

**Consumer Grievance Redressal Forum
Maharashtra State Electricity Distribution Co. Ltd.
Bhandup Urban Zone, Bhandup**

Ref. No. Member Secretary/MSEDCL/CGRF/BNDUZ/

Date :

Case No. 476

Hearing Dt. 27/12/2012 & 05/01/2013

M/s. Eternity Friends Co.Op. HSG Soc. - Applicant

Vs.

M.S.E.D.C.L. Gadkari S/Dn. - Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri S. K. Choudhari, Chairman, CGRF Bhandup.
- 2) Shri R.M Chavan, Member Secretary, CGRF, Bhandup.
- 2) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Applicant

- 1) Shri Suraj Chakraborty, Consumer Representative.

C - On behalf of Respondent

- 1) Shri J.R. Reddy, Dy. Ex. Engr., Gadkari S/Dn., Thane.
- 2) Shri S.D. Jagtap, Gadkari S/Dn., Thane

ORDER

M/s. Eternity Friends Co.Op. Hsg. Society is having electric connection under sr. no. 000026270863 used for swimming pool in the name of M/s. KANAKIA Properties Ltd. This connection was released on 18/03/2004. In the same premises another three phase electric connection was sanctioned for club house for 45 kw under sr. no. 000026270855 which was billed under processing cycle no. 2. The electric meter of club house was stop recording from Aug-06 to July-2007 and hence was billed on average units of 9805 p.m. As this billing status was refundable, the IT section refunded the consumer ₹ 1,14,241.18 in the month of Oct-06. The said faulty meter was replaced on 14/07/2007 and accordingly the meter replacement report was fed to the billing system which

again leads to refund the av. billing done from Aug 06 to July 07 for an amount of ₹ 5,39,983.65.

In the month of Aug-07 the billing PC of this consumer has been changed from PC-2 to PC-8 due to which the billing consumer number is changed to 400000414598.

During the mass inspection drive of flying squad it was observed that the IT section has wrongly passed the credit of ₹ 1,14,241.18 and ₹ 5,39,983.65 and hence utility claimed the amount of ₹ 7,07,641.56 through the electric bill of this new consumer number. The connection was made permanently disconnected for non payment of these arrears in the month of Aug-2008 and loaded the arrears to another live consumer of the same premises used for swimming pool under sr. no. 000026270863 in the month of July-12. The reason claimed by the utility for this transfer of arrears in the connections are in the same name of M/s. Kanakia Properties and is entitled to pay the arrears along with interest for the actual utilized energy.

Shri Suraj Chakraborty was representing on behalf of M/s. Eternity Friends Co.Op Housing Society Ltd. (herein after will referred as to the Applicant), he stated that the electric connection is a 3 phase low tension used commonly for swimming pool by the society members. The said connection is in the name of M/s. Kanakia Properties Ltd. He further stated that the builder M/s. Kanakia Properties Ltd. has handed over the society and assets on 22/08/2007 when this society is officially registered in the name of M/s. Eternity Friends Co-Operative Housing Society. He reiterated that till its registration society was not concerned with the electricity billing matter. The builder was looking after the payment of all electric dues.

He further stated that there were 3 connections which were used commonly and builder which are :

- i) Consumer no. 000026270863
purpose – common amenities
status - live
- ii) Consumer no. 000026270855
purpose – commercial
status – made P.D. in Sept-07

- iii) Consumer no. 400000414598
purpose – commercial
status – P.D. on Aug-2008

Out of above, the connection at sr. no. 1) is released on 30/10/2004 and till June-2012 billing was normal and suddenly in July-12, the utility raised a demand of ₹ 14,16,713/- without any explanation or reason. However he reiterated that the Applicant was paying the dues regularly without any default since formation of the society.

He further stated that the utility has billed on average status of RNA from Feb-2005, in April-2005 a huge bill for an amount of ₹ 2,32,235/- for an units of 49132 was sent. He added that utility has billed this consumer on average basis for units of 9805 from Aug-2006 to July-2007 and when disconnected this connection was in credit. He also submitted the payment details made from May-05 to Dec-06 which amount to ₹ 14,75,292/-.

He further clarify that the rate per unit charged by utility right from April-05 to Aug-2008 as per the tariff rate revised time to time comes out with an average of ₹ 6.30/unit.

He also submitted the total bill calculation with this rate for an units of 257823 from the date of release of connection to Aug-2008 which is $257823 \times 6.30 = 16,24,284/-$.

He added that against above billing, Builder has already paid ₹ 15,09,762/- and concluded that the balance arrears should be ₹ 1,14,522/-. He reiterated that utility has wrongly demanded ₹ 7,42,557/- and thereafter ₹ 14,16,713/- which included the principle demand of ₹ 7,42,557/-.

He further stated that, the society has taken over the assets on 22/08/2007 and these arrears are for the consumption of electricity which is made by builder and hence the society has no concerned with these arrears.

The Applicant has also quoted in his submission the reference of Regulations 2005 there in Regulation 10.5 according to which new occupier has to pay only six months dues of last unpaid bill.

He insisted upon the calculation made by utility for the demand of ₹ 7,42,557/- and also objected the heavy interest and DPC charged for an

amount of ₹ 6,74,156/-. He also referred the Section 56 of E.A. 2003 according to which the utility can not demand the dues after the period of two years, when such sum becomes first due.

He quoted the reasons as to why the arrears are not recoverable as follows :

- a) The energy consumed by builder, hence arrears may be recovered from builder by Civil Suit.
- b) The arrears is time barred as per the provisions of Electricity Act-2003 (Sec-56).
- c) The arrears are time barred, because the Civil Suit is not filed within time.
- d) The arrears amount is wrong and exorbitant the payments made by builder are not considered. Hence, the arrears is wrong.
- e) The reading mentioned in CPL is wrong the said readings are calculated on average basis and not on the basis of actual consumption.
- f) The MSEDCL has not taken their signature on meter replacement reports. The MSEDCL has not shown them the initial and final readings while replacement of the meters.
- g) There is no any provision in electricity Act-2003 and MERC Regulations for transfer of arrears from one connection to another connection. However, MSEDCL has wrongly transferred the arrears from one connection to another connection without following any provision of Law. Such transferred of arrears is illegal and without any base or rule.

He further referred the commercial circular no. 65 dtd. 20/10/2007 regarding the average billing done to the consumer and directive in this regards from Hon'ble Supreme Court and Commission.

At last he prayed as under :

- 1) To withdraw ₹ 14,16,713/- from electricity bills. The above recovery is wrongly charged by MSEDCL in the bill of consumer no. 000026270863.
- 2) To withdraw the interest and DPC amount charged on above recovery amount/supplementary bill.
- 3) To grant compensation to them as per the provision of MERC (SOP) regulations-2005 for wrong and billing without taking meter reading.
- 4) To levy penalty to concerned officer as per MERC (SOP) Regulations for wrong activities, negligence and average billing.

- 5) To grant them compensation of ₹ 25,000/- for mental torture, harassment, damages, travelling expenses for fighting against MSEDCL.
- 6) To grant them interim relief order against disconnection till the disposal of CGRF case. The MSEDCL has already issued disconnection notice. Hence, please grant interim protection against disconnection.

They have already paid an amount of ₹ 15,000/- by cheque no. 315870, dtd. 10th Oct. 2012 via TJSB Bank, which is the amount equal to one month bill alongwith current bill as per provision of Section 56/1 of E.A. 2003.

- 7) To take necessary action as per rules against IGRC Thane for wrong and vague decision. The IGRC has clearly violated the provisions of Electricity Act and MERC Regulations. The IGRC only giving decision in favour of MSEDCL. The decision of IGRC is wrong, illegal and full of mistakes. The IGRC gives a hearing understands our case, but, knowingly decision given in favour of MSEDCL.

On behalf of utility Shri J.R. Reddy was present to represent the case (herein after will referred to as the Respondent). He stated that the connections which are made P.D. was in use for club House and the arrears due for payment is for utilization of electricity and interest and DPC for non payment of dues. He conceded that the arrears loaded on sr. no. 000026270863 is also in the same name of M/s. Kanakia Properties Ltd. and both the consumers are same and hence these arrears are recoverable.

He further stated that these arrears of ₹ 7,42,557/- was first claimed by utility in Jan-2008 which was increased till Aug-2008 to the tune of ₹ 7,96,595/- and hence made the connection P.D. for non payment of this arrears.

While deposing, the Respondent insisted that the demand raised is after the formation of society it means consumer was aware of this arrears, and the society should have demand the dues from the Builder.

The Respondent further conceded that the arrears are loaded belately, but as stated by the Applicant the Section 56 (2) of E.A. 2003 cannot be applicable being it is for the live consumer, and these arrears are of P.D. consumer. However, the club house arrears are transferred to the swimming pool connection being both consumers are in the same name of M/s. Kanakia Properties Ltd. and in the same premises/complex.

The Respondent also clarify that the society is formed in Aug-2007 and the bill claimed first time in Jan-2008; in view of this transaction the Regulation 10.5 of MERC Regulations 2005 cannot be made applicable.

The matter was heard on 27/12/2012 and subsequently on 05/01/2013. Both the parties were present, the documents on record and arguments during the hearing reveals that, it is true that the demand raised is too late by the utility. However, it was prime duty of the tenant/society that any kind of dues balance should have been gets cleared from the builder. Prima facie it is found to be a mistake done by account section or billing section of utility that the dues are not claimed in time.

This clearly shows that the billing staff has not kept eye on the recovery of huge arrears belonging to the same name on which number of live connections were exist in the same premises.

Forum feels that being arrears are for the utilization of energy it should have been recovered from the concerned. It is also true that any lethargy of any clerical staff should not cause the huge loss of revenue to any Govt. organization.

Perusal of the record shows that the principle amount of arrears is around equal to that of interest and DPC, moreover, it was not clear whether the Respondent has bifurcated the units charged on accumulated units and awarded the slab benefits. The Respondent should do it on top priority; also there are directives from the higher authority of utility to award the benefits on interest and DPC claimed on accumulated consumption demand that should also be awarded in the spirit of positive steps for recovery.

Forum therefore direct the utility to award the slab benefit by splitting consumption over the period of billing and the interest and DPC should be relaxed as per the circular of Head Office (i.e. Hon'ble Director of Operations).

Forum also observed that the amount paid as claimed by the Applicant against the billing done from the date of connection should be properly observed and adjusted against the arrears claimed towards club house billing.

Forum observed that, merely on the reason that demand raised by the utility belately could not be the ground to squash it vehemently. It will be fare

and proper that Applicant should move the matter for recovery of these arrears from M/s. Kanakia Properties Ltd. through the concerned litigate channel.

ORDER

- 1) The Respondent utility should observed the proper billing considering slab benefits, relaxation in interest and DPC as elaborated in above paragraph..
- 2) The Respondent utility should adjust the payment made by consumer from the date of connection till disconnection, if any.
- 3) The Applicant should move to the proper Lawful concerned channel for the recovery of arrears from the builder.
- 4) The Respondent is free to recover corrected arrears after observing all directives elaborated in forgoing paragraph.
- 5) The prayer of the Applicant to squash the bill is hereby rejected to the above reasons.

No order as cost.

Both the parties should be informed accordingly.

Compliance should be reported within month period.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 12th of February 2013.

Note :

- 1) If Consumer is not satisfied with the decision, he may go in appeal 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 go in appeal before the Hon. High Court within 60 days from receipt of the order.

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

S. K. CHOUDHARY
CHAIRMAN
CGRF, BHANDUP

R.M. CHAVAN
MEMBER SECRETARY
CGRF, BHANDUP