

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 13 of 2009

In the matter of
Petition filed by Shri. Amarjeet Upadhyaya seeking release of electricity
connection and related complaint against MSEDCL.

Shri. V.P. Raja, Chairman
Shri A. Velayutham, Member

Shri. Amarjeet Upadhyaya
RC Hospital and Diagnostic Centre
Rambaug Lane No. 4,
Chikanghar, Kalyan(W)

... Complainant

V/s

Maharashtra State Electricity
Distribution Company Ltd.
Kalyan Urban Div., (W)
Kalyan

.... Opponent

ORDER

Dated: June 15, 2009

Shri. Amarjeet Upadhyaya, filed a complaint on 20.4.2009, invoking the provisions of Regulation 32 of the MERC (Conduct of Business) Regulations, 2004, Sections 129(1), (2), and Section 142 of the Electricity Act, 2003 ("EA 2003"). In the Complaint, it has been alleged that MSEDCL, the Opponent, has not complied with one Order dated 21.8.2008 passed by the CGRF, Kalyan in Grievance No. K/N/016/0145 of 08-09.

2. The prayers that have been made are as follows -

“(i) to pass an order to release the connection immediately as per the order passed by the CGRF, Kalyan dated 22.8.2008 in accordance with Section 43(1) of the Electricity Act, 2003 and comply the order with full effect.



(ii) to quash and set aside the circular no. CE/IRE/MIS/CFC/ABM/640/32114 dt. 5/10/05, complaint charter dated 21/10/05 and letter no. 573 dated 2/04/09 from respondent licensee demanding NOC of KDMC for hospital purpose issued by respondent in pursuance to above circular being illegal and contrary to section 43(1) of the Electricity Act, 2003.

(iii) to pass an order for penalty and punishment as per section 43(3) and section 142 of the Electricity Act, 2003 for non-compliance and damages as per section 129(2) of the Electricity Act, 2003.

(iv) for ad-interim and interim relief in respect of prayer clause (a).

(v) for the cost.

(vi) for any other relief which the Hon. Commission may deem fit and just in interest of justice.”

3. The controversy raised in the Complaint is in a narrow compass. The Complainant has annexed to his Complaint a copy of the Electricity Ombudsman's Order dated 5.11.2008 passed in Representation No. 64 of 2008, wherein the Complainant's prayer for release of electricity supply without insisting prior NOC / Consent etc. from the Local and Planning authority (Kalyan Dombivli Municipal Corporation), has been found by the Electricity Ombudsman not to be in consonance with the provisions of law and untenable. The Electricity Ombudsman rejected the prayers of the Complainant, and held inter alia, as under -

“16. This is a case where in the Appellant intends to convert the garage for commercial use for storage and use of medical diagnostic machineries. The Appellant does not deny that it calls for the local authority's permission as the commercial user needs to be regularized. Reference to new Regulation 170 by the Appellant, is an enabling provision to regularize the unauthorized use of premises. But the fact remains that the Appellant by his own admission, concedes that such permission is yet to be obtained. Any activity other than one permitted in the garage, would amount to unauthorized use. In this background, the Respondent can not be faulted for insisting the NOC / Permission etc. from the Kalyan Dombivli Municipal Corporations before the supply is released to the Appellant's garage premises. Till then the application for supply can not be treated as 'duly completed application' as defined under the provisions of the Act, and Regulations referred to above. Therefore, the Appellant is required to provide the required documents / consent / permission from the local authority. The Appellant's prayer for release of electricity supply without



insisting prior NOC / Consent etc. from the Local and Planning authority (Kalyan Dombivali Municipal Corporation), therefore, is not in consonance with the provisions of law and is therefore untenable. The same is liable to be and hereby rejected for the reason stated above. The Forum has gone through the entire issue and made similar observation. There appears no reason to interfere in the Forum's order.

17. As regard the Appellant's prayer seeking penalty under Section 43(3) of the Electricity Act 2003, and damages for loss of business at Rs 1000/ per day till installation of meter, it must be observed that the Appellant did neither substantiate nor press this prayer during hearing. In any case, there appears no fault or delay on the part of the Respondent in processing the application for electricity supply. Regulation 5.8 of the Electricity Supply Code also stipulates that the application shall be deemed to be received on the date of receipt of the duly completed application containing all the necessary information and the documents. Since, the application is not complete, as observed in the preceding paragraphs, provisions under section 43(3) do not get attracted. In any case, neither the Forum, nor this Electricity Ombudsman is competent to award penalty under section 43(3) of the Electricity Act, 2003. The Respondent can not be held responsible for the delay in giving supply of Electricity to the Appellant and his loss of business, if any. The Appellant is also not entitled for any compensation as contemplated under Regulation 8.2 (c) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006. Appellant's prayer in this behalf, therefore, deserves to be and is hereby rejected."

4. The Complainant submits that more than one month has passed from the submission of the NOC / Permission etc. from the Kalyan Dombivli Municipal Corporation, to the Opponent, but still the Opponent has not yet released the connection till date. Hence the present complaint.

5. The Opponent filed its reply on 22.5.2009 contending therein that the law requires the Complainant to submit duly complete application for seeking electricity connection, which the Complainant has failed to do by not submitting the NOC Permission from the Kalyan Dombivli Municipal Corporation. The said requirement, as per the Opponent, arises under the provisions of Bombay Provincial Municipal Corporation Act, 1949, Development Control Rules, and the rules and regulations for development of properties as made by the Kalyan Dombivli Municipal Corporation. Hence, due to the failure of the Complainant to submit the aforesaid NOC, connection cannot be given and consequently, electricity supply cannot be given. As regards the contention made by the Complainant that he has already submitted the NOC / Permission from the Kalyan Dombivali Municipal, the Opponent submitted that such a NOC has been issued by the Town Planning



Department of the KDMC which provides for release of new service connection for garage purpose however, in fact, the Complainant has applied for electricity connection for Hospital purpose. Hence, the said NOC does not serve the purpose. The Complainant has not, during the hearing, objected to the aforesaid submission made by the Opponent.

6. The matter was heard on 28.5.2009. During the hearing, the Complaint submitted that the Opponent being the distribution licensee, was duty bound under Section 43(1) of the EA 2003 to give supply of electricity to the premises of the Complainant, within one month after receipt of the application requiring such supply. It has been alleged that the Opponent failed to give effect to the aforesaid statutory requirement and hence this case calls for imposing stringent measures including penalty on the Opponent by invoking the provisions of Regulation 32 of the MERC (Conduct of Business) Regulations, 2004, Sections 129(1), (2), and Section 142 of the EA 2003.

7. Having heard the parties and after considering the material placed on record, the Commission is of the view that whether the NOC from KDMC as submitted by the Opponent is sufficient for the purposes of availing electricity connection by the Complainant who intends to convert the garage for commercial use for storage and use of medical diagnostic machineries, is an issue that should be taken up by the Complainant with the Electricity Ombudsman because the CGRF's Order dated 21.8.2008 has merged with the the Electricity Ombudsman's Order dated 5.11.2008. The Commission is of the view that this is not a case where any order of the CGRF or the Electricity Ombudsman, has not been complied with by the Opponent. On the contrary, the Opponent's defence is that the Complainant is not complying with the Electricity Ombudsman's Order. If the Complainant feels that it need not comply with the Electricity Ombudsman's Order or whether that order calls for any change in view of the NOC from KDMC submitted by the Complainant to the Opponent, or whether the Electricity Ombudsman needs to issue any clarification, then these are matters where the Complainant ought to approach the Electricity Ombudsman. This Commission is not the right forum for seeking reliefs on this matter. Thus, the present complaint is liable to be dismissed as not maintainable, and is hereby dismissed.

8. However, looking at the factual matrix and the submission made by the Complainant, the Commission would like to point out that Section 175 of the EA 2003 provides as follows -

“175. The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.”



This means that the requirement to supply within the timeline prescribed under Section 43(1) of the EA 2003 must be read with Section 175. In turn, it would mean that the Opponent distribution licensee has to ensure that all other laws be it the provisions of Bombay Provincial Municipal Corporation Act, 1949, Development Control Rules, rules and regulations for development of properties as made by the Kalyan Dombivli Municipal Corporation, are complied with, so far they are applicable, before electricity supply could be given.

In view of the above, the present complaint stands dismissed as not maintainable.

Sd/-
(A. Velayutham)
Member

Sd/-
(V.P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC

