



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. 39 OF 2005

In the matter of Reimbursement of amount agreed as per
Conditions of Supply by Reliance Energy Limited

M/s. Vikas Builders & Contractors..... Appellant
Malad (E), Mumbai.
Versus
Reliance Energy Limited..... Respondent

Present:

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

On behalf of the Appellant:

1. None

On behalf of the Respondent:

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

Date: 22nd December, 2005

ORDER

Shri Rakshpal Abrol, on behalf of M/s. Vikas Builders and Contractors filed this representation on 27th October, 2005. The representation is not accompanied by an amount of required deposit to be made with the Ombudsman as per Regulation No. 16.4 (5) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. The same is registered at Serial No. 39 of 2005. The representation arises out of the Order issued by the Consumer Grievance Redressal Forum of Reliance Energy Limited, on 24th September, 2005. The Forum rejected the application of Shri Abrol requesting a concessional tariff from M/s. Reliance Energy Limited on the basis of the correspondence entered into with the Licensee. The Forum also rejected the claim of reimbursement of the cost of sub station construction in addition to the payment of Rs. 2,39,900/- already made by the Reliance Energy Limited. The Forum found the application barred by time and further held that Shri Abrol has no locus standi to represent the consumer. No relief was granted to the applicant. Aggrieved with the order of the Forum, Shri Abrol filed the representation and stated his case as under:

2. M/s. Vikas Builders and Contractors had applied for electricity connection to the Licensee, Bombay Suburban Electricity Supply Limited (BSES), now renamed as

Reliance Energy Limited, for supply of electricity to the layout named as Vikas Park, Malad. Vikas Builders and Contractors (hereinafter referred to as the Appellant) provided the land for construction of sub station admeasuring 7 X 4mtrs in the layout. The said sub station was constructed and handed over, upon inspection on 15th November, 1995 to the BSES.

3. The Appellant, in the month of August, 2000 further approached the Respondent proposing the development of a residential complex comprising 267 flats requiring the projected load of 1965 KW. The Respondent vide its letter of 1st August, 2000 offered the special rates with rebate in energy charges subject to certain conditions. The Respondent by further letters dated 7th and 13th September, 2001, renewed the offer on the conditions mentioned therein. The Appellant says that the Respondent did not provide rebate in the tariff as agreed under the letters referred to above. As regards the reimbursement of the cost of construction of a sub station, the Appellant received the amount of Rs. 2,39,990/- somewhere in the month of July, 2001 towards old sub station constructed by them as referred to above. This was demolished upon construction of a new sub station admeasuring 11 X 4mtrs. However, the Respondent did not reimburse cost of this new sub station.

4. The Respondent offered and renewed the rebate in tariff by letters dated 7th and 13th September, 2001, which according to the Appellant is binding and cannot be denied by the Respondent. The Appellant is aggrieved with the Forum's view that there was no contract between the Appellant and the Respondent on the rebate in tariff.

5. The Appellant does not agree that the case was time barred as observed by the Forum. It says that the Forum has overlooked the letter dated 22nd October, 2004 addressed to the Distribution Licensee making its grievance. The Appellant says that it has approached the Forum within 12 months from 22nd October, 2004 as required in the Regulations. Therefore, he pleads that the Forum has wrongly treated the application as time barred.

6. The Appellant submits that the Forum has erred in holding that the Appellant has no locus standi and cannot put a grievance for and on behalf of Vikas Builders and Contractors. The Appellant says that Vikas Builders and Contractors cannot be termed as a "person". He is authorised to represent the case and has signed the representation accordingly.

7. Notice was issued to the Respondent to submit its parawise reply to the points raised in the representation. The Respondent filed its reply on 25th November, 2005. It says Shri Rakshpal Abrol has no locus standi in the present case and the Forum has rightly decided this issue. It further states that the representation has become infructuous since the complainant and other flat owners made the payment of electricity bills disputed by the complainant. Therefore, prima facie, nothing survives in the present representation and the same is liable to be rejected.

8. The Respondent further adds that the representation is not maintainable since the grievance filed by the complainant before the Forum was time barred under Regulation

No. 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. Moreover, the complainant has sought the relief in terms of rebate in tariff before the Forum which ultra vires the provision of Section 45 (4) of the Electricity Act, 2003 and also the provision of Clause 3.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations, 2005.

9. The matter was posted for hearing on 9th December, 2005. Mrs. Anuradha Shetye, Nodal Officer & Additional Manager (Legal) was present on behalf of the Respondent. Nobody was present on behalf of the Appellant nor any communication was received from the Appellant showing any cause for non appearance. The notice for hearing was duly served on the appellant. In view of this, the representation is liable to be dismissed in default. However, it is noticed that the appeal relates to various issues raised on behalf of a consumer and the memo of appeal contains adequate details and documents alongwith the representation. It is, therefore, considered appropriate to proceed and decide the case on merits in terms of the available documents on record. Ends of justice would be met by adverting to the merit of the case, rather than dismissing it due to non-appearance of the Appellant.

10. Mrs. Shetye, on behalf of the Respondent, made her short presentation reiterating the submissions made in the written statement. She focussed her argument on the fact that Shri Abrol has no locus standi to represent the matter on behalf of Vikas Builders and Contractors. She explained that the Appellant and other flat owners have already made the payment of electricity bills disputed by the complainant and therefore the representation has become infructuous and nothing survives therein. When asked whether all other issues raised in the representation also ceased to exist with the payment of the electricity bills, she conceded that they do not. Since the other issues raised by the Appellant are still to be decided, it is necessary to examine those issues in the appeal based on the material available on record.

11. Mrs. Shetye pleaded that the Forum has rightly decided the issue of limitation and the issue of undue preference in tariff as sought by the Appellant. She also dealt with the issue of payment of Rs. 2,39,900/- made to Vikas Builders and Contractors towards the cost of sub station constructed for the residential complex and stated that no amount is payable now beyond the amount already reimbursed. She added that the Respondent never agreed to pay any cost towards construction of the old sub station (7 X 4mtrs) in the year 1995. The amount of Rs. 2,39,900 paid in the year 2001, relates to the new sub station as agreed. With this submission, she prayed that the appeal should be dismissed without any relief.

12. In view of the submissions and the documents furnished by the Appellant and the submissions and the arguments made by the Respondent, it is necessary to consider the following issues for decision.

- a) Whether the Appellant is entitled for the rebate in tariff in view of the submissions made in the representation.
- b) Whether the Appellant can claim reimbursement for construction of sub

station beyond what is already reimbursed by the Respondent.

- c) Whether the application filed before the Forum was time barred in view of the fresh submission made by the Appellant.
- d) Whether Shri Abrol can represent the consumer M/s. Vikas Builders and Contractors and what is his locus standi in the present case.

13. The Respondent argued that the Distribution Licensee cannot show undue preference to any person in terms of giving rebate or concession in tariff. She cited Section 45 (4) of Electricity Act, 2003 to make her point. Section 45(4) of Electricity Act, 2003 reads as under:

“45(4): Subject to the provisions of Section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons”.

Provision under the above section makes it abundantly clear that the Distribution Licensee has no liberty or flexibility to offer undue preferential treatment in levy of charges of electricity. It cannot discriminate against any person or class of persons. Therefore, apart from the fact that there was no contract concluded in the present case, provision under the Section 45(4) would prevent the Distribution Licensee to extend any undue preferential tariff in violation of the provisions. The Forum has examined this point and taken the correct view in this behalf.

14. The Forum has examined the claim of the Appellant for concessional tariff rate in details. It has gone into contents of the offer letters made by the Respondent vide its letter dated 1st August, 2000, 7th September, 2001 and 13th September, 2001 and concluded that there was no contract as such between the applicant and the B.S.E.S. Limited now known as Reliance Energy Limited to provide electricity at a particular rate. On perusal of the contents of these letters again, it can be said that the series of letters have merely depicted the offers made by the Respondent to M/s. Vikas Builders and Contractors. It signifies the willingness of the Respondent to offer a particular rate or rebate subject to the conditions mentioned in the above letters. The letter dated 7th September, 2001 mentions of an undertaking that the Appellant would construct shops / flats exceeding 500 and combined load exceeding 1000 KW. The record indicates that these conditions are not fulfilled by the Appellant. In any case, the proposals made by the Respondent had no reciprocal response of acceptance from the Vikas Builders and Contractors and therefore it cannot be said that there was any “promise” as defined under the Indian Contract Act, 1872 in terms of giving rebate or concessional tariff. As a result, no agreement was reached to this effect. Communication of acceptance is necessary towards entering into contract. Unaccepted offer creates no right or obligation and does not lead to any contract whatsoever. The Forum has considered the entire material on record and rightly held that there was no contract concluded between the Appellant and the Respondent for a concessional tariff or rebate.

15. As regards the issue of reimbursement towards the cost of construction of sub station, it is clear from the records that the Respondent has already paid Rs. 2,39,900/- towards construction of the sub station on 11th July, 2001 after deducting the taxes. The

Appellant has claimed that this reimbursement was towards the earlier sub station constructed in the year 1995. Records do not support this contention. Perusal of the letter dated 5th November, 1995 does not mention anything regarding the cost to be reimbursed, neither the Appellant has written to the Respondent claiming any cost for the purpose. There appears no correspondence at all to indicate that the Respondent had agreed for any reimbursement for construction of sub station in the year 1995. The conclusion of the Forum that the Respondent has reimbursed the cost in the year 2001 for sub station constructed in the year 2001 which admeasures 11X4mtrs is in order. No fresh documents or evidence is produced in the representation to show anything contrary.

16. The Appellant submits that his application to the Forum was not time barred since he applied to the licensee making his grievance vide his letter dated 22nd October, 2004. The Appellant says that the Forum ignored this letter and held that the application was time barred. On perusal of correspondence on record, it is seen that the Appellant had approached the licensee first on 20th November, 2002. It is true that the Appellant did write to the licensee again on 22nd October, 2004. Perusal of the Regulations 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 requires that the consumer shall submit its grievance to the Forum no later than 12 months from the date of original intimation to the Distribution Licensee. It is clear from this provision that it is the original intimation of 20th November, 2002 from the Appellant to the licensee that is important to calculate the period of 12 months for approaching the Forum. The Appellant has approached the Forum on 28th April, 2005 and therefore the Forum has rightly concluded that the application was time barred.

17. The Forum has held that the Appellant has failed to satisfy that he can represent Vikas Builders and Contractors. It is seen that the representation is signed by Shri Abrol in the capacity of consumer, authorising himself as representative of Vikas Builders and Contractors. There is no authorisation seen on record from M/s. Vikas Builders and Contractors nominating Shri Abrol as his representative to make this representation. The Appellant has raised the point that M/s. Vikas Builders and Contractors cannot be termed as a "person". Contention of Shri Abrol in this regard is clearly misplaced. The terms 'Consumer' and the 'Person' are defined in Section 2(15) and Section 2(49) of the Electricity Act, 2003.

*"Section 2(15): "Consumer" means any person who is supplied with electricity---
----- as the case may be.*

*Section 2(49): "Person" shall include any company or body corporate or
association or body of individuals, whether incorporated or not, or artificial
juridical person."*

It is clear from the above definitions that M/s. Vikas Builders and Contractors can alone be said to be a consumer in the present case. Provisions of the Section 2 (49) defines a person which includes a company or a body corporate, etc. As a company or body corporate, M/s. Vikas Builders and Contractors falls within the definition of a "person". The submission made by the Appellant in this behalf has no substance.

18. On going through the submissions and documents on record, I do not find any substance in the points raised by the Appellant in the representation. On the contrary, it is observed that the Forum has gone into details in respect of every issue involved in the case and arrived at the conclusions. It has not ignored or overlooked any of the points raised by the Appellant. No fresh material or point is brought up by the Appellant on the observations made by the Forum. As such, there is no merit in any of the submissions made by the Appellant in the representation. I am inclined to fully agree with the observations made by the Forum and there is no need to interfere in the order of the Forum. The representation is, therefore, rejected and disposed off on the grounds elaborated in the preceding paragraphs.

Sd/
(W.G.Gorde)
Ombudsman

(S.N.Yadwad)
Secretary