



OMBUDSMAN

## BEFORE THE OMBUDSMAN

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

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### **REPRESENTATION NO. 44 OF 2005**

In the matter of Shifting of Electricity Pole from  
the Plot of the Complainant

Shri Ramkishore Soman Pal & Balram Pal..... Appellant  
Versus  
Maharashtra State Electricity Distribution Co.Ltd., Nagpur.... Respondent

Present:

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

On behalf of the Appellant:

1. Shri Balram Pal

On behalf of the Respondent:

1. Shri B.P. Barhate, Executive Engineer, Civil Lines Division, Nagpur

**Date: 12<sup>th</sup> January, 2006**

Shri Ramkishore Soman Pal and Balram Pal, the Appellant in the present case has filed the representation on 5<sup>th</sup> December, 2005 against the order of Consumer Grievance Redressal Forum (Nagpur Urban Zone). The Forum in its order dated 21<sup>st</sup> May, 2005 rejected the application of Shri Pal seeking removal of the electricity pole from his plot. The representation is registered at Serial No. 44 of 2005. In the representation, the Appellant states his case as under:

2. The Appellant is a consumer of electricity supplied by Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as the Respondent). The consumer's house is located near Juna Futala wasti talao at Nagpur and is the owner of the plot no. 512A since the year 1966. He has purchased this plot by sale deed no. 3593 of 1966 and claims his stay on the above address since the last 40 years.

3. It is alleged by the Appellant that the Respondent has erected the electricity pole within the boundary of his plot sometime before 8 years without obtaining his permission. He claims the said electricity pole is a security risk to him and therefore he wants the Respondent to give him the guarantee regarding safety and rent of Rs. 1 lakh per year for erecting the electricity pole.

4. The Appellant had made out his case before the Consumer Grievance Redressal Forum, Nagpur. The Forum has rejected his say with the observations that the applicant has failed to prove ownership of the plot on which the said pole is erected. The Forum further observed that mere possession of any plot area does not bestow right of legal ownership unless the same is proved by cogent, corroborative and convincing documentary proof.

5. The Appellant says that the Forum has not appreciated the fact that he has purchased the said plot in the year 1966. The copy of the sale deed was furnished before the Forum. Absence of entry of the part of the plot in the CTS record does not deprive him of the ownership of the said plot. As such, the Appellant has submitted that his prayer should be granted and the Respondent should be directed either to remove the said pole from the plot or to grant him the rent as requested in the representation.

6. The Respondent, Maharashtra State Electricity Distribution Co. Ltd. did not furnish any statement of defence. The matter was heard on 10<sup>th</sup> January, 2006. The Appellant reiterated his stand mentioned in the representation that the said electricity pole should be removed and should be compensated at the rate of Rs. 1 lakh per year towards the rent for fixing the said pole.

7. The Respondent was represented by Shri B.P. Barhate, Executive Engineer, Civil Lines Division, Nagpur Urban Zone. While explaining that he did not receive the earlier notice calling for the information, however, he has brought a sketch of the location to demonstrate the facts. He said that the electricity pole was fixed long ago after the consent of the plot owner. He explained that Maharashtra State Electricity Distribution Co. Ltd. extends the electricity line by fixing poles, etc only on consent from the landowners. Moreover, it is the responsibility of the said owner to give the right of way for erection of poles etc before extending the line as per clause no. 2C of conditions of supply. The old documents in this behalf are not now available since such papers are not preserved after 3 years. The Respondent further submitted that although the electricity line was erected for giving supply to the Appellant, there are few more consumers now fed on the same line and as such it may not be technically possible to remove the pole and the line at this stage.

8. During the hearing, the Appellant was asked as to whether he had consented for erection of the said pole earlier. He replied that someone from his relatives on their behalf did consent for the same although he has not personally given any consent. He agreed that although the pole was fixed some 8 to 10 years ago, he has not put up any written protest or complaint to the Respondent for removing the said pole for all these years. It was only during the last one year that he started protesting in this behalf. He also agreed that he had constructed an additional floor on his house during the last year and therefore the electricity line now runs closer to the slab of his house. On query, he agreed that he did not obtain any approval to the additional construction of the first floor and did it unauthorisedly.

9. On query, the Appellant agreed that he received the Forum's order in the month of May, 2005 but filed his representation in the month of December, 2005 i.e. over 6 months. No explanation for this delay was given nor did the Appellant file any application for condonation of delay.

10. From the facts on record, it becomes clear that the Forum has examined the case in the context of the Appellant's ownership of the portion of the plot and concluded that the Appellant failed to prove his legal ownership over the portion of the plot on which the electricity pole is erected. The Forum rejected the application on this sole ground. The background of the case and the facts brought out through the submissions make it further clear that the Appellant was aware of the erection of the pole for the past eight to ten years. No protest or complaint was lodged with the Respondent. It was only during the last one year that he started making protest, when he had constructed an additional floor over his house, although without any permission from the building authorities. Someone on behalf of his family had apparently consented before erecting the pole, which is meant to supply electricity to his house and one more neighbour. The Respondent during the hearing cited the 'Conditions for Supply of Electrical Energy' to say that it is the owner or occupier's responsibility to give the right of way for erection of pole, etc and to stretch the electricity line. The relevant provision under the 'Conditions and Miscellaneous Charges for Supply of Electrical Energy' reads as under:

*2(C) "Where the consumer has no frontage abutting a public street, and where the service line has necessarily to cross over or go under or through other property, the consumer shall, if so required by the Board, obtain the necessary way leaves and permission at his own expense, and continue them as long as supply is to be maintained. Should, however the way leaves or permission be withdrawn, the supply will be cut off forthwith. Any extra expenses incurred in laying the service line, maintaining the same in accordance with the way leaves shall be at the expense of the consumer."*

Perusal of the above provision makes it abundantly clear that, it was the consumers' responsibility to obtain the necessary way leaves and permission, to facilitate supply of electrical energy. There is, therefore, no force in the argument made by the Appellant in this behalf that he himself had not given any consent for erecting the pole.

11. In this background, the Appellant cannot now rise after eight years to say that the said pole was erected without his consent. Moreover, the issue has gone stale and cannot be now raised merely on the ground that he is or appears to be the owner of the plot. The issue is clearly barred by time apart from being without any merit.

In a similar case, the National Consumer Grievance Redressal Commission, in the first appeal no. 145 of 2001 decided on 16<sup>th</sup> August, 2001 has observed as under:

*"In several cases, this Commission and Honourable Supreme Court had held that when there was no specific provision regarding limitation in CPA, then the provisions of Indian Limitation Act were applicable. Absence of specific provision in CPA on time limit did not give licence to any one to file complaint any time".*

It is admitted fact that the Appellant knew about the erection of an electric pole in a plot claimed to be in his possession since the year 1966 about 8 years ago. Filing complaint in the year 2005 appears to have come out of the unauthorized construction of the upper floor in the recent past. The Forum has apparently focused its order on the issue of ownership of the portion of the plot by the Appellant and did not deliberate on other relevant issues in the case.

12. Secondly, the order of the Forum was issued on 21<sup>st</sup> May, 2005 and received by the Appellant in the month of May itself. The appeal against this order is filed on 5<sup>th</sup> December, 2005 after an unexplained delay of 198 days. The representation is therefore clearly time barred in terms of the Regulation 16.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. There is no explanation for the long delay nor there is any request for its condonation. Moreover, the issue is very very old and cannot be allowed to be taken up at the will of the Appellant. The consumer cannot dig up the old issues and file grievances at his own convenience and pleasure. In this background, it is not relevant whether or not the Appellant has any legal possession of the portion of the plot but the facts remain that Maharashtra State Electricity Distribution Co. Ltd., the licensee in this case, had laid down the line, to cater electricity supply to the Appellant's house. Moreover, as per Clause No. 2C of the Conditions of Supply, the consumer has to obtain necessary way leaves and permission at his own expense for erection of the service line.

13. The Appellant has not made out any case to warrant consideration of his representation. Nothing prevented the Appellant to write to the Respondent, had he meant to protest for locating the pole in his plot earlier. The cause of grievance itself is time barred as elaborated in paragraph 11 above. Moreover, the appeal filed through the representation is also time barred and is therefore not maintainable. There is no force in the argument advanced by the Appellant seeking removal, shifting of the pole and claim of rent on the ground of "no consent". Therefore, the representation fails on both the point of law and facts. The Respondent is, however, duty bound to examine whether the said electricity line runs at a safe clearance from the existing slab of the house and take preventive measures if and when required. The Appellant is free to take up this cause with the Respondent independently. The representation is disposed off with these observations.

Sd/  
(W. G. Gorde)  
Ombudsman

Sd/  
(S. N. Yadwad)  
Secretary