

**CONSUMER GRIEVANCE REDRESSAL FORUM,
AMRAVATI ZONE, AKOLA.**

*“Vidyut Bhavan”,
Ratanlal Plots,
Akola: 444 001
Tel.No.2434476*

Dt- 11/07/2013

Complaint No.46/2013

In the matter of grievance about levying and recovery of Electric Duty

illegally with other reliefs

Quorum :

Shri T.M.Mantri,	Chairman
Shri P.B.Pawar,	Secretary
Shri A.S.Gade,	Member

Pawan Ramnarayan Gupta,Akot (Con.No.318739060640)	...	Complainant
-------------------------------------------------------------	-----	--------------------

...VS...

The Executive Engineer, Rural Dn. Akola	...	Respondent
------------------------------------------------	-----	-------------------

Appearances:

Complainant representative Shri D.M.Deshpande

Respondent representative Shri Shri P.Chavan, Asstt.Engineer, Akot.

1) As per the submissions made on behalf of both the parties, in nutshell the grievance of the complainant is in respect of illegal recovery of the electric duty, though it has been exempted by the State Government by referring to the notification dated 7th July,2004 and 26th May,2009. The period covered therein for exemption is from 1st April,2004 to 31st March,2014. It is alleged that, in fact, the N.A. licensee is required to make compliance of these notifications so also the circulars issued by the MSEDCL itself. It is alleged that, even there is no uniformity throughout the region in recovery of electric duty.

The N.A has failed to incorporate appropriate Duty Code i.e. 97. It is further alleged that the Electric Duty Deptt. has expressed displeasure in that respect. Because of negligence of the concerned officer in performance of duty, for which the complainant is required to suffer. It is further alleged that the consumers of the Circle Office of the licensee have got the benefit of this exemption by making the reference to the information provided by the circle office under the Right of Information Act. Though the complainant approached the IGRC on 30/3/2013 and the said authority has passed order on 30/5/2013, the complainant approached this Forum seeking the relief prayed for. Alongwith the complaint copies of documents came to be filed.

2) As per the regulations notice was issued to the N.A. for its reply which came to be filed stating that the N.A. is a Government Company with further averments that the issues regarding electric duty are to be dealt with under the provisions of Bombay Electricity Duty Act, 1958 with Rules there under, hence it is out of purview of this Forum. Similarly, it is stated that the present case is not falling under "Grievance" under Regulation 2006. Reference has been made to the correspondence made with the Electric Duty Inspector office in the matter of Shivam Oil Industries, Barshitakli. The reference of Regulation 6.6 is only made without making any further averments.

3) It is stated that, as per the order of IGRC, the N.A. has complied with it and from February, 2013 the complainant is exempted from payment of electric duty. With regard to the claim of refund, it is stated that it has been referred to the Electric Duty Inspector, Amravati who is authorized and empowered by the State Government to effect such refund.

4) As far as the claim for interest, it is stated that the amount recovered from the complainant as electric duty has been deposited with the State Government; hence the N.A. is not liable for its refund. Moreover, the issue of refund is taken care by submitting the proposal to the said office, therefore also no refund be awarded. Lastly, it is stated that the complaint is liable to be dismissed by awarding cost of Rs. 5000/- to the N.A. for unnecessarily vexing it in this complaint. Copies of some documents came to be filed with the reply. The matter was then posted for arguments.

5) Heard Shri D.M.Deshpande learned representative of the complainant and Shri P.Chavan, Assistant Engineer, MSEDCL Sub.Dn.Akot, the learned representative for the N.A. As referred to above, the controversy involved is of short nature in respect of refund of electric duty. Here it is pertinent to note that, as per the reply of the N.A. as well as submissions made during the course of arguments by its learned representative, the electric duty is not being levied from February, 2013, as, it is exempted. The complainant's representative has admitted this submission. In view thereof, now only question remains to be decided in respect of claim of refund of electric duty collected from the complainants till January, 2013.

6) Admittedly, by notification of 7th July,2004 and 26th May,2009 the State Government has accorded exemption from payment of electric duty for the industries in Vidarbha Region. The copies of notifications are on record and not disputed. It is pertinent to note that, even the departmental circulars of N.A. licensee, in that respect, have been issued. It is admitted position that,

inspite there of the electricity duty has been levied in the bills and recovered from the complainant. It has been tried to submit on behalf of the N.A. licensee that the order of IGRC has been complied with. Suffice to say that the said submission is not fully correct. When the electricity duty was exempted for industries by the State Government vide notifications referred to above, the action of levying the electric duty in the bills and recovery there of is in contravention there to. There is no satisfactory justification put forth from the side of the N.A. The learned representative of the N.A. has submitted that the proposal has been sent to the Electric Duty Inspector for refund and it is the appropriate and competent authority. However, nothing has been brought on record to show that the authority is competent, as tried to be submitted. On the contrary submission made by the learned representative of the complainant, that even the Electric Duty Inspector has made query with the licensee in respect of recovery of electric duty, inspite of exemption. So it is clear that, the said submission of N.A. has no base at all specially when the Government has exempted the electric duty. Levying of the electric duty in the electric bills, inspite of such notifications is apparently a mistake or act of negligence and it has been continued for sufficient long time. It is in contravention to such notification as well as departmental circulars of the licensee. Nothing has been pointed out as to what are the provisions under Electric Duty Act, 1958 or Regulations there under in support of defense of the N.A. In view thereof, it is crystal clear that the electric duty has been illegally recovered, hence the question of making reference to anybody else does not arise at all. It is the responsibility and liability of the concerned officer of the N.A. licensee.

7) As far as the objection raised in reply by making reference of definition “Grievance” and with regard to the Clause 6.6 of the Regulation 2006, nothing has been submitted on behalf of the N.A. If one considers the definition of grievance under the Regulation as well as Clause 6.6 of the Regulation, 2006, it is clear that there is no substance in the objections of the N.A. On the contrary, in the matter of M/s HPCL Vrs. MSEDCL, this objection has been duly considered i.e. the cause of action has been clearly explained by the Hon’ble High Court therein. So this objection of N.A. has no merits. On behalf of the complainant the written notes of arguments with copies of some documents came to be filed, this clearly supports the case of the complainant. In view of illegal recovery of electric duty, the same has to be refunded and in fact the IGRC order also means the same.

8) With regard to the claim of interest and costs as made on behalf of the complainant, the learned representative has made submission in respect thereof. It is further submitted that as the amount has been illegally recovered, the complainant have been deprived of the user thereof. Hence, the claim in that respect needs to be awarded. According to the learned representative of the N.A. the amount has been deposited with the State Government and it is not with the N.A. hence no interest be awarded. Similarly, for the mistake no costs should be imposed. On the contrary, in reply, the N.A. has claimed costs against the complainant.

9) Suffice to say that the claim of N.A. in reply, in that respect is not tenable. In fact, for the mistake/ negligence on the part of the concerned staff/ officer illegal recovery has been made. The complainant could have utilized

those amounts for other purposes. There is deprivation in enjoyment of their rights. This position, in view thereof supports the submission made on behalf of the complainant. The learned representative for the complainant has relied upon the order of Electric Ombudsman, Nagpur. There is no reply there to from the side of the N.A. on this aspect. Though the complainant has claimed 12% interest, this Forum has to take appropriate view in that respect. Here it is to be noted that the consumers under Circle Office were not levied with electric duty and they got the benefit of these notifications, so apparently, there is discrimination amongst the consumers of N.A. licensee. Consequently, this Forum has to award suitable relief including that of costs as the complainant have been required to approach various authorities. Needless to say that because of mistake/negligence/ laches on the part of the concerned staff/ officer of the concerned office of the N.A., the electric duty has been levied illegally which resulted in this litigation. Consequently, the N.A. licensee to take appropriate steps against the concerned staff/officer for recovering the monetary liability which it is required to pay because of this order to the complainant. The complainant has referred to the judgment of Hon. Apex Court in the matter of Lucknow Development Authority Vs. M.S.Gupta (1994 SEC (1) 247 page) which deals with this aspects of liability of erring person. With such observations, this Forum proceeds to pass the following unanimous order.

ORDER

1. Complaint NO. 46/2013 is hereby partly allowed. The N.A. licensee is directed to refund the electric duty collected from the complainant till January,2013 alongwith interest @ 9.5% per annum from the date of recovery till adjustment of the entire amount in the forthcoming electric bills payable by each of the complainant.
2. The N.A. licensee is also liable to pay costs Rs. 1000/-to each of the complainant.
3. N.A. licensee to take appropriate steps including that of recovery of the monitory liability incurred against it because of this order against the respective staff / officer for mistake/negligence and latches on their part.
4. Compliance report to be submitted within a period of one month

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman