

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

Case No. CGRF(NUZ)/097/2006

Applicant : M/s. J.P. Construction,
Ramnagar Square, Amravari Road,
Nagpur through its partner
Shri M.J. Patwardhan

Non-Applicant : The Nodal Officer-
Executive Engineer,
Congressnagar Division,
Nagpur representing the MSEDCL.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 08.03.2006)

The present grievance application has been filed on 01.02.2006 as per Regulation 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 here-in-after referred-to-as the said Regulations.

The grievance of the applicant is in respect of allegedly improper, unjust & illegal energy bill dated

10.09.2005 in which an erroneous amount of Rs. 1,43,271/- has been shown to be recoverable as an arrear amount.

The applicant had earlier approached the Executive Engineer, Congressnagar Division, MSEDCL, Nagpur for redressal of his present grievance by issuing a legal notice dated 23.09.2005 and thereafter also by another undated notice. These legal notices were replied by the non-applicant's Counsel on 24.10.2005 rejecting the grievance of the applicant and asking him to make payment of the arrear amount of Rs. 1,43,271/- as claimed in the energy bill dated 19.09.2005. The applicant was not satisfied with the reply given to him by the non-applicant and hence he filed the present grievance application before this Forum under the said Regulations.

Since the applicant had complained to a senior Officer viz. the Executive Engineer, the requirement of the applicant approaching the Internal Grievance Redressal Unit again under Regulation 6.3 of the said Regulations stands dispensed with. Such a dispensation has been confirmed by the MERC.

Both the parties were heard by us on 27.02.2006 & 06.03.2006.

Documents produced on record by both the parties are also perused & examined by us.

The applicant has contended that his Construction Firm had taken an electricity meter at the site of his construction at Madhavnagar, Nagpur in the year 1992. His consumer no. was 410013524681. This meter was disconnected in the year 1997 on his request. That time, the non-applicant

had issued a final P.D. bill of Rs. 1,43,271/- and the applicant had paid this amount in three installments.

According to him, he had paid amount of Rs. 50,000/- by a cheque, being cheque no. 081 dated 27.08.1997, towards first installment. Thereafter, second installment of Rs. 53,257/- was paid by him by cheque no. 421 dated 09.09.1997. These cheques were drawn on the Sangli Bank Ltd. He added that he had paid the third installment of Rs. 40,014/- in cash in the month of October, 1997. According to the applicant, he had thus paid the entire bill amount of Rs.1,43,271/-.The non-applicant did not issue any bills in respect of consumer no. 410013524681 for about eight years. There was no demand from the non-applicant during this period of eight years. Thereafter, in the month of September, 2005, the non-applicant showed, all of a sudden, for the first time arrear amount of Rs. 1,43,271/- as recoverable in the applicant's another live connection having consumer no. 410012288534.

The applicant also contended that no arrear amount was outstanding in respect of his second live meter. The arrear amount of Rs. 1,43,271/- was shown in the applicant's live connection in the applicant's energy bill dated 19.09.2005.

He added that the arrear amount in question shown as recoverable is not only unjust, improper but it is also illegal and that the non-applicant's claim is time-barred as per section 56(2) of the Electricity Act, 2003.

He also stated that he has been paying of all his energy bills regularly in respect of his consumer no. 410012288534, meter no. 8089020368.

He has produced copies of the following documents in support of his contentions.

- 1) His energy bill dated 18.07.2005 for Rs. 1990/- in respect of his meter no. 8089020368, consumer no. 410012288534.
- 2) Payment receipt dated 28.07.2005 for Rs. 1990/- against his energy bill mentioned at Sr.no. 1 above.
- 3) His disputed energy bill dated 19.09.2005 for Rs.1,44,460/- showing inclusion of arrear amount of Rs.1,43,271/-.
- 4) Legal notice dated 23.09.2005 addressed by the applicant to Dy. Exe. Engineer, MSEDCL, Congressnagar Division, Nagpur and Assistant Engineer, Shankarnagar S/Dn., Nagpur.
- 5) His another undated notice on the same subject addressed to the Executive Engineer, Congressnagar Division, MSEDCL, Nagpur.
- 6) Reply dated 24.10.2005 given to the applicant's Advocate Shri M.M. Pathak by the non-applicant's Advocate Shri Quazi.
- 7) Three acknowledgements showing service of notices on the non-applicant.
- 8) Reply dated 27.09.2005 given by the non-applicant's Advocate to the applicant's Advocate.

- 9) Extract of the applicant's Bank Pass Book of Sangli Bank Limited for the month of August & September 1997.
- 10) His energy bills dated 28.12.2005 & 24.01.2006 respectively for Rs. 1,48,840/- & Rs. 1,50,970/- in respect of consumer no. 410012288534.
- 11) His energy bill dated 19.11.2005 for Rs. 1,47,900/- against consumer no. 410012288534.

The non-applicant, in reply, has stated in his written submissions that the applicant did not pay his energy bills regularly so far as his consumer no. 410013524681 was concerned. He has strongly denied that the applicant's meter having consumer no. 410013524681 was disconnected on the request of the applicant in the year 1997. According to him, the applicant's meter was disconnected because he did not pay his energy bills, the total final liability of which was Rs. 1,43,271/- as in December, 1998.

He also strongly denied that this amount was ever paid by the applicant in three installments.

His say is that the applicant has not produced any reliable documentary evidence to show that he has paid this amount of Rs. 1,43,271/- in the past. According to him, no receipts, whatsoever, have been produced by the applicant to prove that he did pay this amount as claimed by him.

He referred to the applicant's CPL in respect of consumer no. 410013524681 for the period from December, 1997 till January, 2006, a copy of which is produced on record by him, and vehemently argued that the final liability of Rs.1,43,270=59/- was shown for the first time in the applicant's

energy bill for the month of December, 1998 in his CPL. As against this position, the applicant's say that he paid the amount of Rs.1,43,271/- much earlier to December, 1998 i.e. in the year 1997/- gets falsified evidently for the reason that arrear amount of Rs.1,43,271/- was never shown as due from him in the year 1997. The applicant's CPL also nowhere reveals any indication that the applicant has ever paid this arrear amount after December 1998.

By relying upon the Assistant Engineer's letter, being letter no. 74 dated 12.01.2005 addressed to the applicant, a copy of which has been produced on record, the non-applicant contended that this arrear amount of Rs. 1,43,271/- was proposed to be transferred to the applicant's live account having consumer no. 410012288534, meter no. 89020368 in case the applicant did not pay the arrear amount in question within three days from receipt of the bill. The arrear amount of Rs. 1,43,271/- thus came to be rightly included in the applicant's energy bill dated 19.09.2005 against meter no. 8089020368, consumer no. 410012288534.

According to the non-applicant, there is nothing illegal in transferring the arrear amount outstanding against the applicant in respect of his previous meter to his another live connection having consumer no. 410012288534.

He has denied that section 56 (2) of the Electricity Act, 2003 is applicable to the instant case. His say on this point is that the arrear amount in question has been shown as continuously recoverable since the date of permanent disconnection of the meter in the applicant's CPL pertaining to consumer no. 410013524681 till the billing month of June,

2005. This arrear amount was transferred to the applicant's another live account having consumer no. 410012288534 in the billing month of September 2005 and thereafter also. According to him, his claim is not barred by limitation.

For this purpose, he has relied upon the ruling given by the Bombay High Court in appeal no. 25 of 1973 (misc. petition 765 of 1972) decided on 13.02.1978 and reported in A.I.R. (1998) Bombay High Court at page No. 69. The Bombay High Court has held that the word "due" mentioned in Section 24 (1) of the Indian Electricity Act, 1910 includes neglect to pay time-barred claim.

He has also relied upon another ruling given by the Supreme Court in special leave petition no. 765 dated 24.01.1997 reported in A.I.R. 1997 at page no. 1101. The Hon'ble Supreme Court has held that under Section 24 of the Indian Electricity Act, 1910 the electricity Board has the power to discontinue electric supply in the case of non-payment of dues by a consumer and that the Board may not take re-course to right to file suit.

The submission of the non-applicant is that although the Electricity Act, 2003 has come into force w.e.f. 10.06.2003 replacing the Indian Electricity Act, 1910, the same wording of Section 24 (1) of the Indian Electricity Act, 1910 is retained in Section 56 (1) of the Electricity Act, 2003. Relying on this interpretation, he further added that he is very much entitled to disconnect the supply of any electric connection standing in the name of a consumer if his other connection has gone in arrears.

He has also relied upon the judgment given by Madras High Court in writ Petition No. 6194 and 7950 /2003 decided on 25.09.2003 reported in A.I.R. / 2004 N.O.C. 276 (Madras). The Madras High Court has held that the Electricity Board has powers to disconnect other service connections in the petitioner's name in case of default in payment of electricity dues relating to any one of the service connections of the same consumer and that no illegality or irregularity had occurred in such a disconnection under Section 24 of the Indian Electricity Act, 1910.

He has also relied upon a judgment given by the Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal given on 04.02.2004 in appeal no.188/2003 in which the principle mentioned above has been endorsed.

Reliance is also placed by him upon a judgment given on 01.02.2006 by the State Consumer Disputes Redressal Commission, Mumbai in first appeal no. 867 / 2002 in the case of Shri Bapurao Patmase Vs. MSEB. The State Commission has quoted the Madras High Court judgment reported in A.I.R. / 2004 N.O.C 276 (Madras) and also the Madhya Pradesh State Consumer Disputes Redressal Commission's judgment dated 04.10.2004 in appeal no. 188/2003 reported in II (2005 CPJ at page No. 221 and held that the MSEB's action of disconnection of the petitioner's commercial connection on the ground of non-payment of arrear amount pertaining to his other Industrial connection was not faulty.

Relying on these citations, the non-applicant strongly contended that there is no substance in the present grievance application.

He has produced copies of all the documents referred to by him in his written submissions.

He lastly prayed that the applicant's grievance application may be rejected.

The applicant in reply has stated that the judgments relied upon by the non-applicant are not applicable to the instant case since the facts and circumstances of the present case are different from those mentioned in the judgments relied upon by the non-applicant.

We have carefully gone through all documents produced on record as also all submissions, written & oral, made before us by both of them.

The following three points arise for consideration and decision by this Forum in the present case.

- 1) Whether the applicant has proved that he has made payment of Rs. 1,43,271/- in the past as claimed by him;
- 2) Whether the non-applicant's action of transferring the arrear amount in question pertaining to the applicant's disconnected meter (Consumer No. 410013524681) to the applicant's live connection having consumer no. 410012288534 is correct and legal;
- 3) Whether the non-applicant's claim of recovering the arrear amount of Rs. 1,43,271/- is correct and legal;

As regards the first point, the applicant's submission is that he has paid the amount of Rs.1,43,271/- in the year 1997 in three installments. The first two installments of Rs.50,000/- and Rs. 53,257/- are claimed to have been paid by him by cheques in August / September, 1997 while the third & final installment is claimed to have been paid in cash in October 1997. However, this has been strongly denied by the non-applicant.

It is pertinent to note that the arrear amount of Rs. 1,43,271/- has been shown as recoverable for the first time in the month of December, 1998 by the non-applicant. It is thus not understood as to how the applicant has paid this arrear amount in the year 1997 when it was not shown as due and recoverable. Moreover, the applicant was not able to produce receipts of payments claimed to have been made by him.

A feable attempt is made by the applicant by producing & relying upon a copy of his Bank Pass Book. Two particular entries pertaining to withdrawal of Rs. 50,000/- and Rs. 53,257/- respectively on 26.08.1997 and 09.09.1997 are basically relied upon by the applicant. There is no doubt that these two entries are there and they indicate that the two cheques for these two amounts were issued by him in the name of MSEB. However, the other more essential particulars as to against which consumer number or, for that matter, against which meter number of the applicant these payment were made by him are not at all fully and satisfactorily explained or proved by the applicant.

The applicant says that he paid the third installment of Rs.40,014/- in cash in October, 1997. No proof of any kind is produced by him in this regard. His mere say will not serve his purpose.

The burden of proof to prove the payments claimed to have been made by the applicant was squarely upon him particularly when the non-applicant has categorically denied receipt of these amounts. This burden has not been discharged successfully by him. In the absence of any cogent and convincing evidence or explanation, it is not possible for us to accept the contention of the applicant that he did make the payment of arrear amount of Rs. 1,43,271/- as claimed by him. His claim in this respect cannot be accepted by us.

The first point is, therefore, answered in the negative.

In respect of the second point, we hold that there is nothing illegal if the arrear amount outstanding against the applicant in respect of his disconnected meter having consumer no. 410013524681 is transferred to his live connection having consumer no. 410012288534.

Section 56 (1) of the Electricity Act, 2003 lays down that where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee in respect of supply of electricity to him, the licensee may, after giving not less than fifteen clear days' notice in writing to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the

supply of electricity and for that purpose, cut or disconnect any electric supply being the property of such licensee through which electricity may have been supplied and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

This very wording demonstrates that the Distribution Licensee is entitled to transfer the unpaid arrear amount in respect of the applicant's disconnected meter to his other live connection and also that he is entitled to cut off the electricity supply of his second live connection if he does not pay the unpaid arrear amount provided that he serves the applicant with a fifteen clear days' notice before actual disconnection.

The judgment dated 01.02.2006 of the State Consumer Disputes Redressal Commission, Mumbai in first appeal no. 867/2002 relied upon by the non-applicant in particular is very relevant to the present case and it supports the above view.

The non-applicant was, therefore, legally entitled to transfer the arrear amount of Rs. 1,43,271/- into the applicant's second live connection having consumer no. 410012288534.

The second point is, thus answered in the affirmative.

As regards the third point, the contention of the applicant is that the non-applicant's claim is time-barred in terms of Section 56 (2) of the Electricity Act, 2003 while the say of the non-applicant is that he is legally entitled to recover this amount since the requirement of Section 56 (2) is complied with by him.

The applicant's CPL pertaining to his permanently disconnected meter having consumer no. 410013524681 clearly demonstrates that the arrear amount in question has been shown as continuously recoverable since December, 1998 and onwards regularly till this amount was transferred to the applicant's live account having consumer no. 410012288534 i.e. till September 2005. Moreover, the applicant was very much aware of the fact that he was owing the arrear amount to the non-applicant. Not only this, but he also claims that he had paid the arrear amount way back in the year 1997. We are, therefore, inclined to hold and do hold accordingly looking to the circumstances of the case that the non-applicant's action cannot be said to be violative of Section 56.

The third point is hence answered in the affirmative.

Certain citations have been relied upon by the non-applicant in the context of Section 24 of the Electricity Act, 1910. The Indian Electricity Act, 1910 has since been repealed w.e.f. 10.06.2003 by the Electricity Act, 2003 the

citations referred to by him cannot be said to be applicable to the present case.

May that be the case, the fact remains that the applicant's claims cannot be accepted by us for the reasons stated by us in the preceding paragraphs of this Order.

In the result, the applicant's grievance application stands rejected.

(Smt. Gouri Chandrayan)
Member

(S.D. Jahagirdar)
CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**