

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 165 OF 2022

In the matter of enhancement of load and change of name

Shrikant G. Mogal Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Kalyan (U)Respondent No.1
(MSEDCL)

Sandeep Borhade (C/o. Roshan Auto Service).....Respondent No.2

Bharat Petroleum Corporation Limited (BPCL) Respondent No.3

Appearances:

Appellant : 1. Shrikant Mogal
2. Nitin Dharmadhikari, Representative

Respondent No.1: 1. Digamber Rathod, Executive Engineer
2. More, Dy. Ex. Engineer
3. Shilpa Bangde, Asst. Law Officer

Respondent No.2: Rakhee Borhade, Representative


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 27th January 2023

Date of Order : 29th March 2023

ORDER

This Representation was filed on 20th October 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order


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dated 18th August 2022 passed by the Consumer Grievance Redressal Forum, Kalyan (the Forum).

2. The Forum, by its order dated 18th August 2022 has allowed the grievance application in Case No. 046 of 2022-23 by directing as under:

"2. Licensee is directed to release the additional load of 175 KVA immediately as demanded by the applicant on existing transformer & infrastructure by augmenting the same. The expenses for the same should be borne by the licensee company.

3. Licensee is directed to process the Change in name application of the applicant if the applicants apply for the same.


4. Licensee is having liberty to reduce the additional load and revert the change of name after judgment of the competent court, if the judgment will be in favour of the order."

3. Preamble

(i) Shri Shrikant G. Mogal, the Appellant in this case, is the owner of land of 1200 sq. meters situated at Survey No. 128, Hissa No. 2,3,4 & 5, Village Kalyan, Taluka Kalyan, Dist. Thane. The Appellant entered into a Lease Deed Agreement with Bharat Petroleum Corporation Limited on 27th May 2004 for petroleum business (running a petrol pump) on the said plot for a period of 29 years from 01.03.2004 to 28.02.2033. The Lease Agreement was duly registered. The main purpose of this lease deed agreement dated 27.05.2004 is captured and reproduced as below:

a. ***"3. To use the said land or all lawful purposes including storage and sale of Petroleum Products, Motor Accessories etc. either by itself or by duly appointed agent and dealers and for all such purposes the Lessee shall have full liberty to make at its cost excavations therein for tanks and construct and erect thereon any buildings and structures, pumping plant and accessories as may be requisite for any lawful purpose of the Lessee".***

b. Further, the Respondent No. 3 (BPCL) by its "Dispensing Pump and Selling License Agreement" has appointed Respondent No.2 (Sandeep Eknath Borhade, Roshan Auto Services) as a dealer for petroleum business on the said plot. The said agreement was/is renewed after every five years.



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- (ii) The electric connection on the said premises was/is in the name of Shrikant Mogal from 06.04.1989. The said electric connection is being used from 2004 by BPCL / Sandeep Eknath Borhade who has been paying the electric bills from time to time.
- (iii) Respondent No.2, User (Borhade) originally applied for additional load up to 170 KVA in order to set up a CNG service. This application was made in the name of the owner Mogal, and signed by the applicant Borhade. At this point, Mogal raised an objection against enhancement of load. **MSEDCL initially rejected the application, as the original consumer (Mogal) had neither applied for enhancement of load, nor was a No Objection Certificate from the original consumer provided.**
- (iv) Not satisfied with the decision of MSEDCL, the Respondent No.2 filed his grievance application before the Forum on 20.07.2022. The Forum, by its order dated 18th August 2022 allowed the grievance application in Case No. 046 of 2022-23. The operative part is captured in Para 2.
- (v) The Forum did not make BPCL and Shrikant Mogal as parties in the said grievance application. The Appellant, Shrikant Mogal filed a review application before the Forum after issue of its order. However, the Forum did not consider this, and the Appellant was advised to approach the Electricity Ombudsman (Mumbai) if he was aggrieved by the order.

4. The Appellant being the original owner / consumer is affected by the said order, and hence has filed this representation against the order of the Forum. The complainant who approached the Forum was made a party as Respondent No.2 along with MSEDCL as Respondent No.1. BPCL as an interested party was made Respondent No. 3. The e-hearing was held on 27th January 2023 where all the parties were heard at length through video conferencing. BPCL chose not to respond. The Appellant's written submission and arguments are stated in brief as under:-


- (i) The Appellant is the owner of the said disputed premises and land. The Appellant had taken MSEB/MSEDCL connection in the year 1989 in his name, having


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consumer No.020020425980 as per CGRF regulations 2020 Item No.10 at the said premises.

- (ii) The Applicant owns the land at Murbad Road Kalyan as his property as per the 7/12 extract enclosed herewith. This was leased out to BPCL vide lease deed dated 18/05/2004 for 30 years, by fixing year wise specific rent, which would be revised after every 5 years, as per agreement, up to 28/02/2033. The said agreement was registered with the Sub Registrar Kalyan.
- (iii) Shri. Sandeep Eknath Borhade is running the BPCL Petrol Pump as its dealer / licensee, and has applied for (i) enhancement of existing load and (ii) Change of Name to Ex. Engineer, MSEDCL Kalyan (W) to erect a new CNG pump. However, both applications were rejected as there was no consent of the original Consumer as per the supply conditions of 2005 and Commercial Circular No.126 having reference No. of MSEDCL as, PR-3/cos/33350 Dated 30/10/2010. The Respondent No.2, Shri. Sandeep Eknath Borhade is not a Consumer of MSEDCL and is only a licensee of BPCL, having no direct relationship with the Owner or Main MSEDCL consumer Shri. Shrikant G. Mogal. Hence, MSEDCL has legally rejected both the applications of Respondent No. 2.
- (iv) In the Final Order of the Forum, in the 3rd Para, the name of Respondent No. 2. against Shri. Shrikant G. Mogal, with his Consumer No., is mentioned, as if he is the consumer, and this is totally illegal and against the provisions of CGRF Regulations Item No. 2.1(c). The definition of MSEDCL consumer is a regular existing Consumer or a Prospective Consumer, and only he can file a Grievance or Complaint with the Forum. Hence, in this case Shri. Sandeep Eknath Borhade is not at all a Consumer or a Prospective Consumer of MSEDCL. The said application should either have been rejected by the Forum, or it should have issued notices to the main Consumer of MSEDCL Shri. Shrikant G. Mogal, and also to BPCL, to put up their side to be heard. But the case was decided taking only MSEDCL as the non-applicant, which was totally unjustified, illegal as per provisions of MERC and CGRF regulations and MSEDCL circulars in existence. Hence the Forum's order stands to be set aside and rejected in toto.


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- (v) That, as per CGRF regulations 2020 Item No7.9 and Civil procedure Code (5 of 1908), when a dispute is pending/in process and is already going on at Civil Judge (S D.), Kalyan vide Sp.C.S.No.273/2008, the Forum should not have registered the said grievance.
- (vi) If at all the Forum decided to hear the said application, then, it should have issued notices to the concerned parties like BPCL and Shrikant G. Mogal. However, the said matter was decided one sided and seems to be totally unjustified and illegal.
- (vii) The Order of the Forum has stated that, as per oral approval of MSEDCL authorities, the applicant has purchased New Transformer and other materials. This is totally unlawful as the concerned authority has rejected the said applications. Then how can Shri. Sandeep Eknath Borhade purchase the material required for enhancement of existing load which is totally unjustified, and illegal.
- (viii) That, in the Analysis and Reasoning in the Forum's order, where there is a reference of the existing Consumer, the necessary consent of the existing consumers is not at all mentioned/quoted. As per commercial circular No. 126 mentioned above, there is a Form "U" for change of name under which "h" clearly mentions that when the premises is let out, NOC of the original Consumer is mandatory. It is also a must as per Annexure "A". Similarly, for enhancement of load the NOC is mandatory.
- (ix) Finally, if any Electrical Accident/Fire Hazard takes place due to the enhanced electric load while doing the said enhancement work, the main consumer and user will be held responsible from the electrical inspector if there is any legal dispute, and therefore the main consumer must know of any changes like enhancement of load or change in infrastructure. The consent of the main consumer is of utmost importance which cannot be excluded/exempted. Hence the said order stands to be rejected/set aside in toto. The application of Shri. Sandeep Eknath Borhade should be made null and void and order of CGRF, Kalyan should be set aside.
- (x) As regards mental and physical harassment, the Respondent No. 2. Shri Sandeep Eknath Borhade should be ordered to pay compensation and expenses towards this appeal as, minimum of Rs,1,00,000/-(Rs. One Lakh). Suitable order for


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compensation should also be granted with the order setting aside the Forum's order.


- (xi) To summarise, the Appellant is the original commercial consumer (No. 0200020425980) from 6th April 1989 and his address on the bill is C/o. Roshan Auto Service, Nr. Purnima Talkies, Murbad Road. He, Suman Arun Mogal and Bharat Petroleum Corporation Limited (BPCL) have entered into a lease deed on the said property for 29 years i.e., from 01.03.2004 up to 28.02.2033. Thereafter, BPCL through its authorised dealer, Roshan Auto Service have established a petrol pump on the said property, who is the Respondent No.2 in the present Representation. The Appellant has taken an objection with the Forum, as the Appellant, being the original consumer, was not included as a party in the concerned proceeding before it. A Special Civil Suit is pending at C.S. (S.D.) vide Case No. 273 of 2008 between the Appellant and BPCL. The Appellant requests not to process the above two applications immediately.

5. The Respondent No. 1 (MSEDCL) by its letter dated 21.11.2022 submitted its written reply. The written submission along with its arguments are stated in brief as below: -

- (i) Shrikant G. Mogal (Appellant) is a LT three phase Commercial Consumer (No. 020020425980) since 06.04.1989 having Sanctioned Load of 37.5 KW and Contract Demand of 37.50 KVA (present) at C/o Roshan Auto Services, Near Purnima Talkies. Murbad Road, Kalyan (West). The facts as stated in para 4 (xi) are agreed.

(ii) **Facts of the case:**


- a) Shri. Sandeep Eknath Borhade, Authorized Dealer of BPCL applied for a new commercial three phase connection for 145 KW Load and 161 KVA CD in the prescribed A1 form to this office on 22.12.2021 for providing CNG facility at the petrol pump.
- b) EE Kalyan (West) by its letter dated 05.01.2022, informed the applicant to produce the Agreement between Mahanagar Gas and Applicant. The EE has also informed that there is an existing connection (No. 020020425980)


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in the same premises and hence, two connections in the same premises cannot be provided as per the MSEDCL rules and Regulations.

- c) The Respondent No. 1 visited the site immediately. During the visit, it was found that the Respondent No.2 is using the existing connection for BPCL Petrol Pump. Hence, the application for a new electricity connection was rejected on 22.03.2022.
- d) Thereafter the Respondent No. 2 applied for additional load of 170 KVA for CNG facility on 28.02.2022. On 09.05.2022, the AEE Kalyan (W) Sub-Division (1) submitted the Technical Feasibility Report.
- e) Meanwhile, Smt. Suman Arun Mogal, by her letter dated 23.05.2022, and Shri Shrikant G. Mogal (Consumer) by his letter dated 09.06.2022, raised an objection for releasing the additional load. According to them, they are the owners of the said premises and Shri Shrikant G. Mogal has not signed any application for additional load or any related documents. Furthermore. It is stated in the letter that, there is a Court case pending against BPCL for cancellation of the Lease Deed Agreement.
- f) On 27.06.2022, the Office of EE Kalyan (West) Division informed the Appellant that Shri Shrikant G, Mogal is the consumer, and for any extension in load, the application has to be made only by him. Any application from BPCL cannot be considered. He was requested to get the application from the consumer (Shri Shrikant G, Mogal). The copy of the letter dated 27.06.2022 is kept on record. In brief, MSEDCL agreed with the plea of the Appellant, Mr. Mogal.
- g) The Respondent No.2 filed a grievance application before the Forum on 20.07.2022. The Forum, by its order dated 18.08.2022 allowed the grievance application. The operative part is captured in Para 2. **Accordingly, MSFDCL in compliance with the order of the Forum, processed both the requests of Respondent No.2 (Sandeep Borhade). The Change in name has been effected from the billing cycle of October 2022, and for releasing the additional load, the work is in progress.**



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- h) The main grievance is between Shri. Sandeep Borhade and Shri Shrikant G. Mogal. MSEDCL is merely a formal party to the proceeding. Hence MSEDCL will oblige with whatever Order is passed by the Electricity Ombudsman.

6. The Respondent No. 2, Sandeep Borhade, Roshan Auto Service by its letter dated 15.02.2023 has submitted its written reply. The written submission along with its arguments are stated in brief as below: -

- (i) The Respondent No.2 is the authorized dealer of Bharat Petroleum Corporation Limited (BPCL) (Respondent No.3) and is engaged in the business of running a Petrol Pump.
- (ii) The Forum, by its order dated 18th August 2022 has allowed the grievance application. The Forum has rightly decided the grievance as per provisions of Section 43 of the Electricity Act, 2003 which clearly states that owner or occupier has the right to apply for electricity connection. According to Condition of Supply of Maharashtra Electricity Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005(Supply Code Regulations 2005), the Respondent No.2 is covered within the ambit of the definition of “Occupier” and hence Respondent No.2 has a statutory right to apply for electricity connection, increase in load extension etc.
- (iii) **There is no provision or clause under the Lease Deed between BPCL and Mr. Shrikant Mogal and Mrs Aruna Mogal indicating that the consent or permission of the Lessor/Owner needs to be taken for enhancement of business or for seeking additional load of electricity. Hence the Respondent No.2 has complete authority to apply for additional load of electricity in the leased premises.**
- (iv) The Respondent No. 2 had complete locus standi to file the application before the lower authorities, and a decision has been given by the Forum after following the due process of law and with proper application of mind.
- (v) The civil suit referred by the Appellant is completely different from the issue that was raised and adjudicated by the Forum. Hence the principles of Res judicata or Res sub judice does not apply to the concerned proceedings. There is no legal requirement to


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have a written agreement between parties elucidated by the Applicant and the same does not affect the subject matter under consideration.


- (vi) The Forum has correctly ruled that the Respondent No.2 is a paying consumer as he is duly paying all the taxes and electricity bills with respect to the said connection.
- (vii) The decision of the Forum is a speaking order after evaluating and perusing the necessary documents and evidence brought on record.

7. A notice along with the required papers was also served on 9th February 2023 to BPCL by making it a party as Respondent No. 3 for its submission in the subject matter. The notice was delivered the next day to BPCL. A similar set was also handed over to the representative of Shrikant Borhade to give it to the Territory Manager, BPCL, which was done. However, BPCL did not submit any reply. A reminder notice was also served by email dated 3rd March 2023. However, BPCL did not submit any written reply till date. Hence, it is difficult to assess the stand of BPCL, i.e. whether they support the application for load extension or not.

Analysis & Ruling

8. Heard the parties and perused the documents on record. Shri Shrikant G. Mogal, the Appellant in this case, is the owner of the land situated at Survey No. 128, Hissa No. 2,3,4 & 5, Village Kalyan, Taluka Kalyan, Dist. Thane. The Appellant is a LT three phase Commercial Consumer (No. 020020425980) since 06.04.1989 having Sanctioned Load of 37.5 KW and Contract Demand of 37.50 KVA. The Appellant entered into a Lease Deed Agreement with Bharat Petroleum Corporation Limited on 27th May 2004 for petroleum business on the said plot for a period of 29 years from 01.03.2004 to 28.02.2033. The Lease Agreement was duly registered.

9. Thereafter, BPCL appointed Sandeep Borhade, C/o. Roshan Auto Service as its authorised dealer for business purpose on the said plot vide an agreement which is renewed every five years. The agreement contains terms and conditions for carrying out business, including payment of electricity and water charges consumed in the premises by the company from time to time. The authorised dealer was prompt in payment of all electricity bills till date.


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As per his requirement for additional CNG facility, he applied to Respondent No. 1 for a new commercial three phase connection for 145 KW Load and 161 KVA CD in the prescribed A1 form on 22.12.2021 under his own signature. The Respondent No. 1 declined to sanction the new connection since one electricity connection was already existing in the premises. Hence, the applicant applied for additional load of 170 KVA for CNG facility on 28.02.2022. On 09.05.2022, the AEE Kalyan (W) Sub-Division (1) submitted the Technical Feasibility Report. Subsequently on 23.05.2022, it also intimated Respondent No. 2 about the objection taken by Smt. Suman Arun Mogal and the Appellant against releasing the additional load. According to them, they are the owners of the said premises, and Shri Shrikant G. Mogal has not signed any application for additional load or any related documents.

10. On 27.06.2022, the Office of EE Kalyan (West) Division informed the Respondent No. 2 that Shri Shrikant G. Mogal is the consumer and for any extension in load, the application has to be made by him only. An application from BPCL cannot be considered, and he was requested to get the application from the consumer.

11. Being aggrieved by this decision, Borhade filed a grievance application before the Forum for compliance of his demand of load enhancement and change of name. The Forum registered the case; however, did not make Mogal or BPCL parties in the case, and allowed the grievance in Borhade's favour. The Appellant, Mogal who is the original consumer, being affected by the Forum's order has approached the Electricity Ombudsman.

12. It is observed that the grievance before the Forum has been allowed for load enhancement and change of name in favour of the complainant who is the current occupier and user on the premises, and is the authorised dealer of BPCL. However, the agreement of land lease is between the Appellant (owner) and BPCL, and the complainant / dealer is a third party. The Territory Engineer Manager, Thane Retail Territory, BPCL by his letter No. CNG. ROSHAN AUTO dated 15.07.2022 addressed to the Executive Engineer, MSEDCL, Div-1, regarding request to increase capacity to 170 KVA electrical connection for CNG facility, has mentioned as below: -


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“ We have our existing petrol pump at Kalyan, Dist.-Thane by Name of M/s. Roshan Auto Centre. In order to provide additional value added services to customers, we have proposed to add the CNG facility at outlet. And it is imperative that additional load is required at the outlet to facilitate and energize the CNG fuel station.

The subject site is leased to Bharat Petroleum Corporation Ltd. On 27th May 2004 and valid till 2033. As per Lease agreement BPCL reserves the right on the subject land to provide the mandatory facility required for Business activity. Subject lease agreement between landlord and BPCL is attached.

Hereby we authorise our Dealer Mr. Sandeep Borhade to apply for additional 170 KVA connection on behalf of BPCL. We have attached BPCL agreement copy of M/S. ROSHAN AUTO and BPCL.


Request you to please provide the electrical connection of HT line at subject retail outlet. And complete the work at earliest.”.....(Emphasis added)

The BPCL did not mark a copy of this letter to Shrikant Mogal, the original consumer, nor was he informed about this. As per rules, it is obligatory either for the Appellant (Mogal) as the original consumer, or BPCL as the original user, to apply for load enhancement.

13. We have studied the original Lease Deed Agreement between the owner (Mogal) and Bharat Petroleum Corporation Limited. The specific relevant paragraphs are reproduced below:-

"3. To use the said land for all lawful purposes including storage and sale of Petroleum Products, Motor Accessories etc. either by itself or by duly appointed agent and dealers and for all such purposes the Lessee shall have full liberty to make at its cost excavations therein for tanks and construct and erect thereon any buildings and structures, pumping plant and accessories as may be requisite for any lawful purpose of the Lessee".

.....
AND TOGETHER ALSO with full and free liberty to the Lessee to use the demised premises as a Storage Depot or a Service Station for the purpose of selling or otherwise dealing in or of receiving storing treating or handling for distribution of petroleum or any of its products and kindred motor accessories or any other trade or business and other lawful purpose.” (Emphasis added)


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Nowhere does the lease deed say that the permission of the owner will be required to expand the existing business or to sell any petroleum products or accessories. CNG is itself a petroleum product. In fact, the lease deed specifically allows the sale and distribution of petroleum or any its products, or any related trade or business. Therefore, a simple reading of the lease deed indicates that the **NOC of the owner is not required for the enhancement of the load for the purpose of business expansion or sale of CNG.**

14. The Appellant has pointed out that there is a Court case pending against BPCL for cancellation of the basic Lease Deed Agreement. However, there is no status-quo order issued by the Court. Therefore, nothing bars load enhancement for bona-fide business extension at this stage. In future, if the Court gives the order in favour of the Appellant and the lease deed with BPCL is indeed cancelled, the load can easily be reduced again by the Appellant.

15. **However, another important issue remains. In this case the Respondent No. 2 (Sandeep Borhade) has signed most of the documents as Shrikant Mogal (Original Consumer) which is not acceptable as per law and amounts to mis-representation. If he had signed the documents as the authorised dealer of BPCL, it would have been factual and acceptable.**

16. The Forum, by its order dated 18th August 2022 has allowed the grievance application by directing the Respondent Licensee to release the additional load of 175 KVA immediately as demanded by the applicant by augmenting the existing transformer & infrastructure. The Forum also directed to process the Change in Name application of the applicant if he applies for the same.

17. The Respondent No. 1 (MSEDCL) has stated that neither BPCL nor Shrikant Mogal applied for the change of name, but Sandeep Borhade (authorised dealer of BPCL) has applied for change of name without following the due procedure i.e. without obtaining the consent of the original consumer. **An application for change of name by any third party without the NOC of the original consumer is not allowed as per MSEDCL's policy and as per the**


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advice of its legal team, as it leads to litigation and disputes. However, as per direction in the Forum's order, MSEDCL changed the name in favour of BPCL without Mogal's consent. There are multiple irregularities in this case.

18. The 2 main issues in this case are:-

- (i) Can the change of name be allowed without the consent of the original consumer, Mogal ? The answer is in the negative, as explained above.
- (ii) Can the enhancement of load be allowed (for expansion of CNG business) without the consent of the original consumer? The answer is in the affirmative, provided the application is made correctly following the due procedure.


19. Unfortunately, the Forum did not consider the basic legal requirement for change of name, and did not give any opportunity to Shrikant Mogal (the original consumer) as well as BPCL (the actual occupant as per lease agreement) to be heard, by not making them parties in the case.

20. In view of the above, the Representation of the Appellant (Shrikant Mogal) is allowed by setting aside the order of the Forum. Other prayers of the Appellant are rejected.

21. The Respondent No.2 being a commercial consumer generating revenue for the Respondent No.1, MSEDCL, the parties are advised to have a meeting and settle their issues under the bracket of rules and regulations in force.

22. The representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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