

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redresses Forum
Nagpur Zone, Nagpur**

Case No. CGRF (NZ)/93 /2017

Applicant : Smt Shamishtha B Gaikwad
User Shri.Sajal B Gaikwad
H. No. 306 Mohan nagar
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F), NUC MSEDCL.
Nagpur

Applicant: - Shri. Suhas Khandekar applicant's Representative,

Non- applicant: - 1) Shri Vairagade EE, Nodal Office, Nagpur
2) Shri. Dahashatre, SNDL, Nagpur

Quorum Present: - 1) Mrs. V.N.Parihar,
Member,Secretary & I/C.Chairman.

2) Shri N.V.Bansod,
Member

ORDER PASSED ON 15.12.2017.

1. The applicant filed present grievance application before this Forum on 13.10.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressed Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).
2. Non applicant, denied applicant's case by filing reply dated 02.11.2017
3. Forum heard arguments of both the sides and perused record

4. The applicant Shri Sajal Bhimrao Gaikwad having consumer no. 410014694297 is the user of the premises in which a connection (hereinafter called C1) has been given in the name of his sister, who has been a consumer of Non-applicant since 08.07.2011 in the residential category. Earlier, there was already a connection (hereinafter called C2) in the name of applicant's father, Shri Bhimrao Gaikwad with consumer No. 410010458581 since 1972. The above (C1) was an additional connection in the same premises. In respect of C2, his father had complained several times about the bill being too high, MSEDCL did not resolve the complaint. After the installation of the connection C1, somewhere along C2 was disconnected, and the meter was removed without any notice under section 56 of the Electricity Act. In the bill for the month of August 2016, he suddenly found that an amount of Rs. 110873.49 had been added to his bill as arrears. On enquiring with the SNDL authorities, the same could not be clarified, and the next few months, he was allowed to pay the current bills. In the month of January 2017, a notice dated 10.01.2017 was received from the advocate of SNDL in the name of his father, Shri Bhimrao Gaikwad, asking him to pay Rs. 108873.00. His father was unwell at the time, and within a short period of the receipt of the notice, he expired on 17.01.2017.

5. He filed grievance on 22.02.2017 with the IGRC, who issued an order stating that since the meter is in the name of a legal heir, he being a legal heir, the recovery was justified. Thereafter, he went to the office of MSEDCL. He was informed that there are no dues from my father, and also given a certificate to that effect. The certificate is not signed, and the concerned official informed me that signature was not necessary as it

was a computer generated certificate. He was assured that he do not have to pay those arrears, and accordingly submitted a letter to SE, MSEDCL on 03.03.2017. Thereafter there had been no action or correspondence on the subject for several months, but he was also not allowed to pay my current bills. In the last week of September 2017, some employees of SNDL disconnected his power supply without informing him or giving any statutory notice. On enquiring in the office of SNDL, he was told that unless he pays the arrears the connection cannot be restored. Under compulsion, he handed them over cheques of Rs. 35000.00, and Rs. 1, 10,000.00 respectively, with a request not to deposit the same since he is taking up the matter with MSEDCL/CGRF. Officials of SNDL have been verbally threatening him for disconnection of his power supply. However, no statutory notice of 15 days has been issued to him in accordance with section 56 of the Electricity Act. In between, he collected a copy of CPL pertaining to the C2, which shows PD in July 2013. He has also downloaded a copy of the last one year's history for this connection from the web-site of MSEDCL, which shows that in Nov. 2016, the bill has been squared off, and as per the present position Rs. 19660.00 is payable to his father. It is observed from the documents, that the dues of C2 have been transferred to C1 by SNDL in Aug. 2016, even when his father was alive. On the other hand, the history of C2 shows that the arrears were till Nov. 2016, after which they are withdrawn. It is clear from the above, that the order of IGR Cell of SNDL was erroneous, as the facts are different. It is also clear that the arrears have been squared off and now there is a credit. Under the circumstances dues shown in his bill are incorrect and needs to be withdrawn.

Therefore he requested the forum to provide relief on following lines –

- a) Advise SNDL to desist from any disconnection of supply without the statutory 15 notice of 15 days.
- b) Advise SNDL not to take any coercive action.
- c) Quash the additional amount shown as arrears in the bill of Aug. 2016, and revise all subsequent bills accordingly.
- d) Arrears have accumulated in his bill, as SNDL did not allow him to pay the current bills also. he may be allowed to pay these arrears in four equal installments without any DPC or interest.
- e) Advise SNDL to return the checks of Rs. 35000.00 & Rs. 1, 10,000.00 from him.
- f) Advise SNDL to pay him a compensation of Rs. 5000.00 for continuous harassment and disconnection without notice.

6. Applicant filed grievance with IGRC on dt.20.02.2017. Accordingly matter was heard and IGRC by its order dt.23.02.2017 stated that *“The premises of the old PD consumer and that of the applicant is same. Also, the applicant i.e. user of the electricity (Shri Sajal Bhimarao Gaikwad) is legal heir i.e. son of the old consumer. Being legal heir, he is liable to clear the outstanding dues of the electric bill in the name of his late father because he is going to be owner of the property. Therefore, the action of the commercial manager to transfer the old PD dues on live consumer no. 410014694297 used by the applicant (Shri Sajal Bhimarao Gaikwad) is justified and cannot be altered.*

7. Aggrieved by this decision of IGRC, Applicant filed his grievance application with

this forum for necessary relief.

8. Non-applicant in his written reply has submitted that the applicant Shri Sajal Bhimrao Gaikwad is not bonafide consumer of Non-applicant but user of Supply released in the name of Ku Sharmistha Bhimrao Gaikwad .The connection is released to Ku Sharmistha Bhimrao Gaikwad on dt.08.07.2011.The applicant has lodged complaint with IGRC that the debit of Rs. 1,10,874=49 towards the old PD dues, against PD consumer no. 410010458581 in the name of Shri. Bhimrao Sudam Gaikwad who is father of the applicant, is raised in his bill of Aug- 2016. The applicant does not agree to pay such dues and requested for withdrawal of the same. It is further stated by Non-applicant that the electric connection was released at plot no.306,Mohannagar for residential purpose on dt.21.10.1972 to Shri.Bhimrao Gaikwad with Consumer no.410010458581.said connection was PD in the month of July 2013.As per regulation 10.5 of MERC's SOP regulation 2005, Ku Sharmistha Bhimrao Gaikwad,being the legal hair residing in the same premises has to pay the unpaid arrear of her father's connection of Rs.1,10,873.49/-Hence the said amount was shown as an outstanding arrears in her bill for August 2017.

9. The case was fixed for personal hearing on dt.03.11.2017, dt.10.11.2017, finally on dt.24.11.2017. Both Applicant and Non-applicant were present and heard.

10. During hearing Applicant's representative reiterated the same facts as per their grievance application. He further contended that as the supply was PD in July 2013, recovery action should have been completed by Non-applicant by July2015, whereas the said action is taken in the month of Aug-2016.Therefore recovery after the period of

two year is not justified as per provision 56(2) of Electricity Act 2003, which states that “*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 the 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 supplied and the licensee shall not cut off the supply of the electricity*”. He also requested to allow applicant to deposit current Bill amount excluding the arrears. He produced no dues Certificate of Shri Bhimrao udam Gaikwad, having consumer no.410010458581 for “Amnesty Scheme for PD consumer 2016.17 and contended that since there are no dues against Shri Bhimrao udam Gaikwad, having consumer no.410010458581, whereas Excess payment of Rs.19760/- has been done by Shri Bhimrao Gaikwad .Therefore arrears shown in the Energy Bill for the month of Aug-2016 of Ku Shamishtha Bhimrao Gaikwad having consumer no. 410014694297 is totally incorrect and illegal. He also mentioned that on dt.09.11.2017, during pendency of case with this Forum, His supply was disconnected without legal notice, as per section 56(1) of the Electricity Act 2003. This is clear disregard towards MERC’s Regulations and Electricity Act 2003. The said matter was brought to the notice of Member secretary CGRF who intervened and directed Non-applicant to restore the supply. The supply was immediately restored.

11. Non-applicant contended that there is a history of cheque bouncing in r/o of Shri B.S. Gaikwad which has resulted in accumulation of huge arrears of Rs. 110873.49. To justify this, Non-applicant filed CPL of Mr. Bhimrao.S.Gaikwad for the period from Jan2011 to Oct 2017 .They contended that, on perusal of the same it would be seen that

on 30-12-2010 Amt of Rs.20000/-was paid by Cheque but it was debited as Rs 21449/- in the month of Jan-2011 which includes interest,DPC and cheque bounce charges .Secondly on dt 15.02.2011 Rs.16500 seen to be paid by cheque which was again bounced. Hence Rs.17315 again debited in the month of March 2011 which includes interest, DPC and cheque bounce charges.Similarly on dt 20.08.2011 Amount of Rs.46670/- was paid by Cheque which was bounced .hence Rs.48320/- was debited in the month of Sept 2011 which includes interest, DPC and cheque bounce charges. On dt 30.09.2011, amount of Rs.46670/- was paid by Cheque which was bounced .hence Rs.48320/- was debited in the month of OCT 2011 which includes interest, DPC and cheque bounce charges. Amount of Rs.41270/- was paid by Cheque.On dt.31.05.2012 which was bounced .hence Rs.42169/- was debited in the month of June 2012 which includes interest, DPC and cheque bounce charges. Amount of Rs.59650/- was paid by Cheque on dt.13.07.2012 which was bounced .hence Rs.61100/- was debited in the month of July 2012 which includes interest ,DPC and cheque bounce charges. Again Amount of Rs.50000/- was paid by Cheque on dt.22.11.2012 which was bounced .hence Rs.51697/- was debited in the month of Dec- 2012 which includes interest ,DPC and cheque bounce charges. Considering these facts upto the month of July 2013,principle arrears 99934.21+Interest 10939.28=Total arreares110873.49/-were accumulated .These arrears were debited in the energy bill of Ku Shamishtha B.Gaikwad. which is live consumer. But the same amount was not credited from Bhimrao's account till Nov2016.In the month of Dec-2016 ,this amount was withdrawn from Bhimrao's account making the amount "Nil". and credit of SD of Es.2000/-was given .Due to posting of amount of Rs 110873.49/- in the month of Aug-16 in the

account of Ku Sharmishtha B Gaikwad, the interest on the Rs.110873.49 of Rs.17660/- is credited in the month of Dec-2016 in the account of Shri Bhimrao Sudam Gaikwad along with refund of Rs.2000/- as SD amount. Therefore Credit of 19660/- is seen. Therefore they vehemently denied that, as claimed by applicant S.D amount is not adjusted is totally false. Hence Excess payment of Rs.19760/- along with arrears of Rs.110873.49- is done by Shri Bhimrao.S.Gaikwad as claimed by applicant's representative is incorrect, but it is as per accounting done as per aforesaid explanation. They further contended that, arrears transferred to live connection existing in the same premises is legal and correct, and is done as per departmental circular 19021 dt 06.07.2013. Further Non-applicant contended that House no. shown as 306 in CPL of Ku.Shamishtha Gaikwad is actually 396, verified by Dy.Manager Nodal Officer MSEDCL during spot inspection done by him. It is an error occurred while feeding the data.

12. Due to the expiry of term of Chairperson of the Forum on dt 30.06.2017, consequent to which the matter was heard by the two remaining Members. At the time of hearing Quorum present was 1) Member Secretary & I/C. Chairman. 2) Member (CPO). As per in clause 4.1(c) of MERC (CGRF & EO) R.2006 which reads as, *"Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting.* Needless to say that, in absence of Hon'ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge Chairman has one additional casting vote, therefore as per

provision given in clause 8.4 of MERC (CGRF & EO) Regulation 2006 which reads as under, *“Provided that where the members differ on any point or points the opinion of the majority shall be the order of the Forum. The opinion of the minority shall however be recorded and shall form part of the order”*.

Hence, the Judgment is based on majority view of I/C chairman and Member Secretary. However the separate dissenting note of Hon'ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

13. We have perused the record. We have heard the arguments of both the parties.

14. During perusal of record it is seen that there is history of frequent bouncing of the cheque is seen, thus depicting mentality of applicant to use electricity free of cost. This attitude is unfair on the part of applicant. The explanation given by NA in Para 11 is verified by the forum and found to be correct, hence figure of arrears is not correct and NA has not done their accounting properly as alleged by applicant is incorrect.

15. In the representation no.34/2013, Hon'ble Elect Ombudsman held that *“as per regulation 10.5 ,the appellant is liable to pay actual and correct arrears of previous occupant, limited to a period of 6 months, if not legal heir.*

16. In this case, the present occupant is son of the PD consumer Hence In view of the above observation and relying on H'ble Elect Ombudsman, on applicant is entitled to recover the entire arrears of Shri. Bhimrao S. Gaikwad from another consumer Ku. Sharmistha B.Gaikwad whose supply is currently been used by Shri B.S.Gaikwad

Son Shri. Sajal B.Gaikwad,a legitimate legal hair of the PD consumer Shri B.S.Gaikwad who was expired on dt.17.01.2017.Hence grievance *application* therefore deserved to be dismissed.

Separate note by Mr. Naresh Bansod Member (CPO) in Case No. 93/2017 dated 14-12-2017.

(1) Arguments of both parties heard on 24-11-2017 and perused the submissions of both parties on record as well as documents in the case file. The case file is sent to me for Note after almost 20 Days on 14-12-2017 without concurrence of Reg.8.4. of MERC (CGRF & EO) Regulations 2006 i.e. discussion amongst member on dias point or points of difference.

(1A) It is noteworthy to mention that the order of IGRC dated 23-2-2017 is signed only by Head of IGRC, SND Limited, Nagpur Mr. Sureshchandran M. Ghade and appears to be not signed by Mr. Prakash Chandan.(AGM Commercial Member Secretary & Mr. Mukund Dahasahsttra Sr.Manager(Acctts) Member because they may not be agreeable to finding & order. Hence order of IGRC loses its legal value and worth to be considered as order.

(1B) It is very surprising that Sr. Manager(Accounts) Mr. Mukund Dahasahstra is the Member of IGRC and same person is authorized signatory of S.N.D.L. Nagpur. This practice of dual role as member of IGRC and again filing reply as authorized signatory of SNDL is not permissible as prudent practice and due to such type of working, it appears that IGRC is only to protect SNDL but not to redress of grievence of consumer and creates serious doubt about working of

Distribution Licensee.

(2) Applicant prayed for relief as under.

(A) Advice SNDL (Non Applicant) to desist from disconnection of supply without statutory notice & coercive action.

(B) Quash the additional amount shown as arrears in the bill of Aug.2016 & revise all subsequent bills as well as allow to pay current bills and arrears be allowed to pay in 4 instalments if any without DPC or interest.

(C) SNDL (Non Applicant) to return the cheques of Rs.35000/- & Rs.11000/- taken from me & pay compensation of Rs.5000/- for continuous harassment and disconnection without notice.

(D) Applicant during proceedings of the case vide application dated 9-11-2017 & 23-11-2017 prayed for refund of excess amount around Rs.148000/- with interest and admitted that entries of arrears, arrears of interest and adjustment shown in Jan. 2011 are correct and consumer (c2) was forced to pay Rs.73516/- in the year 2011 and Rs.74494/- in year 2012. The monthly total of excess sheets and CPL do not tally and any error in our calculations be informed but non applicant totally failed to clarify the error alleged by applicant.

(3) The applicant is having consumer No. 410014694297 of SNDL since 9-7-2011(c1) and his father was having (Bhimrao Gaikwad) was having consumer No. 410010458581 since 1972 (c2) His father complained several times about

- (4) Excessive billing but no head by MSEDCL. After connection of applicant in 8-7-2011, the connection of my father (c2) was disconnected and meter was removed 22-7-2013 without notice under section 56 of the Electricity Act. 2003.
- (5) Applicant noticed suddenly that amount of Rs.110873=49 Ps. Added to bill as arrears to consumer No.410014694297 in Aug.2016. and on enquiry Non Applicant (SNDL) could not clarify and allowed to pay current bills for next few months.
- (6) I II, ailing father of Applicant received notice from Adv. Ujjwala V. Rakshit dated 10-1-2017 received in January 2017 asking recovery of pending Electricity Bill from habitual defaulter to pay Rs.108873/- and he expired on 17-1-2017.
- (7) On enquiry with MSEDCL, Applicant was informed that there are no dues from my father and also no dues computerized certificate was issued and due to assurance of non payment arrears, Applicant applied to S.E. MSEDCL on 3-3-2017. Later on no action or correspondence on issue of arrears for several months and Applicant was not allowed to pay current bills. In last week of Sep.2017 some employees of S.N.D.L. disconnected supply without giving any statutory notice and said connection cannot be restored unless paid in to. Applicant handed over cheques of Rs.35000/- and Rs.110000/- under compulsion with a request not to deposit cheques as taking up matter with MSEDCL/CGRF and official of SNDL were verbally threatening evethough no notice of disconnection was given.

On getting copy of CPL of his father (c2) which shows P.D. in July 2013 and amount was squared off in Nov 2016 and Rs.19660/- payable to his father (c2).

(8) It is noticed that dues of c2 (father) transferred to c1 (Applicant) in Aug 2016 even when applicant's father was alive and arrears were there till Nov 2016 and withdrawn later on.

(9) Applicant denied order of IGRC of SNDL erroneous & facts are different. As per CPL arrears were squared off and now there is credit and bills are incorrect needs to be withdrawn.

(10) Non applicant in reply stated that (A) supply was given to Ku. Samishata Bhimrao Gaikwad with consumer No. 410014694297 on 8-7-2017. Applicant complainant Mr. Sajal Bhimrao Gaikwad is not authorized consumer as per section 2(15) of Electricity Act. 2003.

It is necessary to Note that in aforesaid section – it is mentioned “includes any person whose premises are for the time being connected for the purpose of receiving electricity.”

Secondly as per Reg. 2.1.5 MERC electricity supply code and other conditions of supply, Regulations 2005, “Occupier” means the person in occupation of premises where energy is used or is proposed to be used.

Thirdly MSEDCL's SPOT inspection report dated 27-10-2017 it is mentioned “Name of the Applicant/Consumer Mr. Sajal Bhimrao Gaikwad and forum allowed Mr. Sajal Gaikwad as user occupier on behalf of Smt. Sharmishta Gaikwad.”

Hence objection of Non Applicant is baseless and disallowed by forum during proceeding of the forum itself

(B) Non applicant Admitted that arrears of Mr. Bhimrao Gaikwad (c2) P.D. were connected in Aug-2017 and applicant as was not agreeable approach IGRC for correction of bill and IGRC order is not agreeable to the Applicant.

(C) Non applicant admitted that supply was given to (c2) Mr. Bhimrao Gaikwad on 21-10-1972 with consumer No. 410010458581 and due to non payment of bill amounting Rs.110873.49, supply was disconnected in July 2013. In the same area (परीसर), the P.D. arrears of Mr. Bhimrao gaikwad were added in the bill of Ku. Samishta B. Gaikwad (c1) amounting Rs.110873.49 Ps. To consumer No. 410014094297 in August 2016 incorrectly as connected on Aug-2016. and arrears can be connected as per rules and prayed for dismissal of complaint.

(10) It is necessary to note that Non Applicant without verifying the facts & intentionally to misguide the forum, mentioned the date of supply of (c1) Applicant is 8-7-2017 that is after 6 years form actual date of supply i.e. 8-7-2011 in comments on Para 6 & 7 disallowing current bills as well as wrongly mentioned connected bill of c2 to c1 in August 2017 but actually its August 2016..

Issues for my consideration are as under.

(A) Whether disconnection of supply of consumer(2) in July-2013 is as per provisions of the Electricity Act.2003 ? No

(B) Whether Disconnection of supply of Applicant in last week of Sept 2017 is as per provisions of the Electricity Act. 2003 without notice is legal ? No

Reply to A & B → It is necessary to note that inspite of allegations of

Applicant regarding without notice disconnection of supply (P.D.) of Consumer No. 410010458581 (Mr. B.S. Gaikwad) but Non applicant failed to comment and to produce/file the duly acknowledged copy notice of disconnection in July 2013 under section 56(1) of the Electricity Act. 2003. Hence the disconnection of supply of (c2) Mr. Bhimrao Gaikwad was totally arbitrary and illegal in the eyes of law.

In reply non applicant is totally silent about disconnection of supply of Applicant (c1) in last week of Sept 2017 and under compulsion received the cheques for Rs.35000/- & Rs.110000/- In spite of clear allegations of disconnection of supply of (c1) Applicant, Non Applicant further failed to produce the duly acknowledged copy of disconnection Notice as per section 56(1) of The Electricity Act 2003 and hence the action of disconnection of supply in last week of Sept 2017 is again illegal which shows the disregards towards provisions of law i.e. The Electricity Act. 2003.

Applicant vide letter dated 9-11-2017 infomed the forum that he has received phone calls from Tel. No. 6607022 twice on 6-11-2017 & further phone calls from 6607022, 7028348878, 6607022 Thrice & on 8-11-2017 from 6607022 threatening the disconnection without notice, during pendency of the case and prior to that on 3-11-2017, it was pointed out that supply was illegally disconnected & again after oral instructions to Mr. Dahasahstra of SNDL, Supply was restored after few hours, This action of SNDL is totally malafide, illegal and arbitrary causing serious harassment to Applicant.

(C) Whether really the (c2) father of (c1) was liable to pay the arrears of Rs.110873.49 Ps on the date of P.D. & No. i.e. July-2013. ? No

Firstly Non applicant failed to mentioned correct date of Permanent disconnection but vaguely mentioned July-2013. Hence it can be inferred that they donot have records to produce for our perusal of forum.

On perusal of page 17 filed by Applicant that is payments history from Jan. 2017 to Sept. 2017 shows the credit of Rs.19660/- of payment of bill dated 22-11-2012 and in Dec-2016 the credit is Rs.2000/- and in Nov.2016 of P.D. arrears are 108870/- since 22-11-2012 which proves the total mismanagement in Accounting.

Non applicant filed the document on 8-11-2017 "Dues transfer was done on 410014694297 Shamishtha B. Gaikwad of Rs.110873.49 in the month of Aug.2016 of old consumer no.410010458581 (c2).

Now I have checked difference amount $110873.49 - 90830 = 20043.49$ S.D. of Rs.6000/- credited as well. Total credit given Rs.26043.49.

Now collectable amount till Oct-2017 outstanding is $159599.13 - 26043.49 = 133555.64$ (410014694297 Shamishta B. Gaikwad) Note – old consumer 410010458581 outstanding done Nil.

On perusal of above said communication of SNDL further proves that there is total mismanagement & misappropriation of payment of c2 (B.H. Gaikwad) which they have corrected without interest on 7-11-2017 after P.D. connection in July 2013 and after transferring P.D. Arrears of C2 in August 2016 during the life time of Mr. B. S. Gaikwad (c2) which is not permissible as per regulation 10.5 of MERC (ESC) & Regulations 2005. Which can be only after death of father at the time of change of Name if claimed by legal heirs.

MSEDCL officials provided CPL of Mr. Bhimrao Gaikwad (c2) for period from Jan.2011 to Oct.2017 which reveals as under.

January-2011 Arrears – Rs/15988.26 Ps.

Current Bill.

Jan-2011 - Feb-2011 - March-2011 - April-2011 - May-2011 - June-2011
Rs.6480 4979 7488 9077 11364 12615 Total
55003/-

Arrears

16000/-

Net:

71003/-

Receipt date & amount.

31-12-2010 15-02-2011 17-03-2011 29-03-2011
Rs.20000 16500 46000 13140 = Total Rs.95640/- - Excess paid
Rs.24637

Current Bill.

July-2011 - Aug-2011 - Sept-2011 - Oct-2011 - Nov-2011 - Dec-2011
Rs.10875 10413 11411 11934 8255 11815 = Total
54704/-

Receipt date & amount.

20-08-2011 30-09-2011 09-11-2011
Rs.46670 466670 Rs.50000 Total Receipt Rs.143340/- Excess paid Rs.88636/-

Current Bill.

Jan-2012 - Feb-12 - March-12 - April-12 - May-12 - June-2012
Rs.8386 9803 9303 14001 13385 15592 = Total Rs.70470/-

Receipt date & amount.

26-12-2011 08-02-12 16-04-12 31-05-12
Rs.29320 11870 11250 41270 Total Receipt Rs.93710/- Excess paid Rs.23240/-

Current Bill.

July-2012 - August-2012 - September-2012
Rs.9046 10919 2186 Consumption is Zero -Total Rs.22151/-
In June 2013 Current Bill 10152/-

Receipt date & amount.

13-07-2012 22-11-2012
Rs.59650 Rs.50000 Total Receipt Rs.109650/- Excess paid Rs.87499/-

Total of current billing from Jan-11 to June-12 & June-13	Rs.228480/-
Arrears on Jan-2011	<u>Rs. 16000/-</u>
	Rs.244480/-

Paid amount Rs.95640 + 143340 + 93710 + 109650 = Total Rs.442340/-

Excess paid Rs.197860/-

Hence it is proved after extensive work with the help of Asst.Accountant of Non Applicant that (c2) Mr. Bhimrao Gaikwad paid Rs.197860/- excess to S.N.D.L. (Non Applicant) and Mr. Bhimrao Gaikwad was not in arrears to be paid to SNDL than Rs197860/- (Approximately) payable by Non Applicant to Mr. B. H. Gaikwad of the present applicant.

(d) Whether Non Applicant was entitle to recover Rs.108870/- or 110873/- etc. from Mr. B.H. Gaikwad or his legal hairs. ? No

In paint 'C' it is crystal clear that Non Applicant is liable to refund the amount than the present Applicant to pay arrears of his father. In submission & Arguments, Applicant's Representative stated that recovery after more than 2 years cannot be recoverable as per section 56(2) of The Electricity Act.2003. 56(2) - Not with standing 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 the period of two years from the date when such sum becomes first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut the supply of the Elecctricity".

In aforesaid para it is proved that electricity was disconnect in July 2013 illegally. No sum has been shown continuously as recoverable by way of monthly bills after P.D. in July 2013.

Hence as per section 56(2) the amount of Rs.108870/- or 1108731 is not recoverable as non applicant has not taken any steps to recover arrears after R.D. in July 2013 till July 2015 and there is no explanation of Non Applicant. Hence action of Non Applicant is against the provision of Section 56(2) and spirit of law.

During arguments Non Applicant shown reliance on the Mahavitrans Cir. No.P-Com/Accts/19021 dated 6-7-2012 with captioned – Guidelines for recovery of arrears from P.D. consumers in which Ref. is towards.

(2) Reg. No. 10.5 of MERC (Esc & Ocs) Regulations 2005

(3) Orders of Hon'ble Electricity Ombudsman (m) in Case No. 62 of 2012 dated 22-10-12, Case No.78 of 2008 dated 16-12-2008, Case No. 85 of 2008 dated 16-12-2008 and Case No. 34 of 2013 dated 24-05-2013.

Non applicant did not file copy of orders of Electricity Ombudsman for the perusal of forum but I procure the orders for reference.

As per above circular dated 6-7-12 para 12 → The field officers should issue disconnection notices u/s 56 of Electricity Act. 2003 to all live consumers in arrears with the signature of ALO/JLO. Notice of disconnection of recovery notices issued to all P.D. consumer in arrears with the signature of ACO/JLO. Even though it is mentioned' The work of issuing legal notices should not be assigned to private advocates, if it is noticed, action will be taken against concerned" still Non Applicant dared to issue legal Notice dated 10-01-2017 through Adv. U. V. Rakshit which is in total disobedience of the Circular as well as arbitrary Act. Of officials of Non Applicant /S.N.D.L. and Non Applicant also failed to issue disconnection notices as per Section 56 of the Electricity Act.

Rep. No.62/2012 - In the matter of recovery of arrears of previous user.

Rep. No.78/2008 - In the matter of transfer of arrears of one connection to the another in the same name & the same premises.

Rep. No.85/2008 - In the matter of application for connection to floor mill irrespective of the arrears on permanently disconnected connection in the same premises.

Ref. No. 34/2013 - In the matter of recovery of arrears in the same premises.

Applicant (c1) is having separate connection consumer No. 410014694297 since 8-7-2011 and he is not the user of the connection consumer No. 41001045858 and he not 2nd party for use supply of consumer No. 410010458581 and facts in Rep. No. 62/2012 are totally different with present complaint & hence not applicable.

The consumer number & name of applicant & his father are totally different not in the same name and same premises because as per CPL House No. of Applicant is 306. Whereas House No. of (C2) Mr. Bhimrao S. Gaikwad is House No. 396. Hence in Rep. No.78/2008 is not identical on facts and circumstance of this present case. Hence not applicable to present case.

This is not the case of Applicant for New Connection irrespective of arrears of permanently disconnected into same premises. Hence the facts & circumstances of this case & in Rep. No.85/2008 are totally different and hence the orders in Rep. No. 85/2008 cannot be made applicable to the present case.

In this case, there is no issue of change of Name by purchaser of the premises or legal heirs in the same premises. In the Rep. No. 34/2013, the fact was that the Residential connection was given to M/s. Kankia Properties Pvt. Ltd. For swimming pool

and in the same premises, commercial connection was also given for club house, row house project and assesst of the properties handed over to M/s. Eternity Friends Coop. Housing Society Ltd. And Elect ombudsman held that”as per Regulation 10.5. the appallant is liable to pay actual & correct arrears of the previous occupant, limited to a period of 6 months. As per section 56 of the Electricity Act. 2003 past arrears beyond 2 years are not recoverable”.

The fact is Rep. No.34/2013 are totally different with this case and hence not applicable as present applicant not acquired assessts of his father (c2) or applied for change of name of connection. As laid down by E.O. in this case, the past arrears of Mr. Bhimrao S. Gaikwad are not recoverable after 2 years i.e. from July 2013 to July 2015 onwards. In view of the above observations. Non applicant is not entitle to recover the arrears of Mr. Bhimrao S. Gaikwad from another consumer his son (c1) or any other legal heirs.

In para 7 of afore said circular it is mentioned as under “Before transfer of such arrears, S.D. amount shouldbe adjusted in the arrears and fictitious arrears amount should be withdrawn. The identity and legality of the consumer must be checked before transfer of arrears.

In this case S.D. arrears were not adjusted in the arrears after P.D. in July-2013 but amount of Rs.26043.49 Ps. Was adjusted without interest on 7-11-2017 i.e. after 4 years of P.D. & after transfer of P.D. arrears of consumer No. c2 to consumer No. c1 in Aug-2016 when c2 was alive and no efforts were taken to recover arrears during life time of c2 that is before death on 17-01-2017.

In above paras the fictious arrears are proved but not withdrawn by Non Applicant but put applicant to harassment and letter of applicant to forum dated 9-11-2017 is self explanelory as Reg.10.5 of electricity supply code relates to the dues after demise of the consumer (c2) and not when he is alive. Which against provisions of Section 56 of the Electricity Act. 2003.

(e) Whether applicant is entitle is to claim the excess amount paid by his father (c2) Himrao Gaikwad ? Yes.

Applicant during proceedings vide letter dated 23-11-2017 stated that amount shown in the month of January 2011 are correct and consumer was forced to pay excess amount of approx 73516/- in the year 2011 & Rs.74494/- in the year 2012 and also pointed that excel sheet and CPL donot tally and prayed that excess amount around Rs.148000/- be refunded with interest at Bank rate from the date of excess recover.

As per my calculations mentioned above excess amount paid by c2 is Rs.197860/- but applicant claimed less amount.

During Arugments representative of Non Applicant pointed out that cheques of Rs.41270/- 59650/- Rs.50000/- totaling Rs.150920/- were returned as dishonored and forum directed non applicant i.e. Bank statement of dishonored cheque will be filed by Non Applicant within a week. During arguments, representative emphasised that 3 returned cheques should be filed before the forum alongwith cheques returned memo but Non Applicant instead of filing 3 returned cheques and bank statement but filed computer statement generated by Non Applicant which is not reliable piece of paper, but on 15-12-2017 original cheques were verified. In view of the above observtins, It is

basic question before us that why Non Applicant has not initiated criminal action under Section 138 of Negotiable Instrument Act. For recovery of arrears from the year 2012.

Hence Non applicants false story of arrears of Rs.108873/- or 110873/- of c2 also does not match with 3 cheques returned amounting Rs.150920/-. Hence entire submission of Non Applicant lacks evidential value & proved to be unreliable and deserves to be discarded.

Hence the entry of arrears of c2 i.e. Rs.108870/- or Rs.110873.49 (Fictious entries) deserves to be withdrawn by Non Applicant as per aforesaid circular as entires are fictions and applicant is entitled to refund of Rs.148000/- with interest at Bank rate from the date of the respective payment.

In para 13 of aforesaid circular file by Non Applicant, "In case of non availability of ALO/JLO at any circle office, concerned Dy/Asst/Jr.Manager(F&A) should sign the legal notices. The field officers shall issue notices on urgent basis to P.D. Consumers within limitation and file civil suits at the earliest.

Connection of 'c2' was P.D. in July 2013 & as per section 56(2) period for recovery is 2 years i.e. upto July 2015 and as per law of limitation 3 years period is provided for filing civil suit but no action was taken.

As per Non Applicant, the 3 cheques were returned unpaid, but simple legal recourse was available under section 138 of Negotiable Instruments Act., Which is penal in nature & time bound but Non Applicant neither issued Notices nor filed cases under section 138 of NIA. On perual of CPL from Jan-2011 to Oct-2016, In case of dishonor of cheque, it is necessary to mention in "Cheque Disonner Flag" but there is no mention

that cheques dishonoured.

On perusal of CPL from Jan-2011 even though consumption was less or zero, Non Applicant shown every consumption 1174, 1092, 992, 100, 860, 879, 979, 1047, 1151, 1213, 1367, 1138, 1101, 1082, 1040, 1076, 1162, 1405, 1410, 1271, 1271, 1271, 1271, 1271, 1271, 1198 & 1103 in June 2013 and charged for the same when since Oct-2012 current reading & previous reading is same as 1052. In June 2013 current reading & previous reading is 1052 still shown consumption of 1103 and hence all the readings appears to be imaginary and not explained by Non Applicant and hence the figures appears to be fictions.

(11) During proceedings of the case, besides prayer of Applicant that Non Applicant were reluctant to issue current bills & accept current bills but ultimately the current bill for July 2016 to Nov 2017 amounting Rs.14680/- was allowed to pay and applicant paid Rs.14680/- in cash on 11-12-2017 and same is informed by applicant on same day. This proves the eagerness of applicant to pay all current bills and complied the proviso of Section 56(1) of the Electricity Act. 2003 which proves the bonofides of the Applicant.

In view of the above physical mathematical calculations as well as observations, Non Applicant is not entitle to recover the amount of arrears transferred to c1 from 'c2' as c2 has already paid excess amount of Rs.148000/- and Non Applicant is liable to refund Rs.148000/- from the date of respective deposits with interest @ 9.5% till its payment to the Applicant.

Non Applicant is also liable to return the cheques of Rs.35000/- & 10000/- received from

Applicant under compulsion under threat of disconnection.

It is proved that due to illegal acts of Non Applicant & its officials, Applicant is harassed causing mental, physical, financial harassment also due to non allowing current bills to pay Non Applicant is liable to pay compensation of Rs.2000/- to the Applicant.

Therefore application deserves to be allowed.

Hence the following order.

ORDER

- (1) Non Applicant is directed to withdraw the amount of arrears of c2 from the CPL 'c1'. Applicant including interest & DPC charges if any as fictitious amount.
- (2) Non Applicant is directed to refund pay excess amount paid Rs.148000/- to the applicant with interest @ 9.5% from the date of respective deposit.
- (3) Non Applicant is also directed to pay Rs.2000/- as compensation from physical, mental, economical harassment to the applicant.
- (4) Non Applicant is further directed to return the cheques of Rs.35000/- & Rs.100000/- given under compulsion to the Applicant .
- (5) The compliance of this order shall be done within 30 days from the date of this order.

As per 4.1 (C) proviso of above said regulation. Secondly on perusal case No. CGRF (NUZ) 031/2009, order dated 26-6-2009 where so called member secretary i.e. present technical member was representative of non applicant and is well aware that Mrs. Langewar acted as member secretary and Smt. Gouri Chandrayan as member as per regulation 5.2 of above said regulation and same practice was

observed to have followed earlier whenever the post of chairperson was vacant.

This means that when chairperson is appointed in the CGRF & Joined and he is absent from sitting of the forum, then technical member, shall be the chairperson for such sitting (during leave, sick leave etc) but presently the Chairperson's post is vacant in the forum on date of sitting, so the technical member and member (CPO) can continue to run sitting and decides the cases as per regulation 5.2 of said regulation but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017. In entire MERC (CGRF & EO) regulations 2006 post of only Technical Member is notified but no post of Member Secretary is notified and hence self designating as Member Secretary is against provisions of above regulation. Hence order of the Technical person or so called member secretary cannot be a Majority order

**Naresh Bansod
Member (CPO)**

17. Before reaching to the final order, it is necessary to decide the matter within two months from the date of filing of the application. Applicant filed application on 13-10-2017. Therefore it was necessary to dispose of the application on or before 13-12-2017. Term of Chairperson In charge of the Forum expired on dt.30 June 2017. Forum heard argument on 03-11-2017, 10-11-2017, 24-11-2017. The separate dissenting note of Hon'ble Member (CPO) is given on dt.14.12.2017 due to this, there is delay in deciding the matter

18. As per regulation 10.5 of MERC supply code Regulation ,2005, “Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile 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 transferred 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 successors-in-law or new owner/occupier of the premises, as the case may be”. In view of the above facts and this regulation, we proceed to pass the following order.

ORDER

- 1) Grievance application dismissed.
- 2) IGRC order is correct, hence needs no interference
- 2) Applicant is directed to deposit arrears of his Father’s PD connection *the applicant is liable to pay actual and correct entire arrears of previous occupant, being a legal heir.*

Sd/-
(Shri.N.V.Bansod)
MEMBER

Sd/-
(Mrs.V.N.Parihar),
MEMBER SECRETARY & I/C. CHAIRMA

