

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD

Case No. CGRF/AZ/AUR/U/2005/03.

Date of Filing: 18/05/2005.

Date of decision: 07/07/2005.

Shashikant Kashinath Joshi -- the Consumer Complainant.

V/s

MAHARASHTRA STATE ELECTRICITY BOARD,
The Distribution Licensee.

Sub: Grievance under the Maharashtra Electricity Regulatory Commission,
(Consumer Grievance Redressal Forum and Ombudsman)
Regulation 2003

The consumer complainant Shri Sashikant K.Joshi, r/o,36, Pannalal Nagar, Aurangabad. has filed his grievance in annexure 'A' on 18-05-2005 under Regulation number 6.5 of the Regulation 2003. A copy of the grievance was forwarded on 18-05-2005 to the Nodal Officer and Executive Engineer(Adm), in the office of the Superintending Engineer, M.S.E.B. Urban Circle Aurangabad , with a request to furnish his response on or before 04.06.2005 and hearing in the matter was fixed on 7.6.2005 .

The contention of the consumer in the grievance, is that, he has purchased shop No.L-7 in Manik Arcade complex in December 1997.The consumer did not apply for electricity connection and the shop was in closed position for pretty long time. The consumer in January 2001 or so intended to start his business in the shop and therefore requested the builder in January 2001 or so about providing the electrical connection, as the consumer has already paid Rs. Ten thousand to the builder for electrical connection at the time of payment of consideration of the shop. The builder, as per contention of the consumer arranged for electricity supply in February or March 2001 The consumer has further contended that he does not remember the exact date, but he has paid the energy bill regularly since then. It is further contended that the consumer , in the month of December 2004 received the energy bill for Rs. 45060/ which included an amount of Rs. 44319/ as bill adjustment (arrears). The consumer enquired with the MSEB authorities time and again but no reply was given to him .

The power supply of the consumer was disconnected on 24.01.2005 on account of non payment of the said bill.

It is further contended by the consumer that since no response from MSEB authorities was received , he made enquiries and the story that came out was as stated hereinafter. The builder has provided electricity connection for 19 Nos. of shop/flats from the meter of the consumer. .Bill for huge amount was received and since the builder did not pay it ,the supply was disconnected. After some time the builder went to the MSEB authorities and by some settlement obtained revised bill in December 2000 or so. The consumer has also stated that builder has paid the said revised bill , but does not remember the exact date. The consumer, it is further contended that has demanded all this information number of times , from authorities of D.L. , but in vain.

The consumer has paid the amount of arrears on 29.3.2005 .As per contention of the consumer the amount paid was Rs.46560/, out of which Rs 30000 were contributed by the concerned builder and balance of Rs. 16560/ was contributed by the consumer..

Thereafter the electricity

connection to the consumer was restored .The consumer, by his application requested the D.L to initiate action of theft against builder, 19 flat/shop owners and the concerned officials of MSEB. .The consumer has also sustained heavy loss because of disconnection of power supply and has demanded compensation at the rate of Rs. 1000/ day from the date of disconnection till the restoration of power supply. The consumer has also

prayed to grant him an amount of Rs.an amount of Rs. 15000/ to him towards mental torture etc during last five months .

On the date of hearing, the consumer was present. The Dy.Executive Engineer, Divisional accountant and Asst.Accountant of the sub division were present on behalf of the distribution licensee (hereinafter referred to as D.L.) . The Executive Engineer and the Nodal officer was not present

Similarly no response on behalf of D.L. was filed even on the date of hearing, needless to say it was not filed till 4/6/2005 .The representatives present on behalf of D.L., did not produce any authority from the Nodal Officer authorizing them to be present on behalf of the D.L. Therefore the hearing in the matter was adjourned to 17.6.2005.

On 17.6.2005,the Executive Engineer and Nodal Officer was present on behalf of D.L. along with his assistants. The Executive Engineer & Nodal officer has filed his reply dt 16.6.05 on 17.6.2005.

On the date of first hearing i.e on 7/6/2005 it was brought to our notice that the Executive Engineer & Nodal officer as head of the Internal Consumer Grievance Redressal cell of the D.L. has issued a letter dt.27.5.05 to the consumer, wherein besides some other contentions it was stated that amount of Rs.44319/ shown as arrears against him is correct. As observed above the Nodal Officer has filed his parawise reply to the grievance on 17.6.05. In the reply it is contended that the consumer has submitted A-1 form for new connection, accordingly F.Q was issued to him in January 1999 and payment was done on 6.1.99.The connection was released in the Month of March 1999 but due to non payment of electricity charges up to Dec.1999 amounting to Rs. 89593/ , the supply was permanently disconnected in Jan.2000.After receipt of request application from consumer, and after receipt of payment of Rs. 44237/ , against the revised bill, the electricity supply was restored. It is also contended that the previous arrears bill of Rs. 89996/ was revised to Rs. 43237/ and the remaining amount of Rs. 44319/ was waived .It is further contended that in Nov.2004 the internal inspection wing raised objection for revising the arrears bill by waving amount of Rs. 44319/. and directed to recover the same from the consumer. Hence the amount of Rs. 44319/ was charged to the consumer in the bill issued in the month of Dec.2004.It is also contended that about the queries of the consumer pertaining to the bill the Dy. Executive Engineer ,Garkheda has informed him orally that the matter was referred to Division office for seeking guidelines..

Due to non payment of the bill the power supply was disconnected temporarily on 24.01.2005. It is further contended that the consumer was aware at all stages of electricity supply & its disconnection and therefore has paid the bill of arrears on 29.3.05 in which the builder has contributed Rs.30000/. Therefore it is contended by the Nodal officer that every act regarding meter i.e connection, payment of arrears , disconnection etc is made in concurrence of the builder by the consumer.

The Nodal officer as stated above , irrespective of request to that effect did not file any response on the grievance up to 4/6/05. Not only that the nodal officer was neither present on the date of first hearing i.e. 7/6/05, nor filed any reply or response to the grievance even on the date of first hearing. Here , it would be in the fitness of the things to observe that the consumer on 9.3.05 has filed his grievance before the IC.G.C. of D.L., and it is with reference to this complaint the Executive Engineer and the Nodal officer has given his reply by letter dt. 27.5.05 to the consumer .It is interesting to note that the contents of the letter dt. 27.5.05 vis-à-vis the contentions made in the reply dt 16.6.05 to the grievance filed before Forum on 17.6.05.

The contention of the consumer , as it appears from the grievance is that though he purchased the shop in Dec,1997, he did not start any business till December 2000. It was in Jan. 2001 when he planned to start his business he enquired with the builder for electricity connection which the builder promised to him and within couple of months electricity supply was made available to him and the consumer has been paying the energy charges regularly since then till he received the bill for the month of Dec.2004 for Rs. 45060/.

The contention of the Nodal officer, as mentioned in response dt. 16.6.05 is that the consumer applied for connection in the month of Jan 99 and after payment of quotation the connection was released to him in March 99 .

The further contention in his response is that no payment towards energy charges of Rs. 89593/ was made up to Dec.99 .and therefore the supply was permanently disconnected.

It is further contended that after receipt of request application from consumer the connection was restored after payment of Rs. 43237/ against the revised bill , in which an amount of Rs. 44319/ (out of total arrears of Rs. 89593/) was waived .

We have gone through the grievance and documents filed along with it .We have also gone through the letter dt. 27/5/05 addressed to the consumer by the Executive Engineer and the Nodal officer . We have also gone through the response dt. 16.6.05 filed by Nodal officer before the Forum on 17.6.05. After having gone through all the record before us and after hearing contention of the both parties we find that the real issue in the matter giving rise to the grievance is amount of Rs. 44319/ , which was waived by the D.L. while revising the bill , may be on request of the consumer or somebody else. The issue, as observed by the contention of the both the parties is also related to the inspection of internal audit wing the fact of revision of the arrears bill and the fact of first of release of electricity connection .

The Nodal officer's contention in his response dt.16.6.05 that the consumer has purchased the shop No. L-7 in Manik Arcade complex in Dec.1997 and submitted A-1 form for new connection in the said premises, goes on to give an impression that the consumer ,owner of one shop Viz Shop No..L-7 has applied for connection for 19 Nos. of flats/shops and on payment of firm quotation of Rs. 2076/ the connection was released to him. The consumer on the other hand contends that he neither applied for the electric connection nor did he pay any amount to D.L. for connection nor was he aware of any electricity connection having been released in his name till Dec.2004. Coming to the letter dt. 27.5.05 in which the Nodal

officer has informed the consumer that the amount of Rs. 44319/ shown against him is correct , we find that the Nodal officer in very first para of

the letter has mentioned that “ quotation was issued for construction of 19 flats at Chetnanagar, Garkheda” It is neither the contention of the consumer nor of the D.L. that the consumer himself is the builder or the consumer is the owner or has purchased 19 flats. In absence of such situation it is simply impossible to believe that a owner of a shop would apply for connection for construction of 19 flats. On going through the report of internal audit wing we find that the internal audit wing in its report has observed that the revision of the bill by bifurcating & distributing the amount of arrears against 19 flats was itself wrong when the initial connection for construction of building was taken . The internal audit wing has no other source to infer that initial connection was taken for the construction of the building. Needless to say this information must have been supplied to the wing by the then officials concerned with the matter. This also gets confirmed by the fact of the letter dt. 27.5.05 in which the consumer was replied that quotation was issued for construction of 19 flats at his request. On going through the A-1 form , we find that the A-1 form does not bear Sr.No. nor date of application. Nor does the A-1 form bear any signature, or initials of the concerned official of the D.L. nor date of receipt by D.L. The counterfoil of the A-1 form which is required to be filled in by the D.L. authorities in which application No. & date and other details are mentioned is completely blank. The counterfoil, in fact, is receipt of the application which is required to be given to the applicant. The copy of A-1 form filed is along with counterfoil with no writing whatsoever on the counterfoil. All these things taken together would tend to show that the contention of the consumer that he did not apply for the connection and he was not aware of any connection having been released , to be correct. Considering all the facts taken together it would be correct to believe that the connection was sought by somebody in whose interest the supply was absolutely necessary. No man of ordinary prudence would apply for connection for 19 flats when he is owner of just one flat/shop. On going through the CPL we find that the consumption for bills ending June /Aug/Oct/Dec.1999 is 3260/1927/4021 & 3434 units

respectively . We also find that not a single paisa against any of the bill is paid. and the net bill ending Dec.99 is Rs. 89593/ ..Though the CPL discloses amount of the bill to be Rs.89593/, the Nodal officer in his letter dt.27.5.05 has stated the amount of arrears as Rs. 89996/. Coming to the

A-1 form we find that the connection is sought for 6 bulbs/tubes, two fans along with three numbers of plugs with total load of 780 watts. Even assuming all these points for which supply is taken are utilized 24 hrs a day and all the 30 days of the month , still then the consumption displayed in the CPL would not be technically possible, rather impossible. It is surprising that for all the four bills which are for huge amount at no point of time any of the officers of the D.L. could notice this. Nor they appeared to be concerned about the recovery also. But it is surprising to note that on application of one Shrikant Kashinath Joshi , which does not disclose any date of application, but received on 16.3.(as per say of Dy. Ex.Engineer 2001), the Dy.ExEngineer has revised the bill to Rs. 43237/ and waived the rest of the charges amounting to Rs. 44319/. From the copy of the CPL on which this revision is done , it appears that the bill is revised considering the fact that electricity has been supplied from this meter to 19 flats and the bill is revised by dividing total number of units by the number of flats.. Here it would be also pertinent to mention that the application for restoration of supply is made by one Shrikant Kashinath Joshi. As it appears from entire letter that the letter is not signed but only name of applicant has been mentioned. and that writing of the name tallies with the entire text of the letter. Here it is also pertinent to note that the A-1 application form at least bears correct name of the consumer. It is contended by Nodal Officer that the waived amount was shown in the bill of the consumer issued in Dec,2004 after point was raised by the internal inspection wing and on its directives to recover the same from the consumer. On going through report of the inspection wing, we find that all that the inspection wing brought to the notice is that the bifurcation of the bill amongst 19 flat owners is incorrect and had sought clarification on what basis it was done. Therefore the contention of the Nodal officer that because of the directives of the audit wing arrears were sought to be recovered from the consumer from the bill of Dec.2004 is incorrect.

The contention of the consumer that somewhere from March 2001 when the electricity supply was made available to him by the builder he has been paying the bill regularly till he received the bill for Dec.2004 which included arrears of Rs. 44319/, appears to be correct as observed from the CPL. The consumer, referring to section 56 of the Electricity Act 2003 has contended that the amount of arrears is not recoverable from him . Sub section 1 empowers the D.L. to cut off electricity supply for non payment of electricity charges and to take necessary action for recovery of the charges etc. Sub section 2 of section 56 has overriding effect over the provisions of sub section 1 of section 56 of the Electricity Act 2003. Sub section 2 of section 56 reads as below.

“ Notwithstanding anything contained in any other law for the time being in force ,no sum due from any consumer, under this section shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity charges and the licensee shall not cut off supply of the electricity”

As observed above the electricity charges from June 99 were not paid till Dec.99 when the same culminated into amount of Rs. 89593/ .As observed from the CPL ,the consumer has been paying his bills from March 2001 to Sept.2004 regularly and it is in bill of Dec.2004 the arrears have been shown for the first time. On going through report of the inspection wing we find that all that the inspection wing brought to the notice is that the bifurcation of the bill in 19 flat owners is incorrect and had sought clarification on what basis it was done. Therefore the contention of the Nodal officer that because of the directives of the audit wing arrears were sought to be recovered from the consumer from the bill of Dec.2004 is incorrect. In our opinion , if the bifurcation of the bill was correct nothing prevented the Dy.Ex.Engineer from reporting as to how the same was correct. If the same was not correct , then in fact the persons responsible therefor should have been made to explain and after seeking the explanation responsibility should have been fixed.

The contention of the Nodal officer that it was because of the rejection of revision of the arrears bill by the audit wing , the arrears were shown for the first time in the bill of Dec.2004 , cannot have overriding effect over the substantive provisions of the law i.e sub section 2 of section 56 of the Electricity Act 2003. However it is also observed that due to non payment of the bill the electricity supply was disconnected on 24.1.2005. The consumer after receipt of the bill for the arrears of Rs. 44319/ for the first time applied to the Dy.Ex.Engineer on 20.1.05 , stating that he has been paying the electricity bill regularly for last four years and prior to that he has not applied for electricity connection nor was he aware of the fact that meter was already issued in his name. It is for the first time that the bill for the arrears was received . The consumer therefore requested not to disconnect his supply and to give bill excluding arrears and that he is willing to pay the same and also requested to enquire on points raised by him in the application. The copy of the application was given to Ex.Engineer & Supdt. Engineer. The consumer on 4.2.05 has sought information from the Dy. Ex. Engineer on some points raised by him. Copy of this application was also marked to Ex.Engineer & Supdt.Engineer. The consumer in his application dt.4.2.05 has specifically mentioned to initiate case of theft of electricity against the builder,19 flat owners and the then concerned officials of MSEB. The consumer again on 16.2.05 has requested the Ex.Engineer to give the decision in the matter, a copy of the same was marked to Supdt.Engineer and Dy Ex.Engineer. The consumer on 1.3.05 has again applied to Dy..Ex.Engineer with copy to Supdt Engineer and Ex.Engineer to give information on points mentioned in the applications along with copy of the CPL. It is this letter dt. 1.3.05 of the consumer which is replied by the Dy.Ex.Engineer vide his letter dt.7.3.05. No information asked for by the consumer has been given by the Dy.Ex,Engineer except the copy of the CPL and it is mentioned in the letter that the information asked for can be available from the CPL. It is surprising to note that the officer of the D.L. did not pay any heed to the applications of the consumer irrespective of the fact that he has contended that the entire episode is result of collusion between builder and the officers of D.L. and also made a request to initiate case of theft against all those responsible. But the request of the consumer

fell on deaf ears of the officers of the D.L and the supply was disconnected on 24.1.2005. When the consumer by his application dt. 20.1.05 has volunteered to pay the current charges and requested to enquire into the matter relating to the arrears , his disconnection on 24.1.05 does not appear to be justified .Since the supply was disconnected and efforts of the consumer went in vain , he also approached the ICGRC on 9.3.05 . It appears no cognizance of the request of the consumer was taken . The consumer, being in disconnected status paid the bill of Rs. 46650/ under protest vide his letter dt.29.3.05 on 29.3.05 to the Dy.Ex.Engineer. In the letter the consumer has stated that since his business is totally stopped the builder and the consumer are paying the bill under protest ,the builder having contributed Rs. 30000/ and Rs. 16560/ having been contributed by the consumer. Two separate cheques have been issued .

As observed above the amount of arrears was not recoverable from the consumer in light of provisions of sub section 2 of section 56 of the Electricity Act.2003. However after remaining in disconnection status for more than two months , the consumer along with the builder has paid the bill of arrears . The persuasion of the consumer vide his letters referred to above and continues silence and inaction on the part of D.L. tend to show that the contention of the consumer is probable and comparatively acceptable to the contention of the Nodal officer made in his report dt.16.6.05

Considering all the facts before us and the above observations, we are of the opinion that the action of D.L. in recovering the arrears was in contravention of the provisions of sub section 2 of section 56 of Electricity Act 2003 and therefore totally unjustified and unlawful. We are therefore of the view that the amount of arrears recovered is liable to be returned to the consumer. Here we would like to make ourselves explicit that we are considering the claim of the consumer only to the extent of Rs. 16560/ i.e his contribution in the payment. The contribution of Rs. 30000/ contended to be paid by the builder is not the issue before us and neither it is considered .

In view of the contentions of the consumer coupled with his request to initiate case of theft against all concerned , we are of the view the D.L. should enquire into the matter and initiate action as warranted in light of the facts that may be disclosed in the enquiry.

Hence it is ordered that the payment of Rs. 16560/ made by the consumer against arrears which were not lawfully recoverable from him shall be returned to the consumer by the D.L.

The D.L.& the consumer shall comply with the above order and report compliance to the Forum.

Inform the parties and close the case.

(H.A.KAPADIA)
Member

(K.S.SHEGOKAR)
Member Secretary

(R.K.PINGLE)
Chairman