

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO.3 OF 2021

IN

REPRESENTATION NO. 104 OF 2020

In the matter of interruption in power supply and compensation thereof

Narendra R. PatelReview Applicant

V/s.

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

Appearances: -

Review Applicant : Narendra R. Patel

Respondent : B. S. Dhodi, Dy. Ex. Engineer, Dahanu


Coram: Deepak Lad

Date of hearing: 10th June 2021

Date of Order : 14th June 2021

ORDER

This Review Application is registered on 27th April 2021 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) for review of the Order dated 9th March 2021 passed in Representation No. 104 of 2020.



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2. The Electricity Ombudsman, Mumbai, by its order dated 9th March 2021 has rejected Representation No.104 of 2020.

3. Aggrieved by this order dated 09.03.2021, the Applicant has filed this Review Application. The Applicant has submitted this Review Application late as it is difficult for him to move due to his old age and the conditions are not conducive in view of lockdown due to Covid-19 pandemic. Therefore, he humbly requests the Hon'ble Electricity Ombudsman to condone the delay and admit the Review Application. The Applicant has submitted following points as under: -

- (i) There are number of grave and manifest errors on the face of record in the said order of wrong application of law and incorrect interpretations of the Regulations of Supply Code in the impugned order that need to be corrected under Review by the Hon'ble Court. This impugned order is contrary to well-settled legal principles. The present Review impugns the aforesaid order, which is of substantial interest of public and electricity consumers and of far-reaching public importance.
- (ii) The Hon'ble Court being the guardian of electricity consumers in Maharashtra should not let even a microscopic impact of injustice to the consumers whereas in the present case there is gross injustice not only to the Applicant but also to all the electricity consumers and public at large.
- (iii) The Hon'ble Court inadvertently, imprudently, unwisely and wrongly interpreted the provision of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014) by ascribing unnatural meaning in an unnatural way and by omitting the essential phrase "*in the opinion of the Commission*" without realizing the negative harmful and disastrous impact of



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this baseless interpretation on public at large and electricity consumers of Maharashtra by applying irrelevant and irresponsible theory of intention of the legislature of the Commission. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. The words in the present case are clear and precise and same must be given their natural meaning. Even the earlier order of the Electricity Ombudsman in Representation Nos. 93 to 170 of 2018 has confirmed / ruled that the opinion of the Commission is required. The present Regulations are primarily framed to further the objectives of the Electricity Act, 2003 and to protect the interest of consumers.

- (iv) As such interpretation which benefits consumers has to be done as it is laid down by the Hon`ble Supreme Court by its various Judgments. As regards troubles/difficulties one has to face, is not to be considered and the literal interpretation has to be drawn irrespective of any consequences. The Distribution Licensees have protection for lesser number of hours specified in Annexure A of SOP Regulations 2014 for 3 hours to 18 hours in class I cities to Rural Areas respectively and in case, more hours are needed, he can obtain the opinion and get exempted from paying compensation.
- (v) In the present case, the Forum has given time to the Respondent to obtain such certificate/opinion but could not get the same. Neither the Respondent has acted upon it nor the Hon`ble Court came out with the correct interpretation during arguments. If that would have been done the Applicant consumer would have dealt with the same and the Judgment would have been different. The Hon`ble Court has erred in resorting to intention of the legislature theory without finding any ambiguity.
- (vi) The Applicant referred the following judgment in support of the written statement. The following observations in the major Judgments on interpretation must have been mandatorily followed.

(a) S. Nayak V/s. A. R. Antulay:-


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If the language is clear and unambiguous, no need of interpretation would arise. The 5 Judge the bench further observed that the question of construction arises only in the event of ambiguity.

(b) **Grasim Industries V/s. Collector of Customs, Bombay: -**

The court has explicitly observed that where the words are clear and there is no obscurity, and there is no ambiguity, there is no scope for court to take upon itself the task of amending or altering the statutory provisions.

(c) **Municipal Board V/s. State Transport Authority, Rajasthan: -**

The Supreme Court held that literal interpretation must be made.

(d) **Tata Consultancy Services V/s. State of A.P.:-**

Court observed that a literal construction would not be denied only because the consequences to comply with the same may lead to a penalty The courts should not be overzealous in searching for ambiguities or obscurities in words which are plain.

(e) **Alembic Chemical works V/s. Workmen: -**

The Supreme Court held that the enactment being a welfare legislation for the workers, had to be beneficially constructed in favour of workers and thus if words are capable of two meanings, the one that gives benefit to the workers must be used.


(f) **Union of India V/s. Braj Nandan Singh, AIR 2005 SC 4403:-**

The primary rule is to interpret words as they are. When the meanings of the words are clear i.e. words should be simple so that the language is plain and only one meaning can be derived out of the statute.

(g) **Nasiruddin V/s. Sita Ram Agarwal, (2003) 2 SCC 577:-**

In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom.

(h) **Kanai Lal Sur V/s. Paramnidhi Sadhukhan, AIR 1957 SC 907:-**


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The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. 37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise.

- (i) Pratap Singh V/s. Shri Krishna 1956 SC 140 = 1956(2) SCR 1029 = 1956 SCJ 143:

It is well settled that absolute enactment must be obeyed absolutely or fulfilled exactly.


- (j) I.T. Comm. V/s. Elphinstone S & W Mills AIR 1960 SC 1023 – Comm. V. Tej Singh AIR 1959 SC 352:-

It is not the function of the court of law to give to the words a sustained and unnatural meaning.

- (k) Ramswami V/s. State AIR 1958 SC56) :-

Words which are clear and precise are to be given their natural meaning.

- (vii) In para 10 of the order the Regulation 6.6 of the SOP Regulations 2014 is wrongly referred/applied which is not at all relevant/applicable in the present case as this is not


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Scheduled Outage. The Scheduled Outages are planned well in advance and the schedule is prepared. The mandatory provision provides that the same shall be specified in the public notice. Moreover, it is to be noted that the same is not claimed by the Respondent. Now as regards to Regulation 17.2 of the Supply Code it is limited to the hours less than specified as Standard in Annexure A of the SOP Regulations 2014. Please note and mark the word Standard stated in the heading of column 2 of the said Annexure A. The mandatory provision of the Regulation 17.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations 2005) needs to be compulsorily followed. The same is produced below.

“17. Failure of supply.

17.1 The distribution licensee shall take all reasonable measures to ensure continuity, quality and reliability of supply of power to the consumer, except where he is prevented from doing so by cyclone, flood, storms or other occurrences beyond the control.”

It is also not true that the WhatsApp messages were sent.

(viii) As regards para 13 of the order under review, it is totally false and untrue to say / interpret that the particular SOP Regulation shall not apply. The thinking of Hon’ble Court that it can interpret as stated in the said para is totally false. In case of different opinions/interpretations with the Applicant arises, the mandatory and necessary remedy is that the issue shall necessarily be referred to the Commission, as provided in CGRF Regulations 2006. It is humbly and respectfully submitted that Hon’ble Court erred in not referring the same earlier is now humbly requested to do the same before passing the order on Review Application. It is respectfully and humbly stated that the Hon’ble Court has no authority/jurisdiction to indirectly declare/state/strike down the Regulation/Provision. It is to note that the said SOP Regulations 2014 were framed after consultation with the licensees and persons likely to be affected and following


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the directions of various Sections of the Electricity Act 2003 in general and Section 57 in particular decided the standard of performance accordingly.

- (ix) The aims and the relevant provisions of the Electricity Act, 2003 are as under: -
- (l) *“An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.”*
- (ii) *“Section 57. (Consumer Protection: Standards of performance of licensee):*
- (1) *The Appropriate Commission may, after consultation with the licensees and persons likely to be affected, specify standards of performance of a licensee or a class of licensees.*
- (2) *If a licensee fails to meet the standards specified under sub-section (1) without prejudice to any penalty which may be imposed or prosecution be initiated, he shall be liable to pay such compensation to the person affected as may be determined by the Appropriate Commission:”*
- (x) The Electricity (Rights of Consumers) Rules framed by Central Government in exercise of powers conferred by Sub-Section (1) read with Clause (z) of Sub-Section (2) of Section 176 of the Electricity Act 2003 needs to be considered.
- (xi) Hence, it is humbly and most respectfully prayed that the present Review Application be allowed and accepted in the interest of justice and the impugned order be set aside and all prayers made in the Representation which is under review be allowed/granted.

4. The Respondent filed its reply vide its email dated 04.06.2021 stating in brief as under: -

- (i) Issue of limitation and maintainability: -

The order of the Hon'ble Electricity Ombudsman (Mumbai) has been passed on 09.03.2021 in Representation No. 104 of 2020 whereas Review has been filed on


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27.04.2021 i.e. after expiry of 30 days from the date of the order as such this review is filed after expiry of period of limitation as per the CGRF Regulations, 2006 as well as 2020. Therefore, it is not maintainable.


- (ii) On perusal of this review application, the Applicant has not brought anything new which he was not aware of during the original proceeding, nor did he point out any error on the face of the record in the impugned order. The Applicant has raised same grounds and plea's which he had already taken in hearing in Representation No.104 of 2020. The Review Application is nothing short of repetition of the original representation. This Hon`ble Electricity Ombudsman has already heard and given his verdict on all issue raised in present Review. The Applicant under guise of Review actually wants to reopen the case but this could not be allowed under limited jurisdiction of Review.
- (iii) The scope of the review is limited. The mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

- a. KamleshVarma v/s Mayawati and Ors. reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

- b. In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be



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confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

(iv) Reply on Merit:


- a) The Applicant is a LT Residential Consumer (No. 005530002545) at Neelkanth, Anand Mangal Society, Dahanu Road, Dist. Palghar.
- b) The Dy. Executive Engineer, 132 kV / 33 kV Dahanu substation under EHV 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.
- c) 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.
- d) The power supply was not interrupted by MSEDCL however, forced / emergency outage was taken by MSETCL. Hence, it was beyond the control of MSEDCL. The Regulation 11 of the SOP Regulations 2014 provides for exemption in such situation from meeting the obligations.
- e) The MSEDCL state that MSETCL had availed emergency outage on 33 kV Dahanu feeder on 22.05.2020 from 09.00 hours to 17.00 hours which was a priority work for uninterruptable power supply to the entire Dahanu Taluka in view of Covid-19


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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 What`s App groups of the Citizens in Dahanu. The Respondent referred the Regulation 11 of the SOP Regulations 2014 which 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.

- f) The Applicant approached the Forum and thereafter to this Electricity Ombudsman, the Electricity Ombudsman by its order dated 09.03.2021 has rejected the Representation. The Forum and this Electricity Ombudsman 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. In the present case, 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 MSEDCL from any liability on account of power supply interruption.
- g) In the matter of MCGM v/s MERC reported in 2016 (2) BOM CR 722, Bombay High Court, with regard to SOP Regulations 2014 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.
- (v) The Hon`ble Electricity Ombudsman (Mumbai) has already passed the reasoned order dated 09.03.2021. Therefore, the Respondent prays that the review application be rejected.


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5. The Review Applicant has filed rejoinder by email dated 08.06.2021 as under: -
- (i) All contentions in the reply of the Respondent which are contrary to the claim of the Applicant are hereby denied.
 - (ii) In the Respondent's reply, it has cited the provisions applicable for the Review Petition, which in fact have been fully complied by the Applicant. Hence, the present Review Petition is maintainable. As regards the review application being barred by limitation, it is to be noted that the Applicant has fully explained the details as to when the order was received and the date of filing this Review Petition.
 - (iii) There are various provisions in the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) prescribing time schedules. They are as under:
 - (a) 7.8: *The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.*
 - (b) 8.3: *The Nodal Officer shall furnish paragraph-wise comments to the Forum on the Grievance within five (5) working days (for Grievance related to non-supply, connection, re-connection or disconnection of supply) ---*
 - (c) 20.1: *The Electricity Ombudsman shall complete the enquiry as expeditiously as possible, and every endeavour shall be made to decide the representation within a period of fifteen (15) working days of receipt of representation.*
 - (d) 22.1: *Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for review of such order within thirty (30) days.*Please note that out of all these provisions, the only provisions stated as (a) and (b) above are mandatory. The rest are flexible and adjustable.
 - (iv) The irresponsible and careless conduct of the Respondent needs to be seen. It is to be noted that after so many reminders from the Electricity Ombudsman's office, the present reply was filed without giving sufficient time to the Applicant/Petitioner to file rejoinder. The Respondent is the habitual violator of time frame at all levels.


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- (v) The strict and stringent lockdown prevailing in country in general and Maharashtra State and more particularly in Palghar district needs to be taken into account in the interest of justice. Even the Supreme Court took suo motu cognizance of the impact of the Covid-19 restrictions on compliance with limitation periods, and this led to Sua Motu Writ Petition (Civil) No 3 of 2020. It is said, limitation period would not be applicable during the lockdown period. The Respondent hiding the delay on its part is like “The pot calling the kettle black” The postal delay is also to be considered.
- (vi) As regards para (ii) of the Reply of the Respondent, it is to be noted that the mistakes on the face of record are fully and clearly explained in the Review Application which is easily understandable even by common man. The Judgments cited in the Review Application needs to be accepted and if thought to be rejected, the same be fully explained with full and detailed reasoning. There is no need whatsoever to search the same (mistakes/errors/misapplications) with microscope or magnifying glass. They are so prominent that they are prima facie or even ex facie seen. Hence, the Judgments cited by the Respondent do not be considered as being not applicable/irrelevant. The fundamental and mandatory provision of Regulation 20.6 of the CGRF Regulations 2020 is violated. The said Regulation is stated as below:

“In case any issue is not covered in the Commission’s Regulations or Orders, the issue shall necessarily be referred to the Commission for guidance”.

Hence, it is beyond the power and jurisdiction of the Electricity Ombudsman to give twists or turns or add, alter or delete any word or phrase. This is to be necessarily corrected by accepting the plain meaning and allowing the claim of the Applicant or refer the matter to the Commission for guidance. In Judgment of M.S. Ahlawat V/s. State of Haryana 1999 Supp. (4) SCR 160 held that,


“To perpetuate an error is no virtue but correct it is compulsion of judicial conscience”.


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- (vii) The exemptions which can be claimed is given in Regulation No.11 and the Respondent has claimed it vide 11.1 (ii) which is to be supported by the Opinion of the Commission. The provision for the opinion of the Commission is specifically made to prevent misuse and/or to control and restrict the possible autocratic dictatorial and anti-consumer approach by the Distribution Licensees.
- (viii) The Respondent has not specifically disputed/contested the case laws cited by the Applicant/Petitioner hence the same be treated conceded/accepted/admitted.
- (ix) The details given in the rest of the paragraphs of the reply of the Respondent are irrelevant for considering this Petition /Application.
- (x) The aforesaid paragraphs and the details given in the Review Petition / application be considered. Hence it is humbly and respectfully prayed that the present Review Petition/Application be allowed and accepted in the interest of justice and the impugned judgment/order be set aside and all the prayers of the reliefs prayed for be granted.

6. The hearing was held on 10.06.2021 on e-platform through video conferencing due to Covid-19 epidemic. The Applicant argued in line with his written submission. The main argument of the Applicant is that the provision of the Regulation should be read as it is verbatim and applied to the case at hand. There is no judicial liberty to draw any other meaning by going into the intentions of the Commission in framing the required regulations. Therefore, this Authority has committed an error apparent in drawing a conclusion by getting into the intentions of the Regulator in framing those regulations. Therefore, justice be met and review be allowed with directions to the Respondent to pay the compensation for the supply interruptions on 22.05.2020. The Appellant has cited various Judgments in support of his argument with respect to interpretation of the statutes.


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7. The Respondent reiterated in line with its written reply dated 27.05.2021. The points raised for review by the Applicant were already on record for perusal while deciding the original Representation. This is not the fit case for Review as the Applicant has not pointed out any new discovery in the matter. The Applicant has failed to show any error on the face of record. As such the present review is not maintainable considering the provision of Regulation 19 of the CGRF Regulations 2006.

Analysis and Ruling

8. Heard both the parties and perused the documents on record. Provision with respect to review of order passed by the undersigned is given in Regulation 19 of the CGRF Regulations 2006. The relevant provision is quoted below: -

“19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.


19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application.

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

9. In view of the prayer of the Applicant to condone the delay in filing the Review Application, as per the order of the Hon’ble Supreme Court dated 08.03.2021 in Suo Motu Writ Petition (Civil)


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3 of 2020 regarding cognizance for extension of limitation due to lockdown situation due to Covid-19 epidemic, I hereby, condone the delay of 18 days for filing the instant Review Application.

10. The Review Application mainly deals with the interpretation of Regulation 11.1 of the Supply Code Regulations 2014 and that too with respect to the phrase “*in the opinion of the Commission*” in the opening clause of Regulation 11.1.

The Review Applicant is not satisfied the way the Regulation 11.1 is interpreted in the impugned order. In support of his submission, the Review Applicant has cited many Judgments with respect to interpretation of the Statute. The undersigned has no reason to be on the other side of the Judgments cited by the Review Applicant. But it is equally true that a statute is an edict of the legislature and a conventional way of interpreting a statute is to seek the intention of the legislature. It is the duty of the adjudicating authority to act upon the true intentions of the legislature. The adjudicating authority has to objectively determine the interpretation so as to give fruitful meaning to the piece of legislation. This is more so relevant when there is dispute with respect to wording of a particular clause of the statute which totally alters the meaning of the provision of the statute if it not interpreted in a proper perspective. Therefore, circumstances of the case as a whole in conjunction with other provisions of the Act, Rules and Regulations made there under need to be harmoniously read and fruitful meaning needs to be ascribed to the real intention of that piece of Legislation.

11. Now let us examine the contentions of the Review Applicant vis-à-vis the provisions of the Act and Regulations made there under.

Bare perusal of the Electricity Act, 2003 reveals that the State Commissions are not meant to micromanage the functioning of the Distribution Licensees because Distribution Licence is issued with certain conditions which in short prescribes the manner in which the Distribution Licensee should function.


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The Commission has notified three different Regulations which provide exemption to Distribution Licensees from paying compensation in failure to restore power supply in certain set of circumstances amongst other things. These Regulations are as below: -

- (i) Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (**SOP Regulations 2005**)

Regulation 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 cyclone, floods, storms 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”


- (ii) Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (**SOP Regulations 2014**)

Regulation 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


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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.”

(iii) Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance for Distribution Licensees, including Power Quality) Regulations, 2021. (Supply Code & SOP Regulations 2021)

Regulation 18:

18. Failure of Supply

18.1. The Distribution Licensee shall take all reasonable measures to ensure continuity, quality and reliability of supply of power to the Consumer, except where he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

18.2. The Distribution Licensee shall be entitled, for reasons of testing or maintenance or any other sufficient cause for its efficient working, to temporarily discontinue the supply for such periods, as may be necessary, subject to providing advance public notice in this behalf.


18.3. The details of scheduled power outages shall be informed to the Consumers One (1) week in advance. In case of unplanned outage/fault, immediate intimation shall be given to the Consumers through SMS/ any other electronic media along with estimated time for restoration. This information shall also be available in the call centre of the Distribution Licensee.

Provided that the Consumer whose mobile number or email has been registered shall be informed electronically about tentative time within which the supply will be restored.

18.4. The Distribution Licensee shall not be liable for any claims against it attributable to direct, indirect, consequential, incidental, punitive, or exemplary damages, loss of profits or opportunity, whether arising in contract, tort, warranty, strict liability or any legal principle which may become available, as a result of any curtailment of supply under the circumstances or conditions mentioned in this Regulation 18.

Regulation 26:

*“26.1. 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—*


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- a. *force majeure events such as cyclone, floods, storms, war, mutiny, civil commotion, riots, lightning, earthquake, lockout, precautionary disconnection of supply, 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;*
- d. *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”

(iv) The Commission has also notified the Supply Code Regulations 2005 in which Regulation 17 deals with failure of supply. The same is quoted below:


“17 Failure of Supply

17.1 The Distribution Licensee shall take all reasonable measures to ensure continuity, quality and reliability of supply of power to the consumer, except where he is prevented from doing so by cyclone, floods, storms or other occurrences beyond his control.

17.2 The Distribution Licensee shall be entitled, for reasons of testing or maintenance or any other sufficient cause for its efficient working, to temporarily discontinue the supply for such periods, as may be necessary, subject to providing advance public notice in this behalf.

17.3 The Distribution Licensee shall not be liable for any claims attributable to indirect, consequential, incidental, punitive, or exemplary damages, loss of profits or opportunity, whether arising in contract, tort, warranty, strict liability or any legal principle which may become available, as a result of any curtailment of supply under the circumstances or conditions mentioned in this Regulation 17”.

Regulation 11.1, both in SOP Regulations 2005 and 2014, deals with exemption to distribution licensee from payment of compensation to consumers in the event of failure to restore power supply in certain set of circumstances. Similarly, Regulation 26 of the Supply Code & SOP Regulations 2021 also deals with the same. If these three provisions in three different Regulations which are more or less same, are read with Regulation 17 of the Supply Code Regulations 2005, and Regulation 18 of the Supply Code & SOP Regulations 2021, then it can be safely concluded that the Commission never intended distribution licensee to approach it for grant of exemption from payment of compensation to consumers in the event of failure to restore power


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Secretary
Electricity Ombudsman Mumbai




supply in certain set of circumstances under Regulation 11.1. Had it been so then Supply Code Regulations 2005, and Supply Code & SOP Regulations 2020 would not have provisions as they are in Regulation 17 and 18 respectively.

Therefore, the legislative intent of the Commission in Regulation 11.1 or for that matter Regulation 26 is to the extent of oversight which comes through various Indices prescribed for judging the overall performance of the distribution licensees.

Therefore, the phrase “*in the opinion of the Commission*” in Regulation 11.1 simply imply that the Commission has spelt out certain set of circumstances which allows exemption to the distribution licensees from payment of compensation. If any consumer is having some grievance in that regard, then he/she can approach the Grievance Redressal Mechanism provided under the Act and Regulations made thereunder.

Therefore, the submission of the Appellant that in every such circumstance, the distribution licensee should approach the Commission for getting exemption is highly misplaced.

12. In the instant case the fact cannot be ignored that the 33 kV breaker installed on the feeder supplying power to the consumers of the Respondent was not only problematic but in the physical custody and under technical & administrative control of the Maharashtra State Electricity Transmission Co. Ltd. which is a separate entity by itself. It is this company which carries out operation, maintenance, and even replacement for all its equipment within its substation. Hence, there is no Locus Standi for the Respondent as regards to its operation, maintenance, etc. Therefore, it is writ large on the face of it that it is outside the scope and control of the Respondent. This goes in sync with the essence of the impugned order. By no stretch of imagination, such incidences / occurrences are intentioned to be referred to the Commission for grant of exemption. If what the Review Applicant says is correct, then the propriety of formation of a Grievance Redressal Mechanism under Section 42 (5 & 6) through establishment of Consumer Grievance Redressal Forum, and Electricity Ombudsman will be an exercise in futility and certainly that is not the aim of the Act.


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13. The Review Applicant has submitted that instead of interpreting the Regulation 11.1 in a manner it has been interpreted in the impugned order, it could have well referred the matter to the Commission under the Regulation 20.6 of the CGRF Regulations 2020 for guidance. Here I differ with the submission of the Applicant. The undersigned is at judicial liberty to interpret the provision of Regulation 11.1 in the prevailing circumstances. Therefore, I do not find it necessary to refer the matter to the Commission for its guidance. Every case is a unique case and justice should be given considering the circumstances of the case. It is not the case of one size fits all. It is the prerogative of the undersigned as to whether to seek guidance from the Commission under Regulation 20.6 of the CGRF Regulations 2020.

14. While parting with the order, I am unable to understand as to how the Respondent could afford not to resort to giving wide publicity for the proposed outage on 22.05.2020 by the Transmission Company. This is more so relevant in view of the statutory provisions. The reasoning submitted by the Respondent for not giving publicity due to Covid-19 epidemic is not acceptable as it could have given the notice through electronic media such as local cable TV, bulk SMS, etc.

15. In view of the above, I am of the opinion, the Review Applicant has not brought out any new issue which has not been dealt in the impugned order which is the primary requirement for review of the order under Regulation 19 of the CGRF Regulations 2006, except citing various Judgments. Therefore, the Review Application is rejected.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

