

## **Gujarat Electricity Regulatory Commission (Establishment of Ombudsman) Regulations, 2004**

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## **Gujarat Electricity Regulatory Commission (Establishment of Ombudsman) Regulations, 2004**

In exercise of the powers conferred under Sec. 181 read with sub-sec. (6) of Sec. 42 of the Electricity Act, 2003 (36 of 2003) and all powers enabling it in that behalf, the Gujarat Electricity Regulatory Commission hereby makes the following Regulations providing for the appointment and functioning of an Ombudsman in the State of Gujarat for redressal of grievances of consumers.

#### CHAPTER 1

##### Preliminary

### **1. Short Title, Extent and Commencement :-**

(i) These Regulations may be called the Gujarat Electricity Regulatory Commission (Establishment of Ombudsman) Regulations, 2004.

(ii) These Regulations extend to the whole of the State of Gujarat.

(iii) These shall come into force on the date of their publication in the Gazette.

#### CHAPTER 2

##### Definitions and Interpretations

### **2. Definitions and Interpretation :-**

(1) In these Regulations, unless the context otherwise requires :

(a) "Act" means the Electricity Act, 2003 (36 of 2003).

(b) "Commission" means the Gujarat Electricity Regulatory Commission.

(c) "Complainant" means any (a) Consumer or Consumers including their legal heirs or successors, having a Complaint against a Licensee and lodging the same either directly or through their representatives; or (b) any voluntary consumer association or associations, registered under the law for the time being in force and making the Complaints in the larger interest of the Consumers; or (c) any Consumer(s)/voluntary consumer association(s) where the Licensee does not register or fails to register the Complaint of such Consumer(s)/voluntary consumer association(s); or (d) any person whose electricity connection is disconnected; or (e) an applicant for a new connection for the supply of electricity.

(d) "Complaint" means any complaint made by a Complainant, either in writing, including e-mail and facsimile modes, or verbally

over phone if such numbers are specified by a Licensee for lodging complaints, or by visiting personally such offices of the Licensee which are designated by the Licensee for registering the complaints, to a Licensee, which may, without limitation, include complaints relating to:

(i) any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by the Licensee in pursuance of a licence and/or any contract or agreement or under the Electricity Supply Code or in relation to Standards of Performance of Licensees, as may be specified by the Commission;

(ii) any unfair trade practice or a restrictive trade practice which has been adopted by the Licensee in providing Electricity Service; or

(iii) Electricity Services which are being offered for use to the public in contravention of the provisions of any applicable law including safety code, rules and regulations, as prescribed by competent authorities under the relevant laws or established through prudent industry practices, and as a result whereof the life and safety of the human beings, livestock or property is put at risk and endangered.

(g) "Electricity Service" includes supply, billing, metering and maintenance of electrical energy to the consumer and all attendant sub-services and also any other service which a Licensee is required to provide pursuant to his license or under any applicable law.

(h) "Forum" means the forum for redressal of grievances of the consumers to be constituted by the Licensee in terms of sub-sec. (5) of Sec. 42 of the Act and in accordance with the Guidelines.

(i) "Grievance" shall mean a grievance of the Consumer arising out of the failure of the Licensee to register or redress a Complaint, and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a Complaint.

(k) "Guidelines" shall mean the guidelines laid by the Commission for the establishment of the Forum by the Licensee under the Gujarat Electricity Regulatory Commission (Establishment of Forum for Redressal of Grievances of the Consumers) Regulations, 2004.

(l) "Licensee" means a distribution licensee, as defined under the

Act.

(m) "Ombudsman" means an authority appointed or designated by the Commission, under Clause 3 of these Regulations pursuant to sub-sec. (6) of Sec. 42 of the Act.

(n) "Regulations, shall mean the Gujarat Electricity Regulatory Commission (Establishment of Ombudsman) Regulations, 2004.

(o) "Representation" shall mean the representation made to the Ombudsman by a Complainant who is aggrieved by the order of the Forum (including the dismissal order), or non-redressal of his Grievances by the Forum within the specified time in accordance with the Guidelines.

(p) "State Act" shall mean the Gujarat Electricity Industry (Reorganisation and Regulation) Act, 2003. Words and expressions used and not defined in the Regulation but defined in the Act or the State Act or the Rules framed thereunder shall have the meanings assigned to them in the Act or the State Act or such Rules. Expressions used herein but not specifically defined in the Regulations or in the Act or the State Act or the Rules framed thereunder but defined under any law passed by a competent legislature and applicable to the electricity industry in the state shall have the meaning assigned to them in such law. Subject to the above, expressions used herein but not specifically defined in these Regulations or in the Act or the State Act or the Rules framed thereunder or in any other law passed by a competent legislature shall have the meaning as is assigned in the electricity industry.

(2) Interpretation. In the interpretation of these Regulations, unless the context otherwise requires:

(a) words in the singular or plural term, as the case may be, shall also be deemed to include the plural or the singular term, respectively;

(b) the terms "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" regardless of whether such terms are followed by such phrases or words of like import;

(c) references herein to the "Regulations" shall be construed as a reference to these Regulations as amended or modified by Commission from time to time in accordance with the applicable laws in force.

(d) the headings are inserted for convenience and may not taken into account for the purpose of interpretation of these Regulations.

(e) references to various statutes, regulations or guidelines shall be construed as including all provisions consolidating, amending or replacing such statutes, regulations or guidelines, as the case may be, referred to.

### CHAPTER 3

#### Appointment, Tenure and Jurisdiction of the Ombudsman

### **3. Appointment and Tenure :-**

(a) The Commission shall from time to time appoint or otherwise designate such person or persons as the Commission may consider appropriate as the Ombudsman for the purposes of these Regulations :

Provided however, where the Ombudsman consists of more than one person, it shall not consist of an even number of persons. In such a case, the Commission shall appoint one of the members of the Ombudsman as the Chairperson of the Ombudsman.

(b) The Commission may appoint or designate:

(i) an Ombudsman separately for the area of supply of each Licensee; or

(ii) a common Ombudsman for two or more such areas of supply; or

(iii) a common Ombudsman for the entire State.

(c) In order to be appointed as the member of an Ombudsman, a person shall be either:

(i) a retired District Judge or qualified to be appointed a District Judge; or

(ii) have experience of twenty or more years in law, management or administration; or

(iii) be a retired Chief Electrical Inspector/Chief Executive Officer/Managing Director/Chairman of an electricity sector utility or a person having at least 20 years of experience in the electricity industry.

(d) The members of an Ombudsman appointed under sub-clause (a) above shall normally devote their whole time to the affairs of the office of Ombudsman. However the Commission may, if in its

opinion it is considered to be necessary so to do, permit the members to undertake such part-time honorary work as is not likely to interfere with their duties under the Regulations.

(e) The tenure of the members of the Ombudsman appointed under the Regulations shall be for a period not exceeding three (3) years.

(f) Where the Commission is satisfied that in the public interest, or for the reasons set out below, it is necessary to remove a member of an Ombudsman, the Commission may for reasons to be recorded in writing and by giving one month notice or by paying one month consolidated emoluments in lieu of the notice period, remove such person, if such person:

(i) has been adjudged an insolvent;

(ii) has been convicted of an offence which involves moral turpitude;

(iii) has become physically or mentally incapable of acting as a member of the Ombudsman;

(iv) has acquired such financial or other interest as is likely to affect prejudicially his functioning as a member of the Ombudsman.

(v) has so abused his position as to render his continuance in office prejudicial to the public interest ;or

(vi) has been guilty of proved misbehaviour :

Provided that no person shall be removed from his office on any ground specified in the aforesaid clauses (iv), (v) and (vi) unless the commission has, on an inquiry held by it, concluded that the person ought, on such ground or grounds to be removed.

(g) The terms of appointment including the remuneration of the members of the Ombudsman and the Chairperson shall be determined by the Commission. The remuneration payable to the members and the Chairperson of the Ombudsman shall be paid out of the Fund :

Provided however that till the time the Fund is constituted or for such further period as the Commission regards reasonable, the remuneration and other allowances payable to the Ombudsman shall be borne by the Licensees in such proportion and in such manner as may be determined by the Commission.

(g) The office(s) of the Ombudsman will be located at such place(s) as may be specified by the Commission. The Commission shall provide the infrastructure required for the office(s) of the Ombudsman. In order to expedite disposal of the Representations made to the Ombudsman, the Ombudsman may hold sittings at such places within its area of jurisdiction as may be considered necessary and proper by it in respect of a representation pending before it.

(i) The Commission may, at the request of the Ombudsman, provide support staff to the Ombudsman to facilitate the functioning of the Ombudsman. The terms and conditions of employment including the salary of such staff shall be fixed by the Commission and shall be paid by the Commission out of the Fund.

(j) The name, location, e-mail address and telephone numbers of the Ombudsmen shall be widely publicised through newspapers, and displayed on the websites and the offices of the Licensee and the Commission and shall be intimated to the consumers through the electricity bills. They may also be publicised through radio and television.

#### **4. Jurisdiction :-**

The territorial jurisdiction of the Ombudsman shall extend to the whole or part of the State of Gujarat:

Provided that where the Commission, by order, appoints or designates more than one Ombudsman under sub-clause(b) of Clause 3, it shall define the territorial jurisdiction of each Ombudsman in such order.

#### **CHAPTER 4**

Powers and Functions of the Ombudsman

#### **5. Powers and Functions of the Ombudsman :-**

The Ombudsman shall have the following powers and duties:

(a) To receive the Representations, consider such Representations and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between the Licensee and Complainant, and pass an award in accordance with these Regulations where such conciliation is not reached.

(b) The Ombudsman shall in the first instance act as counsellor and mediator in matters which are the subject matter of the Representation.

(c) The Ombudsman shall exercise general powers of superintendence and control over its office and shall be responsible for the conduct of business thereat.

(d) The Chairperson of the Ombudsman shall have the powers to incur expenditure on behalf of the office. In order to exercise such power, the Ombudsman shall draw up an annual budget for its office in consultation with the Commission and shall exercise its powers of expenditure within such approved budget. The budget shall have the provisions for the administrative expenditure of the Ombudsman. The Commission shall sanction the sufficient fund for the approved budget of the Ombudsman out of the Fund. The Commission shall, however, supervise the appropriation of such fund and shall issue such instructions, from time to time, as it may deem reasonable and necessary for the appropriation of the fund.

#### CHAPTER 5

Procedures to be followed by the Ombudsman

### **6. Procedure to be followed by the Ombudsman :-**

(a) Any Consumer, who is aggrieved by the order of the Forum (including a dismissal order) of non-redressal of his Grievances by the Forum, may himself or through his representative, make a Representation to the Ombudsman within thirty (30) days from the date of the final order of the Forum or from the expiry of the period specified in the Guidelines for redressal of the Grievance by the Forums :

Provided that the Ombudsman may entertain a Representation after the expiry of the said period of thirty (30) days if it is satisfied that there is sufficient cause for not filing it within that period.

(b) The Representation shall be in writing, duly signed by the Complainant or his authorized representative, including facsimile or e-mail mode, and shall contain the name and address of the complainant, the facts giving rise to the Grievance supported by documents, if any, and may specify the relief sought from the Ombudsman.

(c) The Representation shall contain a statement, duly signed by the Complainant, to the effect that the conditions stipulated in clause (f) below have been fulfilled, and that there is nothing, in the knowledge of the Complainant, which would bar the Ombudsman from considering the Representation, facilitating the



settlement thereof, or passing an award in respect of the subject matter of the Representation, or otherwise dealing with the Representation, or otherwise dealing with the Representation in accordance with the provisions of these Regulations.

(d) The Ombudsman shall issue due acknowledgement of the receipt of the Representation to the Consumer with an acknowledged copy of the Representation in the following manner:

(i) forthwith upon submission if the Representation is delivered personally; or

(ii) despatch/e-mail/fax within two working days of receipt of the Representation if sent by post or courier or through e-mail or fax. The Ombudsman, while issuing acknowledgement, shall assign a unique case number to each Representation accepted by it.

(e) The Ombudsman shall maintain true and correct records of all Representations received, from time to time.

(f) No Representation to the Ombudsman shall lie:

(i) unless the Complainant is aggrieved by an order of the Forum or his Grievances are not redressed by the Forum within the period set out in the Guidelines;

(ii) unless the Representation against an order of the Forum was made within the period set out in these Regulations;

(iii) in respect of the same matter and between the same Complainant and the Licensee that has been settled by the Ombudsman in any previous proceedings;

(iv) where proceedings in respect of the same matter and between the same Complainant and the Licensee, are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;

(v) in cases which fall under Sec. 126 , Sec. 127 , Sec. 135 Sec. 136 , Sec. 137 , Sec. 138 , Sec. 139 , Sec. 152 , Sec. 161 of the Act; or

(vi) in cases where the Complainant is required to pay an amount in terms of an order of the Forum, unless such Complainant has deposited in the prescribed manner, one third of that prescribed amount, with the Ombudsman.

(g) The Ombudsman may reject the Representation at any stage if it appears to it that;

(i) the Representation is frivolous, vexatious or mala fide;

(ii) the Representation is without any sufficient cause;

(iii) the Representation is not being pursued by the Complainant with reasonable diligence; or

(iv) there is no prima facie loss or damage or inconvenience caused to the Consumer(s)/Complainant.

(h) If a Complainant brings before the Ombudsman a matter already pending before any other competent forum, and such forum takes cognisance of the same, the Ombudsman may dismiss the proceedings pending before it.

(i) As soon as it may be practicable to do so but not later than one week from the date of receipt of the Representation, the Ombudsman shall serve a notice to the concerned Licensee along with a copy of the Representation and endeavour to promote a settlement of the matter by agreement between the Complainant and the Licensee through conciliation or mediation.

(j) The notice to the Licensee served under sub-clause (h) above shall specify the time period within which the Licensee is required to respond to the Representation, and this time period shall be such as to allow the Ombudsman to settle the matter by conciliation or mediation within thirty (30) days from the date of receipt of the Representation.

(k) For the purpose of facilitating settlement of the representation, the Ombudsman may follow such procedures, as it may consider appropriate, or as may be prescribed by the Commission from time to time :

Provided that where the Ombudsman consists of more than one person, conciliation or mediation may be conducted by one or more members of the Ombudsman, designated by the Chairperson of the Ombudsman for the purpose.

(l) If the Representation is settled through conciliation or mediation by the Ombudsman, the Ombudsman shall make a recommendation, as it deems fair in the circumstances of the case in writing. Copies of the recommendation shall be sent to the

Complainant and the Licensee. If the Complainant and the Licensee accept the recommendation of the Ombudsman they shall communicate their acceptance to the Ombudsman in writing within fifteen (15) days of the date of receipt of the recommendation.

(m) Where the Representation is not settled by agreement within a period of thirty (30) days from the date of receipt of the Representation or such extended period as the Ombudsman may deem fit, the Ombudsman may determine the place, the date and the time of hearing of the matter as the Ombudsman considers appropriate :

Provided, however, that the Ombudsman shall hold the hearing within forty-five (45) days from the date of receipt of Representation, or fifteen (15) days from the expiry of such extended period as has been specified by the Ombudsman for settlement by agreement among the parties:

Provided further that where the Ombudsman is unable to hold the hearing within such period as specified above, it may hold the hearing at a later date with the Commission's permission.

(n) Where the Ombudsman consists of more than one person, no hearing shall be conducted by the Ombudsman unless two thirds of the members of the Ombudsman are present, and all decisions of the Ombudsman, including the final award, shall be made with the consent of a majority of the members of the Ombudsman.

(o) The Ombudsman shall, at the date of the first hearing, subject to the timeframe stipulated under these Regulations, set the schedule for the hearing, including the outer limit for the passing of the award. The Ombudsman shall endeavour to follow the schedule strictly, and shall not deviate from such schedule except by recording reasons for such deviation.

(p) The Ombudsman shall decide the matter on the submissions of the parties, after providing them an opportunity of being heard. The Ombudsman shall pass a speaking award with detailed reasoning. While making an award, the Ombudsman shall be guided by the evidence adduced by the parties, the principles of applicable laws including Rules and Regulations issued under the relevant laws, guidelines, directions, and instructions of a general nature, issued by the Commission from time to time, prudent industry practices and such other factors which in its opinion are necessary in the interest of justice.

(q) The award passed by the Ombudsman shall set out:

(i) issues arising from the proceedings before it;

(ii) issue-wise decision;

(iii) reasons for passing the award; and

(iv) directions, if any, to the Licensee or Consumer.

(r) The Ombudsman shall have the power to impose costs upon either of the parties, as it may deem appropriate in the circumstances before it.

(s) A copy of the award shall be sent to the Complainant and the Licensee concerned.

(t) The award passed by the Ombudsman shall be binding on the Licensee and the Complainant. The Licensee or the Complainant may, however, within thirty (30) days from the date of receipt of award, in case aggrieved by the award, prefer an application for the review of the award to the Ombudsman. The Ombudsman may review the award given by it on the following grounds:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time the award was made; or

(ii) Mistake or error apparent on the face of the record; or

(iii) Any other sufficient reason.

(u) On reviewing the award, as the Ombudsman deems necessary, it may either pass a new award (as the final award) nullifying the award under review or retain the same stand taken the award under review and declare the same as the final award of the Ombudsman.

(v) Except in cases where a review application has been moved under clause (s) above by either of the parties, in the event of non-compliance/non-implementation of any award passed by the Ombudsman by either of the parties, the aggrieved party may approach the Commission for the enforcement of the award within a period of thirty (30) days of the passing of the award or from the expiry of the time granted for the implementation of the award by the Ombudsman, whichever is later. The Commission may issue any

order (including an order imposing fines and penalties on the Licensees as provided for under the Act) or take any other steps, as it deems appropriate for the enforcement of the award.

(w) As soon as it will be practicable, the Commission would make an arrangement for the dedicated space for the Ombudsman on its website so as to enable the Ombudsman to upload information such as contact details of Ombudsman, the status of Representations pending before it, the dates of the next hearings and subject to confidentiality the awards passed by it for the Consumers/Complainants. The Complainants may retrieve any of the aforesaid information pertaining to the Representations upon entering the case number assigned to the Representation;

#### CHAPTER 6

#### Miscellaneous

### **7. Inspection of Records and Supply of Certified Copies :-**

(a) The Complainant and the Licensee shall be entitled to obtain certified copies of the orders, decisions, directions and reasons in support thereof given by the Ombudsman in respect of the Representation.

(b) Any person/Consumer shall be entitled to a copy of the orders of the Ombudsman subject to the payment of reasonable cost and compliance with other terms, as the Ombudsman may direct.

### **8. Power to call for information :-**

(a) For the purpose of carrying out its duties, and Ombudsman may require either party to furnish any information or certified copies of any document relating to the subject matter of the Representation, which is or is alleged to be in the knowledge or possession of such party, within fifteen (15) days of such request :

Provided that in the event of failure of a Licensee to comply with the requisition without any sufficient cause, the Ombudsman may, if it deems fit, proceed to settle the case on the basis of the records available with the Ombudsman.

(b) The Ombudsman shall maintain the confidentiality of any information or document coming into its knowledge or possession in the course of discharging its duties and shall not disclose such information or document to any person except with the consent of the person disclosing and providing such information or document:

Provided that nothing in this clause shall prevent the Ombudsman from disclosing information or documents furnished by a party in a dispute before it to the other party or parties, to the extent considered by it to be reasonably reasonably required to comply with the principles of natural justice. The Ombudsman may also disclose any such information to the Commission if required.

(c) The Ombudsman may also direct the licensee to undertake an inspection or engage a third party to undertake such inspection, as may be required for expeditious disposal of the Representation and redressal of the Grievance.

#### **9. Savings :-**

Nothing contained in these Regulations shall affect the rights and privileges of the Complainant under any other law or time being in force, including the Consumer Protection Act, 1986 (68 of 1986).

#### **10. Powers to Remove Difficulties :-**

If any difficulty arises in giving effect to any of the provisions of these regulations, the Commission may by general or special order, direct the Licensee or the Ombudsman to take suitable action, not being inconsistent with the Act, which appears to the Commission to be necessary or expedient for the purpose of removing such difficulty.

#### **11. Amendment :-**

The Commission may, at any time vary, alter, modify or amend any provision of these Regulations.

#### **12. Submissions of Reports to the Commission :-**

The Ombudsman shall submit a quarterly report on the the number of Representations received, redressed and pending within fifteen (15) days of the end of the quarter, to the Commission. The Ombudsman shall also furnish to the Commission, by 31st May every year, a report containing a general review of the activities of its offices during the preceding financial year and shall also furnish such information as the Commission may require.

#### **13. Suo Motu Powers of the Commissions :-**

(a) The Commission shall have the power to take suo motu cognisance of any matter that is pending before or has been disposed off by the Ombudsman, where it deems fit to do so. The Commission may, where it exercises its powers under this clause, pass orders reversing the orders of the Ombudsman :

Provided that the Commission shall not reverse the orders of the Ombudsman or take cognisance of a dispute pending before the Ombudsman unless it makes a reasoned order in writing to that effect.

(b) Where the Commission takes cognizance of a dispute pending before the Ombudsman under sub-clause (a), the Ombudsman shall not pass any further orders in regard to the matter, and the matter shall be decided finally by the Commission.

(c) The Commission shall have the same powers and functions as the Ombudsman under these Regulations in relation to any matter over which it takes suo motu cognizance :

Provided, however, that the Commission may by order confer upon itself additional powers as may be necessary for it to effectively decide any matter of which it has taken suo motu cognizance under this clause.

#### CHAPTER 7

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#### **14. Temporary injunctions :-**

Cases in which temporary injunctions may be granted: Where in respect of any complaint it is affirmed on affidavit or otherwise on prima facie plausible grounds-

(a) that if the temporary injunction is not granted, the purpose for which complaint is filed would be defeated for delay, or

(b) that the licensee threatens or intends to remove or disconnect the electricity connection, or

(c) that the licensee is not following the provisions of the Electricity Act, 2003, the State Act or any applicable Rules and Regulations' the Ombudsman may by order grant a temporary injunction to stay or prevent or restrain such act, or make such other order as the Ombudsman thinks fit, until the disposal of Complaint application or until further orders. The Ombudsman may grant such relief at any stage during the disposal of a complaint.

#### **15. Before granting injunction, Ombudsman to give notice :-**

The Ombudsman shall except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction; direct notice for the same to be given to the

opposite party :

Provided that, where it is proposed to grant an injunction without giving notice of the Complaint and any application to the opposite party, the Ombudsman shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant

(a) to deliver to the opposite party, or to send him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with

(i) a copy of the affidavit filed in support of the application;

(ii) a copy of the application; and

(iii) copies of documents on which the Complainant relies, and

(b) to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent.

**16. Ombudsman to dispose of application for injunction within 30 days :-**

Where an injunction has been granted without giving notice to the opposite party, the Ombudsman shall make an endeavour to finally dispose of the application within 30 days from the date on which the injunction was granted; and where it is unable so to do, it shall record reasons for such inability.

**17. Order for injunction may be discharged, varied or set aside :-**

Any order for an injunction may be discharged, varied or set aside by the Ombudsman, on an application made by any party dissatisfied with such order:

Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Ombudsman shall vacate the injunction unless for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order



shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by the change in the circumstances, or unless the Ombudsman is satisfied that the order has caused undue hardship to that party.

**18. Injunction to corporation binding on its officers :-**

An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose actions it seeks to restrain.