

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

Case No. CGRF(NUZ)/043/2008

Applicant : M/s. KSL Realty & Infrastructure Ltd.,
Plot No. 101/1, Survey no. 101,
Walkar Road,
Empress Mill Gate No. 4,
NAGPUR – 440 018.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Superintending Engineer,
NUC,
Nagpur.

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.

Interim ORDER (Passed on 20.08.2008)

A grievance application is filed by the applicant under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations in which the applicant has prayed for setting aside illegal

assessment bill amount of Rs.52,89,561/- which, in turn, includes current bill amount of Rs. 2,85,660=24 for the month of June, 2008, debit adjustment bill amount of Rs. 49,00,183=44 for the period October, 2006 to February, 2008 against application of tariff code LT-VII meant for temporary connection for construction purpose and delayed payment charges of Rs. 1,03,716=87. The applicant has also requested to set aside illegal assessment bill amounting to Rs.71,99,041=24 for the period March 2008 to June, 2008.

A 15 days' notice is already issued by the non-applicant on 02.08.2008 and it is also duly served on the applicant asking the applicant to pay this amount failing which the power supply shall be disconnected.

In terms of Regulation 8.3 of the said Regulations, the applicant has requested this Forum to pass interim order thereby restraining the non-applicant from disconnecting his power supply since, according to him, there is a strong prima-facie case to prove that the non-applicant's action of billing is violative of directions of the Maharashtra Electricity Regulatory Commission (in short, the Commission).

Heard Shri R.B. Goenka for the applicant and Shri Borikar, Superintending Engineer, NUC, MSEDCL, Nagpur for the non-applicant.

Perused written submissions placed on record by both the parties as also the record of the case.

The applicant's main contention is that the tariff meant for LT-VII category cannot be applied to the applicant's case since the applicant is a HT consumer and also that the supply being availed by

the applicant does not fit into the definition of words “Temporary Supply” made in the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations 2005 (in short, the Supply Code Regulations). It is his strong contention that the applicant has a prima-facie case to prove that the non-applicant has violated the Commission’s directions in respect of applicability of tariff. For this purpose, he has relied upon the Commission’s following tariff orders.

- 1) The tariff order effective from 01.10.2006 to 30.04.2007.
- 2) The tariff order effective from 01.05.2007 to 31.05.2008
- 3) The tariff order effective from 01.06.2008.

According to him, the interpretation drawn by the non-applicant of the Commission’s Clarificatory order dated 24.08.2007 passed in case no. 26/2007 and case no. 65/2007, in respect of tariff for HT temporary consumers is not correct in as much as tariff applicable for LT-VII category mentioned therein is applicable in the event of extending supply to consumer availing temporary supply at HT voltages also. Such is not the case of the applicant because the applicant is not availing temporary supply at HT voltage. His power supply is continuous and permanent.

Pointing out the definition of words “Temporary Supply” made in the Supply Code Regulations, he argued that the agreements executed by the applicant with the non-applicant nowhere indicate that the power supply is for a period not exceeding two years. The power supply is almost a permanent supply. He further submitted that the Commission’s tariff order effective from 01.05.2007 cannot be made applicable to the period prior to 01.05.2007. The previous tariff

order effective from 01.10.2006 to 30.04.2007 also nowhere makes any mention of HT temporary supply tariff category.

He added that the non-applicant has already been categorized as HT – VI Commercial category consumer and hence, the tariff meant for LT-VII category is not applicable to him. He also made submissions on the point of assessment amount included in the bill in question for the past period of six months from October, 2006 to March 2007 for which period he has already paid the assessment amount worked out by the non-applicant towards unauthorized use of electricity and further that no further liability on this count is now permissible in terms of interpretation Section 126 of the Electricity Act.

Various other grounds were also raised by him.

He lastly requested that his prayer for interim relief may be granted.

The non-applicant, on his part, has denied all the claims of the applicant by stating that the applicant is using power supply for construction purposes and as such, he fits into the definition of temporary supply. He strongly pleaded that nothing wrong has happened in applying the tariff meant for LT-VII category to the applicant since this is permitted by the clarificatory order passed by the Commission's on 24.08.2007. According to him, the applicant used power supply un-authorizedly during the period from October, 2006 to March 2007 and as such, previous assessment was accordingly done and the applicant has also paid the requisite assessment amount. The applicant is using the supply of power for construction purposes only since prior to October, 2006 till today. Earlier tariff meant for HT-VI Commercial complex category was made applicable to the applicant and

accordingly energy bills were issued and they were also paid by the applicant. However, in view of the Commission's clarificatory order dated August, 2007, the matter came to be reviewed and the applicant was rightly asked to pay amount of Rs.52,89,561/- which includes the current bill amount for the month of June, 2008 and also arrear amount of Rs.49,00,183=44 in view of application of the proper tariff rate meant for LT-VII category. He strongly pleaded that the applicant has no prima-facie case and he is only delaying payment of charges legally due from him. According to him, there is no force in the argument advanced by the applicant's representative.

The main issues involved in this case are

- 1) Whether the applicant's power supply can be termed as temporary supply since the use of power is for construction purposes and
- 2) which tariff rate is applicable period wise to the applicant in the circumstances of the case.

These two points can be adjudicated upon after we fully hear the case which is slated for hearing on 02.09.2008.

A point has been made by the applicant's representative that the non-applicant has refused to accept the payment of electricity charges offered to him in terms of Section 56 (1) (b) of the Electricity Act, 2003. In reply, the non-applicant stated that the amount worked out under Section 56 (1) (b) by the applicant was not correct and proper. Hence, it was not accepted. The submission made by the non-applicant is acceptable to this Forum because the applicant did not offer proper quantum of payment towards electricity charges due from the applicant for each month calculated on the basis of average charges

for electricity paid by him during preceeding six months in terms of Section 56 (1) (b). The payment offered to the non-applicant was only an amount of Rs.2,65,093/- which was only one month's average energy charge. The applicant was supposed to have offered payment of electricity charges meant for the period in dispute at the average rate of Rs.2,65,093/- per month. In view of this position, the applicant's contention is not tenable.

The non-applicant has argued that the tariff meant for LT-VII category was also made applicable for the period from October, 2006 to March 2007 during which period the applicant had made unauthorized use of electricity and further that this Forum has held in its order passed on 27.08.2007 in case no. 45 / 2007 in respect of the same consumer namely-the applicant that the applicant made unauthorized use of electricity. Hence, the question about revision of the assessment in respect of this period cannot come before this Forum for adjudication since the Forum has no jurisdiction in this respect as stated in the said Regulations.

The applicant, on his part, has denied this submission by saying that since he has already paid the assessment amount including amount of penalty pertaining to this period of six months, no further liability can be inflicted on the applicant.

In this respect, though this Forum did hold in a case before it as quoted by the non-applicant that unauthorized use of electricity was there in respect of the past period of the six months from October 2006 to March 2007, the fact remains that the amount of Rs.52,89,561/- mentioned in the non-applicant's notice dated 02.08.2008 also includes other substantial amount meant for the period from April 2007

onwards till February 2008 and during this further period, the applicant has been classified to be HT-VI category consumer meant for commercial connection by the non-applicant. It is also a matter of record that the arrear amount worked out by the non-applicant for the period beyond April 2007 till February, 2008 has been strongly challenged by the applicant's representative.

The fact remains that the applicant is threatened with disconnection of power supply. On hearing both the parties, we are convinced that injustice will be caused to the applicant if an Interim order is not issued in terms of Regulations 8.3 of the said Regulations.

Secondly, we hold that the requirement of Regulation 8.3 of the said Regulations is prima-facie satisfied. Hence, this Forum directs the non-applicant not to disconnect the applicant's power supply till the grievance application is finally decided.

Sd/-
(Smt. Gauri Chandrayan)
Member

Sd/-
(S.D. Jahagirdar)
CHAIRMAN

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