

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 61 of 2005

In the matter of
**Contravention of Section 46 of EA, 2003 and Regulation 10.5 of MERC
(Electricity Supply Code and other Conditions of Supply)
Regulations, 2005 by Reliance Energy Limited**

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

Dated: August 16, 2006

ORDER

Smt. Pratibha Datta through her Consultant Shri. Gopikrishna Kundanmal Chandak filed a complaint on 13th March, 2006 alleging that Reliance Energy Limited (“REL”) has contravened the provisions of Electricity Act, 2003 (EA 2003). The Complainant’s contentions are summarized in a threefold manner as under:

- (i) By claiming an estimate amount of Rs. 1570/- from the Complainant for providing connection to her premises being Room No.1, Sai Baba Nagar, Marol Church Road, near Bori Colony, Andheri (East), Mumbai 400 059 without seeking permission from the Commission, REL has contravened the provisions of Section 46 of EA, 2003. On the details of arrears alongwith documentary proof being sought by the Complainant, REL failed to provide the same and, therefore, the amounts representing the arrears are fictitious;
- (ii) By claiming arrears for ten years amounting to Rs. 26,000/- from the Complainant, REL has contravened the provisions of Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (“Electricity Supply Code”). It has been submitted that under the MERC (Standards of Performance of Distribution Licensees, Period for giving Supply and Determination of Compensation) Regulations, 2005 (“SOP”) as also under the Electricity Supply Code, the Complainant is liable to pay arrears pending for six months only which the Complainant is ready to pay provided REL produces documentary proof in support thereof;
- (iii) By not providing electricity supply at the aforesaid premises of the Complainant within a period of one month from the date of requisition, by showing fictitious arrears, REL and its officers have contravened the provisions of Section 43(1) of the EA, 2003.



The Complainant has prayed for initiation of an inquiry by appointing an adjudicating officer under Section 143 of the EA, 2003 and that an Order may be passed directing REL to connect the supply at the premises of the Complainant immediately.

2. By its Reply filed on 12th April, 2006 on the issue of maintainability, REL has contended that the concerned Consumer Grievance Redressal Forum ("CGRF") established by REL would be the appropriate Forum to decide the present matter since the Complainant is a "consumer" within the meaning of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003. It has been pointed out that disputes between a distribution licensee and consumer attracts the jurisdiction of the CGRF. REL's further contentions are summarised as under:

- (i) That premises/ Room of the Complainant has been admittedly numbered as Room No.1 from the earlier Room No. A/13. The Load Card assigned to the said premises as per the records of REL shows that the Meter No. 2689476 was connected to the premises on 20th August, 1996 as per records, on an application of Shri. A.M. Sharif, the erstwhile owner of said premises and admittedly, the Complainant has been in occupation of the said premises on rental basis since the year 1995. The meter was disconnected in the year 2001 due to non-payment of arrears. An application was made by the Complainant on 3rd December, 2005 requesting for the provision of supply of electricity and requisite payments towards service line charges amounting Rs.1570/- were paid.
- (ii) That the Complainant is liable to pay the arrears of the erstwhile owner since the Complainant was throughout in occupation of those premises since the year 1995. The payment of arrears would enable REL to proceed with giving connection to the premises. REL is entitled to recover the entire amount due and payable to the satisfaction of REL, in accordance with Regulation 7.2 of the SOP;
- (iii) It cannot be said that REL has contravened the provisions of Section 46 of EA, 2003 in view of an Order dated 6th October, 2005 passed by the Electricity Ombudsman in Representation No.11 of 2005.

3. An admissibility hearing was held in the matter on 12th April, 2006 wherein it was contended on behalf of the Complainant that REL in the first instance requires to seek prior permission of the Commission under Section 17(3) of EA, 2003 for operating under the licence granted to BSES. It was contended that the Commission ought to decide the issue as to whether REL is a distribution licensee or not, in the first instance. In reply, Smt. Anjali Chandurkar, Counsel for REL submitted that the provisions of Section 17(3) would not be attracted since there has been a change of name from BSES to REL after following the requisite procedure with the Registrar of Companies under the Companies Act, 1956. During the hearing, in addition to the aforesaid submission relating to change in name, the parties reiterated their written submissions.

4. Having heard the parties at length and after considering the material placed on record, the Commission is of the view that the contention of the Complainant as to whether a license is issued in the name of REL or not or whether permission was obtained under Section 17(3) is an issue which has not been pleaded in the Complaint and, therefore, the Commission shall not take cognisance of the same while deciding the present matter. As regards the main contentions brought about by the Complainant in the complaint, the Commission's findings are as under:



- (i) The relation between a consumer and a distribution licensee is governed by Part VI “Distribution of Electricity” of EA, 2003. Section 42(5) to (8) provides with respect to forum for redressal of grievance and the appellate forum as well. By virtue of powers conferred by Section 181 read with Sub-sections (5) to (7) of Section 42 of the EA 2003, the Commission has made the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006, in supercession of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2003, which has come into force from 20th April, 2006. The internal grievance redressal cells (“IGRC”) and the CGRFs established by the distribution licensees are expected to redress consumers’ grievances in respect of matters specifically provided in the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (“CGRF Regulations”). The powers and jurisdiction of the CGRF are no doubt clearly defined. Within the bounds of its jurisdiction, the CGRF has all the powers expressly and impliedly granted. It, therefore, follows that the CGRF also has such powers as are truly incidental and ancillary for doing of such acts employing all such means as are reasonably necessary to make the grant effective. The jurisdiction of the CGRF as seen from sub-section (5) of Section 42 of EA, 2003 read with the provisions of the CGRF Regulations is enumerated there in.

Sub-section (5) of Section 42 of EA 2003 reads thus:

“(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.”

Regulation 2.1 (c) of the CGRF Regulations reads thus:

“(c) “Grievance” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”

The entirety of power as spelt out in the aforesaid provisions could be exercised by the IGRC and the CGRF only as against a “grievance” filed by the Petitioner herein. On facts and in the light of the statutory provision conferring jurisdiction on the IGRC/ CGRF, when a forum has been constituted for redressal of grievances of consumers by the mandate of Section 42, the Commission does not have jurisdiction and, therefore, the Commission does not propose to examine the factual dispute or contentions advanced by the respective parties, as it is for the competent IGRC/ CGRF to decide such grievances or disputes between consumers and licensees. The special provision excludes the general is a well accepted legal position.



Therefore, it is a question of the Petitioner taking up the matter with the concerned IGRC/ CGRF, as the case may be, in respect of non-compliance, if any, by the Respondents of the provisions of the Electricity Supply Code particularly Regulation 10.5 thereof and for the provision of supply. The CGRF is expected to examine the factual matrix of the matter by investigating in detail as regards the contentions of the Petitioner based on facts. In the circumstances, the Commission has not examined the merits of the case and counter case of both parties as the issues or controversies are left open to be agitated before competent forum.

Being a creature of the Statute, it is not open to the Commission to go beyond the provisions of the EA, 2003. The Commission has to discharge its functions within the limits imposed there and to act according to its provisions. That apart, it is impossible for the Commission to examine the case of millions of consumers, whose grievances are to be addressed by the forums specially constituted.

- (ii) In view of the above observations, as against the contentions and prayers made by the Petitioner, the Commission is of the view that an attempt to invoke the provisions of Section 142 of the EA, 2003 in this case cannot be sustained in law, since the facts are required to be investigated in the first instance by the concerned IGRC/ CGRF. The special provision in sub-section (5) of Section 42 of EA, 2003 will govern this with further representation thereof under sub-section (6) of Section 42.
- (iii) The Commission is also of the view that it is not necessary to appoint an adjudicating officer under Section 143 of the EA, 2003 for holding an inquiry for the purpose of imposing penalty under Section 43.

While giving liberty to the Petitioner to work out its remedies before the competent forums, the Commission dismisses the Petition with the above observations.

(S.B.Kulkarni)
Member

(A. Velayutham)
Member

(Dr. Pramod Deo)
Chairman



(Ms. Malini Shankar)
Secretary, MERC