

**BEFORE CONSUMER GRIEVANCE REDRESSAL FORUM, MSEDCL
(GONDIA ZONE), OFFICE OF THE CHIEF ENGINEER, RAMNAGAR,
GONDIA.**

Case No.CGRF (Gondia) 06/2017

Filed on 03/06/2017

Decided on : 31/07/2017

M/s Gupta Rice Industries,
At Tumkheda, Tah. Goregaon,
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

Applicant present with Mr. K. S. Parihar, Authorized Representative.
Above Non-applicant represented by Mr. A. B. Dakhane (Dy. Executive
Engineer Gondia Gramin Sub-Division).

Quorum Present : 1) Mr S. K. Wankhede – Technical Member
 2) Mr N. V. Bansod – Member (CPO)
 Additional Charge.

ORDER PASSED ON 31/07/2017

- 1) The applicant filed the present grievance application before this forum on 03/06/2017 under Regulation 6.4 of the M.E.R.C. (C.G.R.F. & E. O.) Regulations - 2006, herein after referred to as said regulations.
- 2) Applicant filed grievance before IGRC having grievance No.07/2017 on 24/04/2017 but during pendency applicant file application before the forum due to threatening notice of disconnection to applicant dated 03/05/2017 towards disconnection of supply of applicant's industry by non-applicant with a prayer to grant interim order restraining the non-applicant from disconnection of supply of the industry on 03/06/2017, Case No.06/2017.
- 3) Forum conducted the hearing of both the parties on 06/06/2017, on point of interim order non-applicant agreed that applicant is regular payee of monthly energy bills and considering the disputed facts in the interest of justice and to avoid disconnection of supply. Forum granted interim order as per Reg.8.3 of said regulation till disposal of IGRC complaint and application pending before the forum.
- 4) IGRC denied grievance of applicant. Non-applicant did not file the reply before the forum.
- 5) Applicant is the consumer of non-applicant since 15/05/1998 with connected load (KW) 100 HP contract demand 93 KVA and

applicant was paying electricity bill regularly. Applicant's meter number 055-MSB 51727 (old) and New meter number is 076-00358685 i.e. load was 100 HP, meter capacity 100/5 Amp & CT was 100/5 Amp. **Applicant further said that old meter was replaced by non-applicant of their own without any intimation till today.** There was no testing of old meter and no adjustment in bill is given and MF was 1 (One). This allegation of applicant was neither replied nor filed any document evidence by non-applicant and no new meter installation report is before us which creates suspicion on in our mind about correctness of meter etc.

6) Applicant's said during June - 2013 to November - 2013, Abnormal average bill was given due to no display of reading in the meter. Applicant said that before installation of meter and CT's was tested and same meter is continued and question of multiplying factor MF difference does not arise and in CPL, MF-1 is noted and it is normal and meter reading is correspondingly increasing.

7) As per applicant meter capacity is 100/5 Amp & CT is also 100/5 Amp and hence MF-1 is correct.

8) Non-applicant issued bill for January - 2017 for Rs.7,81,500/- and same is received by letter in Registered A/d Post as difference of MF for period November - 2013 to December - 2016 and ascertained from CPL. Applicant deposited all regular bills and hence question of depositing provisional bill of Rs.7,81,500/-does not arise. Non-applicant used to record meter reading every month and issue bill and same are paid by applicant.

9) Applicant invited the attention of the forum to Reg. 15.3 (billing in absence of meter reading) and 15.4.1 (billing in the event of defective meter) (Reg.2005). The difference bill given to applicant is due to defective meter, assessment was not correct but provisional bill for November - 2013 to December - 2016 was issued for Rs.7,81,500/- in Jan. 2017.

10) Applicant said that old meter of 100/5 Amp appears to have replaced by meter 50/5 Amp and old CT 100/5 Amp remains and difference bill as per MF-2 and MF-1 is issued for Rs.7,81,500/- for November - 2013 to December - 2016 and same was protested by applicant still non-applicant have added in March - 2017 bill inspite of regular payment of correct monthly bills.

11) Applicant said that **supply is given to him only (single consumer) from D.T.C.** (Distribution Transformer Centre) No.430261 and Energy Audit Meter is fixed on D.T.C. **but non-applicant have no evidence but failed to give correct bills and so question of revision does not arise.**

12) Mr. Dakhane orally during arguments said that in November - 2013, old meter was replaced with new meter because old meter was not giving correct reading (No display of meter reading) and during period of faulty meter average assessment was given to applicant and same is paid by applicant. **In November - 2013 meter (New) of capacity 50/5 was installed with same CT of 100/5 Amp and earlier meter was of capacity 100/5 Amp and CT of 100/5 Amp**

while changing meter in November - 2013 with over sight instead of MF-2, MF-1 was applied as old MF-1 continued in billing data.

13) Non-applicant said the fact was brought to the notice of applicant and accordingly issued provisional bill of Rs.7,81,500/- and same is added in March - 2017 in regular bill as per I.T. System. Non-applicant said as applicant used energy, he should pay the bill and due to non-payment, notice of disconnection was issued. We heard the arguments of Mr. K. S. Parihar (Consumer) representative as well as Mr. Dakhane, Dy, Executive Engineer and perused all the papers on record and order of CGRF (NUZ) Nagpur in Case No.108/2012 dated 20/12/2012 alongwith order of IGRC dated 18/07/2017.

- a) **Non-applicant did not file the reply to the grievance which is violation of said regulation.**

- b) IGRC in their order dated 18/07/2017, considered the order of Hon'ble Civil Court, Gondia in Suit No.60/2017 dated 03/04/2017 between in M/s Satguru Ice Factory V/s M. S. E. D. C. L. and same is raised by non-applicant in argument but copy of **the order of Civil Court is not available for perusal.** Secondly, IGRC failed to refer the provisions of regulation 6.19 of said regulation is as under.

6.19 **“the forum shall not be bound by the code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 as inforce from time to time”**. Hence any order of Civil Court is limited to that suit only and not binding on the forum we are of the opinion that it cannot be

considered as precedence or cannot be made applicable in the present facts & circumstances of the case. Hence it is futile attempt on part of IGRC as well as non-applicant due to unawareness of MERC (CGRF & EO) Regulations, 2006.

14) **It is an undisputed fact that the old meter No.055-MSB51727 was not displaying reading in the meter and non-applicant changed the old meter and installed New meter No.076-00358685 during period June - 2013 to November - 2013 (No installation report on record). There is no finding of the IGRC on it. As per Reg. 14.4 of M.E.R. Commission, Central Electricity Supply code and other (Conditions of Supply) regulations, 2005. It is the responsibility of the MSEDCL to have periodical & testing and maintenance of meter but appears to be not cared, by non-applicant which is violation of regulation even though there was no display of meter reading.**

15) Applicant invited attention after to Reg.15.3 & 15.4.1 of 2005, it was mandatory on non-applicant to issue estimated **bill for 3 months and after test the consumer's bill shall be adjusted.** In case of applicant besides meter being defective neither the testing of the meter was done and average bill issued was not adjusted which is further violation of Reg. of 2005 **and Chief Engineer shall** take not of illegal working of the concerned officials. **Neither old meter testing report (Replaced meter) is available on record.** Nor the installation report of new meter with capacity of 50/5 Amp is available on record. Hence, the entire functioning of non-applicant is factious and glaring example

of innovative way of working to harass the consumer and conceal the facts from applicant & forum.

16) It is an admitted fact the electric supply to applicant is given from D.T.C. number 4390261 and he is the only consumer on that D.T.C. but during meter was not displaying reading it was quite possible to issue **bill on basis of readings of D.T.C.** But non-applicant further failed to act prudently and issue the bills from June - 2013 to November - 2013 on average without adjustment later on and non issue of bill as per data of D.T.C. which is negligence of non-applicant on the contrary D.T.C. meter is for energy audit and to detect the leakage of revenue or to detect misuse of electricity by any particular consumer.

17) On perusal of record, **the date of installation of new meter cannot** be ascertain and mention of month November - 2013 is vague and imaginary which cannot be accepted in legal proceedings.

18) Basic question before us is that when sanctioned and connected load is 100HP and old meter was of capacity 100/5 Amp and CT was also 100/5 Amp, why not meter of 100/5 Amp capacity was installed and there was no explanation of non-applicant. Secondly, the question arises that why the requisition of meter capacity 100/5 Amp was not done and why not he meter of 150/5 Amp or 200/5 Amp were requisitioned and **there is no record of the meter of 50/5 Amp was provided by the Divisional Store and its date. Hence, entire working of the non-applicant creates suspicion** and mere assumption of non-applicant is baseless submission in the eyes of law.

19) Now the question is whether the non-applicant can recover the difference between MF-2 MF-1 for the period November - 2013 to December - 2016 non-applicant filed. Now, the question is whether the non-applicant can recover difference between MF - 2 & MF - 1 for the period November - 2013 to December - 2016. 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 sum becomes due.

The premises of applicant was inspected in the month of November – 2013 and MF difference bill was issued on 25/01/2017 for period of November – 2013 to December – 2013 for first time and same bill dated 25/01/2017 can be recoverable from 25/01/2017 till 24/01/2019 but does not permit to go back prior to 25/01/2017 or after 24/01/2019.

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

20) As the bill dated 25/01/2017 is first bill and amount in it not shown continuously as recoverable as arrear of charges for electricity supplied in the past. Hence, 2nd 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 for regulations are for the benefit of consumers. But, midway was appears to have adopted in above order of CGRF 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 provisions of law.

21) 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 earlter 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.”

22) 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 an 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.”

23) 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 without verification of vital documents and hence order of IGRC deserves to be set aside. The application deserves to be allowed.

In the result we 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 25/01/2017 and further notice issued by Junior Law Officer dated 03/05/2017 to the applicant is quashed.
- (c) And the bill for Rs.7,81,500/- for November – 2013 to December – 2016 as per aforesaid letter dated 25/01/2017 is quashed.
- (d) The IGRC order dated 18/07/2017 is quashed and set aside.
- (e) Needless to say that the non-applicant may categories the applicant in “MF-2” from 25/01/2017, the date of 1st notice to the applicant.

(f) 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 November – 2013 and suitable action may be taken against the officers if they are found guilty of negligence.

(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