

MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

KONKAN ZONE RATNAGIRI

Consumer Grievances Redressal Forum Ratnagiri

Consumer case No – 92/2011

Date :- 13.07.2011

**ANMOL HOTEL,
At /Po – Bharnenaka,
Tal – Khed
Dist – Ratnagiri**

Complainant

V/S

**Executive Engineer,
Maharashtra State Elec.Dist.Co.Ltd.
O&M Division Khed**

Opposite Party

Quorum of the Forum

- 1) Mr. D. S. Jamkhedkar
Chairman**
- 2) Mr. V.B.Jagtap.
Secretary Member**
- 3) Mr. N. A. Kulkarni
Member**

On behalf of consumer :-

**Mr.Imran Abdulgafur Dudke, Khed
Mr.Mangesh A.Ingle, Khed**

On behalf of opposite party

- 1) Mr.S.V.Tawade (Ex.Engr),
MSEDCL, Khed Division**
- 2) Mr.S.D.Dange (A.E)
MSEDCL, Khed S/Dn.**
- 3) Mr.N.B.Dhainle (A.A)
MSEDCL, Khed S/Dn.**
- 4) Mr.K.S.More (UDC)
MSEDCL, Khed Division**

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

The consumer M/s Anmol Lodging & Boarding, at Bharne, Tal-khed, Dist-Ratnagiri having consumer no. 221110014721 filed the grievances under prescribed format dated 13.07.2011 and a letter was issued to the Executive Engineer, Khed Division, Khed vide letter No.933, dt.14.07.2011 to file the submission and the explanation as against the grievances filed. The submission of the Khed Division along with the relevant particulars was received by the Forum on 04.08.2011 and accordingly case was posted for hearing on 24th August 2011. Both the parties attended, however consumer applicant was not present and no authority was filed. They agreed to file the authorities and the amended form 'A'. Under these circumstances the case is adjourned. The letter of authority and the amended form 'A' filed with this Forum on 13.09.2011. Having complied with the procedural part by the consumer the notice was issued for final hearing on 4th October 2011 and case was finally heard at the camp office of Forum, Khed Division, Khed. Parties present advanced their arguments and filed the further particulars on the various issues involved there in.

The particulars of the grievances of the consumer are as under :-

The consumer is having power supply of three phase commercial connection in r/o M/s Anmol Lodging & Boarding, consumer No.221110014721 at Bharne, Tal-khed, Dist-Ratnagiri. The power supply was released on 06.02.2005. The meter is secure make having capacity 100/5 and the CT details are having make hupnun holding capacity 200/5 on 09.12.2010 meter became faulty and hence the 100/5 capacity meter was replaced by 50/5 on 14.12.2010. On 21st March 2011 the distribution company raised a supplementary bill for Rs.6,64,700/- on all the units consumed by consumer from April 2005 till November 2010. This recovery is not permissible under the provision of S.56 of the Electricity Act 2003. The distribution licensee is empowered to recover the dues under this section after the period of 2 years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charges for the electricity supply. The dues are paid covering the period from March 2009 to February 2011. The distribution licensee further amended its recovery vide bill dated 12.05.2011 and revised bill was issued of Rs.5,14,910/- being the MF deference from April 2005 to November 2010. The distribution licensee is not at all justified in raising such old recovery and they are not at all authorized to recover such sum to cover-up the lapses on their part. These disputes continuously followed and the grievances are also filed with the IGRU Cell Ratnagiri, which was not disposed off. Ultimately under protest consumer have deposited certain amounts and requested to withdraw the arrears in view of specific provision of the law. In the meantime billing of the December 2010 was done by applying MF as '4'. From the date of supply MF is applied '1' and upon finding the lapses and the negligence consumption from the period 06.02.2005 to

09.12.2010 was calculated by applying MF '2'. This act and recovery on the part of distribution licensee is against the provision of Electricity Act 2003. The recovery if any should be restricted for the period of 2 years from the date when it became first due. The reliance is also placed on the decision of Hon. Ombudsman & Hon. Bombay High Court, Bombay. Thus the amount paid under protest should be refunded with interest, added by the consumer and further demanded appropriate relief under the provisions of Electricity Act 2003.

The case was finally heard on 3rd October 2011. Both the parties advanced their argument & filed the relevant submission along with the copies of judicial decisions. The consumer reiterated his stand on this issue and argued that the case is covered under the provision of S.56 (2) Electricity Act and the same is supported by the number of judicial decisions. He also argued that the lapses are on the part of distribution licensee for which consumer should not be penalized. The mechanism for billing of the distribution licensee totally failed and they neglected towards the recovery. The intention of legislation is very much clear and Mahavitaran totally failed to follow this. Thus the action of recovery initiated by them is contrary to the provision of law and against the basic principles. Under the tremendous pressure we under protest deposited a sum of Rs.1,71,637/- on 22.07.2011, Rs.34,390/- on 19.08.2011 and Rs.34,390/- on 19.09.2011 which needs to be refunded along with interest as applicable. We are regular about payment of bills and we have no grievances about bills after replacement of meter. The dispute is the recovery from April 2005 to November 2010 i.e. change of meter which is done by distributors licensee on 14.12.2010.

The Mahavitaran on the other hand relied on the submission filed vide division office letter No.2633, dt.02.08.2011. The Executive Engineer of Khed Division confirmed the position and agreed that Multiplying Factor was applied as '1' instead of '2'. The early year bills were issued as MF '1' and for the period from 06.02.2005 upto November 16.11.2010, the MF applications applied as MF '2' and bills are raised for the difference amount. He also stated that on A/C of lapses/omission/errors bill was amended to Rs.5,14,910/- . It was also argued that the particulars are made available to the higher authorities as to the person responsible for the such lapses. It is the manual error on the part of Mahavitaran and under the wrong impression billing was not done correctly. Under this circumstances the amount become first due, when it is charged for the electricity consumption which needs to be paid by the consumer. The Executive Engineer relied on case No.78/2011 of this Forum and also the judgment vide Writ Petition No.7015 of 2008, delivered by the Division Bench of Bombay High Court. He stressed that on basis on findings of Hon. Bench the relief should be granted to Mahavitaran.

In view of arguments advanced by both the parties and considering the rival submission and upon verifying the relevant documentary evidences including Judicial Decision, it is concluded by this Forum, that the recovery of such bill particularly the bill raised dated 21.03.2011 and subsequently amended vide letter 12.05.2011 and the subsequent action initiated by Mahavitaran is illegal and in violation of the Rules &

Regulation of MERC. The recovery initiated by Mahavitaran is against the basic principles of law. As far as grievances are concerned the supply was connected on 06.02.2005 and after replacing the meter during the year 2010, Mahavitaran could notice the serious lapses of application of multiplying factor and subsequently during the year 2011 the supplementary bill was raised for the total period from April 2005 to November 2010 being the differential amount to the extent Rs.6,64,700/-. The further unfortunate part is that the concern authority came to know the mistake of billing pattern and once again the earlier supplementary bill was corrected as 5,14,910/- and delivered to consumer vide letter dated 12.05.2011. This is nothing but the serious lapses and the overall negligence on the part of Mahavitaran which further resulted into a heavy revenue loss.

The multiplying factor applied by them was '1' instead of '2' and accordingly revised bill was issued for a total period of 5 years. On the basis of documentary evidence it reveals that this clear violation of the provision of S.56 of Electricity Act 2003. The recovery itself is time barred since the period of limitation has also expired. It is needless to say that the billing system and subsequent recovery plays a very vital role on the part of Mahavitaran. Mahavitaran totally failed and they are not at all justified in the system process and hence they should have followed other alternative for the recovery, within the applicable norms in this regards.

The rules & regulation are also specific and the procedural part is laid down vide Rule 15.1 to 15.5 of the Supply Code and Conditions of Supply. No exception is provided under any of the rule or provisions of the said Act. Therefore it would be necessary and fair to consider the Consumer Grievances in terms of the provisions of S.56 of the Electricity Act 2003.

It was also held by the Hon'ble High Court and Electricity Ombudsman on this issue having the identical facts. The reliance is placed on the following judgments.

- a) Rep. No.27 of 2006 – Mr.Awadesh S.Pande (of M/s Nand/A/15) V/s Tata Power Co.Ltd – Electricity Ombudsman.
- b) Rep.No.72 of 2009- M/s Seasons Polymers Pvt.Ltd. V/s Maharashtra State Electricity Distribution Co.Ltd. – Electricity Ombudsman.
- c) Awadesh S.Pande V/s Tata Power Ltd. - Division Bench of Bombay High Court, Bombay.
- d) Mahesh Oil Mills V/s State of West Bengal Writ Petition No.WP516 /2005 decided on 19.02.2007
- e) Venco Research & Breeding Farm Pvt.Ltd. V/s Maharashtra State Electricity Distribution Co.Ltd. – Rep No.7 of 2009 – Electricity Ombudsman.
- f) Shri Nitin Uday Patil, Chairman, Popular Nagar, Pune V/s MSEDCL, Representation No.30 Of 2011 – Electricity Ombudsman.

- g) MSEDCL V/s M/s.Green Word Magnum Enterprises, Writ Petition No.2894 Of 2007 – The High Court of Judicature At Bombay – 2007.
- h) Executive Engineer, MSEDCL, O&M Dn Kankavli V/s Sub Divisional Officer, BSNL, Devgad, Representation no.119 of 2011 – Electricity Ombudsman.

Thus respectfully following the above Judgments, it is concluded as – Issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake cannot be approved to provide additional leverage to the license against the consumer protection in the light of the provision under Electricity Act 2003. In fact S.56 (2) balances the interest of both Distribution Licensee and the consumer. The responsibility is cast upon the Distribution Licensee to claim and recover the arrears within two years from the date when such sum becomes first due. Two years is a quite a adequate period to raise the bills towards the arrears if remained unclaimed for any reason which in the case was due to human/manual error. Under these circumstances it would not be fair, reasonable to interpret the provision of S.56 in a manner to give a blanket authorization to the Distribution Licensee without any time limit to claim the old arrears. The Distribution Licensee is free to recover such dues permissible under law including by way of Suit as provided U/s 56(1) of the Electricity Act 2003. It is also the admitted position that the claims of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred. Considering the various provisions including the regulations only those charges for a period of two years previous to the demand could be recovered and Distribution Licensee can act accordingly in order to satisfy the relevant provisions of law. In view of this, it would be incorrect to allow the Distribution Licensee to raise supplementary bills for the period of more than two years preceding the date of bill or otherwise, we are afraid that the basic intention of the legislation would be defeated.

It is the position of the law that the provision of S.56 do not empower distribution licensee to recover any amount if the period of 2 years has elapsed, no electricity supply can be cutoff for nonpayment those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provision of S.56 would not be attracted. We are afraid, we cannot subscribe to that proposition S.56 (1) is a special provision, enabling the generating company or the licensee to cutoff supply of electricity until such charges or sum as demanded under S.56(1)is paid. Relying on Sub Section (2) it was strenuously urged that S.56(1) cannot be resorted to after the period of 2 years from the date when such demand became first due. In our opinion Sub Section (2) only provides alimentation, that the recourse to recovery by cutting off electricity supply is limited for a period of 2 years from the date when such sum became due. As long sum is due, which is within 2 years of the demand and can recover; the licensee can exercise its power of coercive process of recovery by cutting off electricity supply. This is a special mechanism provided to enable the licensee or the generation company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable licensee or company to recover its dues. Apart from the above mechanism independtaly it can make recovery by filing a suit also. Thus under these circumstances Mahavitaran is eligible and entitled to recover the dues when the sum becomes first due up to a period of 2 years only.

As per the decisions of the Hon'ble High Court, while interpreting S.56 of Electricity Act 2003, much importance had been given to work out the amount "First Become Due" of the said provision.

The Forum feels that the amount of consumed electricity would become due when the billing cycle is completed. Sometime the billing cycle is monthly or bimonthly etc. In such cases, if the billing cycle is monthly, then the charges for electricity consumed would become due at the end of month. In facts in this case bills were raised after completion of billing cycle but wrongly. So the amount first become due on that date only. As such simply because wrong bills were raised cannot give any leverage to Mahavitaran. As such, in view of the provisions of S.56 of Electricity Act, it is not possible for Mahavitaran to claim anything more than arrears of 2 years. As a result the present demand is illegal and fresh demand will have to made. It is therefore directed to issue the fresh bills in view of the above findings and same can be recovered in 2 installments for which no interest should be charged.

The supplementary bills duly revised stands cancelled and Mahavitaran is directed to issue a fresh bill by correctly applying billing system for a period of 2 years only. The total amount recovered under installment system needs to be refunded separately along with the interest @ 9% up to the date of payment. The appropriate authorities of Mahavitaran already analyzed the lapses and it was also reported as to how the concern staff member failed in discharging their duties and obligation as far as billing is concern. Mahavitaran is at liberty to initiate separate enquiry as to the serious lapses and the sheer negligence on the part of employees.

In view of the above observation/findings of this Forum the following order is issued for which Mahavitaran is under obligation to execute the same within the applicable norms and the prescribed period.

ORDER

1. The consumer Grievance is allowed and the recovery of supplementary bill for the period from 06.02.2005 upto 16.11.2010 is held as illegal, the amended bill of recovery of Rs.5,14,910/- stands cancelled. Mahavitaran is directed to issue a fresh bill and same should be recovered in 2 installments.
2. The amount paid by the consumer under installment against the supplementary bill should be refunded along with interest @ 9% from the date of deposit within a period of 30 days .
3. No interest should be charged against the recovery bill for a period of 2 years.
4. Mahavitaran is directed to initiate a separate enquiry on the issues of lapses, negligence on the part of responsible officers /employees and to decide appropriate course of action.

5. No order as to the cost, expenses and compensation.
6. Mahavitaran should file compliance report within a period of 40 days and to report or otherwise penal action will follow.
7. In case consumer desires to appeal against this order he should file his appeal to the following addresses.

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

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

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

**N.A.Kulkarni
Member,C.G.R.F
Konkan Zone**

**Date : 24.11.2011
Place : Ratnagiri**