

**MADHYA PRADESH ELECTRICITY REGULATORY  
COMMISSION  
BHOPAL**

**Sub: In the matter of order dated 10.01.2019 passed by MPERC under Regulation 5.3 of MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revision-I, Regulations 2009) and judgment of Hon'ble High Court of Madhya Pradesh, dated 26.09.2022 in Writ Petition no. 16854 of 2022.**

**ORDER**

**(Hearing through video conferencing)  
(Date of Order: 08<sup>th</sup> May 2023)**

**The Managing Director,**  
M.P. Madhya Kshetra Vidyut Vitaran Co. Ltd.,  
Bijli Nagar Colony, Govindpura, Bhopal

Vs.

**M/s Girija Colonisers and Developers,**  
Hotel Suredra Vilas, 240 Zone I,  
MP Nagar, Zone- I, Bhopal

- **Applicant**

- **Respondent**

Shri D.P. Ahirwar, CGM, Shri Rakesh Kapil, EE, Shri Chandra Kumar Valeja and Shri Hitesh Valeja, Advocate appeared on behalf of the Applicant.

Shri Vivek Malhotra, and Shri Anurag Bisaria, Advocate appeared on behalf of Respondent.

The subject matter has been taken up by the Commission in compliance of judgment passed by Hon'ble High Court of M.P. on 26.09.2022 in Writ Petition no. 16854 of 2022 filed by the Managing Director, MPMKVVCL, Bhopal, after a letter issued by the Commission on 10.01.2019, on his representation under Regulation 5.3 of MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revision-I, Regulations 2009). The brief facts of the matter are as follows: -

- i. Respondent herein, M/s Girija Colonizers & Developers, is a builder and had constructed a colony named "Surendra Manik" situated in Bhopal. For the completion and development of this colony, Respondent applied for external electrification of the colony under 100% deposit scheme and since there was urgency, Respondent deposited the charges. After the completion of work, Respondent preferred an application before Electricity Consumers Grievances Redressal Forum, Bhopal (hereinafter referred as ECGRF), Bhopal to obtain refund of the aforementioned charges claiming the same as contrary to regulation 4.1.3 of MPERC (Recovery of Expenses and other Charges for providing Electricity Line or Plant used for the purpose of giving Supply) Regulations (Revision-I), 2009.

This application, submitted under Section 42(5) of the Electricity Act of 2003, was registered as case no. "BT/41" at ECGRF, hearings of which were held on 05.04.2018,

21.04.2018, 21.05.2018, 14.06.2018 and 07.07.2018. The ECGRF allowed the application of Respondent vide order dated 16.07.2018.

ii. Relevant abstract of ECGRF order dt. 16.07.2018 is reproduced below: -

- (क) आवेदक द्वारा उसकी कॉलोनी को विद्युत प्रदाय के लिये प्रणाली आवर्धन कार्यों को छोड़कर आवश्यक विस्तार कार्यों की लागत ही अनिवार्य रूप से वहन किया जाना है।
- (ख) आवेदक की कॉलोनी को विद्युत आपूर्ति की व्यवस्था, अनावेदक द्वारा एक समुचित क्षमता के 33/11 के.व्ही. उपकेन्द्र के माध्यम से की जाना है, जिसकी संस्थापना के प्रभारों का भुगतान आवेदक द्वारा ही किया जाना है। किन्तु, कॉलोनी का संयुक्त भार 2000 किलोवॉट से कम होने पर आवेदक की इस उपकेन्द्र संस्थापना हेतु प्रभारों का भुगतान नहीं करना है तथा केवल प्रणाली विकास लागत (Supply Development Cost) रुपये 500/-प्रति किलोवॉट की दर से कुल संयुक्त भार के लिये प्रभारों का भुगतान किया जाना है, अर्थात् प्रणाली विकास लागत हेतु प्राप्त प्रभारों की प्राप्ति के बाद 33/11 के.व्ही. उपकेन्द्र की संस्थापना के प्रभार अनावेदक द्वारा स्वयं वहन किये जाने हैं। किसी तकनीकी अथवा वित्तीय कारण से यदि अनावेदक पृथक 33/11 के.व्ही. उपकेन्द्र की संस्थापना न करते हुए विद्यमान पावर ट्रांसफार्मर की क्षमता वृद्धि (आवर्धन) का निर्णय लेता है, तो इस कार्य के प्रभारों को भी अनावेदक को वहन करना होगा और वह इन प्रभारों को आवेदक से प्राप्त करने के लिये पात्र नहीं है।
- (ग) चूंकि विनियम 2009 (Regulations 2009 RG 31(I)) की कंडिका 6.1.1 (स) के अनुसार प्रणाली विकास लागत रुपये 500/-प्रति किलोवॉट की दर से आवेदक से प्राप्त प्रभारों को निक्षेप कार्यों (Deposit Work) हेतु वसूल की गई लागत के रूप में माना जाना है। अतः कॉलोनी के विद्युतीकरण/विद्युत आपूर्ति से संबंधित प्रभारों के अलावा आवश्यक निक्षेप कार्यों (Deposit Work) के लिये आवेदक द्वारा कोई अन्य प्रभार देय नहीं है, अर्थात् अनावेदक विद्यमान पावर ट्रांसफार्मर की क्षमता वृद्धि (आवर्धन) का कार्य, आवेदक के व्यय पर पूर्ण जमा योजना में स्वीकृत नहीं कर सकता है और न ही आवेदक को ऐसे कार्यों के प्रभारों का भुगतान किये जाने हेतु कोई मांग-पत्र जारी कर सकता है।

iii. The aforementioned order passed by ECGRF was represented by the present Applicant i.e., MPMKVVCL, Bhopal before the Commission as per clause 5.3 of the MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revision-I, Regulations 2009) vide letter dated 04.12.2018. In its application, MPMKVVCL broadly stated as under: -

“प्रकरण के संक्षिप्त में तथ्य इस प्रकार है कि आवेदक ने शिकायत निवारण फोरम के समक्ष एक प्रकरण क्रं बी.टी. 41/2018 इस आधार पर प्रस्तुत किया था कि उसके द्वारा बाह्य विद्युतीकरण हेतु ट्रांसफार्मर की क्षमता वृद्धि 5 MVA to 8 MVA करने के मद में राशि रुपये 39,61,517/- का दिनांक 30.03.2017 को मांग पत्र जारी कर विधि सम्मत न होते हुए भी राशि जमा करायी गयी। उक्त मांग पत्र को अवैध घोषित कर और उक्त जमा की गयी राशि रुपये 39,62,517/- मय ब्याज के वापस दिलायी जावे। जिसका उत्तर आवेदक की ओर से फोरम के समक्ष प्रस्तुत कर निवेदन किया गया था कि “आवेदक ने जब अनावेदक के कार्यालय में augmentation of Power Transformer from 5 MVA to 8 M VA at 33/11 KV Substation of Vallabh Nagar, of City Division West Bhopal के समक्ष प्रस्तुत किया था, जिसकी स्वीकृति 5 प्रतिशत जमा योजना अर्न्तगत Augmentation of Power Transformer from 5 MVA to 8 M VA at 33/11 KV Vallabh Nagar Substation से स्वीकार कर अनावेदक द्वारा आवेदन पत्र के माध्यम से दी गई थी तथा अनावेदक कंपनी द्वारा 30.03.2017 को स्टीमेट स्वीकृत कर 39,62,517/- का पुनरीक्षित डिमाण्ड नोट जारी किया गया था। जिसे आवेदक ने बिना किसी शर्त के समस्त तथ्यों को स्वीकार कर जमा कर दिया था और पूर्ण रूप से सहमति दी थी, जो आवेदक पर

बंधनकारी है, जो म.प्र. विद्युत नियामक आयोग द्वारा जारी रेग्युलेशन रिवीजन फस्ट 2009 के आधार पर जारी किया गया था। उक्त अधिनियम के प्रावधान अनुसार कंडिका 4.1.3 के उप कंडिका 3 को फोरम के समक्ष रिप्रोड्यूस किया गया था। इस प्रकार यह भी निवेदन किया गया था कि फोरम के समक्ष आवेदक ने अपने भाग पर गलत निर्वचन किया है कि वह उक्त भुगतान हेतु उत्तरदायी नहीं है, जबकि म.प्र. विद्युत प्रदाय संहिता 2013 की कंडिका 4.3 जो निम्नानुसार प्रावधानित करती है “the cost of extension of upgradation of the system up to the point of supply for meeting demand of new consumers along with supply affording charges etc. shall be payable by the consumer” उपरोक्त प्रावधान अनुसार कॉलोनी विकसित करने वालों को ही एक्सटेंशन की कास्ट अदा करनी होती है, परंतु आवेदक द्वारा उक्त प्रावधान का गलत निर्वचन किया गया है कि रूपये 39,62,517/- सब स्टेशन स्थापना के लिए प्राप्त किए गए हैं जो पूर्णतः गलत है, परंतु जो राशि की मांग की गई है वह कंपनी द्वारा पूर्व से स्थापित सबस्टेशन में ही 5 एमवीए से 8 एमवीए भार विकसित करने के लिए augmentation की राशि ही प्राप्त की गई है जो पूर्णतः उचित एवं सही है, जिसके संबंध में आवेदक ने आवेदन पत्र द्वारा अंडरटेकिंग भी दी है, परंतु अधीनस्थ फोरम ने आवेदक द्वारा प्रस्तुत समस्त वैधानिक बिंदुओं को दरकिनारा करते हुए अपने एकपक्षीय चिंतन के आधार पर जो आदेश पारित किया गया है वह विधिक एवं बोलता हुआ आदेश नहीं है। इस कारण उक्त आदेश से व्यथित होकर आवेदक माननीय आयोग के समक्ष यह आवेदन पत्र अभ्यावेदन के रूप में निम्न आधारों पर प्रस्तुत करता है—

### आधार

1. यह कि उपभोक्ता शिकायत निवारण फोरम द्वारा प्रकरण कं बी.टी. 41/18 में पारित आदेश में यह निर्वचन करने में गंभीर वैधानिक भूल की है कि आवेदक से बिना किसी प्रावधान के जमा करायी गयी पावर ट्रांसफार्मर आर्गुमेंटेशन की राशि रूपये 39,62,517/- वापस की जाये। इस प्रकार विद्युत शिकायत निवारण फोरम होते हुए भी जिस तरह से अपने अधिकारों को विधि विपरीत प्रयोग कर जो आदेश पारित किया गया है, वह स्थिर रखे जाने योग्य नहीं है। इस प्रकार उपभोक्ता शिकायत निवारण फोरम के द्वारा पारित आदेश अभिलेख के तथ्यों एवं विधि के विपरीत होने से माननीय आयोग द्वारा हस्तक्षेप कर संशोधन किए जाने योग्य है।
2. यह कि अधीनस्थ उपभोक्ता शिकायत निवारण फोरम द्वारा यह विचार ही नहीं किया गया कि अनावेदक द्वारा पूर्व में माननीय उच्च न्यायालय जबलपुर के समक्ष रिट पीटिशन प्रस्तुत की थी, जिसमें माननीय उच्च न्यायालय द्वारा अनावेदक को उचित उपचार हेतु विद्युत उपभोक्ता शिकायत निवारण फोरम के समक्ष अपनी शिकायत प्रस्तुत करने हेतु निर्देश दिया गया था, परंतु अनावेदक ने माननीय उच्च न्यायालय द्वारा पारित आदेश दिनांक 27.02.2017 के पालन में कोई भी शिकायत आवेदक कंपनी के विरुद्ध प्रस्तुत नहीं की थी और इसके विपरीत अनावेदक ने आवेदक कंपनी के समक्ष दिनांक 01.03.2017 को आवेदन पत्र प्रस्तुत कर बाहरी विद्युतीकरण के लिये डिमाण्ड नोट पुनरीक्षण कर नया देने का निवेदन किया था, जिसे आवेदक कंपनी ने पुनरीक्षित कर दिनांक 30.03.2017 को रूपये 39,62,517/- का डिमाण्ड नोट दिया गया था, जिसे अनावेदक ने स्वीकार कर उक्त राशि को बिना किसी आपत्ति के उसी दिन जमा करने के उपरांत अनावेदक की कालोनी का पूर्ण विद्युतीकरण कर दिया। इसके पश्चात अनावेदक ने दुर्भावनापूर्वक संपूर्ण कार्य निष्पादित कराने के शिकायत अधीनस्थ फोरम के समक्ष प्रस्तुत की। परन्तु अधीनस्थ फोरम द्वारा स्वीकृत तथ्यों एवं दस्तावेजों के विपरीत जाकर, जिस तरह से मनमाने तरीके से आदेश पारित किया गया है वह विधि के प्रतिकूल होने से माननीय आयोग द्वारा हस्तक्षेप कर संशोधित किये जाने योग्य है।
3. यह कि अधीनस्थ फोरम द्वारा यह भी विचार नहीं किया गया कि अनावेदक ने जो फोरम के समक्ष विनियम 2009 की कंडिका 4.1.3(iii) का उल्लेख किया गया था। उक्त प्रावधान का निर्वचन अधीनस्थ फोरम द्वारा विधि के विपरीत मनमाने तौर पर त्रुटिपूर्ण किया है, जबकि उक्त कंडिका के प्रावधान अनुसार यदि कोई भी कालोनी की विद्युत व्यवस्था के लिये विद्युत भार 2000 किलोवाट से अधिक भार प्राप्त करने हेतु आवेदन देता है, तो उसे 33/11 kV उपकेंद्र की स्थापना हेतु उसे आवश्यक राशि नियमानुसार जमा कराया जाना आवश्यक है। चूंकि वर्तमान प्रकरण में विद्युत भार 1368 किलोवाट समाहित इस कारण आवेदक कंपनी द्वारा विद्युत व्यवस्था हेतु अनावेदक से कोई भी उपकेंद्र की स्थापना हेतु व्यय की राशि की मांग नहीं की गयी है, बल्कि पॉवर ट्रांसफार्मर की क्षमता वृद्धि की ही राशि नियमानुसार अनावेदक से जमा करायी गयी है। परंतु, अधीनस्थ फोरम द्वारा उक्त

तर्कों पर विचार न कर गंभीर त्रुटि की गयी। इस कारण अधीनस्थ फोरम द्वारा पारित आदेश स्थिर न रखे जाने योग्य होने से माननीय आयोग द्वारा हस्तक्षेप कर संशोधित किये जाने योग्य है।

4. यह कि अधीनस्थ शिकायत निवारण फोरम द्वारा वैधानिक प्रावधानों का गलत निर्वचन कर अपने एकपक्षीय चिंतन के आधार पर आदेश पारित किया गया है। क्योंकि अधीनस्थ फोरम द्वारा माननीय आयोग द्वारा जारी नियम (iii) *The supply shall be arranged through a separate Distribution Sub-station of adequate capacity. However, if combined load of the Complex/Colony is not more than 2000 KW, charges @ Rs. 500 per KV shall be levied towards systems Development cost. Such Applicant (s) shall not be required to pay charges for installation of 33/11 kV Sub-station. If combined load of the Complex/Colony is more than 2000 kW, the applicant (s) is/are required to pay charges for installation of 33/11kV Sub-station of required capacity towards system Development.* निर्देश के विपरीत जाकर जो आदेश पारित किया गया है वह विधि विपरीत होने से किसी भी सूरत में स्थिर रखे जाने के योग्य नहीं है एवं माननीय आयोग द्वारा हस्तक्षेप कर संशोधन किए जाने योग्य है।
5. यह कि अधीनस्थ फोरम द्वारा गंभीर अनियमितताएं कर ऐसी अधिकारिता का प्रयोग किया गया है, जो विधि तथा अधिनियम द्वारा निहित नहीं है। क्योंकि जिस तरह अधीनस्थ फोरम होते हुए भी यह निर्वचन किया जाना कि दबाववश प्राप्त की गयी राशि स्वंत्रत सम्मत न होकर असम्यक असर से की गयी सम्मत ही मानी जायेगी। परंतु, अधीनस्थ फोरम को आवेदक द्वारा प्रस्तुत नियम एवं तर्कों के आधार पर स्पष्ट एवं बोलता हुआ आदेश पारित किया जाना चाहिए था। परंतु अधीनस्थ फोरम द्वारा जिस तरह से एक पक्षीय चिंतन के आधार पर आदेश पारित किया गया है, उक्त आदेश को बोलता हुआ आदेश नहीं कहा जा सकता, क्योंकि उक्त आदेश में विधि द्वारा सुस्थापित सिद्धांतों एवं सुस्थापित नियमों का पालन नहीं किया गया। इस कारण माननीय आयोग द्वारा उक्त आदेश में हस्तक्षेप कर संशोधन किए जाने योग्य।
6. यह कि अधीनस्थ फोरम द्वारा पारित आदेश को संशोधन किया जाना न्याय हित में किया जाना आवश्यक है, क्योंकि आवेदक ने म.प्र. विद्युत प्रदाय संहिता 2013 की कंडिका 4.3 “*the cost of extension of upgradation of the system up to the point of supply for meeting demand of new consumers along with supply affording charges etc. shall be payable by the consumer*” उपरोक्त प्रावधान अनुसार कॉलोनी विकसित करने वालों को ही एक्सटेंशन की कास्ट अदा करनी होती है। परंतु, अधीनस्थ फोरम द्वारा उक्त तथ्यों पर विचार न कर जिस तरह से मनमाने तरीके से अपने अधिकारों को दुरुपयोग कर तथा विधि द्वारा स्थापित प्रावधान को दरकिनार करते हुए एक पक्षीय चिंतन के आधार पर जिस तरह से अपने क्षेत्राधिकार के विपरीत जाकर अधिकारिता का प्रयोग कर, जो आदेश पारित किया गया है वह विधि एवं दस्तावेजी साक्ष्य के विपरीत होने से माननीय आयोग द्वारा हस्तक्षेप पर संशोधन किए जाने योग्य है।
7. यह कि अधीनस्थ शिकायत निवारण फोरम द्वारा यह विचार करने में भी गंभीर भूल की गयी है कि अनावेदक द्वारा 39,62,517/-रूपये की राशि आवेदक कंपनी द्वारा जमा करायी गयी है वह वापस की जावे, शिकायत निवारण फोरम द्वारा उक्त निर्वचन पूर्वतः विधि एवं विधान के विपरीत किया गया है। क्योंकि अनावेदक के वर्तमान प्रकरण में यह स्पष्ट है कि अनावेदक द्वारा System Development cost एवं पावर ट्रांसफार्मर Augmentation charges के मद में राशि जमा कराये जाने हेतु उस पर अनावेदक द्वारा आपत्ति के उपरांत माननीय उच्च न्यायालय के समक्ष प्रस्तुत रिट-पीटिशन के निराकरण उपरांत कोई शिकायत प्रस्तुत नहीं की गयी थी और पूर्ण स्वतंत्र सहमति से आवेदन पत्र के साथ पुनरीक्षित मांग पत्र की राशि जमा की गयी थी। उक्त राशि पर अनावेदक द्वारा जमा करते समय कोई भी आपत्ति प्रस्तुत नहीं की गयी थी, जिससे स्पष्ट होता है कि अनावेदक ने पूर्ण रूप से संतुष्ट होकर विद्युतीकरण का कार्य कराने हेतु राशि जमा की। परंतु अधीनस्थ फोरम द्वारा अनावेदक द्वारा पूर्व में प्रस्तुत की गयी आपत्ति, माननीय उच्च न्यायालय के आदेश का गलत निर्वचन कर, जो आदेश पारित किया गया है वह विधि एवं न्यायिक प्रक्रिया के विपरीत होने से माननीय आयोग द्वारा हस्तक्षेप पर संशोधन किए जाने योग्य।
8. अतः माननीय आयोग से नम्र निवेदन है कि आवेदक कंपनी द्वारा प्रस्तुत आवेदन पत्र (अभ्यावेदन) को स्वीकार कर अधीनस्थ शिकायत निवारण फोरम द्वारा पारित आदेश दिनांक 16.07.2018 जो कि

सुसंगत विधि एवं रिकार्ड पर आधारित नहीं है, का पुनरीक्षण कर शिकायत निवारण फोरम द्वारा पारित आदेश को अपास्त करने के आदेश पारित करने की कृपा करें जो न्यायहित में उचित होगा।

- iv. In the meanwhile, Respondent i.e. M/s Girija Colonizers & Developers also preferred Writ Petition no. 27244/2018 before Hon'ble High Court of MP seeking execution of order dated 16.07.2018 of ECGRF.
- v. Commission vide letter dated 10.01.2019 rejected the application dated 04.12.2018 of MPMKVVCL filed under Regulation 5.3 of MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revision-I, Regulations 2009) on the grounds that application was submitted without competent approval and also that writ petition no. 27244/2018 was pending before Hon'ble High Court for execution of the order dated 16.07.2018. The contents of the letter dt. 10.01.2019 are reproduced as under: -

*“कृपया संदर्भित पत्रों का अवलोकन करें। आपके द्वारा आवेदन बिना कम्पनी की स्वीकृति के सीधे ही आयोग को प्रस्तुत किया है। इस बाबत पूर्व में आपको संदर्भ क्रमांक – (ii) के माध्यम से यह अवगत कराया गया है कि इस प्रकार के कोई भी प्रकरण कम्पनी के माध्यम से ही प्रस्तुत किए जाए। इसके अतिरिक्त मौजूदा प्रकरण में मेसर्स गिरजा कालोनाईजर एण्ड डेवलेपर्स ने “विद्युत उपभोक्ता शिकायत निवारण फोरम, भोपाल” द्वारा प्रकरण क्रमांक बी.टी. 41/2018 (मेसर्स गिरजा कालोनाईजर एण्ड डेवलेपर्स से संबंधित) में पारित आदेश दिनांक 16.07.2018 के पालनार्थ माननीय मध्यप्रदेश उच्च न्यायालय में एक रिट-याचिका प्रस्तुत की है एवं प्रकरण माननीय न्यायालय के समक्ष विचाराधीन है। अतः इन परिस्थितियों में आयोग के द्वारा “मध्यप्रदेश विद्युत नियामक आयोग (उपभोक्ता की शिकायतों के निराकरण हेतु फोरम तथा विद्युत लोकपाल की स्थापना) विनियम 2009” यथा संशोधित कण्डिका 5.3 में प्रस्तुत विषयांतर्गत आवेदन पर कार्यवाही करना संभव नहीं है। अतः आवेदन दिनांक 04.12.2018 मूल रूप में आपको वापस भेजा जा रहा है”।*

- vi. The Applicant filed Writ Petition no. 16854 of 2022 challenging the letter dated 10.01.2019 of the Commission. Hon'ble High Court vide its order dated 26.09.2022 passed in Writ Petition no 16854/ 2022 disposed of the petition with following directions -

*“Pendency of Writ Petition at the behest of Respondent no. 1 cannot be a ground not to decide the appeal. Accordingly, the impugned order dated 10.01.2019 is hereby set aside. The matter is relegated back to MPERC for deciding the appeal filed by the present Petitioner by passing a reasoned and speaking order in accordance with law”.*

2. In compliance of the order dated 26.09.2022 of Hon'ble High Court, the matter was listed for hearing on 09.01.2023.
3. At the motion hearing held on 9<sup>th</sup> January 2023, Applicant requested time for submission of a fresh representation in the matter. The Applicant was granted two weeks' time for the same and was directed to serve the copy of the representation to the Respondent. The Respondent was directed to submit its reply on the same within one week thereafter. The Applicant was also

allowed to file a rejoinder, if necessary, within a week thereafter but in any case, before the next date of hearing. The case was fixed for hearing on **07.02.2023**

4. During the course of hearing held on 07.02.2023, the Commission had noted that Applicant had served a copy of representation made before the Commission under clause 5.3 of the MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievance of Consumer) Regulations, 2009 to the Respondent on 20.01.2023 but Respondent had not submitted its response to the Commission. Respondent requested for time to submit the response. Commission directed Respondent to submit its reply on the representation to the Commission within 7 days with a copy to Applicant and one week time was allowed to Applicant to file a rejoinder thereafter. The case was fixed for arguments on **07.03.2023**
5. During the course of hearing held on 07.03.2023, Respondent requested time of one week for arguments. Applicant also agreed for arguments in next hearing. Having heard the parties, Commission directed to list the case for arguments on **14.03.2023**.
6. Applicant MPMKVCL has not made any fresh submission but filed a copy of its original Application dated 04.12.2018 filed earlier before this Commission with a wrong date of 01.12.2018. Applicant also provided a copy of it to Respondent.
7. In its response to the aforesaid Application, Respondent M/s Girija Colonisers has submitted as under:

***“A. Preliminary Objections***

***I. The law does not provide for such an application***

*5. The applicant purports to have preferred the Application under regulation 5.3 of the MPERC (Establishment of Forum an Electricity Ombudsman for redressal of grievances of the consumers) (Revision-I) Regulations, 2009 (the “2009 The Regulations”)*

*6. The said 2009 Regulations, read with all amendments thereto, stand **repealed** vide regulation 5.15 of the MPERC (Establishment of forum an electricity Ombudsman for redressal of grievances of the consumers) (Revision-II) Regulations, 2021 notified on 30.07.2021 (the “2021 Regulations”).*

*7. That the 2021 Regulations were made by this Hon’ble Commission with the following objects and reasons:*

***Chapter 1: Introduction***

*The MPERC recognizes that need has arisen to revise the existing regulations to align with Electricity (Rights of Consumers) Rules, 2020 notified on 31.12.2020 by the Ministry of power, Govt of India to ensure further improvement of consumers services as also provide for timely and satisfactorily resolutions of consumers grievances.*

*8. That the 2021 Regulations do not contain any provision corresponding to Regulation 5.3 of the repealed 2009 Regulations and, in fact, quite to the contrary, expressly provide vide regulation 3.29 for the absolute finality, as against the Distribution Licensee, of the orders of the Forum.*

*9. Regulation 3.29 or the 2021 Regulations provides inter alia that the directions issued by the Forum shall be binding on the Distribution Licensee, who shall comply with the order of the Forum within a period of forty –five (45) days from the date of receipt of the order.*

*10. Regulation 3.29 of the 2021 Regulations has been made with the intent of*

preventing the mischief of the misuse of regulation 5.23 of the repealed 2009 Regulations by Distribution Licensee, as is amply evident in the instant matter.

11. Further, it is pertinent to note that the 2021 Regulations do not provide for saving of any proceedings that was initiated and is pending under the repealed 2009 Regulations and, also because it is procedural in nature, shall have retroactive application and effect.

12. That the 2021 Regulations is a beneficial piece of legislation that is to be interpreted in a manner that would protect and promote the interests of the complainants in consonance with the objects and purpose thereof and aligned with Electricity (Rights of Consumers) Rules, 2020 notified on 31.12.2020.

13. That the Applicant concealed this vital fact from the Hon'ble HC in his WP No. 16854 of 2022 and is thus, among other things, guilty of *suppresio veri*.

## **II. Copy of relevant representation of the Applicant has not been served upon the Respondent**

14. This Hon'ble Commission in para 5 of its Daily Order dated 09.01.2023 was pleased to direct as follows:

5. During the course of hearing today the Applicant requested time for submission of a **fresh representation in the matter**. The applicant is granted two weeks' time for the same and is directed to **serve the copy of the same to the Respondent**. [...]

15. The Applicant, however, has egregiously failed and omitted to abide by the aforesaid directions of this Hon'ble Commission and- in yet another instance of his flip-flop in the matter – chose, arbitrarily and unilaterally, to serve a copy of its 'supplementary application' dated 04.12.2018 (the "**Impugned Application**") upon the Respondent.

16. The Respondent craves the liberty to file a full and formal reply if and when a complete copy of the said 'fresh representation' is provided by the Distribution Licensee to the Respondent.

## **III. Impugned Application has become infructuous**

17. On 09.01.2023, the Applicant – for reasons best known to himself – chose to not press and withdraw the Impugned Application, which fact is clearly recorded at para 5 the Daily Order dated 09.01.2023 of this Hon'ble Commission (relevant portion is quoted at para 14 hereabove).

18. That, the Impugned Application, by necessary implication and effect of the said withdrawal, has since become infructuous and is non est in the eyes in law.

19. That, the Applicant is liable for abuse of the process of this Hon'ble Commission in playing fast and loose with his application, as is apparent from his conduct in the matter as follows:

Date	Application	Remarks
16.11.2018	Application filed by the Applicant vide letter no. AGM/CDW/Legal/3587	Copy not served upon the Respondent
04.12.2018	'Supplementary Application' filed by the Applicant vide letter No. 18-19/4162	The Impugned Application
09.01.2023	Applicant withdraws the Impugned Application and seeks leave to file ' <u>fresh representation</u> ' in the matter	Copy of such ' <u>fresh representation</u> ' also not served upon the Respondent
14.03.2023	Applicant seeks to argue his Impugned	Applicant did not seek the

	Application dated 04.12.2018	leave of this Hon'ble Tribunal for the restoration (if permissible in law, which is denied) of his Impugned Application
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20. That the Applicant cannot be heard on the Impugned Application which already stands disposed of as withdrawn and not pressed.

**IV. Applicant has no locus**

21. Regulation 5.3 of the repealed 2009 Regulations provides for an application to be filed only by the Complainant or the Licensee Company and by no other person.

22. It is settled law that “if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.”

23. It is trite law that a company has a separate and distinct legal personality than that of its shareholders, directors, and officers. The law does not provide for any application/representation by the MD of a Licensee Company against any order of the Ld. Forum.

24. However, the Impugned Application is admittedly preferred by the ‘Managing Director’ of Distribution Licensee company, who clearly was not an eligible person to prefer an application under regulation 5.3 of the repealed 2009 Regulations.

25. That, this Hon’ble Commission had at least twice notified the Applicant of this fatal defect in the Impugned Application vide the following letters:

- a. Letter no. MPERC/RE/2019/52 dated 09.01.2019; and
- b. Letter no. 58/MPERC/A&V/2019 dated 10.01.2019, where the relevant portion reads as follows:  
“Your application has been submitted directly to the Commission without the approval of the company. In this regard, you have been informed earlier through reference number- (ii)- that any such cases should be presented through the company only.

26. That this Hon’ble Commission, vide its letter referred to at para 25.b hereabove, returned the Impugned Application on two distinct grounds, namely:

- a. An application under regulation 5.3 is required to be filed by the Distribution Licensee (in contradistinction to the Applicant, Managing Director); and
- b. A writ Petition filed by the Respondent for execution of Ld. Forum’s order dated 16.07.2018 in BT 41/2018 is pending adjudication before the Hon’ble High Court (WP No. 27244/2018).

27. In this regard, it is pertinent to note that the order dated 26.09.2022 of the Hon’ble High Court of Madhya Pradesh in WP No. 16854 of 2022 is in the context of, and limited only to, the effect, if any, of the pendency of WP 27244 of 2018 on the instant proceedings before this Hon’ble Commission (i.e., the ground taken by the Applicant in WP No. 16845 of 2022).

28. That, the Applicant willfully chose not to cure the defect referred to at para 26.a hereabove- insofar as it was permissible in law – at his own peril whereby the Applicant before this Hon’ble Commission has no locus to prefer an application under regulation 5.3 of the repealed 2009 Regulations.

**V. Impugned Application is barred on grounds of limitation**

29. Regulation 5.3 of the repealed 2009 Regulations inter alia provided that an application thereunder can only be made within a period of **thirty (30) days** from the date of receipt of



order.

30. That the Impugned Application is ex-facie dated 04.12.2018, which is **One Hundred Forty-One (141) days** from the date of the final order of the Ld. Forum in BT 41/2018.

31. Thus, the Impugned Application was evidently made way beyond the prescribed period of limitation in this regard. Further, the Applicant has never even sought for the condonation of delay in making the Impugned Application let alone demonstrate 'sufficient cause' for the same.

32. That, the power conferred upon this Hon'ble Commission under regulation 49 of the MPERC (Conduct of Business) (Revision-I) Regulations, 2016 only apply to the said regulations and would not respectfully, be availed for extension or abridgment of time specified by the repealed 2009 Regulations. Further, the inherent powers of this Hon'ble Commission cannot be invoked by a party de hors the express provisions of law.

#### **VI. Contraventions of MPERC (Conduct of Business) (Revision-I) Regulations, 2016**

33. The Impugned Application is in contravention of the mandatory provisions of the MPERC (Conduct of Business) (Revision-I) Regulations, 2016 including, among others, the following:

- a. Regulation 12 (Affidavit in support): the Impugned Application has not been verified in the prescribed form; and
- b. Regulation 13(2) (Payment of fees)- the Applicant has failed and omitted to pay the fee specified by this Hon'ble Commission along with the Impugned Application.<sup>1</sup>

#### **VII. Impugned Application is not an appeal**

34. That the Applicant, in his WP No. 16854 of 2022 before the Hon'ble HC, has dishonestly characterized the Impugned Application to be in the nature of an appeal which is manifestly false and incorrect.

35. It is trite law that an appeal, being a substantive right, is a creation of statute. Right to appeal does not exist unless it is specifically conferred in law.

36. That, the repealed 2009 Regulations, purportedly relied upon by the Applicant in making the Impugned Application, do not provide for an appeal against any order of the Ld. Forum.

37. Thus, the Applicant is guilty of suggestio falsi and has fraudulently obtained the order dated 26.09.2022 of the Hon'ble High Court of Madhya Pradesh in WP No. 16854 of 2022.

#### **B. On Merits**

38. The Applicant has sought to make detailed submissions on merits, but since the instant proceedings are not in the nature of an 'appeal' (ref. paras 34 to 37 hereabove), it is respectfully submitted that a reappreciation of the evidence is beyond the scope of instant proceedings.

39. Thus, only for the sake of completeness, the Respondent:

- a. Reiterates and adopts the entirety of its submission before the Ld. Forum in BT 41/2018, which shall be deemed stated, submitted, and incorporated in toto herein by reference thereto; and
- b. Categorically denies the contents of Impugned Application that are contrary to or inconsistent with the submission of the Respondent hereunder as if the same are specifically set out and traversed herein.

40. Without prejudice to generality of the foregoing, the Respondent states and submits that:

- i. The demand letter of Distribution Licensee, MPMKVVCL, dated 30.03.2017 for

*Rs 39,62,517/- is patently illegal and in contravention of the MPERC (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations (Revision-I), 2009 (the “Recovery Regulations”).*

- ii. *Regulations 4.1.3 of the Recovery Regulation makes it mandatory for the Distribution Licensee to arrange the supply of the Respondent’s colony ‘Surendra Manik’ through ‘a separate Distribution Sub-station’ of adequate capacity and, where the combined load of the colony is not more than 2000 kW (as is admittedly the case with Surendra Manik colony) not require the Respondent to pay charges for installation of 33/11 kV Sub-station.*
- iii. *The Distribution Licensee’s own calculations confirm that installation of a new 1.8 MVA sub-station would have sufficed to meet the requirements of the Surendra Manik colony.<sup>2</sup>*
- iv. *However, the Distribution Licensee, unilaterally and arbitrarily, decided to supply electricity to the said ‘Surendra Manik’ Colony from an existing sub-station.<sup>3</sup> (instead of a separate sub-station as is mandatorily required under the aforesaid regulation 4.1.3) and thereafter, under the guise of ‘augmenting the power transformer, extortionately charged the Respondent for the full cost of installing a new 8 MVA transformer at the said existing sub-station, even though its own calculations indicate that supply to Surendra Manik Colony would only be requiring a small portion (less than 25%) of the capacity of such 8MVA transformer.*
- v. *A typical distribution sub-station comprises transformer, bus-bar, conductor, breaker, isolator, protection devices, etc.<sup>4</sup> Thus, the aforesaid regulation 4.1.3 expressly prohibits the Distribution Licensee from charging the costs of sub-station (or a portion thereof, more particularly that of a transformer which is a major portion of the cost of a sub-station) from the Respondent.*
- vi. *Whilst the two categories provided under regulation 4.1.3 of the Recovery Regulations (i.e., category-1: not more than 2000 kW and category-2 more than 2000 kW) are clearly mutually exclusive, yet the Distribution Licensee, on its whims and fancies, has illegally compelled the Respondent to pay charges under both the said categories.*
- vii. *The so called ‘consent letter’ was evidently obtained from the Respondent under duress and with mala fide and oblique motives considering inter alia that there is no requirement of such a ‘consent letter’ in law and that the Distribution Licensee, despite being repeatedly asked before the Ld. Forum, failed to produce any other such other letter that it may have obtained from other similarly situated applicants for new connections, to establish that this is indeed the standard operating procedure of the Distribution Licensee.*
- viii. *Regardless of the validity, or otherwise, of the said ‘consent letter’ the Distribution Licensee cannot demand any cost, charge, fee, etc. from the Respondents de hors the express provisions of law or in contravention thereof.*

*41. That, the Respondent craves the leave of this Hon’ble Commission to:*

- a. *Refer to and rely upon the record of case no. BT 41/2018 before the Ld. Forum;*
- b. *Aver facts and produce evidence, documentary as well as oral, for the effective adjudication of the instant matter;*
- c. *Add/alter/amend/modify the present submission as and when required during the course of proceedings; and*
- d. *File any other and further application as and when required during the course of the proceedings.*

### **C. Prayers**

*42. In the foregoing premises, it is respectfully submitted that there are no reasons for this*

*Hon'ble Commission to interfere with the detailed and speaking order passed by the Ld. Forum dated 16.07.2018 in BT 41/2018, whereby this Hon'ble Commission may be pleased to:*

- a. Dismiss the Impugned Application in limine with exemplary costs;*
- b. Direct the Distribution Licensee to forthwith comply with the order dated 16.07.2018 if the Ld. Forum in BT 41/2018 and thereby refund a sum of Rs 39,62,517/- along with interest at the rate of 9% p.a. from the date of the said order till the date of realization of the said amount in full by the Respondent; and*
- c. Proceed against the Distribution Licensee, MPMKVCL, in accordance with sections 142 read with section 146 of the Electricity Act, 2003 for its willful and contumacious contravention of the provisions of the Electricity Act, 2003 or the rules or regulations made thereunder.*

8. At the last hearing held on 14.03.2023 the arguments were completed by Applicant and Respondent. Three days' time was granted to both the parties to file additional submission in writing, if any. The case was closed for orders.

### **Commission's Observations and Findings:**

9. Commission noted that none of the parties made any additional submission during the time allowed for the same. Commission therefore proceeded on the basis of the submissions already made by the parties. Commission further noted that the dispute is only regarding the recovery of cost of augmentation of 5 MVA transformer to 8 MVA transformer at 33/11 kV sub-station of Applicant in connection with outer electrification of colony of Respondent.

10. Commission observed that the Applicant has not made any new submission through its letter dated 01.02.2023 but re-submitted its application which was made before the Commission under clause 5.3 of the MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievance of Consumer) Regulations, 2009. The grounds of representation by the petitioner in its application dated 04.12.2018 are as under: -

- i. That the respondent submitted application for augmentation of power transformer from 5 MVA to 8 MVA at 33 /11 kV Vallabh Nagar sub-station, Bhopal under deposit scheme for which consent was given by the respondent through affidavit which is binding on the respondent.
- ii. That the demand of charges for augmentation of power transformer from 5 MVA to 8 MVA at 33 /11 kV Vallabh Nagar sub-station, Bhopal under deposit scheme was issued as per the provisions of clause 4.3 of the Supply Code, 2013 which stipulates that the cost of extension of upgradation of the system up to the point of supply for meeting demand of new consumers alongwith supply affording charges etc. shall be payable by the consumer.
- iii. That the ECGRF ignored the provisions of clause 4.3 of Supply Code, 2013 and clause 4.1.3 of MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009 while passing the order dated 16.07.2018.

11. The respondent vide his affidavit dated 16.03.2023 has raised many maintainability issues and also made submission on merit.
12. We would first deal with the maintainability issue. The Commission had notified MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievance of Consumer) Regulations, 2009 on 28.08.2009. The application dated 04.12.2018 submitted by the Applicant under Clause 5.3 of the said regulations was not considered by us and rejected vide letter dated 10.01.2019 as the execution petition no. 27244/2018 filed by the Respondent before Hon'ble High Court in the same matter was pending. We have further noted that the Applicant also preferred a Writ Petition no. 16854/2018 before Hon'ble High Court challenging the order dated 16.07.2018 of ECGRF and letter dated 10.01.2019 of this Commission. Hon'ble High Court vide its order dated 26.09.2022 passed in petition no 16854/2018 has relegated back the matter to Commission for deciding the appeal filed by the present Applicant by passing a reasoned and speaking order in accordance with law. Commission has noted that Respondent has not challenged the said order dated 26.09.22 of Hon'ble High Court. Commission has also noted that the dispute in the instant case is regarding interpretation of Commission's regulations namely Madhya Pradesh Electricity Supply Code, 2013 and MPERC (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations (Revision-I), 2009. This Commission is the appropriate body having jurisdiction to interpret its Regulations in such matters. In light of above, we are of the considered view that there is no need to deal with each and every issue raised by Respondent on maintainability and we hold that the hearing in the case as per order dated 26.09.22 of Hon'ble High Court is maintainable.
13. Now, we shall deal with the matter as per law in the light of provisions contained in the Madhya Pradesh Electricity Supply Code, 2013 and MPERC (Recovery of Expenses and other Charges for providing Electric Line or Plant used for the purpose of giving Supply) Regulations (Revision-I), 2009. The observations are as under: -
  - i. The Respondent i.e. M/s Girija Colonizers submitted an application to Applicant i.e. MPPKVVCL, Bhopal on 28.02.2015 for outer electrification of the residential colony with estimated load of 1368 kW.
  - ii. Applicant raised a demand note of Rs 1374798/- for estimated load of 1368 kW which included payment towards system development charges @Rs 500 / kw of estimated load, supply affording charges and supervision charges.
  - iii. As per approved estimate, the existing 5 MVA transformer at 33/11 kV S/s was to be augmented to 8 MVA at an estimated cost of Rs 4420725/- for which also, demand was raised by Applicant to the Respondent. This demand was subsequently revised to Rs 3962517/- on 30.03.2017.
  - iv. The Respondent paid the revised demand of Rs 3962517/-. Subsequently, Respondent made a complaint with ECGRF against the demand of Rs 3962517/- towards augmentation cost of 33 kV sub-station from 5 MVA to 8 MVA demanded by MPPKVVCL for outer

electrification of their colony “Surendra Manik”. The case was registered as BT-41 by the ECGRF.

- v. The Respondent had submitted before ECGRF that the demand on account of augmentation of sub-station was paid under protest and under duress as the work was getting delayed and that such charges were not leviable as per the provisions of clause 4.1.3 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2013.
- vi. Applicant had submitted in its reply before ECGRF that the demand was paid by the Respondent without any protest with affidavit for agreeing with the demand. The Applicant further submitted that the demand was made based on clause 4.3 of the Supply Code, 2013 and sub-clause (iii) of clause 4.1.3 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2013.
- vii. The ECGRF in its order dated 16.07.2018 observed that clause 4.3 of the Supply Code, 2013 does not have any provisions to recover the cost of augmentation of existing capacity of 33 kV transformer at sub-station. ECGRF further observed that since the application was for outer electrification of the Colony and load of the colony was 1368 kW which was less than 2000 kW, therefore, as per the provisions in sub-clause (iii) of clause 4.1.3 of MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009, no cost recovery towards installation of new transformer or augmentation of transformer was permissible and the Licensee was only entitled to recover supply affording charges and system development charges. The ECGRF mentioned that for such cases when the load for outer electrification of colony was less than 2000 kW, the work was to be executed using the funds accumulated as per regulation 6.1.1 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009.
- viii. Commission noted that both Applicant and Respondent had interpreted the regulatory provisions in their favour. Despite order of ECGRF, Applicant is not satisfied with the interpretation made by the ECGRF of the relevant regulatory provisions. We would therefore discuss the relevant provisions of applicable regulations and settle the issue.
- ix. We shall first discuss the provisions of clause 4.3 of the Supply Code, 2013 which is reproduced as under: -

*“The cost of extension of distribution mains and/or extension /upgradation of the system up to the point of supply for meeting demand of new consumers along with supply affording charges etc. shall be payable by the consumer **as per the provisions made in MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009.**”*

*{emphasis supplied}*

Commission observed that the clause 4.3 of Supply Code, 2013 did not have any specific provisions regarding recovery of cost of extensions/upgradations for different categories of consumers in itself but stipulates clearly that the cost of extensions/ upgradations shall be payable by the consumer as per the provisions made in MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009. **Commission thus holds that the Applicant misinterpreted the provisions of clause 4.3 of the Supply Code, 2013 while recovering cost of augmentation of 33 kV sub-station.**

- x. Now, we shall discuss the provisions of sub-clause (iii) of clause 4.1.3 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009 which is reproduced as under: -

*“4.1.3 (iii) The supply shall be arranged through a separate Distribution Sub-station of adequate capacity. However, if combined load of the Complex/Colony is not more than 2000 kW, charges @ Rs. 500 per kW shall be levied towards System Development cost. Such Applicant(s) shall not be required to pay charges for installation of 33/11 kV Sub-station. If combined load of the Complex/Colony is more than 2000 kW, the Applicant(s) is/are required to pay charges for installation of 33/11kV Sub-station of required capacity towards System Development.”*

*{emphasis supplied}*

Commission observes that the above clause clearly specifies that, if combined load of the Complex/Colony is not more than 2000 kW, charges @ Rs. 500 per kW shall be levied towards system development cost and such consumer shall not be required to pay charges for installation of 33/11 kV Sub-station. Since the estimated load of the Colony of the Respondent was only 1368 kW, Respondent was not required to pay charges for augmentation of 33/11 kV sub-station. **The Applicant grossly erred while recovering cost of augmentation of existing 33 kV sub-station from 5 MVA to 8 MVA from the Respondent in contravention to the provisions of the sub-clause (iii) of clause 4.1.3 of the MPERC (Recovery of expenses and other charges for providing electric line or plant used for the purpose of giving supply) (Revision-I) Regulations, 2009 prevailing at that time.**

14. In light of the above observations, Commission does not find any irregularity in the order dated 16.07.2018 of ECGRF passed in BT No. 41/2018 with regard to charges payable by the Respondent. The case is disposed of accordingly. Commission Secretary is directed to serve a copy of this order to Applicant, Respondent and ECGRF, Bhopal.

**(PK Chaturvedi)  
Member**

**(Gopal Srivastava)  
Member(Law)**

**(S.P.S. Parihar)  
Chairman**