

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

Case No. CGRF(NUZ)/108/2012

Applicant : M/s. Sunder Industries,
Koradi Road, Bokhara,
NAGPUR.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Rural Circle,
M.S.E.D.C.L. NAGPUR.

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

2) Adv. Subhash Jichkar,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED 20.12.2012.

1. The applicant filed present grievance application before this Forum on 22.10.2012 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 applicant's case in brief is that previously there was a load of 175 kVA on the meter connection of the applicant. Then the applicant applied for extra load of 100 kVA on 27.11.2007. M.S.E.D.C.L. had sanctioned above load of 100 kVA on 11.12.2007,

but it was allotted to the applicant in the month of June 2008. M.S.E.D.C.L. had issued energy bill of Rs. 53,18,145.90 (Rs. Fifty Three Lacs Eighteen Thousand One Hundred Forty Five & Ps. Ninety only). It is excessive and time barred bill for the period June 2008 to May 2012. Therefore the applicant claimed to revise this bill.

3. Non applicant M.S.E.D.C.L. denied the claim of applicant by filing reply Dt. 8.11.2012. It is submitted that the applicant is H.T. Consumer having Contract Demand of 275 kVA on 11 kV. Initially, the connection was released on Dt. 6.12.1995 with C.D. of 175 kVA as per load sanction Dt. 30.5.1995. The applicant had requested for enhancement in Contract Demand from 175 kVA to 275 kVA (addition of 100 kVA) vide application Dt. 22.6.2007. The load of consumer was enhanced as per letter Dt. 16.4.2008 which is at Annexure '1' with reply. In the enhancement in load the existing C.Ts. of 10/5 A was replaced with C.Ts. of ratio 15/5 A. As the C.Ts. was replaced, the Multiplying Factor (M.F.) for the consumption of units changed from 2 to 3. The above replacement was done in presence of consumers representative. Copy of testing report issued to consumer is filed along with reply as Annexure '2'.

4. M.S.E.D.C.L. further submitted that the required changes in the Contract Demand was incorporated but change in the M.F. was erroneously remained to be incorporated in the billing master. Due to this reason bills for the period from June 2008 to May 2012 was issued on the basis of old M.F. of 2'. On Dt.

13.6.2012, at the time of installation of new meter for facilitating automatic meter reading to the consumer, this matter was noticed and accordingly the difference of short billed amounting to Rs. 53,18,145.81 for the said period was issued as per letter dated 18.9.2012, copy of which is filed along with reply as Annexure '3'. Initially when the connection was released for a load of 175 kVA, the C.Ts. connected was of the ratio 10/5 A. At the time of load enhancement the C.Ts. was replaced from 10/5 A to 15/5 A. Because of change in C.Ts at the request of consumer, M.F. gets changed from 2 to 3. Bill which is issued is the bill towards difference of less billed amount during the period of June 2008 to May 2012. For non payment of the said bill notice for disconnection is issued to the consumer and it is not at all illegal. Consumer is regularly paying short energy bills from June 2008 to May 2012. So it is denied that it is time barred. Therefore M.S.E.D.C.L. prayed to reject the application of the applicant.

5. Forum heard the arguments of applicant in person. Forum also heard the arguments of Mr. Bhadikar, Superintending Engineer and Mr. Shetty, Asstt. Engineer for M.S.E.D.C.L. Forum perused the entire record carefully.

6. It is an admitted fact that the bill which is issued is the bill towards the difference of less billed amount during the period June 2008 to May 2012 Dt. 18.9.2012. According to Section 56(2) of Electricity Act 2003 – “Notwithstanding any thing contained in any other law for the time being in force, no sum due from any consumer under this section shall be recoverable after the period of

2 years from the date of such sum became first due, unless such sum have been shown continuously as recoverable as arrears of charges for electricity supplied”. Therefore there is limitation of 2 years contained in the said provisions & the provision is mandatory and not discretionary. There is nothing on record to show that same dues has been continuously shown as recoverable as arrears of charges for electricity supplied from time to time in previous bills. Therefore M.S.E.D.C.L. is not entitled to recover the amount towards the difference of less billed amount for the period of about 4 (four) years in one stroke. At the most, M.S.E.D.C.L. has right to recover the bill towards the difference of less billed amount for a period of 2 years prior to May 2012 i.e. since June 2010 to May 2012 and thereafter.

7. For this purpose we place our reliance on the order passed by Electricity Ombudsman (Mumbai) in representation No. 72/12 – M/s. Excel Industries Vs. M.S.E.D.C.L. decided on 30.10.2012. In this order Para 8, Page 5/5, it is held as under:-

“It is clear from the above that the division bench of the honorable High Court allowed the Distribution Licensee to recover the arrears limited to two years preceding the date of demand and not for 26 months, in terms of section 56 (2) of the Act. The ratio of this judgment was also affirmed by the honorable High Court, in the cases of MSEDCL Versus M/s. Green World Magnum Enterprises (Writ Petition No. 2894 of 2007 decided on 07.09.2007) and MSEDCL versus Venco Breeding Farms Pvt Ltd. (Writ Petition No. 6783 of 2009, decided on 05.03.2010). Review Petition

filed by MSEDCL for review of this order, in respect of the Writ Petition No. 6783 of 2009, and seeking to refer this matter to the larger bench was rejected by the honorable high court (RP no. 146/2009 decided on 24th March, 2011). In view of these judgments, it has been held by this Electricity Ombudsman, in cases of several Representations, that past arrears for a period of more than two (2) years, preceding the date of demand / supplementary bill, are not recoverable, in terms of section 56(2) of the Electricity Act 2003”.

8. In above cited order of Hon'ble Electricity Ombudsman Mumbai, in Para 7 of the order there is even reference of order passed in Writ Petition (L)2221/06 between Mr. Awadesh S. Pande (of M/s. Nand A/15) and Tata Power Company Ltd.

9. In Writ Petition (L)2221 of 2006 between M/s. A.S. Pande (of M/s. Nand A/15) and Tata Power Company Ltd. Hon'ble Division Bench of High Court of Judicature at Bombay disposed off the writ petition on 5.10.2006 holding that :-

“We then come to the next issue as to whether the demand made by Respondent No. 1 is contrary to the provision of Section 56 of the Electricity Act. We have already narrated the facts. The Electricity Ombudsman by his order of 18th July, 2006, held that the Respondent No.1 is entitled to recover past dues by correcting multiplying factor. The question posed by the Electricity Ombudsman to itself was whether the recovery could be made for the entire period of 26 months i.e. for a period from October 2003 to November 2005 and that too belatedly in January 2006. After considering the various provisions including the regulations, the Ombudsman held, only those charges for a period of two years previous to the demand could be recovered and that the arrears for the consumption in January 2004 became first due in February

2004 as supplementary bill was raised in 2006 and these dues been within two years are recoverable under the provisions of Section 56 (2) of the Electricity Act.

Submission of counsel for the petitioner is that the provisions of Section 56 do not empower Respondent No. 1 to recover any amount if the period of two years has elapsed nor can electricity supply be cut off for non payment of 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 provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 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 Section 56(1) is paid. Relying on sub section (2), it was strenuously urged that Section 56 (1) cannot be resorted to after the period of two years from the date when such demand became first due. In our opinion, sub section (2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long as a sum is due, which is within two years of the demand and can be recovered, the licensee of the generating company can exercise its powers of coercive process of recovery by cutting of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore, the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the fact of the record and consequently there is no merit in this petition”.

10. Facts of the matter cited above and facts of the present case are similar and identical. Therefore both these authorities are squarely applicable to the case in hand. Relying on cited authorities, this Forum holds that past arrears for a period of more than (2) years in terms of Section 56(2) of Electricity Act 2003 are barred by limitation. Therefore in our considered opinion it is

necessary in the interest of justice to allow grievance application partly, directing N.A. M.S.E.D.C.L. not to recover the difference amount between the charges of Electricity supplied and the amount paid by the applicant during the period of more than (2) years. We hold that M.S.E.D.C.L. is entitled to recover the bill towards the difference of less billed amount only during the limitation period since June 2010 to May 2012 and thereafter. Supplementary bill since June 2008 to May 2010 is barred by the limitation, not recoverable within the meaning of section 56(2) of Electricity Act 2003 and needs to be revised.

11. It appears that it is a serious negligence on the part of concerned officials / officers of M.S.E.D.C.L. not to claim this time barred amount within time. It is a great surprise that it is an amount of Rs. 53,18,145.90 and concerned officers of M.S.E.D.C.L. allowed to go it negligently. It is pertinent to note that in para 6 of reply of M.S.E.D.C.L. it is submitted that *“required changes in contract demand was incorporated but the change in M.F. was erroneously remained to be incorporated in the billing master. Due to this reason bills for the period from June 2008 to May 2012 was issued on the basis of old M.F. of 2. On Dt. 13.6.2012 this fact was noticed”*.

12. Therefore, from the pleading of M.S.E.D.C.L., it is clear that this negligence was going on since June 2008 to 13.6.2012. It is a serious matter of negligence in official duty, dereliction of duties and indiscipline while working in official capacity and needs to be viewed seriously. In the opinion of the Forum it is necessary

for M.S.E.D.C.L. to conduct full fledged departmental enquiry against the concerned officers / officials who are at fault for this negligence and to submit enquiry report to the appropriate authority and to recover time barred amount from the concerned negligent offices of M.S.E.D.C.L. According to regulation 8.2(e) of the said regulations, this Forum can pass any other order deemed appropriate in the facts and circumstances of the case. By exercising our power laid down under regulations 8.2 (d) of the said regulation, this forum is issuing such directions.

13. With these observations, the Forum proceeds to pass the following order :-

ORDER

- 1) Grievance application is partly allowed.
- 2) Non applicant M.S.E.D.C.L. is hereby directed to revise supplementary bill Dt. 18.9.2012 for amount of Rs. 53,16,145.80 for the period June 2008 to May 2012.
- 3) M.S.E.D.C.L. is hereby directed to recover the bill towards difference of less billed amount during the period June 2010 to May 2012 only.
- 4) M.S.E.D.C.L. shall not recover time barred amount for the period June 2008 to May 2010 towards amount of less billed from the applicant.
- 5) M.S.E.D.C.L. is hereby directed to conduct the departmental enquiry and to take action in accordance with law against its negligent officers who are responsible for not recovering such a huge amount for such a long time and allowing it to become time bar and shall recover

time bar amount from its officers who are responsible for not recovering the amount within limitation laid down under section 56 of Electricity Act 2003.

- 6) Non applicant to comply the order within 30 days from the date of this order.

Sd/-
(Smt.K.K.Gharat)
MEMBER
SECRETARY

Sd/-
(Adv.Subhash Jichkar)
MEMBER

Sd/-
(Shri Shivajirao S.Patil)
CHAIRMAN