

		Date	Month	Year
1	Date of Receipt	03	08	2022
2	Date of Registration	03	08	2022
3	Decided on	05	09	2022
4	Duration of proceeding	15 working days		
5	Delay, if any.	—		

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING
(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai - 400 001
Telephone No. 22799528

Grievance No. B-463-2022 dtd. 03/08/2022

Mohd. Sakib Mustaque Sorathia, Complainant

V/S

B.E.S.&T. Undertaking/Licensee.....Respondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Member

1) Shri S.S. Bansode, Technical Member.

Absent :

Member

2) Shrimati Anagha A. Achrekar Independent Member.
(Absent due to recent demise of her relative)

Appearances:

On behalf of the Complainant : Shri Taher Khan

On behalf of the first Respondent : Shri A.R. Talegaonkar

Date of Hearing : 24.08.2022

Date of Order : 29.08.2022



(Milind Karanjkar)
Secretary
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Judgment

1. The complainant has submitted his application bearing No.484939 dtd. 17.09.2021, to the respondent for new electric connection for the premises bearing Room No. 201, second floor, Economic House, Building No.34, Shaikh Hassan Marg, Mumbai-400009. In the instant grievance application he has expressed his grievance that for deciding his said application, the respondent has requisitioned the complainant to produce documents namely- (a) plan approved by Executive Engineer of Building and Planning department of Municipal Corporation (b) No Objection Certificate of Municipal Corporation for repairing the premises for which electric connection is sought and (c) repairing work order. The complainant has also grievance that by asking to produce these documents the respondent is causing unnecessary delay in deciding his aforesaid application for electric connection.
2. The following facts can be said to be not in dispute between the parties:
 - a) The complainant had submitted his application bearing No. 484939 dtd. 17.09.2021, to the respondent/licensee for new electric connection for the premises bearing Room No. 201, second floor, Economic House, Building No.34, Shaikh Hassan Marg, Mumbai- 400009. However, in the instant grievance application, the complainant has wrongly mentioned number of that application as "484928 dt. 27.4.2021" instead of "484939 dtd. 17.09.2021." Along with this application bearing No. 484939 dtd. 17.09.2021, the complainant has produced copy of rent receipt dt. 15.9.2021, showing that this receipt has been signed and issued by land lord of Economic House, Building No.34, Shaikh Hassan Marg, Mumbai- 400009, mentioning therein that "Mohd. Sakib Mustaque Sorathia" has paid an amount of Rs.450/-being rent and municipal taxes/compensation for the month of August 2021 in respect of room No. 201, floor 2nd Shaikh Hassan Marg, Mumbai- 400009.
 - b) In response to the said application of the complainant, the respondent issued letter dtd. 21.09.2021, informing the complainant that in absence of certain documents, as listed in the letter, the respondent was unable to process the said application. In the said letter the respondent asked the complainant to submit those documents within 15 days from the date of this letter, failing which the application would stand cancelled without any further intimation to the complainant. The following documents were listed in the said letter:
 - i) Plan of building approved by Executive Engineer of Building and Planning (hereinafter shall be referred to as EEBP) department of Municipal Corporation Greater Mumbai (hereinafter shall be referred to as MCGM),
 - ii) No Objection Certificate of MCGM for repairing the premises for which electric connection is sought,




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- iii) repairing work order.
- c) The respondent has produced the copy of the said letter at page 37/C with its reply in this proceeding, but by mistake the date is printed on it as "2022-Aug-12" instead of correct date as "21.09.2021". By letters dt. 27.4.2022, 16.5.2022 and complaint in form of annexure "C" dt.19.05.2022, addressed to various authorities of respondent, the complainant has been pursuing that he was not legally required to submit these documents. In these letters the application number is wrongly mentioned as "484928 dt. 27.4.2021" instead of "484939 dtd. 17.09.2021".
3. The Complainant's case, as is mentioned in the grievance application/complaint and as submitted by his representative, in the course of the hearing before this forum, may be stated as under:
- a) The building, in which the applied premises is situated, is old one and already meters have been installed and electric connections have been provided to various tenements/premises situated from ground floor to fourth floor of the said building namely Economic House. The complainant's premises are situated at second floor of it. The land lord of the building has also given request letter dt. 16.02.2021 addressing to the Divisional Engineer of BEST undertaking (Respondent) for giving electric connection and for installing meter in respect of the applied premises Room No. 201 on second floor of the said building in the name of the complainant. In this proceeding also the complainant has produced before this forum the copy of the letter dt. 16.2.2021. The complainant has produced rent receipt issued by the land lord in respect of this premises in favor of the complainant, accepting him as tenant and entitling him to occupy the premises lawfully. Despite all these documents indicating that the complainant is legally entitled to occupy the premises and to get electric connection and meter in his name, the respondent is not providing electric connection to the premises of the complainant.
- b) The complainant gave complaint through annexure "C" form. However no reply to that complaint has been received by him from the respondent. It is submitted by the complainant that the said Economic House building is very old one. So, according to the complainant, how it is possible for him to produce the plan approved by the Executive Engineer of Building and Planning (EEBP) department of MCGM, NOC of MCGM and BEST planning department's NOC for the meter. Despite this, the B-Ward officials of the Respondent are asking the complainant to submit additional documents for providing electric connection. The complainant has also informed to the respondent that he has no concern with the upper floors above the 4th floor. The premises of the complainant are part of the building. However the officials of the respondent are giving unnecessary trouble to the complainant by delaying the electric connection to the premises of the complainant.




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- c) The complainant has taken these premises on tenancy and from last so many months he is trying to get the electric connection there. But no needful has been done by the officials of the respondent so far. Without electric supply the complainant is facing difficulties in using the premises. But the officials of the respondent are not ready to understand the troubles of the complainant and they have failed to provide redressal to his problem.
- d) It is submitted by the complainant that in the case of "Femida Anées Ujjainwala," the distribution licensee (the BEST Undertaking) was refusing to give electric supply, without production of documents to prove that the structure of the applied premises was an authorized construction. So the matter was brought before the Consumer Grievance Redressal Forum (CGRF). In that case the CGRF had directed the BEST Undertaking/respondent to provide the electricity to the complainant of that case, but compensation was not awarded to the complainant for delay in giving electric connection. In the appeal, filed by the complainant against it, the Hon'ble Ombudsman directed the respondent/distribution licensee to pay compensation of Rs. 3,100/- The complainant has also referred to the order of Hon'ble Bombay High Court in WP No. 1856 of 2017 "Lavina Electric Works v/s State of Maharashtra and others" with WP No.1879 of 2017 " M/s Ramesh Multi Works and Anr. V/s State of Maharashtra and others" in support of his submissions that the Respondent licensee is not authorized to enquire as to whether the structure of the applied premises is authorized or not.
- e) According to the complainant, he has submitted all necessary documents about his occupancy, including property tax payment receipt and rent receipt etc. He has also informed to the respondent that he is ready to give required bond stating that if any authority raises any objection in case of meter being given to the complainant, then the meter may be removed without any intimation to the complainant. However the respondent is not giving electric supply to the complainant, though he is entitled to get it.
- f) The representative of the complainant has submitted that he is holding only tenancy rights in respect of the applied premises. He acquired these occupancy rights recently by paying deposit amount to the land lord. It is normal practice in the city of Mumbai that such occupancy rights on tenancy basis are purchased by paying huge amount of pagadi/deposit to the land lord. Hence in the letters given by land lord to the Respondent it is mentioned by the land lord that he has sold the premises to the complainant. In fact complainant is only owner of occupancy rights about tenancy and legally he is entitled to occupy it and to get electric connection on that basis. To prove his this right, it is sufficient to produce rent receipt and no objection of land lord and these documents have been produced by the complainant with his application. The requirements prescribed by the MERC Regulations about supply or Supply Code have been complied with. Once it is done, the Respondent is not entitled to enquire into other things like authorization of construction by asking the complainant to produce the sanctioned plan or NOC of



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the MCGM or Fire Brigade. According to the representative of the complainant, it is none of the business of the respondent to make any such enquiry to ascertain whether the complainant is entitled for electric connection or not. It is also submitted that no authentic document has been produced by the respondent which are certified by the MCGM to show that the construction is unauthorized. Only on the basis of complaints of some interested persons, the respondent cannot come to the conclusion that the premises of the complainant are unauthorized and giving electric connection to it would be illegal.

g) The representative of the complainant has, therefore, submitted that this Forum may give direction to the Respondent/BEST Undertaking to install electric meter connection and to provide the electricity to the premises of the complainant, without pressing their demand to produce the aforesaid documents. It is also submitted the Respondent be also directed to pay compensation to the complainant for causing delay in giving electric connection for the reason of nonproduction of the documents, which actually are not necessary to be produced by the complainant.

4. The Respondent/BEST Undertaking (Licensee) has filed its reply and has submitted that the instant grievance application is liable to be dismissed in view that the complainant has not produced the documents mentioned in the aforesaid letter dt. 21.09.2021 issued by the Respondent. The case of the respondent as is submitted by it in its reply and as is submitted by its representative in the course of hearing, may be summarized as under:

a) The complainant has failed to comply with the requirement of production of documents, as mentioned in the letter dt. 22.9.2021 (21.9.2021). As a result of this the application No. 484939 dt. 17.9.2021 of the complainant for electric connection automatically stood cancelled on 06.10.2021. Thereafter, the respondent has not received any application from the complainant to revise the cancelled application nor any fresh application for electric connection has been received from him.

b) There are number of complaints received by the respondent against illegal and unauthorized construction of additional floors in the said building of Economic House. The copies of the said complaints have been produced by the respondent with its reply in this proceeding before this forum. The details of those complaints and names of the persons who made these complaints are mentioned in the reply of the respondent as under:

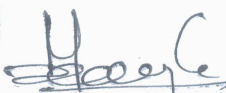
- (i) Complaint letter dt. 09.05.2022 sent on email by Saina Shaikh,
- (ii) Complaint letter dt. 08.10.2021 received from Afak Abdul Wahed,
- (iii) Complaint letter dt. 31.12.2021 received from Shah Jihan Patel,
- (iv) Complaint letter dt. 30.09.2021 received from chief editor of Gunah Times,




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- (v) Complaint letters dt. 30.09.2021, 28.10.2021, 06.12.2021 and 01.02.2022 received from Salim Moosa Mansoori
- (vi) Complaint letter received from Gautaman and Waman Muneshwar on 25.08.2021
- c) As per the site inspection report dt. 21.09.2021, RCC work was in progress above fourth (4th) floor of Economic House building. As per the record of the respondent, it provided electric supply to ground floor, first floor, third floor and fourth floor. No supply is given to 2nd floor. The respondent has produced list of those connection holders and annexed it at pages No. 88/C and 88/AC.
- d) The MCGM had issued notice U/S 354A of the Mumbai Municipal Corporation Act 1888 (MMC Act) for unauthorized construction of additional upper floors. The copies of those notices are appended at pages 92/C to 93/C.
- e) The inspection report about Economic House made by Fire Brigade is also appended at page 94/C.
- f) From the MCGM property tax extract and collector office data available in complaints, it is observed that the Economic House was a ground plus 4th floor storied structure. These documents are produced by the respondent with its reply at page 85/C to 99/C. It shows that the owner of the building has constructed 10 number of the unauthorized upper floors as mentioned in the complaints.
- g) As per the record of the respondent, it has not provided electric supply to 2nd floor of Economic House Building. As per MCGM extract, there was a godown and office on the second floor. In this regard the respondent has produced documents at page 98/C.
- h) According to the respondent, it has received total nine number of applications for different premises describing them in the applications as bearing No. 201 to 209 on the 2nd floor. The details of these applicants are given by the respondent in para 2.2 of its reply. The present complainant is one of those nine applicants.
- i) According to the respondent, it can be seen that the owner has converted second floor office and godown into 9 numbers of residential premises and has not submitted any approved plan or document for the structural changes carried on the second floor.
- j) According to the respondent, as the applicant or owner of Economic House has not submitted any approved plan, documents of the second floor for conversion of godown and office premises into 9 number of residential premises and MCGM has served notice u/s 354A of MMC Act 1888 for unauthorized construction, it may not be lawful to entertain the application of the complainant for grant of electricity.




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- k) According to the respondent, further, it is well established fact that unpaid dues constitute a "charge on the premises" and if the premises are illegal, as it is in the instant case, recovery of the dues would be contrary to the Regulation 6.2 and 12.5 of the MERC (Electricity Supply Code and Standard of Performance) Regulations 2021. Respondent has produced copy of these provisions of the Regulations at page 105/C to 108/C.
- l) In view of the above submissions in the reply, the representative of the respondent has submitted that the building is an unauthorized construction *prima-facie* at least in respect of second floor's structural changes and conversion of its user from commercial to residential purpose without permission from competent authority, as it is unauthorized about the 10 number of upper floors above the 4th floor. Second floor appears to be structurally divided from one tenement to 9 tenements and applied premises is one of them. This is also appearing to have been done unauthorizedly and without sanction of the competent authority and thus in violation of the law about town planning. Therefore, according to the respondent, it may not be lawful to entertain an application of the present complainant for electric supply to his premises, which is apparently appearing to have been raised and used in contravention of law. Moreover, in case of dues of electricity in future, the respondent would not be able to recover by imposing or creating charge thereof on the premises, as no charge of such dues can be imposed on an unauthorized premises which is always liable to be demolished under the law.
- m) For all the aforesaid circumstances, the representative of the respondent has submitted that the instant grievance application is liable to be dismissed.
6. We have heard the parties. In view of the respective pleadings, submissions and the documents of the parties, following points arise for determination, on which we record our findings as under, for the reasons to follow:

Sr. N.	Points for determination	Findings
1.	Whether the respondent is entitled to ascertain, <i>prima facie</i> , the legality, validity and authorization of structure of applied premises, while deciding application for electric connection to such premises?	In affirmative.

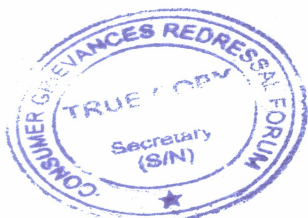


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2.	Whether the respondent is entitled to ask the complainant to produce the documents at sr. No. (i) to (iii) as described in clause (b) of para 2 herein and as mentioned in respondent's letter dt. 20/21.09.2021, to decide as to whether the complainant is entitled to get the electric supply to his premises situated on the second floor of the building namely "Ecomic House" ?	In affirmative.
3.	Whether the delay in deciding complainant's application for electric connection is due to any inaction on the part of the respondent and whether complainant is entitled for compensation for the alleged delay?	In negative.
4.	What operative order is required to be passed by this forum to dispose of the instant grievance application/complaint?	The instant grievance application will have to be dismissed, as is being indicated in the operative order being passed herein below.

7. For the above said findings recorded by us on the above points No. 1 to 4 posed, we record reasons as under:

- We have noted the contentions of the parties as mentioned by them in their pleadings as well as in their oral submissions. We have also perused the documents submitted by the parties on record in the course of hearing. We have also noted the admitted facts in Para-2 herein earlier.
- It appears from the pleadings and documents as referred to and relied upon by the parties that originally the building called Economic House, Building No.34, Shaikh Hassan Marg, Mumbai- 400009, was comprising of ground plus 4th floor only. The tenements in the building were under occupation of different occupiers/tenants.
- Admittedly, the complainant has submitted his application bearing No.484939 dtd. 17.09.2021, to the respondent for new electric connection for the premises bearing Room No. 201, second floor, Economic House, Building No.34, Shaikh Hassan Marg, Mumbai- 400009. The complainant has neither stated as to when he acquired the applied premises allegedly bearing Room No. 201 on 2nd floor nor he has produced any document expressly indicating as to exactly on what date he acquired the said premises. He has produced copy of rent receipt dt. 15.9.2021, showing that this receipt has been signed and issued by land lord of Economic House, Building No.34,



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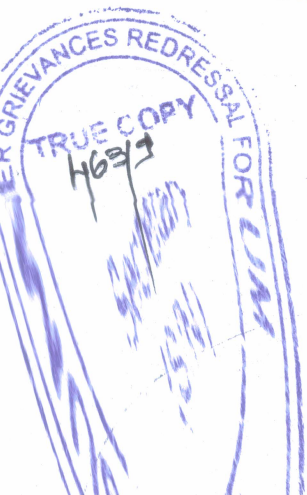
Shaikh Hassan Marg, Mumbai- 400009 and mentioning therein that the complainant "Mohd. Sakib Mustaque Sorothia" has paid an amount of Rs.450/-being rent and municipal taxes/compensation for the month of August 2021 in respect of room No. 201, floor 2nd Shaikh Hassan Marg, Mumbai- 400009. On the basis of this document it can be assumed that the complainant wants to say that in the month of Aug. 2021 only, he has acquired tenancy rights to occupy the said premises allegedly bearing No. 201. Thus the documents do not show that prior to Aug. 2021 the complainant was occupying the said premises on 2nd floor of the said building. Thus, it appears that just one month, after allegedly acquiring the applied premises, the application for new electric connection has been submitted i.e. on 17.09.2021.

d) Admittedly the respondent asked the complainant to produce some documents by issuing letter, which either bears date as 20th September or 21st September 2021. The following documents were listed in the said letter:

- i) Plan of building approved by Executive Engineer of Building and Planning (hereinafter shall be referred to as EEBP) department of Municipal Corporation Greater Mumbai (hereinafter shall be referred to as MCGM),
- ii) No Objection Certificate of MCGM for repairing the premises for which electric connection is sought,
- iii) Repairing work order.

e) We have examined the aforesaid submissions of the parties in the light of aforesaid facts of the case. We find that case of the respondent is that it is entitled to see, before sanctioning electric connection to the complainant, as to whether the applied premises is an authorized structure or not and to see whether it violates directions of law and the authorities under statute. The complainant's submissions are that under the Electricity Act and MERC Regulations framed there under it is not within the authority of the respondent to ask the complainant to produce the aforesaid documents as mentioned in its letter dt.20/21.9.2021. It is submitted by the representative of the complainant that respondent is only entitled to require the complainant to give under taking that in case the connection is found in contravention of any law or direction of any legal authority, the complainant would not have any objection if supply is disconnected consequent to such violation. He has submitted that the complainant is ready to submit such under taking or bond to the respondent.

f) In view of the rival submissions of the parties as noted herein earlier, the first question that arises is as to whether the respondent is entitled to ascertain that applied premises is legally authorized structure. If answer to this question is in affirmative then the second question arises as to whether the respondent is entitled to demand the production of the documents mentioned in its aforesaid



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letter bearing 20th or 21st Sept. 2021. Therefore, the aforesaid point No. 1 and 2 have been posed for determination.

- g) As regards point No.1, it may be noted that distribution of electricity is regularized under the provisions of the Electricity Act 2003 (herein after it shall be referred to as the Act of 2003) and the MERC (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations 2021 (herein after it shall be referred to as "MERC Supply Code. 2021") framed by the Maharashtra Electricity Regulatory Commission (MERC). Only those who have been permitted under a license issued by competent authority under the Electricity Act and Rules and Regulations framed there under are permitted to distribute electricity and such licensee has to follow the provisions of the Act and the Rules and Regulations framed there, under by competent authorities empowered under the law. The applications for new electric-connections are dealt with as per the procedure laid down under clause 5 of the Supply Code 2021. Clause 5.6 of the said MERC Supply Code, 2021, provides that applicant shall produce proof of ownership or occupancy of the applied premises. It is relevant to note here what is provided in this clause about the rights and responsibilities of the distribution licensee and the applicant for new connection. The said provision is quoted as under:

5.6) For application for new supply, Distribution Licensee shall seek only following documents and details along with application form:

- a. Proof of identity of the Applicant/ authorisation document (in case of Firm or Company)
- b. Proof of ownership / occupancy (in case of owned or leased premises)
- c. Mobile Number of the Applicant (owner as well as occupier, if both are different)
- d. E-mail of the Applicant, if available (owner as well as occupier, if both are different)

Provided that the Distribution Licensee may also provide the option of e-KYC to the Applicant:

For all other statutory requirements, the Applicant shall provide declaration/undertaking for confirmation that the information provided in the application is true, the Applicant has complied with all requirements under all statute for the time being in force, the Applicant himself/herself shall be held legally responsible for any issue arising out of any such non-compliance and it indemnify the Distribution Licensee from any loss that may occur on account of such non-compliance.

- h) No doubt, in sub-clause (a) to (d) of clause 5.6 of the said Supply Code 2021 it is provided that for application for new supply, Distribution Licensee shall seek only those documents as mentioned in these clauses and sub-clause (b) refers to the documents of "Proof of ownership / occupancy (in case of owned or leased




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premises).” However, in our considered view, the above noted sub-clauses (a) to (b) of clause 5.6 of the Supply code 2021 will have to be read in combination with the proviso given in this clause 5.6, which impliedly recognizes the requirement that the Applicant has a duty to comply with all requirements under all statute for the time being in force. This proviso requires that along with the application the applicant should give a declaration cum undertaking about certain facts including that the Applicant has complied with all requirements under all statutes for the time being in force. It also provides that if at any later stage it is found that there is any issue about non-compliance of matters declared in the declaration/undertaking, the Applicant himself/herself shall be held legally responsible for any issue arising out of any such non-compliance and it indemnify the Distribution Licensee from any loss that may occur on account of such non-compliance. It means that after submission of the application for new connection along with the written declaration/undertaking, it is always open to the distribution license to satisfy itself as to the correctness of the contents of the said declaration/undertaking. For its satisfaction regarding the above aspects the licensee can make necessary enquiry. This can be done even before deciding whether the connection should be given to the applicant. In our view the provisions of clause 5.6 of the Supply Code of 2021 can be interpreted in this way only and it cannot be interpreted to draw the meaning that after giving of the above declaration-cum-undertaking, the distribution licensee cannot have any right to enquire about the statutory requirements mentioned in the above said declaration-cum-undertaking. If there is no doubt to believe the declaration-cum-undertaking, the licensee at its discretion may postpone any further enquiry and give the connection subject to its right to enquire the compliances referred to in the declaration/undertaking.

- i) In view of the aforesaid discussion, the intention behind framing the provisions of clause 5.6 of the MERC supply Code 2021, about dealing with applications for new connection, is that while deciding whether connection should be given or it should be refused, the licensee is required to see whether premises is brought into existence without contravening of any law or direction of authorities constituted under the law or the Rules and Regulations framed there under, including the provisions of Maharashtra Town planning Act (MRTP Act) etc. The distribution Licensees are expected to ascertain that the electric connection is not given to premises which do not fulfill the security norms. If the premises are not raised by following the rules about town planning and other prescribed safety norms, then there is always a possibility of risk of happening of untoward incidents, endangering life and property of people. Therefore, we are of the view that when there are reasonable grounds available to doubt the legality and auhorization etc. about construction or user of the applied premises, then the distribution licensees have a right rather a duty under law to ask the applicant to show to the satisfaction of the licensee that the applied premises are raised or erected with proper permission of the competent authorities constituted under the relevant law.




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j) In view that the aforesaid discussion and the aforesaid interpretation of the provisions of clause 5.6 of the MERC Supply Code 2021, we are unable to agree with the submissions of the complainant that the respondent is not entitled to see and ascertain that the structure/premises, for which new electric connection is requested to be given, is legal and authorized and whether it fulfills all the prevailing norms of proper security etc. It is not that respondent is liable to give electric connection even to the premises which have been prima facie raised unauthorizably without lawful permission or sanction from the competent authority, which is statutorily empowered to accord such permission under the MRTP Act. The Electricity Act or Rules and Regulations framed there under do not contain any such a provision which support the above said submission of the complainant. On the contrary the complainant's own document proves that distribution licensee has to see that the application for electric connection does not contravene any legal provision. The said document is copy of Circular dt. 18.10.2016, as relied upon by the complainant. On perusal of this circular it appears that it was issued by the Industry Energy and Labour Department of Maharashtra State Government with reference to the old Regulations framed by the MERC in the year 2005. In that circular directions have been given to all the distribution licensees to provide electricity on production of proof of occupancy of residential premises as mentioned in clause 4 of MERC (Electricity Supply Code and Other Conditions of Supply) of 2005 and it has further been directed that if applicant produces his/her photo identity card and valid proof of his occupancy about applied premises and if there is no legal bar to provide electric connection, then electric supply should be given by the licensees. Though the MERC (Electricity Supply Code and Other Conditions of Supply) of 2005 have been repealed by the new MERC Supply Code 2021, the complainant has placed reliance on the said circular of 2014. However, even as per this circular, the distribution licensees were entitled to ascertain whether there is any legal bar in respect of giving electric connection.

k) The complainant has relied upon order dt. 20.10.2018, passed by the Hon'ble Ombudsman in the Representation No. 208 of 2018, which was filed being aggrieved by the order dt. 20.7.2018 about refusal of relief to grant compensation for delay in giving connection etc. The order impugned in the said Representation No. 208 of 2018 was passed by this forum (presided over by the then learned chairman Shri V.G. Indrale) in the case bearing No. S-D-355-2018, (Smt. Femida Anees Ujjainwala V/s BEST Undertaking) In that case it was held by the forum that in view of the provisions of Regulation 4 of MERC (Electricity Supply Code and Other Conditions of Supply) of 2005, occupier was entitled for electric connection if he /she had produced any one of the documents listed in the said regulation 4 and one of those documents was rent receipt and thus on production of rent receipt the occupancy was assumed and therefore the forum directed to the distribution licensee to provide electric supply. As the forum had refused to consider the grievances of other persons who were not party to the proceeding and as the forum refused to grant compensation for the delay in giving connection, the





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representation No. 205 of 2018 was filed before the Hon'ble Ombudsman. The Hon'ble Ombudsman held that in the facts of the aforesaid case of "Femida v/s BEST Undertaking" that despite production of rent receipt the BEST Undertaking delayed the connection. Therefore it was held that the complainant was entitled for compensation from the distribution licensee (BEST Undertaking). Accordingly, the Hon'ble Ombudsman gave direction to the distribution licensee to pay compensation of Rs. 3,100/- to the complainant under the SOP Regulations 2014 framed by the MERC under section 43 of The Electricity Act 2003. We find respectfully that this order of the Hon'ble Ombudsman is not helpful to the complainant in contending that the respondent should ignore the reasonable doubts raised by various complaints received in the office of the respondent and also in view inspection report of the official of the respondent about the authorization of the construction and user of the applied premises, and also in view of the site-inspection-report of the official of the respondent.

- l) The complainant has relied upon the decision of the Hon'ble Division bench of the Hon'ble Bombay High court dt. 24th April 2018 in WP No. 1856 of 2017 "Lavina Electric Works v/s State of Maharashtra and others" with WP No.1879 of 2017 " M/s Ramesh Multi Works and Anr. V/s State of Maharashtra and others." We have gone through the copy of this decision as produced by the complaint. We respectfully find that the decision is not applicable to the facts of the instant case. From the copy of the said decision as is produced by the complainant, it appears that in that case some of the respondents had disputed the right and interest of the petitioner in the applied premises and therefore the question was whether the petitioner was entitled to get the electric connection, despite the objections of such respondents. The Hon'ble High Court held that the Respondent/BEST Undertaking had nothing to do with the private dispute particularly in relation to the right, title and interest in the immovable property. If petitioner claimed to be residing therein/subject premises as a tenant but the land lord did not accept it then the claim or dispute between the petitioners and respondent No. 3 of that case could be independently adjudicated and decided by a competent Court. That court is not bound to take note of the fact that the electricity supply was provided to the premises on the request of the petitioner of that case.
- m) Similarly, The complainant has also relied on the decision dt.8.12.2016 of the Hon'ble Bombay High Court in W.P. No. 825 of 2016 "Ismail Musabhai Bilakhiya v/s The General Manager and Another". In that case the licensee had not decided the application for electric supply and the same had been kept-pending on the ground that the MCGM had invited its attention to the order dt. 11.09.2014 passed by the Hon'ble single bench of the Hon'ble Bombay High court in Civil Application No. 3802 of 2012 in First Appeal No. 1599 of 2013. The Division bench of the Hon'ble High Court held in its order dt. 08.12.2016 that "On plain reading of the said order, we are of the view that the same does not come in the way of the first Respondent considering the Applications made by the Petitioners for grant of electricity connection." With these observations the Hon'ble division bench directed the




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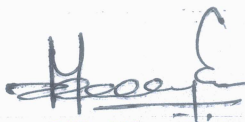
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respondents of that case to decide the applications for electric connection and not to reject the same on the basis of the order dt. 11.09.2014 passed by the Hon'ble single bench of the Hon'ble Bombay High court in Civil Application No. 3802 of 2012 in First Appeal No. 1599 of 2013. From the copy of the the decision of the Hon'ble Division bench of the Hon'ble Bombay High court dt. 08.12.2016 in the case of "Ismail Musabhai Bilakhiya v/s General Manager and another (W.P. No. 561 of 2016), as is produced by the complainant it is not seen that in the said case there were multiple complaints from various persons about the unauthorized raising of multiple floor and also about change of user unauthorizedly without sanction from competent authority under MRTP Act etc.

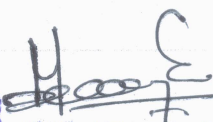
- n) In the instant case before us, the authorization or legality of the construction and user of the subject premises is in dispute. According to the respondent, prima facie it contravenes the provisions of law laid down under Maharashtra Town Planning Act (MRTP Act) which provides that nobody can raise or erect any construction or structure nor can change user of the premises without prior permission of competent authority constituted under the provisions of MRTP Act. Contravention of such provisions of the said Act is also an offence punishable under that Act in addition to a ground for initiation of action for demolition such unauthorized construction. Whether distribution licensee is liable to give electric supply to such prima facie unauthorized structures is the question involved in the facts of the instant case. To such facts of the instant case, with respect, we hold that the aforesaid decisions of the Hon'ble Bombay High Court in the case of (1) WP No. 1856 of 2017 "Lavina Electric Works v/s State of Maharashtra and others" with WP No.1879 of 2017 " M/s Ramesh Multi Works and Anr. V/s State of Maharashtra and others." and (2) W.P. No. 825 of 2016 "Ismail Musabhai Bilakhiya v/s The General Manager and Another". would not be applicable. Therefore, respectfully we hold that the said decisions is not of any help to the complainant to contend that the respondent is not entitled to ascertain that the premises is constructed authorizedly or not, while considering the application for giving electric connection to such premises. Hence we have recorded affirmative findings on point No.1.
- o) Having observed as above, we hold that the respondent is entitled to ascertain whether the applied premises falls within the category of unauthorized construction, while deciding on application of the complainant for electric connection to the said premises, the next question that arises as to whether the documents asked by the respondent to be produced by the complainant are necessary and essential for taking decision on the application of the complainant for new connection. We have seen from the documents produced by the respondent that it has received several complaints stating that the upper 10 floors above the fourth floor in the building by name "Economic House" have been constructed without any sanction from competent authority and thus the construction is unauthorized. In support of such complaints necessary documents have also been submitted to the respondent by the concerned complainants of such




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complaints. The respondent's officials also inspected the site and found that the construction on upper floors was going on and the respondent has also collected documents of notices issued by the MCGM U/S 354A of Mumbai Municipal Act to stop the construction at the said building. The documents of taxes maintained by the MCGM about above building show that originally the building comprised of ground plus 4th floor only. These documents also indicate that there was only one commercial premises on second floor. Now the applicant and 8 other persons have applied for new connection on total 9 separate residential premises on the same second floor. There is no document produced to show as to how the user of the second floor has been changed and whether such change has been done on obtaining necessary sanction from the competent authorities under the MRTP Act. In all the above circumstances, prima facie the respondent is justified to doubt the authorization of the applied premises and it is justified if it wants to ascertain whether the premises has been raised and is being used by following the statutory rules and regulations and the directions under them. If any contravention is found, it may result into rejection of application for new electric connection. It is necessary for the respondent to ascertain as such to know whether in future, the premises shall be subject to demolition by competent authority on account of contravention of the law relating to town planning. Before deciding to give the electric connection it is necessary for the respondent to go through necessary documents mentioned at sr. (i) to (iii) as mentioned in clause (b) of para 2 herein. These documents are, therefore, essential to be produced by the complainant before the respondent. Taking into consideration all these circumstances and also that there were already ground plus 4th floors in the building and the applied premises of the complainant is said to be situated at second floor, the documents at Sr.No. (i) to (viii) as described in clause (b) of para 3 herein and as mentioned in the letter dt. 30.09.2021, of the respondent, appear to be essential for ascertaining whether the premises in question situated at second floor is also affected by the complaints of unauthorized construction and unauthorized conversion of user thereof. As far as the contention of the complainant is concerned that on other floors viz. ground floor, first floor, third floor and fourth floor, connections have already been and, therefore, on second floor also the connection should be given on parity, we find that about those floors prima facie there is no material produced to show that their user has been changed unauthorizedly. Therefore we hold that parity is not applicable and on that basis the complainant cannot claim that without verifying legality of user of his premises and also the legality of division of tenement into 9 tenements on second floor, the electric connection should be given to the applied premises. It is not necessary that because others have been given electric connection as above, the respondent is not entitled to ask the complainant to produce the documents which are necessary to ascertain as to whether the premises of the complainant is affected or not affected by the allegations and complaints, which prima facie are raising doubts about illegal construction and unauthorized change of user etc.




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- p) In view of the above discussion, we hold that the respondent is entitled to ask the complainant to produce the documents at sr. No. (i) to (iii) as described in clause (b) of para 2 herein and as mentioned in the letter dt. 20/21.09.2021 of the respondent, *(as produced by the respondent at page 37/C with it's reply by wrongly mentioning on it the date as 2022-Aug-22)*, to decide as to whether the complainant is entitled to get the electric supply to his premises situated on the second floor of the building namely "Ecomic House." Hence we have recorded affirmative findings on point No. 2.
- q) As far as the request made by the complainant in the present complaint/ grievance application about giving direction to the respondent to pay compensation for delay in deciding his application for electric connection, is concerned, it may be noted that the complainant had submitted his application bearing No.484939 dtd. 17.09.2021 to the respondent for new electric connection. It is not disputed that the respondent sent letter dt. 20/21.09.2021 to the complainant requiring him to produce the documents mentioned at sr. (i) to (iii), as mentioned in clause (b) of para 3 herein and as mentioned in the letter dt. 20/21.09.2021, of the respondent. In the said letter the respondent had also informed the complainant that in absence of certain documents, as listed in the letter, the respondent was unable to process the said application. In the said letter the respondent asked the complainant to submit those documents within 15 days from the date of this letter, failing which the application would stand cancelled without any further intimation to the complainant. In view of these contents of the letter dt.20/21.09.2021 issued by the respondent, the application cannot be said to be pending any more before the respondent as within 15 days of this letter the complainant was to produce the documents and on his failure to do so the application automatically stood disposed off on 06.10.2021. No doubt subsequently, by letters dt. 27.4.2022, 16.5.2022 and complaint in form of annexure "C" dt.19.05.2022, addressed to various authorities of respondent, the complainant has been pursuing that he was not legally required to submit these documents. However, this does not mean that the respondent has delayed the decision on the application. The respondent in its letter dt. 20/21.9.2021 itself had informed that if documents are not produced, the application shall stand disposed off. The complainant has referred to the order dt. 20.10.2018, passed by the Hon'ble Ombudsman in the Reference No. 208 of 2018 (Femida Anees Ujjainwala v/s BEST Undertaking), which was filed being aggrieved by the order passed by CGRF refusing to grant compensation for delay in giving connection. The Hon'ble Ombudsman has held that in the facts of the aforesaid case of that despite production of rent receipt the BEST Undertaking delayed the connection, the complainant was entitled for compensation from the BEST Undertaking and accordingly direction to pay compensation of Rs. 3,100/- under the SOP Regulations 2014 framed by the MERC under section 43 of The Electricity Act 2003. In the said case it was observed by the Hon'ble Ombudsman that Practice Direction issued by the MERC under the Supply Code Regulation 2005, on 20th April 2015 provides that licensee shall endeavor to release connection within 15 days from the date of application, else licensee shall be liable to pay compensation at




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the rate of Rs. 100/- per week of the period of the delay. In the instant case we find that the licensee is not liable to pay any compensation firstly for the reason that application was dealt with by it on fourth day of submission of the application, by sending the letter 20/21.9.2021 stating that if documents are not produced within 15 days, the application shall stand disposed off. As we have held that the documents asked to be produced are essentially required for deciding the entitlement of the complainant, it cannot be said that by asking to produce the documents, the respondent has caused any harassment to the complainant, as alleged by him before this forum. In view of these circumstances, we hold that the respondent is not liable to pay any compensation to the complainant. Accordingly, we have recorded negative findings on point No. 3.

- r) In view of the affirmative findings on point No. (1) and (2) and negative findings on point No.(3), we hold that the instant grievance application will have to be dismissed, as is being indicated in the operative order being passed here in below. Accordingly, we have answered the point (4). Hence, we pass the following order.

Order

- 1) The instant grievance application No.B-463-2022 dtd.03/08/2022 is hereby dismissed.
- 2) Copies of this order be provided to all the concerned parties.


Shri. S.S. Bansode
(Member)


Shri S.A. Quazi
(Chairman)




(Milind Karanjkar)
Secretary
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