

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 18 OF 2020

In the matter of providing electricity connection

Vincent Court Pvt. Ltd... .. Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking..... Respondent No.1
(BEST Undertaking)

Gokul Prasad D. Gupta Respondent No.2

Appearances


For Appellant : M. H. Patel, Chairman

For Respondent No.1 : 1. Milind S. Kamble, Superintendent (ES)
2. Rohit G. Baile, Asstt. Admn. Officer

For Respondent No.2 : 1. Gokul Prasad D. Gupta
2. Mahesh G. Gupta

Coram: Mr. Deepak Lad

Date of Order: 6th May 2020


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




ORDER

This Representation is filed on 28th January 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 21st November 2019 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).

2. The Forum, by its Order dated 21.11.2019 has dismissed the grievance No. N-FS- 394 – 2019.

3. Not satisfied with the Order of the Forum, the Appellant has filed this representation stating in brief as below: -


- (a) The Appellant is a Building Property of Company at 175, Dr. Babasaheb Ambedkar Road, Dadar (East), Mumbai.
- (b) It is learnt in December 2018 that the Respondent No. 2, Gokul Prasad D. Gupta has applied for new electric connection on 23.04.2018 in commercial tariff category at unauthorized encroachment structure (Stall of 6 feet x 4 feet) in Vincent Court Building property open space. The Appellant has raised objection vide letter dated 17.12.2018 to the Respondent No.1 for installing new meter.
- (c) The Appellant filed the complaint application before the Internal Grievance Redressal Cell (IGRC) on 17.12.2018 taking objection for sanctioning new electric connection to the Respondent No.2 for unauthorized structure which is in open space of Appellant`s property. It was also requested to take action on the concerned officers who have overlooked all regulations and violated official and legal



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principles of natural justice and sanity by misusing their authority and taking unwarranted efforts to grant electricity supply to a trespasser/squatter. In spite of objection, the Respondent No. 1 has given electric connection on 20.12.2018 by installing new meter.


- (d) The Respondent No.1, by its letter dated 10.06.2019 has rejected the complaint.
- (e) The Appellant has put on record that the Shop and Establishment certificate is not a proof of occupancy as explicitly stated on the certificate itself and is an only a certificate for benefit of employees, if any. It does not grant the structure or the applicant any qualification whatsoever.
- (f) It is not mentioned in any regulation of the licensee, or the Maharashtra Electricity Regulatory Commission (the Commission) or Government Resolution that electric supply can be granted to beneficiary on the basis of mere occupation. A paper proof of occupancy is a must.
- (g) Two requisition registered by the Respondent No. 2 from 2014 were rejected by the same office for want of authorization of said structure from the Municipal Corporation of Greater Mumbai (MCGM) and proof of occupancy from the building Committee.
- (h) The MCGM Authorities have declared that the structure of the Respondent No. 2 is unauthorized and supply should not be granted to Respondent No.2.
- (i) The Appellant approached the Forum on 27.09.2019. The Forum, by its Order dated 21.11.2019 has dismissed the complaint of the Appellant.
- (j) The Form has erred in its observation that
- (k) Subsequent to the application of the Respondent No. 2 for supply, the Respondent No.1 visited the spot and verified the premises. The officer has noted that the



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structure is in a passage between the Vincent Court building and adjacent Loonet building and is not within the property of Vincent Court building thereby implying that No Objection Certificate (NOC) or proof of occupancy from Vincent Court is not required. These observations are false and improper. The demarcated building approved plan of the MCGM is also on record which has not been considered by the Forum.

- (l) The address shown in the application and the Shop and Establishment certificate are contrary to the report of the inspecting officer.
- (m) The photo ID submitted along with the application does not show the proper name of the Respondent No.2 and therefore it is invalid.
- (n) The Appellant referred the judgment dated 09.01.2007 of Calcutta High Court in Case of Amrendra Singh V/s Cese Ltd. and Ors. for occupier within the meaning of Section 43 of the Act. The Forum has erred for not taking cognizance of Section 43 of the Electricity Act, 2003 (the Act) wherein under the notes of this Section, it is mentioned that Rank Trespassers are not entitled to get electricity supply as an occupier within the meaning of Section 43.
- (o) The Forum has also erred in its observation that the Respondent No. 2 is in settled position of the premises which is not proper and justified. The concept of settled position is clarified in the order of the Calcutta High Court referred as above.
- (p) The Respondent No.1 has violated their own resolutions and the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) by releasing electric supply to the Respondent No.2 and has succeeded in perpetuating an illegality much to the hardship and injustice to the Appellant.



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(q) Therefore, the Appellant prays that the Respondent No.1 be directed to disconnect the electric supply to the Respondent No.2 in the interest of the natural justice.

4. The Respondent No.1, BEST Undertaking has submitted its reply by its letter dated 25.02.2020 stating in brief as under: -

- (i) The Respondent No. 2, Gokulprasad D. Gupta has applied for new electric connection on 23.04.2018 for his stall situated at Ground Floor, Vincent Court, Dr. Babasaheb Ambedkar Road, Dadar (East), Mumbai.
- (ii) The application was supported with the following documents.
 - (a) Challan copy issued by the Commission of Profession Tax in the name of Gokulprasad Dhoreram Gupta.
 - (b) Kerosene Permit issued by Dy. Controller of Rationing Region 'C', Worli, Bombay in the name of Gokul Prasad.
 - (c) Health Receipt provided by Municipal Corporation of Greater Mumbai, License No.887793372 and Licensee name Mr. Gokulprasad Dhonde Gupta.
 - (d) PAN Card No. AAKPG1315L of Gokulprasad Gupta.
 - (e) Aadhar Card No.7016 0559 5885 of Gokulprasad Dhonde Gupta.
 - (f) Registration Certificate of Establishment FS 001369/Shop-I situated at Vincent Court, Vincent road, Dr. Babasaheb Ambedkar Road, Dadar (East), Mumbai-14 for the year 2017/2019 valid up to 31.12.2019.
- (iii) After receipt of requisition of new electric connection, the Respondent No. 1 has inspected the site. As per site investigation report dated 24.04.2018, the Respondent


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No. 2 was found physical occupant of the structure. After observing all formalities in line with Section 43 of the Act and Regulation 4 of Supply Code Regulations, the electric connection was sanctioned with Consumer A/c No.584-072-001. Following statutory formalities of payment and others, the electric connection was released in the name of Respondent No. 2 on 20.12.2018

- (iv) There is a dispute between Appellant and Respondent No.2 about said structure. The Appellant is objecting for providing new electric connection to the Respondent No.2.
- (v) The Appellant filed the grievance application before the Internal Grievance Redressal Cell (IGRC) on 18.12.2018 taking objection for sanctioning new connection to the Respondent No.2. The same was replied by the Respondent No.1 vide letter dated 10.06.2019. Further, it was also mentioned in the letter that, if the structure is found unauthorized, the same will be demolished by MCGM Authority, it was assured that the electric connection, provided to the Respondent No. 2 will be disconnected and meter will be removed. The Respondent No. 2 has given such undertaking on Indemnity Bond.
- (vi) The Respondent No.1 prays that the representation of the Appellant therefore be rejected.

5. The Respondent No.2, Gokul Prasad D. Gupta has not submitted any written reply before hearing.

6. During the hearing on 19.03.2020, the Appellant, Respondent No.1 argued in line with their respective written submissions. The Appellant argued that the Respondent No.2 has illegally



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constructed a stall within the open space of Company Building Property without any authorization of MCGM. His construction activity is illegal and without any permission of the Appellant. All these facts are on record. Even though, the Respondent No.1 has granted electric supply to a trespasser/squatter, despite objection. The Appellant prays that the Respondent No.1 be directed to disconnect the electric supply of the Respondent No.2 permanently in the interest of the natural justice.

7. The Respondent No. 1 argued in hearing that the Respondent No. 2 has applied for new connection and the same was sanctioned as per documents submitted by the Respondent No.2 He is in settled occupation of the said shop and there are sufficient documents on record which are as per Supply Code Regulations. The application for electric connection was rejected in the year 2014 as there were no specific guidelines for giving supply for alleged unauthorized structure and documents of the Respondent No. 2 were incomplete. The documents will be traced and will be submitted to this office in due course. The Forum, in its order has observed that the Appellant is not consumer and the issue raised by the Appellant is not covered under the definition of Grievance in the CGRF Regulations. It is a civil matter and if required, the Appellant has remedy to challenge the same in appropriate court being civil matter. The Respondent No.1 therefore prays that the representation of the Appellant be rejected.

8. The Respondent No. 2 argued that since 1963, the said stall is in his settled possession and physically occupied by him. There is no legal dispute pending in any court in respect of said Stall. The Respondent No. 2 argued that he has submitted sufficient documents like Registration Certificate of Establishment as per Maharashtra Shops and Establishment Act, 1948, Kerosene Permit issued by Dy. Controller etc. The Respondent No.2 argued that he has applied for a new


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connection with appropriate documents and based on these documents, the connection was released by the Respondent No.1 on 20.12.2020. The IGRC and the Forum has rightly rejected the complaint of the Appellant. It is further pertinent to note that the Respondent No.2 has also executed an indemnity bond in favour of the Respondent No.1 in the prescribed form. The Respondent No.2 prays that the representation of the Appellant therefore be rejected.

Analysis and Ruling

9. Heard all the parties and perused the documents on record. The Appellant has not disputed that the Respondent No. 2 is in settled possession of the Stall. The Appellant has complained that the Respondent No. 1 has sanctioned electric connection to the Respondent No. 2 for alleged unauthorized structure which is in open space of Appellant`s property. The Appellant has taken objection for sanctioning new electric connection prior to release of connection to a trespasser/squatter. In spite of objection, the Respondent No. 1 has given electric connection on 20.12.2018 by installing new meter. While perusing the documents, The Appellant is objecting, vide its letters dated 07.12.2004, 09.12.2014, not to sanction electricity connection to the Respondent No. 2 which are on record.

10. The Appellant filed the complaint in IGRC and afterwards approached the Forum on 27.09.2019. The Forum, by its Order dated 21.11.2019 has dismissed the complaint of the Appellant as the Appellant is not the consumer.

11. The Commission has framed the Regulations called as CGRF Regulations, 2006. These Regulations are framed under the Electricity Act, 2003 for providing guidelines to the distribution


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licensees for establishing Forums for redressal of grievances of consumers and for appointment of the Electricity Ombudsman, for making representations against the non-redressal of grievances of consumers. The Commission has also framed Regulations called as Supply Code Regulations. CGRF Regulations as well as Supply Code Regulations do not specifically define “consumer” however, Regulation 2.2 of the CGRF Regulations stipulates that words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings respectively assigned to them in the Act. The “consumer” has been defined under Section 2 (15) of the Electricity Act, 2003 as under:

“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.”

The CGRF Regulations defines “grievance” as per Regulation 2.1 (c) as under:-

“Grievance” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”

12. Regulation 6.4 of the CGRF Regulations provides that in the event consumer is not satisfied with the remedy provided by the Internal Grievance Redressal Cell (IGRC) to his grievance, the consumer may submit the grievance to the Forum. Regulation 17.2 of the CGRF Regulations



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further provides that any consumer, who is aggrieved by the non-redressal of his grievance by the Forum, may make a representation for redressal of his grievance to the Electricity Ombudsman. From these provisions of the CGRF Regulations, it is necessary that Appellant has to satisfy that the Appellant is a “consumer” and the dispute raised by it is a “grievance” as per CGRF Regulations

13. The Appellant, in this case, for the reasons stated above is neither a consumer nor his complaint constitutes a grievance as per the CGRF Regulations. The issue raised by the Appellant therefore does not fall within the purview of Forum or Ombudsman for that matter. The Forum has rightly held that it does not have jurisdiction. On the same lines, the Ombudsman has no jurisdiction to entertain the instant representation for the simple reason that the complaint of the Appellant does not fit into the definition of the Grievance as quoted above. Moreover, I noted that the Appellant has raised the same issue in past with the Respondent No.1. The records submitted by the Appellant does not conclusively prove that the suit premises fall within the piece of land owned by the Appellant. Assuming that the suit premises falls within the land owned by the Appellant, it is observed that it has not initiated any legal eviction process against the Respondent No.2 since 07.12.2004 when the first complaint was filed by it before the Respondent No.1 against release of connection to Respondent No.2.

14. During the hearing, when the Respondent No. 1 was asked as to why the connection was denied to Respondent No. 2 on earlier occasion, it replied that it has to check the records in this respect as the case was dealt by some other officer. It appears that the documents submitted by the Respondent No.2 are not conclusive proof of ownership / occupancy which can be relied upon to release the connection. Therefore, Respondent No.1 is directed to examine the case as to why the


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connection was denied on earlier occasion and if it is satisfied that the circumstances then in existence did not materially change now and that the connection now released is a mistake on their part, it is at liberty to take the appropriate decision.

15. Since the Forum and the Ombudsman do not have jurisdiction to entertain the complaint of the Appellant, no order can be passed for relief as sought by the Appellant and therefore, there is no question of interference with the order of the Forum.

16. In view of the above, the representation is disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


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