

(A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum

“VidyutBhavan”, Gr. Floor,

L.B.S.Marg,Bhandup (W),

Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/

Date:- 24/07/2014

Cases Nos. 539

Hearing dates:- 28/04/2014,05/05/2014,20/06/2014,27/06/2014,30/06/2014,
23/07/2014.

In the matter of New Connection

M/s. Neelsidhi Developers - Complainant
The Emerald, 2nd floor, Plot No. 195 B, Besides,
Neelsidhi Towers, Sector -12, Vashi,
Navi Mumbai- 400705.

Versus

**M.S.E.D.C.L., through Executive Engineer, Kalamboli Sub-station under
Panvel Division - Respondent**

Before:

1. Shri S.K. Choudhari, Chairman, CGRF
2. Dr. Mrs. Sabnis, Member, CGRF
3. Shri . S.B.Bholashankar, Member Secretary, CGRF

Present

On behalf of Applicant

1. Shri . Sandeep Sampat – In – person

On behalf of Respondent

- 1) Shri. Shahaji B. Kachre, Executive Engineer, MSEDCL, Vashi Division
- 2) Shri. S.L. Inamdhar, Dy. Executive Engineer, MSEDCL, Vashi Circle.
- 3) Shri. Rajiv Ramtake , Dy. Executive Engineer, MSEDCL, Kalamboli sub
division

ORDER

Facts:-

- 1) Plot No. 04 at Sector 9E at Kalamboli, Navi Mumbai about 370.44 sq.mtrs was leased by CIDCO, some where, in the year 2009 to the complainant. This plot was given to complainant for the development of Residential, Residential – cum-Commercial development. This development is without any Sub-division. The project was to be completed in phase-I and phase-II.
- 2) Complainant had submitted an application to the Respondent on 17/12/2009 for supply of power for a load of 4803.5 KW in the said project showing space for two sub-stations. Respondent approved the proposed plan under letter dated 02/01/2010.
- 3) The plan was submitted to CIDCO. CIDCO under different Commencement Certificates approved the permission for development.
- 4) After completion of phase –I project, complainant submitted an application on dated 31/07/2012 to the Respondent for permanent power connection for 4727 KW out of which 2251 KW was required urgently for phase –I and remaining 2475.5 KW was required for phase -II after 18 months.
- 5) However, instead of giving supply of power, Respondent under it's letter dated 04/08/2012 required 1000 sq.mtrs. open space in the project land for Sub-stations for the supply of electricity to the complainant.

- 6) Complainant under it's letter dated 29/08/2012 informed to Respondent that the required land can not be given as the project was already developed as per the approval dated 02/01/2010.
- 7) To see whether really land in the plot of complainant was available or not, Respondent visited the site. They found that land was not available. Therefore, they dropped the demand and another proposal was proposed under DDF scheme with cost of Rs. 2,19,51,545/- for infrastructure along with supervision charges of Rs. 2,85,370/- to be borne by the complainant and in this quotation for installation of transformer of 10 MVA etc. was included. The base for this proposal is a Circular dated 20/05/2008 and order of Hon'ble Supreme Court in case No. 20340/2007. The Circular regarding Regulations 3.3.3 and 3.3.4 of MERC which are subject to final decision of Hon'ble Supreme Court.
- 8) As per this Circular when load is 3 MVA or more, a Sub-station 33/11 KV or 22/11 KV is required to be established in the complex and the expenses to be borne by Respondent, subject to giving the land on non-chargeable basis. According to complainant in this case the space for Sub-station is to be given by CIDCO.
- 9) It is further, the case of complainant that he has not asked for DDF. So it was objected by complainant and requested the cost to be reduced by items at Sr. No. 1 to 9 being on account of augmentation amounting Rs. 73,75,418/- as it should be borne by respondent.

- 10)** It is the further case of complainant that respondent in its letter dated 16/04/2013 informed to higher authority that the estimate is included in O& M scheme but, now the work is included in new INFRA – II scheme. He prepared another estimate for LTPS of Rs. 1,52,26,388/- it was stated that the augmentation work was included in INFRA-II scheme. The same was excluded from the estimate prepared.
- 11)** Mean while, complainant laid the HT cable for power supply. It generated an okay report dated 20/05/2013. However, Respondent under letter dated 13/07/2013 asked complainant again to bear the cost of augmentation considering the need of the power to the flat purchasers. Ultimately, complainant under its letter dated 26/07/2013 consented to bear the expenses to the tune of Rs. 2.19 cores with supervision charges and withdrew objection letter dated 21/11/2012
- 12)** Even after this consent by complainant to his surprise a new proposal dated 14/10/2013 was given to the complainant. As per this proposal the cost of Rs. 564.48 Lacs was to be born by complainant for augmentation of Kalamboli housing Sub-station including the supply system. It includes the cost of 2nd incoming feeder from Toloja to Kalamboli. According to complainant this proposal is illegal and against the provisions of Indian Electricity Act and Regulations of MERC.
- 13)** Mean while some of the flat purchasers submitted individual applications to the Respondent for supply of power. Those applications were not considered by Respondent on the

ground that the proposal dated 14/10/2013 is already sanctioned but complainant has not paid the amount.

- 14)** Complainant approached to IGRC who after hearing both the parties rejected the Grievance of complainant. Hence, the present complaint.
- 15)** The further say of the complainant is that some of the other projects were given supply to those who had submitted the applications after the application of complainant.
- 16)** Complainant prayed to direct respondent to provide 2251 KW of electricity to Phase – I. To prepare fresh proposal for LTPS and to direct to sanction the proposal of complainant and to provide at least 1MW electricity to Phase-I with immediate effect.

Respondent appeared and file say as below

- 17)** As per say, complainant refused to hand over the land required for Sub-station of load over 3 MVA. In alternative, Respondent is entitled for recover charges of augmentation of service connections and the supervision charges in view of supply code. It is the further say of the Respondent, that complainant to bear expenses of DDF as also expenses towards augmentation. Complainant is not entitled for any refund with interest. According to Respondent, issue of seeking approval of drawings for submission to CIDCO before actually applying for a connection is the genesis of the present dispute. It is further stated in reply that in addition to this land, there is also need for space for requirement for DTC.
- 18)** The further say is that on 02/01/2010 the EE approved the lay out with DTC with two Sub-stations. According to

Respondent concerned EE ignored the correct requirement of the load. Therefore, a charge sheet was served on the ground that the land for Sub-station was not demanded. Complainant while applying for temporary connection on 08/01/2010 had shown load of 2949.5 KW. So, according to Respondent within a month, two proposals having different load were shown by complainant to avoid giving the land. While issuing amended C.C.'s, CIDCO every time asked complainant to approach Respondent for power requirements.

- 19)** According to Respondent in CIDCO plot owner having plot more than 4000 sq. mtrs. the owner has to spare land for electrification.
- 20)** As per say of Respondent it under takes development of the distribution system on it's own. However, this can not be confused with the requirement to pay for the DDF as well as for the augmentation of system under the applicable Regulations 3.3.4 of Regulation 2005.
- 21)** It is further stated as per Circular No. 22197 dated 20/05/2008 that for the load of 3 MVA or more then, the cost of Sub-station would be borne by Respondent and the land will given by complainant. In Paragraph No. 10 of the say it is pleaded as below,
- 22)** "Additional infrastructure for the said area by incorporating the same as normal development for system improvement and strengthening. However, it is pointed out that this would interim require process and procedure including issuing tenders, obtaining sanctions, approvals and various other requirements as applicable including the duration for the same.

Even, in case of the MSEDCL being provided with the requisite land, statutory Regulations, contemplate a period of one year (1) for completing the work after grant of possession of ear marked land”.

According to Respondent there can not be any estoppel against law.

- 23)** According to Respondent the 22 KV Taloja – Kalamboli feeder is feeding from 100/22 KV Taloja station to 22/11KV Kalamboli Sub-station. The loading capacity of the conductor is 400 AMP maximum load is 372 AMP. Therefore it is not possible to go beyond 370 AMP. There is no discrimination between complainant and M/s. Kalptaru, M/s. Mahalaxmi, M/s. Balaji for whom power more then 3MVA is required and they have given the land.
- 24)** It appears that before filing this complaint, some of the flat purchasers approached the Hon’ble High Court against present Respondent and complainant. The Writ-Petition Number is 4304/2014. Therefore, it is requested by Respondent to dismiss the complaint as it is with malafied intention under Regulation 6.9 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006.
- 25)** Before Hon’ble High Court as per direction of High Court the consent minutes were submitted by the parties on 05/05/2014 and in view of the said consent minuets the Hon’ble High Court disposed off the said Writ-Petition.
- 26)** As per consent minutes with a view to reduce hardship of the flat purchasers parties came to understanding as below,

- 27)** “without prejudice to the Right and contentions of Respondent 1 & 2, the Respond No. 2 deposited Rs. 5,64,48000/- with respondent No. 1 and Rs. 2,16,400/-. In the event the amount which is deposited the Forum to pass the order of refund with interest if any. Respondent No. 2 shall assure that minimum 11 KV line with switchgear and distribution transformer are erected and commissioned within two months. Respondent No. 1 to complete work of augmentation and release the supply 4751 KW within three months from the date of consent minutes.”
- 28)** After disposal of this Writ-Petition, complainant submitted amendment application and requested to add the prayer to hold that Respondent is liable for refund of money with interest. That application was allowed.
- 29)** The flat purchasers being one of the party for consent of minutes before Hon’ble High Court, the Forum was of the opinion to add those flat purchasers as party to this complaint and to give opportunity to hear them. In response to this order the flat purchasers were added and as a Representative of flat purchasers one of them filed an affidavit whose name is Dharmesh Toparani.
- 30)** In support of the case, the complainant has filed an affidavit in reply to the written say filed by the Respondent.
- 31)** As per his affidavit there is no provision in Electricity Act or Regulations to hand over the land for Sub-station for load over 3 MVA. Regulation 2005 does not em power in alternative for land to charge for augmentation. Complainant is entitled for refund of amount with interest. In CIDCO development area,

plot owner having plot area, equal or above 4000 sq.mtrs. is required to provide land for DDF is not correct. On 31/07/2012, i.e. the date on which application was submitted. Respondent had adequate space capacity to meet the power requirement of both Phase 1 and Phase II and no augmentation was required. As per RTI information there was sufficient capacity. The application of complainant was on behalf of flat purchaser and every flat purchaser is required 3KW/4KW or 7.5KW which does not exceed 25% of the total capacity. CIDCO is providing amenities and public utilities for the area of Navi Mumbai. CIDCO has already provided land at Kalamboli for establishing 22/11KV Sub-station and bound to provide additional land to the Respondent if required. The land which is taken by Respondent for supply more than 3MVA are the cases out side the jurisdiction of CIDCO, Navi Mumbai. The augmentation at Kalamboli Sub-station is not only for complainant. If the work is undertaken by Respondent under INFRA- II scheme the charges can not be recovered from the complainant.

32) There appears to be practice by Respondent to issue approval with Sub-station location as in our case. Complainant has produced on record one proposal dated 18/12/2009. It is true in that in this case the load requirement was 548.5KW. Where as in another case the load requirement is 758 KW.

33) To the say filed by Respondent, the complainant has filed a counter affidavit. According, to complainant the defense of the Respondent that the land is not provided by CIDCO is not correct. As per information under RTI Act sufficient plot's are

reserved by CIDCO for amenities and public utilities including the provision for land for Sub-station. According to complainant there are four cases of the builders those who have submitted the applications for supply of electricity after the application of complainant and who were given supply without any charges of augmentation from Kalamboli Sub-station. In two cases the Technical Feasibility Reports were submitted for approval subject to commissioning of 33/11 KV at Sector 20 Roadpali Kalamboli. However, no any Sub-station is created but still then the supply was given from Kalamboli Sub-station.

34) It appears that the total load after the application of complainant to these builders is of 3469KW. It means, the capacity was available. Complainant has produced on record one letter from CIDCO under RTI Act which discloses that there are certain plot's reserved for installation of electric Sub-station at Kalamboli. It shows that in Sector 2 at plot No. 6, 1706 sq.mtrs area is occupied by MSEB for transformer. At Sector 11 plot No. 1, 2555 sq.mtrs area is reserved for MSEB Sub-station. It is admitted position that in Sector 20 the land is reserved for Sub-station. The complainant attracted our mind towards one letter from Dy. EE to EE, Panvel dated 12/07/2013 which discloses that the Technical Feasibility Report and it's proposal was submitted subject to commissioning of 33/11 KV Sub-station at Sector 20 and diversion of load existing Sector 14 feeder on the new Sub-station. Considering the future growth in Kalamboli. But, despite this is admitted position that this builder is supplied the power from Kalamboli Sub-station.

Same thing with another builder M/s.Neelkanth. In this Technical Feasibility Report it is clearly mentioned that supply will be released after completion of the work of augmentation of existing 5MVA, 22/11 KV power transformer in Kalamboli housing Sub-station and also completion of work proposed for new 22/11 KV Sub-station at Sector 20 Raodpali Kalamboli.

35) The Forum thought to have a spot inspection. Accordingly the Forum visited the spot. First we went to Taloja. We found that there is a over head cable from Taloja to Kalamboli. It was submitted as per the direction of Hon'ble High Court turnkey tender is issued. The matter is pending at Head Office. We found that the current capacity at Taloja is 400 AMP. Through cable normally the maximum capacity used is 370 AMP, which is the capacity of the cable. It is fluctuating. Then we went to Kalamboli. We were told on the date of inspection 2MVA is available from 10 MVA transformer. 0.5 MVA is available from 5 MVA transformer. It was requested by complainant at that time as 2 MVA load is available, his interim relief application for 1MVA to Phase -I may be considered. Before Hon'ble High court the idea of consent minutes was to avoid hardship to the flat purchasers. Complainant submitted detailed arguments which are on record.

36) After spot inspection say is submitted by Respondent. According to say, it is admitted that 2MVA and 0.5 MVA is available. But supply can not be given as maximum load of incomer from Taloja is having 372 AMP. Therefore, interim relief can not be granted. It is admitted that Kalamboli Sub-station is on the plot given by CIDCO.

37) One Circular is given by Respondent dated 19/06/2008. It is regarding proceedings to plan for electrifying areas, under DPR

and releasing new connections. We will deal with this Circular later on.

38) On this say, complainant submitted one more affidavit .As per affidavit of complainant Technical Feasibility Report dated 04/12/2012, maximum loading capacity was 360 AMP. As per letter dated 16/04/2013 maximum loading capacity 600 AMP. From Technical Feasibility Report dated 10/05/2013 maximum capacity was 360 AMP. The same is with letter's dated 12/07/2013, 21/10/2013, 22/11/2013 and 21/07/2014.

39) One more submission is made by Respondent, that how the complaint of complainant is malafied. After hearing both parties at length and after considering several provisions of Law, Regulation, Documents on record, the following points have raised, for our determination.

- 1) Whether, complainant is entitled for refund of the amount deposited by complainant as per the orders of Hon'ble High Court?
- 2) If, yes whether he is entitled for interest?
- 3) Whether, flat purchasers are entitled for immediate release of power of 1.26 MVA for Phase I constructed by complainant?
- 4) What order?

Our findings are as below,

- 1) Yes, As per Majority
- 2) Yes, 13% per annum as final order. As per majority.
- 3) Yes, As per majority.
- 4) See below order.

Reasons

40) At the outset we would like to make it clear that whatever observations, findings interpretation of law and reasonings given in this case are restricted only to this case. It will not have any bearing for dealing other cases by Respondent under Circular dated 20/05/2008 and Circular dated 06/06/2012. We would like to give our reasonings in two parts.

1) Part –I – Land

2) Part-II- augmentation

Part I- Land

Persee – Minority

41) While discussing the facts, Law intersee between Hon'ble Members, of the Forum, Hon'ble Member Secretary has expressed his different views. According to him in view of Circular dated 20/05/2008 and 06/06/2012 it was obligatory on the part of the complainant to provide a land in it's plot for creation of Sub-station. He further expressed that this provision of land is required as the load of the complainant is more than 3MVA.

42) Hon'ble Member Secretary also expressed his opinion that this complaint should be rejected under 6.9 Regulation 2006 on the ground that it has been filed with malafied intention. Considering the present load of 10 MVA and 5 MVA transformers at Kalamboli Sub-station the load required by

complainant can not be released and therefore augmentation is required. He further expressed that showing the different load at different applications shown by complainant, since begging was not inclined to hand over the land. Therefore, according to him as the land is not given, different Technical Feasibility Reports were submitted. But there was no response from the complainant on any of the reports. The power to the flat purchasers was to be given and therefore it was necessary to have a augmentation of 5MVA transformer at Kalamboli Sub-station. For this augmentation another cable under ground is required to be taken from Taloja to Kalamboli Sub-station as the cable which is available does not have that much capacity. He further expressed that after augmentation of 5 MVA transformer the maximum load more than 4 MVA is required by complainant and therefore the cost which is imposed on him is legal and can not be refunded with interest.

43) There is no provision for giving interest to the complainant . Therefore, in sum and substance, Hon'ble Member Secretary was of the view to dismiss the complainant. According to him even the interim relief for 1.26 MVA can not be granted, as there is no capacity in the cable from Taloja to Kalamboli or at transformer at Kalamboli Sub-station.

Parsee Majority

44) Hon'ble Member of the Forum expressed her opinion that the Circulars dated 20/05/2008 and 06/06/2012 may be applicable to the personal lands belonging where the development is taking place. It may not be applicable to the lands in to public authorities like CIDCO, MHADA, Corporation

etc. In her view these authorities have their own no development Zones, in these no development zones, the plots are reserved for amenities and public purpose including the portion for electricity Sub-stations. She further expressed that the service line charges can not be recovered in case of non-DDF application.

- 45)** In her opinion it is primary duty of utility to develop the Infrastructure. So she expressed the demand of land from the complainant whose plot is in CIDCO is untenable.
- 46)** So, according to her as the land is not given by complainant, in alternative claiming the cost of augmentation is contrary to the provisions of Electricity Act 2003, Regulation 2005 and on other grounds.
- 47)** In our view as a matter of fact, the detailed discussion on the point of land is not required. This is for the reason that admittedly the land is not available with complainant. However, the submissions were made as to how the demand of land to the complainant is not as per law, we may summarise this point in short.
- 48)** CIDCO authority is an establishment as per the provisions of Maharashtra Regional and Town Planning Act 1966. It has made General Development Control Regulations for Navi Mumbai- 1975.
- 49)** Section 3.3 of Regulation defines “Action Area plan”. It means approved plan and report indicating the detail lay out of proposed development in the Action Area, which may stipulate the land use permitted on each plot and the extent to which the building operation may be undertaken on each plot.

- 50)** Here in this case reserving a plot for two Sub-stations for DTC, complainant has submitted an application for approval of plan to Respondent with the claim of above 4MVA load. This plan was with the letter of respondent was forwarded to CIDCO. Commencement Certificates were issued. Accordingly, the construction was started. Commencement Certificates were amended from time to time but the load requirement was the same.
- 51)** When Phase –I was completed, application was submitted by complainant for permanent power supply to Phase-I for 2251 KW immediately and remaining power supply about 2475.5 KW after 18 moths for Phase II.
- 52)** Here at this stage Respondent demanded 1000 sq.mtrs. area in the plot for establishment of Sub-station 22/11 KV.
- 53)** It was objected by complainant on two grounds 1) as per law, land can not be demanded 2) land is not available as the work is already completed as per the C.C. issued by CIDCO from time to time.
- 54)** We have General Development Control Regulation. There is clause 14 with the heading “Zoning and use provisions” Sub-clause 8 B is regarding service Industries class ‘B’ with residence for essential staff. In clause 9 No. of items are given for which the land is reserved by CIDCO. One item is public utility and services namely Police Station, Telephone Exchange, Fire Station, Electricity Sub-station etc. clause 14, 4.7 is regarding no development Zone. It includes Public utility establishments. It means these plots are reserved for the public utility purposes.

- 55)** Indian Electricity ACT 2003 came into force on 10/06/2003 Maharashtra Electricity Regulatory commission (Electricity supply code and other conditions of supply) Regulation 2005 came in to force on the date of publication. As per this Regulation applicant is a person who makes an application for supply of electricity. Dedicated distribution facilities means such facilities not including a Service Line.
- 56)** The provision of land according to this Regulation 2005 is made under clause 5.5. As per this clause supply requires installation of DT in the premises of applicant. The provision is to be made by applicant by way of lease of a suitable piece of land prevailing market rates.
- 57)** In our view if the land is required to be given in the premises of applicant then it is only for purpose of distribution transformer. Encyclopedia defines it as “A transformer that provides the final voltage transformation in the electric power distribution system, stepping down the voltage used in the distribution lines to the level used by the customer”. We have given this definition of distribution transformer as neither Act nor Regulation 2005 defines it.
- 58)** Now, so far land is concerned in CIDCO area, the Town Planning authority in Section 22 of the Act explains ‘Contents of development plan’. As per this, the plan will indicate regarding use of land and manner in which development will take place including the provision for public utilities, amenities and services including Electricity and Gas.
- 59)** As per the argument of Respondent in Paragraph No. 9 on, Page 15 it is stated ‘I want to say that CIDCO has neither

provided land for Sub-station nor kept it reserved as well as there is no land at Kalamboli for electricity Sub-station at present in Navi Mumbai. CIDCO is developing some nodes which is controlled by CIDCO including electrical Infrastructure. The plot of complainant is not included in PSIDC scheme. CIDCO is providing land for DTC Sub-station for the load of plot owners below 4000 sq. mtrs. and the plot owners above 4000sq. mtrs, the land is to be given by plot owner for DTC, if the load is below 3 MVA and for Sub-station 22/11 KV if the load is more than 3MVA'.

- 60)** We have on record one agreement which took place between CIDCO and MSEDCL. Sub clause B of clause 3 is like this.
- 61)** 'this installation and commissioning of 11KV/0.4 KV Sub-stations in Phase wise manner as per power supply demand of plot holders having built up area less than 4000 mtrs and laying of 11 KV cables for plot holders having built up area more than or equal to 4000 mtrs. As per the estimated demand would also be within the scope and responsibilities of CIDCO. The master plan prepared by CIDCO would determine the layout and location of the cables and transformers to be commissioned.
- 62)** This agreement is dated 01/08/2003 and this is regarding power supply to sector 1 to 24 of Kharghar node to Navi Mumbai.
- 63)** Another argument was that M/s. Mahalaxmi developers, M/s. Balaji Symphony, M/s. Kalptaru builders having load more than 3 MVA have given the land for creation of 22/11 KV. We

asked to the Respondent whether all these projects are from CIDCO area? On this Respondent submitted that these projects are on private site. They have not shown us any proposal demanding load more than 3MVA has given the land from CIDCO area. It also appears that Respondent has taken on lease the land from Panvel Nagar Parishad for establishment of 33/22/11 KV.

- 64)** So to our mind a demand of a land from plot owner of CIDCO for establishment of a Sub-station can not be said to be valid and proper.
- 65)** Under Right to Information Act when application was submitted CIDCO made it clear that there are certain plots reserved in Kalamboli node for establishment of 33/22/11 KV Sub-station.
- 66)** Admittedly one of such a plot by CIDCO is reserved in Sector 20 where the work of Sub-station is under progress under DPR INFRA-II scheme by Respondent.
- 67)** In Circular dated 20/05/2008 it is mentioned that if complex load is 3 MVA or more, then 33/11KV Sub-station or 22/11 KV shall be established to cater such load in that complex. However, the cost of Sub-station or associated facility shall be on account of the Respondent i.e. MSEDCL. The of land shall be made available by developers for amenities and public utilities on non-chargeable basis.
- 68)** Complainant submitted that for amenities and public utilities the portion of the private land can be considered. It further says that since MSEDCL spent for the Sub-station, it can supply the power to other consumers. We are enable to

understand that if the land is taken from private party, how that land can be maintained by the Respondent. In our humble view, amenities and public utilities is the duty of public authority.

- 69)** We have a case in hand from CGRF, Kalyan Case No. K/N/106/842/2012-2013 decided on 05/06/2013. According to that case the consumer was developing housing project at Manda-Titwala. This project is spared over 68 acres in first Phase – I. The plans were approved by the authority. Area of 5% was reserved as per DC Rules and essential Services.
- 70)** The defense of the MSEDCL was that load required was heavy and for that purpose MSEDCL demanded 2800 sq.mtrs area for establishing the Sub-station. According to consumer, if more area is required then it can claim that area from authority i.e. KDMC. Applicant or Respondent of that case were directed to approach the proper authority for the land 2800sq. mtrs.
- 71)** The observation is that, the Representative of applicant as well as the officers of Licensees finally considered and they were at liberty to go to the authority as per order. Officers of the Licensee of Respondent were directed to approach the appropriate authority placing their requirement.
- 72)** In our view, we feel that when first approval was made by Respondent under letter dated 02/01/2010 to CIDCO at same time, the Respondent ought to have approached to CIDCO for claiming land for the establishment of 22/11 KV Sub-station for supply of power to the complainant.
- 73)** As shown in the Circular dated 20/05/2008 or 06/06/2012, it may authorize that Respondent to claim the land for Sub-

station in the plot, when that property is a private property. In other words, when there is the development authority, Respondent should approach to the authority claiming the land for establishment of Sub-station.

- 74)** In order dated 08/09/2006 in Case No. 70/2005 by MERC so far the CIDCO area plot t is concerned, stand which is taken by Respondent is like this.
- 75)** 'MSEDCL has proposed separate S.L.C. charges for MHADA, CIDCO colonies. However, S.L.C. to consumer is totally disallowed. The commission does not find in necessary to go into merits and details of calculations'
- 76)** We are not touching to the merit and demerit of Circular dated 20/05/2008 and 06/06/2012. Because, in our humble opinion it is not within the ambit of this Forum. However, we may cite here one case from MERC Case No. 108/2012 dated 03/01/2013 in the matter of 'petition of serum Institute of India Ltd. to set aside commercial Circular No. 155 dated 23/01/2012 and 'Internal Instructions' dated 13/09/2012 issued by MSEDCL providing terms and conditions without the approval of the commission.'
- 77)** It is true that the facts of that case are totally different from the facts of our case. Hon'ble MERC so far these internal instructions are concerned has directed to revise the bills raised and accordingly with the impugned circulars should be revised or applicable relief should be granted.
- 78)** We discussed this case for the reason that complainant submitted before us that nothing is brought on record that theses two Circular's did not get the approval from the

commission. Respondent submitted that the copies of these Circular's are marked to Hon'ble MERC. According, to Respondent these two Circular's are issued according to provisions of Act. and Regulations 2005.

- 79)** Therefore, we are of the opinion that we should not touch the merits and demerit of these Circulars. We do not agree with the say of complainant that Circular dated 06/06/2012 and the Circular dated 20/05/2008 are ultra-vires. We say because in earlier Circular dated 20/05/2008 how much land to be taken for how much load was not made clear. The same is made clear in Circular dated 06/06/2012.
- 80)** In circular dated 20/05/2008 the land was to be provided on non-chargeable basis. where as in circular dated 06/06/2012 it is made clear how land is to be taken.
- 81)** We see that in Circular dated 06/06/2012 two categories are made. One is general and second is public authority. We say this because, as per this Circular dated 06/06/2012 the land in case of MIDC along with infrastructure is to be provided by MIDC. It means that MIDC is excluded from giving the land for Sub-station. There is no specific mention in this Circular about CIDCO. In our view, there is separate agreement by MSEDCL with CIDCO and therefore, in our humble opinion as the CIDCO is not from general category and the plot of complainant is from CIDCO, therefore complainant is not supposed to reserve a land from his plot which is taken by him for development as a net area for Sub-station. We have already discussed, if the land was required by Respondent they ought to have approached to CIDCO. As per Circular dated 06/06/2012 the land for DTC is

already established by complainant in his plot and the work of the cable from Kalamboli Sub-station till the plot is complete by complainant under supervision charges of 1.3 of the cost at his own cost. He has completed the work of part C and Part D of the sanction order dated 14/10/2013.

82) We are of the opinion to reproduce certain observations from Case No. 70/2005 dated 8/09/2006 by Hon'ble MERC.

83) "The commission totally rejects MSEDCL's proposal to recover Service Line Charges from the prospective consumers except in cases of consumers requiring dedicated distribution facility. As per the provisions of the Act, developing infrastructure is the responsibility of Licensee. The commission, therefore directs that the cost towards infrastructure from delivery point of transmission system to distributing mains should be borne by MSEDCL. The recurring expenses related to the capital investment on infrastructure shall be considered during ARR determination. [for detailed Ruling refer Section – III (6)] "

Part – 2 – Augmentation

Persee Minority

84) Hon'ble Member Secretary is of the opinion that neither CIDCO is providing any land, nor complainant is giving land, then as supply is to be given to do the flat purchasers, there is no any alternative but to augmentation of the 5MA transformer at Kalamboli to 10 MVA transformer and for that purpose whatever the cost that will have to be paid by complainant as per 3.3.4 of Regulation 2005 read with first

proviso to the said clause as the increase as is more than 25% considering the group of consumers. Hon'ble Member Secretary also expressed that the day on which application was submitted by complainant being "Not complainant application" was not considered. Therefore, complainant can not say as to how the power was released to other consumers those who have submitted their applications after the application of complainant. Respondent has rightly sanctioned the proposal dated 14/10/2013 considering the need of the power. The amount which is deposited by complainant for augmentation under 3.3.4 Regulation 2005 is legally demanded by Respondent. Therefore, the say of the complainant should be rejected. Hon'ble Member Secretary is also of the opinion considering the attitude of complainant by way of interim relief the power should not be granted. He further expressed as per orders of Hon'ble High Court tender is issued and the matter is in progress for augmentation.

Persee Majority

- 85)** Clause 3.3.4 of Regulation 2005 is excluded from Regulation 18: Regulation 18 is regarding schedule of charges. This schedule of charges submitted by Respondent is to be approved by Hon'ble MERC . Clause 3.3.4 is excluded from schedule of charges as it may vary from case to case for claiming the charges for augmentation. According to this clause utility is authorized to recover from the applicant such proportion of the expenses reasonably incurred on such work.

- 86)** There are two proviso to this clause 3.3.4. First proviso says if the load applied does not exceed 25% of the capacity expenses can not be recovered. So far our case is concerned proviso two is important. As per this proviso No. 2 if any dispute arises, the need and extend of, augmentation it is to be determined with the Redressal procedure set out in the CGRF Regulation.
- 87)** In this light we would like to refer again a Circular dated 20/05/2008. Sr. No. 3 of the Circular is material for the discussion of this case. As per the main heading it is concerned with group of LT consumers in non- demotic, Residential Complex, where the load is equal to or more than 500KVA.
- 88)** This 500KVA appears to be classified by MERC in it's order dated 08/09/2006. Accordingly commissions ruling at 2.4 it has decided to introduce only two slabs namely up to 500 KVA and above 500KVA.
- 89)** We have not seen from the order any slab which is above 500 KVA but below 3MVA.
- 90)** This Circular at Sr. No. 3 with the above referred heading is divided in two parts. As per the first part, the load of 500 KVA and above required the load to such complex the infrastructure including the transformer, lines and other added equipment are required to be installed in the developers premises it self. Therefore, connection should be given under DDF. It will not include the cost of setting up or augmentation of 33/11 or 22/11 KV Sub-station. The line will remain dedicated to the consumer.

- 91)** Now, coming to the second part, it says that if the complex load is 3MVA or more then 33/11 KV Sub-station or 22/11 KV shall be established to cater such load in that complex. However, the cost of Sub-station or associated facility shall be on account of Respondent. The provision for land for Sub-station to be given by developer for amenities and public utilities on non-chargeable basis. As the expenses is from MSEDCL it will be open for MSEDCL to supply power to other consumer's from that Sub-station but, in case of DDF the line will remain with consumers.
- 92)** We found that in first part there is an option either for Sub-station or for augmentation. In second part, there is no word of 'Augmentation'. In other words if the load is required more than 3MVA, the only course remains with of creation of Sub-station. Therefore it is obligatory on the part of the Respondent to create a Sub-station only and not augmentation of any transformer when supply is to be given is more than 3MVA.
- 93)** This Circular does not disclose any thing as to what is to be done if land is not given for Sub-station. As per SOP when application submitted for supply of power it is obligatory on the part of utility to supply the power within stipulated period.
- 94)** When this Circular is issued on 20/05/2008, it was not clear as to how much land to be taken. We have already discussed about the land in first part. When there is private property under development and power required more than 3MVA, the land can be taken for Sub-station. In this case the land belongs to CIDCO. It is taken on lease. Therefore, demand of land to the complainant is not correct.'

- 95)** When augmentation is not mentioned in second part of Sr. NO. 3 in Circular dated 20/05/2008 where the question of augmentation arises? “Apart from that, as per the stand taken by MSEDCL before Hon'ble MERC in case No 75/2005 decided on 08/09/2006 is as below regarding a schedule of charges in para 6.3 of the order under heading MSEDCL's response at bottom on page no. 15 is like this.”
- 96)** “MSEDCL submitted that most of the capital expenditure scheme financed by REC or PFC are primary directed at system augmentation and improvement and not for expansion.”
- 97)** In case no 82/2006 decided on 17/05/2007 by Hon'ble MERC on Page No. 6. It is observed 'While on the subject, the commission directs that MSEDCL should not collect any monies under any charge item which is not defined under the supply code and/ or order dated 08/09/2006'.
- 98)** Here in this case for augmentation of 5MVA transformer at Kalamboli Sub-station complainant under sanction order dated 14/10/2013 was directed to pay Rs. 5,64,48000/- as a cost for augmentation including the cost of cable from Taloja to Kalamboli.
- 99)** So, far the need of augmentation we have discussed that in case of load more than 3 MVA only Sub-station is required and not augmentation.
- 100)** Now, another question is that, the day on which application submitted by complainant whether there was a need of augmentation? it appears from the reply on the RTI Act that there was adequate space capacity at Kalamboli housing Sub-station to meet the power requirement of both phase I and

Phase II. The letter of Respondent under RTI is dated 14/03/2014.

- 101)** Now, there are three Technical Feasibility Reports in this case of the complainant. In first Technical Feasibility Report dated 04/12/12 in respect of 22KV Kalamboli feeder maximum load capacity was 360 AMP economic loading of conductor 340 AMP maximum load recorded 310 AMP CT ratio 400/1AMP.
- 102)** As per the approval dated 16/04/2013 maximum loading capacity 600 AMP , economic load is conductor 400AMP, load as on 30/03/013 12.8MW/332AMP, maximum load recoded till date 12.8MW/332AMP economic loading of conductor 340AMP, maximum load 310AMP, CT ratio400/1,AMP.
- 103)** Technical Feasibility Report of M/s. Neelkanth shows that maximum capacity 360AMP economic loading conductor 340 AMP maximum load recorded 332 AMP, CT Ratio 400/1 AMP. The report from M/s. Shree Developers dated 10/05/2013 maximum loading capacity 360AMP economic loading of conductor 340AMP, maximum load
- 104)** 310AMP,CT Ratio 400/1AMP, similarly on 12/07/2013,21/10/2013,22/11/2013,21/07/2014the maximum load 360 to 370 AMP but recording is 370,340,305,etc.
- 105)** So, according to complainant had the land was taken by Respondent from CIDCO in year 2009 knowingly the required load of complainant and if Sub-station was created then the load capacity required by complainant was available with Respondent.
- 106)** Section 42/1 of Electricity Act cast duty on utility to develop and maintain and efficient, co-ordinated and economical

distribution system in his area of supply and to supply electricity in accordance with the provisions contended as per the Act.

107) According to complainant when 68 No of DTC 11 of HT and 22/11 KV steel market Sub-station are connected with 22/11KV Kalamboli feeder. It was sufficient to cater to all 23 Sector of Kalamboli node.

108) Complainant also submitted that including the cost of double circuit in the estimate dated 14/10/ 2013 is bad- in – Law, when distance between Taloja and Kalamboli is 7 KM.

109) Probably, this may be unique case where there are 3 proposals. The first proposal is dated 23/10/2012 next 16/04/2013 and last one 14/10/2013. In proposal dated 23/10/2012 the cost of 10MVA transformer was to borne by complainant and the cost of incomer from Taloja to Kalamboli was to be borne by Respondent.

110) In proposal dated 16/04/2013 the cost of transformer and incomer feeder were to be borne by Respondent under INFRA - II scheme and in the last proposal dated. 14/10/2013 the entire cost was to be borne by complainant.

111) We fail to understand how these different proposals were submitted. It was never informed to the complainant that the previous proposals were rejected.

112) We have circular filed by Respondent dated 19/06/2008 regarding plan for preparation of schemes (DPR). Under this Circular directions were given to field officers, to visit regularly area under development and obtain funding. When there are

fast developments, create backend infrastructure to meet immediate future demand.

- 113)** Complainant also submitted that there is a breach of 4.4 of Regulation 2005. It says that as per as possible and practicable power should be given on first come, first served basis. In this case it is brought on record that after the application of complainant, power is released to other developers.
- 114)** It is on record that the work of Sub-station of 33/11 KV at Sector 20 Roadpali is in progress. In Technical Feasibility Report of M/s GPC Buildcom dated 02/07/2013 the proposal was submitted subject to commissioning of Sub-station at Sector 20. There are other cases also with the same condition on record. But still then, from Kalamboli Sub-station the connections are given. This is a discrimination by the Respondent.
- 115)** It is that true in original approval the power was demanded was above 4MVA. In application dated 31/07/2012 the power was demanded 2251KW on priority basis, record shows that Respondent released electric supply for the total load of 2370KW on 28/08/2013 and 26/11/2013 this will show on the date of application filed by complainant for Phase –I, 2251 KW was available.
- 116)** If subsequently the supply is released and load capacity became less at no fault of complainant, in our view , complainant is not liable to pay any charges for augmentation.
- 117)** In our view there was no need of augmentation of the transformer, the day on which application was submitted by complainant was just for 2251KW.

118) However, now in view the order of Hon'ble High Court, the augmentation is under taken by Respondent. Under DPR in INFRA II scheme, at Roadpali, in Sector 20, the work of 22/11 KV Sub-station is also in progress. Any how when augmentation it self was not required claiming the cost under clause 'A' and 'B' of the proposal dated 14/10/2013 is contrary to the Law and therefore it should be struck down.

119) We have on record letter form SE, Vashi to CE, Bhandup dated 16/04/2013. It is regarding 22KV Sub-station under O&M scheme for year 2013-2014. It is mentioned in this letter that the work included in INFRA II scheme. It is in progress. The proposal included LTPS to the complainant. It is mentioned in this letter that the work of incomer and augmentation is taken in INFRA II scheme. As per the division office letter the work of augmentation is necessary and it is included in INFRA II Scheme.

120) In Technical Feasibility Report regarding complainant it is mentioned that the supply will be released subject to additional feeder after commissioning of Roadpali Sub-station proposal in INFRA II plan and completion of augmentation under DDF.

But, complainant has not demanded power under DDF.

121) In letter dated 23/10/2013 by Dy.EE to EE, Panvel it is mentioned as: site is visited by CE, Bhandup/Vashi. As per SOP the proposal can not be kept pending. There is revenue loss of Rs. 62,870/- per month and average monthly revenue will be Rs. 7,63,760/-. So the proposal was requested under DDF. Complainant was ready under DDF subject to deduction of

charges at Sr. No. 1 to 9. Of the proposal. But, same was also not considered.

122) While submitting the arguments complainant requested that as per the spot inspection at present 2 MVA load capacity is available. We have seen the capacity of cable from Taloja which is about 360 to 370 AMP. It is the fundamental right of flat purchasers to have electricity. The flat purchasers are party of this complaint. It is submitted that possession to about 104 flat purchasers in given. We also found that there are 4 DTC in the area of the complainant having capacity 630 KVA each. According to complainant by interim relief and also submissions of flat purchasers, if 1.26 MVA (out of 2MVA which is available from 10 MVA transformer) may be released till the work of augmentation or functioning of Sub-station at Sector 20 is started, whichever is earlier.

123) Even before the Hon'ble High Court while drafting the consent of minutes, the prime need of the flat purchasers was considered. Under these circumstances, we are of the opinion to give direction to the Respondent by way of interim relief to release the load of 1.26 MVA from 10 MVA transformers from Kalamboli Sub-station so that two transformer of 630MVA each will be functioning.

124) In case No. 56/2007 decided on 16/02/2008 by Hon'ble MERC 'it is observed'. If the consumer does not seek dedicated distribution facility, the licensee has to develop it's own infrastructure to give electric supply within the period stipulated in Section 43 of the Electricity Act 2003 read with the Maharashtra Electricity Regulatory Commission (Standards

of performance of distribution Licensees period for giving supply and determination on of compensation) Regulations, 2005. In fact, the licensee should take advance action to develop the distribution network, based on the survey of growth pockets and demand projections so as to fulfill 'Universal Service Obligation'

125) As per the Regulation made under Rule 8.2 of Regulation 2006. This Forum if satisfied after voting under Regulation 8.1 the allegations are correct it shall issue an order to utility directing to return to the consumers undue charges paid by the consumers.

126) For claiming interest, complainant has produced on record. Note No. 5 of Mahavitaran long tenure borrowings that Mahavitaran borrowings the money with interest at 13% per annum. According to complainant he is also entitled for this interest as he has taken this amount from Axis Bank as a over draft.

127) Therefore, we are inclined to grant interest to the complainant on deposited amount as per the final order.

128) We left it to utility for taking any action of defaults if any committed by the officers in this case while not following the Rules and Regulations, SOP in proper prospect, so that in future such type of hardship may not occur to other consumers.

129) Therefore, we by Majority are passing the following order.

Date:- 24/07/2014

This order is pass by Majority

Hence Operative Order.

- 1) Part 'A' and 'B' of approval/sanction letter dated 14/10/2013 is hereby set aside and struck down.
- 2) Respondent/ MSEDCL is hereby directed to refund amount of Rs. 5,64,48000/- to the complainant.
- 3) Respondent/utility is hereby directed to pay 13% interest per annum on the principle amount from the date of deposit till it's realization.
- 4) Respondent/MSEDCL is hereby directed to release supply of 1.26 MVA from 10 MVA transformer at Kalmboli Sub-station to the flat purchasers with immediate effect.
- 5) This supply will continue to Phase-I at Plot No. 4 Sector 9E Kalamboli i.e. the plot developed by complainant till the work of augmentation is completed or the functioning of Sub-station 22/11 KV under taken at Sector-20 Roadpali by the Respondent .
- 6) After completion of work at Sr. No. 5, the connection for full load to Phase-I and Phase-II be switched over for regular permanent supply.
- 7) Complainant may not handover possession to the remaining flat purchasers from Phase I till the completion of work under taken by Respondent as mention in Order No. 5.
- 8) There will be no order as to cost.

Both the parties be informed accordingly.

The order is issued under the seal of Consumer Grievance Redressed Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, and Bhandup on 24th July 2014.

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I do not agree

I agree

Shivaji B. Bholshankar
MEMBER SECRETARY
CGRF, BHANDUP

S. K. CHOUDHARY
CHAIRMAN
CGRF, BHANDUP

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP