



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. 7 OF 2005

In the matter of additional load and Maximum demand violation charges

M/s. Kagzi Bros. Pvt. Ltd
C-29, M.I.D.C. Phase I,
Dombivli.....

Appellant

Versus

The Superintending Engineer,
Maharashtra State Electricity Board,
Kalyan Circle,
'Tejashree Bldg., 2nd floor,
Jehangir Maidan, Karnik Road,
Kalyan (W) – 421 301.....

Respondent

Present:

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

On behalf of the Appellant

3. Shri Daga Vijaya Deushi

On behalf of the Respondent

4. Shri R.G. Sheikh, Executive Engineer
5. Shri P. J. Kulkarni, Assistant Engineer

Date: 31st May, 2005

M/s. Kagzi Bros. Pvt. Ltd, located at C29, MIDC, Phase I, Dombivli is a textile processing unit and is a H.T. consumer of M.S.E.B. with Consumer No. 020339012688. The consumer (hereafter called as Appellant) has filed representation against the order dated 7th February, 2005 of Consumer Grievance Redressal Forum, Kalyan on the grievance submitted by them against M.S.E.B. (hereafter called the Respondent). The Forum had heard the application of the Appellant against M.S.E.B., Kalyan on the issue of penalty charged and recovered from them for exceeding the contract demand. The Forum issued directions to the Respondent to refund the amount of Rs. 5,34,825/- if paid by the Appellant for violation of contract demand levied as per Maharashtra Electricity

Regulatory Commission's tariff order dated 1st December, 2003 and also ordered withdrawal of delayed payment charges. The Forum has, instead, directed the Licensee, Respondent to charge the Appellant for violation of contract demand if not done so far, in accordance with the Maharashtra Electricity Regulatory Commission's guidelines clarifying and rewording a clause relating to the penalty for exceeding the contract demand. The Forum has upheld the stand of the Respondent in releasing additional power of 200 KVA on 28th June, 2004 on completion of formality of N.O.C. by the consumer on 9th June, 2004. The Appellant has agreed with part of the order issued by the Forum but disagreed with the observations of the Forum that the formalities were completed by the consumer on 9th June, 2004 and that there was no delay in release of power. The Appellant filed this representation against the order, which is registered at Serial No. 7 of 2005. The Appellant has stated his case as under:

2. The Appellant states that it agrees with part of the order issued by the Forum except for Clause 8) J) and 11) of the order and the Clause 5) of the final order. Clauses 8) J), 11) and 5) of the final order read as under:

“8)J) : Application dated 01.08.02, N.O.C. received dated 09.06.04, Released additional load on 28.06.04.

11) : On scrutiny of reply submitted by Nodal Officer of the Licensee, it is noticed that consumer has made application for additional power of 200 KVA on 1st August, 2002. The formalities of submitting documents were completed by the consumer on 9th June, 2004. The Licensee released 200 KVA additional power on 28th June, 2004.

5) : Licensee has released additional power of 200 KVA on 28th June, 2004 on compliance of formalities by the consumer on 09.06.04. Since there is no delay in releasing additional load by the Licensee, no order is passed by the Forum.”

3. The Appellant has denied that it has completed the formalities on 09.06.04. The Appellant states that he made an application to the Licensee for additional connected load of 400 KW and maximum contract demand of 200 KVA on 1st August, 2002. The Respondent issued the sanction order for this power on 16.01.03. Copy of the said order submitted by the Appellant is taken on record. The Appellant states that he had procured machinery for expansion and installed the same in the unit at the time of making application for additional power. He expected grant of power within one month from the date of application in accordance with the provisions of the rules. The Appellant further states that he started taking trial runs on the additional machines from the month of November, 2002 in anticipation of power sanction. This resulted in exceeding sanctioned maximum demand. The Appellant reached the maximum demand upto 554 KVA in May, 2004 as against sanctioned contract demand of 250 KVA. The Appellant pleads that he had no other alternative, as otherwise he would have suffered loss of production. The Appellant claims that he is entitled to the benefit of applied contract demand of 450 KVA from the relevant date and also the benefit of maximum demand in excess of 450 KVA. The Appellant claims that the Respondent have asked payment of additional service line charges and security deposit for maximum demand of 554 KVA which were paid by him. Therefore, he is entitled to receive post facto, sanction for maximum

demand upto 554 KVA. The Appellant claims that the Respondent cannot charge any penalty on violation of contract demand as the Appellant has duly complied with the formalities for enhancing the load in time.

4. The Appellant further states that it is an existing unit and the existing consumer of the Respondent for the past 12 years and presumes that all the N.O.Cs required for expansion are already complied. The Appellant states that it has not made any compliance of N.O.C. on or around 9th June, 2004 as stated in the order of the Forum. He claims that the Respondent replaced the existing C.T.P.T. unit with a higher ratio unit on or around 9th June, 2004. The Appellant says that replacing C.T.P.T. unit was the duty of the Respondent and not a compliance to be fulfilled by the Appellant. The Appellant states that the release of additional load was pending only for want of replacement of C.T.P.T. unit. The Respondent has harassed the Appellant and made illegal demands at each and every stage.

5. The Appellant has further stated that it has paid a huge sum in the name of penalty for violation of contract demand from November, 2002 and now it should be refunded to it to meet the ends of justice. The Appellant has now sought the following relief:

- a) Refund of all the penal charges and penalty for violation of contract demand from November, 2002 till the date of the order.
- b) Directions to the Respondent to revise the maximum demand to 554 KVA in place of 450 KVA on permanent basis as though the application was made for 554 KVA.

6. The copy of the representation filed by the Appellant was sent to the Respondent to enable them to file their say. On behalf of the Respondent, Superintendent Engineer, Kalyan filed his reply on 17th May, 2005. The Respondent has agreed that the Appellant has submitted the application for additional load on 1st August, 2002 and stated that the Respondent has completed the required formalities of M.S.E.B. on 9th June, 2004. Hence, the release order for additional contract demand was issued on 28th June, 2004. The Respondent further says that the Appellant was informed to submit the documents including the N.O.C. from M.I.D.C. before release of additional contract demand. It is agreed that the Appellant has made necessary payments of Service Line Charges and Security Deposit, etc and also submitted the test report. The Respondent reiterated that additional load was not released due to non-submission of N.O.C. from M.I.D.C. although other documents were submitted on 2nd November, 2002. It has quoted M.S.E.B.'s circular dated 1st September, 1994 and the Government Order dated 6th August, 1994 and furnished the copies thereof. These documents are taken on record. The Respondent states that the Appellant has obtained the N.O.C. from M.I.D.C. vide letter dated 27th May, 2004 which was then submitted to M.S.E.B.'s office on 10th June, 2004.

7. The Respondent further states that the Appellant availed additional contract demand without release from M.S.E.B. and hence penalty was charged for exceeding contract demand as per the provision in the tariff. It has submitted details of the sanctioned contract demand, established demand and violated contract demand between December, 2003 and July, 2004. The Respondent has stated that it has levied additional

penalty of Rs. 5,34,825/- on account of violated contract demand. It also declined to regularise contract demand upto 554 KVA which is not as per its standard practice.

8. The matter was heard in this office on 24th May, 2005. The Respondent submitted parawise replies to the points in the representation while the Appellant submitted fresh rejoinder in addition to the earlier written submissions. The Appellant reiterated its stand that it had complied all the requirements for release of additional power sometime in April, 2003. These include payment of security deposit and service line charges. The representative of the Appellant, upon showing him the letter dated 10th June, 2004 addressed to the Respondent, agreed that it had submitted the N.O.C. from M.I.D.C. in June, 2004. When asked to clarify its stand taken earlier in the written submission that it had not submitted any compliance on or about 9th June, 2004, the Appellant during the hearing agreed that the statement contained in the written submission to this extent, is not correct.

9. Upon query to the Appellant, it agreed that additional machines were procured and connected from October – November, 2002 even before the sanction of additional power. It was submitted that the Appellant had no alternative as otherwise it would have resulted in the production loss. The Appellant further agreed that this action on his part is not according to the rules. The Appellant during the hearing furnished certain documents including the copy of the circular no. 538 dated 1st September, 1994 issued by the Respondent indicating the procedure for sanction and release of power. It says that the power can be released on the basis of affidavit giving six months time to the consumers to procure the necessary NOC.

10. While on this issue, the Respondent referred the Maharashtra Electricity Regulatory Commission's order No. 9 of 2004 in the matter of non release of additional load by M.S.E.B. to M/s. TES Pvt. Ltd. Paragraph 25 of the order referred by the Respondent for particular consideration in the context of this case is reproduced below.

“The Petitioner's representative submitted that TES will comply with whatever documents are required by MSEB and also agreed to joint inspection. Concluding the hearing, the Commission directed that, thereafter, MSEB should decide the application for additional load by the 1st week of December, 2004. The Commission observed that other issues not relating to the present Petition such as MSEB taking action against him for extracting excess power and TES challenging the penalty in the Civil Court, can be dealt with separately by respective parties, and that these directions are without prejudice to their rights with regard to them. The Record of the hearing held on 20th October, 2004 was circulated to the parties on 10th November, 2004 for compliance.”

11. The Respondent on the basis of above directions in the MERC order argued that it has the right to seek any documents from the consumer before the power is connected. Close reading of the above directions indicates that the licensee can certainly ask necessary documents from the consumer before connection of power. It, however, does not mean that the licensee has the right to ask the documents which are not relevant or essential even in accordance with their own circulars before release of power supply. In

the present case, requirement of M.I.D.C.'s N.O.C. is a document in consideration. The departmental circular (COMM) no. 538 has made it clear that "irrespective of submission of N.O.Cs before release of connection, if consumer complies with other formalities of M.S.E.B., and submits affidavit as prescribed, supply should be released without any delay." The Appellant had submitted the affidavit at the time of making application in August, 2002. This is corroborated by the letter dated 10 March, 2004 from the Respondent that the affidavit is there but it would not release power without the N.O.C. Therefore, the Respondent cannot draw any support from the MERC's Order No.9 of 2004 referred to above and this cannot authorise the Respondent to delay release of power supply when the necessary requirements are already fulfilled by the consumer.

12. The Respondent during the hearing further argued that the Appellant had not submitted the NOC on the previous occasion in the year 2000 when additional power was sanctioned by them. This argument does not sound to be correct. N.O.C. from M.I.D.C. issued on 27th May, 2004 and submitted on 10th June, 2004 clearly mentions in the reference at Serial No. 3 that N.O.C. was indeed issued in the year 2001 in favour of the Appellant for additional power. In view of this, the Respondent now cannot take the stand that NOC was not submitted on the earlier occasion in 2000. In fact, if the NOC was not submitted within six months of release of power in the year 2000, the Respondent should have initiated the action against the Appellant in accordance with the rules. This has not been done as confessed by the Respondent during the hearing. The argument advanced during the hearing in this behalf is devoid of any merit.

13. The Appellant has requested retrospective sanction of maximum demand of 554 KVA as is established during the operation. It says that it has made necessary payments to the Respondent. However, no application for this maximum demand is so far made. The Respondent has stated there is no such provision to sanction the additional maximum demand in absence of any application from the consumer, and therefore the request to regularise such demand retrospectively cannot be accepted merely because it was established during the operation. The fact remains that the Appellant had applied before for maximum demand of 450 KVA inclusive of their existing demand and during the course of operations it exceeded the maximum demand even beyond 450 KVA. There appears no ground for consideration and regularisation of the maximum demand of 554 KVA retrospectively.

14. On going through the submissions made by the Respondent, it is seen that the application for additional load of 400 KW and contract demand of 200 KVA was made by the Appellant on 1st August, 2002. This was in addition to the existing connected load of 400 KW and contract demand of 250 KVA. The Appellant had submitted the application form, N.O.C. from Air & Water Pollution, list of machinery, plot possession letter, conveyance of the plot, approved plan for factory building and other details regarding the company. The Respondent vide its letter dated 7th September, 2002 advised the Appellant to submit N.O.C. from M.I.D.C., Memorandum and Articles of Association, name and address of Directors and the Board Resolution to sign their application for power. On 16.01.03, the Respondent issued letter sanctioning additional power as requested by the Appellant subject to conditions mentioned in the sanction

order.

15. On perusal of the said sanction order, it is clear that the order was valid for 12 months and expected the consumer to be ready to receive the additional sanctioned power by completing necessary formalities. The Appellant was asked to pay Rs. 699900/- towards service line charge, full security deposit and cost of metering equipment. Condition No. 5 (a) of the sanction letter required the Appellant to produce N.O.C. from M.I.D.C. and further stated that no affidavit will be accepted as the consumer had already submitted affidavit for the same purpose but failed to submit the N.O.C.

16. The Appellant has stated that it has submitted all the documents required for grant of additional load and that they are the consumer of the Respondent for the past 12 years, being an existing unit. He was, therefore, expecting the release of additional load within one month from the date of application in accordance with the Regulations. The Respondent has not disputed the say of the Appellant about completion of formalities except the N.O.C. from M.I.D.C. The Appellant has stated that it has not submitted any N.O.C. on or about 9th June, 2004 and it was only the installation of C.T.P.T. unit done by the Respondent. The Appellant, further, says that this was not the formality to be complied by them but it was the duty of the Respondent to install the C.T.P.T. unit as a metering equipment.

17. The Respondent in the written statement has stated that it has received a copy of the N.O.C. from M.I.D.C. submitted by the Appellant on 10th June, 2004 which is on record. Therefore, the say of the Appellant that it has not submitted any N.O.C. on or around 9th June, 2004 is not correct. The letter dated 10th June, 2004 from the Appellant to the Respondent had in fact mentioned that they had already requested for release of additional load on the strength of affidavit in lieu of M.I.D.C.'s N.O.C. and also submitted the said N.O.C. from M.I.D.C. obtained by letter dated 27th May, 2004, from M.I.D.C.

18. Based on the submissions above, it becomes clear that the Appellant had indeed completed all formalities except submission of N.O.C. from M.I.D.C. for getting additional power released in their favour on or about 16th April, 2003. This is also not disputed by the Respondent. Now the issue emerges as to whether the Respondent could have released the additional load on the strength of the affidavit submitted by the Respondent alongwith the application for additional power made on 1st August, 2002, and in absence of MIDC's N.O.C.

19. The Respondent has submitted a copy of the Government order dated 6th August, 1994 and a departmental circular (commercial) no. 538 dated 1st September, 1994 in support of its argument on the requirement of N.O.C. The Government order of 6th August, 1994 speaks of liberalising the procedure and doing away with some of the N.O.Cs while granting electrical power. Moreover, requirement of N.O.Cs stipulated in the Annexure of the said order is meant for the new consumer and not for the existing consumers wishing to avail additional power. The Appellant cannot be classified as a new applicant or consumer since it existed for atleast 12 years at the same location. The

departmental circular no. 538 of 1st September, 1994 submitted by the Respondent stipulates the procedure for releasing power. Relevant paragraphs of the said circular read as under:

“A Study Group appointed by the Government was further studying the matter so as to simplify the procedure for releasing connections also at an early date. The Study Group also observed that the process of obtaining N.O.Cs takes some time; as such a proposal was recommended to the Government to even releasing the connections by taking an affidavit for giving six months’ time for submission of N.O.Cs from the date of release of connection. The proposal now has been approved by the Government.

Under the circumstances, those prospective consumers who are completing the steps of payment, Agreement, Test Report, Electrical Inspector’s permission, etc and are ready to avail the supply but could not get some N.O.Cs, their supply can be released by taking of affidavit on Rs. 50/- stamp paper as prescribed. The Government has also stated that if the M.S.E.B. is ready and consumer could not avail the supply, the M.S.E.B. is charging minimum charges by issuing prescribed notice as per agreement executed by the consumer. However, there is no provision if the consumer is ready in all respects but supply is not released by the Board. In this connection, this is to inform you that if such cases are pointed out to H.O. by the consumers, serious view will be taken in the matter.”

20. Contents of the above circular make it clear that the consumers who have completed the steps of payment, agreement, test report and electrical inspector’s permission, etc and are ready to avail supply but could not get some N.O.Cs, their supply has to be released by taking an affidavit as prescribed. In the present case, the Appellant had, in fact complied with all the requirements for additional power including this Affidavit on or about 16th April, 2003 except the N.O.C. from M.I.D.C. Therefore, the Appellant was entitled to get the additional load released without the Respondent insisting for N.O.C. from M.I.D.C.

21. The Respondent by its letter dated 10th March, 2004 had reiterated its stand justifying the need to submit the N.O.C. and not accepting the affidavit in lieu thereof. The letter, however, says that the Appellant had submitted the affidavit alongwith the application for additional power and was expected to submit the N.O.C. from M.I.D.C. within six months. The Respondent again advised the Appellant to submit the N.O.C. without which the additional load will not be released. On perusal of contents of the departmental circular dated 1st September, 1994, it is clear that power has to be released on the basis of the affidavit by giving six months time for submission of N.O.C. from the date of release of connection and not from the date of application for power or the date of sanction letter. In the event of non availing of sanctioned power, the licensee levies ‘minimum charges’ irrespective of no use of electricity as per the agreement. On the contrary, if the consumer is ready but the supply is not released, the licensee views the situation seriously. The provision in respect of the requirement of N.O.C. has been clearly misinterpreted by the Respondent and unnecessarily delayed release of additional power until 28th June, 2004 by insisting the N.O.C.

ORDER

1. In view of the above, it becomes clear that the action of Respondent in not releasing the power until 28th June, 2004 from 16th April, 2003 is not correct and not in consonance to the Government order and the departmental circular. The Appellant has brought to the notice that it has completed all the necessary formalities like payment of charges, submission of test certificate, etc by 16th April, 2003. The Respondent, therefore, was obliged to release additional load to the Appellant unit on or about that date. Any delay in release of power thereafter is at all not justified. Consequently, no penalty charges on account of exceeding contract demand after that date would be leviable. It is, therefore, directed that any penalty or penal charges levied and recovered on account of contract demand exceeding 250 KVA after 16th April, 2003 should be refunded immediately or adjusted in the next ensuing bill. The Respondent, however, is free to levy penalty or penal charges for violation of maximum demand beyond 450 KVA.
2. The Appellant has stated that it had procured the machinery and started trial runs from October, 2002. It has requested waiving of penalty from October 2002 onwards. However, this cannot be agreed for the reason that the Appellant is not expected to use the connected load in excess of the sanctioned load and / or establish extra maximum demand without sanction. Therefore, request of waiving of penalty charges from October 2002 to 16th April, 2003 is not justified and is therefore rejected.
3. The Appellant has requested for retrospective sanction of the maximum demand of 554 KVA as it established the same during the operation and that it has made necessary payments to the Respondent. The Respondent has accepted the payment on account of the M.D. of 554 KVA. In view of this, the Appellant may approach the Respondent separately for enhancing the maximum demand beyond 450 KVA.
4. This order should be carried out immediately and compliance reported by July 15, 2005.

Sd/
(W. G. Gorde)
Ombudsman

(S. N. Yadwad)
Secretary