

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AMRAVATI.**

“ Vidyut Bhavan” Shivaji Nagar, Amravati, Amravati : 444603 Tel No 0721
.2551158

Order

Dt 30/12/2017

Complaint No._18_ / 2017

**In the matter of grievance pertaining to old P.D. Arrears on premises
and billing thereof**

Quorum

**Dr. Shri Visharm Bapat, Chairman
Shri D.B. Mohod, Member/ Secretary
Sau. Sushama Joshi, Member (CPO)**

In the matter of

M/S Gharrkul Industries Pvt.Ltd. :-
At – Plot No. C-42, MIDC, Amravati
Distt.- Amravati
Consumer No:-LT- 366478308153

Complainant

.....Vs.....

The Executive Engineer MSEDCL, :-
Urban Division, Amravati.

Respondent

Appearances :

Complainant Representative :- Shri. Ashish Subhash Chandarana

Respondent Representative :- Shri. S.M. Shrungare

Additional Executive Engineer,
Amravati Ulll Subdivision

The complainant has filed the instant complaint before this Forum against the MSEDCL for the issuance of notice U/S 56 of Electricity Act 2003 and a demand note of ₹ 556801.00/- and an ultimatum for disconnection of the supply if the complainant fails to pay the said demand. Being aggrieved by such demand note, the complainant has been constrained to file his grievance before this forum.

The facts in brief of the complaint are as follows.

- 1) That the complainant is an industrial consumer of MSEDCL having load sanctioned of 70 HP (Annexure A-2) and who applied for the same on 27/08/2013 and the connection was sanctioned by MSEDCL on 30/08/2013 (Annexure A-3). The complainant applied for the connection by signing the pre-printed form of MSEDCL and MSEDCL issued fresh load sanction letter cum demand note dtd.30/08/2013 of Rs. 79,100/- and accordingly the complainant paid the said demand (Annexure-A3). The MSEDCL released the new connection on Dt.01.04.2014.
- 2) The complainant has received a letter from MSEDCL dt.24/03/17 (Annexure A-5) about the recovery of arrears according to regulation No. 10.5 of MERC (Electricity Supply Code and other Conditions of supply) Regulations, 2005 without disclosing the amount of arrears. There after the complainant have been receiving regular energy bills without mention of arrears.
- 3) On 25/4/2017 the complainant received letter from MSEDCL dt. 25/4/2017 for demand of arrears on the plot No.C-42 to the tune of ₹ 568801/- along with regular energy bills dt 18/4/2017. On 18/5/2017 complainant received energy bill for month of May 17 with ₹ 568801.00 showing the arrears since 1999.

- 4) The complainant protested the bill dt. 18/5/2017 vide letter dt 23/5/2017 & 26/5/2017 and requested to give him regular energy bills but MSEDCL failed to give satisfactory reply and informed the complainant vide letter dt. 13/06/2017 that there are the arrears of M/S Prudential PolyWeb, plot No. C-42, MIDC, Amravati of ₹ 16,25,414.20 and out of which the complainant was asked to pay ₹ 5,68,801.00.
- 5) The complainant is paying regular current bills which are enclosed along with the present complaint.
- 6) The complainant have purchased the property from SICOM and under free hold condition and therefore MSEDCL have no right to claim any encumbrances against free hold land purchased.
- 7) The complainant submits that as per regulation 10.5 of MERC (Electricity supply code and other conditions of supply) Regulations, 2005, the MSEDCL can not release the connection without recovery of past arrears. And complainant further submits that even if there were any past arrears the same could have been recovered at the time of release of connection. The MSEDCL cannot recover after 3 and half years of sanctioning connection.
- 8) Under such circumstances consumer prays
 - i. to stay the disconnection notice issued by MSEDCL till the pendency of present complaint.
 - ii. To set aside the demand of past arrears from the applicant.
 - iii. Any other relief which Hon'ble CGRF may deem fit including cost.
- 9) The complainant has filed the present complaint on 26/9/2017 and applied for interim stay for execution of the demand notice Dt. 22-08-2017. Accordingly the Forum, after hearing the complainant's

grievance, granted stay on 27/2/2017 directing MSEDCL not to disconnect the supply of the complainant till the disposal of present representation and issue notice to MSEDCL to file reply.

10) The non applicant MSEDCL after the receipt of the notice of the CGRF filed their reply and submitted the preliminary issue. The complainant is under the liability of making the payment of at least for the period of six month outstanding against the premises of the previous owner as the complainant is enjoying the said premises i.e. plot No. C-42 MIDC Amravati and he is having full knowledge that the MSEDCL has already secured the decree from the civil court against the previous owner, consumer of MSEDCL and consequently the liability is fully adjudicated by the civil court.

11) It is submitted by MSEDCL that after passing the decree by the civil court and finalizing the liability in connection with consumer that is his predecessor in title of the present complainant in the special suit no.231/2001 (MSEDCL Vs. M/s. Prudential PolyWeb, plot C-42) which is encumbrance on plot no C-42. It is further submitted that this Hon'ble Forum have no jurisdiction as contemplated in regulation 6.7(d) of MERC Regulations 2005 and on this ground the present complaint may be dismissed in the interest of justice. The MSEDCL reproduced the regulation 6.7(d) of Regulation 2005 as follows.

6.7(d)- The Forum shall not entertain a grievance "(d) Where a representation by the consumer, in respect of the same grievance is pending in any proceeding before any court, tribunal or arbitrator or any other authority or a decree or award or final order has already been passed by any such court, tribunal, arbitrator or authority".

It is submitted by MSEDCL in that, the present complainant has secured the new electric connection without disclosing the previous

position in respect of outstanding. Merely because of lack of communication, outstanding arrears could not be confirmed at time of sanction of the new service connection in the name of the present complainant.

It is submitted that the complainant could not escape from the liability to pay arrears as a transferee.

12) As per submission by N.A. MSEDCL, the complainant has quoted the provisions of electricity Act 2003 in his complaint & which clearly clarifies the right vested in MSEDCL to cut off electricity supply. It is further submitted by MSEDCL that this provision is very much identical to the provision of section 24 of Electricity Act-1910.

13) It is submitted by MSEDCL that the A-1 form though signed by consumer, it is not binding on the MSEDCL if it is inconsistent with law. Occupier of the premises as provided under provision of regulation 10.5 (Electricity supply code and other conditions of supply) Regulations, 2005 is liable for charge at least for period of 6 month arrears. Rest of the amount can be recovered from the original consumer by executing the decree which is pending before Competent Court vide special Spl. Exe. Suit-No 19/2017. It is submitted that after issuing of notice pointing out the liability to the complainant as provided under regulation 10.5 of supply condition become arrears, giving rights and jurisdiction to MSEDCL to disconnect the electric supply and complainant cannot have any cause of action to approach to this Hon'ble Forum challenging the issuance of notice. So the complainant has filed this complaint to avoid the liability of payment of arrears. It is further submitted that the claim made by MSEDCL from the date of permanent disconnection for a period of 6 months cannot be treated as illegal. The MSEDCL has quoted the judgments of Hon'ble Bombay High

Court and stated that by referring the judgments of the Hon'ble High Court "that in any case the subsequent transferee of the premises shall be liable to pay arrears of 6 month to MSEDCL".

14) It is submitted by MSEDCL that the complainant has contended in the complaint that he has deposited various amounts for seeking new service connection but the MSEDCL neither pointed out nor claimed any amount or liability at the time of release of new service connection. MSEDCL submitted that this preposition cannot be treated legal particularly in the legal preposition laid down by Hon'ble High Court as well as the Supreme Court of India.

15) It is submitted by MSEDCL that the complainant cannot take the advantage only because of the officials of MSEDCL could not trace or find out the arrears outstanding against the premises at the time of release of new service connection in favour of the complainant. As per section 56 (1) of Electricity Act-2003 MSEDCL can cut off any electric line for outstanding amount which is not paid.

16) It is submitted by MSEDCL that the complainant purchased the property from SICOM and it is treated as free hold condition and therefore MSEDCL has no right to claim the amount outstanding against the premises is wrong as it is the charge as contemplated under Electricity Act-2003. It is further submitted by MSEDCL that the purchaser must confirm as to whether any amount is outstanding or payable to the authorities before purchase of the property. And he cannot question the exercise of powers of recovery and disconnection under section 56 of Electricity Act-2003, in view of the arrears continuously shown in CPL. The complainant cannot rescue himself from paying the arrears which is confirmed by the legal position by Hon'ble Supreme Court & Hon'ble High Court.

17) The MSEDCL in support of their contention referred various judgments of Hon'ble High Court and Supreme Court which is binding to pay outstanding arrears which are annexed at serial no. R1 to R7.

18) It is submitted by MSEDCL in view of aforesaid facts, circumstances as well as legal preposition, it is crystal clear that the action of the complainant for seeking the relief of restraining MSEDCL from making the recovery of said amount is absolutely without any substance and the judgment referred by the consumer Lucknow Development Authority Vs M.K. Gupta is not applicable to the present compliant as the facts and circumstances and legal preposition involved in the same judgment are absolutely different.

19) The MSEDCL submitted that the releasing the supply was done in good faith and with bonafide intention. In view of facts and circumstances as well as on the basis of legal preposition settled by Hon'ble. Supreme Court & High Court, the present compliant is liable to be dismissed in the interest of justice.

20) The representative of the consumer requested to the Forum that as the Member Secretary of the Forum has filed execution petition by virtue of his position as the competent authority, humble request was made that the case be decided by other two members of the Forum.

After going through documents placed on record and various judgments of Hon'ble. Supreme Court & High Court referred by the parties to the dispute & hearing arguments advanced by the parties to the present matter.

The following points arise for determination before this Forum.

- 1) Whether the Forum has jurisdiction to entertain this complaint?

It is undisputed that the complainant is paying electricity charges as per the consumption till notice of disconnection dt.22.08.17, Rs. 5,56,801.00/-. It is argued by MSEDCL that under regulation 6.7 (d) Regulation 2005, the Forum shall not entertain this grievance as there was a decree already passed by the competent Civil Court. Hence this Forum has no jurisdiction to entertain the present dispute. But the cause of action for the present grievance arose as on 22.08.17 when notice issued to the complainant for disconnection of supply under section 56(1) for arrears of ₹ 5,56,801.00 dtd.22.08.17. As the complainant is a consumer of MSEDCL, the Forum has a jurisdiction to entertain the present complaint.

- 2) Whether the MSEDCL has right to recover the outstanding arrears from the complainant/consumer?

While deciding the above point, the Forum found that there are various undisputed facts between the parties that the complainant's supply of electricity was released on 01.04.2014. It is not disputed that the supply released on the property plot No. C-42 MIDC, Amravati was purchased in auction from SICOM.

The property plot No. C-42, MIDC, Amravati was previously owned by Prudential PolyWeb. This property was purchased by the present consumer in auction in 2009. This Forum perused the documents placed on record & it is found that there was a previous owner of the property that is Prudential Polyweb. Through proprietor Shri Naresh Chaddha, Prudential PolyWeb obtained the supply of

electricity from MSEDCL on 17.11.1986 by agreement of seven years and paid the electricity charge till 16.02.1999. His connection was temporarily disconnected on 22.03.1999 for arrears of Rs 19,76,199.85/- and notice was given for the recovery of arrears. There after the connection was permanently disconnected on 23.09.1999. Upon scrutiny of documents it is found that MSEDCL filed the recovery suit for arrears of electricity charges against Prudential PolyWeb on 12.12.2001 which was decreed in the favor of MSEDCL on 19.12.2005.

Forum have gone through the record and found that there is no demand from N.A. MSEDCL for the arrears on the premises before the release of connection to the present consumer. The representative of the consumer vehemently argued that if MSEDCL had demanded the arrears on the premises before release of electric supply, the consumer would have got 90% subsidy from the State Govt. We find the substance in the argument on behalf of consumer.

The Forum have come to the conclusion that the MSEDCL cannot invoke the provision of section 10.5 of MERC Regulation 2005 because the arrears on the premises were never demanded by MSEDCL before 22.08.2017 which could have been demanded at the time of release of electricity supply i.e. on 01.04.2014. But surprisingly MSEDCL never demanded the arrears neither at the time of demand note nor at the time of release of supply. Hence we find that the approach by N.A. MSEDCL is arbitrary which shows the malafide intention to cover up the lacuna on their part.

Moreover Forum finds that, admittedly there was a recovery suit filed by MSEDCL in the year 12.12.2001 vide Sp. RCS 231/2001 against the outstanding arrears of previous owner of the premises i.e.

Prudential PolyWeb through Naresh Chaddha for the recovery of ₹19,76,399.85 which came to be decreed exparte on 19.12.2005 with cost along with interest @6% p.a. from the date of suit till its realization. Forum also find that there was no appeal filed by the defendant (Prudential PolyWeb) hence the decree came to be confirmed. Hence the logical question came before this Forum, that what efforts have been taken by N.A. MSEDCL after obtaining the decree in recovery suit to recover such a large outstanding amount lying against the defendant? The MSEDCL is a company registered under the companies Act and it cannot bear such a huge financial loss for the negligent act of the erring officers. There was no satisfactory answer presented by N.A. MSEDCL.

There appears an inordinate delay on part of the N.A. MSEDCL in filing execution petition till the end of limitation period.

Now whether N.A. MSEDCL have right to demand the arrears on the premises from the complainant on 22.8.2017? In the light of the Section 56(2) of Electricity Act 2003, the Forum is of firm view that the N.A. has lost its right to demand arrears on the above mentioned date as it apparently violates the provision of Section 56(2) of E.A. Act 2003 and Regulation No. 10.5 of MERC (Electricity supply code and other conditions of supply) Regulations, 2005.

Hence we pass the following order

Order

1) The compliant is partly allowed

- 2) The N.A. MSEDCL is directed to set aside and quash the bill / demand note dt.22.08.2017 for ₹ 5,56,801.00.
- 3) The N.A. MSEDCL is directed not to disconnect the supply of the consumer for the above disputed bill and the consumer is directed to pay regular bills as per consumption.
- 4) The N.A. MSEDCL is directed to recover the loss of revenue to MSEDCL from the erring officers for not taking timely actions and measures, after due enquiry as per principles laid down by Hon. Supreme Court in the matter of Lucknow Development Authority Vs M.K. Gupta in 1994 SCC(i) 243.
- 5) No orders as to costs.

-----	Sd/-	Sd/-
(D.B. Mohod) Member Secretary	(Mrs. S.P. Joshi) Member(CPO)	(Dr.V.N.Bapat) Chairman

Contact details of Electricity Ombudsman appointed by MERC (CGRF&EO) Regulations 2006 under Regulation 10:
THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
Nagpur-440 013.
Phone : 0712-2596670

No.CGRF / AMZ/ Amravati/No. 25

Dt. 30/12/2017

To
The Nodal Officer,
Executive Engineer
MSEDCL, Urban Division, Amravati.

The order passed on 30/12/2017 in the Complaint No.__18_/2017, is enclosed herewith for further compliance and necessary action.

~~dated~~
30/12/17
Secretary,

Consumer Grievance Redressal Forum,
MSEDCL, Amravati Zone, Amravati

Copy to:-

1. M/S Gharkul Industries Pvt.Ltd. Plot No.C 42 MIDC Amravati. Dist.-
Amravati.

Copy f.w.cs.to:-

- 1.The Chief Engineer, MSEDCL, Amravati Zone, Amravati .
- 2.The Superintending Engineer, O&M Circle, Amravati

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AMRAVATI.**

“ VidyutBhavan” Shivaji Nagar, Amravati, Amravati : 444603 Tel No 0721
.2551158

Supplementary Order

Dt 30/12/2017

Complaint No._18_ / 2017

**In the matter of grievance pertaining to old P.D. Arrears on premises
and billing thereof**

Quorum

**Dr.Shri Visharm Bapat, Chairman
Shri D.B.Mohod, Member/ Secretary
Sau. Sushama Joshi, Member (CPO)**

In the matter of

M/S Gharrkul Industries Pvt.Ltd. :- Complainant
At – Plot No. C-42,MIDC,Amravati
Distt.Amravati
Consumer No:-LT- 366478308153

.....Vs.....

The Executive Engineer MSEDCL, :-
Urban Division, Amravati.

Respondent

Appearances :

Complainant Representative :- Shri. Ashish Subhash Chandarana
Respondent Representative :- Shri.S.M.Shrungare
Additional Executive Engineer,
Amravati UIII Subdivision

Supplementary Order

As period of compliance of Order by N.A.MSEDCL is inadvertently remained to be mentioned in operative para of the order passed on dt. 30/12/2017 in r/o CGRF Case No. 18/2017.

Hence by inherent power given to this Forum , pass the following point no. 6 in this supplementary order which is to be read as part and parcel of the order passed on dt. 30/12/2017.

Now by this supplementary order the operative para of the order passed by this Forum shall be read as:

1).....

2).....

3).....

4).....

5).....

6)The N.A. MSEDCL is directed to submit compliance report to this Forum within one month of issue of this order.

(D.B.Mohod)
Member Secretarty

Sd/
(Mrs. S.P. Joshi)
Member(CPO)

Sd/
(Dr.V.N.Bapat)
Chairman

Contact details of Electricity Ombudsman appointed by MERC (CGRF&EO) Regulations 2006 under Regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
Nagpur-440 013.
Phone : 0712-2596670

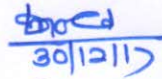
No.CGRF / AMZ/ Amravati/ No.27

Dt.30/12/2017

To

The Nodal Officer,
Executive Engineer
MSEDCL, Urban Division,
Amravati.

The supplementary order passed on 30 /12/2017 in continuation with original order dtd.30/12/2017 in r/o of CGRF Complaint No. __18_/2017, is enclosed herewith for further compliance and necessary action.



Secretary,

Consumer Grievance Redressal Forum,
MSEDCL, Amravati Zone, Amravati

Copy to:-

1. M/S Gharrkul Industries Pvt.Ltd. Plot No.C 42 MIDC Amravati. Dist.-
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