



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/028/909 of 2013-14

Date of Grievance : 28/01/2013

Date of order : 18/03/2014

Period Taken : 50 days.

IN THE MATTER OF GRIEVANCE NO. K/ DOS/028/909 OF 2013-14 IN RESPECT OF MAHENDRA SHRIPATRAO NIRMAL ROOM NO.3, SIDDIVINAYAK SOCIETY, THANKAR PADA, KALYAN (W), DISTRICT-THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING DISCONNECTION OF SUPPLY.

Mahindra Shripatrao Nirmal,
RoomNo.3, Siddivinayak Soceitym'
Thankar Pada, Kalyan (W),
District-Thane
(Consumer No.020023060524)

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited though its
Nodal Officer, Kalyan Circle-I, Kalyan,

.... (Hereinafter referred as Licensee)

Appearance : For Consumer – Shri B.R.Mantri

For Licensee - Shri Lahange –Nodal Officer / Executive Engineer,
Shri Bharambe –Asst. Engineer

Shri Nilesh Nikam-Representative of Shri Suresh Nikam

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003.(36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is

referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations 2005'. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.' Hereinafter referred 'SOP' for the sake of convenience.

2] This grievance is presented on 18/1/2014, by consumer, alleging that his supply bearing consumer No. 020023060524 was disconnected on 29/9/2013 without any notice and without any ground.

3] In this matter, on receiving the grievance application, it was sent to the Nodal Officer along with accompaniments of it vide this Forum letter No. EE/CGRF/Kalyan 020 dated 18/1/2014. In response to the said notice, Licencee appeared, filed two reply dated 31/1/2014 and 6/2/2014. During the pendency of the matter, we noticed that the supply of consumer was disconnected in the light of complaint given by Mr. Suresh Nikam and hence it was found necessary to make said Nikam aware of this proceeding. He was asked to attend this Forum. His presence was found necessary as already he had approached Civil Court, seeking relief against the present consumer and Licencee in Spl. Civil Suit No.237/2013 filed on 18/7/2003.

4] On behalf of said Nikam, reply is filed on 26/2/2014 and written submissions are filed on 5/3/2014. Said Nikam authorized his son Mr. Nilesh.

5] We heard consumer's representative Mr, Mantri, Nodal Officer Mr. Lahange and Asst.Engineer- Shri Bharambe and Nilesh Nikam-representative of Mr. Suresh Nikam , we have gone through the total material placed on record by all the three sides. On its following factual aspects are disclosed:-

a] Room No.3 in Siddivinayak Society, Thankar Pada, Kalyan (W), is standing in the name of Suresh W.Nikam and consumer Mahindra Nirmal is his near relative.

In the said room, supply was available in the name of Suresh Nikam bearing consumer No. 020020323940. However, said consumer number resulted in PD in July 2012.

b] In July 2012 present consumer applied for seeking supply in the same premises and hence on 15/7/2012 supply given to him in his name and allotted with consumer No. 020023060524.

c] Consumer was regularly paying the dues, but received notice of Licencee, issued u/s. 56(2) of Electricity Act dated 23/9/2013, whereby dues of Rs. 3126.67 were sought within 15 days or to face consequences as per the said provision. Consumer paid the said amount on 1/10/2013 i.e. seven days prior to the date permitted. In spite of compliance of said notice the supply to his premises was disconnected by the Licencee on 29/9/2013. In this regard, consumer approached Licencee and noticed that as per the letter of Mr. Suresh W.Nikam dated 29/8/2013 along with order of KDMC No.1578 dated 19/7/2013, Licencee disconnected the supply of consumer on the ground that while seeking supply, consumer has enclosed a copy of tax receipt, in his name of the said premises. As the said aspect of consumer's entry in the said receipt is set aside by Municipal Corporation, Licencee proceeded to disconnect the supply of consumer, observing that it is in breach of the affidavit filed by consumer while seeking supply.

d] In this regard, consumer approached IGRC on 22/11/2013 IGRC decided the matter on 17/1/2014, rejected his plea. Thereafter consumer approached this Forum on 18/1/2013 and as noted above, Licencee filed reply on 31/1/2014 and 6/2/2014.

e] As stated above, Shri Nikam was asked to attend this Forum as dispute is pending pertaining to the supply and supply of the consumer is disconnected in the light of his complaint and that the suit is pending in the Civil Court. Accordingly, through his son, he filed reply on 26/2/2014 and written notes of arguments on 5/3/2014.

5] It is necessary, at this stage, to note, as disclosed from the material placed on record. Said Nikam has lodged a Criminal case No. 179/2013 on 19/6/2013, alleging forgery and fraud against present consumer Mahindra Nirmal, pertaining to supply in his name was converted to PD and consumer has entered his own name. Further said Suresh Waman Nikam has filed Spl.Civil Suit No.237/2013 on 10/7/2013 and it is registered on 18/7/2013, wherein the present consumer, his wife, his son, KDMC and Licencee i.e. MSEDCL are the five parties. In the said suit Shri Suresh Waman Nikam has prayed for relief and thus relief pertaining to KDMC are for

cancellation of name of consumer in Municipal record for the premises i.e. room No.3 and against Licencee i.e. MSEDCL relief is sought in following terms:

- i] Defendant no.5 be ordered to re-enter the name of plaintiff in the records of MSEDCL, by deleting the name of defendant no.1.

Accordingly, it is seen that though relief of deleting the name of present consumer was sought in the suit, Licencee proceeded for disconnecting the supply on 29/9/2013. Accordingly, though suit filed by Nikam, registered on 18/7/2013, there is no any effective order by the Court, granting any interim relief. Licencee on the complaint of Nikam, disconnected the supply of consumer, finding fault with consumer, more particularly in the affidavit filed by consumer and tax receipt by him which is set aside by the KDMC and name of Suresh Waman Nikam was entered in it. Consumer has also resorted to a legal proceeding in the Court by filing Reg.Civil Suit No. 472/2013 on 27/8/2013. He sought Specific Performance of Contract, alleging that Mr. Suresh W.Nikam has executed an agreement and as per the agreement sale deed is not executed. It is necessary to mention that suit filed by Suresh W.Nikam for seeking possession and recovery of amount.

6] In view of aforesaid chronology of factual aspect, now question comes up for considering before this Forum, whether the action of Licencee to disconnect the supply of consumer on 29/9/2013 is illegal and whether it needs to be set aside.

7] For considering the aforesaid aspect, which is in dispute, it is clear that previous supply of Mr. Suresh Nikam resulted in PD and Mr.Nikam is having dispute over that aspect. He has resorted to remedy and sought relief before the Hon'ble Civil Court, seeking that said cancellation of his name or PD be set aside and his name be reentered. No doubt, he has sought further relief that name of present consumer also be deleted. If relief of Suresh Nikam is considered for entering his name, once again within the jurisdiction of Hon'ble Civil Court as suit is pending. No any interim relief is obtained there. Accordingly, we find, to the extent, Nikam seeking relief for

entering his name or cancelling PD, pertaining to his consumer number is, exclusively within the powers of Hon'ble Civil Court and Mr. Nikam has not approached this Forum on this point. Hence, we are not required to dwell on it and he is entitled to have an appropriate relief from the said Court. Though he has sought relief of deleting the name of present consumer. No any interim relief is sought or obtained, but Licencee proceeded to give said relief and disconnected the supply of consumer on 29/9/2013. We find, when, matter was before the Hon'ble Civil Court, it was necessary on the part of Nikam to seek relief from the said Court, but no any interim relief is given or obtained. But as noted above, Licencee herein proceeded to pass an order against the consumer and Licencee is part to the suit filed by Nikam dated 10/7/2013 i.e. prior to disconnection of consumer's supply on 29/9/2013. If the Licencee is served with said suit summons, then Licencee is aware that matter is sub-judice before the Hon'ble Civil Court and when matter is sub-judice before the Civil Court, it ought to have approached Civil Court and placed before it the contention pertaining to the allegations, but thought it is proper to disconnect the supply of consumer.

Now, the base of disconnection is, the order, passed by K.D.M.C., re-entering the name of Suresh Waman Nikam in the record, deleting the name of consumer Nirmal. At this juncture, it is necessary to note while seeking supply, consumer has filed an affidavit before the Officer of Licencee and in the affidavit in format details are stated. In one of the column there is reference for ownership and occupation/claim and in the second part there is contention of status of tenant, though these clauses are alleged. Those are cut as it was without scoring or tick marking the necessary material. It is how, the facts disclosed and question comes up precisely on basis of which clause of affidavit Licencee, given supply to the present consumer? At this stage, it is necessary to note that Mr.Nikam in his contentions, in the Suit before the Civil Court, and even before this Forum made it clear, in reply. Stating that consumer is gratuitous Licencee, being relative, inducted considering the

circumstances of sickness of consumer's son. It is also disclosed that there was an agreement amongst consumer and Nikam for dealing that property for Rs.2,20,000/- and consumer was to pay Rs.50,000/-. But in a good faith, Mr. Nikam claimed that he has signed on the agreement and consumer assured to pay the amount of Rs.50,000/-, collecting it from other relatives showing it to them and raising the funds. It is contended that said transaction was not fruitful and it automatically stood cancelled. As against it, consumer claimed that transaction is completed, it is Suresh W.Nikam, who has not executed document and hence, Reg.Civil Suit No. 472/2013 is filed for Specific Performance of Contract. It is the contention of consumer that he is staying or residing in the said premises from 1990. As against it, Suresh Nikam claims that consumer is residing there from 2003. However, residence of consumer at least from 2003 is not in dispute. The dispute is that whether consumer's status is established as a owner or claiming to be the owner or otherwise , owner or it is gratuitous Licencee. These all aspects are being dealt by Hon'ble Civil Court, which is seen from the copies of plaints before this Forum and it is now necessary to deal those aspects on merit. But one thing is clear that consumer is residing there as per his version from 1990, as per version of Suresh W. Nikam from 2003. In the suit filed by Nikam relief is sought for evicting the consumer and till evicted. Consumer is continuing in the premises. Accordingly, consumer's occupation in the premises is not in dispute.

8] In the light of this above discussion, it is clear that consumer is occupying the premises, consumer was having benefit of supply till supply in the name of Suresh Nikam, resulted in PD and thereafter supply is given in the name of consumer which is subsequently disconnected on 29/9/2013 is. Admittedly, it is without any notice to him. On behalf of Suresh Waman Nikam, it is submitted that consumer has committed forgery, made a false affidavit and on it's basis, Officers of Licencee, given supply, hence he is not entitled to any relief and was not entitled to any notice before disconnection. It is contended that already criminal case is filed against the consumer on the ground of forgery and fraud. Sum and substance of the contention of Nikam, is,

that disconnection is totally legal and proper, in the light of affidavit filed by consumer with the Licencee, is, false one. In written notes of arguments dated 5/3/2014 on behalf of Mr. Nikam, case is developed under the provisions of Consumer Protection Act. But we are required to deal this matter, considering the provisions of Electricity Act, 2003, read with Regulations of MERC.

9] Though in respect of affidavit, it's forgery or it's falsehood, contention raised by Nikam, pending before the Hon'ble Civil Court and further it is a subject matter before the Civil Court. But when it is dealt by Licencee, it is only on the presumption, that consumer's name deleted from the tax receipt. If, Licencee was sure about this ground, then question comes up whether this was the only ground on which Licencee relied and supply was given. We already noted above in the affidavit given, there are different clauses, all those clauses are kept as it is, without scoring or tick marking the relevant portion. It leads to conclusion whether Licencee, granted supply to the consumer only on the basis of tax receipt. We find even while seeking change in the name for tax receipt, consumer's stand was clear, we restrain ourselves from commenting on it, as it is sub-judice in Civil Court. When affidavit itself speaks about overlapping grounds, it was necessary for the Licencee to fix up, in which clause supply was given and if those grounds were vague, it was necessary on the part of Licencee to issue notice to the consumer before passing any order of disconnection. Supply is given by the Licencee to the consumer and it is sort of contract and breach if any noted then one sided action cannot be taken without notice to other side. Thus we found, it was necessary, as the affidavit filed, speaks of details which are overlapping, not marked appropriately and if consumer would have been made aware of the intended action on the ground of change in the name in tax receipt, he would have got an opportunity to make his stand clear and we find this is totally in breach of Principle of Natural Justice. We find, as consumer was made to face a peculiar situation without any notice, though Licencee contended that orally it was told but consumer has denied it. If, it would have been a position and consumer was made aware then definitely, he

would not have proceeded, to pay the arrears towards notice u/s. 56(2) on 1/10/2013. On one hand, consumer honoured notice u/s. 56(2) , paid arrears, but day prior faced aspect of disconnection and in all probability, if disconnection is made on the above grounds, consumer would not have paid the amount. Accordingly, we find, there was no intimation/notice to the consumer about disconnection for grounds stated.

10] Now question comes up, if, consumer was not given any notice and order is passed, whether it is legal and valid. We find on merit , Licencee may come to the conclusion as found fit, but it should be an order on giving hearing to the parties and it would have help both sides. No doubt, if, it was the claim of Nikam, in this regard, Licencee was to consider all things keeping in mind contentions of parties and hence, if there would have been notice to the consumer, position would have been more clear and hence order of disconnection is hit by not following the Principle of Natural Justice. In this light, we find that disconnection of supply of consumer dated 29/9/2013, needs to be set aside. Licencee be directed to restore the supply and Licencee is at liberty to reconsider the grievance of Mr. Suresh Waman Nikam, towards disconnection of supply of consumer on hearing both the sides, taking into account the progress and status of Civil dispute taken out by Nikam pending in kalia Court, wherein all are parties. This particular exercise is required to be done for completing the requirements of Law. No doubt, when all these three parties are in Civil Court, in the suit filed by Mr. Nikam and relief is sought, pertaining to this aspect, the order passed by this Forum is, totally subject to any order passed by Civil Court, as it is binding on all three parties.

11] In this matter, we have not expressed any view about illegality committed ,aspect of the fraud or forgery committed, which are subjudice , we dealt the aspect of limited purpose, consumer be given hearing abiding by Principle of Natural Justice.

12] This relief of supply in no way, can be read as a permanent relief, given to the consumer. It is of subject to decision by Civil Court.

In the result, this grievance is to be allowed.

Hence the order.

ORDER

- 1] Grievance of consumer is hereby allowed.
- 2] Licencee is action disconnecting the supply of consumer without hearing him or without giving notice to him is hereby set aside. Licencee is required to reconnect the supply without 48 hours from receiving this order. Licencee is at liberty as discussed above, to deal the complaint of Mr. Nikam and to take appropriate of Civil dispute taken out by consumer pending in Civil Court, Kalyan, is Licencee is a party along with consumer therein.
- 3] This order is subject to any order if already passed by Civil Court or which will be passed by Civil Court. Accordingly, as matter is subjudice before Civil Court, orders of Civil Court are having the precedence.
- 4] Licencee to submit compliance of this order within seven days of this order.
- 5] Copy of this order be sent to Mr. Suresh Waman Nikam, C/44, Shrinik Nagar, Housing Society, Amrut Nagar, Ghatkopar (West) Mumbai-400 086..

Dated:18/03/2014

I agree

I agree

(Mrs.S.A.Jamdar)
Member
CGRF,Kalyan

(Chandrashekhhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadaashive S.Deshmukh)
Chairperson
CGRF, Kalyan

NOTE

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- c) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

