

MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

KONKAN ZONE RATNAGIRI

Consumer Grievances Redressal Forum Ratnagiri

Consumer case No. – 56/2013

Date :- 05.10.2013

**Mahalaxmi Vidut Pvt.Ltd.
At.Konalkatta ,
Tal .Dodamarg , Dist-Sindhudurg.**

Complainant

V/S

**Superintending Engineer
Maharashtra State Elec.Dist.Co.Ltd.
Sindhudurg**

Opposite Party

Quorum of the Forum

- 1) Mr. D. S. Jamkhedkar
Chairman**
- 2) Mr. V.B.Jagtap.
Secretary Member**
- 3) Mr. J.P. Biwalkar
Member**

On behalf of consumer

**Mr. R.G.Sonwane
(Rep. MVPL)**

On behalf of opposite party

- 1) Mr.A.S.Mahadar,
Superintending Engineer,
Sindhudurg, Kudal**
- 2) Mr.J.T.Eagale,
Executive Engineer, Kudal**
- 3) M.r.N.S. Shiklgar
Junior Law Officer,Kudal**

Maharashtra State Electricity Regulatory Commission Consumer Grievance Redressal Forum and Ombudsman Regulation 2003 Vide Clause No.8.2

The consumer has filed this grievance with the prayer that the demand bill of Rs.7,86,745.37/- issued by opponent be quashed.

Facts of the grievance in brief are as follows.

- 1) The consumer complainant presently holds and utilizes power for his business through Meter No.236819050370. The MSEDCL had slapped him with notice to pay Rs. 7,86,745.37/- being arrears of charge for the period from January 2006 to August.2009.
- 2) The history of the case goes to show that Executive Engineer from Irrigation department. had applied to opponent for getting electric connection for construction of hydro power project of which the contract was given to present consumer complainant. Accordingly MSEDCL had given supply under the electric Meter bearing Consumer No.235519050050 in 1999.
- 3) Then all of a sudden after about 10 years, MSEDCL felt that there was unauthorised use of electricity by Irrigation dept as the constructional activities were carried out by Government through present complainant i.e. MVPL (Mahalaxmi Vidyut Pvt. Ltd.) It is on this background opponent MSEDCL felt that action under Section 126 of Electricity Act 2003 must be taken against consumer. So a bill was raised demanding Rs. 7,86,745.37/- on Executive Engineer Irrigation department (Tilari Project) and as Government has directed MSEDCL to recover the amount from MVPL. It is on this background now MSEDCL has claimed aforesaid amount from present consumer.
- 4) Since the demand of Rs. 7,86,745.37/- has been raised against present consumer holding Consumer No. 235519050050, he filed grievance to IGRC first and then to this forum.
- 5) A notice was issued to opponent MSEDCL calling upon it to file say. The MSEDCL has filed say and opposed the grievance.
- 6) The MSEDCL has come out with the case that E.E. Tilari Project had allowed present complainant to use electricity for construction activities, there was change of purpose and so the provision of Section 126 of Electricity Act 2003 are attracted in this case. It is submitted that E.E.Tilari or state Government has permitted opponent to recover amount from MVPL and even otherwise being

beneficiary of the supply, the present consumer is liable to pay the charged amount.

- 7) With this background, rejection of the claim has been prayed.
- 8) The consumer made submissions on the lines of his grievance and submitted that the action of MSEDCL to invoke the provision of Section 126 of the Electricity Act 2003 is basically wrong as the construction were carried out by MVPL as an agency appointed by the Government. Besides this, no procedure as contemplated under Section 126 of the Electricity Act 2003 has been followed in this case and as such the claim is untenable in law.

It is also submitted that the amount, if any, should have been recovered from Government and not from MVPL.

With these submissions, it was urged that the impugned demand bill of Rs. 7,86,745.37/- be quashed and the claim be allowed.

The S.E. Sindhudurg for MSEDCL vehemently supported the action taken by Mahavitrans and urged that since constructional activities were carried out at the site, there was change of purpose and thus action Section 126 of Electricity Act 2003 is well justified.

It is also submitted that since present consumer MVPL is benefited by the supply the amount of arrears could be recovered from MVPL.

On this background it is submitted that claim be rejected.

In view of rival submissions following points arise for my consideration and we have given findings against each of them for the reasons given below.

| | Points | Findings |
|----|--|--------------------|
| 1. | Whether the action initiated by opponent MSEDCL us. 126 of Electricity Act.2003 is well justified. | No. |
| 2. | Whether the demand bill of Rs. 7,84,330/- is correct and proper. | No. |
| 3. | What order | As per final order |

Reasons

9) Point No. 1 :-

The very vital point in this case is whether the provisions of Section 126 of the Electricity Act 2003 are attracted in this case or not.

So for as MSEDCL is concerned it has come out with the case that since Electricity had been consumed for constructional activities of the Hydro Project, the purpose of supply had been changed and so provisions of Section 126 of Electricity Act 2003 are attracted in this case.

If we go through the application itself, which was submitted by Government (Irrigation Department) we find that it has been clearly mentioned in the application that electric supply was needed for construction of Hydro project. Even the agreement which was entered into between E.E. Tilari project and MSEDCL while releasing connection, on 22 Nov. 1999 shows that supply was sought for constructional activities.

If it is so, then it cannot be said that the Government had changed the purpose of supply and so Section 126 of Electricity Act 2003 comes into play. So it must be said that this is not a case in which provisions of Section 126 of the Electricity Act 2003 are attracted.

Besides this, we find from the record that none of the requirement of Section 126 of Electricity Act 2003 are followed in this case. We do not have record to show that competent authority or assessing officer had commenced the action or any provisional assessment was done and served on the consume. So the basic requirement to justify action under Section 126 of Electricity Act are not followed in this case.

So we are of the considered view that action initiated by Mahavitran is not at all justified. So we answer the point in the negative.

10) Point No.2:-

In view of our finding to point No.1 it must be said that the demand of Rs. 7,84,330/- is not correct and proper.

At any rate MVPL has acted as agency of the Government under BOOT agreement (Build-own-operator and Transfer) which is for 30 years so after 30 years from 1999, the project will have to be handed over to Government. It is in the light of this, the demand of bill from MVPL on it's personal consumer number is not at all **countenanced** by legal provisions.

So it must be said that demand is not correct and proper. so point is answered in the negative.

11) Point No.3 :-

In the result, the claim deserves to be allowed and the bill in question

deserves to be set aside and quashed. Some compensation needs to be given to the consumer.

Hence we proceed to pass following order.

Order

- 1) **Consumer's Grievance is allowed.**
- 2) **The demand bill raised by MSEDCL on MVPL for Rs.7,84,330/-(Rs. Seven Lakh Eighty Four Thousand Three Hundred Thirty Only) is set aside and MSEDCL is directed to withdraw the demand bill.**
- 3) **Compliance of the order shall be reported to the forum within one Month.**
- 4) **In case consumer desires to appeal against this order he should file his appeal to the following addresses.**

**Secretary,
Electricity OMBUDSMAN,
Maharashtra State Electricity Regulatory Commission,
606/608, Keshava Building,
Bandra Kurla Complex,
Mumbai – 400 051.
Phone No.022 – 2659 2965.**

**D.S.Jamkhedkar
Chairman ,C.G.R.F.
Konkan Zone**

**J.P.Biwalkar
Member,C.G.R.F.
Konkan Zone**

Date : 24.12.2013

Place : Ratnagiri

Dissenting Opinion

I the undersigned shri.V.B.Jagtap in my capacity as member /Secretary of this Forum do not agree with the findings of this order.

According to the documents on record it is very much clear that the electric connection bearing Consumer No. 235519050050 was given to Executive Engineer Tillari Head Works Division No.I Konallatta, as per his application dated 05.10.2013, for the construction of small Hydro project. No doubt that this connection was utilized for the construction purpose, but the actual user of this connection was M/s Mahalaxmi Vidut Private Limited.

M/s MVPL had constructed the Hydro Electric Power Station under the BOOT Agreement with the Government of Maharashtra. For the construction of said Power station M/s MVPL utilized the electric supply from the connection given to the Executive Engineer Tillari itself, and no separate connection for the construction purpose was taken. This was clearly evidenced from the facts mentioned in the complaint letter filed by M/s MVPL with this Forum.

M/s MVPL is separate entity. The subject matter connection was given to The Executive Engineer Tillari and actual user of the connection was M/s MVPL. The Executive Engineer Tillari was recovering the charges for the electricity utilized by M/s MVPL through the said connection. This is clearly revealed by the letter of The Executive Engineer Tillari dated 03.05.2011, written to M/s MVPL. In that letter it is mentioned that all the electricity passing through the meter was utilized by M/s MVPL and if M/s MVPL fails to pay the said bill, The same will be deducted from the bank guarantee. This itself clearly evidenced that The Executive Engineer Tillari Head works Division I was reselling the electric supply. In reply to this letter M/s MVPL also agreed to pay the said bill vide letter dated 12.05.2011.

From all above facts and the evidences produced before the forum it is abundantly clear that the connection was in the name of Executive Engineer Tillari Head works Division I KonalKatta, and M/s Mahalaxmi Vidut Private Ltd. was the unauthorised beneficiary of the electric supply. This unauthorised use of electricity is covered under the ambit of section 126 and Indian Electricity Act 2003.

As per MERC (CGRF and Ombudsman) Regulation 2003 section 6.8 there is no jurisdiction for the Forum for The cases covered under unauthorised use of electricity as provided under section 126 of the Indian Electricity Act 2003.

In present case unauthorised use of electricity was clearly established. Which attracts the provisions of Section 126. of Indian Electricity Act 2003. As per MERC (CGRF and Ombudsman) Regulation 2003 section 6.8, there is no jurisdiction to the forum and hence to the best of my opinion the Forum should reject to the grievance filed by M/s Mahalaxmi Vidut Private Limited. In the present case the violation of the rules and regulations is on the part of consumer and utilization of electric supply is clearly established, under this circumstances the provision of Section 126 of Indian Electricity Act 2003 clearly attract and the Forum is barred to admit such cases. The rules of MERC (CGRF and Ombudsman) Regulation 2003 Section 6.8 also clearly provides that no jurisdiction is vested with Forum and hence in the clear cut provision of law itself, I am of the opinion that this should be rejected only, for which separate mechanism is already established. Thus the grievance of the consumer is out of jurisdiction and needs to be dismissed.

V.B.Jagtap
Ex.Engineer,C.G.R.F.
Konkan Zone

Date : 24.12.2013
Place : Ratnagiri