



## BEFORE THE OMBUDSMAN

(Appointed by the Maharashtra Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051  
Tel. / Telefax: 022-2659 2965

### **REPRESENTATION NO. 11 OF 2005**

#### **In the matter of New Service Connection Charges**

Shri R. D. Sankpal and Shri S. G. Galande..... Appellant

Versus

Reliance Energy Limited..... Respondent

Present:

1. Shri W.G. Gorde, Ombudsman
2. Shri S. N. Yadwad, Secretary

On behalf of the Appellant:

1. Shri R.D. Sankpal

On behalf of the Respondent:

1. Smt. Anuradha Shetye, Additional Manager, (Legal),  
Nodal Officer, M/s. Reliance Energy Limited

**Date: 6<sup>th</sup> October, 2005**

1. Shri R.D. Sankpal, on behalf of himself and Shri S. G. Galande filed the representation on 6<sup>th</sup> May, 2005 in respect of their grievance against the Distribution Licensee, Reliance Energy Limited for not sanctioning electric connection to their premises at appropriate connection charges. The applicants, Shri Sankpal and Shri Galande reside at Jaimatadi Chawl, Samata Sahakari Sanstha, Maharashtra Nagar, Mankhurd, Mumbai – 400 088 (hereinafter referred to as Appellant). The representation is registered at Serial No. 11 of 2005. Details of the representation are given below:

The Appellant had filed their application with the Licensee for a new electricity connection and meter for residential purpose at the above address, on 2<sup>nd</sup> November, 2004. Reliance Energy Limited (hereinafter referred to as Respondent) issued an estimate of charges to be paid by the Appellant, as bifurcated below:

a)	Service line contribution	Rs. 1450/-
b)	Security Deposit	Rs. 120/-
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	Total	Rs. 1570/-
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2. The Appellant says that as per his information, the estimate for tapping meter should be Rs. 126/- and not Rs. 1570/- as claimed by the Respondent. A copy of the

estimate dated 02.06.2004 issued in favour of some other consumer by the same Respondent was enclosed as a proof in support of his say.

3. The Appellant further says that, despite follow up with the Respondent's officials, the matter could not be sorted out as the Respondent declined to reduce the estimated charges for connection. He, therefore, took up the matter with the Consumer Grievance Redressal Forum of Reliance Energy Limited, on 8<sup>th</sup> February, 2005. The Appellant explained the steps taken by him to redress the issue. The Forum heard the matter on three occasions, the last one, being on 28<sup>th</sup> June, 2005. The Forum did not pass any order within the stipulated time of two months. The Appellant, being aggrieved due to non-redressal of grievance in time, approached the Ombudsman through this representation.

4. The Respondent filed its reply on 24<sup>th</sup> May, 2005. It states that it has raised a preliminary issue that the Appellant is not covered within the definition of 'Consumer' under the Electricity Act, 2003 and as such, the applicant has no locus standi to file any grievance. The remedy of filing grievance under the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 is available only to the consumers and not to any person other than the Consumer. The Respondent insisted that this preliminary issue of maintainability of grievance filed by the applicant should be decided first, before entertaining the grievance.

5. The Respondent, further, says that the present grievance is premature and the same is also barred by the principle of Res-Judicata since the applicant's grievance is still pending before the Forum.

6. The matter was heard on 22<sup>nd</sup> June, 2005. The Appellant reiterated his stand during the hearing that the Respondent has not redressed their grievance and still insists that the applicant should pay Rs. 1570/- before granting connection as against Rs. 126/- applicable in their case. Copy of one estimate for Rs. 126/- issued by the Respondent to some other Consumer was cited in support of his say. He submitted that he has filed his grievance with the Forum, in February, 2005 and despite lapse of over four months, no decision was taken and therefore, he had to approach the Ombudsman.

7. The Respondent insisted that the present applicant is not a 'Consumer' within the meaning of the definition of Consumer in the Electricity Act, 2003 and therefore, he cannot raise his grievance at this stage. The Nodal Officer, Mrs. Shetye, on behalf of the Respondent, further stated that the matter is still pending at the level of the Forum awaiting the decision. In view of this, she prayed that the representation should not be entertained.

8. It was brought to the notice of the Respondent during the hearing that the case is pending with the Forum for more than four months. The Appellant had been waiting for the decision for long time and thereafter filed the representation as provided in the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. As such, the principle of Res-Judicata does not apply

in the present case. The Nodal Officer informed that the matter is now scheduled for hearing by the Forum in the next few days. The Respondent has not filed its reply to the points raised in the representation and has restricted its submission to the issue of maintainability. In view of this, the Nodal Officer was advised to file a point wise reply. The matter was adjourned.

9. Subsequent to this, it was brought to our notice that the Forum has passed the order in the present case on 28<sup>th</sup> June, 2005. The Forum has observed that the person who has been supplied electricity for his own use from the Licensee or whose premises are connected for the time being for the purpose of receiving electricity with the work of Licensees, is included in the definition of 'Consumer'. The definition does not include an applicant who is a prospective consumer.

10. The Forum also relied on the order of National Consumer Grievance Redressal Commission, in the Revision Petition No. 73 of 1992 decided on 17<sup>th</sup> December, 1992 in case of the Additional Chief Engineer and Others versus Ramalingam. The National Commission has observed as under

*“the Respondent has also raised a more fundamental issue that the Appellant Complainant is not a ‘consumer’ by making an application alongwith the earnest money deposit on 18.11.90 and he has become an intending consumer, an applicant for service. The hiring of services or supply of power by the Respondent could only arise after full amount has been deposited or connection has been given”.*

11. On being brought to the notice of the Forum by the present Appellant that if the proposed consumer is not entitled to make a grievance to the Forum, then where should the applicant seek justice, the Forum observed that “there may be some difficulty in the way of proposed consumer. However, in such cases, the proposed consumer would be well advised to approach the Court of Law. We are strictly governed, by the definition of consumer as the Forum is established for Redressal of Grievance of Consumers, as defined in the Act”.

12. In view of the above, it is necessary to go through the definition of the “Consumer” in the first instance before the matter is examined on merit.

13. The Forum, in its order has relied on the definition of 'Consumer' as it appears in Section 2 (15) of the Electricity Act, 2003. The Forum also relied on the Order of the National Commission in the Revision Petition referred to above. The definition of 'Consumer' under Section 2(15) reads as under:

*“Consumer means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be.”*

14. On perusal of the definition, it is seen that the definition is divided in two parts. The first part explains broadly as to who is a consumer and the second part is an inclusive clause explaining as to who are also covered in the definition of 'Consumer'. On careful reading of the first part, it is clear that Consumer means any person who is supplied with electricity for his own use by a Licensee. It is worded in the passive voice of the grammar. The active voice of the same sentence would appear as below –

'A Licensee supplies electricity to a person for his own use'. The sentence in the definition is worded in passive voice but in the present tense and not 'past tense'. It intends to cover any person whosoever wants and has applied for electricity. It does not convey the 'past tense' to mean a person who has already been supplied with electricity. Had it been intended that the persons who are already supplied with electricity, alone are to be covered as 'Consumers' the wording of the same sentence would have been as under:

"Consumer means any person who was supplied or has been supplied with electricity for his own use by a Licensee....."

15. The two parts of the definition clearly describe two different categories of persons. It can be inferred that the Act does not intend to exclude those who are in a process of being supplied electricity from the purview of the definition of 'Consumer'. These categories of persons are covered in earlier part of the definition. First one to cover those potential consumers who are in the process of being connected and the second, to cover those already connected.

16. Second part of the definition "and includes any person----- as the case may be" relates to those consumers, whose premises are already connected with power, unlike those referred to in the earlier part of the definition.

17. The later part of the definition intends to include any person whose premises is already connected which means the existing consumer already in receipt of the electric supply. This class of "already connected consumer" is certainly distinguishable from the other class of consumers who are in a process of being connected (and not already connected). Such class of consumers is defined in the earlier part of the definition. Had both the parts of the definition intended to mean as "already connected consumer," as is understood by the Forum, then two parts of the definition of 'Consumer' get merged into one and become undistinguishable with no separate identity. This is certainly not intended.

18. It is true that the Electricity Act, 2003 has provided a mechanism i.e. Forum and the Ombudsman under Section 42 of the Act to redress the grievance of the Consumer. The term 'Consumer' is defined in Section 2 (15) of the Act. In addition, perusal of Section 42 (4), would be helpful to bring out the meaning and coverage of the person who can be classified as a 'Consumer'. Section 42 (4) reads as under:

"Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of

*wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.”*

19. It is clear from the above that the Commission may permit a Consumer or Class of Consumers to receive supply of electricity from a person, etc. ----- Reading of this Sub Section conveys that even without receiving actual supply, an applicant is classified as a Consumer and not merely as an applicant. Had it been intended that the Consumer is one who has already received electricity supply, then there will be an apparent contradiction in the interpretation of the above Sub Section.

20. Similarly, it would also be worthwhile to read Section 2(61) of the Electricity Act, 2003, to drive home the point:

*2(61) “service-line means any electric supply-line through which electricity is, or is intended to be supplied-*

- (a) to a single consumer either from a distributing main or immediately from the Distribution Licensee’s premises; or*
- (b) from a distributing main to a group of consumers on the same premises or on contiguous premises supplied from the same point of the distributing main”.*

21. In the above description, the ‘service line’ means any electric supply line through which electricity is or intended to be supplied to a single consumer, etc. Here again, the intention is clearly to include the prospective consumer in the definition of a ‘consumer’, otherwise, an apparent contradiction would again arise if we restrict the definition of consumer to only those who are ‘already connected’. In that case, contents of the sub sections (a) and (b) above ought to have been differently defined by using words like applicants or potential consumer, etc instead of ‘consumer.’

22. In addition to the above, it will be useful to look at the provisions under Section 42(5) in this context. Section 42(5) of the Act reads as under:

*“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”.*

23. It is clear that the Forums for redressal of grievances are established and function in accordance with the guidelines specified by the State Commission. The Commission has accordingly published the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 and Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of giving Supply and determination of Compensation) Regulations, 2005. A close look at the above set of Regulations, would reveal that they have stipulated guidelines to regulate various services and specified standard parameters to be followed in respect of electricity supplied to the consumers. These parameters include period for giving electricity supply, quality and system of supply, restoration of power supply as well as consumer charter and services. Regulations also specify time

limits for each stage of service like inspection of the applicant's premises after receipt of application, time period for intimation of charges, restoration and quality of supply, metering and other post connection and reconnection issues.

24. The Consumer's interface with the Licensee starts necessarily at the stage of making application and not after he is actually connected. The applicants expect to receive host of services like early inspection of premises, getting estimate of expenses / charges as early as possible much before the actual connection of electricity. The Commission, therefore, have detailed out and covered all the steps right from the application stage which are required to be adhered to by the Licensee to render timely and better service. Non observance of the norms prescribed by the Regulations attract penalty as determined in the Regulations. The Commission has, therefore defined the term 'applicant' in the Regulations to cover the Consumer seeking service at different stages such as making application for supply, increase or reduction in contract demand, restoration, change of name, etc. Regulations provide that any such applicant / consumer, if and when aggrieved with any of the services to be provided by the Licensee, can raise grievance in accordance with the Grievance Redressal Regulations to the Forum and the Ombudsman. It is, therefore, beyond normal comprehension to exclude the class of consumers who are going through the process of making application and sanction of electric supply from the access and remedies to ventilate and redress their grievances. Otherwise, it will go against the very spirit of the legislation. In this context, it would be worthwhile to quote the part of the Preamble of the Act.

36 of 2003 (26<sup>th</sup> May, 2003): An Act to consolidate -----  
protecting interest of consumers and supply of electricity to all areas -----  
-----or incidental thereto.

25. It is seen from the above that the protection of interest of consumers and supply of electricity to all areas, have been treated as priorities under the Electricity Act, 2003.

26. The Respondent in the written statement as well as during the hearing argued that the Appellant in this case is not a consumer as he has only applied for electric connection and the power is yet not been supplied. The Respondent relied on the National Commission's Order in the Revision Petition No. 73 of 1992 decided on 17<sup>th</sup> December, 1992 in the case of Additional Chief Engineer versus Ramalingam, reported in 'National Commission and Supreme Court on Consumer Cases' 1986-1995, Volume 1 Page 695. It was argued that case under citation depicted a parallel situation in which the applicant was not treated as 'Consumer' merely on the basis of his application for power and earnest money deposit.

27. It is observed that the case referred to above in paragraph 26 by the Respondent's Nodal Officer, was decided by the National Commission, on 17<sup>th</sup> December, 1992. The same Commission, further, on 18<sup>th</sup> August, 1994, has decided the first appeal No. 183 of 1992 between Tamil Nadu Housing Board and Others versus A.V. Ramakrishnan. The National Commission in this case, relied on Supreme Court Judgement in the Civil Appeal No. 6237/90 between Lucknow Development Authority versus M.K.Gupta decided by the Supreme Court on 5<sup>th</sup> November, 1993 and ruled that even the applicant

for service is a 'potential user and is a Consumer'. The relevant paragraphs in the order of the National Commission referred to above, read as under:

*"7. The main argument of the learned counsel for the Appellant is that the Respondent had only applied for allotment of a site for building a house and has paid only registration fee and therefore, at the most he was only entitled to consideration of his application and as no allotment of any site has been made, whatever the cause may be, he is not a consumer. In our opinion, this argument has no force. The words "service of any description which is made available to potential users" came for consideration before the Supreme Court in M.K. Gupta case (Supra) the Court remarked:*

*"Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression service made available to potential users. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of a transaction is covered in the expression 'service of any description.'"*

*"Therefore, the Respondent – Complainant who had applied for allotment of a building site will be covered by the Expression "potential user". Therefore, it is futile to argue that because no allotment of plot had been made in favour of the Complainant he cannot be deemed to be a consumer as defined in the Consumer Protection Act. As his name was not included in the draw the Appellant-Board will be held to be deficient in the rendering of service."*

28. Mrs. Shetye, the Nodal Officer also cited the order of Tamil Nadu State Consumer Disputes Redressal Commission in the Case No. A.P.468 of 1999 between Tamil Nadu Electricity Board and Others versus Nachimuthu to defend her stand that the applicant does not become a consumer. The case referred to above relates to an application which was rejected as certain conditions were not satisfied by the applicant. The order concludes that the application will be accepted by the opposite party only if certain conditions are satisfied. Having turned down the application, no relationship of a hirer or a user so stated would have been established. In the present case, however, the application from the Appellant has not been turned down but an estimate to pay certain charges was communicated. As such, there is no situation like broken down relationship, mentioned in the case referred. Moreover, it appears that the order of National Commission, based on Hon. Supreme Court judgement referred in preceding paragraphs, has not been brought to the notice of Tamil Nadu State Consumer Disputes Redressal Commission. Therefore, it will be not enough to rely on the said order in the context of the view taken by the National Commission and the Hon. Supreme Court while deciding the definition of a 'consumer'.

29. In the context of the present case, it will be further useful to refer the judgement of the Hon. Supreme Court of India in the Civil Appeal No. 6237/90 between Lucknow Development Authority versus M.K.Gupta to understand the emphasis laid by the Hon. Supreme Court on the importance of protecting the Consumer. In that case, the Hon. Supreme Court found it appropriate to ascertain the purpose of the Act, the objective it seeks to achieve and the nature of social purpose it seeks to promote. The said judgement

has attached great importance to the word 'protection' and has dealt the issue extensively on protection of the interest of consumers. It has left no doubt in concluding that it is not only purchaser of goods or hirer of services but even those who could use goods or who are beneficiaries of services, are included in the definition of 'consumer'. The Hon. Supreme Court has observed "In other words, service which is not only extended to actual users but those who are capable of using it, are covered in the definition. The clause is, thus, very wide and extends to any or all actual or potential users."

30. In the light of and relying on the above judgements, the observations made by the Consumer Grievance Redressal Forum, to exclude those consumers who are not actually connected with electricity, from the definition of the 'Consumer', would not hold good. The earlier view of the National Commission on which the Forum has relied upon, is subsequently modified in a separate order issued by the said Commission in the case of Tamil Nadu Housing Board versus A.V. Ramakrishnan.

31. Moreover, it is important to note that the later order of the Commission is based on the interpretation of the definition "Consumer" by the Hon. Supreme Court in the case of Lucknow Development Authority versus M.K.Gupta. The objective of and the spirit behind the Consumer Protection Act, 1986 and the Electricity Act, 2003, so far as they relate to consumer protection cannot be construed to be at variance. Therefore, I have no hesitation to conclude that in the present case, the Appellant falls within the ambit and definition of the 'Consumer' under the provisions of the Electricity Act, 2003. It is pertinent to note that provisions under the Consumer Protection Act, 1986 prevail over the corresponding provision of the Electricity Act, 2003 in case of any inconsistency, ambiguity or any lack of clarity if noticed, as clarified in Section 173 of the Electricity Act, 2003

32. Having concluded that the present Appellant is a 'consumer' within the meaning of the Electricity Act, 2003, it would be necessary to proceed to decide the case of merit.

33. The matter was heard on 26<sup>th</sup> September, 2005. Mrs. Shetye, the Nodal Officer of the Respondent made written submission together with details of average cost charged by Reliance Energy Limited to each applicant in respect of Annabhau Sathe Nagar, Maharashtra Nagar and Chimatpada areas. The copy of the letter 26<sup>th</sup> October, 2004 written by the Respondent to Secretary, Maharashtra Electricity Regulatory Commission is also submitted. She stated that the Appellant is not entitled to agitate on the issue of estimate and reiterated her stand that the present appeal filed by the non-consumer, is not maintainable. While arguing on the estimated charges levied to the consumer, Mrs. Shetye relied upon the letter submitted to the Maharashtra Electricity Regulatory Commission on 26<sup>th</sup> October, 2004. She stated that the Respondent has started levying average service installation charge to the consumers which is based on the actual cost of laying the network, from October, 2004 and no discrimination is made between first applicant and the later applicant. As such, there is no 'Tapping Category' nor there is any separate charge for Tapping Category. The Applicant, seeking connection has to pay the average charge on equal basis.

34. The Appellant stated during the hearing that he is aggrieved with the decision of the Forum in not recognising him as a 'consumer' and pleaded that his case should be considered for giving electric connection on par with the other consumers who are connected in the recent past. He cited and submitted copies of estimates in 5 other cases wherein the Respondent has given the estimate of Rs. 156 each. This includes connection fees and security deposit and no service line charges. The cases referred by him relate to the period from March, 2005 to August, 2005 (i.e. after October, 2004). Copies of the electricity service estimate submitted by him were taken on record. The Nodal Officer desired to verify genuineness of these estimates. Subsequent to this, the originals of these estimates duly issued by the Respondent were shown to her for verification. While on these issues, the Nodal Officer was asked to state whether she agrees with the estimates referred to above, as approved and issued by the Respondent, she was not able to clarify but assured that she would do it within two days.

35. The Appellant made further submission on 29.09.2005 to say that M/s. Reliance Energy Limited cannot levy and collect service line charges from the public unless and until the charges are approved by the Maharashtra Electricity Regulatory Commission as per the Regulations. The Appellant further stated that the judgement cited by the Respondent in Ramalingam case is not applicable here as the applicant in that case was not prepared to pay the full amount calculated under the approved schedule. The situation here is different since he is prepared to pay any amount no sooner the distribution licensee proves it legal and calculated under its approved schedule.

36. Mrs. Shetye, on behalf of the Respondent made submissions to explain that there are two categories of applicants.

Category 1 is a network category of slums applicants (residential) wherein the cost of laying the service line is incurred by M/s. Reliance Energy Limited well in advance and hence the average cost is recovered per applicant falling in this category of network. This category of applicants do not pay the actual cost of service lines and each applicant does not have to pay disproportionately.

Category 2 is of the non-slums applicants wherein the actual cost of service line is recovered and paid to M/s. Reliance Energy Limited by the applicant. Question of charging the average cost per applicant in this category, does not arise. Typically, this category includes connections given for building, recognised / authorised chawls and commercial / industrial (non-slum units) in the slum area. Since actual cost is recovered from the applicants of this category, question of recovering cost on average basis like category 1, does not arise. It is further stated that the 5 applications of whom the estimates were submitted by the Appellant falling under this category 2 and therefore the average cost is not recoverable from them. Cost of service line having being already recovered, estimates given to them include only connection charges and security deposit.

37. Having heard both the parties, it is necessary to look at the provisions governing the charges for connection recoverable from the applicants. The charges are governed by Regulation 18 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions) Regulation, 2005 and Section 45(5) of the Electricity Act, 2003. The provisions in the Act and the Regulations read as under:

45(5): *“The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the Regulations made in this behalf by the concerned State Commission”.*

Regulation 18.1: *Every Distribution Licensee shall within one month from the date of notification of these Regulations or within one month from the grant of license, whichever is later, file with the Commission for approval, a schedule of charges for matters contained in these Regulations and for such other matters required by the Distribution Licensee to fulfil its obligation to supply electricity to consumers under the Act and these Regulations:*

*Provided that the Distribution Licensee shall file the schedule of charges along with every application for determination of tariff under Section 64 of the Act together with such particulars as the Commission may require.*

38. The provisions above show that the licensee can recover the charges as approved by the Commission under Regulation 18. It is also provided that the distribution licensee may, with the approval of the Commission recover such expenses on the basis of an average or normative rate to provide an electric line or electric plant for providing the supply, as per Section 43(2) of the Electricity Act, 2003.

39. This issue was apparently taken up by Mumbai Electric Consumer Federation (Proposed) with the Commission in April, 2005. The Secretary, Maharashtra Electricity Regulatory Commission, in reply to the above, by his letter dated 28<sup>th</sup> April, 2005, has confirmed that the Commission is in the process of finalising the schedule of charges of the various licensees as provided under Regulation 18 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions) Regulations, 2005. The letter further says that the existing charges of the distribution licensee continue to be in force until then. Model draft conditions of supply prescribed under the Annexure VI and the ‘schedule of service and miscellaneous charges’ in Part III of the Indian Electricity Rules, 1956 provide for recovery of cost of service lines from the applicant. Similar provision exists under the Clause No. 6 of ‘Conditions of Supply and Miscellaneous Charges’ framed by the Respondent licensee. This requires the licensee to submit to the applicant a quotation of the estimate of cost to be borne by him.

40. It is evident from the above that the Respondent licensee can recover charges for new connection at the existing rates. The question, therefore, arises as to what are the existing charges levied by the Respondent?

41. During the hearing, Mrs. Shetye was asked whether there is any circular to indicate charges for various services rendered by them at present. She reconfirmed that there is no such circular and further stated that the charges are recovered on the basis of the average cost incurred by M/s. Reliance Energy Limited in laying down the network of cables, etc. The details of the average cost per consumer in respect of Annabhau Sathe Nagar, Maharashtra Nagar and Chimatpada areas where the Appellants are situated were furnished. This indicates that cost per applicant including the security deposit varies between Rs. 1570 to 1595 per connection. Broad break up of the cost of network and the number of applicants in the network is also furnished while working out the average cost.

Mrs. Shetye clarified through her submission that all 3 applicants whose cases are being considered during the appeal belong to category 1 (slums applicants) where M/s. Reliance Energy Limited has incurred cost of service line well in advance and therefore the average cost is being recovered from each applicant. She refuted the say of the Appellant that the electricity connections were given to 5 other similar applicants by charging only Rs. 156/-. She submitted that all the 5 applicants referred to by the Appellant belong to category 2 (non-slums applicants) where the actual cost of service line is already recovered by M/s. Reliance Energy Limited and therefore only security deposit and connection charges i.e. total Rs. 156/- each are charged / recovered.

42. Having considered the argument and submissions from both the sides, certain facts emerge clearly for decision.

43. There is no approved "schedule of charges" issued and adopted by the licensee at present. The matter of schedule of charges is still under the consideration of the Commission. There is also no 'schedule of charges' as such now existing. Therefore, the existing charges would only mean the cost incurred or recovered from the applicants by M/s. Reliance Energy Limited in laying down the network or cables as the case may be, in both the categories. The Respondent has furnished broad details of the cost incurred and the average cost per consumer which is being recovered in the present case. The Respondent also explained why it has charged Rs. 156/- to some consumers in category 2 cited by the Appellant. There appears, therefore, no case of discrimination against the present Appellant. The Respondent intends to recover the average cost incurred by it in laying down the network.

44. The Appellant, on the other hand, vehemently opposed to the charges being levied by the Respondent, on the ground that the schedule of charges is not so far approved by the Commission. Having examined this issue at length, it can be concluded that in absence of any approved "schedule of charges" under Regulation 18 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulation, 2005, the Respondent can levy the average cost as is reasonably incurred by it in providing services.

45. The Appellant, during the hearing raised objection that the charges being levied by the Respondent are on higher side. Having furnished the details of the average cost, it will neither be permissible nor necessary to go into the details of cost in order to decide its reasonableness or otherwise. In this context, it may be worthwhile to refer the Order of the National Commission in the Revision Petition 602 of 1995 between the Gujarat Housing Board versus Thakkar Somanlall. Relevant paragraph of the Order is quoted below:

*"The pricing is not a matter which can be the subject matter of dispute before the consumer Forum, except where the price have been fixed by law. The price charged by the Petition herein is a consideration for the sale or transfer of the flat. The question as to what was the estimated cost and the actual cost of the flat is a matter of pricing not amiable to the jurisdiction under the Consumer Protection Act."*

46. The National Commission, in yet another order, in the Revision Petition 573 of 1994 has held as under:

*“This Commission has taken the consistent view that reasonableness or otherwise of the cost or price charged for rendering a service is not a matter falling within the purview of adjudication under the Consumer Protection Act and all that the Forums are concerned with is whether there has been any deficiency in the matter of rendering service that has been contracted for”.*

47. In the light of the above, it can be concluded that in absence of any statutory fixation of cost or price for service, the Respondent licensee could recover the cost of the network for provision of electricity service. The Appellant could not substantiate the argument that there has been a discrimination with the other similar consumers after the Respondent adopted, levy of charges on the basis of average actual cost for network.

48. Having deliberated on the issues raised in the appeal, I am inclined to agree with the view taken by the Appellant that they should be treated as ‘consumers’. At the same time, it would not be a subject matter for the Ombudsman to go into the details of costing and pricing of various services rendered by the licensee in absence of any statutory fixation of charges for services. This is more so since the licensee is only trying to recover the cost of network in an attempt to provide timely service sought by the consumers as mandated under the Electricity Act, 2003.

49. In order to determine the preliminary issue of whether the Appellant is covered in the definition of “consumer” and whether a grievance of an applicant falls in the jurisdiction of the Consumer Grievance Redressal Forum and Ombudsman, additional documents, judgements and information had to be obtained. This has resulted in delay in disposal of the Representation.

### **ORDER**

1. The Appellant is a consumer within the meaning of the Electricity Act, 2003. Order of the Consumer Grievance Redressal Forum to this extent is set aside.
2. Charges for providing electricity services is not a subject matter to be deliberated before the Forum and / or the Ombudsman until the charges have been statutorily fixed under appropriate Act or Regulation.

Sd/  
(W.G. GORDE)  
Ombudsman

Sd/  
(S.N.YADWAD)  
Secretary