

**Consumer Grievance Redressal Forum
Maharashtra State Electricity Distribution Co. Ltd.
Bhandup Urban Zone, Bhandup**

Ref. No. Secretary/MSEDCL/CGRF/BNDUZ/

Date :

Case No. 412

Hearing Dt. 09/11/2011

M/s. Rahul Dyeing & Printing Pvt. Ltd.

- Applicant

Vs.

MSEDCL Vashi Division

- Opponent

Present during the hearing

A] - On behalf of CGRF, Bhandup

- 1) Shri S. D. Madake, Chairman, CGRF Bhandup.
- 2) Shri R.M Chavan, Member Secretary, CGRF, Bhandup.
- 2) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B] - On behalf of Applicant

- 1) Shri J.P. Ferreira, Consumer representative.
- 2) Shri S.G. Kumar, Director.

C] - On behalf of Opponent

- 1) Shri S.B. Kachare, Ex. Engr. & Nodal Officer, Vashi Circle.
- 2) Shri V.G. Hanmawar, Jr. Law Officer.

Preamble

M/s. Rahul Dyeing & Printing Pvt. Ltd. is a H.T. consumer under Sr. No. 000149021159 with connected load 181 kw and contract demand of 171 kvA at Plot no. C-440/1, TTC, MIDC, Turbhe, Navi Mumbai.

On 17/11/2010, the Dy. Ex. Engineer of Vashi sub-division inspected the premise and concluded that the supply was using for the activity other than sanctioned category. The utility therefore serve the bill amounting to ` 8,90,966.08 under section 126 of E.A. 2003 which subsequently reduced by correcting to the tune of ` 12,26,804.51.

The Applicant consumer approached to the circle office of the utility but could not get any relief on dtd. 04/11/2011 the utility discontinued power supply after issue of notice. In view of restoration of power supply as interim relief, the Applicant approached to this Forum and accordingly the grievance was filed vide case no. 412.

Consumer's Say: -

On behalf of consumer Shri Ferreira and Shri S.G. Kumar (herein after referred as to the Applicant) were present to represent the case.

In the Present case Applicant referred the Superintending Engineer as party no. 1 and party no. 2 to the supply company i.e. MSEDCL

The Applicant submits that he is a consumer within the meaning and definition of consumer under section 2(1)(d) of the Consumer Protection Act, 1986 and the utility is guilty of deficiency in services under unfair trade practices under section 2(1)(g) and (R) of the said Act. It is further submitted that since the utility have their address as mentioned in the title of this complaint and this Hon'ble Forum has the jurisdiction u/s 11 to entertain, hear, try and decide this complaint u/s. 12(1) of the said Act. The Applicant craves leave of this Hon'ble Forum to grant leave under section 11(b) to file present complaint against all the opposite parties before this Hon'ble Forum to avoid technical difficulties, if any, which may arise on future and also to avoid duplication and multiplicity of suits. The Applicant seeks permission of this Hon'ble Forum u/s 12(c) on behalf of, and for the benefit of all interested consumer, if any.

The Applicant submits that opposite party no. 1 is Superintending Engineer of MSEDCL. The opposite party no. 2 is the electricity supplier company, supplying electricity in Maharashtra having their office at the address mentioned in the Title clause of Applicant.

The Applicant stated that his company is registered under company act, 1956 and are manufacturers of Textiles, carrying on activities of Dyeing and printing. The Applicant Company is using electric connection given by the utility no. 2 vide H.T. consumer no. 000149021159 since year 1996 and since 1996 till date are regularly paying electric charges month wise bills raised on the consumption by utility. From last so many years total industrial scenario, industries are reeling under heavy recession and facing bad phase. Applicant company has given part premises on leave and license basis to some parties. On 24/11/2010 the complainant informed to the utility, that Applicant Company had given to two parties their part premises, and Applicant further requested that please guide if any tariff difference is there they are ready to pay the same.

The Applicant says that Applicant received on 12/01/2011 a letter dtd. 14/12/2010 from the utility, stating that some Dy. Engr. Visited on 17/11/2010 to Applicant premises and found power supply is extended to three other users from Applicant source, which is offence u/s 126 of E.A. 2003, while infact there were two users not the three as alleged in their letter, third user mentioned in the said letter as M/s. Printing press, there is no such firm and utility requested to pay amount of ` 7,95,693.45 within 15 days failing which the said amount otherwise would be added in the forthcoming bill and in case if Applicant wants to make any representation to utility, they should do so within 7 days from date of receipt of the letter.

The Applicant said that he wrote a letter on 17/01/2011, requesting that the demand of ` 7,95,693.45 is illegal and unjust and requested to allow time to give personal hearing.

The Applicant further stated that he made a representation to Superintending Engineer in February, 2011 and utility was fully satisfied and informed during personal meeting with Applicant Company Director Mr. S.G. Kumar, that the demand of ` 7,95,693.45 will be withdrawn as both the parties/Licensee were also using H.T. load.

The Applicant further added that on dtd. 07/07/2011, the Applicant Company received a notice from utility amount ` 76,381.71.

The Applicant say that it is to the surprise that the Applicant received a notice on 21/09/2011 demanding ` 12,26,804/- mentioning that detail of earlier difference from March,2010 to October, 2010 as ` 8,90,966.01 instead of their earlier demand of ` 7,95,693.45 in the previous letter of utility, however, in the same letter utility mentioned that if Applicant is not agreeing to demand of the utility party they can prefer an appeal to the Chief Engr. Electricals, within 30 days, after depositing 50% amount.

The Applicant says that the Director Shri S.G. Kumar, accordingly met Superintending Engineer and Chief Engineer, Bhandup Office, and requested that they have submitted their objections long back on dtd. 17/01/2011, Applicant neither received any reply nor given any hearing for earlier letter on the contrary during personal meeting in the month of February, 2011. Superintending Engineer told to the Applicant that there was no need of hearing as they have send the demand by mistake and they will cancel that demand/letter. The Applicant made a written representation on dtd. 04/10/2011 to both – Superintending Engineer & the Chief Engineer also. They assured the Applicant Director Mr. S.G. Kumar in presence of one shri Manoj Gulati, a consultant sitting there for his own work, and informed no need to pay the amount, utility will give to Applicant a new date for hearing and accordingly matter will resolved.

Applicant further stated that in second week of October, 2011 also Applicant visited the office of the Superintending Engineer and latter assured that Applicant should come after Diwali only as Superintending Engineer is busy and assured Applicant that your matter will be resolved and no action will be taken, Applicant has to take care for benefit of Superintending Engineer on Diwali and no need to pay any amount provisionally as mentioned in their demand letter.

The Applicant also informed to the utility that if there would have been any malafide intention of the Applicant company to make any benefit by giving/or selling electricity as alleged in utility demand letter, Applicant company has got her own wind-mill unit also in Satara the generation of the said wind-mill is sold to the utility only at a price of ` 3.35 per unit while utility is charging much higher rate to the Applicant. Applicant also submitted his grievances that since July, 2011 onwards the charges/monthly electric bill of the Applicant charged drastically higher which Applicant is paying regularly under protest to avoid any misunderstanding, however utility assured that after diwaly everything will be resolved.

The Applicant further added that suddenly on 03/11/2011 evening after closer of Applicant's office Superintending Engineer send on 24 hrs. disconnection no. , as Applicant could not comply off the record demands of the Superintending Engineer, immediately Applicant called on Superintending Engineer at around 5.45 p.m.- utility called Applicant at 13.00 hrs. on next day i.e. on 04/11/2011, accordingly Applicant's Executive Shri J.P. Ferreira, alongwith Co. director Shri S.G. Kumar visited to Superintending Engineer's office at Vashi Circle, Superintending Engineer was not available, then Shri J.P. Ferreira called Superintending Engineer from mobile, where by Superintending Engineer told that he had gone to attend some function, Applicant should pay 50% i.e. ` 6,15,000/- alongwith an request to given an appeal, as per their demand letter dtd. 16/09/2011. The Supdt. Engr. further told that he is under heavy pressure for recovery at least 50% amount Applicant should

deposit immediately and Supdt. Engr. further assured that he has already told and managed with his superiors within 30 days he will withdraw the demand and the said amount of 50% i.e. ₹ 6,15,000/- so paid would be refunded to the Applicant. The Supdt. Engr. further requested to Applicant that he should meet him to comply off the record payment in the evening after 4.30 p.m. When Applicant Executive talked Supdt. Engineer from his Vashi office at that time Supdt. Engr.'s peon shri Shinde and Shri Rakesh Malhotra one visitor was present there.

The Applicant stated that he immediately paid ₹ 6,15,000/- vide cheque no. 969049 (Central Bank of India, J.B. Ngr branch alongwith covering letter.

Applicant states that around 17.00 hrs. Supdt. Engr. called from mobile no. 9930269531 and told that you had only given cheque with covering letter and what about other (off the record cash money) send it immediately otherwise I will return your cheque and get disconnected Applicant electricity line. The Applicant says that he casually took the matter and did not pay the huge off the record money to the Supdt. Engr.

The Applicant says that at 11 a.m. only on 05/11/2011, Supdt. Engr. sent his staff to disconnect the electric supply of the Applicant Vashi factory, inspite of request by the watchman that no staff is therefore, and would be available after half an hour.

The Applicant further stated that the Director of the Company rushed from Mumbai to Supdt. Engr.'s Vashi Office, but staff available told us that Supdt. Engr. is not available in office and without his direction they cannot do anything.

The Applicant says that Company Director Shri S.G. Kumar, called on 06/11/2011, at around 11 am to Chief Engineer on his mobile 9930090050 who was shocked to know the matter and took Applicant's grievance seriously as Applicant's production suffering, effecting to the

exports commitments and assured that within two hrs. Applicants electric supply would be connected and asked Shri Kumar to contact one Jr. Engr. Shri Mishra from Vashi Circle on his mobile no. 9920523981 and to give him cheque of ₹ 6,15,000/- at Circle office at Turbhe, Shri Mishra will pass on message to circle/Engg. Line staff and ensure that line is restored, but in afternoon Shri Mishra told that he is helpless as Supdt. Engr. threatens him not to restore the line on holiday and without written order of Supdt. Engr.

The Applicant further states that in view of the aforesaid it is prima-facie evidence that action of Supdt. Is grossly arbitrary inhuman and without any opportunity given to the Applicant of being heard, the act of the utility is not only unlawful but also amounts to deficiency in service and unfair trade practice under the Consumer Protection Act.

The Applicant submits that cause of action arose on 05/11/2011 when utility disconnection arbitrarily disconnected the electricity supply; therefore the present complaint is filed within the time limit under the Consumer Protection Act.

The Applicant says that he has not filed any application/complaint before any statutory or non-statutory authority in respect of the aforesaid matter.

The Applicant further states that he craves leave to refer to and rely upon the documents annexed hereto and further craves leave to file additional documents in respect of his contentions. The Applicant craves leave to add, alter or amend any or all of the foregoing paragraphs if and when necessary with the permission of this Hon'ble Forum.

The Applicant says that due to arbitrary act of the Supdt. Engr. Applicant company's 150 workers are jobless from 3 days.

Prayer of the consumer :

- a) To allow the complaint.
- b) To hold and declare the utility to be guilty of deficiency in service and unfair trade practice as per the provision of the Consumer Protection Act.
- c) To direct the utility to restore the Electric supply immediately as ad-interim relief.
- d) To direct the utility to pay compensation of ` 2,00,000/- (` two lacs only) for incessant mental and physical harassment, inconvenience and agony caused to the Applicant and further compensation of ` 3,00,000/- (` three lacs) as damaged for production, due to deficiency of service on part of utility.
- e) To declare the demand of utility is illegal vide letter dtd. 16/09/2011 and the bills raised from July, 2011 till date at higher rate are bad in law and accordingly to refund the excess amount paid by the Application with interest.
- f) For such other and further reliefs as the nature and circumstances of above numbered complaint may deem fit and proper.

Utility Say :-

On behalf of utility Shri S.B. Kachare, Nodal Officer and Ex. Engr.Vashi Circle was present alongwith Jr. Law Officer to represent the case (hereinafter will referred as to the Opponent).

They stated that M/s. Rahul Dyeing & Printing Pvt. Ltd., Plot no. C-440/1, TTC, MIDC Turbhe, Navi Mumbai, is their bonafide HT consumer bearing consumer no. 000149021159 with C.L. 181 kw and C.D. 171 kVA entailing mfg. activities of dyeing and printing under the industrial category of tariff i.e. 56 HT I N.

As argued by the Opponent, during the inspection of the above said premises of the Applicant held by Dy. Ex. Engr., MSEDCL, Vashi s/divn. On dtd. 17/11/2010, it was found that the said premises had been subletted to three other tenants namely a) M/s. Solas Marine Services

Pvt. Ltd. b) M/s. Super Pack Pvt. Ltd. c) installation of machineries for printing press, all engaged in the business involving various different activities other than the activity for which power supply was sanctioned, attracting the commercial category of tariff without intimation or permission of this office.

As the supply was being used for the activities attracting commercial tariff instead of the sanctioned activity for which industrial tariff is applicable whereby, attracted the provision of Section 126 of EA 2003.

Accordingly, the provisional supplementary bill was issued to consumer for the period March 2010 to Nov. 2010 amounting to ` 8,90,966.08 vide this office letter no. SE/VC/HTB/8549, dtd. 14/12/2010 with request to make the payment within 15 days or to submit the representation, if any, within 7 days. The Applicant consumer neither made the payment nor filed any representation against the said supplementary bill.

Therefore, the final bill containing the assessment charges for the period March 2010 to Nov-2010 amounting to ` 8,90,966.08 and against plane tariff difference to the period Dec-2010 to May-2011 amounting to ` 3,35,838.50. total ` 12,26,804.51 was issued vide this office letter no. SE/VC/HTB/6521, dtd. 16/09/2011 with request to make the payment within 15 days to avoid unpleasant action of disconnection of power supply. However, the consumer was informed the address of appellate authority to file the appeal against the said bill after depositing 50% of the amount.

The Opponent further clarify that the Applicant consumer instead of challenging the above said final assessment bill before the appropriate Appellate Authority made the request vide its letter dtd. 04/10/2011 to give him the personal hearing. But the Applicant at the same time intimated that he was going to prefer an appeal.

The Opponent also clarify that this office vide letter no. SE/VC/HTB/7292, dtd. 19/10/2011 informed Applicant that the opportunity for filing any representation against the provisional assessment bill was already given to him. Therefore, in absence of any provision under section 126, 127 of EA 2003 it could not be just, fair and legal to give him again the same opportunity to file representation against the final assessed bill. However, the Applicant was intimated o pay the said bill within 7 days and also reminded to prefer an appeal before the Appellate authority.

The Opponent further stated that the Applicant neither made the payment nor filed any appeal against the said supplementary bill. Therefore, 24 hrs. disconnection notice was issued vide letter no. SE/VC/HTB/7557, dtd. 02/11/2011 with intimation to make the payment within 24 hours failure of which will attract the disconnection of power supply.

In response to above 24 hrs. disconnection notice the Application has submitted the cheque amounting to ` 6,15,000/- alongwith letter dtd. 04/11/2011 and mentioning therein that he is going to file an appeal before our superior authorities by depositing 50% amount of final bill under protest. Applicant further requested utility to given him an appeal and personal hearing.

Considering the legal provisions envisaged under section 126, 127 of E.A. 2003, it would not be just fair and legally possible to accept the above said cheque of the consumer which would otherwise amount to part payment of the assessment as well as to admit the request either for giving him the opportunity to file the appeal for want of appellate jurisdiction to this office or allowing him the date for personal hearing after lapse of the time limit as prescribed under the section 126 of EA 2003 for raising any objection or filling the representation against the provisional assessment bill. Accordingly, the consumer has been

intimated vide letter no. SE/VC/HTB/7639, dtd. 04/11/2011 that it could not be legally possible to accept the cheque which has been returned herewith and also intimated to take the action of disconnection.

Thus, it is clearly evident from the above circumstances that in spite of proper opportunities offered to the Applicant for filing the representation against the provisional assessment bill as well as to prefer an appeal before the proper appellate authority within the prescribed limit under section 126 & 127 of E.A. 2003, the Applicant consumer filed to follow the said legal provision nor discharge his legal liability of making the payment against the said bill inspite of frequent notices of disconnection. Thus, the Applicant consumer has left no other legal way for MSEDCL other than to make the disconnection of power supply. Hence, the MSEDCL was constrained to disconnect the power supply of the above said consumer in default of payment and thus, has followed only legal provisions.

The Opponent further stated that in the above circumstances and in the present matter of interim relief the opponent MSEDCL craves the leave of Hon'ble Forum without prejudice to its legal right to file the detailed say on the issues mentioned in the complaint and with request to consider the present say on the limited and urgent issues of interim relief, on amongst other ground as under :

a) The present matter is based on the facts and issues which give rise to the action to be taken under the provisions of section 126 & 127 of EA 2003. Therefore, the grievance referred to the Hon'ble Forum falls within the purview of section 126 of EA 2003 which has been excluded from the jurisdiction of Hon'ble Forum as per the Regulation no. 6.8 of the MERC (CGRF & EO) Regulation 2006. On this very ground of want of jurisdiction the present complaint deserves to be dismissed.

b) The Appellate Authority under section 127 of EA 2003 has been empowered to hear and decide the any appeal file against the final

assessment bill made under section 126 of EA 2003 and the Hon'ble Forum has no jurisdiction to try the same. On this very ground want of jurisdiction the present complaint deserves to be dismissed.

c) The present complaint is also not tenable under the provisions of Consumer Protection Act 1986. The Opponent MSEDCL has followed every provision of the EA 2003 in true and strict sense. In spite of the proper opportunities given to the consumer to challenge the said assessment bill, the Applicant neither availed the opportunities within prescribed limit nor discharged its legal liability to make the payment against the said bill after the frequent notices of disconnection which ultimately resulted in disconnection of supply as per the legal provision prescribed under the Electricity Act. Therefore, there is no deficiency of service on the part of licensee. Hence, the present complaint is not tenable for want of substance and merits.

d) The Applicant has not recourse before the appropriate authority for the proper remedy available under the Act. On this ground the present complaint deserves to be dismissed.

e) The present complaint by twisting the facts is hereby trying to mislead the Hon'ble Forum and thereby to get remedy which is otherwise not legal. Thus, it has not come with clean hands before the Hon'ble Forum and on the equitable ground i.e. who seeks equity must do equity the present complaint deserves to be dismissed.

f) The present complaints are false, frivolous, vexatious and bad in law. Hence, not tenable in the eye of law.

The Opponent further stated that in the above circumstances it prays that the Hon'ble Forum be pleased :

- a) To dismiss the present complaint for want of jurisdiction
- b) To dismiss the present complaint devoid of merits and substances.

- c) To dismiss the present complaint has to be false, frivolous, vexatious and bad in Law.
- d) To dismiss the present complaint as not tenable in the eye of Law.
- e) To dismiss the present complaint for want of recourse for the proper remedy before the appropriate authority.
- f) To allow here and further to amend, alter, add or modify any other and further grounds whenever needed.
- g) To allow to file the detailed say in the matter after studying all the points of the complaint as for want of the time given to file the present say.
- h) Any other and further relief which the Hon'ble Forum deems fit in the interest of justice.

Observation :-

The matter was heard on 09/11/2011 both the parties were present, the documents on record and arguments during the hearing reveals that, the Opponent utility inspected the Applicant's premises on 17/11/2010 and observed that the premises is divided in to 3 more sheds and the supply was extended to each premises which the Opponent concluded the unauthorized extension of supply and also the activities going on are covered under the commercial. On perusal of documents & proceedings it is observed the Applicant has subletted the premises and given on rent to the other occupants/tenant, where the activities were for

| <u>S.No.</u> | <u>Purpose/Activity</u> | <u>Connected load</u> |
|---------------------|------------------------------------|------------------------------|
| 1) | Administrative Office | for 20 KW |
| 2) | Packing unit, Super Pack Pvt. Ltd. | for 55 kVA |
| 3) | Printing press unit | Non use |

It will be worth to refer the relevant Section of the MERC (CGRF & EO) Regulations 2006 which deals with the cases of unauthorized use of electricity.

Forum observed that the MERC (CGRF & EO) Regulations 2006 there in 6.8 speaks that:

“If the Forum is prima facie of the view that any Grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum:

- a) unauthorised use of electricity as provided under section 126 of the Act;
- b) offences and penalties as provided under sections 135 to 139 of the Act;
- c) accident in the distribution, supply or use of electricity as provided under section 161 of the Act; and
- d) recovery of arrears where the bill amount is not disputed.

In the above the relevant section in the present case is 6.8 (a) which do not allow the Forum to deal with as the Appellate authority is designated under section 127 of Electricity Act 2003.

The Section 127 of E.A. 2003 state that *“Being the case is pertains to the unauthorized use of Electricity as the Opponent booked under this section, Forum could not intervene & ask for restoration of supply.*

Hence, it is fair and proper to decide the matter by the concerned. Appellant authority and Forum could not intervene in the case.

ORDER

Considering above MERC (CGRF & EO) Regulations 2006, therein 6.8 (a) this Forum could not intervene in the matter; the Applicant consumer should approach to the Appellate authority as described under section 127 of E.A. 2003.

No order as to the cost

Both the parties be informed accordingly.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 1st of December 2011.

Address of the Appellate Authority

**The Chief Engineer (Elect) PWD,
Bandkam Bhawan, Marzban Road,
Nr. Sidharth College, Fort,
M U M B A I – 400 001.**

Tel. No. 22013415/16/18.

**DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP**

**S. D. Madake
CHAIRMAN
CGRF, BHANDUP**

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MEMBER SECRETARY
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