

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur**

Case No. CGRF(NUZ)/85/2012

Applicant : The Secretary,
"Rachana-Sayantara" Apartments
Condominium, Kh. No. 103,
Near Saroj Nagar, Hazari Pahad,
NAGPUR – 10.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
M.S.E.D.C.L. NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Smt. Gouri Chandrayan,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON 4.10.2012.

1. The applicant filed present grievance application before this Forum on 6.8.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

2. The applicants case in brief is that M/s. Rachana Construction Company Pvt. Ltd. Lotus Building, Dharampeth, Nagpur has constructed a condominium of 4 blocks having total 174 flats with few duplexes. The sale deed of 160 flats are executed. Presently 92 flats are in occupation by owners / tenants. The owner have formed association & taken over the management in February 2012. It was found that no electricity bill was issued by SPANCO regarding this meter Consumer No. 419990010995 every month and till taken over the management by the association in February 2012. Therefore Manager of the association lodged oral complaint to M/s. SPANCO. Therefore for the first time SPANCO issued a bill of Rs. 493340/-, for the period of 13 1/2 . Association thereafter lodged a complaint on 11.6.2012 with SPANCO challenging the correctness of the bill, then M/s. SPANCO issued another bill of Rs. 559870/- along with amount in arrears. Association then lodged the Grievance with learned I.G.R.C. on 12.7.2012. It was disposed off on 17.7.2012, while waiving Rs. 9866/- (DPC). Association denies correctness of the bill so also correctness of the order of I.G.R.C. Therefore applicant filed this grievance application in this Forum and requested to revise the bill. On 11.8.2012 SPANCO has served Notice of Disconnection to the applicant consumer to pay the bill of Rs. 6,28,980/- failing which electric supply will be disconnected. Therefore applicant also claimed interim relief under regulation 8.3 of the said regulation not to disconnect electricity supply till the disposal of the matter showing willingness to deposit amount of Rs. 2,00,000/- under protest.

3. Notice were issued and the matter was fixed for hearing on interim relief on 14.8.2012. On that date Forum has passed order by way of interim relief that “Applicant shall pay Rs. 2,00,000/- under protest and non applicant on such payment shall not disconnect the supply of the applicant till disposal of the matter”.

4. It was also ordered on Dt. 14.8.2012 that “Meter to be tested in the laboratory in the presence of the applicant and Member / Secretary of the Forum and to file testing report before next date of hearing and matter was fixed for final hearing on 29.8.2012 at 12.45 P.M.

4. Meter testing report is filed on record on 4.9.2012 to the effect that meter is O.K. and matter was fixed for hearing on 17.9.2012 at 1.00 P.M.

5. Non applicant i.e. M.S.E.D.C.L. did not file any reply on record. However, Franchisee of Distribution licensee SPANCO filed reply on record on 14.8.2012. It is submitted that date of connection is 29.4.2011 having Consumer No. 419990010995. First bill is prepared in May 2012 (As initial reading provided by M.S.E.D.C.L. is 79166 units) and final reading taken on 31.5.2012 was 127445 units i.e. consumption of 48279 units. Disputed bill of May 2012 is for 48279 units amounting to Rs. 493340/-. Certain actions were taken to sort out the complaint. Meter was tested at site by Acucheck so also tested in the laboratory of SPANCO and found O.K. CMRI-CMRI was taken and reading collected compared with manual reading taken in the month of May 2012 and found O.K. From the details it is clear that consumption since 16.3.2012 to 29.5.2012 was

11428 units in 74 days i.e. 4500 units per month. Billing date prior to 16.3.2012 is not available in the C.M.R.I. The applicant consumer approached to I.G.R.C. on 13.7.2012 and Learned I.G.R.C. ordered to waive off DPC amount of Rs. 9866/-. Disconnection notice u/s 56 of Electricity Act 2003 was delivered to the applicant on 11.8.2012. Initial reading as on 29.4.2011 was 79166 units and reading as on 31.5.2012 is 127445/- units. Average monthly consumption for 30 days is 3630 units. The bill is O.K. and consumer has to pay the bill. The Consumer can be allowed to pay the bill in installments.

6. Forum heard arguments of applicant's side so also arguments of Officers of M.S.E.D.C.L. & Officers of M/s. SPANCO and perused the record.

7. After receiving rival stock of arguments from all the sides, then Forum Scrupulously and meticulously perused the entire record and proceeds to decide the matter in accordance with law. So far as merits of the matter are concerned, there is difference of opinion amongst members of the Forum and therefore final order is based on majority view of Hon'ble Chairperson and Hon'ble Member (CPO), whereas dissenting note of Hon'ble Member/Secretary of the Forum is noted at the bottom which is part and parcel of the order.

**MAJORITY VIEW OF HON'BLE CHAIRPERSON AND HON'BLE
MEMBER (CPO) OF THE FORUM**

8. On the date of hearing Dt. 17.9.2012 Forum has directed both the parties i.e. 1) The applicant 2) Non applicant M.S.E.D.C.L.

& 3) Franchisee of Distribution Licensee M/s. SPANCO to produce copy of A-1 form and documents related to generation of 1st bill within 7 days i.e. on or before 24.7.2012. M.S.E.D.C.L. & SPANCO did not produce any documents on record. On the contrary, the applicant filed written note of arguments supported by the documents Annexure '1', Ann. '2' and Ann. '3' on Dt. 24.7.2012.

9. On behalf of the applicant it is argued that A-1 form is not signed by Rachana Condominium (Society). The applicant has absolutely no knowledge as to who applied for this connection long back. A-1 form is not signed by any office bearers of the Condominium society. The applicant demanded copy of A-1 form to Rachana Construction Company Pvt. Ltd. Lotus building, Dharampeth Nagpur who had applied for connection but builder has not given copy of A-1 form but simply builder provided one receipt about payment of deposit amount for meter Dt. 18.4.2012 for Rs. 28523/-. According to the applicant, Flat owners have formed association and taken over the management in February 2012. Prior to that association has not utilized electrical energy before handing over the possession of the building to the association by the builder. It is further argued that it is the builder who utilized electrical energy from this meter till handing over the management in February 2012 for construction work of another building. Therefore at the most association is liable to pay the bills since February 2012 and not prior to that.

10. It is further argued that monthly bills are not issued to the applicant since February 2012. Therefore applicant complained

to SPANCO and thereafter May 2012 bill in one piece for 13.3 months amounting to Rs. 4,93,340/- was issued. This bill is excessive and abnormal and therefore applicant requested to revise the bill.

11. On behalf of M.S.E.D.C.L. it was argued that every month reading was not noted since date of connection and therefore '0' consumption is noted in CPL till May 2012 as reading was not taken every month. It is noted in CPL and later on Unit was handed over to Franchisee M/s. SPANCO by M.S.E.D.C.L.

12.. On behalf of SPANCO it is argued that initial reading was provided by M.S.E.D.C.L. as 79166 units and final reading was taken for the first time on 31.5.2012 is 127445 units. Therefore first bill in May 2012 was issued for 48279 units amounting to Rs. 493340/-. It is further argued that date of connection is 29.4.2011 and connection was given by M.S.E.D.C.L. Meter is found O.K.

13. In the opinion of majority view, it is clear from the record that it is an admitted fact in the reply of M/s. SPANCO that date of connection is 29.4.2012. It is also admitted by M/s. SPANCO that first bill is issued in May 2012 i.e. after a period of 13 months. It is also admitted in reply of M/s. SPANCO that initial reading is provided by M.S.E.D.C.L. and it was 79166 units. It is positive case of the applicant that applicant is "Rachana Sayantara Owners Association", Hazaripahad Near Sarojnagar, Nagpur. It is the contention of the applicant that for the first time owners have formed association and taken over the management of the building

in February 2012. Therefore it is clear that before taking over the management from the builder in February 2012 association has absolutely no concern with previous consumption prior to February 2012.

14. Management of the building was handed over to association in February 2012 and date of connection is 29.4.2011, therefore it is clear that connection was issued prior to 10 months of handing over the management by the builder. Therefore the important point for consideration as to who had applied in A-1 form for obtaining the connection goes to route of the matter. Therefore during the course of hearing Dt. 17.9.2012 this Forum has directed to M.S.E.D.C.L., SPANCO and the applicant to provide copy of A-1 form so also documents related to generation of first bill within 7 days i.e. on or before 24.9.2012. But M.S.E.D.C.L. and SPANCO did not produce copy of A-1 form and documents related to generation of first bill. It is common sense that documents related to generation of first bill and A-1 form are in possession of M.S.E.D.C.L. and SPANCO but they have withheld and suppressed the documents for the reasons best known to them. They have also not produced copy of A-1 form on record and had not given reasonable opportunity to verify the signature on A-1 form so as to prove actually during that period association was not in existence and whether it is signed by employee of the builder if any. Applicant filed written note of arguments on 24.9.2012 along with important documents Annexure 'I', 'II' and 'III' i.e. documents regarding handing over of the building to the association condominium and zerox copy of receipt of Security Deposit Dt. 28.4.2011 dfor Rs. 28,523/-. It is mentioned in written

notes of arguments that applicant demanded copy of A-1 form to building but it is not provided and provided only receipt of S.D. Dt. 28.4.2011 by the builder. This receipt of S.D. shows that for this connection S.D. Rs. 28,523/- was deposited on 18.4.2011. It means that before depositing the amount of S.D. at least prior to one month A-1 form must have been submitted in March 2011 for obtaining new connection. Thereafter consumer has to comply other formalities, to submit test report by electrical contractor etc. Thereafter M.S.E.D.C.L. has to issue demand note and then S.D. was deposited on 18.4.2011. Therefore we have no hesitation to hold that application for N.S.C. in prescribed A-1 form was submitted in March 2011. Record shows that in March 2011 association / condominium was not in existence and entire Building and management was with the builder. According to the applicant for the first time building and management was handed over to the applicant in February 2012. Therefore at the most applicant association / condominium is liable to pay electricity bill since February 2012 and not prior to that.

15. Furthermore, there is also one surprising thing in receipt of S.D. Dt. 18.4.2011. It is noteworthy that this receipt is issued in the name of "Secretary, Rachana-Sayantara". It is pertinent to note that receipt of S.D. is not in the name of Secretary of "Rachana Sayantara Condominium" or "Rachana Sayantara Apartments owners condominium" nor in the name of "Rachana Sayantara Association". Record shows that "Rachana Sayantara" is the name of the scheme by the builder and it is not the name of the association. Therefore receipt for S.D. is not clear whether S.D. was

deposited in the name of Secretary Rachana Sayantara Builder or Rachana Sayantara Condominium Association. Suppression of the important documents by M.S.E.D.C.L. and SPANCO i.e. copy of A-1 form and documents related to generation of first bill shows that matter is not so easy as it appears.

16. In the reply of M/s. SPANCO, date of connection is given 29.4.2011 and first bill is shown to be prepared in May 2012. Initial reading on date of connection was 79166 units. Therefore it is clear that on date of connection meter was not new brand one but it was definitely used by somebody else and may be by the builder, that is the only reason why admittedly initial reading on dt. of connection was 79166 units and not '0'. If it could have been new brand meter, initial reading would have been '0'. Therefore much doubt is created to whom the meter was allotted previously, who was the previous consumer of this meter, how much consumption was utilized by him whether at the time of P.D. of previous consumer last reading was 79166 and whether correct initial reading was noted on the date of connection on Dt. 29.4.2011 as 79166?

17. As per the procedure if the builder starts construction of any apartments he has to apply for temporary electrical connection for construction purpose. On completion of the entire construction that meter has to be P.D. by the builder and new meter has to be issued in the name of association at the time of handing over the management. In this case the procedure appears to be not followed for reason best known to the officers of M.S.E.D.CL. & SPANCO. It is positive case of the applicant in written note of arguments that

management was not handed over to Condominium by the builder fully since construction of all the buildings by the builder was not completed and therefore builder has used the electricity energy for completing the remaining construction. Therefore only A-1 form is withheld by the builder. This argument is specifically noted in para 6 of the written note of the applicant Dt. 24.9.2012. We find much force in arguments of the applicants side.

18. It is an admitted fact that date of connection is 29.4.2011 and for the first time bill is issued in May 2012 i.e. on 31.5.2012 i.e. after a period of 13 months for consumption 48279 units that too, when the applicant complained after taking over the management in February 2012 then only for the first time first bill was issued in May 2012.

19. It is noteworthy that according to MERC (Standard of performance of distribution licensee, period of giving supply and determination of compensation) Regulations 2005, specifically in Regulation 9.1, it is specifically provided that “reading of consumer meter shall be undertaken by the authorized representative at least once in every 3 months for Agricultural consumers and at least once in every 2 months for all other consumers”. Therefore according to this provisions, it is the duty of non applicant to take meter reading of the applicant at least once in every 2 months and to issue electricity bill regularly. If officers of M.S.E.D.C.L. or M/s. SPANCO distribution licensee fail to do it, according to Appendix ‘A’(7)(II) of MERC (Standard of performance of distribution licensee, period of giving supply and determination of compensation) Regulations

2005, even compensation is also payable @Rs.100/- per week or part thereof on delay. Therefore it is clear that non applicant has neglected and violated this important provision of cited regulations and issued first bill after 13 months. It is definitely improper and illegal. However, looking to the facts and circumstances of the case in our opinion it is not justified to grant any compensation because there is no prayer or demand of the compensation by the applicant.

20. Considering all these aspects, in our opinion, non applicant played a game of hide and seek and issued the bill of 13 months at once. Non applicant also did not produce copy of A-1 form on record to show as to who actually applied for new service connection and who has signed A-1 form in the name of association which was not existing. Security deposit is also not in the name of Condominium or association, but it may be in the name of Rachana Sayantara Builder. Non applicant did not produce any material on record why initially reading was 79166 units, who was the first consumer who utilized this consumption? Entire record and documents related to generation of first bill are withheld and suppressed by the non applicant. Therefore we have no hesitation to draw adverse inference against non applicant.

21. We are aware of the fact that there are certain builders who may apply in the name of Condominium even before coming into existence of the condominium. There are also certain builders who utilize electrical energy on such meters and after a long gap hand over the electrical meter along with the management in possession of the condominium. However, in such type of cases, condominium is

not responsible to pay electrical charges of the consumption utilized by the builder for other construction before handing over management to the association. In such cases, M.S.E.D.C.L. or SPANCO as the case may be, is at liberty to recover those previous charges from Builder i.e. the person who actually utilized electricity energy before handing over the management to the association.

22. In this case, record shows that management was handed over to the association in February 2012 and therefore at the most applicant association is liable to pay electricity charges since February 2012. Non applicant is at liberty to recover previous charges prior to February 2012 from the Builder i.e. person who actually utilized energy for other purpose.

23. For these reasons, in our opinion, bill for 13.3 months amounting to Rs. 4,93,310/- is excessive, abnormal and illegal, and therefore needs to be revised. It is necessary for the non applicant to recover the bill and charge from the applicant of the utilized consumption only since February 2012. We must make it clear that non applicant is at liberty to recover the previous bills prior to February 2012 from the Builder i.e. (person other than the applicant) who has consumed the electrical energy during that time. Accordingly non applicant has to cancel entire bill and to revise it accordingly.

24. For that purpose, to recover the bill from the applicant since February 2012, non applicant shall consider average consumption of the applicant for the months May 2012, June 2012,

July 2012 and August 2012 and calculate and issue proper bill since February 2012 onwards accordingly to the applicant.

25. DISSENTING NOTE OF HON'BLE MEMBER / SECRETARY

1. "This grievance arose when the distribution franchisee of M.S.E.D.C.L. SPANCO Nagpur Discom Ltd. issued electricity bill of Rs. 493340/-, in the month of May 2012 to the consumer , the Secretary, Rachana – Sayantara with Consumer No. 41999001995.

2. The President of Rachana Sayantara Owners Association raised an objection against this bill vide letter dt. 11.6.2012 and informed to SPANCO that the Association has taken over the management of the building in Feb. 2012 and are liable to pay the electricity bill from February 2012 while earlier electricity charges are to be paid by Rachana Construction Company Nagpur. In response to this complaint no action was taken by SPANCO. Hence the applicant filed its grievance to I.G.R.C. of SPANCO on Dt. 13.7.2012.

3. I.G.R.C. passed an order Dt. 27.7.2012 in case No. 49/12 to waive off D.P.C. of Rs. 9866/- and requested to the applicant to approach the commercial section for grant of installments subjected to submission of suitable undertaking. I.G.R.C. in its order found that SPANCO has issued the bill for 13.3 months in one go. The reason for this delay is mentioned as *M.S.E.D.C.L. did not feed the required data to I.T. for generating the bill after release of supply by it. The bill, however, came to be generated by SPANCO when it was*

noticed by SPANCO during its regular inspection. Raising of such bill, however, can not be termed as time-barred because the provisions of section 56(2) of Electricity Act 2003 permitted recovery of any such bill amount up to the period of 24 months from the date when it first became due. Further I.G.R.C. noted that since the company delayed issuance of the bill the applicant can not be compelled to pay D.P.C(Delay Payment Charges). Therefore I.G.R.C. ordered to waive off assessed DPC of Rs. 9866/-.

4. Aggrieved by this order the applicant filed the grievance in the Forum on Dt. 6.8.2012 in Schedule 'A'. The applicant in Schedule 'A' requested to the Forum to test the meter in independent laboratory and impugned bill be corrected at the earliest. During the course of hearing as per the applicant's request the meter was tested in independent laboratory and testing report reveals that the meter is in order.

5. The Non-applicant in its reply to the Forum mentioned that although the bill issued after a delay of 13 months but the consumption trend found commensurate with the consumption trend based on the normal meter reading. Therefore the bill is correct and needs no revision.

6. From above it is clear that the only grievance for redressal is that whether recorded units 48279 is payable by the applicant or not. The applicant doubted on normal functioning of meter, but meter testing report stated that meter is OK. The CPL shows that the first bill was generated in the name of Secretary

Rachana Sayantara in the month of May 2012 with initial reading as 79166 units and final reading for the month of May 2012 is 127445 units. The bill generated in the month of May 2012 was for 13.3 months with consumption of 48279 units. In other words, the date of connection fed to the system is April 2011. The documents on record also support this point. The applicant paid the demand note of amount of Rs. 28533/- on Dt. 18.4.2011. The connection was obviously would have been released after the payment date. So I am agree with the connection date of non applicant.

7. The only point remained is who used the electricity from April 2011 to May 2012, i.e. either the applicant or the builder. But in my opinion the Licensee is not responsible to search who ever using the electricity unless and until there is change in ownership. The Licensee has released connection in the name of Secretary Rachana Sayantara and same connection is still in existing and with society only. Further, documents as submitted by the applicant in the Forum clarified that the meeting was called upon by the builder with all Apartment Owners on Dt. 23.4.2011 to hand over the management of Rachana Sayantara. As per the non applicant's submission, date of connection was 29.4.2011. The second meeting was called on 20.10.2011. Here, the applicant mentioned that the adhoc body of association was dissolved and on 20.12.2011 new body alongwith president was formed. Then the association again appointed new president on 3.6.2012 and then president has pointed out that no electricity bill of consumption of electrical energy used for common amenities was being issued by the Licensee. In other words the connection was there since April 2011 but the body was

not aware about it. No matter whether all members are using the electricity, but it was the responsibility of the secretary in whose name connection was released to check whether the electricity bill of the said connection was issued or not. It clearly shows that the connection was using electricity but no one bothered about paying the electricity bill. No proof was submitted by the applicant that the during the period Apr 2011 to Feb 2012 , the electric connection was used by the builder. However, the documents on record show that the present consumption trend i.e. with actual meter reading is matched with the previous consumption trend for unbilled period.

8. As per the Supply Code Regulations 15.5.2, *In case the consumer does not receive the bill or, having received the bill, has lost the bill, he shall, before the receipt of next bill, report the same to the officer designated by the Distribution Licensee to address such cases Provided further that non-receipt of bill or loss of bill does not excuse the consumer from discharging obligation to make the payment within the due date for payment of electricity charges.* This regulation clarifies that it is the responsibility of the consumer to collect the bill in case he does not receive within the time period. So as per documents on record the applicant was aware that electricity supply was connected in its premises in April 2011 and no bill was being received by him. He has never informed to the non applicant about the same till June 2012.

9. Although this is a grave negligence on the part of non applicant not to raise the bill within time period, but it can not excuse the applicant from payment of bill for the past period.

Disputed bill which was raised to the applicant is for 13.3 months i.e. within the time limit as recoverable amount in the ambit of Section 56 (2) of Electricity Act 2003. Therefore in my opinion, it is not the responsibility of the Licensee to check who is using the electricity of a particular connection unless and until there is change in ownership. It is the internal matter between Flat Owners and the builder. The connection was released in the name of Secretary, Rachana Sayantara that means Secretary knew the fact that connection was released but till June 2012 no one has taken cognizance to follow the matter for generation of electricity bill with the Licensee. Hence the applicant is liable to pay all the amount of electricity bill for the period of 13.3 months as raised by the non applicant within the ambit of electricity Act Section 56(2). I am agree with the view taken by I.G.R.C. Hence there should not be any interference with the order of I.G.R.C”.

26. In the majority opinion of the Forum, it is necessary to withdraw and cancel bill of May 2012 amounting to Rs. 4,93,340/-. It is justified that non applicant shall prepare fresh bill since February 2012 in the name of the applicant on average basis considering the applicant's consumption for May 2012, June 2012, July 2012 and August 2012 and to revise the bills accordingly. It is justified that non applicant shall recover such bill from the applicant only since February 2012. However, we must make it clear that non applicant is at liberty to recover bills prior to February 2012 from the builder i.e. the person (other than applicant) who has actually utilized the consumption during that period. Hence Forum proceeds to pass the following order on the basis of majority view.

ORDER

- 1) Grievance application is hereby allowed.
- 2) Bill issued by non applicant for May 2012 amounting to Rs. 4,93,340/- is hereby withdrawn, set aside and cancelled.
- 3) Non applicant shall prepare fresh bill recoverable from the applicant with effect from February 2012 on the basis of average consumption for the month of May 2012, June 2012, July 2012 and August 2012 and to revise this bill accordingly and issue to the applicant for payment.
- 4) Non applicant is at liberty to recover bill prior to February 2012 from the Builder i.e. the person who has consumed the electrical energy other than the applicant.
- 5) Amount of Rs. 2,00,000/- (Rs. Two Lacs only) deposited by the applicant shall be adjusted in the bills.
- 6) Non applicant is hereby directed to comply in future regulation 9.1 of MERC (Standard of performance of Distribution Licensee, period of giving supply & determination of compensation) Regulations 2005 and to undertake the reading of the consumers meter at least once in every 2 months and to issue the bills of consumption regularly to the consumer.
- 7) Non applicant to comply this order within 30 days from the date of this order.

Sd/- (Smt.K.K.Gharat)	Sd/- (Adv.Smt.GauriChandrayan)	Sd/- (ShriShivajirao S.Patil)
MEMBER SECRETARY	MEMBER	CHAIRMAN