

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.16/2015

Date of Grievance : 29.05.2015

Date of Order : 02.07.2015

In the matter of lease & rent of the premises provided to the licensee for installation of Distribution Transformer.

The Chairman,
Savitri Sahakari Griha Rachna Sanstha, (Herein after referred to as Consumer)
83/84, Kasbapeth,
Pune-411011.

Complainant

Versus

Executive Engineer,
M.S.E.D.C.L.,
Rastapeth Division,
Pune.

Respondent

(Herein after referred to as Licensee)

Quorum

**Chair person
Member Secretary**

**Mr. S.N.Shelke
Mr. D.H.Agrawal**

Appearance

For Consumer

**Mr. Girish Anand Borse
Mr.L.P.Karde,
Representative**

For Respondent

**Mr.Ganesh Ekade, Ex.Engineer
Rastapeth Division.
Mr.M.B.Paithankar, Addl. Ex.
Engr., Kasbapeth S/dn.
Mr.S.G.Thakar, Asstt.Engineer,
Kasbapeth.**

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.

- 2) Being aggrieved and dissatisfied by the order dated 19.05.2015 passed by IGRC Rastapeth Urban Circle, Pune, thereby rejecting the grievance of the consumer, the consumer above named prefers this grievance application on the following amongst other grounds.
- 3) The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Rastapeth Division, Pune vide letter no. EE/CGRF/PZ/Notice/16 of 2015/ 191 dtd.29.05.2015. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 22.06.2015.
- 4) We heard both sides at length, gone through the contentions of the consumer and reply of the respondent and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) Energy connection bearing consumer no.170017437634 is standing in the name of Savitiri Sahakari Griha Rachana Sanstha, Pune-11.
 - ii) In the said premises of the society there are various residential & commercial connections.
 - iii) The concerned builder/society provided the space to the Licensee for installation of distribution transformer somewhere in the year 1997-98 for the newly constructed houses of the members of the said society.
 - iv) There is no any written agreement or lease between the Licensee & the society in respect of payment of rent to the owner or said society.
 - v) The society (present consumer) for the first time insisted the Licensee for execution of lease agreement & payment of rent of the space provided the Licensee by filing grievance before IGRC in the month of May-2015.
 - vi) The IGRC Rastapeth rejected the grievance on the ground that there was no any lease agreement in existence vide impugned order dated 19.5.2015.

5. The consumer representatives Mr.Borse & Mr.Karde submitted that the space provided for installation of DTC is owned by the Society. Therefore as per provisions of Regulation No. 5.5 of MERC (Electricity Supply code & other conditions of supply) Regulations, 2005, the lease agreement be executed between the Licensee & this consumer in respect of the space provided to the Licensee for installation of distribution transformer. They further submitted that the rent of the said space be provided to the consumer from the year 2005 i.e. from the date of notification of the said regulations.

6. On the other hand Mr.Ekade, the Executive Engineer, MSEDCL, Rastapeth Division, submitted that the said transformer was installed in the year 1997-98 for supply of electricity to the newly constructed houses of the members of the said society at Kasba Peth area of Pune city. The members of the said society had individually submitted their applications for demand of energy connections to their houses. Accordingly, the Licensee considering the huge power requirement and the voltage constraints installed 500 KVA distribution transformer with the consent of the society. There is no any agreement between the Licensee & the said consumer about lease or payment of rent of the said premises. The consumer has filed this grievance after laps of 18 years. As erection of the said DTC was prior to the passing of the Electricity Act, 2003, the present grievance is not maintainable & be rejected. He further submitted that IGRC Rastapeth has rejected the grievance vide impugned order dtd.19.5.2015. Since there is no any rent agreement/lease deed between us, no question of payment of rent to the consumer. He further submitted that Hon'ble Electricity Ombudsman (M) has passed the order dtd.5.7.2012 in representation no. 38/2012 stating that the such grievance is not related to supply of electricity or deficiency in service. Therefore Mr.Ganesh Ekade, lastly submitted that the said grievance be rejected.

7. Following points arise for our determination. We give our findings thereon for the reasons stated below.

Points

1. Whether the Forum has jurisdiction to entertain & try the said grievance?
2. What order?

Findings

No

As per final Order.

8.

REASONS

As to point no.1.

Admittedly the distribution transformer was installed by the Licensee in the premises of the builder/society (present consumer) in the year 1997-98. There is nothing on record as to whether any agreement or lease was executed by the parties for the space provided to Licensee for installation of distribution transformer. The consumer after laps of 18 years i.e. in the year 2015 has submitted its grievance before the IGRC for execution of the lease agreement of the said premises & the rent thereof. MERC for the first time made certain provisions in the year 2005 in respect of the space provided to the Licensee for installation of distribution transformer & the rent thereof. Therefore it is worthwhile to reproduce following provisions of MERC (Electricity Supply code & other conditions of supply) Regulations 2005.

5.5 Where, in the opinion of the Distribution Licensee, the provision of supply required installation of a distribution transformer within the applicant's premises, the applicant shall make available to the Distribution Licensee, by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer.

Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the Distribution Licensee and the applicant having regard to prevailing market rates.

Provided further that any existing agreement, as at the date of notification of these Regulations, for use of such land or room may, upon expiry be renewed on such terms and conditions as may be mutually agreed between the parties, to be consistent with this Regulation 5.5.

Provided also that where, at the date of notification of these Regulations the Distribution Licensee is using any such land or room without an agreement for such use, or under an agreement as the case may be for use of such land or room is deemed to have expiry at the end of two (2) years from the date of notification of these Regulations, subsequent to which a fresh agreement may be entered into on such terms and conditions as may be mutually agreed between the parties, to be consistent with this Regulation 5.5.

5.6 Notwithstanding anything contained in Regulation 5.5, where the provision of such land or room is required under the Development Control Rules of the local authority or by any appropriate authority of the State Government, the terms and conditions for use of such land or room by the Distribution Licensee shall be as determined under the said Rules or by the said authority.

9. Therefore it is clear from the above regulations that the applicant shall make available to the distribution licensee, by way of lease for the period for which supply is given to the premises, a suitable piece of land within such premises for the distribution transformer. The terms and conditions for lease of land or room shall be mutually agreed between the parties & where provision of such land or room is required under development control rules & the terms and conditions for use of such land or room by the distribution Licensee, shall be as determined under said rules or by the said authority. The consumer has provided the space for the distribution transformer in the premises of the consumer in the year 1997-98 and did not demand any rent of the said premises until the present grievance is filed in the year 2015.

10. The Hon'ble Electricity Ombudsman (M) vide order dated 5.7.2012 in the representation no.38/2012 has observed as under-

Appellant's grievance is clearly relating to rent for the land handed over to the Respondent for the substation and not relating to grievance in supply of electricity or deficiency in service. It is clearly beyond the purview of the Forum or this Electricity Ombudsman to look into the Development control Rules of the local authority, the Rent control Act,

1999, terms and conditions of mutual agreement between the Appellant and the Respondent, to be framed in accordance with the statutory Rules and decide the value of land, period of lease, market rent etc.

11. Paying of rent for the space provided to the Licensee for installation of DTC and lease thereof is not relating to supply of electricity or deficiency in service. Therefore said grievance is beyond the purview of the Forum as held by the Hon'ble Ombudsman (M) in the case cited supra. Hence forum has no jurisdiction to entertain try & decide the said grievance. We answer point no.1 in the negative. The grievance is thus liable to be rejected.
12. Lastly we pass following order.

ORDER

- 1) Grievance of the consumer stands rejected.
- 2) No order as to cost.

Delivered on: -01.07.2015

D.H.Agrawal
Member/Secretary
CGRF:PZ:PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE