

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 104 of 2020

In the matter of interruptions in power supply and compensation thereof

Narendra R. Patel .....Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Palghar (MSEDCL).....Respondent

Appearances: -

For Appellant : Narendra R. Patel

For Respondent : 1. R. B. Kadam, Addl. Ex. Engineer, Palghar  
2. B. S. Dhodi, Dy. Ex. Engineer

**Coram: Deepak Lad**

Date of Hearing: 26<sup>th</sup> January 2021

Date of Order : 9<sup>th</sup> March 2021

**ORDER**

This Representation is filed on 17<sup>th</sup> December 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 11<sup>th</sup> November 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).



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2. The Forum, by its order dated 11.11. 2020 has rejected the grievance application in Case No. 2050 of 2019-20.

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -


- (i) The Appellant is a LT Residential Consumer (No. 005530002545) at Neelkanth, Anand Mangal Society, Dahanu Road, Dist. Palghar.
- (ii) The Appellant stated that there was no power supply on 22.05.2020 for about 9.35 hours i.e., from 09.07 hours to 18.42 hours in Dahanu town. There is no valid reason for this non-supply of power. The Respondent licensee is not eligible for any exemption under the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 [SOP Regulations, 2014] in the absence of “opinion of the Commission” in this regard. The Respondent, therefore, is liable to pay the compensation.
- (iii) The Appellant has filed grievance with Internal Grievance Redressal Cell (IGRC) on 08.06.2020. The IGRC, by its order dated 14.07.2020 rejected the grievance considering interruption in power supply as an emergency outage.
- (iv) The Appellant approached the Forum on 08.09.2020. The Forum, by its order dated 11.11.2020 has rejected the grievance.
- (v) The Forum has misinterpreted and misunderstood the provisions of SOP Regulations and has failed to consider the argument of the Appellant.
- (vi) The Appellant prays that the Respondent be directed to pay compensation towards non-supply of power for about 10.00 hours as per SOP Regulations 2014 with interest and cost.

4. The Respondent MSEDCL has filed its reply dated 16.02.2021 stating in brief as below:

  
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- (i) The Appellant is a LT Residential Consumer (No. 005530002545) at Neelkanth, Anand Mangal Society, Dahanu Road, Dist. Palghar.
- (ii) The Dy. Executive Engineer 132 kV / 33 kV Dahanu substation under EHV of O & M Boisar Division, Maharashtra State Electricity Transmission Co. Ltd. (MSETCL) vide its letter No.105 dated 18.05.2020 had requested emergency outage on 33 kV Dahanu feeder on 22.05.2020 from 09.00 hours to 17.00 hours for replacement of 33 kV old breaker of S&S make by new breaker of Schnider Make emanating from 132/33 kV EHV S/s. This was important / priority work for uninterruptable power supply to the entire Dahanu taluka for emergency services in view of Covid-19 epidemic.
- (iii) Accordingly, MSETCL availed the emergency outage on 22.05.2020 for about 9.35 hours i.e., from 09.07 hours to 18.42 hours on 33 kV Dahanu feeder for old breaker replacement. The Respondent MSEDCL put on record the technical data received from MSETCL and screenshot of SMS sent to consumers indicating revised time of restoration of power at 18.30 hours instead of 17.00 hours with inconvenience regretted.
- (iv) The power supply was not interrupted by MSEDCL however, forced / emergency outage was taken by MSETCL. Hence, it was beyond the control of MSEDCL.
- (v) Regulation 11 of the SOP Regulations 2014 provides for exemption in such situation from meeting the obligations.
- (vi) The Appellant has filed grievance with IGRC on 08.06.2020. The IGRC by its order dated 14.07.2020 rejected the grievance considering the said interruption is emergency /forced outage by MSETCL.
- (vii) The Appellant approached the Forum on 08.09.2020. The Forum, by its order dated 11.11.2020 has rejected the grievance. The Forum has rightly considered the reason of said interruption is due to emergency /forced outage by MSETCL and the Respondent MSEDCL cannot be held responsible for power failure. The provisions of SOP as per SOP Regulations 2014 are applicable only to the distribution licensee i.e. MSEDCL.

  
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(viii) The Respondent MSEDCL prays that this representation of the Appellant is, therefore, liable to be dismissed.

5. The Appellant filed rejoinder dated 24.02.2021 on Respondent's reply and requested to consider as his written argument which is stated as under: -

- (i) The Respondent has accepted the fact that the power supply was disrupted/disconnected/stopped for 09.35 hrs. (to be treated as 10.00 hrs as per SOP Regulations 2014) in Dahanu which comes under Municipal Council (i.e., Urban Area).
- (ii) The restoration of supply is required to be done within 4 hrs. in urban areas for fuse off call complaint as per Appendix A of SOP Regulations 2014.
- (iii) The Respondent has tried to seek/claim in the exemption for the aforesaid non-supply of power Regulation 11.1(ii) SOP Regulations 2014. However, no 'Opinion of the Commission', as required as per the said regulation, is taken by the Respondent. Hence, the Respondent is not entitled to claim the said exemption in this case.
- (iv) The Appellant referred the Regulation 11.1 of SOP Regulations 2014 in support of his argument. As per the said Regulation No 11.1 none of the exemption mentioned in sub clauses (i) to (iv) can be claimed/permitted/allowed without the opinion of the Commission. Hence, this is mandatory to be followed in the present case. The said Regulation 11.1 of the SOP Regulations 2014 reads as under:

*"11. Exemption*

*11.1 Nothing contained in these Regulations shall apply where, in the opinion of the Commission, the Distribution Licensee is **prevented** from meeting his obligations under these Regulations by—*

- a. force majeure events such as cyclone, floods, storms , war, mutiny, civil commotion, riots, lightning, earthquake, lockout, fire affecting licensee's installations and activities;*
- b. outages due to generation failure or transmission network failure;*
- c. outages that are initiated by the National Load Despatch Centre/ Regional Load Despatch Centre/State Load Despatch Centre during the occurrence of failure of their facilities;*



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d. *or other occurrences beyond the control of the Distribution Licensee:*

*Provided.....*

(v) The word “**prevented**” in the Regulation 11.1 which means that the Respondent was forced and prevented by extra ordinary circumstances to supply power despite his desire and willingness to do so. The non-supply of was neither because of generation failure nor because of transmission failure. Hence the Respondent cannot claim exemption under the aforesaid Regulation. However, the Respondent MSEDCL failed to get such certificate/opinion of the concerned Authority.

(vi) The Appellant further filed additional submission on 26.02.2021 which consists of the following issues and also clarified by him as below:

A. Whether there was non- supply of power as stated by the Appellant.

This issue is admitted by both the parties that there was non-supply of power for 9.35 hours on 22.05.2020.

B. Whether the exemption claimed by the Respondent comes under Regulation No. 11.1 (ii).

The Respondent is not eligible as per Regulation No. 11.2 (ii) as no “opinion of the Commission” is provided.

C. Whether the opinion of the Commission is mandatorily required as per Regulation 11.

The opinion of the Commission is mandatorily required for all exemption in SOPs as per SOP Regulation 2014.

D. Whether there was transmission failure.

There was no transmission failure.



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(vii) Hence it is respectfully submitted that in view of what is stated above the Representation be allowed in full and compensation as claimed be granted together with interest and cost.

6. Due to Covid-19 epidemic, the hearing was scheduled on 26.02.2021 on e-platform through video conferencing but due to some technical problem on the Appellant side, the hearing was conducted through audio conferencing.

7. The Appellant argued that he has submitted written arguments on 24.02.2021 and 26.02.2021. He stated that the Respondent MSEDCL is claiming exemption under Regulation 11 of the SOP Regulations 2014, however, as per the provisions of the said Regulation, if any such exemption is claimed, the “opinion of the Commission” has to be produced. Since the opinion of the Commission has not been produced, the licensee cannot be exempted under the said SOP Regulations. Further, the MSEDCL has stated that MSETCL had taken the emergency outage for 9.35 hours on 22.05.2020 from 9.07 hours to 18.42 hours, however, it has not been published in advance for public notice.

8. The Respondent MSEDCL, on the other hand, reiterated that MSETCL had availed emergency outage on 33 kV Dahanu feeder on 22.05.2020 from 09.00 hours to 17.00 hours for replacement of 33 kV old breaker of S&S make by new breaker of Schneider Make. This was a priority work for uninterruptable power supply to the entire Dahanu taluka for emergency services in view of Covid-19 epidemic. It was not possible to publish the notice of emergency outage in the local newspapers during the then prevailing lockdown due to Covid-19, however, it was circulated in the various WhatsApp groups of the citizens in Dahanu. The Respondent pointed out that Regulation 11 of the SOP Regulations exempts the licensee from meeting its obligations for the grounds mentioned in the said Regulations. As regards opinion of the Commission, the Respondent stated that such opinion would be necessary if there is large scale failure to adhere to the standards of performance. In the present case, interruption was limited only to Dahanu feeder, the details for the same have been given. Therefore, there was no question of obtaining the opinion of the Commission.



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The Forum has considered all these aspects. The Respondent, therefore, humbly submitted that the Appellants may not be granted any further relief.

### **Analysis and Ruling**

9. Heard the parties and perused the documents on record. It is the contention of the Appellant that the Respondent MSEDCL has claimed exemption under Regulation 11 of the SOP Regulations. However, the licensee has to produce the “opinion of the Commission” for declaring it to be transmission failure while claiming the exemption under the said Regulations. Regulation 11 of the SOP Regulations, provides as under: - [

*11.1 Nothing contained in these Regulations shall apply where, in the opinion of the Commission, the Distribution Licensee is prevented from meeting his obligations under these Regulations by—*

- (i) force majeure events such as cyclone, floods, storms, war, mutiny, civil commotion, riots, lightning, earthquake, lockout, fire affecting licensee’s installations and activities;*
- (ii) outages due to generation failure or transmission network failure;*
- (iii) outages that are initiated by the National Load Despatch Centre/ Regional Load Despatch Centre/ State Load Despatch Centre during the occurrence of failure of their facilities;*
- (iv) or other occurrences beyond the control of the Distribution Licensee:*

*Provided that the Distribution Licensee shall not be excused from failure to maintain the standards of performance under these Regulations, where such failure can be attributed to negligence or deficiency or lack of preventive maintenance of the distribution system or failure to take reasonable precaution on the part of the Distribution Licensee.*

*11.2 The Commission may, by general or special order, exempt the Distribution Licensee from any or all of the standards specified in these Regulations for such period as may be specified in the said Order.*

10. Regulation 17.2 of the Supply Code Regulations 2005 read with Clause 6.6.7 of the SOP Regulations 2014 provides that the licensee shall be entitled to temporarily discontinue the supply for testing or maintenance purpose, however, scheduled outage is subject to providing advance public notice. Post hearing, the Respondent was asked whether the message of emergency/ forced outage was communicated to the consumers of that particular



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area. The Respondent stated that due to strict lockdown at that point of time due to Covid-19, it was impossible to publish notice through local newspapers, hence, messages were circulated through the WhatsApp Groups of citizens in Dahanu. Regarding obtaining of the opinion of the Commission as per Regulations 11 of the SOP Regulations, it is stated that there was interruption in supply only in Dahanu. This was important / priority work for uninterruptable power supply to this entire area for emergency services in view of Covid-19 epidemic. Hence, there was no need to obtain the opinion of the Commission. This contention of the licensee deserves acceptance, as in the present case, there was no nonadherence of the standards of performance by the licensee.

11. In the matter of MCGM v/s MERC reported in 2016 (2) BOM CR 722, Bombay High Court, with regard to SOP Regulations and licensee's obligations, has observed that to hold the distribution licensee absolutely to a rigid and inflexible time period irrespective of issues beyond its control, would be entirely unworkable and unjust.

12. It is an undisputed fact that there was power supply interruption on 22.05.2020 from 09.07 hours to 18.42 hours. The only issue raised by the Appellant is that the Respondent ought to have taken "opinion of the Commission" in view of the provision of Regulation 11 of SOP Regulation 2014.

13. On plain reading of the opening sentence of Regulation 11.1 and more particularly the phrase "*in the opinion of the Commission*" I am of the opinion that the Appellant has wrongly interpreted the same. On the contrary it is a set of eventualities as stipulated there in, given by the Commission in which SOP Regulations shall not apply. It cannot be construed to mean that on each such occasion the Distribution Licensee shall seek the opinion of the Commission on nature and cause of that particular interruption. It will be a perverse interpretation as per the doctrine of plain interpretation. Even assuming without admitting that "*the opinion of the Commission*" is mandatory then the entire system of governance will collapse and in all probabilities this certainly is not the legislative intent of the Commission. The Appellant has miserably failed to understand the repercussions of his interpretation of the Regulation if *the opinion of the Commission (permission)* is

  
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Secretary  
Electricity Ombudsman Mumbai





sought to be taken under the set of circumstances defined in the said Regulations. There will be complete chaos.

14. In the present instance, the emergency outage was taken by the MSETCL as the equipment to be repaired / replaced were in its premises. The Distribution Licensee, the Respondent which is at the receiving end has no role to play in it. Therefore, it cannot be held responsible and accountable for the outage as it is outside its scope. Obviously, Regulation 11.1 of the SOP Regulations 2014 exempts the Respondent from any liability on account of power supply interruption.

15. I am, therefore, of the opinion that there is no substance in the submission and argument of the Appellant and the Forum has rightly dismissed the case. I concur with the order of the Forum and the Representation is therefore disposed of accordingly.

Sd/-  
(Deepak Lad)  
Electricity Ombudsman (M)

(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

