

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

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**Case No. CGRF(NUZ)/172/2014**

Applicant : Shri Rajeev P. Dhoble,  
Ganesh Society Layout,  
I.T. Park Road, Gayatrinagar,  
Nagpur : 22.

Non-applicant : Nodal Officer,  
The Executive Engineer,  
Congressnagar Division,  
MSEDCL, N.U.C.,  
NAGPUR.

Quorum Present : 1) Shri Shivajirao S. Patil,  
Chairman.

2) Adv. Subhash Jichkar  
Member.

3) Shri Anil Shrivastava,  
Member / Secretary.

**ORDER PASSED ON 20.8.2014.**

1. The applicant filed present grievance application before this Forum on 17.7.2014 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicant's case in brief is that Shri Ramakant Vithobaji Gaikwad, Advocate is the owner of this premises. Theft of electricity was detected by M.S.E.D.C.L. in the month of June 2001 and total amount of Rs. 109765/- was outstanding against previous

users M/s. Harshal Printers & Varda Electronics Pvt. Ltd. (Nimish Ladhad, Director). Previous users did not pay P.D. arrears.

3. Same owner of the property and premises Shri Ramakant Gaikwad, Advocate has executed General Power of Attorney in the name of the applicant and applicant Shri Rajiv Prabhakar Rao Dhoble applied for 9 (Nine) new Service Connections for newly constructed multi residential complex named "Monarch Apartments" on the same Plot No. 3, Ganesh Society Layout, Nagpur. It is the contention of M.S.E.D.C.L. that there are outstanding dues which are payable by the applicant i.e. present owner and therefore this fact is informed by M.S.E.D.C.L. to the applicant Shri Rajiv Dhoble. It is the contention of the applicant that he is not responsible to pay P.D. arrears of previous user of present owner and without paying P.D. arrears, connections should be given to him. But electricity connections are not given to the applicant. Applicant approached to I.G.R.C. Learned I.G.R.C. passed order Dt. 26.6.2014 to the effect that as there are P.D. arrears on the premises, as per MERC (Electricity Supply Code & Conditions of Supply) Regulations 2005, specially regulation 2.2.4, restoration of such disconnection shall be governed by applicable Acts and rules & regulations. Hence the consumer is requested to pay the P.D. arrears amount Rs. 3,50,810/- and grievance application is disposed off. Being aggrieved by the said order of Learned I.G.R.C. the applicant approached to this Forum.

4. Non applicant denied applicant's case by filing reply dated 4.8.2014. It is submitted that applicant has applied for 9 electricity connections for newly constructed multi residential complex "Monarch Apartments" on Plot No. 3, Ganesh Society Layout,

Nagpur. There are old outstanding dues on this property which are payable by the applicant i.e. same present owner. This fact is already informed by Dy. Executive Engineer, Trimurtinagar Sub-Division as per letter dated 6.6.2014. As per commercial Circular No. 53 Dt. 7.5.2007, giving reference regarding judgement passed by Hon'ble Supreme Court of India in Case of Appeal No. 5312-5313 of 2005, it is clear that "electricity dues constitutes a charge on the property so far as the transferee of the unit are concerned". Secondly the provision contained in section 56 (2) of Electricity Act 2003 does not apply here. Hence the applicant is liable to pay all the outstanding dues payable by him. After clearing of all the dues, the case for releasing the new connections will be processed as per the rules and regulations of M.S.E.D.C.L.

5. Forum heard arguments of both the sides and perused the record.

6. Record shows that since beginning till today owner of the property is Mr. Ramakant Gaikwad, Advocate and owner is not changed. This important aspect goes to the route of the matter. It is not the case of sale of the property by previous owner to the subsequent owner being successor-in-title but owner is one and the same.

7. Record shows that previously there were tenants in this property. Theft of electricity was detected against previous user in the year 2001 and previously assessment bill and final assessment bill regarding P.D. arrears was prepared by M.S.E.D.C.L. and thus

P.D. arrears are not paid since 2001 either by previous user or land lord of the property who is the same since beginning till today.

8. Careful perusal of the record specially document No. 7 produced by the applicant shows that is a letter Dt. 17.1.2014 to S.D.O. M.S.E.D.C.L. Trimurtinagar, Nagpur. It is an application filed by Shri Ramakant Gaikwad Advocate, owner of the property for restoration of electric meter which were deposited for safe keeping with M.S.E.D.C.L. from his building at Plot No. 3, Gaitrinagar, Nagpur. In this Application Dt. 17.1.2014 of the applicant, there is also reference of his letter dated 4.3.2011. Therefore it is clear that since 4.3.2011 applicant Shri Ramakant Gaikwad, Advocate is requesting for electricity connections but up till now no such connection is given to him. Therefore cause of action arose for filing of the grievance application on 4.3.2011 as shown in document No. 7 of the applicant. According to regulation 6.6 of the said regulations, Forum shall not admit any grievance unless it is filed within 2 years from the date on which cause of action has arisen. Document No. 7 along with application produced by the applicant shows that cause of action arose on 4.3.2011. However, present grievance application is filed on 7.7.2014 and therefore grievance application is barred by limitation and deserves to be dismissed.

9. In document No. 7 produced by the applicant along with application, Shri Ramakant Gaikwad, Advocate, owner of the property, it is specifically mentioned that he has deposited 3 electric meters details of which are given in the cited letter dated 4.3.2011, copy annexed for ready reference. Meters were installed in the name of his wife, daughter and mother in law, which were installed in

different blocks in their building on Plot No. 3, Ganesh Society Layout Gaitrinagar, Nagpur. Now the building is reconstructed and they want the meters restored back for electricity supply to the 3 blocks they have retained in the building. Meters were in fact deposited for safe custody and Security Deposits and meter cost were not claimed or received. Those meters were owned by the applicant family. If the same meters are not available new meters can be supplied as replacement and applicant family is ready to deposit additional amount as may be required under existing rules.

10. Language of this letter of the applicant Dt. 17.1.2014 and letter dated 4.3.2011 shows that these are the same 3 meters in the name of wife of the applicant, daughter of the applicant and mother in law of the applicant on which there was theft of electricity was detected by the user and meters were seized at the time of detection of theft in the year 2000-01. There is no provision for depositing meters in MSEDCL for alleged safe custody. It was in fact seizure.

11. It is noteworthy that owner of the property is not changed. Property is not sold or transferred by any mode of transfer by Shri Ramakant Gaikwad, Advocate, to anybody else since 2000 till today. Regulation 10.5 of MERC (Supply Code & Other Conditions of Supply) Regulations 2005 reads as under : -

*“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:*

*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”.*

In the case in hand P.D. arrears are not unpaid either against deceased consumer or erstwhile owner and therefore in fact this provision is not applicable to the present case. Since beginning till today Shri Ramakant Gaikwad, Advocate is the owner of the property. Therefore P.D. arrears are the arrears against **person** and it is not the case of arrears against property. Power of Attorney is not the document of transfer of immovable property and such document can not change the ownership or title. Therefore the applicant Shri Rajiv Dhoble, Swastik Builders or Moharch Apartments are not subsequent purchaser or successors in title and hence above cited provisions do not come into the picture.

12. Owner of the premises Shri Ramakant Gaikwad, Advocate was also present at the time of hearing and he argued the case in person. He relied upon the authority reported in AIR 2007 Orissa 37 – Ajaykumar Agarwal Vs. O.S.F.C. & Ors. However, it is the case regarding Orissa Electricity Regulatory Commission, Distribution (Conditions of Supply) Code 2004. However, in the state of Maharashtra, Orissa Electricity Regulatory Commission is not applicable and our regulations are governed by MERC. Secondly, as per the facts of this matter specially Page No. 12 that Petitioner was Auction Purchaser. However, in this case, there is no new purchaser but the same is the owner. Therefore facts of this authority are far

away from the facts of the present case and hence this authority is not applicable to this case.

13. Owner of the premises Shri Ramakant Gaikwad, Advocate also relied on AIR 2008, Gauhati Page No. 1, Tripura State Electricity Corporation Ltd. & Ors. Vs. Shyamalchandra Debnath. However, as per facts of this authority, it is a matter of Tripura State Electricity Corporation Ltd. However, in Maharashtra State, MERC and M.S.E.D.C.L. are applicable. Secondly, claimant in the authority cited supra was purchaser of the land. However, in this case, there is absolutely no purchaser. Shri Ramakant Gaikwad, Advocate is the same owner in the past also and at present also. Therefore facts of this authority are also different and distinguishable. Hence authority cited supra is not applicable to the case in hand.

14. It is pertinent to note that M.S.E.D.C.L. has issued very important circular vide **Commercial Circular No. 53 Dt. 7.5.2007** by Chief Engineer (Com.) which is at document No. 12 produced by the applicant. In this Circular, it is specifically mentioned as under : -

*“Meanwhile, the Hon’ble Supreme Court in our Appeal No. 5312-13 of 2003 while referring the issue on recovery of arrears to Three Bench Court has made following observations : -*

*“The basic question is whether electricity dues constitute a charge on the property so far as the transferor and transferee of the unit are concerned.*

*Considering the importance of the issues involved, it would be appropriate if the matters are heard by the Three Judge Bench. The matters may be placed before Hon’ble Chief Justice of India for necessary directions”.*

15. Therefore it is clear that Hon'ble Supreme Court in appeal No. 5312-13 of 2003 while referring the issue of recovery of arrears to three Bench Court has made following observations : -

*“The basic question is whether electricity dues constitute a charge on the property so far as the transferor and transferee of the unit are concerned.*

*Considering the importance of the issues involved, it would be appropriate if the matters are heard by the Three Judge Bench”.*

16. As we have already pointed out, in the case in hand there is absolutely no question about transfer of the property. It is an admitted fact that there was no transfer of the premises of Plot No. 3, Gaitrinagar Nagpur. It is an admitted fact that since the year 2000 till today, Shri Ramakant Gaikwad, Advcoate is one and the same owner and therefore this authority of Hon'ble Apex Court of the land is not applicable to the case in hand. In the case in hand, the important question is whether arrears can carry with the person i.e. individual. It is not the point in issue in the case in hand regarding arrears against property. But the case in hand is the matters of arrears against the person. Therefore this authority of Hon'ble Supreme Court of India is not also applicable to the case in hand. If Shri Ramakant Gaikwad, would have disposed off property as a transfer by sale, will, gift, exchange or by any other legal mode of transfer to any transferee, then only such type of question may have arisen. Therefore, all these authorities are not applicable to the case in hand.

17. In Document No. 7, application of Shri Ramakant Gaikwad, Advocate Dt. 17.1.2014 and his earlier application Dt.

4.3.2011 is demanding 3 electricity connections whereas same owner of the property Shri Ramakant Gaikwad is demanding 9 electricity connections through his Power of Attorney Shri Rajiv P. Dhoble for Swastik Builders & Developers and Monarch Apartments. Shri Rajiv Dhoble or M/s. Swastik Builders or Monarch Apartments are nothing but merely in the shape of Power of Attorney for and on behalf of same land lord Shri Ramakant Gaikwad.

18. It is rather surprising to note that owner of the property, his power of attorney and M.S.E.D.C.L. also are suppressing important facts which go to the route of the matter. Document No. 2, produced by the applicant along with the application is the letter written by Jr. Engineer, M.S.E.D.C.L. Trimurtinagar, Nagpur addressed to M/s. Swastik Builders & Developers, Plot No. 3, Nagpur. In this letter, it is specifically mentioned that office of M.S.E.D.C.L. has received file of Monarch Apartments in respect of owner Shri Ramakant Gaikwad through Power of Attorney Shri Rajiv Dhoble for giving power supply to 8 Nos. 2 BHK flats, one meter for Guard Room, one 3 Phase meter for common purpose. However, there is nothing on record whether these 8 2BHK flats are sold by anybody else & to whom. If really any such big apartment is constructed, owner of the premises has to execute Registered Sale Deed in respect of each & every flat owner of such flats. Entire flat owners have to form a condominium society. Meter for guard room and 3 phase meter for common purpose has always to be in the name of Condominium Society of the Apartments. There is nothing on record to show that any such Condominium society named & styled as Monarch Apartments Condominium Society came into existence. There is nothing on record to show that these 8 2BHK flats are owned

by separate 8 purchasers. It is a common sense that after purchase of every 2 BHK flat, new purchaser has to submit application for new service connection in prescribed A-1 form. Condominium society has to file prescribed A-1 form for electricity connection for guard room and one 3 phase meter for common purpose. There is no evidence on record to show that Monarch Apartments Condominium society came into existence and filed A-1 form for new connection for guard room and common purpose. In absence of such circumstances, owner of the property Shri Ramakant Gaikwad or his Power of Attorney Shri Rajiv Dhoble have absolutely no locus standee for applying 9 connections and to file present grievance application. On this count also grievance application deserves to be dismissed.

19. Record shows that 8 2 BHK flats and entire Monarch Apartments is constructed. It is common sense that for construction of building by builder, Temporary meter for construction purpose has to be installed. There is no evidence on record to show that any such temporary meter was taken for construction purposes. Doubt is created whether builder has taken illegal supply for construction of building. Without supply no building or apartments can be constructed. It is a matter to be investigated by M.S.E.D.C.L.

20. As P.D. arrears are arrears against present owner of the property, Shri Ramakant Gaikwad is liable to pay P.D. arrears and then only he is entitle to apply either for restoration of previous connections or for fresh electricity connections. However, without payment of P.D. arrears, no connections can be released in the same premises either in the name of owner Shri Ramakant Gaikwad or his Power of Attorney i.e. the applicant.

21. Therefore, order passed by Learned I.G.R.C. is perfectly legal and valid and needs no interference. Grievance application deserves to be dismissed. Hence following order :-

**ORDER**

- 1) Grievance application is dismissed.

Sd/-  
(Anil Shrivastava)  
MEMBER  
SECRETARY

Sd/-  
(Adv. Subhash Jichkar)  
MEMBER

Sd/-  
(Shivajirao S. Patil),  
CHAIRMAN