

**GUJARAT ELECTRICITY REGULATORY COMMISSION  
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE  
Polytechnic Compound, Barrack No.3, Ambawadi,  
Ahmedabad-380015**

**CASE NO. 103/2015  
(UNDER REVIEW)**

**Appellant:** M/s. Acrysil Limited  
Survey No.312, Bhavnagar-Rajkot Highway  
Navagam. VARTEJ-364060. Dist.Bhavnagar

**Represented by:** Shri Vikram Shah, Consultant.  
Shri Tushar Upadhyay, Manager  
Shri Ketan Virani

**V/s.**

**Respondent:** Executive Engineer,  
Paschim Gujarat Vij Company Ltd.,  
Rural Division Office, BHAVNAGAR.

**Represented by:** Shri H.R.Patel, DE, PGVCL, Bhavnagar  
Shri P.M.Gandhi, SA(Rev), Bhavnagar

**:::PROCEEDINGS:::**

- 1.0.** The Appellant had submitted review representation aggrieving with the order No.452 dated 19.10.2015, passed by Electricity Ombudsman in case No.103/2015.  
The case was heard on 21.01.2016.
- 2.0.** The Appellant has represented the case as under.
  - 2.1.** Appellant has filed review representation as per GERC Notification No.02 of 2011, Clause No. 3.45. It is stated that there are some mistakes/errors apparent on records and there are other reasons including non-consideration of important issues involved in the case which requires review of the order.
  - 2.2.** It is submitted that Ombudsman has observed and recorded findings in Para No.4.7 of the order and declared that the representation as non-maintainable.

The whole procedure of CGRF and Ombudsman is governed by GERC Notification No.2 of 2011. Appellant has referred the Clause No.3.17 “Pre-conditions/limitations for entertaining complainant’s representation” and stated that complaint in respect of grievance matter is not pending before any Court.

Appellant has referred Clause No. 3.17(i) “It has been filed by the complainant (aggrieved consumer), for all avoidance of doubt, a Licensee is not allowed to file a representation before the Ombudsman against the order of the Forum”. He has also referred Clause No. 3.17(iii) “The Representation by the Complainant, in respect of the same complaint/grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not been passed by Ombudsman, such court, tribunal, arbitrator or authority”.

The Appellant has stated that said provision of Clause No. 3.17(iii) speaks about position qua the very complainant and subject complaint of very complainant before Ombudsman with regard to which there is pending in any proceedings before any court, tribunal or any other authority. Thus it neither provides nor quintuplets any restrictions or bar in entertaining the appeal for the reasons that proceedings on the same issue of other persons before any other forum is pending. Thus it is clear reading that the provision of Clause 3.17(iii) would be attracted in the case of Appellant. Thus it is error/mistake occurred on fact on record.

- 2.3. It is submitted that as per Para 4.1 of original order dated 17.10.2015 is noted that both the connections are released before application of Supply Code, GERC Notification No.11 of 2005 which is applicable on 31.03.2005. There is an error on face of the records.

Appellant has referred the Ombudsman Case No.33 of 2015 of M/s. Anand Niketan Ashram Trust V/s MGVCL and stated that having similar grievance matter, Ombudsman has taken a differ stand in the case of appellant.

- 2.4. It is submitted that findings of Para No. 4.2 of Ombudsman order relied for observing and conclusion as per Para No.4.7 of order, it may be pointed out that there is no any pending process before any court of law. It is submitted that second connection of Appellant is EOU having separate legal entity as per notification of Govt. of India. Thus it is apparent error/mistake appears to have taken place.
- 2.5. Appellant has pointed out that when the proceedings on the issue at the instance of other person is pending, it would not barred in entertaining the appeal of the present Appellant and would not debarred from filing appeal, at the most proceedings of appellant ought to have been kept pending. By straight way order of non-maintaining appeal as per Para No. 4.7 is not only apparent mistake but it resulting into discrimination among the similarly situated person.
- 2.6. In reference to the findings in Para No.4.2 of order, Ombudsman has not considered, confirmed/denied the documents provided by Appellant and thus violated Section 3.37 of GERC Regulation No.2 of 2011.
- 2.7. In reference to the findings in Para No.4.4 of order, Ombudsman has erred in observing that GERC is the authority to interpret the applicability of Section 4.1.17 of Supply Code in the subject matter.
- 2.8. It is stated that connections of Appellant have been released in past i.e. before applicability of Supply Code Regulation 2005 the Clause No. 4.1.17 pertains to and regarding grant of new connection and not regarding existing connections or merger

thereof. So this is apparent mistake/error occurred while passing the order.

- 2.9. It is stated that in any case if Ombudsman has found the issue involved in the representation is sub judice in a form of petition filed by other person before Hon'ble High Court and on that ground not intent to conclude or finally decide the representation of appellant Ombudsman then representation ought to have been kept pending and protected the appellant till the issue so pending and sub judice are finally concluded by Hon'ble High Court.
- 2.10. In the submission dated 21.01.2016, it is submitted that M/s. Bhavnagar Salt & Industrial Works Pvt. Limited the stay is granted by Hon'ble High Court against the order of Ombudsman in case No.70 of 2015.

It is stated that as far as the stay order mentioned in the judgment of Ombudsman is concerned, regarding LPA No.1483 of 2013 is concern, it is said that appeal is about the interpretation of Clause No.4.1.17 of Supply Code. In case of Appellant it is not interpretation of any Clause of Supply Code but applicability of Supply Code itself in the matter when It is clearly mentioned that Supply Code will be applicable from the date of its publishing in the gazette. So by that way the matter is different from LPA No. 1483 of 2013.

- 2.11 Appellant has prayed to allow the review appeal and to order to keep the case No.103 of 2015 pending till the final outcome of the issue involved or be pleased to decide the case on its merits.

**3.0.** Respondent has represented as under.

- 3.1. Respondent has reiterated certain points as mentioned in Para No.3 of original order of Ombudsman.
- 3.2. It is submitted by Respondent that as per Clause No. 3.5.1 and 4.1.17 of Electricity Supply Code Notification No.11 of 2005 action has been taken in the case of Appellant.

### **3.5 RECLASSIFICATION OF CONSUMER**

3.5.1. If it is found that a Consumer has been classified in a particular category erroneously, or the purpose of supply as mentioned in the distribution service Agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of Contract Demand has been obtained, the Distribution Licensee may reclassify him under appropriate category after issuing notice (with minimum notice period of 30 days) to him to execute a fresh Agreement on the basis of the altered classification or modified Contract Demand. If the Consumer does not take steps within the time indicated in the notice to execute a fresh Agreement, the Distribution Licensee may, subject to the provisions of the Acts, Rules and Regulations for the time being in force, after issuing a clear 21 days show cause notice and after considering his explanation, if any, disconnect the supply of power. Further, the Distribution Licensee shall dispose of all such applications for change of tariff class by a Consumer within maximum period of seven days after receipt of such application regarding the change of tariff class or communicate the reasons for not changing the tariff class, as applicable. In case of any dispute, the matter shall be referred to Forum for redressal of consumer grievances.

4.1.17. The Distribution Licensee will not provide more than one connection/meter for one premises. The consumers opting for second meter will have to produce separate legal entity such as documents of separate Income Tax No./Sales Tax No., Ration Card and rent or lease agreement.

- 3.3. As per GERC Notification No. 4 of 2015 Electricity Supply Code and Related matters Regulations, effective from 24.09.2015, Respondent has mentioned Clause No. 3.10 and 4.28 regarding the subject matter.

**Classification of consumers:**

3.10.: Distribution Licensee may classify and reclassify consumers into various tariff categories from time to time as may be approved by GERC, and announce the different tariffs for different classes of consumers with the approval of GERC.

4.28: The Distribution Licensee will not provide more than one connection for one premises of in adjoining/contiguous premises belonging to same owner if these are not separate by a public road or by private premises. The consumer opting for second connection will have to produce separate legal entity documents such as separate Income Tax No./Sales Tax No./Ration Card and rent or lease agreement.

- 3.4. It is submitted that due to escaping from appropriate and applicable tariff, in the present case Respondent is losing money. Respondent has submitted calculation sheet of energy for the month of July,2015, showing loss of difference of amount of Rs.1,08,951/- per month with merger of both connections. It is submitted that in this case public money is involved and loss to the company will be loss to the public at a large.
- 3.5. Respondent has prayed as under:
- (1) The application made by Appellant should be rejected on technical grounds as mentioned above.
  - (2) To allow the action taken for amalgamation of both the HT connections.
  - (3) To grant to issue supplementary bill to appellant for applicable tariff with amalgamation of both the connections for the period of notice given i.e. 18.12.2014 i.e. from the month of December,2014 to till the amalgamation of the connections.

**:::ORDER:::**

- 4.0. I have considered the contentions of the Appellant and the Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.

4.1. The issue of review of order stating that Clause No. 3.17 of Regulation No.2 of 2011 is not attracted to case of Appellant. In this regard it is to clarify that aforesaid findings recorded by Ombudsman on the factual grounds that the issue involved in present appeal pertaining to interpretation of regulation Clause 4.1.17 of GERC Supply Code is also a subject matter of the present grievance, which is already earlier dealt by Hon'ble High Court in its order/judgment dated 12.08.2013 in SCA No.464/2013. The judgment issued under SCA No.464/2013 was challenged in LPA No. 1483/2013 in Hon'ble High Court in which interim stay was granted by Hon'ble High Court. The said LPA is pending before Hon'ble High Court.

The issue of interpretation of Clause No. 4.1.17 was already earlier decided by Hon'ble High Court of Gujarat and further it is also under consideration of Hon'ble High Court. Therefore prior to take any decision by the Ombudsman on above subject matter it is necessary to consider earlier decision of Hon'ble High Court in SCA No.464/2013 and also pending decision of Hon'ble High Court in LPA No. 1483/2013.

It is finally dependent subject to decision in Petition No.LPA 1483/2013 of Hon'ble High Court of Gujarat.

4.2. As far as Clause No. 4.1.17 is concerned which pertains to the definition of premises and release of connection by the Licensee, it is noted that contention raised by Appellant and Respondent are under dispute and correct interpretations of the same is to be given only by GERC who has notified the aforesaid Regulations, being a competent authority. The Ombudsman is not empowered as a competent authority to interpret the provision of Clause 4.1.17 notified by GERC. Hence plea advanced by Appellant (review petitioner) that Clause No. 4.1.17 is not applicable to case of Appellant and it pertains to new connection. While connections

of Appellant were released in the year 1989 and 2005 prior to enforcement of notification No.11 of 2005. Thus said notification is whether applicable to the case of Appellant or not is also subject matter of interpretation of Regulation, applicable to be decided by GERC, who has framed same and being a competent authority in this matter, hence Appellant may approach competent authority for the same.

On above grounds present review representation is not entertained and dismissed.

4.3. The Appellant stated that GERC Electricity Supply Code Regulation 2005 is not applicable in this case as the same came in force from 31.03.2005. I clarify that the contentions raised by the Respondent Licensee/erstwhile GEB should be governed by the conditions of supply of the Commercial Circular released with regard to release of power connection. The Appellant has raised the issue that Commercial Circular No.769 dated 28.01.2005 is whether applicable in appellant's case or not is concerned the said circular is dated 28.01.2005 and GERC supply code came in force from 31.03.2005. Thus aforesaid circulars and conditions stipulated in it are applicable in the appellant's case, as it is governing the release of connections in premises of consumer specified by erstwhile GEB/PGVCL.

As per the provision of the earlier act read with Electricity Act, 2003, the relevant provisions of said Circular are as under:

Condition No. 1.1 states as under:

Documents to prove the separate legal entity, such as documents of separate Income Tax Number/Sales Tax Number/Ration Card/Rent or Lease deed agreement.

Condition No.7: Physical verification of the premises needs to be done by Deputy Engineer in case of LT connections and by Executive Engineer personally in case of HT consumer to ascertain

the separate individual legal entity of the exclusive premises. It should be clearly ascertained that the premises are separate and such noting should be made by the respective engineer in the technical proposal which shall be maintained in the consumer's case file.

As per Clause 1.1 of the above commercial circular, the appellant shall require to submit and prove with documentary evidence that there is a separate legal entity for whom the connection sought by the appellant, which proves from the documents such as separate Income Tax Number/Sales Tax number/Ration Card or lease deed agreement.

Clause 1.7 of the aforesaid circular provides that physical verification of the premises need to be done by the Respondent engineer to ascertain the separate legal entity of the premises.

From the aforesaid provisions, it seems that the appellant should require to prove separate legal entity by way of compliance of aforesaid provisions of the Commercial Circular No.769 issued by erstwhile GEB/PGVCL. However there is no evidence on record proves the same. On this ground also the appellant is not eligible the relief sought by it and also the review of order dated 17.10.2015 sought by Appellant is not permissible.

Moreover the Appellant submitted that Regulation Clause No. 4.1.17 relied by the Ombudsman is not applicable in this case. It is clarified that while passing order dated 17.10.2015, Ombudsman relied on aforesaid regulation of Hon'ble Commission and passed reasoned order, therefore it is clear finding of the Ombudsman on the above mentioned issue. Hence it is not an error apparent or mistake on which the review of the order is permissible. On this ground also the review is not maintainable.

The Appellant has also stated that the reliance of the order dated 12.08.2013 of Hon'ble High Court in SCA No. 464/2013 and the

order dated 06.01.2014 in LPA No. 1483/2013 pending before Hon'ble High Court is not applicable in the present case is concerned. I clarified that the aforesaid subject matter is pertaining to the interpretation of Regulation 4.1.17 of the Supply Code and related matters Regulations and Hon'ble High Court in SCA No. 464/2013 has held that the adjoining premises are required to be merged as per the aforesaid provisions with consideration of facts of the above case. However in LPA No. 1483/2013, Hon'ble High Court stayed the order passed in SCA No. 464/2013 through an interim order dated 06.01.2014. Thus LPA 1483/2013 is pending before Hon'ble High Court.

Therefore, there is no final decision of Hon'ble High Court in above subject matter. Thus the issue involved in the present representation i.e. merger of premises is pending before Hon'ble High Court.

On above grounds the present review representation is not entertained and rejected.

- 4.4. I order accordingly.
- 4.5. No order as to costs.
- 4.6. With this order, representation/Application stands disposed of.

(Dilip Raval)  
Electricity Ombudsman  
Gujarat State

Ahmedabad.  
Date: 19.02.2016.