

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 45 of 2005

**Petition filed by M/s. Sanjay Ashok Co-operative Housing
Society Ltd., for restraining the Brihan Mumbai Electric and
Transport Undertaking from constructing a sub-station.**

**Dr Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri.S.B.Kulkarni, Member**

Dated: August 11, 2006

M/s. Sanjay Ashok Co-operative Housing Society Ltd., a housing society registered under the Maharashtra Co-operative Society's Act, 1960, filed a Petition on 6th February 2006 but termed it as an appeal under Section 67(4) of the Electricity Act, 2003 ("EA 2003") seeking to obtain directions for restraining the Brihan Mumbai Electric and Transport Undertaking ("BEST") from constructing a Sub-station in the premises of the Petitioners.

2. The Petitioners stated that they were in receipt of certain letters from BEST suggesting that a sub-station is needed to be constructed by BEST on the premises of the said housing society. It was also contended that on being asked to clarify whether the sub-station is intended to meet the load requirements of the said premises alone, no reply had been received from BEST. The Petitioners also stated that legal notices had been sent by them to BEST indicating that BEST has no right whatsoever to enter upon and construct a sub-station since the property in question stands in the name of the Petitioner society and no rights accrue in favour of BEST under the Deed of Conveyance dated 6th February, 1981 in terms whereof the original owner conveyed the said property in favour of the Petitioner society, and nothing therein is mentioned about lease of any part or portion of the said property to BEST. The Petitioners also stated that since 1981 the Petitioner society and members thereof are in absolute and uninterrupted use, occupation and possession of the said property. It is their contention that in the last 27 years or so, BEST has not made any claim on the said property for the purposes of constructing a sub-station. It has also been contended by the Petitioner society that BEST is forcibly trying to construct a sub-station though there is no need for the same as the Petitioner society is receiving electricity supply from the year 1979 onwards and a new sub-station has already been constructed in the property adjacent to the premises of the Petitioner society.

3. An admissibility hearing was held in the matter on 22nd March, 2006, wherein the Commission was of the view that the issue of Commission's jurisdiction to entertain and decide this matter would need to be satisfied in the first instance. Further, the maintainability of the Petition under Section 67(4) of EA 2003, as relied upon by the Petitioners, would also have to be satisfied.



4. The Petitioners have stated that on a suit having been filed in the Hon'ble City Civil Court against BEST, the City Civil Court has held that the suit is not maintainable and if aggrieved, the Petitioner society should approach the Commission.

5. BEST submitted that the Petitioner society has approached the Commission for seeking relief under the provisions of Section 67(4) of EA 2003 which provides as under:

“67(4) Where any difference or dispute including amount of compensation under sub-section (3) arises under this section, the matter shall be determined by the Appropriate Commission.”

Therefore, where a determination has been made regarding the payment of compensation or rent to persons affected by works of a licensee (to lay down or place electric supply lines, etc.) for any damage, detriment or inconvenience caused by the Licensee, the Commission would have jurisdiction to settle any difference or dispute including the amount of compensation payable by the Licensee. It is the contention of BEST that as a licensee BEST has the right to install a sub-station. Respondents have also submitted that Section 67(4) of EA 2003 does not cover issues relating to construction of sub-station. Therefore, Section 67(4) of EA 2003 would not apply to the present matter.

6. On the preliminary objections taken by BEST, the Petitioners were directed to file their reply within a week from the date of admissibility hearing and to clearly state the provisions of law which would be applicable to the case of the Petitioner Society. BEST were also directed to clearly point out the applicable provisions of law under which the Commission would have jurisdiction to entertain the present matter.

7. Although no further filing were received from the Petitioner society, BEST submitted written submissions on the limited issue of jurisdiction of the Commission on 31st March, 2006. It is the contention of BEST that the entire mechanism for a licensee to carry out works necessary for transmission or supply of electricity is provided under Section 67 of the EA 2003. Under the provisions of Section 67(2) read with Section 180(2)(b) of the EA 2003, the State Government is required to prescribe the rules to be made in this regard, the cases and circumstances in which the consent in writing of the owner or occupier shall be required for carrying out works; the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works; the procedure and manner of consideration of objections; the determination and payment of compensation or rent to the persons affected by works; the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc., and several other matters as are incidental or consequential to the construction and maintenance of works by Licensees. Therefore, the correct procedure for the Petitioner society would be to follow the prescription of the State Government made under Section 67(2) read with Section 180(2)(b) of the EA 2003. BEST has also referred to the provisions of Section 185(2)(b) which stipulate that the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules are framed under section 67 to 69 of the EA 2003. In light of the above, it has been contended by BEST that the Commission would not have jurisdiction to entertain the present petition.

8. Having heard both the parties and considered the material placed on record, the Commission is of the view that Section 67(4) of EA, 2003 would not be the correct provision under which the Petitioners can seek directions to restrain BEST from constructing a sub-station on their property. The dispute is with regard to installation of a sub-station by BEST on the premises of the Petitioner society, which apparently is a part of the property that has been allotted to BEST by the developers, though without knowledge of the Petitioners. The State Government



is required to specify rules for such matters under Section 67, in the absence of which, the jurisdiction of the Commission cannot be invoked. No material has been placed before the Commission regarding the existence of the said rules. Moreover, the jurisdiction of the Commission under Section 67(4) is limited to decide any difference or dispute including amount of compensation which a licensee is required to pay for any damage, detriment or inconvenience caused by the licensee or by any one employed by it. The Commission is not empowered to restrain a licensee from installing or constructing a sub-station. The manner of considering objections from the owner of the property by a specific authority is required to be prescribed by the State Government as aforesaid. Also, the Petitioners have not satisfied the Commission by furnishing requisite information as to the applicable provisions of law under which the jurisdiction of the Commission can be invoked, although being directed to do so. The Commission, accordingly, holds that it does not have jurisdiction to entertain the present petition.

9. Since, the Commission does not have jurisdiction to decide the present petition under the provisions of Section 67(4) of the EA 2003, no other statutory provisions having being relied upon by the Petitioners herein, the Petition is not maintainable.

Accordingly, the Commission dismisses the Petition with the above observations.

Sd/-
(S.B.Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman



(Ms. Malini Shankar)
Secretary, MERC