



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph- 2210707, Fax – 2210707, E-mail : cgrfkalyan@mahadiscom.in

No. K/E/756/911 of 2013-14

Date of Grievance : 28/01/2013
Date of order : 18/03/2014
Period Taken : 50 days.

IN THE MATTER OF GRIEVANCE NO. K/E/756/911 OF 2013-14 IN RESPECT OF M/S. BIKANER IRON & STEEL INDUSTRIES PVT. LTD., PLOT NO.K-16, ADD. MUBAD MIDC, MURBAD, AT VILLAGE KUDAVALI, TAL. MURBAD, DISTRICT-THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF SECURITY DEPOSIT AMOUNT WITH INTEREST AND SOP.

M/s.Bikaner Iron & Steel Industries Pvt.Ltd.,
Plot No.K-16,Addl. Murbad MIDC, Murbad,
At village Kudavali, Tal.Murband,
District-Thane
Consumer No.001840851091

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited though its
Nodal Officer, Kalyan Circle-II,Kalyan,

.... (Hereinafter referred as Licensee)

Appearance : For Consumer – Shri B.R.Mudliyar.

For Licensee - Shri Shaikh –Nodal Officer / Executive Engineer,

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] 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 (Electricity Supply Code and other conditions of supply) Regulations 2005'. 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

Grievance No. 756/911 of 2013-14

Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.' Hereinafter referred 'SOP' for the sake of convenience.

2] This grievance is presented by applicant on 28/1/2014, aggrieved by the fact that security deposit of Rs. 7,39,400/- deposited on 22/8/2008 and service connection charges of Rs.2275/- deposited on the very day, are, not returned in spite of the fact that consumer sought refund of it vide letter dated 26/8/2013 and reminder dated 15/10/2013. Even it approached to the IGRC vide his application dated 11/11/2012, which is not at all decided. He has sought said refund, though as per his application dated 29/7/2008, supply was sanctioned by Licencee vide order dated 14/8/2008, but it has not complied the requirements of sanctioned order and due to some circumstances, it has not insisted for connecting the supply. Accordingly, in fact supply was not connected.

3] In this matter, on receiving the grievance application, it was sent to the Nodal Officer along with accompaniments of it vide letter No. EE/CGRF/Kalyan 034 dated 29/1/2014. In response to the said notice, appearance is given by the Licencee and replied on 18/2/2014, not disputed, the amount deposited to the tune of Rs.7,39,400/-, but contended that original deposit receipt is not produced. **Subsequently** consumer submitted original receipts before this Forum on 18/2/2014, which are collected by the Licencee and communicated to this Forum on 26/2/2014 that already matter is moved and Chief General Manager (CF) of Licencee is requested to transfer an amount of Rs.7,39,400/-, on urgent basis as it is to be refunded to the consumer and compliance is to be given to the Forum.

4] In this matter, we heard both sides, we have gone through the documents and papers. Factual aspects as narrated above are clear:

a] Consumer sought supply on 29/7/2008 for its industrial unit, feasibility report was, secured by Licencee on 11/8/2008, sanction letter was issued by Licencee on 14/8/2008, consumer deposited Rs.7,39,400/- as security deposit. As per the sanction letter various compliances were to be fulfilled by the consumer and then only supply was to be connected. Consumer faced problem and it had not fulfilled compliances, for taking supply and not insisted for supply. Ultimately on 26/8/2013, it approached Licencee for refund of amount of Rs.7,39,400/ towards the security deposit and service connection charges. Reminder to it is issued on 15/10/2013 and consumer even approached IGRC on 11/11/2013, as there was no response, consumer approached this Forum on 28/1/2014.

b] Licencee not disputed the actual amount of security deposit and that it was to be refunded to the consumer. When matter was discussed before this Forum, consumer's representative made a grievance that his contention was not heard by Licencee, no relief granted and hence he approached this Forum. Attempt was done, on behalf of Licencee to contend that original deposit receipts were sought, but those were not produced. CR submitted that deposits are very well with him, those were not demanded, but dispute was raised about the payment of interest.

c] It is a fact on record that there is no any written communication by the Licencee to the consumer, seeking original receipts. The demand for refund of security deposit runs in lakhs and hence, it is just not possible to endorse the contention of Licencee. It being an establishment acting in routine course, on the correspondence and when consumer has written letter, it is not replied, not complied, even not responded by IGRC as required under Regulations. Hence, it is found to be the lame excuse. In spite of it, consumer provided the original receipts before this Forum which are collected by Licencee and matter moved to the Higher Authorities for releasing the refund of security deposit to the tune of Rs.7,39,400/-. There is no dispute and is admitted fact that the refund is liable to be given.

5] Now question comes up, whether consumer is entitled to the interest on the said security deposit. No doubt security deposit is accepted as per MERC directions and refund is dealt as per the MERC Regulations. It is seen from all previous MERC orders pertaining to fixation of tariff . It is laid down that on security deposit, interest is to be paid as per the RBI Bank Rate and it is to be from the date of deposit. If, once, this direction is given then Licencee cannot deny the interest as per Bank Rate. No doubt, on behalf of consumer, reliance is placed on the Judgment of Zharkhand High Court in W.P. (C) No.1091/2006 dated 25/9/2012, M/s. Tata Steel V/s. Zharkhand State Electricity Board . In the said matter there was question, whether interest on security deposit is to be given as per the rate prevailing for fixed deposit. Their Lordships in detail, explained the position and laid down that interest is to be paid only as per Reserve Bank Rate. Accordingly, payment as per the bank rate, is, clear and even it is laid down by the Hon'ble MERC in this state.

On behalf of Licencee, Officers submitted that in fact said security deposit cannot be legally said to be the 'security deposit' as consumer not availed the supply and if he would have availed it, in routine course, security deposit amount could have been entered in the register and consumer would have been given interest. Accordingly, it is contended that consumer is not entitled to any interest, as such. CR disputed this. We are not impressed by the arguments advanced on behalf of Licencee. MERC orders latest up to 1/8/2012, passed in MERC Case No. 201/2012, towards fixation of tariff, it is clearly laid down that whenever there is security deposit, interest as per Bank Rate is to be paid. Accordingly, there is no any deviation that security deposit paid by consumer and failed to give supply, is not entitled to interest on it. We find, when word 'security deposit' is, stated, it has it's own implication, it cannot be read as the payment for charity or for any other purposes then deposit. Hence, plain reading speaks that security deposit, carrying interest, as per MERC direction interest is to be as per Bank Rate. On behalf of consumer, recent Bank Rate notification is placed on record, which is of RBI Bank Rate and it is 9% from 7/10/2013, but prior to it, it was 9.5% . Accordingly, we find, interest is to be paid as per Bank Rate on the said security deposit, prevailing from the date of deposit and changed from time to time is to be worked out. On

deposit of. Rs.7,39,400/- payment of interest cannot be avoided and Licencee is to be directed to pay.

6] Second aspect pertains to refund of service charges, service connection charges are paid to the tune of Rs.2,275/-, but in fact no service is availed, supply is not connected as consumer has not at all complied the requirements of sanction order for connecting the supply. On this basis consumer contended that it is entitled to refund of said service charges paid. On behalf of Licencee it is submitted that service charges are not refundable. There is no specific provision in MERC orders about refund of service charges. It is contended that in the order passed by MERC provision is there to collect the charges, but like that of refund of security deposit or RLC etc. there is no express provision for refund of service charges. It is also contended that such service charges are transferred to capital account and those are not coming under the head of refundable amount. In reply, there is no any other material supporting to the consumer.

7] We find, considering the payment of service charges is nowhere refundable, it is transferred to capital account. In the Regulation of MERC there is specific provision of about the refund of security deposit. Even in the orders passed by MERC, pertaining to RLC etc. provision of refund is made, but in respect of service connection charges, no such specific provision is made. Hence, contention of consumer cannot be accepted for refund of service connection charges.

In the result, this grievance is to be partly allowed.

Hence the order.

ORDER

1] Grievance of consumer is hereby partly allowed.

2] Licencee is directed to refund the security deposit of Rs.7,39,400/- to the consumer along with interest as per prevailing RBI Bank Rate from time to time the date of deposit i.e. from 22/8/2008 till refund of said security deposit.

3] Secondly prayer for refund of Rs.2,275/- deposited on 22/10/2008 towards service connection charges, is rejected.

4] Licencee to comply aforesaid directions within 45 days from the date of this order and submit it's compliance within 15 days thereafter.

Dated:18/03/2014

I agree

I agree

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

(Chandrashekhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadaashive 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 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”
- c) 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.



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Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph- 2210707, Fax - 2210707, E-mail : cgrfkalyan@mahadiscom.in

No. K/E/771/928 of 2012-13

Date of Grievance : 20/02/2014

Date of Order : 09/04/2014

Total days : 77

**IN THE MATTAER OF GRIEVANCE NO. K/E/771/928 OF 2012-13 IN RESPECT OF
M/S. OM GANESH CONSTRUCTION CO. PATKAR BUILDING, FIRST FLOOR,
KELKAR ROAD, BALAJI PRABHU ROAD, DOMBIVLI (E), DIST. THANE
REGARDING REFUND OF COST OF INFSTRUCTURE PROVIDED IN
COMPLIANCE TO SANCTION ESTIMATE.**

M/s. Om Ganesh Construction Co
Patkar Building, First Floor,
Kelkar Road, Balaji Prabhu Road,
(Dombivli (E), Dist. Thane

.... (Hereafter referred as Consumer/applicant)

(Consumer No. **61001000023120**)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

Nodal Officer, Kalyan Circle-I, Kalyan, (Hereinafter referred as Licensee)

Appearance : For Consumer – **Mr.Mr.Sardar-Consumer’s Representative.**

For Licensee - Shri Lahamge –Nodal Officer / Executive Engineer,

Shri Bharambe –Asst. Engineer

Shri Bhise-Asst. Accountant.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

2] 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 (Electricity Supply Code and other conditions of supply) Regulations 2005’. 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 and Determination of Compensation) Regulations, 2005.’ Hereinafter referred ‘SOP’ for the sake of convenience.

2] This grievance is brought before us by applicant on 20/2/2014, alleging that it was burdened to bear cost of infrastructure as per sanction order of Chief Engineer, Kalyan Zone, Kalyan dated 28/5/2011, towards which applicant was required to spend an amount of Rs.1,02,10,060/- and was required to pay normative charges of Rs.1,32,730/-. Said amount though, demanded not paid and grievance made to IGRC,

on that count seeking said amount and others to the tune of Rs. 21,54,450/ - with interest is rejected.

On receiving the grievance, it's copy was sent to Nodal Officer along with it's accompaniments on 20/2/2014 vide Forum's letter No. EE/CGRF/Kalyan/082. In response to the said letter, Licencee appeared and filed reply on 11/3/2014 and additional reply dated 28/3/2014, denying the contentions and contended that said amount was spent by applicant, as it is a company engaged in land development and it proposed to shift four transformers of Licencee and as it was to achieve the commercial advantage. Said request of applicant was accepted for shifting, issued sanction order and it was to be shifted at applicant's cost, paying supervision charges at the rate of 1.3% . It is contended that said work is carried out by applicant without raising any objection, till approaching the IGRC and contention raised is afterthought.

4] In this matter, we heard both sides at length, consumer's representative placed on record even notes of arguments on 11/3/2014 and 27/3/2014. On the basis of material placed on record, following aspects are disclosed:-

a] Licencee has put up four transformers and as contended by applicant, those were erected in the area of 40 x 12 ft. =480 sq. ft. which is valued for Rs.12,00,000/- .It was actually an encroachment on the property of Patkar Trust and Licencee was asked to remove that encroachment but it was not removed and when development activity of applicant as per the sanctioned plan, was required to be carried out. It was without any alternative than to conceded to the proposal of Licencee and thereby as per sanction order dated 20/5/2011, amount of normative charges at the rate of 1.3% i.e. 1,32,730/- deposited on 28/6/2011. It is seen that said amount is deposited by M/s. Bhoomi Developers, however, it is claimed by applicant that while issuing the receipt mistake is committed by Licencee though amount is deposited by applicant.

b] It is a fact that applicant who is developer, has, sought connection for the construction purpose from Licencee, which is allowed and connected from 12/7/2010,

bearing consumer No. 610010000231. It is the contention of the consumer that Licencee was required to create infrastructure as per provisions of Electricity Act, 2003, Supply Code, MERC order in case No56/2007 dated 16/2/2008. It's cost cannot be levied directly on the consumer, who is seeking supply, but it is to be sought in the tariff orders. It is claimed that Licencee treated said aspect as DDF and sanctioned the estimate which is not correct. There was no prayer for DDF.

c] It is a fact that said work as per the sanction order given by Chief Engineer dated 20/5/2011, was carried out and further applicant has applied for 38+7 = 45 commercial connections of 340 kw load. It was sought on 1/8/2013. It was sanctioned on 28/8/2013. Sanction was in the name of applicant Mr. Om Ganesh Construction. In the sanction order, applicant was required to pay an amount of Rs.91,712/-. Admittedly, this is an aspect after carrying out shifting of four transformers.

d] It is contended that due to act of Licencee, who rather forced the applicant to accept Licencee's condition for shifting of transformers without any legal duty on applicant and hence thereby applicant is put to loss, losing the funds spent for providing infrastructure and all these amounts now claimed. As stated above, claim is for **Rs.1,21,054,460/-**.

5] Licencee came up with contention that though applicant requested for shifting four transformers from that place, it was not possible, as 10,000 consumers

were provided supply through those transformers. But with the intent to utilize the said area, applicant agreed to shift said transformers at its costs and as per applicant of applicant dated 22/1/2011, presented on 1/3/2013, further process was undertaken and estimates were prepared and submitted it to the Chief Officer and thereby Chief Engineer sanctioned it on 23/5/2011. Accordingly normative charges of Rs.1,32,730/- paid by Bhoomi Developers vide receipt No. 8966665. It is contended that said act of shifting is voluntarily act so as to utilize the area beneficially by applicant and the objection, raised now is, after thought. Accordingly, it is contended that order passed by IGRC is totally correct.

6] In this matter, it is necessary to consider the factual aspect disclosed that four transformers were installed in the year 1980 as per the Licencee and in the year

1988-90 as per applicant. Though consumer contended that those were in the encroached area, but neither **Patkar Trust** nor any one from partner of applicant succeeded in removing the alleged encroachment. However, it is contended that as applicant was to develop the premises, it was required to conceded to the Licencee's directions. Question comes up whether this can be accepted. Licencee denied any such act of encroachment.

7] Applicant claimed that it was forced to accept the Licencee's terms, it is necessary to note, as demonstrated by Licencee that application was filed in writing, on behalf of applicant by one of its partner. Its copy is placed on record by Officers of Licencee, it is dated 22/1/2011 presented on 1/3/2011. Licencee relied on it. Applicant's representative claimed that it is not filed by any of the partners.

However, it is a fact that on the basis of said letter, estimates were prepared. Those were submitted by Superintending Engineer to the Chief Engineer and thereafter Chief Engineer has given technical sanction for the said expenditure involving cost of **Rs.1,02,100.60**. and asked the applicant to deposit normative charges

at the rate of 1.3% as of **Rs.1,32,730/-**, which is paid on 28/6/2011 by Bhoomi Developers, what was the role of Bhoomi Developers though not explained previously, it is now contended by applicant that it is mistake committed by Licencee while issuing receipt. One fact is clear that amount is deposited towards normative charges as per sanction order, may be through Bhoomi Developers, but no any objection is raised by applicant at that time, not resisted it though expenditure was more than 1.5 crores. Applicant never claimed any DDF facility. Already it had a supply for construction purpose from 12/7/2010 which is prior to shifting of transformers and sought 45 commercial connections on 1/8/2013 after shifting of transformers. Amount spent for shifting of transformers which is as per the sanction order estimate is , 02,100,60/- which is a cost and normative charges **Rs.1,32,730/-**. In

other words, applicant conceded to bear the cost of shifting. It is necessary to bear in mind that applicant had in its mind its own plan while conceding to this particular proposal as it was not able to develop the area but intended to use it beneficially and was to take benefit of so called removal/shifting of those transformers of Licencee, though not succeeded in removing the encroachment which applicant has alleged, it is on encroached portion. At no point of time, Licencee agreed for removal of encroachment. Accordingly, if once, applicant has agreed and undertaken the work spending amount, taken advantage of said area occupied by Licencee, built up structure and utilized it, then question comes up whether it can seek refund of amount.

8] As noted above, Licencee acting on letter of applicant dated 22/1/2011, proceeded to prepare estimate and allowed the applicant to do it, at its cost and on paying normative charges. Said move was not in the light of any application for supply and that Licencee was facing the problem of augmentation. Applicant sought supply to 45 commercial connection on 7/1/2013 after the work of shifting was completed as per

sanction order. As noted above, supply was given to the applicant as per its request dated 1/8/2013 for sanctioning 340 kw load. It is for $38 + 7 = 45$ commercial connections, its sanction was accorded on 28/8/2013. It is not possible to link, this particular claim of supply sought on 1/8/2013 for sanction given by Licencee for shifting of transformers dated 23/5/2011.

9] It is also necessary to know that though applicant was having supply bearing consumer No. 61001000023 was from 12/6/2010, it was for construction purpose. Question comes up whether this particular connection given to the applicant had any relation to those four transformers installed, sought to be removed and reallocated. We find letter is given by applicant dated 22/1/2011 which is presented on 1/3/2011, is, long after supply to the construction was released i.e. on 12/7/2010. An

attempt is done on behalf of applicant to contend this particular construction, was, further development to be carried out known to the Officers of Licencee and as per Provisions of MERC Regulation, Supply Code and Circular of Chief Engineer (Distribution) dated 19/6/2008, Officers from time to time, were to ensure that plan and schemes for creating infrastructure for extending electric connections to the consumers in the area and to obtain funds from Financial Institutions and that as soon as demand from potential consumer comes the works under these scheme should be executed and connection should be released. Further, it is contended that inspite of knowing this fact Officers have phoned burden on the applicant to relocate the transformers at it's cost that too new transformers of high capacity were to be provided and old transformers are to be deposited with the Licencee. Accordingly, it is claimed that supply given to the applicant towards construction has relations to the further development of said land and hence there is relation of applicant with Licencee as 'consumer' even for removal of transformers.

It is necessary, to bear in mind that four transformers installed, were not meant for supply to applicant or Patkar Trust, but for 10000 consumers on it. When applicant has alleged that these four transformers are in the encroached area. Aspect of encroachment though alleged no legal steps taken to recover the possession of encroached portion. Licencee has disputed/resisted the contention of applicant that four transformers were installed in encroached area. But one fact is clear that transformers were installed there, in the year 1988 as per Licencee and in the year 1988-90 as per applicant and those continued till reallocated as per the sanction order, issued by Licencee on 23/5/2011, which is actually carried out by applicant. Accordingly, it is to be scanned as to whether there is any relations of applicant with Licencee as 'consumer' per the provisions of Electricity Act 2003.

10] We find, putting up the transformers for public includes 10,000 consumers, is, one thing, seeking its removal alleging it in encroached area is second thing. Towards removal of transformers if any, terms are agreed of relocating the said transformers at the costs of applicant questions comes up, whether it can be an aspect considered by this Forum, treating applicant as 'consumer' under Electricity Act 2003. Beneficially, we can refer to the definition of 'consumer' under Electricity Act.

Under Electricity Act, 2003, Section 43 speaks about the duty of Distribution Licencee to provided supply to the owner or occupier of premises, who makes application for supply for his own use. Accordingly, this particular provision casts duty, on Distribution Licencee to provide supply. In Section 42 there is a provision for open access also. Further as per section 50 State Commission is required to formulate Supply Code and as per Section 42(5) Forum for Redressal of Grievance of consumer's is also to be established. State Commission is also required to lay down Regulations and all those powers are specified in Section 181 of the Electricity Act, 2003. Basically, definition of 'consumer' is given in Electricity Act. Which is not again defined in any of the Regulations of MERC. This definition of 'consumer' in the Act is unique in respect of Electricity Act.

Section 2(15) of Electricity Act, speaks about the definition of consumer, it reads as under (it is reproduced in analytic form):

'consumer ' means any person supplied with Electricity for his own use, by a
a Licencee or the Government or by any person
engaged in the business of supplying electricity
to the pub under this Act or any other Law for time being enforce

and includes,

any person whose premises are for the time being connected for the purpose of receiving electricity,

With the works of licensee, the Government or such other person as case may be.

(above analysis and portion highlighted for clear understanding)

11] Mere perusal of the aforesaid section and its analysis, it is clear that first part is independent one and second part speaks about inclusive of extended portion. First portion speaks about supply of electricity is to a person, for his own use, whereas second part is of a person, the premises of whom is for time being connected, for receiving electricity. Accordingly, first part deals with the person who has taken supply from Licensee, applying to the Licensee, irrespective of his ownership. He may be the owner or he may not be the owner, but may be legally claiming through owner i.e. tenant /Licensee, mortgagee or authorized by the owner to stay in the premises or a person in settled possession, who cannot be evicted without following due process of Law. Accordingly the aforesaid aspect i.e. first part requires supply to a person in his name. No doubt, this takes care of the aspect to whom supply is to be given. Under the Supply Code, there is a provision for making application in a prescribed form and complying requirements. Accordingly, if any person fulfills

criteria of occupier, is, entitled for supply. Second part as noted above refers to the premises of a person and it is not a supply, available for use of that person or, for his consumption. We find, it may take in its fold the Licensee inter-se Generating Company and Distribution Licensee inter-se or any other combination, wherein supply is not for their own consumption. We are able to say if any person is trading in electricity then such person may be included in the second part.

12] Aforesaid reproduction of definition of 'consumer', clearly demonstrates that there should be relation as 'consumer' towards supply in the premises by Licensee. We are to find out whether present applicant fits in a said clause.

Basically, development is of a property of Patkar Trust. Dispute is about

encroached portion by Licencee. Removal of encroachment is not done. Patkar Trust is not a party here. But an arrangement is arrived at amongst applicant and Licencee and on this basis sanction is given by said Licencee for said shifting and normative charges are recovered from applicant.

Applicant's representative argued at length, made submissions that applicant has not sought any supply as DDF. Secondly, it is submitted that sanction is given and normative charges are recovered from applicant his aspect itself takes in it's fold applicability of Electricity Act grievance pertaining to it is to be brought before this Forum as per Clause 3.3.7 of Supply Code and this dealing, is, to be treated as establishing the relations of applicant as 'consumer' with Licencee. It is contended that Licencee treating it as DDF, issued sanction order and if showing that category, any amount, applicant was required to spend, it is to be refunded as cost of DDF is to be refunded in case if load applied does not exceed 25% capacity that will be created by augmentation of distribution system and the distribution Licencee shall not be entitled to recover any expenses as per Regulation 3.3.4 of Supply Code and MERC order in case No. 56/2007 dated 16/2/2008.

13] On behalf of Licencee, it is reiterated that present applicant is not 'consumer' and that present grievance is not falling within the definition of 'grievance' under the Electricity Act. In support of it, it is contended that question was of transformers existing, reallocation of those transformers, cost to be borne towards reallocation. It is contended that Licencee never agreed to the claim of applicant that those transformers erected in the encroached area in the property of Patkar Trust. Accordingly, it is contended that this aspect is not admitted and it cannot be agitated by applicant. Further it is contended that as applicant was developing the premises, was, to make use of premises for its benefit and hence sought relief of relocation of those transformers. At this stage, we find, it is necessary to read the

contents of the letter of consumer's partner whereby said shifting was sought. Contents of the said letter dated 22/2/2011, submitted on 1/3/2012 reads as under:

----- *We would like to inform you that, 4 nos. Nalanda Distribution transformers are installed on our property, even our constant protest during the installation. However, we don't like to reopen this **closed chapter**. Now we are stepping forward in an anticipation positive response from MSEDCL. It is requested to inform us the cost of **shifting work** to be executed from our LEC paying 1.3% supervision charges.*

For this first temporary shifting the transformers on temporary plinth near to the construction of our building. After completion of slab, it will have to be shifted on locations as per the drawing, The enough space will be provided to accommodate these transformers on first floor of proposed structure.

The contract for above said work has been given to M/s. Datt Electricals having Mc. LIC No.1987 and having their place of business at shop No.1 "Datta Krupa" Gogaraswadi, Dombivli (E), 421 201".

We find, it is clear that communication dated 22/11/2011 submitted on 1/3/2011 is relied on by the Licencee and sanction is given. Now an attempt is done to deny the said letter. In so many words, at no point of time previously in writing the aforesaid letter is denied by applicant. Accordingly, aspect involved was of reallocating/shifting the four transformers and it is an agreement/arrangement arrived at amongst these both sides, applicant was willing to pay supervision charges and to bear the cost. Accordingly, applicant complied it, without any objection. Hence, we find, no force that letter dated 22/11/2011, is not of applicant or that applicant not asked for any such sanction for shifting.

14] Applicant in this matter raised before this Forum contention that it planned to develop the land and requested Licencee to shift the transformers and make the area free for proposed development. It is contended that Licencee instead of shifting the installation itself, proposed elevated installation at the level of first floor of applicant's building and in that regard asked the applicant company to construct elevated the platform suitable to accommodate the size and load of four transformers. It is claimed that there was no alternative for the applicant except to agree with the arrangement proposed. Accordingly, it is claimed, Licencee further issued sanction order. Now, it is contended that in fact it was a Licencee to arrange for augmentation which Licencee has not done, but forced the applicant to do it. This contention is denied by the Licencee. It is a fact that as prescribed under Electricity Act, 2003 read with Supply Code, in case, if, consumer seeks DDF, then Licencee can recover reasonable expenses incurred. However, in spite of such aspect, if the capacity is less than 25% of the load, available, then such expenses are to be borne by Licencee and not by consumer. In this light, applicant tried to contend that while installing the new transformers, load is increased. Applicant even contended that sanction letter reflects DDF.

However, Officers of Licencee stucked up to the stand that the area on which the transformers were standing was required by applicant, it was to develop it and to have profit out of it and in this regard, applicant agreed to shift the said transformers, thereby made request, which was accepted in that light sanction order is issued. Admittedly, Applicant has not sought DDF. Even at this stage, applicant's representative submitted that so-called letter dated 22/2/2011 is not of any partners of applicant and it was learnt recently. However, it is, now clear that applicant was not seeking any supply when the so called sanction order was issued. Already in the year 2010 supply was made available to the applicant for construction purpose and in the year 2013, as prayed by applicant 45 commercial connections are sanctioned, but the

sanction order which is challenged by applicant is, of the year 2011. As per said order applicant was to spend amount towards expenses of putting up transformers and in addition, was to pay normative charges i.e. supervising charges. Accordingly, there is no claim that applicant was seeking supply of DDF nature, and stand is, taken by applicant denying that at it's request sanction order is issued .

We find it is clear that sanction order speaks about request. The sanction order involves expenditure of about 1.5 crores and odd including supervising charges. Expenditure to that effect is, incurred by applicant, but applicant takes a stand that there was no any such application, whereby order of sanction is given. We are, required to read the aspect in it's true spirit. It is not possible to believe without seeking clarification, applicant agreed to bear expenses. Ordinary no person can spend crores of rupees without seeking such clarification. We are not able to accept the contentions of the applicant that sanction order was issued, without any application or request of applicant. Applicant ought to have enquired immediately as it was required to pay and spend amount though it is not seeking DDF. It ought to have asked, who has filed application but mute silence demonstrated which supports the claim of

Licencee that applicant was to take benefit of the area occupied by those four transformers and in lieu of applicant agreed to shift the transformers at it's cost, even paying normative charges. We are clear as per Electricity Act and Supply Code only in case of DDF, such charges can be borne by applicant, if the supply sought, is, more than 25% of the load available. In this case, as there is no prayer for DDF, the manner in which the sanction order speaks, about the normative charges or using the word 'DDF' loses it's value. In other words, it leads to a conclusion that from 1980/1988 transformers were there, neither Patkar Trust nor Mr. Patkar or applicant partnership firm, succeed in evicting Licencee from that particular area and removal of transformers, but, agreed to shift the said transformers. The way in which applicant

developed a theory of augmentation, is, found without any merit. As stated above, at no point of time, there was any prayer for supply as DDF and towards it Licencee directed applicant to arrange for the expenses of shifting the transformers. The supply was available to applicant for construction purpose in the year 2010 and supply was sought for constructed portion to the extent of 45 commercial connections in the year 2013. Hence, if anything is mentioned unconnected to DDF in sanction order, it cannot be read as it relates to DDF. Accordingly, there is understanding / arrangement in between Licencee and applicant, towards shifting of transformers. It has no connection with previous supply for construction purpose or subsequent supply for commercial purpose. Accordingly, it is clear that arrangement arrived at as per understanding amongst the applicant and Licencee, was, not towards giving any supply as such. Accordingly, aspect of shifting transformers by applicant cannot be held as an act done by applicant in the capacity of 'consumer' under the Electricity Act read with MERC Regulation and Supply Code.

16] Applicant herein, approached this Forum claiming relief and it is tried to be stated that as per MERC Regulations, provision of Electricity Act, almost all the

infrastructure towards augmentation was to be provided by the Licencee. It has not done it rather forced the applicant to do it. We find, if any grievance is to be brought before this Forum, by the applicant it has to prove it's status as 'consumer' under the Electricity Act. No doubt, in respect of giving supply u/s. 43 of Electricity Act read with Clause 3 of Supply Code, there is a provision for recovery of charges. But recovery of charges will be in respect of prospective consumer who sought supply or existing consumers. Even relief can be granted for charges, to be recovered as per Clause 3 of Supply Code. But it is to be brought by 'consumer' before the Forum established for Redressal grievance, that grievance are to be brought by consumer. When sanction order is issued by Licencee in this matter, there was no application for

seeking supply from applicant's side. Accordingly, it is not acceptable that the grievance of any person, who is not consumer can be brought before this Forum under Regulations. No doubt, it must fulfill other requirements of the definition 'grievance' of consumer as defined in the Regulation. Word 'consumer' is defined in the Act and 'grievance' is defined under the Regulation. Accordingly, in this matter if any breach is to be alleged and any grievance is to be redressed by the Forum then it should be a 'grievance' of 'consumer'. In this matter, we are not able to find status of present applicant is established as 'consumer' pertaining to the aspect of four transformers to be removed from existing place and to be installed on the elevated portion which was to be built by applicant. This is an independent arrangement arrived. Licencee was having four transformers at particular place and applicant intending to use that particular portion, removing the transformers and something to be done at that place. In other words, elevated platform to be built by it and it was to act as per sanction order, spend amount, bear supervision charges and this is an independent arrangement amongst these too which are not coming within the four corners of the definition of 'consumer' or 'grievance' we find, in the Supply Code the 'grievance' is to be read as 'grievance of consumer' and not of any other person. In each and every provision,

towards dealing the complaints and grievances or representations of 'consumer' before IGRC Forum and Ombudsman, it refers to grievance of 'consumer' as defined in Electricity Act.

17] In view of the above discussion, it is clear that towards disputed aspect applicant's status is not of 'consumer' and the dispute brought before this Forum is not 'grievance' of 'consumer' as defined in the Regulation and Electricity Act respectively. Hence no relief can be granted by this Forum to the applicant and it is rejected on this count.

18] This matter could not be dealt within prescribed time as both sides took time to make submissions finally which they concluded on 28/3/2014.

Hence the order.

ORDER

This grievance application of applicant rejected.

Dated: 09/04/2014.

I agree

I agree

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

(Chandrashekar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

NOTE:

d) 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”.

e) 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 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”

C] 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.