

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

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

Date :

Case No. 289

Hearing Dt. 16/09/2009

In the matter of Case 126 of E.A.2003

P.I.Drugs & Pharmaceuticals Ltd. - Appellant

Vs.

MSEDCL, Thane Division - Opponent

Present during the hearing

A - On behalf of CGRF, Bhandup

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

B - On behalf of Consumer

- 1) .Shri Vijay Dagha (Consumer Representative)

C - On behalf of Respondent

- 1) Shri S.D. Gaikwad. (Dy. Ex. Engr., Vikas S/Dn Thane.

Preamble

M/s. P.I. Drugs & Pharmaceuticals Ltd. is having their office at Gala No. 102-104 Vardhman Ind. Thane having 3 phases Electric Connection under consumer No. 400000050812 with the sanctioned load 27.8 kw and Contract demand of 31KVA. M/s. P.I. Drugs & Pharmaceuticals Ltd. have one more connection in the name of M/s. TRANSCHEM Ltd. having Consumer No. 400000050642 with sanctioned load of 22.5 KW & 25.00 KVA contract Demand at Gala No. 103-104 at same address. These connections are sanctioned in 1987 by then MSEB and billed on commercial tariff.

Consumer say :

Shri Vijay Dagha, the representative of consumer M/s. P.I. Drugs & Pharmaceuticals Ltd. Pleaded the case in person. He stated that for the purpose of its registered office, it acquired Gala No.102, 103 &104 from the predecessor's in title namely Transchem (pvt.) Ltd. Interadia along with electricity connection bearing consumer No. 400000050812 and 400000050642. it is also understood that the aforesaid connection have been granted to the predecessor's in title in 1987 and has been used as such, till date, for the three Gala's respectively under close observation and knowledge of the respondents in as much as consumer No. 400000050812 was used for Gala No. 102,103,104 and consumer no. 400000050642 for Gala No. 103 and 104.

The Appellant state that the respondents have never objected to the use of the electricity through the two aforesaid connections as stated aforesaid, till date, but to the surprise and shock he received a alleged verification report dated 03/02/2009 from the respondents. Copy of the said verification report is attached here with & marked as Annexure '1' the

said verification report has been arbitrarily and unilaterally prepared in as much as the said verification report has not taken into account the sanction/ Bills issued by the respondents every month and does not state the Grounds and the same is vague as it is arbitrary, unilateral, and capricious. The said report Alleges violation of sec 126 unilaterally and arbitrarily for both the consumer's as the same is alleged as "Supply is used for area on premises other than for which it is authorized " "three number of Gala's i.e.102, 103,104 are converted to one premises" The said report also alleges that for consumer no. 400000050642 "All lighting load i.e. tubes 80 Nos., Fan 4Nos., and 6 Nos. of A/C are connected to above meter" and that far consumer No. 400000050812 alleges "All computers and printer and 7 Nos. A/C are connected on above meter". The report specifically alleges that consumer No. 400000050564 "Consumer is using supply in Gala No. 102 in breach of sec-126. And consumer No. 400000050812 "Consumer is using in Gala no. 130&104 also in breach of section-126. The Appellant states that the aforesaid allegations are wrong and alleged without proper inspection being carried out at his premises.

The Appellant reiterated that immediately followed by the above said allegation the respondent raised a provisional bill amounting to Rs. 4,35,050 =00 and Rs. 2,74,240=00 in respect of consumer Nos. 400000050812 and 400000050642 respectively dated 16/02/2009. Copies of the said bills are attached herewith and collectively marked as Annexure "2".

The Appellant further states that they vehemently opposed to the allegation of violation of sec-126 as alleged aforesaid and also immediately addressed letter to The Nodal Officer vide letter Ref. No. P.I. DRUGS_001.AMB dated 26/02/2009. Copy of the said letter is attached herewith and marked as Annexure "3" in the said letter the he has clearly contended that they have not violated sec-126 as both the connections have been duly sanctioned by the respondents themselves for the address and place mentioned there in.

The Appellant stated that the respondents have issued month-to-month electricity bills for both the consumer Numbers with addresses mentioned therein and the same thus have been authorized consumed and duly paid by the and owe nothing to the respondents by way of provisional bills or otherwise on the date of their complaint copies of the latest electricity bills for both the consumer Nos. are attached herewith and collectively marked as Annexure "4" Hence notwithstanding the fact that the complainants have not breached sec-126 of Electricity Act or any other Law, the complainant states that, in case the respondents purports to hold the complainants liable under sec-126, the respondents also should be held equally Liable. The respondents should be held summarily Liable as they themselves the Law making authority and strict responsibility lies on them to issue proper sanctions/bills.

The Appellant further added that the respondents after following their own procedure for sanctioned of electricity connection issued electricity Bills month-to-month containing therein interaia the details like consumer Number and address of the consumer for which the electricity connection is to be used etc. Accordingly the respondents have issued bills ab Ininto Contenting therein the address of (a) Consumer No. 400000050812 to be 102-104 (b) consumer No. 400000050642 to be 103-104 hence the monthly electricity bills for consumer No. 400000050812 states that the electricity is for Gala's 102-104 which conclusively determines the address as Gala's 102,103,104. The respondent's monthly Electricity bills for consumer No. 400000050642 states that the Electricity is for Gala's 103-104 which conclusively determines the address as Gala's 103,104. In other words the use of Electricity for Gala's 102,103 and 104 through consumer no. 400000050812 and use of electricity for his Gala 's 103 and 104 through consumer no 400000050642 are authorized.

The Appellant stated that the respondents were well aware that he had objected to the alleged violation of verification report and the consequent provisional bills and the were enjoined by the statute to give him an opportunity being heard. Now, instead of giving him an opportunity

of being heard. The respondents issued threat of disconnection. Vide letter, hearing Ref. DY.EX.111/THN/T-529, 530-dated 09/04/2009 copy of the said letter is attached herewith and marked as Annexure "5". The respondent's have thus violated the principals of Natural Justice.

He further stated that it persuaded the respondents personally number of times. For an opportunity of being heard but there plea fell on deaf ear. Being worried about disconnection the he issued a letter Ref. No. PI. DRUGS 003.AMB dated 22/04/2009 demanding an opportunity of being heard. The said letter is attached herewith and marked as Annexure-6. Till date the respondents have failed in giving an opportunity of being heard in spite of the issuance of the aforesaid letter and personal follow-up.

He further added that it is in the business of manufacturing Drugs and Medicines, which is life saving and also import substitutes in the field of export. Huge loss would be caused to them in case the electricity connection gets disconnected. Hence due to continued refuse by the respondents in the matter of giving an opportunity being heard and personal and oral threat in the meantime, given by the respondents apart from written threat to the him. He compelled to pay the provisionally Assessed bills under protest vide their letter bearing No. P.I. DRUGS 004 AMB dated 02/05/2009 the said letter is attached herewith and marked as Annexure "7" the respondents receipt for payments of Rs. 4,35,050=00 and 2,74,24=00 are also Annexed herewith and collectively marked as Annexure "8".

The Appellants again insisted on that the respondents, even after received the payment of the provisional bills in full, have not given him an opportunity of being heard nor prepared/served a final bill instead, the respondents have in furtherance of their arbitrary capricious and unilateral acts have issued letter bearing Ref. Dy.Ex.111/THN/T-665 dated 11/05/2009. The said letter is annexed herewith and marked as Annexure"9". The respondents vide their aforesaid letter demanded that the "Two meters is to be clubbed". The respondents have orally further

threatened that they would continue to levy penalty's in future monthly bills also, if he did not club the two meters. In reply to the respondent's aforesaid letter, the complainants have requested the Respondent to rectify both the sanctions/bill as per law so that he can make an application for fresh connection, if required and the three offices Gala's can have distinct connections vide letter bearing PI_DRUGS_005 AMB dated 05/06/2009. The said letter is attached herewith and marked as Annexure "10".

The Appellant's claims that neither ICGRU taken proper cognizance of it nor issued the final bill by the respondents till date and simply crested the mess of the whole situation. They (Respondent) failed to understand the matter is not covered under section 126 of E.A.2003 and as such the Utility has no locus stand in it.

The Appellant stated that the Law has made a clear provision of "Final Bill" by the respondents within 30 days from the date of provisional bill and opportunity of being heard. The respondent's till date have neither served a final bill nor given an opportunity of being heard but contrary to Law issued threats of disconnection based on provisional bill this clearly implies that the respondents have acted high-handedly and they need to be punished severely by this Honb'le Forum for the dereliction of their Legal duties and be directed to refund the amounts of Rs.4, 35,050=00 and Rs.2, 74,240=00 with interest @ 24% per annum.

He further added that Law has made no provision for issuance of disconnection notice on serving of provisional bill or at any other stage but has prescribed final bill. Thus issuance of notice of disconnection against the provisional bill and that too without opportunity of being heard is an oppressive conduct on the part of the respondents. The respondents are well aware that he is under occupation of Nos. of Gala No.102, 103,104. All the three Gala's are distinct. This fact was well known to the respondents since 1987. By way of letter of the respondents attached at Annexure "9". The respondents have misguided him demanding to club

the two meters so that the respondents can obtain higher tariff. He has every right to obtain different connections for each Gala.

The Appellants again stated that the respondents themselves with knowledge, deliberately sanctioned/Billed the two connections in such a manner that the two connections conflict and or overlap with each other in whatever manner they are interpreted. Hence the respondents themselves caused/committed a mischief in sanctioned of the connection and now after a lapse of time have interpreted the sanctioned/bills in such a manner, which is prejudicial to the interest of the appellant. Hence the respondents have made unjust enrichment to themselves and caused unlawful loss to the complainant, by interpreting the sanction/bill in a manner contrary to their own creation for which the respondents themselves should be held liable. In other words it is the respondents who have sanctioned the connection-bearing consumer No. 40000050812 for the Gala Nos. 102,103, &104 and connection bearing consumer No. 40000050642 for Gala Nos. 103& 104and they had the knowledge at time of sanctioned the connections that the sanctions are for the purpose of "two connections in the same premises" and knowing this they have permitted to continue using the connections by raising bills every month in such manner. This is evident from the fact that the respondents themselves admit in their letter bearing Ref. No. DY.Ex.111/THN/T-468 dated 26/03/2009by stating in Para (2) "As per MSEDCL'S circular for one premises for same purpose only one connection shall be sanction". The said letter is attached herewith and marked as Annexure-'11'.

He stated that the respondents have sanctioned these connections in 1987 and thereafter the connections have been transferred as such after the electricity Act 2003 and its amendment on 28/05/2007 came into force. The respondents had thus knowingly the two connections for the same premises. The respondents now cannot penalize the complainants for their own creation.

He further added that the respondents admit at clause (3) of letter at Annexure "11" that "The Electricity Act 2003 is in effect from 10/06/2003 and not only MSECDL Company but state and central Governments also have given sufficient publicity to Electricity Act". The respondents also admit at clause (6) that said two connections were as such transferred to him on 24/08/07. In other words the respondents had the knowledge of the statute in force on the date of transfer of connection to him. Nevertheless the respondents have transferred both the connections to him with address mentioned there in the afore said act of sanctioning the two connections with the knowledge of law in force namely sec-126 prudent person as the respondents is nothing but an act of malafied conduct on the respondents hence the he prays this Hon'ble Forum to pass suitable orders for the refund of 4,35,050=50 and 2,74,240=00 with interest at 24% simple interest thereon from the date of payments till the payments by the respondents. The Appellant also prays this Hon'ble Forum for compensation of Rs.25, 000=00 to cover of the consultants fee, stationary, travel and mental trauma etc. caused to him.

The pray of the Appellant are :-

- a) To declare respondents letter 03/02/2009 marked as Annexure '1' as illegal, ultravires, improper and hence null& void.
- b) To direct the respondents to refund Rs.4,35,050=00+ Rs.2,74,240=00 = Rs. 7,09,290=00 with interest @ 24% per anum from the date of payments till the refund by the respondents.
- c) To grant compensation of Rs. 25,000=00 to cover the cost of the consultants fee, stationery, travel, and mental trauma etc. caused to the.
- d) To declare that this complaint is maintainable as the subject matter of Allegations of the respondents are not covered under sec-126 of the Indian Electricity Act 2003.

The Appellants further submitted the rejoinder mentioning some points as under :-

The Appellants reiterates and relies on the sanction/Bills for the usage of Electricity Viz consumer No.400000050812 is for Gala's no.102, 103,104and consumer No. 400000050642 is for Gala's 103,104 The joint Panchnama submitted by the respondents cannot be relied upon as the same are concocted prior to the preparation of the Panchnama and the Joint reports are highly biased and the same are signed by our incompetent and unauthorized representatives based on undue influence and coercion.

The Appellant states that the sanction for consumer Nos. 400000050812 and 400000050642 are granted in 1987 and are used as such from 1987. Raising objections after a belated period by alleging sec-126 of the Indian Electricity Act in 2009 is hit heavily by the limitation Act and the same is now time barred.

He further insisted on that the respondents themselves have stated during the hearing on 16/09/2009 that the bills have been issued by mistake and hence the complaints should not be held liable for the mistake in bills by the respondents. On perusing the say of the respondents it can be seen that the respondents have not raised any plea of "mistake" in the bills nor have they submitted any documents in support of their claim of "mistake". Notwithstanding the fact that the sanction issued by the respondents is the correct position of the address for which the power is authorized to be consumed, even if the connection of the respondents as regards "mistake" is to be accepted, for the time being the benefit of doubt is to be granted to him.

He further demanded for a strict proof of photographs to be submitted by the respondents as regards the inscription of address on the body of meter and the same is alleged by the respondents as the authorize address of the consumer for which the consumer are authorized to consumer The inscriptions on the meter are concocted prior to the

taking of photographs and are not acceptable to him, as the same cannot be considered as documentary evidence and also as per Law. The respondents have failed to produce any documentary evidence in support of their contention/defense of authorized address.

Utility Say :-

On the behalf of utility Shri S.D. Gaikwad Dy. Ex. Engr. Vikas S/dn presented as under :-

1) As per MSEDCL circular & rules for one premise for same purpose only one connection is to be sanctioned.

In this case two meters are sanctioned for M/s Transchem Ltd. hence it is not possible that one meter is sanctioned for Gala no.102, 103,104 & second meter is sanctioned for 103&104.

The meter belongs to consumer no. 40000050812 is sanctioned for Gala no.102 on meter box it is written that for Gala no.102 and the meter which belongs to consumer no. 40000050642 is for Gala no.103&104.

2) At the time of inception it is found that the meter sanctioned for Gala no.102 is utilized in Gala no.103 and 104 and also the meter sanctioned for Gala no.103 and 104 is utilized in Gala no.102. it is proved that the consumer is using the supply for the premises or the areas other than those for which the supply of electricity was authorized therefore within the meaning of sec-126 (6)(b) (v) the action taken as per sec-126 of the Electricity Act-2003 is correct.

3) Consumer has converted three Galas into single premises with one entrance door and shifted the total connected load on two meters. Consumer has not given any prior intimation or the notice regarding teration of his premises and the unauthorized shifted the load, leading to conclusion that consumer using the Electricity supply unauthorized.

4) Consumer has done this deliberately and misleads the facts to MSEDCL only to avail the benefits of block rate tariff based on sanctioned load (Rate/Unit upto 20Kwis Rs.5.25/-20 KW is Rs. 5.50/- above 50Kwit is Rs. 7.50/-) At the time of inspection it is found that MD record by both meters are 31.6 KVA and 23.95 KVA and tariff applicable is Rs. 5.50/- per unit. If one meter is utilized for three galas the MD recorded will be Rs. 55.55/- KVA and the tariff applicable should be Rs. 7.50/ per unit. Consumer's average consumption of both meters is nearly 6500 units per month. Hence the consumer is getting benefit of around Rs. 15000/- per month.

5) The spot verification report and spot Panchanama was done in the presence of consumer representatives Mr. Sandesh Satam, on date 03/02/2009 and duly signed by him copy of the same provided to him.

6) After completing the inspection and the Panchanama, consumer representative was informed to submit his documents and explanations if any regarding this matter. Accordingly the consumer has submitted the transfer agreements on 11/02/2009. On the basis of this agreement period there after the consumer has approached to the Executive Engineer, Thane (U) division vide letter dated 26/06/2009. Accordingly the reply is submitted the Executive Engineer has communicated the reply to the consumer. Considering the above facts it is clear that the opportunity of being heard is given to the consumer.

7) As per sc-126 the time period for the payments of bills is 07 days. The time period is given to consumer as per sec-56. But as consumer approached CGRF, IGRC, Nodal officer, consumer's supply was not disconnected.

8) Consumer has raised the objection to Nodal officer, Ex. Engineer and the final reply was given to the consumer. In reply it was clearly stated that provisional bill issued to consumer is as per Law and as period

is decided on the basis of registered transfer agreement, bill is also correct.

9) The Electricity Act-2003 is in effect from 10/06/2003 and not only MSEDCL Company but also state and central Government has given wide publicity to Electricity Act to avoid misuse of Electricity. The consumer is well known limited company having high-tension connection at Ambarnath and pilot plant at Tarapur.

10) It may possible that the consumer converted three Galas in one premises after transfer agreement i.e. after 24th August 2007.

Observations :

The matter was heard on 16/09/2009 both the parties were present. On the behalf of utility Shr. S.D. Gaikwad Dy. Ex. Engineer Vikas S/dn. were presented the case (here in after referred as to respondents) and from the consumer side Shri. Vijay Dagha, were (here in after referred as to Appellant) representing the case. from the documents on record and the deliberation of both the parties the following facts were revealed that appellatant is having its industrial unit at Ambarnath MIDC but commercial office is located at Thane in 3Gala's which has been provided with the electricity connection in 1987 by the Utility.

These Gala's were adjacent having separate identity, however the appellatant without the knowledge of Utility made arbitrarily lot of internal changes in the Gala's as well as electricity installations inside this, itself is a major irregularity on the part of the Appellant. On the part of Utility its official in the course of hearing admitted that the address on the bill of M/s. P.I. Drugs & Pharmaceuticals Ltd. Thane may be misprinted as Gala no.102-104 instead of Gala no.102 similarly on the bill of M/s. Transchem Ltd. instead of 103 it was printed as Gala no.103-104. Even then Forum observed from the inspection report that the connection sanctioned in the

name of M/s. Transchem Ltd. for Gala no. 103-104 is unauthorized. Extended to supply electricity installation in Gala no.102, which warrants the provisions section 126 of E.A.2003. Moreover Forum also observed that the appellant have extended supply and divided the connected load in these two different connection so as to avail the benefit of block rate and M.D. based tariff. The appellant have complaint that he had made protracted complaints to the Utilities local officials for giving him hearing against the provisional bill issued to him but was ignored. Forum fills that Utility officials should be more careful& attentive and avoid apathy towards consumers. In the course of hearing the Utilities officials have produce the photographs of the Electricity meters provided in the premises in questions to clarify the position. The Forum therefore fills that the prima facee the cases does not comes within the preview of this Forum taking in to consideration provisions of MERC (CGRF& Electricity Ombudsman) regulations 2006 there in regulation 6.8 and has to be heard and decided by the appropriate authority when in the appellant will have an opportunity to plead all his grievance put in the case. The Forum heard the case to examine the issue whether the case fall under section 126 of E.A.2003,

ORDER

Both the parties are to be informed accordingly.

No orders as to cost.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 6th Oct.2009.

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 appropriate authority as per section 127 of E.A.2003.

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.

**S.L. KULKARNI
CHAIRMAN
CGRF, BHANDUP**

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