

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

**REPRESENTATION NO. 72 OF 2020**

In the matter of delay in commissioning of electric substation

Charkop Shree Gulmohar CHS Ltd. ....Appellant

V/s.

Adani Electricity Mumbai Limited (AEML)..... Respondent

Appearances: -

For Appellant : Raju Brahmabhatt, Representative

For Respondent: 1. Mritunjay Kumar Jha, Dy General Manager, AEML  
2. Dayanand Samant, Vice President, Network Management, North Dn.  
3. Sajimon Nano, Addl. Vice President, Head Commercial, North Dn.  
4. Kamlesh Samant, Asst. Vice President  
5. Vivek Shah, GM  
6. Dnyaneshwar Dhakate, GM


**Coram : Deepak Lad**

Date of hearing: 21<sup>st</sup> October 2020

Date of Order : 5<sup>th</sup> November 2020

**ORDER**

This Representation is filed on 10<sup>th</sup> September 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 13<sup>th</sup> February 2020 passed by the Consumer Grievance Redressal Forum, Adani Electricity Mumbai Limited (AEML) (the Forum).


  
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2. The Forum, by its order dated 13.02.2020 has dismissed the grievance application in Case No. 16 of 2019.

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

- (i) The Appellant is a housing society at Plot No. 29, RSC 22, Sector 8, Charkop Kandivali (West) Mumbai and are consumers of AEML from year 2007.
- (ii) The Appellant has provided land admeasuring 22 sq. meters for electric substation of the Respondent as per its requirement in the Society`s premises under Regulation 26 of the Development Control Regulations 1991 (DCR 1991).
- (iii) Subsequently, on 12.10.2007, the Appellant entered into a Lease Agreement with the Respondent (the then Reliance Energy Ltd) for the said parcel of land. The term of lease is 99 years and the agreed annual rent fixed is Re.1 (Rupee One only) per annum.
- (iv) The Appellant contends that thirteen years have passed away and the said sub-station has not been commissioned yet by the Respondent. The electric supply is being provided to the Appellant society from a different source. Hence, the Appellant states that the demand made for sub-station space is illegal and there is a misuse of Regulation 26 of the DCR 1991. Pursuant to this, the Appellant seeks compensation of the said land as per the prevailing market rates. The Appellant is paying huge property taxes for the space allotted for the sub-station. The Respondent did not pay the property tax to the Appellant. Further, the rent charges as per the Lease Agreement is also not paid to the Appellant society, hence, there is a breach of the Lease Agreement.
- (v) The Appellant is entitled to get compensation of 100 per week for not commissioning the substation in one year as per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2005 and 2014 (SOP Regulations).


  
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- (vi) The Appellant also states that the Lease Agreement was not mutually agreed and since due to the lack of knowledge of the society members, the Lease Agreement came in force.
- (vii) The Appellant prays that the Respondent be directed
  - (a) to revise the rent charges of the substation space as per prevailing market rate.
  - (b) to pay property tax of the substation space to the Society.
  - (c) to pay compensation of Rs.100/- per week as per SOP Regulations for not commissioning the sub-station within one year.

4. The Respondent filed its reply on 11.10.2020 by email stating in brief as under: -


- (i) The Appellant has filed this representation related to its grievance of electric substation space at Plot No. 29, RSC 22, Sector 8, Charkop, Kandivali (West) Mumbai - 400067.
- (ii) The Respondent craves leave to project certain "preliminary submission" in the following paragraphs, for canvassing the legal and correct context, necessary for proper adjudication by this Hon'ble Authority.
- (iii) At the outset, the Respondent repudiates entire allegations as made by the Appellant as the same is unfounded and nothing shall be deemed to be admitted unless same is specifically admitted hereunder.
- (iv) The present representation is misleading and based on misinterpretation of law, therefore, the representation is liable to be rejected.
- (v) The Respondent repeats and reiterates the contents of reply filed by it before the Forum and the same may kindly be treated as part and parcel of the present reply.
- (vi) In the year 2007, the developer/ society approached the Respondent for electric supply. As per Regulation 26 of the DCR 1991, in case of every development / redevelopment of any land building or premises, provision for electric sub-station may be permitted, if the requirement for the same is considered necessary by the concerned power supply authority. Considering the plot size under development and in order to maintain reliable power supply to the Appellant-Society after factoring the likely growth in the consumption of the Society and other consumers

  
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in the vicinity in future, by strengthening the distribution network, the Respondent considered it necessary to have a provision for the sub-station on the said plot. Further, in accordance with the provision of law the concerned Development Authority permitted the sub-station space admeasuring 22 sq. meters in the said plot.

- (vii) On 12.10.2007, the Appellant entered into an Agreement of Lease with the Respondent (the then Reliance Energy Ltd.), for the electric substation plot. The term of lease is of 99 years and the agreed annual rent fixed is Re.1 (Rupee One only) per annum. The said Lease Agreement is valid and is in force.
- (viii) The space provided for the sub-station is in accordance with the provisions of the DCR 1991 and is free from FSI and does not impact the potential of plot of the Appellant.
- (ix) The Respondents submits that vide letter dated 26.08.2019, it has been inter- *alia* conveyed to the Secretary and Chairman of the Appellant Society that being a Distribution licensee, the Respondent is required to meet upcoming load due to development in and around their society, the Load Growth pattern in the area as
- (x) per CAGR is almost 5% which may result into additional 8MVA in the said layout. With a view to maintain quality and reliability of supply, the Respondent is already in the process of commissioning the sub-station.
- (xi) The Respondent requires to commission substation and therefore wrote letter dated 07.11.2019 to the Secretary of Appellant Society seeking cooperation and permission, however for the reasons best known to it, did not allow the Respondent to carry out the works and created objection. The Respondent submits that, it is crucial time to commission substation and taking the same in the ring system. The Respondent has already laid cable till streetlight pole no. RDW 028/006 which is near to Appellant but due to objection from it, the further works is on hold.
- (xii) It is submitted that the provision of DCR 1991 stipulates that “electric cabin or sub-station, watchman’s booth, pump house, garbage, shaft and space required for location of fire hydrants, electric fitting and water tanks and such other requirements for the fitting purpose” shall not be counted towards computation of FSI. The sub-station space is a small portion of land and does not have any

  
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potential, as the potential of this land has already been utilized on the building itself as per the provision of the Development Control Regulations. As the small strip of land does not have any potential, therefore 'Acknowledgment Rent' (token rent) of Re. 1/- per month for the land is charged to express relationship between the lessor or landlord and tenant.

- (xiii) The Respondent submits that the Forum has passed the order after careful consideration of the entire facts, documents on records, detail submissions made by the parties and there is no infirmity in the impugned order, therefore, it is humbly submitted that the order passed by the Forum does not warrant any interference.
- (xiv) In view of the above-mentioned facts and circumstances, it is most respectfully prayed that this Hon'ble Authority be pleased enough to dismiss the present representation.

5. The hearing was scheduled on e-platform on 21.10.2020 through video conferring due to Covid-19 epidemic.

6. The Appellant argued during hearing on 21.10.2020 that the Appellant had approached the Respondent in the year 2007 for electric supply. The Respondent preferred to enter into a Lease Agreement for the plot allotted for sub-station with the Appellant for its future requirement of electric supply as well as the requirement in the vicinity of the Appellant society. This said Agreement is only notarised and not registered hence, making it null and void. Thirteen years have already passed but the Respondent has not commissioned the sub-station. The Appellant Society is registered in the year 1996-97 and its redevelopment taken place in 2005. There are 72 residential flats and 8 shops in the Society. The Appellant has been paying huge taxes for the open space allotted to sub-station with an area of 22.76 sq.mtr.

7. The Respondent reiterated its arguments in line with its submission. As per the Regulation 26 of the DCR 1991, it was permitted to have a mutual agreement between the Respondent and the Appellant society for the erection of sub-station admeasuring 22.76 sq.mtr. This lease agreement was executed in the year 2007 as per Regulation 5.5 of the Maharashtra Electricity Regulatory Commission Maharashtra Electricity Regulatory Commission

  
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(Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) which was mutually agreed with token rent of Re.1 per year for 99 years and still valid till date. The Respondent also stated that it has also addressed a letter dated 07.11.2019 to the Appellant society for laying of HT/LT cable lines to commission the sub-station. Till date, the Respondent has already laid the cables up to the nearest gate of the society. The Respondent argued that approval from the Commission for laying of cables and sub-station has received. The commissioning work of the Sub Station is planned in the year 2019-20. However, the Appellant is not permitting to do remaining commission work of the Substation in the Society premises. The load of the Society is about 350 KW of the Appellant.

8. During course of hearing, the Appellant and the Respondent are permitted to submit any additional submission, if they desire so.

9. The Appellant did not submit any additional information. However, the Respondent submitted its written argument vide email dated 28.10.2020. This additional submission of the Respondent is repetition of its earlier reply. However, important issues are captured below to avoid repetition: -

- (a) It is further stated that DCR are a set of rules that are planned to ensure the proper and effective development of a city, as well as the general welfare of the public. Regulation is necessary to ensure planned development and provide for future requirement. The DCR, therefore, takes care of future requirement at planning stage itself. Any such provision made as per DCR, then can be developed / operationalized to meet the requirement at that time. In this prospective DCR has provision for electric substation. If electric substation is not planned at the layout planning/approval stage itself and all the spaces of layout are utilized and earmarked for different purposes, in future it will not be possible to get any space for electric substation and if the electricity demand increases on account of inherent load growth, the reliability of supply will get hampered.

The Regulation 26 of the Development Control Regulations,1991 is mentioned hereunder which reads as under: -

  
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**“26. Electric Sub-Station: -**

*In every case of development/redevelopment of any land, building or premises, provision for electric substations may be permitted as under if the requirement for the same is considered necessary by the concerned power supply authority.*

.....”

Bare reading of the aforesaid regulation, it is ample clear that the powers to permit the sub-station space lies with the Development Authority by considering the area under development and requirement of Power Supply Authority. It is humbly submitted that, the Appellant is misrepresenting the aforesaid regulations / provision and trying to mislead this Hon’ble Authority. In fact, the concept of Development Plan (DP) and DCR are to be used together. DP provides for zoning or land reservation for particular purpose and DCR provides for how to use the same. For example, if DP plan has earmarked some plot/land for say utility or a bus depot, the same will be utilized in future as and when such need arise. It is not necessary that when the DP is sanctioned and published immediately one has to start constructing the facility as reserved.


- (b) The regulations 5. 5 and 5.6 of the Supply Code Regulations, 2005 with respect to providing land for commissioning of substation. The said Regulation reads as under: -

*“5.5 Where, in the opinion of the Distribution Licensee, the provision of supply requires installation of a distribution transformer within the Applicant’s premises, the applicant shall make available to the Distribution Licensee, by way of lease, for the period for which supply is given to the premises, a suitable piece of land or a suitable room within such premises for the distribution transformer:*

*Provided that the terms and conditions for such lease of land or room shall be mutually agreed between the Distribution Licensee and the Appellant having regard to prevailing market rates:*

- a. ....  
b. ....  
c. *Notwithstanding anything contained in Regulation 5.5, where the provision of land or room is required under the Development Control Rules of the local authority or by any appropriate authority of the State Government, the terms and conditions for use of such land or room by the Distribution Licensee shall be as determined under the said Rules or by the said authority.”*

- (c) The respondent submits that in view of the urgent requirement of the Appellant, the Respondent made arrangement to supply electricity to the Appellant from its existing sub-station. Respondent denies that there is any misuse of substation

  
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land as alleged by the Appellant, it is humbly submitted that Respondent have not and has no intent to use the space for any purpose other than the electric sub-station.

- (d) Further 'Guidelines for In-Principle Clearance of Proposed Investment Schemes' issued by Hon'ble Commission states as under –

*“While Capital Investment is required to be made by Licensees for various purposes like the creation of new infrastructure to meet load growth, to meet statutory requirements, to strengthen the existing system and increase its efficiency, replace old/ obsolete assets, any such capital investment increases the capital base and consequently the reasonable return thus affecting the tariff to consumers. It is therefore necessary to ensure that such capital investment schemes being proposed are necessary and justified, and do not impose an unnecessary burden on consumers by way of tariff.”*

- (e) In line with the above provision, the investment i.e. commissioning of substation in this case is required to be proposed at an appropriate time as and when required for the system. Any early investment would have resulted in unnecessary burden on the consumers.
- (f) The Respondent submits that vide letter dated 05.07.2019 it inter alia informed the Appellant that the installation of substation is a technical and the statutory requirement under the DCR, the sub-station is a structure constructed for the operational purpose and is free of consumable FSI under the DCR. It was further inter alia mentioned in the letter that sub-station shall be optimally utilized as per the load requirement and that the sub-station is the integral part of our distribution network and it is not possible to remove the existing sub-station from its distribution network.
- (g) Subsequently, vide letter dated 26.08.2019 it was inter- alia conveyed to the Secretary & Chairman of Appellant Society that as a Distribution licensee, the Respondent is required to meet upcoming load, due to development in and around the vicinity of their society, the Load Growth pattern in the area as per CAGR is almost 5% which may result into additional 8 MVA in the said layout. With a view to maintain quality and reliability of supply in the area, the Respondent proposed to commission the Distribution Transformer in the Substation and accordingly conveyed to the Appellant Society. It was further


  
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mentioned in the letter that, presently the Respondent have installed LT Pillar and provision of Sub-station will help electricity network in that area and the society, the Respondent is already in the process of commissioning the sub-station and waiting local authority permission. It was further informed to the Appellant society that the Respondent is always willing and agreeable to pay the Property Tax and requested them to submit the property tax receipt for reimbursement of the same.


- (h) On 07.11.2019 the Respondent again wrote a letter to the Secretary of Appellant Society, inter alia informing them that in view of improvement of load in and around their society area as well as to provide uninterrupted power supply to them the Respondent require to commission sub-station located in the society premises and sought their cooperation and permissions; however, for the reasons best known to them, the Appellant society did not allow Respondent to carry out the works and created objections. It is pertinent to mention that the Respondent have already laid cable till streetlight pole no. RDW 028/006 which is near to Appellant society, but due to objection of the Appellant society the further works is on hold. It is pertinent to mention that at present there is LT pillar existing in the substation premises and therefore, it is crucial to commission substation and taking the same in the ring system. A copy letter is attached with the pleadings.
- (i) It is submitted that existing substation is a closed type structure in which LT pillar is already existing, which is used for distribution of electricity, further the Respondents have made all preparations for the installation of electrical equipment in the substation and only due to the objection and obstruction of the Appellant the works is on hold. The Respondent states that the substation space has been provided under an agreement and the objection and obstruction taken by the Appellant is unjust and untenable. The Respondent rely and refer the judgment dated 30.11.2017 passed by the Hon'ble High Court of Gujrat, in Letters Patent Appeal No. 1679 of 2017 in Special Civil Application No. 16219 of 2017 With Civil Application No. 12987 of 2017, In Letters Patent Appeal No. 1679 Of 2017 in Case of P. Residency Cooperative Housing Service

  
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Society Limited & 5 Vs Torrent Power Limited & 1. In the aforesaid matter, the Appellants have inter alia paid for issuance of writ of mandamus and/or any other appropriate writ in the nature of mandamus, order or direction directing the Respondent Company not to enter upon the premises of the petitioner No.1 Society without any authority or prior permission and approval of the Society. The Hon'ble High Court dismissed the Writ inter alia holding that generally the court should not exercise its writ jurisdiction to enforce the contractual obligation.


- (j) It is humbly submitted that it is understood that under misguidance, the Appellant Society is creating objection & obstruction at site, the Respondent being a Distribution licensee is empowered to issue notice under Section 163 of the Electricity Act,2003 (hereinafter referred to as "EA,03") to Appellant Society asking them to allow the authorized person of Respondent to enter the premises and to give reasonable facilities for performance of works, and in case of refusal by the Appellant, the Respondent being a Distribution Licensee is empowered to cut off the electric supply under due process of law for so long as such refusal or failure continues. Considering the facts that, at the time when the objection and obstruction were created by the Appellant society, the issue was pending before the IGRC and also that due to the acts of the managing committee of the Appellant Society the entire members of society (consumers) would have to face the disconnection of electric supply, therefore the Respondent prefer to resolve the issue amicably and prefer not to precipitate the matter by disconnecting the supply by using the powers entrusted to distribution licensee under section 163 of the EA'03. It is also pertinent to mention that Respondent wishes to carry out the works in the peaceful ambiance. Now since the matter is pending before this Hon'ble Authority therefore, it is most respectfully submitted the this Hon'ble Authority may please direct the Appellant to not to create any objection and or obstruction at site and allow the Respondent to carry out the works and also provide all cooperation so that the Respondent can fulfil its statutory obligation as a

  
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Distribution Licensee in providing quality and reliable power supply to all the consumers.

- (k) It is humbly submitted that, for in-Principle clearance of proposed Investment Schemes”, the Respondent submits year-wise DPRs for commissioning of substations with a horizon of 1 to 3 years with tentative schemes wherein commissioning is proposed based on the loading/reliability concerns of the network in the vicinity and/or requirement of new supply in the locality. At the end of each year, the actual progress of each DPR is submitted in prescribed formats to Hon’ble MERC with details of actual capital expenditure as well as actual quantities consumed against each DPR. It is further submitted that Substation space is taken as per the provisions of the prevailing DCR. However, it is necessary to optimize on the investment costs as the capex required for commissioning of each substation is substantial. It is submitted that it is important to acquire the space for the substation as per the provisions of DCR at the initial stages of development of any given plot as it would be extremely difficult to be able to obtain such a space from the occupants of the plot at a later date. It is submitted that the demand for electricity in any individual society/complex most often builds up very gradually as the occupancy levels start increasing. Thus, for most of the cases, while the total expected/applied electricity demand of any given premises may be much higher, the actual requirement in the initial years is very less. It is therefore a common practice to release initial load on existing networks and commission the distribution transformers and associated switchgears as per the requirement of the network after a few years. This practice allows for optimum utilization of resources while providing highest levels of reliability to the consumers at all times.
- (l) It is submitted that, the said Agreement has been executed between the Society and the Respondent on mutual agreed terms and conditions, the consideration amount has been mutually agreed between the parties. The Said Agreement is valid and is in force, therefore, at this stage the demand of rent at market rate by the Appellant is unjust, without any substance and liable to be rejected.

  
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- (m) It is humbly submitted that on page no. 10 of order dated 13.02.2020 the Forum has held that:

*“It is pertinent to note that the lease agreement is still existing between the parties. The CGRF is having no jurisdiction to decide whether the lease agreement is null and void. It is for the competent court to decide the validity of the lease agreement. The lease deed is in force and to get any relief in respect of the lease deed, the applicant has remedy to approach the competent court.”*

- (n) In view of the facts mentioned herein above, the cause of filing the present representation do not sustain and deserves to be rejected. It is therefore most humbly submitted and prayed that the present representation may kindly be rejected.

### **Analysis and Ruling**

10. Heard both the parties and perused the documents on record. The Forum has issued order on 13.02.2020 and the Appellant has filed this representation on 10.09.2020. Considering the Covid-19 epidemic, delay in filing the representation is waived of. It is the case of the Appellant that despite having entered into a lease agreement for a parcel of land admeasuring 22.76 sq.mtr. for the purpose of electric substation, the Respondent failed to commission the substation / infrastructure at the said piece of land. Power supply to the residents is released from the nearby substation. It is, therefore, pertinent that the Respondent no more requires the said piece of land. The Appellant is unnecessarily paying huge taxes for the said land though it is leased at a nominal rent of Re.1 per annum. The Respondent, however, argued that it may not always be possible and even may not be necessary to immediately commission the substation at the allotted piece of land. Development of electricity load is a gradual process and over a period of time, substation needs to be established for reliable and quality power supply. If no such land is made available, it will be almost difficult to find space and commission the substation and this will hamper the entire distribution infrastructure in the area of the Respondent. Precisely, for this, there is a provision under DCR for making such space available. The lease agreement between the two parties is very much valid and sustains in law. The Respondent in a process to commission a substation at the said piece of land, and has in


  
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fact laid cable, etc. close to the society. However, objection raised by the Appellant has hampered further progress of the work.

11. While both the parties are relying on the so-called lease agreement, none of them has bothered to submit the same with their respective replies. However, the Respondent on dated 04.11.2020 has emailed the copy of the same on instructions from this office. After having perused the agreement, it is observed that the said lease agreement is executed on 12.10.2007 for a lease term of 99 years at lease rent of Re.1 per annum. This agreement is for leasing a space admeasuring 22.76 sq.mtr. for erection of electric substation and associated switchgear by the Respondent. If the Appellant in its own wisdom thinks that the agreement is null and void and consideration of Re.1 per annum towards rent is too meagre, it can very well take up this issue in an appropriate court of law as the issue falls outside the scope of the undersigned. As regards grant of compensation as per the SOP Regulations, I noticed that the Respondent has released power supply to all the residents and society as such. Therefore, there is no question of grant of compensation to the Appellant. It is a different matter that the Respondent has provided power supply to it from the nearby substation.

12. While I partially agree with the submission of the Respondent that the demand for electricity in any individual society/complex most often builds up very gradually as the occupancy levels start increasing and for most of the cases, while the total expected/ applied electricity demand of any given premises may be much higher, the actual requirement in the initial years is very less. It is therefore a common practice to release initial load on existing networks and commission the distribution transformers and associated switchgears as per the requirement of the network after a few years, it does not mean that the Respondent can construct and commission substation at any point of time in future. In this case, it has almost taken 12 years to start initial work for commissioning of the substation. It impliedly means that there is something basically wrong in planning the infrastructure. The society came into being in 1995, after redevelopment connections were released in 2007 and at this stage, it can be smoothly presumed that the growth in the society has stabilised and there may not be astronomical rise in the electrical load of the society. The Respondent has conveniently forgotten that by not establishing a substation in due course of time, it has added avoidable

  
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technical losses in the system. I think all these stages have passed in 12 years of prolonged gap. Therefore, if the Respondent is getting allocated such piece of land in various societies, and not commissioning the substation, then it is time for the Respondent to take a holistic view on its entire requirement vis-à-vis load growth. It just cannot go on asking for lands under the garb of erection of substations whenever a society comes up for connections. This particular observation of the undersigned is more so important in light of the arguments of the Appellant that the Respondent has acquired almost more than 500 such parcels of land where it was supposed to have constructed its substations but not yet commissioned.


13. Therefore, without going into this issue, I would simply say that it is incumbent upon the Respondent to see that whether it really requires such lands, etc. for the infrastructure to be commissioned vis-à-vis the load growth and other technical issues.

14. The Appellant has also submitted that the Respondent has not paid rent to it from the beginning and therefore, the agreement is null and void. It is not expected from the Respondent which argues that the agreement is very much valid and sustains in law to have defaulted in paying annual rent of Re.1. Payment of annual rent and taxes, etc is a matter between the Appellant and the Respondent and needs to be sorted out mutually on the basis of the agreement executed, therefore.

15. The Appellant should allow the Respondent to commission the Substation. The Appellant, being a registered Cooperative Housing Society, it will be in the fitness of the things if they do not object to the work undertaken by the Respondent in accordance with the provisions of the Electricity Act, 2003 and the rules and regulations made thereunder.

16. In view of the above, I pass the following order: -


- (a) The Respondent is directed to commission the substation as early as possible.
- (b) The Respondent is free to take action as per law if the Appellant obstructs its work.
- (c) The prayer of the Appellant for grant of compensation for not commissioning the substation in time is rejected.
- (d) The other prayers are not maintainable before this Authority.
- (e) Compliance with respect to timely progress of the work to be submitted.

  
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17. The representation is disposed of accordingly.

Sd/-  
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