

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM MSEDCL**  
**GONDIA ZONE, C/O OFFICE OF THE CHIEF ENGINEER, RAMNAGAR,**  
**GONDIA.**

Case No. C.G.R.F (Gondia) 05/2017.

Filed on : 03/06/2017

Decided on 29/07/2017

M/s Ashok Kumar Rice Mill  
P.A. Rice Mill Compound,  
Govindpur Road, Dist. Gondia.

.....Applicant

**:: V E R S U S ::**

Nodal Officer,  
The Executive Engineer,  
O & M Division, M.S.E.D.C.L.,  
Gondia.

.....Non-Applicant

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Applicant with Mr. K. S. Parihar, Authorized Representative.

Non-Applicant by Mr. A. M. Jain, additional Executive Engineer Gondia  
(Urban) Sub-Division, O & M Division, M.S.E.D.C.L., Gondia.

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Quorum - Mr. S. K. Wankhede, Technical Member

Mr. N. V. Bansod – Member (CPO) Additional Charge.

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**ORDER PASSED ON 29/07/2017**

1) Applicant filed present grievance application before the forum on 03/06/2017 under regulation 6.4 of the Maharashtra Electricity Regulation Commission (CGRF & EO) Regulation, 2006, hereinafter referred to as said regulations.

2) Non-applicant as well as IGRC denied applicant's grievance and non-applicant filed reply on 29/06/2017.

2-a) During pendency of consumer complaint dated 23/05/2017, in IGRC and due to threaten notice of disconnection dated 27/04/2017 and further letters of Non-applicant dated 12/05/2017 and 18/05/2017 towards disconnection of supply of applicant, applicant approached forum on 02/06/2017 for interim order to restrain Non-applicant from disconnection of supply. Forum conducted the hearing of both the parties on 06/06/2017 Non-applicant agreed that applicant's regular payee of energy bills and considering the disputed facts, forum granted interim order as per regulation 8.3 of said regulation till disposal of IGRC complaint and application pending before the forum.

3) Applicant is the consumer of non-applicant since 01/01/1976 and applicant was paying electricity bills regularly. Applicants meter Sr.No.10-20155647 was since January, 2008 and in February, 2008 Meter No.055-MSE-45063 was installed as earlier meter was replaced and meter was neither inspected nor tested during 9 years (February 2008 to 20/04/2017).

4) Applicant said, since February, 2008 Meter No.055-MSE-45063 capacity 100/5 Amp & C. T. Capacity was 100/5 Amp. Before installation meter & C. T. was tested and same meter is continued and question of MF (Multiplying Factor) difference does not arise and in CPL, MF-1 is noted and it is normal and meter reading is correspondingly increasing.

5) Applicant said as per Non-applicant in the month of July, 2013 C.T. with capacity 100/5 Amp was changed to 200/5 which is false. Non-applicant filed the copy of gate pass and on observation said CT's was given to Dy. Executive Engineer, Gondia (City) from Divisional Store but is suspense that where the CT's was used by Dy. Executive Engineer.

6) Applicant said Non-applicant gave bill for July, 2013 to April, 2017 on 27/04/2017 for Rs.17,33,676.63/- (Provisional) and in MERC Regulation and in MERC Regulation 2005 supply code and conditions of supply, there is no mention of issue of provisional bill as well as no mention of sections of the Electricity Act, 2003 and bill is to be quashed.

7) As per applicant, supply was given to him from DTC No.4387634 200/5 Amp and only two consumers are given supply. Second, consumer is Smt Shantidevi Industry, Connection No.430019053610 (sanctioned load 80 HP) and Non-applicant did not file E.A. (Energy Audit) of D.T.C. which is EA-Negative in the month and charging of 248620 units (Additional) on applicant is not appropriate and applicant prayed cancellation of illegal provisions bill of Rs.17,33,676.63/- and Interim Order restraining non-applicant from disconnection, and supply to remain continued.

8) Non-applicant admitted that during inspection of applicant's connection on 13/04/2017, as per C.T. meter the MF would have been MF 2 and informed to sub-division officer on 15/04/2017 and testing team of Bhandara who in turn on 20/04/2017, tested consumer's Meter & C.T.'s and confirm that "MF" should be "MF-2" instead of "MF-1".

9) As per Non-applicant, applicant's application dated 16/05/2013 for Additional load was sanctioned in 2013 and C.T. was changed and in gate pass of sub-division C.T.'s and C.T.'s in consumer's meter are same as on July, 2013.

10) Non-applicant admitted that due to over sight "MF-1" was continued instead of correct is "MF-2" and hence since July, 2013 till April, 2017 for Units 248620 for Rs.17,33,676.63/- was issued along with CPL & details of provisional bill was given to consumer and 14 days notice of disconnection

under Section 56 of the Electricity Act, 2003 was given. Applicant shall pay the bill and if interim order against disconnection is asked by applicant, he should be pay 50% of amount of the provisional bill and after that only disconnection will not be affected.

We heard the arguments of both the parties and perused all the papers, documents as well as copy of the order of CGRF Nagpur Urban Zone, Nagpur in Case No.108/2012 dated 20/12/2012 along with order of IGRC dated 18/07/2017.

11) We observed that there is no dispute about the Meter No.10-20155647 since January, 2008 and new Meter No.055-MSE-45063 installed in February, 2008 and since February, 2008 to 20/04/2017 meter was neither inspected nor tested as non-applicant failed to place documents evidence for our perusal.

12) Both parties admitted that, Meter No.055-MSE-45063 (Old Meter) having capacity of 100/5 Amp and C.T. capacity was 100/5Amp and hence MF-1 was applied and same continued.

14) It is an undisputed fact that, applicant applied for enhancement of load on 16/05/2013 from sanctioned load 50 HP to 107 HP (enhanced of 57 HP) and same is sanctioned by Executive Engineer vide letter No.4702, dated 06/07/2013. As per Non-applicant to enhance the load, Subdivision office gate pass No.854, dated 19/07/2012 for 200/5 Amp, 3 CT's were issued for the applicant and same can be compared from CT's connected to the connection.

(a) In IGRC order Gate Pass is dated 17/07/2012 but during arguments on verification of Gate Pass shown was dated 19/07/2012. It is very surprising that applicant (Xerox copy)

applied for enhancement of Load on 16/05/2013 and Gate Pass is dated 17/07/2012 or 19/07/2012 which is prior to the application of applicant for enhance of load. During argument Non-applicant was requested to produce the original gate pass etc. but was not made available to the forum which creates suspension.

- (b) Applicants representative raised the issue that after application of May-2013, there is no documentary evidence as to requisition of CT's from Divisional Store etc. or if appropriate CT's are not available then Executive Engineer can directly send requisition to head office for supply of CT's and there are directions from head office. Applicant said gate pass is vague and cannot be relied and Non-applicant failed to explain travel of CT's as per gate pass dated 17/07/2012 or 19/07/2012 till it was installed in applicants premises which is 200/5 and why not CT's 150/5 Amp or meter of 150/5 Amp or meter of 200/5 Am was not installed. On this plane answer of Non-applicant is meter of 200/5 Amp was not available, on this applicant categorically pointed that meter of capacity 200/5 Amp is installed in **multiplex of M/s S. M. Mundhada Complex since 2014 non-applicant could not answer the issue raised by applicant.**
- (c) During arguments non-applicant raised the issue of judgment M/s Sadguru ICE Factory passed by Civil Court, Gondia in Suit No.16/2017, dated 03/04/2017 and same is relied by IGRC but it is not available to us for our perusal and we are of the opinion that it cannot be considered as precedence or cannot be made applicable in the present facts & circumstance of the case. Secondly, IGRC as well as non-applicant failed to refer the

provisions of regulation 6.19 of said regulation which is as under.

6.19 : “Forum shall not be bound by code of civil procedure, 1908 or the Indian evidence act, 1872 as inforce from time to time.” Hence any order of the civil court is limited to that suit only and not binding on the forum of the special act and said regulations we are the opinion that it cannot be considered as precedence or cannot be made applicable in the present facts and circumstances of the case. Hence, it is futile attempt on part of IGRC as well as non-applicant due to unawareness of MERC said Regulation of 2006.

- (d) The basic question before us that when the enhanced load is 107 HP, why not CT’s of 50/5 Amp or 150/5 Amp along with meter capacity of 150/5 Amp was not used and **non availability cannot be reason for the same in absence of specific requisition for procurement of meter of CT’s of particular capacity** and denial of availability or approval of Executive Engineer to use the CT’s of 200/5 Amp. Hence, submission of non-applicant during arguments cannot be worth relying.
- (e) Applicant raise question that from DTC No.4387634 (200Amp), supply is given to 2 consumers i.e. M/s Shantidevi Industries and the applicant. It was quite possible to compare the MRI data or Energy Audit Report of the said DTC with applicants and another consumer’s MRI with MRI or Energy Audit Report of DTC, before issuing provisional bill of difference of MF-2 to MF-1. On perusal of documents on record or reply exact date of installation of CT’s in month July – 2013 or later on cannot be

ascertain or presumed by the forum in the absence of report of installation of CT 200/5 Amp at the applicants premises.

- (f) Applicant during arguments raised the question as it is case of 15.5.4 (billing in the event of defective meters) and 15.4.1 of MERC (Electric Supply load and other conditions of supply) Regulations, 2005 due to non comparing of a MRI or Energy Audit Report of DTC with MRI of the applicant and billing shall be done as per regulation 15.4.1. **On perusal of spot inspection report dated 13/04/2017**, meter status is ok but the signature of consumer appears to have been not obtained on the report even though it is specified in the inspection format which is wrong practice adopted by non-applicant without the notice or knowledge of the applicant.
- (g) As per regulation No.6, 6.1, 6.3, 6.4 of Regulation quoted in para above it was obligatory on the part of non-applicant to execute the agreement and provide the copy agreement to the applicant as sanctioned load is above 63 KVA i.e. 107 KVA which appears to be not done even though it was necessary to adopt the correct procedure. Hence, this act of non-applicant is negligence on the their part.
- (h) On perusal of inspection report dated 13/04/2017 and 20/04/2017, there is clear violation of Regulation 8.3 and 8.4 (Access to consumer premises) regulation of 2005 noted above, which is obligatory on the part of non-applicant and non-applicant must have observed the compliance of the regulatory requirement.

15) Now, the question is whether the non-applicant can recover difference between MF - 2 & MF - 1 for the period July 2013 to April 2017. Non-applicant filed the copy of order of the CGRF Nagpur Zone in Case No.CGRF 108/2012, dated 20/12/2012. We are of the view that findings recorded in it does not deserves to considered while deciding the present case because basic issue was considered by MERC in Case No.24 of 2001 order dated 11/02/2003 and consistently followed by the Electricity Ombudsman's and this order of MERC may not have put forward by the parties or may not be within the knowledge of Authorities of CGRF Nagpur etc.

**In order of CGRF, on one side arrears for a period more than 2 years in terms of section 56 (2) of the Electricity Act, 2003, are barred by limitation and observed further as under ;**

“Therefore in our considered opinion it is necessary in the interest of justice to allow grievance application partly directing non-applicant MSEDCL not to recover the difference amount both the charges of electricity supplied and amount paid by the applicant during period of more than 2 years.” (Para No.10 of the order of CGRF)

(A) Section 56 (2) of the Electricity Act, 2003 has two parts. Notwithstanding anything contained in any of other law for the time being in force.

PART (1) No sum due from any consumer, under this section shall be recoverable after the period of 2 years from the date when such some becomes due.

The premises of applicant was inspected on 13/04/2017 for the 1<sup>st</sup> time and difference bill was issued on 27/04/2017 and same bill dated



27/04/2017 can be recoverable from 27/04/2017 till 26/04/2019 but does not permit to go back prior to 27/04/2017.

PART (2) Unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied.

As the bill dated 27/04/2017 is first bill and amount in it not shown continuously as recoverable as arrear of charges for electricity supplied in the past. Hence, 2<sup>nd</sup> part also does not satisfy the mandate of the Section 56 (2) of the Electricity Act, 2003 and no interest of Justice prevail in favour of non-applicant but it always prevails in favour of the consumer because act and regulations are to protect interest of consumer and its welfare as well as regulations are for the benefit of consumers. But, midway was appears to have adopted which section 56 (2) does not permit and the findings of the forum in aforesaid order does not digest as prudent practice and law and does not carry any consideration as contradictory.

16) For the sake of clarity while deciding the controversy of recovery of arrears by MSEDCL, we rely on the land mark order in representation No. 51/2016, dated 30/11/2016 between “M/s Ankur Seeds Pvt. Ltd. V/s Superintending Engineer, MSEDCL, Nagpur (Urban) Circle, Nagpur in which arrears of electricity for period 01/08/2012 to March – 2016 amounting to Rs.1,44,84,190/- was quashed as well as disconnection notice is quashed. In the afore said order, principle laid down in MERC Case No.24 of 2001 order dated 11/02/2003 is categorically considered and in the said order Electricity Ombudsmen Nagpur and MERC in above case – It is observed as under in paragraph 23, 24, 25 of the ombudsmen above order.

**“23) No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow**

a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective. The respondent may at the claim difference between commercial and Industrial Tariff from the communication dated 28/03/2016 made by the Superintending Engineer to the appellant. It, therefore, follows that the notice dated 25/04/2016 demanding Rs.1,44,84,190/- for the period from August, 2012 to March, 2016 deserves to be quashed.

24) Relying on certain Judgment of the High Court, it was urged on behalf of the respondent that the amount of supplementary bill can be recovered and there is no limitation for the same. All these judgments are placed by the respondent on record. I do not think it necessary to refer to them for two reasons. First, the demand in question cannot be categorized as escaped billing in the strict sense of the term to be recovered retrospectively as observed by MERC in its order dated 11/02/2003 in Case No.24/2001. Secondly, there has been two conflicting judgments of the Coordinate Benches of the High Court on the question of recovery of the amount of escaped billing and the question has been referred to a larger Bench comprising of three judges. In view of this, it cannot be said that the respondent is entitled to recover the amount as demanded by it.

25) It is painful to note that the respondent is deprived of a huge amount of about Rs.1.5 Crores because of the negligence on the part of its Officials to apply proper Tariff Category to the appellant despite Tariff Orders passed by MERC and Commercial Circulars issued by the Director (Commercial) on the basis of those Tariff Orders from time to time. It is necessary in the interest of the respondent Organization to recover the said monetary loss from the Officials responsible for negligence after fixing responsibility by conducting Disciplinary Inquiry.”

17) We feel it necessary to quote the para of the judgment of the Hon’ble High Court of Judicature of Bombay, Civil Appellate Jurisdiction Writ Petition No.2798/2015 judgment dated 18/01/2017 in petition between MSEDCL & Anr. V/s M/s M. R. Scion Agro Processors Pvt. Ltd., which can be guiding factor for officials of M.S.E.D.C.L. to Act.

“9) There cannot be a second opinion, that the orders which are passed by the Maharashtra Electricity Regulatory Commission would become relevant from the point of view of the consumer’s interest. So also the regulations which are framed under the Electricity Act, 2003 as noted above and relevant to the facts of this case, are required to be interpreted in a manner which are beneficial to the consumers. Further When it comes to distribution of electricity, the petitioners are in a monopolistic or in a dominant position, as no other player is in the field at least in this case. In this situation the consumer, (Respondent No.1 in this case) cannot be said to be in a sound bargaining position in demanding supply of electricity and its terms and conditions. This inequality becomes relevant when such agreement as the MOU in the present case are required to be considered by the court. The

**applicability of doctrine of inequality to such contracts cannot be ignored. It is in this circumstances that the orders passed by the MERC and the statutory regulations play a pivotal role for protection of the consumers interest. Thus in entering into such agreements the petitioners in their public character cannot be oblivious of the statutory regulations and the obligations cast on them under the various orders, which are passed by the authorities under the Act and which become binding on the petitioners as in the present case. Nor can the petitioners enter into such agreements which would defeat the regulations or render nugatory the orders passed by the adjudicating authorities under the Act. Thus, the reliance of the petitioners on the decision of the Supreme Court in Virgo Steels Bombay (supra) would not assist the petitioners and/or is misplaced in the facts of the present case.”**

In view of the above observations the IGRC without application of mind and observing the MERC order dated 11/07/2003 in Case No.24/2001 jumped to reach to the conclusion and hence order of IGRC deserves to be set aside. The application deserves to be allowed.

**In the result I pass the following order:**

- (a) The application is partly allowed
- (b) The disconnection notice no. ADEE/Sub-DN(U)/Gondia/Rev/TD Notice/512, dated 27/04/2017 issued by Additional Executive Engineer MSEDCL Sub-Division (U) Gondia to the applicant is quashed.
- (c) And the bill for Rs.17,33,676.33/- for July – 2013 to April – 2017 as per aforesaid letter dated 27/04/2017 is quashed.

- (d) Departmental Inquiry be held in order to ascertain as to who was responsible for the negligence in applying proper “MF-2” to the applicant on and after July – 2013 and suitable action may be taken against the officers if they are found guilty of negligence.
- (e) Needless to say that the non-applicant may categories the applicant in “MF-2” from 27/04/2017, the date of 1<sup>st</sup> notice to applicant.
- (f) The IGRC order dated 18/07/2017 is quashed and set aside.
- (g) No order as to cost.

The compliance of this order shall be done within 30 days from the date of this order.

Member Technical

Member

Mr. S. K. Wankhede

Mr. N. V. Bansod