

		Date	Month	Year
1	Date of Receipt	17	05	2022
2	Date of Registration	18	05	2022
3	Decided on	07	06	2022
4	Duration of proceeding	14 days		
5	Delay, if any.	Nil		

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. C-457-2022 dtd. 18/05/2022

Deekay Developers Complainant

V/S

B.E.S.&T. Undertaking Respondent

Present

Chairman

Coram : Shri S.A. Quazi, Chairman

Members

1. Shrimati Anagha A. Achrekar, Independent Member.
2. Shri S.S. Bansode, Technical Member.

On behalf of the Complainant : Shri Behram N. Dubash.

On behalf of the Respondent : Shri M.A. Kharote

Date of Hearing : 30/05/2022

Date of Order : 07/06/2022

Judgment

1. The complainant has grievance about respondent's decision to refuse to give permanent supply/connection to the building, redeveloped by the complainant, and asking payment of amount of Rs. 42,91,888/- towards LV Network strengthening scheme or demanding space for DSS inside the plot to release the permanent load.
2. The following facts can be said to be not in dispute between the parties:
 - a) The complainant is a developer. There was a building occupied by several occupiers over the plot of land bearing C.S. No.2869 of Bhuleshwar Division. 14 Bhagirathi Bhavan, 1st Panjarapole Lane, Mumbai -04. There were electric connections given to this building and to the premises of the occupiers therein. The complainant, being developer, took this property for demolishing the old building and to develop a new building thereon. In the year 2015 the Intimation of Disapproval (IOD) was issued by the Municipal Corporation of Gr. Mumbai, vide EB/6134/C/A, with direction to the complainant to comply certain conditions mentioned in the IOD, including the condition numbered as A-21 in the IOD, which says that the approval to the building/work shall not be granted if the NOC from BEST Undertaking/present Respondent for sub-station shall not be submitted. On 08/10/2020, the complainant registered a requisition/application No. 450859 and thereby it requested the respondent for releasing the total load of 298 kW for the entire newly constructed building comprising of Ground to 22nd floor meant for 93 premises in the building. Respondent's said sanctioning-department sent a letter (LOR) dt. 25/11/2020 to the complainant requiring him to establish a single transformer distribution sub-station/compact DSS of size 3.6mtr x 5.97mtr referring to DCPR Regulations 2034. The complainant has not complied with it, as according to complainant, it is not a legal requirement.
 - b) As per the requisition No. 231678, dt. 02.12.2015 of the complainant the respondent released temporary load of 15kw on the existing 25sq.mm/4C, service No.27259 and temporary meter was installed on 12/01/2016.
 - c) On 29/01/2021, the complainant registered a requisition/application and thereby it requested the respondent for releasing the rehab load of 120kW.
 - d) On 21/10/2021 the respondent has issued NOC for the construction plan addressed to the Municipal Corporation's building proposal department and intimation to the complainant that the respondent has agreed to waive the sub-station requirement in the plot subject to the condition that the cost towards LV Network strengthening and service cable will have to be borne by the complainant. Vide letter PL/Plan/26A/780/2021 dated 23/11/2021, the respondent has informed to the complainant that the estimated cost for LV Network strengthening for releasing the regular electrical load is Rs. 55,68,368/- on chargeable basis. Then the respondent

issued revised NOC subject to the payment of Rs. 42,91,888/- for execution of LV Network strengthening scheme after deducting Rs. 12,76,480/- towards deposit. By letter dated 08/12/2021, the complainant has informed to the respondent not to impose the said cost for LV Network strengthening scheme contending that the imposing of cost is invalid and unlawful. By letter dt. 16/12/2021, the respondent has replied to the complainant that due to critical network and in view that the complainant has not offered DSS space, it is necessary to execute the LV network scheme on chargeable basis to release the electricity load to the building premises of the complainant.

3. The Complainant's case, as is mentioned in the grievance application and as submitted by its representative, in the course of the hearing before this forum, may be stated as under:
 - a) The complainant has strong grievance about failure of the respondent to grant the requisition/application bearing No. 463182, dtd. 28/01/2021 for release of the electrical supply to the above premises of the complainant.
 - b) It is also submitted by the representative of the complainant that the complainant has received letter dtd. 21/10/2021 of the respondent stating that 'BEST management has agreed to waive off the substation requirement in the plot on reasonable estimated cost for strengthening the net work. It is the case of the complainant that the complainant's premises previously had permanent supply. Therefore, the complainant has strong objection about the charges being imposed by the respondent for strengthening the network.
 - c) According to the representative of the complainant, it is the responsibility of the respondent/licensee to make all necessary arrangements to provide electricity to every individual person if he is eligible to get electricity connection. It is also responsibility of the distribution licensee to bear all the charges for strengthening net work. Such charges cannot be imposed on the consumer.
 - d) According to representative of the complainant, the reliance placed by the respondent on the provisions of the Maharashtra Electricity Regulatory Commission (MERC) Regulations is not acceptable in view that the area of the plot of the complainant is less than 1000 sq mtrs under Regulation 28 of the Development Control and Promotion Regulation for Greater Mumbai, 2034, (herein after it shall be referred to as DCPR 2034) there is no necessity to preserve provide any land or space for sub-station for electricity (Sub-Station/DSS) in any development project.
 - e) The complainant has, therefore, requested this Forum to direct the Respondent/BEST Undertaking to provide permanent supply and install the meter and to provide the electricity to the premises of 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. The case as pleaded by the Respondent/Undertaking may be summarized as under:
- a) The Respondent has submitted about the reconnection of electricity to the previous consumers of the old building that, on request of the complainant already part load of 17 kW to 17 commercial rehab tenants for ground floor to 2nd floor has been released by the respondent on 24/07/2018. Thereafter on 29/01/2021 the complainant asked for rehab load of 120kw and then on 25/05/2021 the complainant asked to reduce it to 70 kw. In response, on 23/11/2021, the respondent informed to the complainant that estimated cost of Rs.55,68,368/-will have to be borne by the complainant for strengthening LV network. Then said amount was reduced by the respondent to Rs. 42,91,888/- Subject to payment of this amount, the NOC was issued and communicated by the respondent to the Building Proposal Dept. of Municipal Corporation, for waiver of sub-station establishment in the plot of the complainant. The complainant has not complied with the said requirement and hence, in the aforesaid circumstances, it is not entitled for the relief sought in respect of supply to the previous consumers.
 - b) About the complainant's request for providing permanent supply to the new building, the Respondent has submitted that it cannot be given because the complainant is liable to establish a single Transformer Distribution Sub-station/compact DSS of size 3.6 mtrs x 5.97 mtrs as per SKPL (2018) 223 in above referred plot, in accordance with the DCPR 2034. Moreover, the complainant has not complied with the requirement of payment of cost of the waiver of the sub-station requirement, as described above.
 - c) About the request of the complainant for waiver of LV network strengthening charges, it is submitted by the respondent that as the complainant went on raising construction without making provision for space for sub-station, the complainant is not entitled for getting waived the payment of distribution strengthening charges.
 - d) According to the representative of the Respondent, u/s 46 of the Electricity Act, 2003, it is provided that the State Commission may, by Regulations, authorize a distribution licensee to charge a person, requiring a supply of electricity, in pursuance of section 43, any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving supply. According to the representative of the Respondent, for all the aforesaid circumstances, the complaint filed in this forum may be dismissed and the complainant be directed to make the payment towards execution of the LV Network strengthening scheme and service cable charges, so as to enable the respondent to release the permanent load for the building.
5. 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. No.	Points for determination	Findings
1.	Whether the respondent's decision to demand the complainant to pay the aforesaid amount of Rs. 42,91,888/- to get the permanent supply, is legal and valid ?	In affirmative
2.	What order is required to be passed to dispose off the instant grievance application?	The grievance application will have to be dismissed, as is being directed in the operative order being passed herein below.

6. We record reasons for aforesaid findings on above point Nos. (1) and (2), as under :

- a) 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.
- b) As noted herein earlier, it is not disputed that the complainant is developing the building after demolishing the old building, which was under occupation of the then occupiers. It is also seen from the documents produced by the parties that with reference to the plan of the complainant for approval of the planning authority, in the year 2015, the Intimation of Disapproval (IOD) was issued by the planning authority of Municipal Corporation of Gr. Mumbai, vide EB/6134/C/A, with direction to the complainant to comply certain conditions mentioned in the IOD. Those conditions include the condition numbered in the IOD as A-21, which says that the approval of the building/work shall not be granted if the NOC from BEST undertaking/present respondent for sub-station shall not be submitted. On 08/10/2020, the complainant registered a requisition/application No. 450859 and thereby it requested the respondent for releasing the total load of 298 kW for the entire newly constructed building comprising of Ground to 22nd floor meant for 93 premises in the building. Respondent's said sanctioning-department sent a letter (LOR) dtd. 25/11/2020 to the complainant requiring him to establish a single transformer distribution sub-station/compact DSS of size 3.6mtr x 5.97mtr referring to DCPR Regulations 2034. The complainant has not complied with it, as according to complainant, it is not a legal requirement.
- c) It is also seen from the documents produced by the respondent that as per the requisition No. 231678, dt. 02.12.2015 of the complainant the respondent released temporary load of 15kw on the existing 25sq.mm/4C, service No.27259 and temporary

meter was installed on 12/01/2016. On 29/01/2021, the complainant registered a requisition/application and thereby it requested the respondent for releasing the rehab load of 120 kW. On 21/10/2021 the respondent has issued NOC for the construction plan addressed to the Municipal Corporation's building proposal department and also gave its intimation to the complainant that the respondent has agreed to waive the sub-station requirement in the plot subject to the condition that the cost towards LV Network strengthening and service cable will have to be borne by the complainant. Vide letter PL/Plan/26A/780/2021 dated 23/11/2021, the respondent has informed to the complainant that estimated cost for LV Network strengthening for releasing the regular electrical load is Rs. 55,68,368/- on chargeable basis. Then the respondent issued revised NOC subject to the payment of Rs. 42,91,888/- for execution of LV Network strengthening scheme after deducting Rs. 12,76,480/- towards deposit. By letter dated 08/12/2021, the complainant has informed to the respondent not to impose the said cost for LV Network strengthening scheme contending that the imposing of cost is invalid and unlawful. By letter dt. 16/12/2021, the respondent has replied to the complainant that due to critical network and in view that the complainant has not offered DSS space, it is necessary to execute the LV network scheme on chargeable basis to release the electrical load to the building premises of the complainant.

- d) Thus the respondent is asking the complainant to pay the aforesaid amount of 42,91,888/- and the said payment is condition precedent to get the permanent supply of electricity to the building and to the occupiers of the building. The complainant has contended that the respondent is not entitled to ask the complainant to bear the cost of permanent supply to the building. The complainant's representative has made mainly two submissions in support. The first is that previously the old building had permanent supply before it was demolished for redevelopment and, therefore, the old supply should be continued. The second submission of the representative of the complainant is that regulation 28 of the Development Control and Promotion Regulations for Greater Mumbai, 2034 provides that for a building project on a plot of land up to 1000 sq meters, it is not necessary that the space for consumer sub-station (Sub-Station) for distribution be provided in the plot but it is required to be provided if the area is more than 1000 sq meters, as provided in the table given in the regulation 28.
- e) As far as the above said first submission of the complainant is concerned, the representative of the respondent has submitted that the permanent supply to the earlier building was for occupiers of small building which comprised of ground plus three floors only and already sufficient supply of load is given to the occupiers of the old building accommodated in the new building. After redevelopment, the new building comprises of ground plus 22 floors, which means the load capacity of old building was much less than the requirement of new building which is huge and requirement of load is to be determined on the basis of larger volume of the building more number of its occupiers. We find merits in these submissions of the representative of the respondent, considering that the new building comprises of ground plus 22 floors and it is bigger

than the old building which comprised of only ground plus 3 floors only. The pleadings and documents of the respondent also show that earlier sanctioned load has already been released by the respondent to the old occupiers. Therefore, the submissions of the complainant's representative cannot be upheld that because there was permanent supply in the old and demolished building the supply should be given on that basis to the new building without making proper arrangement for distribution system.

- f) The second submission of the representative of the complainant is with reference to regulation 28 of the Development Control and Promotion Regulations for Greater Mumbai, 2034. Regulation 28 deals with requirement of plot area for consumer sub-station and Distribution sub-station in a building project. Clause (A) of Regulation 28 lays down that in case of development/redevelopment of any land, building or premises, provision for electric sub-station may be permitted as provided in Table No. 11 given in this Clause (A) of Regulation 28. In this table it is provided that for plot area up to 1000 sq meters, nil maximum area of land for sub-station is required to be provided. It means that in such a case, it is not necessary that the space for sub-station to be provided in the plot but maximum area as mentioned in entries at sr. 2 to 5 of this table is required to be provided, if the area of plot is more than 1000 sq meters. Relying on these provisions of Regulation 28 of DCP Regulations, the complainant's representative has submitted as area of complainant's plot is less than 1000 sq. meters, he is not liable to provide space for sub-station in the plot and the demand of the respondent to provide it or to bear cost of waiver of it is illegal.
- g) On examination of the above submissions, we do not find that the demand of the respondent to ask the complainant for providing space for sub-station or asking the complainant to bear the cost of waiver of it is illegal or unlawful. We hold so, taking into consideration the notes (a) to (g) given below the aforesaid Table No. 11 provided in Clause (A) of Regulation 28 of DCP Regulations. Said notes (a) to (g) given below the aforesaid Table No. 11 are in the nature of explanation or proviso to the provisions laid down in entries 1 to 5 given in above said table No. 11. Note (d) provides that "The provision for Sub-Station shall not be made mandatory by the Electricity Distribution Company in each development. The experts in Electricity Distribution Company shall assess the requirement of Sub-Station considering the existing facilities available in the neighborhood." These provisions in note (d), thus, provide that ultimate decision about requirement for space for sub-station will have to be based on the opinion of the experts of the distribution company taking into consideration existence or non existence of existing facility about utility of sub-station. In other words, in a given case even if the plot area is less than 1000 sq. meters, the surrounding area of the plot may not have proper sub-station to deal with the receiving and distribution of electricity in the area or the building in question. In such case the experts of Distribution Company may require that space should be provided for establishment of the sub-station in the plot. In the instant case the respondent has come with a case that surrounding area has no proper facility to serve as consumer sub-station and hence the complainant in its plot would need such sub-station, but the complainant has not provided any such space and therefore waiver of sub-station in the plot would require funds to make alternate

arrangement and its cost will have to be borne by the complainant, as calculated and demanded by the respondent.

- h) Section 46 of Electricity Act provides that State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. By exercising these powers the MERC has framed Regulations. Clause 4.2 and 4.3 of the MERC Regulations empowers the respondent to recover such expenses as may be reasonably incurred by it being Distribution Licensee in providing electric line or electrical plant used for the purpose of giving supply, in accordance of Regulation 4.3. Thus, the demand made by the respondent to the complainant for payment of the aforesaid amount as cost of waiver of Sub-Station in the plot of the complainant, cannot be said to be illegal and without payment of it by the complainant the respondent cannot be compelled by this forum to provide permanent supply to the building of the complainant, as requested by the complainant. Therefore, we have recorded affirmative findings on point No. 1.
- i) In view of affirmative findings on point No.1, we hold that the complainant is not entitled for any relief from this forum, as requested in the grievance application. Hence the instant grievance application/complaint will have to be dismissed. Accordingly, we have answered the point (2). Hence we pass following order:-

Order

- a) The instant Grievance Application No. C-457-2022 dtd. 18/05/2022 is hereby dismissed.
- b) Copies of this order be given to all the concerned parties.

Sd/-
Shri. S.S Bansode
Technical Member

Sd/-
Smt. Anagha A. Achrekar
Independent Member

Sd/-
Shri S.A. Quazi
Chairman