

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.LTD
Consumer Grievance Redressal Forum
Nagpur Zone Rural,Nagpur

Application /Case No.CGRF/NZ/Rural/279 of 2010

In the matter of recovery of arrears of previous occupant of the premises

M/s. Vidarbha Realities Pvt.Ltd. Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd..... Respondent

Present:

1. Smt.S.B.Chiwande,Member Secretary
2. Shri. M.G.Deodhar, Member

On behalf of the Appellant:

1. Shri. Pankaj Gautam,
2. Shri.U.N.Andhare,Representative.

On behalf of the Respondent:

1. Shri.U.G.Ganar, Executive Engineer
2. Shri.P.T.Reshme,Executive Engineer
3. Shri.Madavi, Jr.Law Officer

ORDER

Date: 27th December, 2010

1. M/S. Vidarbha Realities Pvt.Ltd, Mahal Nagpur, the Appellant has filed grievance application in form schedule A under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (C.G.R.F& E.O) Regulations,2006 on Dt.28.10.2010. The grievance arises out of Internal Grievance Redressal Cell (for short Cell) Bhandara Circle's order issued on 26th August 2010. The Cell, in its order held that the applicant is not entitled to exemption from payment of outstanding amount of Electricity bills pending against M/S. Wainganga Sahakari Sakhar Karkhana Ltd.Dewada(Bz),However the applicant Company is at liberty to apply for new connection as per provisions of the Electricity Act 2003 & The Electricity Supply code 2005 .The Cell further directed that the Respondent is at liberty to stipulate the suitable terms subject to which it would supply Electricity and it can stipulate as one of the conditions for supply of electricity

that the arrears due in regard to the supply of electricity made to the premises which it was in the occupation of the previous owner/occupant shall be cleared before electricity supply is restored to the premises or a fresh connection is provided to the premises. The Cell rejected appellant's grievance. Being aggrieved with the Cell's order, the present grievance has been filed by the Appellant. Brief details of the grievance are as under.

2. The Appellant is a company registered under the Companies Act, 1956, having its office at 520, Govind Niwas, Resaldar Lane, Walker Road, Mahal, Nagpur. It purchased the movable as well as immovable property earlier belonging to M/S. Wainganga Sahakari Sakhar Karkhana Ltd. from the Maharashtra State Cooperative Bank Ltd. (Incorporating The Vidarbha Coop. Bank Ltd.) under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (Act) 2002 and in exercise of the powers conferred under Sub section (12) of section 13 read with rule 8 & 12 of the security Interest (Enforcement) Rules, 2002. Prior to the purchase of the property by the Appellant, the Respondent had disconnected the Electricity supply to the previous owner of the company. On Dt. 18.03.2010 the Appellant made an application to the Respondent that they had purchased the property of M/S. Wainganga Sahakari Sakhar Karkhana, Dewhada (Bz), Tq-Mohadi & are intending for early Electric connection for their Sugar Factory. In view of this the appellant sought the detail information from the respondent regarding the outstanding arrears pending in the name of M/S. Wainganga Sahakari Sakhar Karkhana, Dewhada (Bz). In response to the letter the Respondent informed the outstanding dues Rs. 26,88,420/- pending against M/S. Wainganga Sahakari Sakhar Karkhana. The details are given as below

Sr.No.	Consumer No.	Amount Outstanding Rs.	S.D. Rs.	Net Amount Rs.
1.	43001900252-1	1474140.00	314970	1159170.00
2.	43001900169-0	356773.36		356773.36
3.	43001900171-1	233046.57		233046.57
4.	43001900174-6	156373.64		156373.64
5.	439710000974	783057.80		783057.80
				----- 2688420.00

The Respondent asked them to pay Rs. 2688420/- on or before 31.03.2010. The Appellant feels that demand of arrears Rs. 2688420/- which is in the name of M/S. Wainganga Sahakari Sakhar Karkhana made by the respondent is illegal & expressed

their inability to pay all the dues demanded by the respondent and therefore he approached the Cell on dtd.25.05.2010. The Cell rejected the appellants prayer & hence this grievance. The appellants contention in this regard is that

Sr.No.	Consumer No.	Amount Outstanding Rs.	S.D. Rs.	Net Amount Rs.
1.	43001900252-1	1474140.00	314970	1159170.00
2.	439710000974	783057.80		783057.80

The outstanding arrears in R/O above two Service connection no should be charged & revised as per Regulation 10.5 of the Electricity Supply Code Regulation.

The remaining three Service Connections

1.	43001900171-1	233046.57		233046.57
2.	43001900174-6	156373.64		156373.64
3.	43001900169-0	356773.36		356773.36

are belonging to Upsa Sinchan Yojna & it is not included in the property purchased by them, hence they are not responsible for those arrears which are not belonging to them. The Appellant has prayed for revision of Bill as stated above & are ready to pay the outstanding dues after revision immediately.

3. The Respondent filed it's parawise reply on Dt.12.11.2010 to the points raised by the Appellant. It states that the respondent vide his letter dated 11.03.2010 (Wrongly written) informed to the appellant regarding the outstanding dues of Electricity charges standing in the name of " M/S. Wainganga Sahakari Sakhar Karkhana Ltd." At Dewhada (Bz),Tah-Mohadi in pursuance of the letter of the appellant on dtd.18.03.2010.The respondent has informed the details of five consumer numbers and the outstanding dues which are reproduced as below.

Sr.No.	Consumer No.	Amount Outstanding Rs.	S.D. Rs.	Net Amount Rs.
1.	43001900252-1	1474140.00	314970	1159170.00
2.	43001900169-0	356773.36		356773.36
3.	43001900171-1	233046.57		233046.57
4.	43001900174-6	156373.64		156373.64
5.	439710000974	783057.80		783057.80
				----- 2688420.00

Thus the appellant who had purchased the said industrial unit found to be liable for the total amount of Rs.26,88,420/-. The respondent further stated that the appellant has raised the two points

- 1) The outstanding amount Rs.1159170/- & Rs.783060/- against the consumer No. 43001900252 & 439710000974 respectively deserves to be revised.
- 2) Other three consumer numbers have been the subject matter of Upasa Sinchan Yojna & it is tried to be contended that the said party has not been purchased by the appellant.

The respondent stated that the contention of the appellant for the purpose of getting or requesting for revision of the outstanding amount liability with respect to the entire liability cannot be fastened upon the purchaser, unless the appellant is the legal heir. He stated that this case is not pertaining the transfer of connection from the previous consumer, whereas admittedly the amounts are outstanding against the premises and the connections are already under permanent disconnection. Any third party(Transferee) other than the legal Heirs would have been the applicant seeking transfer of those connections there could have been the case of revision of liability for the period of six months, but the case in hand is the case ,where the premises is under disconnection having the said liability of those connection in the premises and as such the limitation of six months period to discharge the liability does not apply.

It is submitted that the entire outstanding being the charge over the property the person seeking New service connection for the same premises is liable to pay the entire outstanding amount and as such there was absolutely no question of revision of liability on any count whatsoever. The Respondent has stated that the IGRF has rightly relied upon the Judgment of the Hon'ble Supreme Court in case of " Paschimanchal Vidyut Vitran Nigam Ltd. and ors Vs. D.V.Steels & Alloys Pvt.Ltd." while arriving at the findings .

4. On the another point raised by the appellant ,the respondent submission is that the three connections ,which according to the appellant are the connections of Upasa Sinchan Yojna. It is to be noted that nothing has been brought on record that these connections have been at different places and therefore the appellant will not be liable to pay the outstanding amounts of those connections but at the same time it is required to be considered that it is not the premises only which creates the liability ,but the liability must

go according to the name and person who has used and enjoyed the electric supply as a registered consumer. The due amount has been well defined in Sec.56(1) of the Electricity Act 2003, which is para material to the provision of Sec.26 of the Indian Electricity Act 2003. The respondent further relied upon the Section 56(1) of the Electricity Act 2003. The respondent's contention is that the rights of the Licensee is not only restricted to the Electric line, which is in default or in arrears, but the right of disconnection is being granted with respect to the any electric supply line or other works. The respondent cited & relied upon the judgment of the state Commission (M.P) and relied upon by the Maharashtra State Commission in case of Bapurao Patmase V/S MSEDCL.

In view of above the Respondent feels that the present appellant being the transferee & having purchased the property of previous owner M/S. Wainganga Sahakari Sakhar Karkhana Ltd., hence the outstanding amount in respect of five connections are bound to be paid by the Appellant & unless and until the arrears are being paid, there is no question of sanction of any new service connection in the name of the present appellant. He further stated that the appellant approached the Forum even without filing any application for grant of New Service connection and as such the complaint before the Forum itself cannot be treated as maintainable for lack of locus on the part of the application. The respondent has also relied upon the Division Bench Judgment of Hon'ble High Court in Akansha International Ltd.V/S MSEDCL, reported in 2007 (5) Born CR page No.481. With this submission the Respondent prays to dismiss the appeal.

5. The matter was heard on 2nd December 2010 Shri. Pankaj Gautam, Shri. U.N.Andhare, represented the Appellant. Shri. U.G.Ganar, Executive Engineer, Bhandara Circle, Shri.P.T.Reshme Executive Engineer Bhandara Division, Shri.Madavi Jr.Law Officer were present on behalf of the Respondent. Shri.Gautam told that they have not received the notice of hearing & copy of parawise comments of the Respondent, hence they requested to postpone the hearing to present their case as regards to the Respondents reply. The Appellants request were granted & The matter was heard on 6th December 2010. The respondent raised the objection that Shri. U.N.Andhare is an Advocate & as per the Regulation 6.15 of the Maharashtra Electricity Regulatory Commission (C.G.R.F & E.O) Regulations, 2006, he can not take part in the proceedings. The Appellant states that Shri. U.N.Andhare is the D.G.M (HR) of their sister concern Purti Power & Sugar

Ltd. & he is assisting in this matter. The Forum asked the appellant to produce the documentary proof. Shri.Gautam reiterated his submissions made in the grievance. He submitted the rejoinder in response to the parawise comments of the Respondent .He argued that as per Regulation 10.5 the appellant is liable only to pay the Electricity Charges to a maximum period of 6 months (Prior to disconnection) of the unpaid charges for the electricity supplied to the premises/property purchased by the appellant. He cited & relied on the Judgment of Hon. Supreme Court AIR 2009 Supreme Court 647 in support of his statement. He further contended that the Judgment of Bombay High Court 2007(5) Bom.C.R.481 cited by the respondent is not at all applicable to this case as the facts & circumstances are different that in the present case.

The Respondent argued that the appellant had purchased the property of M/S.Wainganga Sahakari Sakhar Karkhana Ltd.,Dewhada (Bz)& intending for electric connection in that premises, hence it is appellants responsibility to pay all the outstanding arrears in the name of M/S. Wainganga Sahakari Sakhar Karkhana Ltd.,Registered consumer. The appellant has not submitted any documents for grant of New Service connection .The Respondent prays to reject the grievance.

6. Having heard upon the parties & on careful consideration of documents on record it is noticed that, the supply of electricity of 05 Nos. of connections in the name of M/S.Wainganga Sahakari Sakhar Karkhana was disconnected for nonpayment of charges of Electricity. The Appellant had purchased the property of M/S.Wainganga Sahakari Sakhar Karkhana in auction from Maharashtra State Cop.Bank Ltd. As per sale Certificate dtd.14.09.2010.Initially the said property was purchased in the name of M/S. Vidarbha Reailities Pvt Ltd. The name of the Earlier Company M/S. Vidarbha Realities Pvt Ltd.was changed into “Wainganga Sugar & Power Private Ltd.” Which was again Changed & the new name incorporated under the Companies Act 1956 is “ Wainganga Sugar & Power Limited.” The Appellant vide his Ltr.Dtd.18.03.2010 has informed the respondent that they had purchased the property of M/S. Wainganga Sahakari Sakhar Karkhana Ltd.Dewhada,Tq-Mohadi,Dist-Bhandara.& intending for early Electric supply for their Sugar Factory. He also sought the information about the outstanding dues pending against M/S. Wainganga Sahakari Sakhar Karkhana Ltd..The Respondent informed the details of 05 Nos of connections & outstanding dues in the name of the M/S. Wainganga Sahakari Sakhar Karkhana & demanded payment of Rs.2688420/-.The

Appellant disputed the demand on the ground that the respondent had provided the electricity supply to the premises which they had purchased through Conn. No.43001900252-1 & 439710000974.The appellant has not purchased the property to which the respondent had provided the electricity supply through Conn. No.43001900169-0,43001900171-1 & 43001900174-6.Therefore the appellant is not responsible to pay electricity charges in relation to these three connection. He is ready to pay the charges under the Regulation 10.5 to a maximum period of six months of the unpaid charges for electricity supplied to such premises which they had purchased.. The Respondent stated that the appellant is not only liable to pay the outstanding dues against the premises ,but he is liable to pay entire outstanding amount in the name of Person who has used & enjoyed the electric supply as a Registered consumer. He cited the Section 56(1) of the Electricity Act 2003 in support of his statement.

7. In our opinion Section 56(1) is a special provision ,enabling the generating company or the licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously by cutting of electricity supply. In this case all the five connections in the name of M/S.Wainganga Sahakari Sakhar Karkhana are already under permanent disconnection . In view of this the Respondents reference to the section mentioned above is clearly misplaced and argument in this behalf therefore, deserves to be and is hereby rejected. The respondent cited and referred to the case of Paschimanchal Vidyut Vitaran Nigam Ltd.Versus DVS steel & Alloys Pvt.Ltd Ltd.in civil Appeal no.6565 of 2008 ,decided on 7th November ,2008.The relevant portions of the said judgment which are as below:-

“9. The supply of electricity by a distributor to a consumer is ‘sale of goods’. The distributor as the supplier, and the owner / occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a ‘charge’ on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue

recovery proceedings against the purchaser of a premises for the outstanding electricity dues of the vendor of the premises, in the absence of any contract to the contrary.

10. *But the above legal position is not of any practical help to a purchaser of the premises. When the purchase of a premises approached 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. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, courts will not interfere with them.”*

8. The Hon’ble Apex Court, in the above judgment, has clearly observed that the purchaser of the premises cannot be foisted with the electricity dues of any previous occupant merely because he happens to be the current owner of the premises. However, in the subsequent paragraph 10, the Hon’ble Court observed that if any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirement of such rules and regulations. In the case under reference, there existed a provision by way of Clause 4.3 (g) and (h) of Electricity Supply Code to safeguard the interest of the distributor. In other words, the Hon’ble Apex Court held that there is nothing unreasonable in making provision enabling the distribution licensee to insist upon clearance of arrears before a fresh connection is given.

In view of the above, it is not disputed that the Respondent is entitled to recover the old arrears but only in accordance with the provisions of the Regulations. Regulation 10.5 of the Electricity Supply Code Regulations, reads as under:

“10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representative / successors- in – law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:

Provided that except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.”

9. Therefore, the Respondent’s rights to recovery of dues are limited as provided above. The respondent further stated that the Appellant has not submitted any application for grant of New service connection as such the complaint can not be maintained for lack of locus on the part of application. However, the Respondent feels that it is entitled to recover the entire arrears of Rs.2688420/- . On one hand, the Respondent questions about the non filling of application to get the Supply of Electricity by the Appellant, At the same time, it has asked the Appellant to pay the entire Arrears and thereafter ,it is prepared to release the connection. The two arguments are contrary to each other.

The Respondent cited & relied on the Division Bench judgment of Hon’ble High Court in Akansha International Ltd.V/s MSEDCL, in 2007(5) Bom.C.R 481.The relevant portion of the said judgment which are as below:-

28. So,in this case we can very well go behind the transaction to know who are the real parties entering into the transactions and as stated earlier, we are of the considered opinion that the same Family which formed a private Limited Company, has now claimed the right through one of its Members and the transactions were not bonafied on the face of Record.”

As observed above ,the respondent will have to first decide whether the appellant is at all eligible for getting electric connection in the premises especially in the

context that the Respondent has questioned his bona fides of purchase of premises. Question of arrears to be recovered from him would come only after the issue of eligibility of the Appellant for getting connection in said premises is decided.

In view of above the Appellant will have to provide proper documents to the Respondent for getting Electric connection to the said premises. After submission of appropriate documents ,by the Appellant, so as to become entitled to get supply of Electricity, as stipulated in the Electricity supply code Regulations. Any charge for electricity due to the Respondent, which remain unpaid by the previous owner of the premises, shall be recoverable by the Respondent, subject to the restrictions, as stipulated in the Regulation 10.5,mentioned above.

With the above observations, the Forum unanimously pass the following order

ORDER

1. The Appellant should provide necessary documents for granting of Electric connection to the respondent.
2. The respondent shall process the same in accordance with the Regulations.
3. There is no order as to cost.

Sd/-
Member Secretary

Sd/-
Member

CONSUMER GRIEVANCE REDRESAL FORUM
M.S.E.D.C.L (NAGPUR ZONE RURAL) NAGPUR

**CONSUMER GRIEVANCE REDRESSAL FORUM
NAGPUR ZONE (RURAL) M. S. E. D. C. L.**

Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,

NAGPUR – 440 013

(O) 0712- 2022198

NO. CGRF/NZ/R/

Date :

Certified copy of order dtd 27th December,2010 in Case No. 279/2010

is enclosed herewith.

Member-Secy/ Exe.Engineer,
C.G.R.F.(NZ-R)MSEDCL
N A G P U R

Copy to:-

1. M/S. Vidarbha Realities Pvt.Ltd.,520,Govind Niwas , Resaldar Lane,Walker Road ,Mahal,Nagpur
2. The Chief Engineer,Nagpur Zone (Rural)MSEDCL, Vidyut Bhavan,Katol Road, Nagpur.
3. The Superintending Engineer ,O&M Circle, MSEDCL. Bhandara.
4. The Exe.Engineer ,O&M Division, MSEDCL. Bhandara
4. The Exe.Engineer/N.O., O&M Circle, MSEDCL. Bhandara for information and necessary action.

Address of **the Electricity Ombudsman** is given as below.

Office of - **The Electricity Ombudsman,**

Maharashtra Electricity Regulatory Commission,
606-608, Keshava Building,
Bandra-Kurla complex,
MUMBAI- 400 051

TEL.- 022 - 26592965 (Direct)
022 - 26590339 (Office)