

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 59 of 2011

In the matter of
Petition by Grahak Panchayat, Ratnagiri, seeking amendment to the “Maharashtra
Electricity Regulatory Commission (Consumer Grievance Redressal Forum &
Electricity Ombudsman) Regulations, 2006”.

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Grahak Panchayat, RatnagiriPetitioner

Vs.

1. Maharashtra State Electricity Distribution Co. Ltd.,
2. Brihanmumbai Electric Supply and Transport Undertaking
3. Reliance Infrastructure Ltd.,
4. The Tata Power Co. Ltd.

..... Respondents

Present during the hearing:

For the Petitioner: Shri. Vinayak V. Paranjape, Shri. Suhas Mainkar,
Shri. Jayant P. Biwalkar

For the Respondents Shri. R. G. Sonwane, Shri. S. S. Ketkar, MSEDCL
Shri. S. P. Goswami, BEST
Shri. D. S. Shah, RInfra-D

ORDER

Dated: 25th January, 2012

Grahak Panchayat, Ratnagiri, the Petitioner, is a voluntary consumer organization registered under the Societies Registration Act, 1860, and the Bombay Public Trust Act, 1950.

2. The Petitioner has sought an amendment to the “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006” (“said Regulations”) by filing the present Petition. The following prayers have been made in the Petition:-

“

- i. *The Commission may please amend the MERC(CGRF & EO) Regulations 2006 by adopting definition of ‘Complainant’ given in section 2(1)(b)(ii) of Consumer Protection Act 1986 so that Voluntary Consumer Organization shall have locus standi to raise the consumers’ grievances at CGRF level.*
- ii. *The Commission may please issue necessary notification as per the powers vested in the Commission vide Sec- 27 of the said Regulations & Section- 181 of Electricity Act, 2003.”*

3. The background to the filing of this Petition is that the Petitioner’s complaint before the Consumer Grievance Redressal Forum, Konkan Zone, seeking directions on the distribution licensee for refund of service line charges to consumers in Ratnagiri Circle was rejected on the ground that the Petitioner is not a consumer under the Electricity Act, 2003. The Electricity Ombudsman also held that the case of the Petitioner was not maintainable as the Petitioner had no locus standi in terms of the said Regulations. Since the present Petition is not to seek redressal of any grievance arising from the Order of the Consumer Grievance Redressal Forum and the Electricity

Ombudsman, the merits of the matter dealt with by the said authorities or the arguments advanced before the said authorities and the decisions thereon are not being adverted to in the present Order. The question before the Commission is not whether the Consumer Grievance Redressal Forum or the Electricity Ombudsman were right or wrong.

4. The Petitioner desires that not only consumers, aggrieved due to actions of the distribution licensees, be allowed to file representations before the Consumer Grievance Redressal Forum and the Electricity Ombudsman, but any voluntary consumer organization also must be permitted to file such representations. The Petitioner states that a Complainant as defined in the Consumer Protection Act, 1986, not only includes the consumer, but also includes “any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force.....”. It has also been submitted by the Petitioner that consumer organizations such as the Petitioner should be entitled to serve as a representative / watchdog on various common consumer grievances and hence should be permitted to approach the Consumer Grievance Redressal Forum and the Electricity Ombudsman.

5. The Petitioner also states that, perhaps, this Commission is bound to align its said Regulations with that of the Consumer Protection Act, 1986 as this former statute has been expressly saved under Section 173 of the Electricity Act, 2003 to have an overriding effect thereon as long as the Electricity Act, 2003 or any Rule or Regulation made thereunder or any instrument having effect by virtue of the Electricity Act, 2003 is inconsistent with the Consumer Protection Act, 1986.

6. A letter dated 11 May 2011 from the Maharashtra State Electricity Distribution Company Limited was received by the Commission wherein a request was made that all distribution licensees in the State of Maharashtra be made a party to the present Petition. Since the Petitioner desires an amendment to the aforesaid Regulations which are applicable to all distribution licensees in the State of Maharashtra, the Commission directed the Petitioner during the hearing on 12 May 2011 to implead all distribution licensees and to serve copies of the Petition upon them. In the further hearing,

Maharashtra State Electricity Distribution Company Limited, Brihanmumbai Electric Supply and Transport Undertaking and Reliance Infrastructure Limited appeared through their representatives. The Respondents were directed to submit their replies in writing. The hearing stood adjourned thereafter.

7. The Petitioner filed a further submission advancing two contentions as follows:-
 - (a) That the provisions of the Electricity Act, 2003 are in addition to and not in derogation of any other law for the time being in force, as laid down in Section 175 of the said Act,
 - (b) That Electricity Regulatory Commissions in the States of Delhi, Gujarat and Uttarakhand, among others, have permitted voluntary consumer associations to approach the Consumer Grievance Redressal Forum and the Electricity Ombudsman under their respective Regulations.

8. Written Replies have been received from the distribution licensees who appeared before the Commission. The contentions advanced are summarized as follows:-
 - (a) The Electricity Act, 2003 is a special legislation applicable to electricity consumers only. The Consumer Protection Act, 1986, is a general legislation applicable to all consumers.
 - (b) Since the Consumer Grievance Redressal Forum under the aforesaid Regulations consists of members who include a representative of a registered voluntary consumer protection organization working on matters concerning consumer grievances, there is no need to accede to the prayers of the Petitioner to permit a voluntary consumer organization to approach the Consumer Grievance Redressal Forum and the Ombudsman.

- (c) There is no specific provision in the Electricity Act, 2003, to permit a voluntary consumer organization to file representations before the Consumer Grievance Redressal Forum or the Ombudsman.
- (d) On the issue of inconsistency, it has been submitted that there is no such inconsistency between the definitions of the term “consumer” under the Electricity Act, 2003 and the Consumer Protection Act, 1986.
- (e) A voluntary consumer association is not an affected party and hence cannot be permitted to raise grievances and make representations before the Consumer Grievance Redressal Forum and/or the Ombudsman.
- (f) It is stated that if voluntary consumer associations are permitted to make representations before the Consumer Grievance Redressal Forum and the Ombudsman, there will be multiplicity of proceedings because the voluntary consumer associations would be an added category of applicants besides the aggrieved consumers. This will defeat the objective of speedy redressal of grievances and may overburden the Consumer Grievance Redressal Forums and the Ombudsman.
- (g) It has also been submitted that if the prayers of the Petitioner are to be acceded to, the Electricity Act, 2003, may need to be amended.

9. In rejoinder, the Petitioner has submitted that in case a voluntary consumer organization is permitted to raise collective grievances of various consumers, then the distribution licensees would actually be saved from multiple legal proceedings, wastage of time, money and manpower.

10. Submissions in writing have also been received from Mumbai Grahak Panchayat which is an authorized consumer representative before the Commission under Section 94(3) of the Electricity Act, 2003. Mumbai Grahak Panchayat has supported the Petitioner and has dismissed the contentions made by the distribution licensees on the ground that they cannot be countenanced in law. It has also been submitted that the apprehensions expressed by the distribution licensees, that permitting voluntary consumer associations will lead to filing of frivolous and vexatious complaints, are unfounded.

DECISION WITH REASONS

11. The Commission is of the view that the present Petition does not call for addressing any conflict between the Consumer Protection Act, 1986 and the Electricity Act, 2003, and at the same time, this Commission does not have the jurisdiction to resolve any such conflict as this Commission does not act under the Consumer Protection Act, 1986. The Commission is also of the view that if the Petitioner is overwhelmed by the Consumer Protection Act, 1986, Section 42(8) of the Electricity Act, 2003, provides that the provisions for approaching the Consumer Grievance Redressal Forum and the Electricity Ombudsman in terms of the Regulations notified by this Commission are without prejudice to the rights which the consumer may have, apart from the rights conferred upon by Section 42(5), (6), (7) and the said Regulations. Therefore, if any voluntary consumer association wishes to file a complaint, the said association can invoke the machinery under the Consumer Protection Act, 1986, as a complainant therein also includes a voluntary consumer association. However, as regards the Regulations notified by this Commission, the same have been notified in exercise of the mandate

under Section 42(5), (6) and (7) in order to redress the grievances of consumers. A consumer has been defined in Section 2(15) of the Electricity Act, 2003, as follows:-

"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;

On a conjoint reading of Section 2(15) and Section 42(5), (6) and (7), there is no scope for permitting anybody other than a “consumer” as defined in Section 2(15) to file grievances / representations before the Consumer Grievance Redressal Forum/s and the Electricity Ombudsman. In fact, Section 42(5), (6) and (7), is expressly restricted to “consumers”, as could be seen from a plain reading of the said provisions as follows:-

“(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 grievances 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 under 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.”

{Emphasis added}

The entire mechanism in the said regulations facilitates consumers to intimate the first tier Internal Grievance Redressal Cell of a distribution licensee and thereafter approach and file a complaint before the concerned Consumer Grievance Redressal Forum. If the consumer is dissatisfied with the manner in which his complaint has been dealt with by the Consumer Grievance Redressal Forum, the consumer can then approach a higher authority called the Electricity Ombudsman. Section 42(7) of the 2003 Act mandates the Ombudsman to settle the grievance of the consumer.

12. If the Legislature had contemplated complaints to be filed by consumer associations, then the Legislature would have provided for the same in a similar manner as the Consumer Protection Act, 1986, provides. However, the Parliament, while enacting the Electricity Act, 2003 has not made any such provision. Hence, the Commission, at this stage, is of the view that it may be in excess of the parent statute, i.e., the Electricity Act, 2003 to permit consumer associations to file grievances / representations before the Consumer Grievance Redressal Forums and Electricity Ombudsman, respectively without seeking any relief personal to them. Moreover, the Consumer Grievance Redressal Forums are empowered to redress individual consumer complaints. Hence, if a consumer association files a grievance on behalf of an entire consumer category or a group of consumers, the Consumer Grievance Redressal Forums may exceed their jurisdiction if they address grievances in the nature of a class action as they do not have that widest conceivable range of judicial power. On the other hand, a consumer can always authorize a consumer association within the existing framework of the regulations to appear and represent his / her case before the Forum or the Ombudsman as the case may be. The relevant provisions in this regard are extracted below:-

“6.15 A consumer, Distribution Licensee or any other person who is a party to any proceedings before the Forum may either appear in person or **authorise any person** other than an Advocate (within the meaning of the Advocates Act, 1961) to present his case before the Forum and to do all or any of the acts for the purpose.”

17.8 A consumer, Distribution Licensee or any other person who is a party to any proceedings before the Electricity Ombudsman may either appear in person or **authorise any person** other than an Advocate (within the meaning of the Advocates Act, 1961) to present his case before the Electricity Ombudsman and to do all or any of the acts for the purpose.”

13. Hence, to amend the said Regulations by acceding to the prayers of the Petitioner would be in excess of the Electricity Act, 2003. The Petitioner has filed copies of Regulations of Ld. Electricity Regulatory Commissions of the States of Delhi, Gujarat and Uttarakhand, and others, who have permitted voluntary consumer associations to approach the Consumer Grievance Redressal Forum and the Electricity Ombudsman under their respective Regulations. At the cost of repetition, this Commission finds it necessary to point out that it would be in excess of the parent statute, to allow consumer associations to file grievances before the Forums and Electricity Ombudsman, by subordinate legislation.

14. Accordingly, the present Petition in Case No.59 of 2011 stands dismissed.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman