



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO. K/E/218/242 OF 2009-2010 OF
SMT. JUHI VIKAS VARTAK, VIRAR (EAST) REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN
ABOUT FLYING SQUAD RECOVERY

Smt. Juhi Vikas Vartak
Varadraj Smruti, Vartak Ward
Hira Vidyalaya Road,
Virar (East), Tal : Vasai, Dist. Thane

(Here-in-after
referred
as user - Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Virar (East) Sub-Dn. Virar
Dist. Thane.

(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the

grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

- 2) The consumer is a L.T. – 2, 17.10 KW consumer of the licensee. The Consumer is billed as per commercial tariff. Consumer registered grievance with the Forum on 25/03/2009 for Excessive Energy Bills. The details are as follows: -

Name of the consumer :- Smt. Rajani Suresh Hawaldar

Name of the user – consumer : Smt. Juhi Vikas Vartak

Address: - As given in the title

Consumer No : - 013070443192 (Old consumer No. CL- 430)

Reason of dispute: Flying Squad (FS) recovery bill for

Rs. 01,47,250 of the period from 01/02/01 to 09/01/03

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/288 dated 25/03/2009 to Nodal Officer of licensee. The licensee through its Dy. Executive Engineer, MSEDCL Virar Sub/Dn. (East) filed reply vide letter No. DYEE/Virar/GAD/1718, dated 28/04/2009.
- 4) The user consumer claims that they have purchased the concerned house No. 418 in a auction held by Vasai Janata Sahakari Bank Ltd. By sale a deed dt. 22/02/2008. Any such arrears on account of FS inspection was not mentioned in the description of the property with the said Bank and they were also not given any idea about any such recovery or outstanding amount against the concerned electric connection in the said house at the

time when they purchased the said house in the said auction. They have been paying the electric bills regularly since they purchased the said house. Therefore, the responsibility to pay any such arrears lies with the concerned Vasai Janata Sahakari Bank Ltd. and Smt. Rajani Suresh Hawaldar, the previous owner of the said house. On her enquiry, she was given monthly bills of the period from 17/04/2006 to 11/04/2008 and none of the said bills was containing about the said recovery on account of theft of electricity. She has annexed the xerox copies of the said bills with her grievance application. She learnt after purchase of the said property that the electric supply to the said house was disconnected on 14/05/2007 as there were arrears of Rs. 27,920 as on 02/02/2007 against the said electric connection. Therefore, she made an application to the licensee for reconnection. The licensee has prepared test report at the time of reconnecting the electric supply on 14/02/08. The concerned engineer has shown an amount of Rs. 61,510 as outstanding arrears in the said report. She deposited an amount of Rs. 35,000 and gave a Bond for the remaining outstanding amount and therefore, the electric supply was reconnected. She also deposited such remaining outstanding amount on 07/05/08. She was not aware about any outstanding amount of the theft at that time and any such outstanding amount was also not mentioned in the bills. She has deposited various amounts such as Rs. 35,000 of bill dt. 14/02/08, Rs. 710 on 29/05/08 as per the bill dt. 29/05/08, Rs. 33,780 on 29/05/08 as per the bill dt. 07/05/08, Rs. 5,490 on 30/06/08 in respect of the bill of June 2008, Rs. 1500 of the bill dt. 28/07/08 on 01/08/08, Rs. 2,860 of the bill dt. 18/08/08 on 27/08/08, Rs. 1820 of the bill for Sept. & Oct. 08 on 05/11/08,

Rs. 7,500 of the bill dt. 28/01/09 on 19/01/09, Rs. 1350 of the bill dt. 27/02/09 on 02/03/09. There after the licensee has sent her a bill dt. 12/11/08 for Rs. 01,48,710. The concerned bill and the notice regarding arrears has been issued in the name of Smt. Rajani Suresh Hawaldar. However, the said property now stands in her name and she also pays it's taxes. The arrears in the said bill of the year 2003 are against Smt. Rajani Suresh Hawaldar. She was not knowing about any such arrears and the said arrears have not been mentioned in any bill from Feb. 2007. Smt. Rajani Suresh Hawaldar was the owner of the said house in the year 2003. However now she has becomes it's owner. An amount of Rs. 5 to 6 lakhs are in deposit in the name of Smt. Rajani Suresh Hawaldar with the above referred Bank. She is not in arrears of any bill since she purchased the said house. Therefore, Smt. Rajani Suresh Hawaldar is responsible to pay the said arrears of Rs. 01,48,710 or so of the FS inspection recovery and the licensee should recover the said amount from the said Smt. Rajani Suresh Hawaldar or the above referred Bank. However, the licensee has issued a notice dt. 26/09/08 directing payment of Rs. 01,47,250 and threaten to disconnect the electric supply to her house in case the said amount is not paid within 15 days. Though the said notice was addressed to Smt. Rajani Suresh Hawaldar, the result of non payment of the said amount as per the said notice, would result disconnection of electric supply to her house. Therefore, she has in the beginning on 06/10/08 and 07/10/08 sent letters to the licensee for reduction of the amount of the said notice by weaving the interest and also requested the licensee to recover the said amount from Smt. Rajani Suresh Hawaldar or out of the amount of

the said Smt. Rajani Suresh Hawaldar in deposit in the above referred Bank vide letter dt. 15/12/08. However, the licensee did not oblige her by doing so and therefore, she has registered the present grievance against the licensee with this Forum on 25/03/09.

- 5) The licensee claims that the concerned electric connection is still in the name of Smt. Rajani Suresh Hawaldar and the said connection was given on 01/02/2001. The said connection was inspected by FS on 09/01/2003 and the said inspection revealed that though the sanctioned load of the said connection is 17.10 KW, the consumer was making use of 56.34 KW load. As per the report of the said inspection, supplementary bill for Rs. 39,16,350 was given to the consumer. The amount of the said suppl. bill remained unpaid and therefore, the supply was disconnected on 08/01/03. There after Smt. Rajani Suresh Hawaldar, the then owner of the said house made a representation dt. 01/01/04 claiming that the said assessment as per above suppl. bill was excessive. There after on the application filed by Smt. Rajani Suresh Hawaldar on 31/03/04, the supply was re-connected on her depositing Rs. 50,000 towards part payment and as she has shown her willingness to pay the remaining amount afterwards. The supply was re-connected because the Superintending Engineer, Vasai Circle gave sanction for such re-connection on depositing Rs. 50,000 by the consumer. There after the supply to the said house was permanently disconnected in Oct. 07 due to non payment of the arrears. It appears that in the mean while the present user consumer Smt. Juhi Vikas Vartak purchased the said Hotel site. Smt. Juhi Vartak on 14/02/08 gave an undertaking on stamp paper and also requested to reconnect the supply showing her willingness to pay or deposit an amount of Rs. 35,000. Accordingly, the

electric supply to the said house was restored on Smt. Juhi Vartak depositing Rs. 35,000.

The licensee further claims that Dy. Ex. Engr. Virar (East) S/Dn. submitted a proposal for the reduction in the amounts of average bills issued to the consumer and the Division Office has also submitted a proposal for according sanction for a proper amount of the bill for the approval of suppl. bill as per the inspection by the FS. The Superintending Engineer, Vasai Circle, in response to the above proposals, accorded sanction for recovering an amount of Rs. 01,47,250 from Smt. Rajani Suresh Hawaldar. The said Smt. Rajani Suresh Hawaldar did not pay the amount of the said suppl. Bill inspite of several letters and notice. The said amount of suppl. bill i.e. Rs. 01,47,250 is of the electricity of excess load and therefore, the licensee has right to recover the said amount. The user consumer Smt. Juhi Vartak did not intimate the licensee at the time of purchasing the said house and therefore, she being the present owner of the said house, is liable to pay the said arrears. Therefore, her grievance be rejected and it be permitted to recover the said amount.

- 6) The Chairperson and the Member of the Forum heard both the parties on 28/04/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Smt. Juhi Vikas Vartak, user consumer, Shri Ravindra More, representative of the consumer, Shri N. P. Chaudhari, Dy. Ex. Engr. and Shri S. B. Bhavsar, D. A. representatives of the licensee, attended hearing. Minutes of the hearing including the submissions made by the parties are recorded and the same are kept in the record. Further submissions made by the above referred user consumer and representatives of both the parties were heard

by the Forum in the second hearing 13/05/09 at 14.00 hrs. in order to get clarified the position regarding the suit which was earlier filed by the user consumer. Submissions made by each party in respect of grievance shall be referred while deciding the grievances to avoid repetition.

- 7) Considering the grievance of the user consumer, the following points arise for determination and considering the reply of the licensee and submissions made on behalf of both the parties, the findings thereon are given against each of it, for the following reasons :

Points	Findings
1) Whether the licensee can press for the recovery of an amount of Rs. 01,47,250 of the suppl. bill as per the FS's inspection report against the user consumer Smt. Juhi Vartak, threatening to disconnect the electric supply in case of non payment of the said amount ?	NO
2) What Order	As per final order

Reasons :

- 8) It is clear from various documents on record and it is also an admitted fact that the concerned house No. 418 (old No. 419) was earlier owned by Smt. Rajani Suresh Hawaldar and it is clear from the copy of sale certificate dt. 13/02/08 filed by the user consumer that the user consumer Smt. Juhi Vartak and her husband Shri Vikas Vartak purchased the said house in an

auction held by Vasai Janata Sahakari Bank on or about 13/02/08. It is also clear from the copies of receipts dt. 04/02/08 and 14/02/08 and copy of bill for Nov. 07 to Feb. 08 filed by the user consumer and the licensee also claims that on or about 14/02/08, the user consumer Smt. Juhi Vartak deposited an amount of Rs. 35,000 out of the total arrears of Rs. 61,510 of the period from Nov. 07 to Feb. 08 and also gave undertaking to deposit or pay the remaining amount of the said arrears and on that the electric supply to the said house was restored as it was earlier disconnected due to non payment of arrears of the said period by the earlier owner i.e. Smt. Rajani Suresh Hawaldar. Copies of receipts dt. 29/05/08, 30/06/08, 27/08/08, show that the user consumer Smt. Juhi Vartak deposited or paid the earlier arrears and amounts of further current bills. The CPL for the month of Oct. 08 shows that there were no arrears against user consumer in the said month i.e. just prior to the month Nov. 08 in which the amount of Rs. 76,166.16 as that of interest arrears and Rs. 71,070.60 as arrears, which are out of the amount of Rs. 01,47,250 of the recovery as per the inspection report of FS, were shown. Thus it is clear that the user consumer Smt. Juhi Vartak has paid the electric charges in arrears since Nov.07 after purchasing the said house and thereafter regularly paid the electric charges until the above referred arrears as per the FS inspection report were charged in Sept.08 by issuing notice dt. 26/09/08 and were subsequently shown as arrears in the bills and in the CPL for the month of Nov.08.

- 9) It is clear from the copy of notice dt. 26/09/08 and the copies of spot panchanama, spot inspection report, assessment list, copy of the complaint lodged by Shri Nitnavare, Dy. Ex. Engr. who took part in the FS, copy of the

FIR registered on the complaint lodged by Shri Nitnavare that the FS inspected the said connection on 09/01/2003 and found that though the sanction load was 17.10 KW, electricity with excess load of about 56.34 KW was being used and two lead-seals of the meter were found to have been tampered with and two plastic seals were found in damaged condition and from the condition of the meter and spot, the complainant Shri Nitnavare concluded that theft of electricity was committed and such theft was of electricity worth Rs. 31, 33,080 and on his complaint FIR No. II-3/03 for the offences under Section 39 and 44 of the Electricity Act 1986 was registered. The licensee did not produce on record details of and copies of charge sheet which may have been filed in the said crime and also did not inform about the stage of hearing in the said case even though this Forum directed it to do so at the time of hearing and also vide letters dt.28.5.09 and 19.6.09. It is however clear from the record that the concerned inspection by FS was made on 9.1.03 on which date Smt. Rajani Hawaldar was owner of the said house and therefore the user consumer Smt. Juhi Vartak has no concerned with the alleged tampering with the meter and theft of electricity and therefore even if the concerned criminal case arising out of the said inspection is pending, it could not affect the jurisdiction of this forum to find out whether the user consumer Smt. Juhi Vartak is liable to pay the amount of the charges on account of the said alleged theft and utilization of electricity with excess contact load by the earlier owner and therefore in our considered opinion, the bar of Regulation 6.8 of MERC (CGRF etc .) Regulation 2006 does not apply to the present grievance of the user consumer.

- 10). Though the user consumer earlier filed special civil suit No.760 of 2008 in the Court of CJSD in respect of the present dispute, she withdraw the said suit, and also filed certified copy of the concerned order of the said court passed on plaint exhibit-1. Therefore the bar of Regulation 6.7 of MERC (CGRF etc .) Regulation 2006 does not apply to the present grievance of the user consumer.
- 11). This brings us to the main question as to whether the user consumer is liable to pay the amount of Rs.1,47,250/- out of the total amount of electric charges on account of theft of electricity and utilization of electricity with excess contact load as per the FS inspection report dt. 9.1.03 as per notice dt. 26.9.08. The LR submits that since the earlier Smt. Rajani Hawaldar has not paid the said amount, Smt. Juhi Vartak, being the present owner of the said house, is liable to pay the said amount and the licensee is entitle to disconnect the electric supply to user consumer Smt. Juhi Vartak in case she fails to pay the amount. Though the LR did not rely on any provisions enabling the licensee to recover the said amount from the subsequent owner i.e. user consumer Smt. Juhi Vartak the only provision in the supply code regulations about it, is Regulation 10.5 and the same reads as under:
"10.5:- Any charge for electricity or any sum other than a charge of electricity due to the distribution licensee which remains unpaid by a deceased consumer or earstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transfer to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the distribution licensee as due from such legal representatives or

successor in-law or new owner/occupier of the premises, as the case may be:

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises”

- 12). It is thus clear from above referred regulations 10.5 that the liability of new owner of the concerned premises extends to pay the arrears of maximum period of six months only, and eventhough the said regulation does not specifically say as to from which date or time such earlier period of six months should be counted, in our considered opinion, it could be counted from the date of purchase of or taking over the possession of the concerned premises by the new owner, whichever is earlier. In the instant case, the user consumer Smt. Juhi Vartak and her husband have purchased the concerned premises vide Sale certificate dt. 13.2.08 and therefore they can not be said to be liable to pay the arrears of the period 01/02/2001 to 09/01/2003 as per the FS's inspection report dt. 09/01/03. It is more so because the user consumer Smt. Juhi Vartak and her husband have no concern with the alleged theft of electricity during the year 2001 to 2003 as they were having no concern with the said connection and premises during the said period.
- 13) The other provision which the licensee can press for it's case regarding liability of new owner to pay the arrears of the electric charges, is circular No. 381, dt. 22/09/2003 and the same reads as under :
“On verification of the documents from the new incoming consumer and

after verifying past history of the consumer, if arrears of energy bills exists, then the whole liability of payment of arrears, dues shall rest on incoming consumer. In such cases old arrears to be cleared by new incoming consumer before effecting change of name/ownership of installation”.

It is clear from the above referred regulation 10.5 that the new owner becoming owner by purchasing the concerned premises is liable to pay arrears of previous six months only and therefore, the licensee cannot issue a circular imposing the liability to pay all arrears on new incoming consumer, as has been done by the above referred circular and therefore, in our considered opinion, the above referred circular is improper and illegal to that extent.

- 14) It is true that both the above referred provisions i.e. Regulation 10.5 and MSEDCL's circular No. 381, dt. 22nd Sept. 2003 are regarding the change in the name of the consumer either on account of transfer of concerned premises by sale, gift deed or death of previous owner, and in the instant case the user consumer Smt. Juhi Vartak has not yet filed application for change in the name of the concerned connection. However, in our considered opinion it would be just and proper to find out the liability of user consumer to pay the concerned arrears in the present grievance application as if the user consumer and her husband have applied for change of name, instead of directing them to file such application and then resolve the said controversy in order to avoid further prolongation of the dispute between the user consumer Smt. Juhi Vartak and the licensee.
- 15) Moreover, the Hon. Electricity Ombudsman, in an order dated 17th June 09 in representation No. 55 of 09 Shri Rajesh Bhimrao Bhosale V/s. MSEDCL,

while interpreting the words “Any other sum other than the charge for electricity” appearing in Regulation 10.5, held that such other charges cannot certainly include the amount of theft assessment charges in which the present new consumer is not even remotely concerned, and that the above referred MSEDCL’s circular cannot mean that the licensee can recover, apart from the energy charges, also the assessment of theft charges of the past consumer from the new consumer.

- 16) In view of the above discussion and also relying on the above referred decision of Hon. Electricity Ombudsman, we come to the conclusion that the user consumer Smt. Juhi Vartak and her husband are not liable to pay the above referred arrears of Rs. 01,47,250 demanded by the licensee vide notice dated 26/09/2008 and hence the licensee cannot press for its recovery from them by threatening to disconnect the electric supply to their such premises, in case the said arrears are not paid. Hence the finding is negative on this point as above.
- 17) The user consumer Smt. Juhi Vartak registered the present grievance application on 25/03/2009. Both the parties were heard on 28/04/09 and there after in the second hearing on 13/05/09 in order to get clarification from the user consumer regarding the suit filed by her in the court. The user consumer at the time of such second hearing on 13/05/09 filed undertaking to withdraw the Civil Suit No. 760 of 2008 and also an application for not delivering the Judgment or order in the case until she files certified copy of the order about withdrawal of the suit by her. Subsequently, the user consumer filed certified copy of the order of Civil Judge Senior Division regarding withdrawal of the suit by her on 20/05/09.

The LR was directed to produce the papers regarding the criminal case arising out of the FS's inspection on 09/01/2003, at the time of hearing. However, the licensee did not produce the said papers and therefore, the Ex. Engr. MSEDCL., Urban Division Virar was subsequently directed to produce the said papers vide letters dt. 28/05/09 and 19/06/09. However, the licensee did not produce the said papers and therefore, the Forum has to deliver this Judgment/order without the said papers. In view of the facts and circumstances as discussed above, there has been some delay in passing the final judgment/order in this case.

- 18) In view of the negative finding on point No. (1) as above, the Forum unanimously passes the following order :

ORDER

- 1) Grievance application is allowed.
- 2) User consumer Smt. Juhi Vartak and her husband are not liable to pay the arrears of Rs. 01,47,250 out of the total amount of the charges levied as per the FS's inspection report dt. 09/01/2003 charged vide FS recovery bill demanded vide notice dt. 23/09/08.
- 3) Licensee is at liberty to recover the above referred arrears of Rs. 01,47,250 from the earlier owner Smt. Rajani Suresh Hawaldar.
- 4) The user consumer Smt. Juhi Vartak and her husband to apply for change of the concerned connection in their name within 30 days from the date of decision in this case and the licensee to process the said application without insisting for payment of above referred arrears of Rs. 01,47,250, as per Law.

5) The Compliance should be reported to the forum within 90 days from the date of decision.

6) The Consumer can file representation against this decision with the Ombudsman at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”

Representation can be filed within 60 days from the date of this order.

7) Consumer, as per section 142 of the Electricity Act, 2003, can approach Maharashtra Electricity Regulatory Commission at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003”

Date : 01/07/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan