



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. 12 OF 2005

In the matter of charges for excess connected load and Penalty for use of inadequate capacitors

Nodal Officer and Executive Engineer,
Maharashtra State Electricity Board
Kalyan Circle – 2, Tejshree building,
3rd floor, Kalyan (W), Dist. Thane.....

Appellant

V/s.

M/s. Delux Spring Pvt. Ltd,
S. No. 219, Atgaon, Tal. Shahapur, Dist. Thane....

Respondent

Present:

Mr. W. G. Gorde, Ombudsman
Mr. S. N. Yadwad, Secretary

On behalf of the Appellant:

- 1)Mr. P. H. Sachdeva.
- 2)Mr. L. K. Sachdeva
- 3)Ms. Rita Phulzele.
- 4)Mr. H. K. Ranadive.
- 5)Mr. Vikas Karangale.

On behalf of the Respondent:

- 6)Mr. S. P. Parkar.
- 7)Mr. L. N. Shah.

Dated : 13th June 2005

Nodal Officer and Executive Engineer, MSEB, Kalyan-2 on behalf of the Licensee, MSEB has filed the representation against the consumer, M/s. Delux Spring Pvt. Ltd, Atgaon, Shahapur, Dist. Thane (herein after called as Respondent) against the order of Consumer Grievance Redressal Forum, Kalyan issued on 18th March 2005. The Forum directed the Licensee (hereinafter called the Appellant) to refund the amount if any paid by the consumer against the charges for use of excess load than the sanctioned load and

penalty for low power factor. The Forum also directed the Licensee to withdraw the delayed payment charges / interest levied on the said amount.

2. The Appellant was directed by the Forum to comply with the order within the period of 60 days from the date of the said order. The Appellant being aggrieved with the order of the Forum filed this representation which is registered at Serial No. 12 of 2005. The Appellant has requested to set aside the order of the Forum on the ground that the matter in question falls under the purview of Section 126 of the Electricity Act, 2003 and that the Forum is barred from exercise of jurisdiction. The Appellant has stated its case as under:

3. The Appellant states that the Respondent has used connected load in excess of the sanctioned load in its factory unit and this constitutes unauthorised use of electricity. The Appellant states that the case falls within the purview of Section 126 of the Electricity Act, 2003 and that the Forum should not have dealt with the matter since it is not within its jurisdiction. It further states that the Forum should have given opportunity to the Nodal Officer to furnish parawise comments and should not have proceeded ex-parte against the Licensee. Representative of the Appellant was informed while filing the appeal that prima facie the case is not maintainable as the provisions in the Electricity Act and Regulations provide for filing an appeal / representation only by the consumer and not by the licensee. Despite this, representative of the Appellant insisted that it should be allowed to put forth its argument on the issue of maintainability of appeal before any order is passed.

4. The Appellant and the Respondent were issued notices to file their reply. In the meantime, the Respondent vide its letter dated 31st May, 2005 approached to the Secretary, M.E.R.C. seeking Commission's intervention directing the Ombudsman's office not to proceed with the matter on the ground that the Act does not provide for any appeal by the licensee. The Respondent made a similar request by its letter dated 1st June, 2005 to this office. The Commission endorsed a copy of the Respondent's letter dated 31st May to this office for appropriate action.

5. The Respondent filed its say on 24th May, 2005 giving parawise replies to the points raised in the Representation of the Appellant. Appellant also filed a written statement on 23rd May, 2005. Both the documents are taken on record.

6. Matter was heard on 9th June, 2005. It was made clear to the Appellant during the hearing that prima facie there is no provision in the Electricity Act, 2003 and the Maharashtra Electricity Regulatory Commission (Consumers Grievance Redressal Forum and Ombudsman) Regulations, 2003 to enable the licensee to file an appeal with the Ombudsman. However, since, the Appellant expressly desired to be heard on this issue, the Appellant was advised to limit its arguments only on the issue of maintainability of the appeal in the first instance. Hearing on merit of the case if maintainable could be taken up later. The Appellant mentioned that he was not ready to argue on maintainability during the hearing, and sought further time to do so. The case was adjourned to 10th June, 2005.

7. The matter was again heard on 10th June, 2005. The Representative of the Appellant cited provisions under Regulations 8.5 and 15(1) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 and argued that it provides for an appeal to be filed by either of the party. He contended that the order of the Forum shall be binding on the consumer and the Distribution Licensee unless a representation is made against the same before the Ombudsman. He further stated that Regulation 8.5 intends to allow both the consumer and the licensee to file the Representation and further that the Regulations do not specifically bar the Distribution Licensee to file the representation. He did not contest the point that the Appellant is not a 'consumer' within the meaning of the definition provided in the Act.

8. The Appellant further stated that under the Regulation 15.1, the Ombudsman has to receive the representations against the order of the Forum and consider it for settlement or for passing an award. According to the Appellant, this regulation also permits both the parties to file the representation. The Appellant added that the right to file the representation by the licensee as provided in the Regulation 8.5 and 15.1 is not taken away by any other Regulation or law. As such, it should be concluded that Licensee is also allowed to file the representation. The Appellant further stated that Schedule B annexed to the regulation is meant to facilitate and simplify the procedure for the guidance of the consumer to file the representation. Separate schedule is not necessary for the licensee as it can prepare its representation without any difficulty and no special help is required by the licensee for the purpose.

9. The Appellant was then asked to comment on Regulations 16.1, 16.2 and 16.4, which clearly mention that it is the consumer who, when aggrieved by non redressal of his grievance by the order of the Forum, can make a representation and that no representation to the Ombudsman shall lie unless the consumer is aggrieved by non redressal of his grievance by the Forum. On this, Appellant reiterated his stand that despite such mention in the Regulations 16.1, 16.2 and 16.4 and elsewhere in the Act and Regulations, the right of the licensee to file the representation is not extinguished.

10. The Appellant was then taken to provisions under the Electricity Act, 2003 and asked to comment on the provisions relating to the Forum for redressal of grievances and the provisions for appeal. The Appellant agreed during the hearing that the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 are subordinate to the Electricity Act, 2003 but reiterated that the Regulations 8.5 and 15 (1) allow the licensee to file an appeal with the Ombudsman unless the same is set aside by a competent Court.

11. The Respondent was given the opportunity to explain his viewpoint. He stated that he has already explained this stand in his written statement as well as in his letter dated 1st June, 2005 to the Ombudsman's office and he has nothing to add more.

12. In view of the above, it is necessary to examine the viewpoint of the Appellant, in the light of the provisions of the Electricity Act, 2003 and the Maharashtra Electricity

Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. The relevant provisions are reproduced below:

Section 42 (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 grievance of the consumers in accordance with the guidelines as may be specified by the State Commission.*

(6) *Any consumer, who is aggrieved by non redressal of his grievances in sub Section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.*

(7) *The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.*

Regulation 8.5: *The order of the Forum shall be binding on the Consumer and the Distribution Licensee unless a representation is made against the same before the Ombudsman.*

Regulation 15(1): *The Ombudsman shall have the following powers and duties:*

(1) to receive the representations against the order of the Forum and consider such representations and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the Distribution Licensee and Consumer or by passing an award in accordance with these Regulations.

Regulation 16.1: *The Ombudsman shall settle the Grievance of the Consumer within such time and in such manner as specified in the following Regulations.*

Regulation 16.2: *Any Consumer, who is aggrieved by the non-redressal of his Grievance by the Forum, may make a representation for redressal of his Grievance to the Ombudsman exercising jurisdiction over the Distribution Licensee within sixty (60) days from the date of the order of the Forum.*

Regulation 16.4(2): *No representation to the Ombudsman shall lie:*

(2) unless the Consumer is aggrieved on account of his Grievances being not redressed by the Forum within the period set out in these Regulations.

13. It is seen from the Regulation 8.5 that it makes the order of the Forum, binding on both the parties unless a representation is made against that order before the Ombudsman. If read in isolation, it is likely to give an impression that the Distribution Licensee can also make a representation against the order of the Forum, as it does not specifically mention as to who can make a representation. Similar impression is likely, if the Regulation 15(1) is read in isolation or in conjunction with the Regulation 8.5.

14. In order therefore to understand the intent of the provisions in the Regulation and the Act, it is necessary to read the provisions under Section 42 (6) and (7) and the Regulations 16.1, 16.2 and 16.4(2) in particular. These provisions deal with the issue as to who can make a representation against the order of the Forum. It is also clear from the provisions under Section 42 (6) quoted above that the Authority called Ombudsman is created to deal with issues of non redressal of grievance of consumers by the Forum. Therefore, it will not be fair and correct to read the Regulations 8.5 and/or 15.1 in isolation to draw an adverse conclusion that the Distribution Licensee can make a representation to the Ombudsman, ignoring the clarity of intent displayed through the other provisions referred to above.

15. The Appellant has not disputed the fact that the provisions under the Act always have an overriding effect over those in the Regulations. Perusal of the provisions under Section 42 (6) and (7) quoted above, make it amply clear that any one else other than the consumer, as defined under the Act, cannot file a representation or appeal against the order of the Forum to the office of the Ombudsman. There is no ambiguity in the provisions. The Distribution Licensee clearly is not entitled to file any representation against the Order of the Forum to the Ombudsman. The arguments advanced by the Appellant in this behalf are devoid of any merit.

ORDER

The Representation made by the Appellant is not maintainable under the provisions of the Act and the Regulations referred to above and is therefore rejected.

In view of this, it is not necessary to go into the merit of the case.

Sd/
(W.G.Gorde)
Ombudsman

Sd/
(S.N. Yadwad)
Secretary