

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

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

Date :

Case No. 440

Hearing Dt. 31/05/2012

Milaf Ali Sadia Qureshi &  
A. Khudrus H. Khan.  
Vs.

- Applicant

MSEDCL, Mulund.

- Respondent

Present during the hearing

A] - On behalf of CGRF, Bhandup

- 1) Shri S.K. Chaudhari, Chairman, CGRF Bhandup.
- 2) Shri R.M Chavan, Member Secretary, CGRF, Bhandup

B] - On behalf of Applicant

- 1) Shri Sanjay Shukla - Consumer representative.

C] - On behalf of Respondent

- 1) Shri S.V. Bedagkar, Dy. Ex. Engr., Mulund Divn.
- 2) Shri Prakash Manik, Asstt. Accttn., Mulund Divn.

Shri Milaf Ali Sadiq Ali Quereshi and Shri Abdul Kudrus Hakimulla H. Khan are the three phase Industrial consumer under service no. 6000000099209 at gala no. T/O/X/33/2/2, R.P. Chawl, Goregaon-Mulund Link Road, Mulund (W), Mumbai – 87. On dtd. 16/07/2005, the Jr. Engr. Of utility inspected that above premises and concluded that this was theft of electricity and accordingly lodged the F.I.R. vide no. 1660//2005; (LAC) under section 135 & 138 of E.A. 2003. The utility assessed the theft bill

towards civil liability for an amount of ` 5,44,557.90 which the consumer deposited to the utility. The case was proceeded vide C.C. no. 73/PS/2006 in which the accused was acquitted from the offence of theft of electricity under section 135 & 138 of Electricity Act 2003 vide order dt. 28/04/2009. The applicant consumer rushed to the Internal Grievance Cell for refund of deposited amount of ` 5,44,557.90 but got no relief and aggrieved of this he approached to this Forum and registered case vide no. 440.

Shri Shukla was present to represent the Applicant consumer he stated that on dtd. 16/07/2005 Jr. Engr. Mr. Prashant Patil approached at consumer's gala and checked his installation and alleged that he was using electricity theft; accordingly the said officials disconnected his electricity supply.

There Shri Prashant Patil, Jr. Engr. (MSEDCL) lodged his report with Mulund Police Station 1660/2005 (LAC) under section 135/138 of Indian Electricity Act 2003.

Thereafter the said case bearing Special Electricity Case no. 38/2007

He further stated that after lodging F.I.R. the utility has issued theft assessment (civil liability) to him ` 5,44,557.90 & he has deposited the sum of ` 5,44,557.90 (as per directions of Hon'ble High Court) with MSEDCL Ltd. Mulund.

Even though in order dtd. 16/04/2012, the Executive Engineer (Adm) written that as per MERC Rule this issue is excluded from the jurisdiction of MERC Rule is so written, that if self going to show that IGRC has power to entertain this issue the IGRC has entertained such application earlier.

The consumer further requested to refund the said amount of ₹ 5,44,557.90 with applicable interest. He acquitted in the month of April 2009, under section 135/138 of Indian Electricity Act 2003.

The Ld. Spl. Judge having the power to determine civil liability during the course of trial, but in this case the Ld. Spl. Judge came to conclusion that he had not committed the offence of theft of electricity and was pleased to acquit him from the case 38/2007 and hence the Ld. Spl. Judge has not calculated any civil liability against him.

He further stated as per the circular of MSEDCL when the sanctioned load of any consumer is more than 20 HP; it is the duty of the area Jr. Engr. to take the reading of metering installation. Accordingly in this matter Jr. Engr. used to take the reading and issue the electric bill accordingly. However, no point of time the said area Jr. Engr. has never made a complaint to his superior with regard to tempering the meter.

In the circumstances he has entitled to refund/adjustment the amount as per provision of 154 (6) Indian Electricity Act 2003.

In the circumstances he pray that the order dtd. 16/04/2012 passed by IGRC may kindly be set aside.

On the behalf of utility, the Dy. Ex. Engineer shri Bedagkar was present he stated that the present matter was pertain to section 135 & 138 of Electricity Act-2003 i.e. theft of energy. As per MERC (CGRF & Ombudsman) Regulations 2006, this issue is excluded from the jurisdiction of Hon'ble CGRF.

As per above referred regulations, the CGRF or Ombudsman cannot entertain or interfere in the matter of theft of energy.

The consumer also filed writ petition (L) No. 2517 of 2006 before Hon'ble High Court, which is pending before Hon'ble High Court. Further, the writ petition no. 249 of 2007 is also pending before Hon'ble High Court. The consumer has not withdrawn these two writ petitions from

Hon'ble High Court & not submitted any document to prove that, he has withdrawn both writ petitions.

As per CGRF Regulations, 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 final order has already been passed by any such court, tribunal or arbitrator or any other authority

He further stated that, in the above case, already final order has been passed by Special Court & at this stage, MSEDCL can not entertain the same issue.

As per MERC (CGRF) Regulations, Regulation no. 6.8, the CGRF cannot entertain the issue regarding offences and penalties as provided under section 135 to 139 of the Act 2003.

The Special Court is established under section 153 & 154 of Electricity Act-2003. As per section 154, clause-5 & 6, the special court should determine the civil liability against a consumer for theft of energy.

In the above case the special court has acquitted the accused from criminal charges only and not from civil liability.

Further he states that now, it is the duty of consumer to file misc. application before special court for determination & refund of civil liability. It is within the jurisdiction of special court to determine the civil liability & to refund the same if applicable. MSEDCL cannot interfere or entertain in such kind of matters of theft of energy without any clear orders from special court.

Therefore, it is prayed that, the consumer should be directed to approach the special court who is competent & appropriate authority for determination & refund of civil liability as per section 154 of Act 2003.

The matter was heard on 30/05/2012, both the parties were present, perusal of documents and arguments by the parties reveals that being

Applicant consumer is acquitted from their offence order section 135 & 138 of E.A. 2003, the statement made by the utility that Forum cannot entertained as per MERC(CGRF & EO) Regulation 2006 therein 6.8 (b) has no meaning or substance. Moreover the above said write petition filed by the consumer in the same matter to the Hon'ble High Court is withdrawn and hence MERC (CGRF & EO) Regulations 2006 there in sub-section 6.7 (d) cannot be applied to restrict the jurisdiction of the Forum.

Forum therefore observed that the amount deposited by the consumer towards civil liability against the theft case ` 5,44,557.90 should be refunded alongwith the applicable interest rate of R.B.I. without any undue delay.

### **ORDER**

- 1) The amount deposited towards theft of energy of ` 5,44,557.90 should be refunded through the bill to the consumer.
- 2) The interest on the deposited amount ` 5,44,557.90 at the R.B.I. rate should be awarded to the consumer from the date of deposit till refund.
- 3) No order as to the cost

Both the parties be informed accordingly.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 7<sup>th</sup> of June 2012.

Note : 1) If Consumer is not satisfied with the decision, he may have representation 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 writ before the Hon. High Court within 60 days from receipt of the order.

**S. K. CHOUDHARY**  
**CHAIRMAN**  
**CGRF, BHANDUP**

**R.M. CHAVAN**  
**MEMBER SECRETARY**  
**CGRF, BHANDUP**