

(A Govt. of Maharashtra Undertaking)  
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Consumer Grievance Redressal Forum  
"Vidyut Bhavan", Gr. Floor,  
L.B.S.Marg,Bhandup (W),  
Mumbai – 400078.

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REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/

Date

**Case No. 551**

Hearing Dt. 24.04.2015

**In the matter of excess billing of consumer**

**M/s. Ulka Seafood Pvt Ltd.,**

**- Applicant**

Vs.

**M.S.E.D.C.L. Vashi Circle**

**- Respondent**

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri.S.B. Bhalshankar, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. Suraj Chakraborty – Consumer Representative

C - On behalf of Respondent

- 1) Shri. S.B. Kachre, Nodal Officer, Executive Engineer, Vashi Circle Office.

**ORDER (11/05/2015)**

1. Above named consumer has filed this complaint against respondent utility. He has stated that he is a consumer of respondent utility since 5/11/2012 Respondent utility installed electricity connection on demand made by consumer on given address at premises M/s. Ulka Seafoods Pvt Ltd. Shri. Raju Gokhale is the Director and responsible person for the business. Consumer nos. of the said consumer are R II in I No. 0286190397800 and 028619024620.

- 2) Above named consumer has raised grievance against respondent utility. It was filed before CGRF and also a separate application for grant of Interim relief.
- 3) The consumer had obtained electricity connection on the said plot, demand load being 1650KW and the sanction load is 1850; under the category of old HT-II E from express feeder. The purpose as entered in to an agreement is for cold storage. The said agreement is filed on record before us on 31.10.2014. The agreement is signed by respondent utility Vashi circle on 30.10.2012. The purpose of obtaining electricity connection admittedly for cold storage for Frozen products and ice at the time execution of agreement. The demand and sanction load is above 50KW for fisheries produce dry and packing. Installation load is 1850KW for the purpose of running the machineries, cold storage etc. The said consumer has Licenses from Maharashtra Provision Control Board issued on 8 June 2012
- 4) It is contention of consumer that he received notice under section 56(1) Electricity Act 2003 on 20.02.2015, demanding arrears of electricity charges Rs. 4933627.19 on before 18.02.2015. The grievance is made by consumer against the demand of the said arrears of bill by respondent utility. On 11.12.2013 by Dy. Executive Engineer, flying squad visited the premises, checked the meter and gave report recommending that the said premises required to be charged as per Ht II Commercial. On the base of this report the demand bill was issued to the consumer on applying HT-II commercial tariff as per MERC tariff order 2012 and guidelines issued by director commercial and CE, Commercial.
- 5) At the Zone the consumer challenged said demand of bill, submitting that initially connection is provided by utility to this premises HT-I industrial and not commercial. There is no commercial activity nor there is any event of running business. The list of machineries provided at the time of obtaining

- connection along with agreement was submitted to respondent utility. Therefore application of HT II commercial tariff to the said consumer is illegal, so also the demand of arrears of the bill since 01/08/2012. It is exorbitant and cannot be applied to the premises of consumer unit.
- 6)** After filing this complaint notice was issued to respondent. Utility appeared and filed its reply to the consumer complaint and also to the interim relief application. It is prayed by consumer that the respondent utility be restrained from charging bill for the unit consumption as per commercial tariff as various Circular, and the fact that the utility since beginning was charging as per industrial tariff unit since 01/11/2012.
  - 7)** We gave opportunity to consumer to appear and file documents, Circulars, letters correspondences and all previous referred judgments of CGRF, Ombudsman and MERC. Accordingly consumer filed all relevant documents before this Forum on date of hearing.
  - 8)** On last date of hearing consumer Representative strongly argued to pass Interim relief order. Forum gave full consideration to the issue pending for Interim Relief order as demanded by consumer on 03.11.2014 In writ petition no 6613/2014 Seafood's Association filed circular in which Director (Operation) decided this issue on 01/01/2015. The business of seafood product consumer of utility regarding challenging report of flying squad application Ht II commercial tariff issuing of bill to unit charging. The tariff from industrial proceedings.
  - 9.** This Forum was inform that all India association of sea foods industries also raised similar issue before of MERC and seek similar interim relief application is filed before MERC in case No. 42 of 2015. after taking cognizance The notice which issued to the respondent utility is files reply on record for perusal. As below

No. MERC/Case No. 42 of 2015/ 00024 08 April, 2015

## **NOTICE**

Subject: Petition filed by The Seafood Exporters Association of India under Section 142 & 146 of the Electricity Act, 2003 read with sections 62, 64 and 86(1)(a) of the Act in terms of the Orders passed by the Hon'ble MERC.

### **Case No. 42 of 2015**

The Seafood Exporters Association of India (Regional Office:810, Vashi Infotech Park, Sector 30-A, Vashi, Navi Mumbai – 400705) has submitted a Petition under affidavit on 25.03.2015 under Sections 62, 64, 86(1)(a), 142 & 146 of the Electricity Act, 2003 for seeking relief on account of change in tariff category of the members of the Petitioner's Association, by MSEDCL.

The main prayers of the Petitioner are as under-

*"In the facts and circumstances, mentioned above, it is respectfully prayed that the Hon'ble Commission may be pleased to:*

*a) The Petitioner Association therefore prays that a this Hon'ble Commission be pleased to hold the Respondent, MSEDCL guilty of disobedience of the orders and directions passed by this Hon'ble Commission relating to retrospectively.*

*b) This Hon'ble Commission be pleased to hold the Respondent liable for disobedience of the tariff order dated 16.08.2012 by deliberately and willfully ignoring the term "non Industrial Premises" in the Tariff Entry HT-II Commercial and their by disobeying the said tariff order.*

*c) For declaration that the Respondent has initiated tariff categorization nearly one and the half / two years (1 1/2 to 2 years) post the passing of the tariff*

*order dated 16.08.2012 by willfully and deliberately initiating tariff categorization with visits from Vigilance Department / Flying Squad of the Respondent.*

*d) The Respondent be directed to purge the contempt / willfully disobedience of the tariff order dated 16.08.2012 by withdrawing all actions initiated including all bills issued by re-categorising the Industry / Factories of the members of the Petitioner Association under the tariff category / tariff head HT-II Commercial.*

*e) Directions be issued to the Respondent, MSEDCL to ensure proper categorization upon passing of a tariff order within a reasonable time as stipulated by the Commission to ensure that the Respondent, MSEDCL are not harassed and subjected to undue hardship.*

*f) Pending hearing and final disposal of the case all the bills including Supplementary bills issued by the Respondent, MSEDCL to the extent of re-categorisation of the factories / MERC/Case No. 42 of 2015/ 00024 08 April, 2015*

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*industries of the Members of the Petitioner Association into HT-II Commercial, be stayed and the Respondent, MSEDCL and its officials / agents be restrained from taking any coercive step against the members of the Petitioner Association in respect of the willful and deliberate re-categorisation of the Industry / Factory of the Members of the Petitioner Association into HT-II Commercial;*

*g) Appropriate refunds in respect of the differential amounts towards the tariff categorisation HT Commercial claimed by the MSEDCL from the members of the Petitioner Association be granted with interest at the rate of 12%.*

*h) The Hon'ble Commission be pleased to order interim and ad-interim reliefs in terms of prayers(f) above;*

*i) This Hon'ble Commission be pleased to award cost for these proceedings against Respondent No.1 and in favour of the Petitioner.*

*j) The Hon'ble Commission be pleased to pass such other orders as this Hon'ble Commission may deem fit.”*

3. I am directed to communicate that the hearing in the above matter will be held in the presence of the authorized consumer representatives on **Thursday, 16 April, 2015 at 11.30 hrs** in the office of the Commission at 13th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai - 400 005.

4. The Petitioner is directed to immediately serve a copy of its above mentioned Petition (both in soft and hard versions) to the Respondent and the authorised consumer representatives before the scheduled date of hearing.

5. The Respondent is directed to submit its say on affidavit, if any, on the above mentioned Petition with a copy to the Petitioner and the authorized consumer representatives well in advance.

**10.** It appears to the Forum after going through the said notice the same issued is under consideration for relief is pending before Hon'ble MERC.

**11.** In view of the Rules and Regulation of CGRF and Ombudsman Rule and Regulation 2006 processor as connected under the act section 42©. It appeared to the Forum that Ombudsman is competent authority Higher authority of deciding the issue looking in to the matter and which is under their kind consideration now last date of notice 16 April 2015 shortly date is being fix by MERC for consider Interim Relief application.

12. In this circumstances the provision of section 10 CPC required to stay to the proceeding and hearing of matter of having necessary to be considered by this Forum to avoid conflicting decisions in determination of issue proper forum and correctness of issues pending before Higher appellate authority as and it is referred narrated in judgment which is reported as under comes for our consideration which is as follows

To answer the second question, it would be apposite to excerpt Section 10 of the CPC:

**“Section 10 - Stay of suit**

*No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government 3[\*\*\*] and having like jurisdiction, or before the Supreme Court.*

*Explanation.- xxx*

Section 10 requires that *first*, the matter in issue in the later proceedings must also be directly and substantially in issue in the first suit, *second*, the earlier suit must be between the same parties litigating under the same cause title, *third*, the earlier suit must be pending in a Court having jurisdiction to grant the relief claimed in the later suit. To determine whether the matter in issue in the later proceedings is also directly and substantially in issue in the earlier proceedings, it must be seen whether final decision in respect of the earlier proceedings will act as *res judicata* in the later proceedings. See *NIMHANS* (supra). In other words, it must be determined whether the decision in one would non-suit the other.

This question may be answered briefly. The suit documents reveal that the plaintiff in the suit i.e. the borrower in this writ petition had sought to hedge risk against fluctuation in the currency exchange rate of US \$ against the Indian Rupee. The defendants in the suit were the bank and its representative had proposed to the borrower to enter into derivative transactions, as it would cover and hedge its exchange fluctuation risk. The documents were to be prepared in standard form, though the plaintiff avers that the “...standard format was not made known to the plaintiff”, yet the borrower allegedly relied on the representations of the bank. The borrower claimed that the defendant Bank knew of its dependence on the latter’s knowledge and expertise in the area of these complex contracts. It is averred that, subsequently, the senior management of the borrower discovered that these derivative transactions were contrary to RBI circulars and guidelines, and were merely speculative transactions. On this ground, the plaintiff/respondent moved the High Court, through a civil suit, claiming that these derivative contracts were *void ab initio* and unenforceable, and that the defendant/writ petitioner had fraudulently obtained consent on these transactions from the plaintiff.

To answer the final question, the requirement of concurrent jurisdiction of the two fora cannot be considered to be fulfilled if the Court before which the later suit is pending possesses the jurisdiction to grant the relief claimed in the earlier suit. This is to be understood in light of the principle behind Section 10 which is to ensure that two courts with concurrent jurisdictions do not record conflicting findings in respect of two matters in which the same issues are directly and substantially in issue. The intent is to avoid multiplicity of proceedings, in that a final finding in the earlier proceedings ought not to act as *res judicata* in the later proceeding. (Ref. *Pukhraj D. Jain and Ors. v.G. Gopalakrishna*, AIR 2004 SC 3504, and *NIMHANS* (supra)). It is evident from the text of Section 10 that if its requirements are fulfilled, then the Court



before which the later suit was filed is required not to proceed with the trial of the suit. Thus, it is only later suit that will be susceptible to a stay under Section 10.

Likewise, the petitioner submits that proceedings before the DRT cannot be considered a “suit”. Without going into the meaning of the term “suit”, this Court finds that the principle of Section 10 is to avoid multiplicity of proceedings and conflicting findings being recorded by two fora that are equally competent to hear the issues. In this light, technical arguments like whether a proceeding can be termed a “suit” or not cannot be determinative of the dispute. In the present case, the following observations in *Nagabhushana* (supra) ought to be kept in mind in this regard: “14. *The principles of Res Judicata are of universal application as it is based on two age old principles, namely, “interest reipublicae ut sit finis litium” which means that it is in the interest of the State that there should be an end to litigation and the other principle is “nemodebet his veari, siconstet curiae quod sit pro un aeteademn cause” meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.*

*15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation.”*

*No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government 3[\*\*\*] and having like jurisdiction, or before the Supreme Court.*

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Section 10 requires that *first*, the matter in issue in the later proceedings must also be directly and substantially in issue in the first suit, *second*, the earlier suit must be between the same parties litigating under the same cause title, *third*, the earlier suit must be pending in a Court having jurisdiction to grant the relief claimed in the

later suit. To determine whether the matter in issue in the later proceedings is also directly and substantially in issue in the earlier proceedings, it must be seen whether final decision in respect of the earlier proceedings will act as *res judicata* in the later proceedings. See *NIMHANS* (supra). In other words, it must be determined whether the decision in one would non-suit the other

After giving minutely consideration of the views express in Judgment and order by Hon'ble Supreme Court. This Forum also feels that Interim Relief application which is filed by consumer is pending in consumer Case No. 551 required to be stayed for until further hearing and proceeding before MERC conclusion. Hence I proceed to Pass Following order.

## ORDER

1. The consumer Complaint No. 551 /2014 and Interim Relief application hereby stayed for the hearing of proceeding till the issue which is pending before Hon'ble MERC in case no 42/2015 till the final decided of the proceeding association of seafood's Industries avoid complicating decision

Both the parties be informed accordingly.

Proceeding stayed.

Compliance should be reported within 45 days.

The order is issued under the seal of Consumer Grievance Redressed Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup

Note:

- 1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman

The Electricity Ombudsman,  
Maharashtra Electricity Regulatory Commission,  
606, Keshav Building,  
Bandra - Kurla Complex, Bandra (E),  
Mumbai - 400 051

- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

**DR. ARCHANA SABNIS**  
**MEMBER**  
**CGRF, BHANDUP**

**ANIL P. BHAVTHANKAR**  
**CHAIRPERSON**  
**CGRF, BHANDUP**

**S.B.BHALSHANKAR**  
**MEMBER SECRETARY**  
**CGRF, BHANDUP**