



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO.K/N/021/0198 OF 08-09
OF M/S ROYAL ENERGY LIMITED REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN
ZONE, KALYAN ABOUT NEW CONNECTION.

M/s. Royal Energy Limited
Village Vanivali, Taluka – Khalapur,
Dist – Raigad, } (Here in after
referred to
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its Superintending
Engineer, Pen Circle, Pen } (Here in after
referred to
as Licensee)

- 1) Consumer Grievance Redressal Forum has been established under regulation of "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers. This regulation has been made by the

Maharashtra Electricity Regulatory Commission (MERC) vide powers conferred on it by section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

- 2) The consumer registered grievance with the Forum on dated 11/02/2009 for New Connection.

The details are as follows: -

Name of the consumer : M/s. Royal Energy Limited

Address: - As above

Consumer No : Nil

Reason for Dispute : - New Connection

- 3) The batch of papers containing above grievance was sent by Forum vide letter No. EE/CGRF/Kalyan/118 dt. 11/02/2009 to Nodal Officer of Licensee. The Licensee had replied vide letter No.SE/PC/Tech/PNL/Con.723/1290, dated 25.02.09 .
- 4) The original hearing was fixed on 16/03/09 at 15.00 hrs. vide TOL No EE/CGRF/Kalyan/119, Dt. 11/02/09 in respect of this consumer against New Connection but as per request of consumer vide letter dated 18/02/09 the hearing fixed early on 06/03/09 at 15.00 hrs. vide TOL No. No. EE/CGRF/ Kalyan/ 156 dt. 21/02/2009 .
- 5) On 06/03/09 representatives of the licensee attended the hearing but neither consumer nor any authorized person attended the hearing. The representative also could not produce authority letter, therefore, the hearing is treated as

cancelled. Next date for hearing was given on 16/03/2009 at 15.00 hrs. and intimated to both the parties.

- 6) The consumer representative attended the hearing with authority letter from the consumer. The consumer representative (CR) stated that M/s. Royal Energy Ltd. is establishing a bio-diesel plant at Village Vanivali, Dist. Raigad. The consumer under a lease agreement dtd.26.5.08 took on lease a piece of land (about 1 acre) from M/s. New Era Fabrics Ltd to establish the bio diesel Plant. The consumer is a 100% Export Oriented Unit and will be earning valuable foreign exchange and will produce environmental friendly fuel oil. The CR stated that since the area falls under Pen Circle of Distribution Co. the consumer applied for new connection as per their application dtd.1.10.08. After writing No. of letters they informed vide letter dtd. 3.2.09 that “ regarding payment of arrears informed you vide letter dated 25.11.08, you have again submitted the sub lease vide letter dt.24.12.08. This sub lease has been verified by our legal dept and as per their opinion received vide letter dated 21.1.09 “ this load will be sanctioned and released subject to payment of arrears in the name of M/s. Hanil Era Textile Ltd”. The consumer stated that they made to understand to the Dist. Co. that they have nothing to do with the arrears of M/s. Hanil Era Textiles Ltd. The shareholders and Directors of both the Companies are different and in any event M/s. Royal Energy Ltd. is a separate

legal entity. The land belongs to M/s. New Era Fabrics Ltd. and the consumer have taken the land on lease from M/s. New Era Fabrics Ltd. Under the circumstances the MSEDCL is illegally withholding the eclectic sanction of the applicant consumer knowing and fully aware that the consumer has nothing to do with M/s. Hanil Era Textiles Ltd. and the Distribution Company can not ask to pay any liability of third party. The CR stated that they have not availed supply from Distribution Co. they are themselves generating electricity of their own and running their unit in 10,000 sq. mtr. area.

- 7) (a). The licensee in reply to above defended that M/s. Hanil Era Textile Ltd. (hereinafter called as M/s. HETL), is our consumer and the said firm is holding leasehold premises from M/s. New Era Fabrics Ltd. (hereinafter called as M/s. NEFL) by executing lease agreement dt.26.11.1996 regarding the properties of survey No.8,9,10,94 and 96 Hissa No.1,2,3 & 4 at village Vanivali, Tal. Khalapur for 29 years as per lease agreement dtd. 21.8.96.
- (b). The consumer i.e. M/s HETL is in arrears of the electricity charges to the tune of Rs.6,04,17,350/-These charges are in respect of the premises as a whole held by the consumer i.e. M/s. HETL.
- (c). M/s. HETL further executed a sub-lease agreement with M/s. REL on dt.26.02.08 (which is registered in the office of Sub Registrar, Khalapur) regarding the property having survey

No.94 Hissa No.172 FOR 29 YEARS. In this sub-lease M/s. HEFL is the consenting party

(d) The sub lease i.e. M/s. REL holds the title and possession only through the lease i.e. M/s. HETL. Therefore when there are arrears against the lease i.e. M/s. HETL the sub-lease i.e. M/s. REL is not entitle to a new connection unless the arrears are paid. Merely on the basis of the documents of sub-lease, even if it is a consented by the land lord i.e. M/s. HEFL. The sub-lease will not get any right to obtain new connection under the garb of separate entity.

(e). MSEDCL informed to M/s. REL that unless the arrears are paid you are not entitled to get new supply. After receiving that letter M/s. REL immediately prepared and submitted an agreement for lease dt.26.5.08 with M/s. HEFL regarding the same property having survey No.94 Hissa No.1 & 2 at Vanivali, Tal. Khalapur for period of 16 years, but which is not registered so it has no value in the eyes of law.

(f). The licensee's representative replied that If the circumstances of the above paras taken into consideration it is clear that the subsequent agreement of lease dt.26.5.08 made in favour of M/s. REL is only with an intention to avoid the payment of arrears standing against the premises and where there is dispute pending regarding those arrears before the Hon. Ombudsmen of the electricity having representation No.9/2009 and in which the Hon. Ombudsmen has pleased to

pass an interim order No.14 of 2009 and directed to appellant i.e. M/s. HETL to deposit Rs.50 lakhs on or before 12th Feb.09 with the respondent i.e. MSEDCL and further directed to the respondent that not to disconnect the electric supply to the appellants premises until further orders. In pursuance of that the appellant i.e. M/s. HETL has deposited that amount with the respondent on dt.12.02.09.

(g). The dispute regarding the arrears is pending before the Hon. Ombudsman, means the matter is subjudice. Therefore at this stage the MSEDCL is not ready to fall in loss by the trick played by the above referred three companies, because from the agreement for lease dt.26.5.08 it is clear that the subsequent agreement of lease in favour of M/s. REL is only with intention to avoid the payment of arrears standing against the said premises.

(h). By considering all above facts until and unless the final order of Hon. Ombudsman will made in pending dispute between M/s. HETL and MSEDCL it is not beneficial to MSEDCL to sanction and release power to M/s. REL and if the connection is released to the applicant it will cause irreparable loss to MSEDCL.

- 8) The licensee also relied on a judgement of Supreme Court in a case - Paschimanchal Vidyut Vitran Nigam Ltd. and others .. Versus ... DVS Steels and Alloys Private Ltd. and others – [(2009) 1 Supreme Court Cases 216] in which it is held that

“When the purchaser of premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises.

A stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premise, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non payment, may sell away the property and move on to another property, thereby making it difficult, if not impossible for the distribution to recover the dues.

- 9) The consumer has submitted during the hearing on 05.03.09 one letter dated 5.4.08 from New Era Fabrics Ltd. as notice to Hanil Era Textiles Ltd. towards non payment of lease rent for the period 2007-2008 and one letter dated 14.05.2008 from New Era Fabric Ltd. as notice for termination of lease to Hanil Era Textiles Ltd.

- 10) The CR stated that we were served the copy of supreme Court order where the landlord/owner who was a defaulter sold the plot in small sections and those purchaser were asked to pay the electric dues in proportion to the land holdings they have purchased. But here the case is totally different. The land lord for the land is M/s. New Era Fabrics Ltd. who owns the 56 acres of land and New Era Fabrics Ltd. have no dues with MSEDCL. Therefore MSEDCL can not hold New Era Fabrics Ltd or its licensee Royal Energy liable to pay any dues. The consumer stated that rights of property are over when the agreement between New Era Fabrics and Hanil Era was cancelled due to breach committed by Hanil Era Textiles Ltd. Also the agreement executed on 26.05.08 is final and the registration is under process. Therefore, consumer submitted that the Court Order submitted by the MSEDCL is completely irrelevant in our case where the owner itself does not have any due pending and therefore Royal Energy Ltd. also can not be liable to pay any charges due to MSEDCL by a third Party M/s. Hanil Era Textiles Ltd.
- 11) On this argument of the CR, the licensee replied that the arrears are on the premises and not on the Company. Company can shift their activities anywhere, leasing, or subleasing, the premises to others. But the dues of the premises can not shift to anywhere. M//s. Hanil Era has leased to M/s. New Era Fabrics Ltd and M/s. New Era has subleased

to M/s. Royal Energy Ltd and the Sub Leasee i.e. M/s. REL is not entitle for new connection in the same premises, till the arrears are cleared.

- 12) Forum observations: -
- a). The consumer under a sub lease agreement dated 26.2.08 regarding the property having survey No.94, Hissa No.172, for 16 years to establish the bio-diesel plant at Village Vanivali, Dist. Khalapur. In this sub lease M/s. Hani Era Fabric Ltd. (HEFL) is the consenting party.
 - b). The land belongs to M/s. New Era Fabric Ltd and the consumer has taken the land on sub lease from M/s. New Era Fabric Ltd. for a period 29 years. M/s. New Era Fabric Ltd. by executing lease agreement dt. 26.11.1996 regarding the properties of Survey No. 8,9,10, 94 and 96 Hissa No.1,2, 3 & 4, village Vanivali, Tal. Khalapur for 29 years. As per lease agreement dated 21.08. 1996.
 - c). M/s. Hanil Era gave the premises on lease to M/s. New Era Fabric Ltd. Later M/s. New Era Fabric Ltd. gave the premises on sub lease to the M/s. Royal Energy. Therefore main owner of land is M/s. HETL.
 - d). The consumer applied for new connection. On this it is clear that the main owner M/s. HETL is in arrears with the licensee. Lease does not form as sale deed, these are only rental activities, therefore the liabilities of the main owner can not be denied. As per license's statement, licensee claim that the

M/s. Hanil Era is in arrears for Rs. 6,04,17,350/- Forum also confirmed in its earlier decision issued vide No.K/E/0134/0155 of 08-09 dated Dt.04/12/2008 that the license is entitle to recover the arrears from M/s. HETL. M/s. HETL appealed to Hon.Electricity Ombudsman and the dispute regarding the arrears is pending before Hon. Electricity Ombudsman and the matter is subjudice. Under these circumstances, the MSEDCL stands that now connection can not be released to M/s. Royal Energy due to arrears on Land Lord i.e. M/s. HETL is correct.

- e). The licensee also submitted a judgment of Supreme Court referred & quoted above in which it is held that *“When the purchaser of premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises”*.
- f). In the above circumstances, after studying the papers and hearing both the parties, the forum come to the conclusion unanimously that the stands of the licensee is correct and there is no substance in the grievance made by the Applicant/consumer and hence the following order.

O-R-D-E-R

- 1) Application/grievance made by applicant/consumer is rejected.
- 2) Consumer can file appeal against this decision with the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, Bandra - Kurla Complex,
Mumbai 51”*

Appeal can be filed within 60 days from the date of this order.

Date : 26/03/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan