that day, arrears are worked out. As noted above, ultimately arrears are crystallized. Accordingly, though each and everything was complied by consumers on 29/1/2014 non compliance of connecting supply, in time, was not at the fault of these consumers and hence, till 8/8/2014 there was no any connection. Ultimately connection was given on 9/8/2014.

It is seen that on 30/1/2014 Licencee perceived and noted PD connection existing on that day and arrears were there. These arrears were to be paid but arrears were not worked out consumers' grievances were pending before IGRC which were filed on 25/3/2014 and prior to it these consumers, through representative Pandey, written letter on 5/2/2014, communicating that it is all due to the fault of Officers of Licencee and connections of these consumers cannot be stalled and they cannot be held responsible for said dues if any. Further, they relied on the affidavit given by Narendra Singh Builder dated 4/2/2014 showing readiness and willingness to pay the legitimate dues towards said PD connection. Accordingly, these consumers were not ready to pay the PD arrears, but subsequently admitted to pay it under protest and ultimately paid it on 30/7/2014 as per the bill issued on 23/7/2014. It is necessary to mention that they had opted to pay the said amount under protest on 10/2/2014 and hence we find this readiness and willingness to pay on 10/2/2014 is relevant date for considering the bonafides of consumers. In view of this failure, to give supply from 10/2/2014 to 8/8/2014, consumer claims that it attracts SOP and the consumers are entitled for compensation. Consumers had worked out said period as 27.2 weeks i.e. 28 weeks and sought compensation of Rs.2800/- for every consumer.

7] This particular compensation is challenged, contending that the process followed by builder, thereafter by individual consumers is not legal and proper. It is tried to be contended that Mr. Narendra Singh Builder who had put up the building, had taken temporary connection for construction. Not paid the dues ultimately it resulted in PD. Even for

arrears he approached IGRC and as per the order of IGRC in 10/2014 arrears are crystallized. Said Narendra Singh Builder had even applied for supply in all the rooms built up by him and thereafter consumers independently through the Chairman of their society approached Licencee. Accordingly, one thing is clear, builder approached Licencee for supply, individual consumers then applied for supply and it was kept abeyance. **We tried to find out, what is procedure available for giving supply to the builder for each and every room as he seeks, with the intent that he is to sell all of those rooms.** No any such specific provision shown by Licencee.

8] During the hearing on 10/9/2014 we tried to have on record the necessary details pertaining to the legality of building built up, hence both sides were called upon to place on record whether the building built up by builder was legal one. They were asked to submit sanctioned plan by Corporation, completion certificate obtained.

Towards it, Officers of Licencee placed on record the letter of corporation dated 10/10/2014, making it clear that no any such permission is given for said building. From consumers side, no any positive things placed on record about such permission taken, permission granted, occupation certificate granted or any regularization sought for said construction. Seeking electric supply commenced at the instance of builder, who built up the building without any permission. His application for supply remained unattended, giving scope on to individual consumers, who claimed to be the purchasers of room therein from builder, to seek individual connections. Those are dealt and ultimately Licencee decided to give connection by issuing release order on 8/1/2014. All these things if

considered, in a peculiar background it depicts clearly, that illegal construction commenced, brought up, completed and attempt was done to have supply ignoring the municipal provisions of planning . As no supply was given to the builder, it prompted individual consumer to approach Licencee and who belatedly succeeded to have a sanction.

Position is clear, it is a builder who built up illegal structure intends to have facility to it, that is of electric supply from Licencee. Electric supply is required to be given as per the provisions of Law and said law helps the legal construction as total residents in the city are to be taken care as per planning Law and hence prior sanction is necessary. Similarly for giving any such supply it is necessary to ensure that for construction permission is obtained on approval of the plan, thereafter occupation certificate is secured confirming the construction as per plan. **It is a fact that already Municipal Commissioner of Vasai-Virar Municipal Corporation on 10/4/2013 informed these Officers of Licencee not to give any connection to the buildings having no any permission. Said letter was referred before this Forum in other group of matters i.e. 869 to 872 of 2013-14.** Hence, these are not the mere formalities, but necessary for the development of concerned city and for the total residents in the city. Officers of Licencee too ignored all these things and proceeded to give sanction to individual consumers, they had wisely avoided the prayer of builder. This particular mode speaks itself of illegality of builder, consumer who claimed rooms without verifying the legality of building, even their documents of so called transfer are not registered, contains some blank portion and those are merely notarized.

Accordingly, illegality commenced, allowed to be continued and ultimately sanction for supply given by Licencee without considering the requirements. Builder failed to have supply and then these consumers under the garb of acquiring the rooms sought supply.

All these participants have their own modus of thinking, acting and behaving. After all these consumers succeeded in having the supply and now claims the premium on it by way of compensation resorting to SOP. SOP is sought per head at the rate of Rs.2800/-. Even seeking penalty to the Licencee for not giving supply within the prescribed period of three months which is quantified for per consumer at the rate of Rs.1,90,000/- (Already the aspect of penalty u/s. 43 (3) of Electricity Act is dealt above). Accordingly, this huge figure of payment is sought by consumers following the aforesaid route and now they claim it, as of right, from this Forum which is acting based as per the Regulations, SOP and Supply Code. **Mute question comes up whether this Forum be a participant in all such illegalities, by giving premium, allowing compensation and penalty.**

9] While considering the above aspect already we are guided by the orders of Hon'ble Ombudsman in Representations Nos.7 to10/2014 dated 26/8/2014. Those Representations were filed against the order passed by this Forum in Grievances No. 869,870,871 and 872 dated 6/12/2013. These were taken out by builder who has built up the building without any permission of Corporation and sought electric supply without any occupation certificate obtained from the Municipal Corporation. In the said matter, there was letter of Municipal Commissioner dated 10/4/2013 to the

officers of Licencee, not to give any sanction and to supply the electricity, for the illegal buildings built up. In the said matters this Forum had taken a view no any connection can be given for such illegal buildings relying on the Judgments of Hon'ble Supreme Court and relevant portion of the order in Grievance No. 869 of 2013-14 of this Forum last, part of para 13 and para 14 are reproduced by Hon'ble Ombudsman in Representation No.10/2014 in Para No.2. It reads as under:-

*“In the light of above observation of Hon'ble Supreme Court, we cannot add to the seriousness of the problem by allowing the Consumer's contention that though it is his illegal construction, he is entitled to connection. If any such Order is passed as sought by Consumer, it will be totally against the spirit of direction given by Hon'ble Supreme Court in the above referred judgment of Campa Cola. In respect of such illegal constructions, the planning authority, i.e. Municipal Corporation and other Regulatory bodies are to act appropriately and **it should not be an act of directly or indirectly abetting such violations**. We find when there is no plan submitted, building is built up and the utilities such as Electricity is sought to the building, by the developer and if it is allowed, definitely it will be an act of encouraging or allowing such builder developer to continue the activity carrying the impression that even building is illegal without plan, without permission, still almost all facilities including Electricity will be available without any restraint. **We are required to avoid such label of aiding and abetting the act of the builder developer**. We are clear from the judgment of Hon'ble Supreme Court that by such illegal act, total planning of the civic authority affected, fundamental rights of others are affected, and ignoring it, misreading the provisions of the Electricity Act, Supply Code and MERC Regulations, no any connection can be given for such illegal constructions, that too, taking help of this Forum. We cannot be a party to such acts. Order of MERC referred above now required to be read in the light of the above Hon'ble Supreme Court judgment. Said order of MERC cannot be made applicable to the Builders-Developers who are seeking connections in bulk. What has happened in respect of others is an independent question to be dealt by the appropriate authority of the Licensee or the concerned. Though C.R. has sought supply conditionally, we find*

there is no question of imposing any condition as construction is totally illegal, there is no attempt to have it regularized, under such circumstances, there is no scope to accept his contentions.

No doubt, there is a flaw on the part of the Officers of Licensee, who not responded to the Consumer in a required spirit in time. But their failure in no way will justify the demand of the Consumer as his act itself is totally in contravention of law for developing and building the flats hence, the flaw of the Officers of Licensee will not make the Consumer any way a bonafide person or person entitled to have the supply legally. Hence the grievance of the Consumer is to be rejected. However, the allegation of illegal connection given made by the Consumer Representative be dealt by Chief Engineer of the Zone administratively.

After reproducing the aforesaid portion Hon'ble Ombudsman considered the seriousness of aspect, had specifically issued notice to the Higher Authorities of Licencee and dealt it said observation of Hon'ble Ombudsman reads as under from Para 5 and in Para No.6.

----There were other three Representations viz. Representations No.7,8 and 9 of 2014 involving identical issue. In those Representations, similar such common order was passed by the Forum on 9th December 2013. Since the larger issue of public interest regarding giving supply connections to the illegal premises or unauthorised construction were involved, notices were issued to Superintending Engineer, Vasai Circle and Chief Engineer (Commercial), MSEDCL, HQ, Prakashgad and hearing of all these Representations was scheduled on 12th August 2014. --

6---- During the hearing on 12th August 2014, Mr. J.L.Sonawane, Superintending Engineer, Vasai, Shri A.U. Shinde Executive Engineer Commercial, H.O. Mumbai and Shri S.B.Lakhan- Asst. Engineer were present on behalf of respondent. It was pointed out on behalf of respondent that head Office had issued guidelines dated 4th October 2005, in which it is stated that submission of NOC from local body, such as Gramch Panchayat/Municipal Corporation/Municipal Council/CIDCO/ MIDC is mandatory for releasing electric supply for residential / commercial and

individual purpose. It was therefore, submitted that appellant was required to submit relevant documents from Vasai-Virar Municipal Corporation.

Further Hon'ble Ombudsman noted that Appellants therein intended to withdraw the petitions, filed applications to that effect, stating that Respondent therein i.e. Licencee is ready to release meters within one week and said applications were signed by Officers of Licencee. On that ground, said Representation No.10/2014 was disposed off and while disposing off, reference is made to the order passed in Representation No. 7,8 and 9 of 2014 mentioning that copies of the orders of those Representations directed to be sent to the Managing Director of Licencee. At this juncture we are required to refer to the portion from the common order of Hon'ble Ombudsman in Representation Nos. 7,8 and 9 of 2014, dated 26th August 2014. Para No.11 to 13 are of utmost importance. Those are reproduced as under for ready reference.

“11 It is, however, noteworthy to mention that the Appellants (consumers) in these case are seeking large number of connections in their own name for residential purpose in buildings constructed by Appellants. It is admitted fact that supply connections are sought for illegal buildings. The Appellants had not produced NOC from the Vasai-Virar Municipal Corporation or approved building plans. The Appellants had relied upon Form A-1, for seeking supply. It is contentions of Appellants that there is no bar for seeking as many supply connections as they want as per Form A-1 of the Respondent and there is no specific bar under the Supply Code Regulations for giving supply connections to the buildings as sought for.

12 It is strange to note that inspite of rejection of the grievances by the Forum and making serious observations, relying on the Judgments of Supreme

Court, the Respondent Authorities are willing to give supply connections and have, in fact, given connections to the premises of the Appellants, which are admittedly illegal and unauthorised constructions. As stated above, the Respondent had filed their reply, stating that work of giving supply connections is in process. Respondent had also consented for withdrawal of applications of the Appellants, in which it is stated that Respondent is ready to release the meter within one week for giving power supply to the buildings in question. The Appellants have furnished data that the Respondent-MSEDCL had given the supply to more than 42000 premises, which are constructed illegally or in violation of the plans.

*13 Considering the menace of the unauthorised and illegal constructions and serious observations made by the Supreme Court in various Judgments for illegal construction, it would be necessary on the part of MSEDCL to ensure that appropriate instructions are issued to the concerned authorities to prevent abetting of the act of illegal construction. In **Harit Vasai Suraksha Samiti and others v/s. State of Maharashtra and others reported in (2014) , 2J Bom. C.R. 93**, The High Court of Bombay has observed that CIDCO had taken up the matter of disconnection of energy and water supply with MSEDCL and NMMC to such unauthorised structures. CIDCO had also insisted upon mandatory requirement of NOC from CIDCO for any new connection and structure erected upon CIDCO land . The observation of the Hon'ble High Court which in the form of direction will also be applicable to VVMC and MSEDCL. A copy of this order is, therefore, forwarded to the Managing Director of MSEDCL,HQ, Prakashgad, Mumbai for appropriate action if any.*

On close readings of these aforesaid observations of Hon'ble Ombudsman, no any further discussion is required about giving premium to

these consumers by way of allowing SOP when connections given are for the illegal construction. We, keeping in spirit with the observations of Hon'ble Ombudsman and keeping in mind the mandate of Hon'ble Supreme Court which even Hon'ble Ombudsman relied on, we are not able to concede to the prayers of consumer for any compensation as per the SOP otherwise we also may fall in line with above parties in adding and abetting the illegality.

10] In view of the above discussion, grievances of these consumers are to be partly allowed only to the extent of refund of excess amount deposited. Relief sought towards penalty U/s.43(3) of Electricity Act and compensation as per SOP needs to be rejected.

11] This matter could not be decided in time as both sides were to add their contentions and on 5/2/2015 as per the order of IGRC in Case No. 10/2014 PD arrears are quantified and placed before the Forum and till 23/3/2015 CR was to provide the information as to whether the payment done was by only these ten consumers or else.

Hence the order

ORDER

Grievances No.**K/N/0120/970 to K/N/0127/977,K/N/0129/987 & K/N/ 0130/988 of 2014-15** are hereby partly allowed to the extent of refund of excess amount deposited by these consumers as per Clause 10.5 of MERC Supply Code. Prayer for penalty U/s. 43(3) of Electricity Act not allowed for want of jurisdiction and prayer for compensation as per SOP rejected.

For every consumers in these grievance applications, Licencee to refund 1/10th sum from quantum of Rs.31,800/- with interest as per Bank Rate, for said quantum, from 30/7/2014 till to the date of payment, by cheque in the name of respective consumer within 45 days from the date of this order.

Licencee in case recovers the amount from builder about his PD connection, then out of it to the extent of Rs.38,350/- be refunded to these consumers equally i.e. 1/10th each.

Licencee to submit compliance of the above order within 60 days from the date of this order.

Copies of this order be kept in each and every grievance of this group.

Dated: 25/3/2015

I agree

I agree

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(Chandrashekhar U.Patil)
Member Secretary
CGRF, Kalyan

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.
“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.
- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity
- c) Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

Reply pertaining to above queries

Query No.1:-

Both sides were made aware of the first query and they clarified that towards 10.5 Regulation. Previously liability for six months worked out to Rs.70570/- and after the order of IGRC in ----2014. Refund of liability is worked out which is to the tune of Rs.38,700/-. Accordingly, consumers had paid Rs.70570/- and by deducting revised liability of Rs.38700/- balance amount to be refunded is of Rs.31870/-. This figure is confirmed by CR.

Second query was pertaining to how many persons paid this amount. CR has represented before Licencee his letter, there is reference of refunding the said amount to the applicants. In other words there is 15 are the applicants, seeking supply, hence refund of Rs.31870/- is to be allowed for those persons who paid it. However, CR submitted that only these applicants borne expense. Liberty is given to the CR to place on record the no objection of remaining persons so that it can be equally distributed to the present applicants otherwise refund will be equally to the 15 persons. In spite of mode of refund, it is clear that whenever amount is deposited it is under protest in seeking its refund by issuing cheque and DD. Hence though Officers of Licencee contended that refund is adjusted in the bills to claim of these applicants is to be considered.

Query No.III, when we heard to both sides and CR heard on it, he submitted that as there is provision of MERC he demanded it and he claimed it. However, he is made aware of Sections 142 to 145. All these

sections are clearly speaking about the jurisdiction of MERC to take up the matter allotted to one of its member who is **itself** as to whether the directions laid down by Government. Further jurisdiction of this Forum even of Civil Court is barred . Hence, this Forum cannot entertain and decide the claim of penalty u/s. 43(3) of Electricity Act.

Note:

- e) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.

- f) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity

- g) Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

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- h) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

*Clarification in Para No.8**

**K/N/0120/970 to K/N/0127/977,K/N/0129/987
& K/N/ 0130/988 of 2014-15**