

CONSUMER GRIEVANCE REDRESSAL FORUM,
AKOLA ZONE, AKOLA.

“ Vidyut Bhavan ” Ratanlal Plot, Akola. Tel No 0724.2434475

ORDER .

Dt. 04/09/2017

Complaint No. :- 30/ 2017

In the matter of grievance pertaining to new 3 ph commercial connection & SOP compensation for the delay.

Quorum

Shri. R.A. Ramteke ,Member-Secretary

Shri. D.M.Deshpande-Member (CPO)

Mohammad Tawangar Mohammad Shabbir :- Complainant
At. A-One Saw Mill , Hingna,
Wadegaon Road, Akola.

....Vrs.....

Ex. Engineer MSEDCL, :- Respondent.
O&M Rural Division, Akola.

Appearances: -

Complainant Representative :- Shri. Umesh Joshi.

Respondent Representative :- Shri. S.P. Kenekar Dy. Ex.Engineer.

1. On being aggrieved by the decision of IGRC MSEDCL Akola issued vide order No. SE/AKL/IGRC/2851 Dt. 29.06.2017, the complainant Mohammad Tawangar Mohammad Shabbir, At. A-One Saw Mill , Hingna, Wadegaon Road, Akola approached this Forum with grievance under regulation 6.4 of MERC (CGRF Ombudsman) regulation 2006.

2. The Complainant's case in brief is that M/s. Mohammad Tawangar Mohammad Shabbir has purchased the said premises with Saw Mill through registered sale deed from Mohammad Ashique Sk. Ameer in 2011-12, who had purchased it from Haji Ahnullakhan Haji Kalekhan in 2010, in whose name non applicant MSEDCL had issued three phase electric connection on 01.01.1998. According to complainant the application for new connection alongwith required documents was submitted to NA-MSEDCL, on 21.04.2017. According to complainant the electric connection of said premises was permanently disconnected in March-2017. According to complainant Non applicant MSEB in 2002 lodged complaint against Haji Ahnullakhan Haji Kalekhan in Police Station under section 39, of repealed Electricity Act-1910, for theft of electricity. According to complainant Police did not file charge sheet as they found no theft on investigation and did not register an offence. According to complainant temporary injunction against disconnection was issued by Hon'ble Civil Judge, junior division Akola in case No. 562/2002 and appeal filed by MSEB was also rejected. According to complainant civil suit 562/2002 filed against MSEB by Haji Ahnullakhan Haji Kalekhan is dismissed against which appeal has been filed by Haji Ahnullakhan Haji Kalekhan in District and session Court Akola.

3. According to complainant NA-MSEDCL have not issued demand note for new connection after 21.04.2017, and hence grievance complaint was lodged with IGRC Akola on 12.05.2017 for SOP compensation and releasing new connection as per provisions of supply code regulation 2015 and SOP regulation. According to complainant NA-MSEDCL before IGRC submitted that premises found locked on 04.05.2017, when official was deputed for inspection and after 12.06.2017, after checking feasibility, estimate was prepared by MSEDCL on 13.06.2017. According to complainant NA-MSEDCL have submitted before IGRC that it is informed by letter dated 13.06.2017 about arrears on premises which is never received by the complainants. According to complainant IGRC have rejected the grievance on

ground that case of arrears is pending in the court which is not correct. According to complainant, he is entitled for early connection as per Law and commercial Circular No. 53 dt. 07.05.2007, and 160 dt. 29.03.2012 issued by NA-MSEDCL. Complainant prays for immediate release of electric connection as per application dated 21.04.2017 and SOP compensation for the delay. Complainant – Annexed copy of IGRC order with the complaint.

4. On receipt of 15 days notice dated 03.07.2017 NA-MSEDCL filed belated reply dated 28.07.2017 on 04.08.2017 at the time of hearing. According to NA-MSEDCL, Civil Suit in Case No. 562/2002 and Appeal RCA No. 43/2017 is pending before the Court of Hon'ble 3 RD District and Session Court Akola. According to NA- the above appeal in RCA 43/2017 was posted for hearing on 28.04.2017 and 05.06.2017. According to N.A. the litigation against complainant, who is owner of A1 Saw Mill is pending in 3 RD District and Session Court Akola, in Appeal No RCA 43/2017. According to NA-MSEDCL, said Saw Mill connection is in the name of Haji Ahnullakhan Haji Kalekhan having connection No. 310349060380 and is permanently disconnected for non payment of arrears of Rs. 420710/-. According to N.A., premises wherein electric meter is installed for A-I Saw Mill is purchased by complainant but is between the two parties and should not be treated as valid. According to NA-IGRC Akola have rightly dismissed the complaint as matter is pending in the proceeding in District Court 3 Akola. According to NA Forum should not entertain grievance as the matter is pending before 3 RD District and Session Court Akola, in Appeal No RCA 43/2017. N.A. MSEDCL Annexed with reply order dated 29.06.2017 passed by IGRC Akola, Electric bill dated 15.03.2017, Hamdast issued by 3 RD District and Session Court Akola dated 26.04.2017, written reply before IGRC Akola dated 17.06.2017 filed by MSEDCL, Application for impleadment of complainant in RCA 43/2017 before 3 RD District and Session Court Akola, and copy of JUDGEMENT delivered on 31.08.2016 in

the Suit for Declaration,. Mandatory and Permanent injunction by 2nd Jt. Civil Judge, Junior Division Akola in Civil suit No. 562/2002.

5. The matter was posted for hearing on 04.08.2017, Shri Umesh Hemchandra Joshi, learned representative for complainant and Shri S.P.Kenekar, Dy. Executive Engineer for N.A.-MSEDCL were present. Learned representative of complainant submitted written note of argument and accordingly urged the fact of purchase of Saw Mill wherein said electric connection was given by NA-MSEDCL in the name of Mr Haji Ahnullakhan Haji Kalekhan and filed on record registered saledeed and brought to the notice of Forum that said electric connection which is being used by occupier from 2011-2012 was permanently disconnected on 01.04.2017, and also brought to the notice of Forum that Civil Suit initiated by original owner in 2002 was dismissed by Court but theft assessment penal charges were shown as out standing against the connection, in record. Learned representative Shri Umesh Hemchandra Joshi urged that even after application for new connection on 21.04.2017 N.A.MSEDCL have not issued any quotation for payment of charges and not released the connection within one month, which MSEDCL was bound by provision of Electricity Act-2003 and supply code 2005 and referred commercial circular issued by N.A. MSEDCL No. 53 dated 07.05.2017 and 97 dt. 28.07.2009 and filed on record. Learned representative Shri Umesh H. Joshi urged in written statement the Civil Suit pending in the court is not filed by complainant but by original owner Haji Ahnullakhan and hence Civil litigation does not restrain the non-applicant MSEDCL from releasing new connection and also referred section 10.5 of MERC supply code regulation 2005 ,according to which no arrears are outstanding for last six month, prior to disconnection, hence requested for early release of new connection and SOP compensation as per SOP regulation 2014 for the delay.

6. Heard Shri S.P.Kenekar, Dy.Executive Engineer, learned representative for NA-MSEDCL urged that RCA Appeal No. 43/2017 is pending before 3 RD District and Session Court Akola wherein complainant is party and hence new connection cannot be released and also urged that arrears of Rs. 402276/- are outstanding on the premises, which are not paid by new owner and hence connection can not be released on both the above counts. On interrogation by Forum Shri S.P.Kenekar, Dy. Executive Engineer admitted that said arrears are due to theft case in 2002 against erstwhile owner in section 39 of E.A. 1910, but remain silent about FIR, case and outcome of the case. Forum adjourned hearing up to 28.08.2017 with direction to N.A. MSEDCL to file following documents on record as per provisions of Clause 6.17 (a) of MERC CGRF Ombudsman regulation-2006.

- 1) Spot Inspection report for theft in 2002.
- 2) Assessment of theft (Civil liability)
- 3) Copy of FIR
- 4) Case No. of Criminal case for theft and its outcome.
- 5) Copy of CPL from 2002
- 6) Notice of disconnection from 2002 to 2017.
- 7) Court order in theft case.
- 8) Letter of communication to complainant after 21.04.2017.

7. N.A. MSEDCL did not file documents as directed by Forum on record except copy of panchanama, FIR and copy of CPL and filed PUR SIS dt. 28.08.2017 on record, according to which criminal case No. 73/2003 against accused Haji Ahnullakhan Haji Kalekhan for offence punishable under section 39(3) and 40 of Indian Electricity act 1910 is still pending and restored to its original stage by old number on 15.07.2017 in the Court of Judicial Magistrate first class Akola. Learned representative of N.A. however admitted that no arrears other than penal assessment

in theft case with interest is outstanding against premises and all current bill up to disconnection are paid by the occupier of the premises and also confirmed that security deposit against connection Rs.12000 is not adjusted uptill now.

8. Representative of complainant submitted final written say on 28.08.2017 and referred section 43 of E.A. Act-2003, 4.4 ,4.7 of SOP regulation 2014, section 56 of E.A. 2003 and 10.5 of supply code regulation 2005 and urged early release of new connection and brought to the notice of Forum that outstanding arrears are against theft penal assessment against Haji Ahnullakhan Haji Kalekhan and not against complainant and premises and hence requested to early release of connection , and also urged that 6.7 (d) of MERC CGRF Ombudsman regulation 2006 is not attracted in present case as representation in respect of same grievance (New connection) is not pending before any court.

9. Forum have gone through the complaint, reply filed by N.A. MSEDCL and deliberation with written argument by complainant and N.A. MSEDCL. Forum is of the view that present grievance pertains to release of new connection and as per the provisions of E.A.-2003 and supply code regulation 2005 read with SOP regulation 2014 N.A. MSEDCL to release connection within stipulated time. The complaint is opposed by N.A. MSEDCL on two grounds.

- 1) There are arrears of Rs. 402576/- on premises of erstwhile owner.
- 2) RCA appeal No. 43/2017 is pending in District Court.

On detail verification of CPL filed on record, it is found that these are accumulated arrears from Nov-2002 to March-2017 wherein Rs.99249.65 was debited to account against Adjustment of theft in Nov-2002 and theft case registered against Haji Ahnullakhan Haji Kalekhan in RCC No. 73/2003 and it is penal assessment, whereas in FIR amount involved in theft is Rs. 52000/- for which no convincing

explanation is brought on record by NA MSEDCL and as per pursis filed on record, RCC No.73/2003 is restored on 02.05.2017 and is pending. Forum is of the view that since criminal case is not decided, there is no charge on the premises as on date of application for new connection and as per clause 10.5 of supply code regulation 2005 the liability of new owner limited to energy arrears of last six months prior to disconnection, which are " Nil " as brought on record by N.A. MSEDCL and hence complainant is entitled for new connection. Forum is of the view that on the ground of theft case arrears N.A. MSEDCL can not delay new connection to the complainant.

10. N.A. MSEDCL have also opposed complaint on the ground that RCA appeal No 43/2017 is pending in the court of Hon'ble 3rd District and session Court Akola in similar matter. As per clause 67(d) of MERC CGRF and ombudsman regulation 2006 the Forum shall not entertain a grievance " where a representation by the consumer, in respect of the same grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been raised by any such court, tribunal, arbitrator or authority" . Forum is of the view that same grievance of 'New connection' is not pending is regular civil appeal No.43 of 2017. The appeal is filed by Haji Ahnullakhan Haji Kalekhan, the earswhile owner of A1 Saw mill against the decision of 2nd Jt.Civil Judge Jr. Dn. Akola in Regular Civil suit No. 562/2002 for DECLARATION, MADATORY and PERMANENT INJUCTION against disconnection by N.A. MSEDCL of connection No. 310340501267 which was being used by complainant as occupier of the premises since 2011-12. The complainant Mohammad Tawangar Mohammad Shabbir has filed application dated 22.04.2017 under Affidavit before the Court of Hon'ble 3rd District and session Court Akola in RCA No. 43/2017 For impleadment of complainant in present case as APPELLANT party to the appeal, as per document filed on record by N.A.MSEDCL and not denied by the complainant. Forum is of the view that though same grievance of new connection is not pending in RCA 43/2017 but outcome of appeal, if allowed by

Hon'ble Court, will be the restoration of electric supply, which will nullify the cause of action in the present grievance. With these observations Forum unanimously come to conclusion that present grievance for New connection cannot be decided at this stage till the decision of Hon'ble Court in RCA 43/2017, accordingly complaint is disposed off, with liberty to complainant to approach to Forum in same grievance after outcome of decision in RCA 43/2017. Hence Forum proceeds to pass following unanimous order.

// ORDER //

1. Complaint No.30/2017 is disposed off.
2. The parties to bear their own cost.

Sd/-
Member/Secretary

Sd/-
Member (CPO)

Contact details of Electricity Ombudsman appointed by MERC (CGRF&EO) Regulations 2006 under Regulation 10:

THE ELECTRICITY OMBUDSMAN,
Office of Electricity Ombudsman (Nagpur)
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni, Nagpur-440 013.
Phone : 0712-2596670

No.CGRF /AKZ/ AKL/ 144

Dt. :- 04.09.2017

TO,
The Nodal Officer/Executive Engineer
Rural Division, MSEDCL, Akola.

The order passed on 04/09/2017 in the Complaint No. 30/2017, is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy fwc to :-

1. Superintending Engineer O&M Circle, MSEDCL, Akola.
2. Mohammad Tawangar Mohammad Shabbir.
At. A-One Saw Mill , Hingna, Wadegaon Road, Akola.