



## **ORDER**

Shri Jayantilal Umarshi Shah, is the occupier of the premises at Luis Building of Annapurna Nagarkar, Nagarkar House, Dr. Ambedkar Road, Thane having a single phase residential connection in the name of Smt. Annpurnabai Nagarkar under consumer no. 00001582516/8. In the year 2003 then MSEB officer claimed for theft of energy committed on this single phase electric connection and raised the electric bills against this theft for an amount of Rs. 160335/- and lodge criminal case through Police under no. 508/2003 against consumer in JMFC Court, Thane.

The Hon'ble JMFC Court acquitted the consumer from the charges framed under section 39 & 44 of Indian Electricity Act 1910. However, MSEDCL is not withdrawing the amount raised as assessed towards theft of energy Rs. 160325/- and also not refunding the payment made amounting Rs. 35000/- (i.e. 20% of assessed amount) against so called theft of energy. Hence consumer approached to ICGRC where he got no relief and aggrieved of order passed by ICGRC, consumer approached to this Forum, where his grievance is registered under case no. 296 and accordingly hearing was fixed on 23/11/2009. According to the Appellant the Flying Squad of MSEB falsely implicated him in the energy theft at his residential single phase connection on 01/07/2003 and the case was handed over to Thane Police who intern file the case vide case no. 508/2003 under section 39 & 44 of Indian Electricity Act 1910. In

addition to this, utility ordered him to pay Rs. 160335 as theft assessment amount.

The Appellant was forced to pay an amount of Rs. 35000/- (20% of assessed bill), which he paid it under protest as his power supply was disconnected.

The case before JMFC was at the instance of Thane Police Station with whom the utility was lodged the complaint of power theft.

The case was heard on 23/11/2009 by the Forum when only the Appellant was present and nobody was present from utility side to present the case. From the submission of the Appellant, where the copy of ICGRC order was enclosed in which utility's say was recorded as under :

"The consumer has filed Spl, C. S. no. 602/04 against M.S.E.B. for refund of theft assessment amount but the Hon'ble Civil Court has dismissed the case of consumer. The MSEDCL has not filed an appeal against the judgement of JMFC Court in Criminal case no. 508 of 2003.

The Appellant stated that from October 2008 to April 2009, he was getting regular energy bills without any outstanding arrears and he was paying it regularly. But suddenly in the month of April 2009, he got the energy bill from the utility indicating the huge outstanding amount of Rs, 100919.06 as an arrears.

On acquittal by the JMFC Court from the charge of energy theft, he wrote a letter to utility on 24<sup>th</sup> Sept. 2008 for refund of Rs. 35000/- which was paid as 20% of assessed amount. On approach to utility to check up the matter the utility explained to him that his acquittal by the JMFC is from criminal liability. But the Hon'ble Court has not mentioned about the Civil liability which the Appellant owes to utility.

Appellant had no alternative but to approached ICGRC upon hearing the matter the ICGRC passed an order on dtd. 6<sup>th</sup> Oct. 2009 observing that the dispute relates to civil liability against the theft of energy and applicant is acquitted from criminal liabilities, hence should pay the theft assessment amount, which is towards the civil liability.

Documents on record and submission from Appellant, it reveals that even though the Appellant is strongly refuted the allegation of pilfergement of energy and acquitted from the criminal charges under section 39 and 44 of Indian Electricity Act 1910 by Hon'ble JMFC Court. It is not enough to conclude that the theft of energy did not occurred on the connection no. 00001528516/8.

Forum also observed from the content of order passed by ICGRC, Thane Circle, that the consumer had approached to the Civil Court & registered under special Civil Suit no. 602/04, which subsequently dismissed and no further appeal was filed by the Appellant.

From the above, it is clear that the Appellant is not acquitted from civil liabilities assessed under section 31 (e) of Indian Electricity Act 1910.

As per MERC (CGRF & Ombudsman) Regulations 2006, Regulation 6.8,

*“Provided that if the Forum is prima-facie of the view that any grievance referred to the falls within the perview of the unauthorized used of electricity under section 126 or offences and penalties as provided under section 135 and 139 of the E. Act 2003, the matter is excluded from the jurisdiction of the Forum.*

Hence, the Forum was not called upon to deliberate and decide the matter of theft of energy it is already decided by the Court.

Moreover it is also observed that the Appellant had approached to the Civil Court against the assessment charged by the utility towards theft of energy and Civil Court dismissed the case.

In the present case MERC (CGRF & E.O.) Regulations 2006, more specifically 6.7 (d) does not allow the Forum or empowered to deal with, where the representation by the consumer in respect of same grievance is pending in any proceeding before any Court, tribunal or arbitrator or any other authority or decree or award or final order has already been passed by any such Court tribunal or arbitrator or any other authority.

Provisions on behalf clearly outs the jurisdiction of the Forum, hence the Appellant prayer in the representation deserve to be and hereby rejected.

Before parting with the order, it is necessary to place on record that Respondent utility neither remained present during the hearing nor furnished any reason and/or explanation for remaining absent; the message about the hearing fixed was communicated to Respondent both in writing and verbal telephonically. This act is not in good spirit of redressal of consumer's grievance and in fact displays an utter apathy on the part of the Respondent towards the consumer grievance.

The case is dismissed with the advice to the consumer to approach to the appropriate Appellate Court

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 30<sup>th</sup> November 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 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.

**MRS. M.P. DATAR  
MEMBER  
CGRF, BHANDUP**

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