

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

Case No. CGRF(NUZ)/098/2006

Applicant : Late Shri Shriwardhan P. Savlani,
through Shri Govind Mohota,
Karonde Building, Medical Chowk,
Hanuman Nagar,
Nagpur.

Non-Applicant : The Nodal Officer-
Executive Engineer,
Mahal Division,
Nagpur representing the MSEDCL.

Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 23.02.2006)

The present grievance application has been filed under Regulation 6.3 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003 here-in-after referred-to-as the said Regulations by the present applicant on 02.02.2006.

The grievance of the applicant is in respect of erroneous assessment bill of Rs. 30,578/- wrongly charged by the non-applicant towards un-authorized use of electricity. The applicant is also disputing the element of theft of electricity.

Before filing the present grievance application, the applicant had approached the Internal Grievance Redressal Unit by filing his complaint dated 21.10.2005 under the said Regulations. Thereupon, the Unit replied him by its letter, being letter no. 513 dated January, 2005, that the applicant's meter was inspected by the Flying Squad on 29.10.2005 and it was found that the applicant's meter was running slow by 31% and further that consequently the applicant was rightly charged for the differential 66% consumption as per rules for previous six months' period as per regular tariff. The Unit also informed him that since only the meter seals were found to be broken, no theft charges are made against him. The Unit requested him to pay the assessment bill of Rs.30,578/- at the earliest.

The applicant was not satisfied with the reply given to him by the Unit and hence the present grievance application.

The facts of the case, in brief, are as under :

The applicant is owning a commercial shop in the premises in question and he is getting his power supply through meter no. 1008382. The applicant's shop came to be inspected by the Flying Squad, MSEDCL, Nagpur Urban on 19.10.2005. The Flying Squad noticed the following irregularities after inspection

- 1) Meter was found to be running slow by 34%.
- 2) All the seals provided on the meter found tampered.
- 3) The meter was opened in the presence of consumer's representative for searching slowness of meter but no tampering evidence was found inside the meter.
- 4) Connected load was found to be exceeded by 4.250KW
- 5) Capacitor was not provided.
- 6) Security deposit was found to be inadequate.

Following recommendations were made by the Flying Squad.

- 1) The meter may be replaced and consumption assessed towards slowness of meter and the same may be recovered under Section 126 of the Electricity Act, 2003.
- 2) Adequate S.D. may be collected.
- 3) Additional S.D. / SLC may be recovered for excess load under Section 126 of the Electricity Act, 2003.
- 4) Capacitor may be provided.

The applicant's meter was inspected in the presence of his representative who, in turn, has signed the inspection report dated 19.10.2005.

The applicant wrote a letter on 21.10.2005 to the Executive Engineer, MSEDCL, Mahal Division, Nagpur suspecting the malafide intention of the Jr. Engineer, Flying Squad and complained that his meter was replaced in his absence. He disputed the action of the Flying Squad and requested the Executive Engineer to withdraw the assessment

bill. The Executive Engineer, Mahal Division, MSEDCL, Nagpur informed the applicant about the details of irregularities observed during the inspection of the Flying Squad and requested him to pay the assessment bill of Rs. 30,578/-. Thereupon, the applicant approached the Internal Grievance Redressal Unit under the said Regulations by filing his complaint dated 21.10.2005 which was received on 20.12.2005 by the Unit. The Unit, in reply, informed the applicant to pay the assessment bill of Rs.30,578/-.

The matter was heard by us on 17.02.2006 and 22.02.2006.

The applicant's case was presented before us by his nominated representative one Shri S.P. Banait.

The following two points need to be considered in this case.

- 1) Whether the applicant Shri Govind Mohota is a consumer of the non-applicant Company and whether he is legally competent to file the present application;
- 2) Whether the present case is a case of un-authorized use of electricity as provided in Section 126 of the Electricity Act, 2003 or whether it is a case of a defective meter.

So far as the first issue is concerned, the applicant's representative contended that the applicant is using electricity supplied to him by the non-applicant and as such he is a consumer of electricity while the submission of the non-applicant is that the applicant can not be treated as a

consumer competent to file this application. Elaborating his contention further, the non-applicant submits that the person in whose name the electric connection stands is reported to be dead and the present applicant Shri Mohota is not a legal heir of the original consumer one Late Shri Shriwardhan Sawlani and further that no documentary proof is produced by the present applicant to establish his status as a consumer in place of Late Shri Shriwardhan Sawlani. In support of this submission, he has cited a judgment delivered by Maharashtra State Consumer Disputes Redressal Commission, Mumbai in appeal no. 653/2003 delivered on 16.10.2003 in the case of Keshavbabu Tare Vs- MSEB & another. Relying on this judgment, his contention is that the electricity meter in question does not stand in the name of the present applicant and hence he can not be treated as a consumer.

In reply, the applicant's representative submitted that the applicant is an absolute owner of the premises in question and that he is enjoying supply of electricity from the meter, being meter No. 1008382 and as such, he is a legal user of electricity from this meter. He further stated that the non-applicant had addressed a letter, being letter no. 5819 dated 17.11.2005, accepting the applicant to be the user of electricity at his commercial shop. Hence, his say is that the applicant is a consumer of electricity in the eyes of Law.

In this respect, it will be worthwhile to have a look at the definition of word "Consumer" made in section 2 (15) of the Electricity Act, 2003. This definition reads as under :

“ “Consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be”.

The above definition will clearly show that the present applicant is a consumer of electricity. He is, therefore, quite competent to file the present application.

Moreover, the non-applicant has also accepted the applicant as a user of electricity as rightly stated by the applicant’s representative.

The citation relied upon by the non-applicant is not applicable to the instant case and the same is also not relevant to the present case. The Maharashtra State Consumer Disputes Redressal Commission in its judgment dated 16.10.2003 has held that the appellant before it was not a consumer in terms of section 2 (I) (g) of the Consumer Protection Act, 1986. It is the definition of word ‘Consumer’ made in the Electricity Act, 2003 that is applicable to the instant case and not the definition of word ‘Consumer’ made in the Consumer Protection Act, 1986.

It, therefore, follows that the present applicant will have to be treated as a consumer in terms of the Electricity Act, 2003. The first issue is, therefore, answered in favour of the present applicant.

The contention of the applicant's representative on the second issue is that there is no element of un-authorized use of electricity as pointed out by the Flying Squad's inspection report. He argued that Section 126 of the Electricity Act, 2003 can not be made applicable to the instant case because the electricity meter was not found by the Flying Squad to be tampered with inside the meter. His contention is that only because the outer seals were found to be broken, it can not be said that the applicant's meter was tampered. He also added that the meter was not actually running slow by 34%.

He urged before us that the applicant's consumption as disclosed by the new meter replacing his old meter will prove that his actual consumption of electricity during the assessment period of six months prior to the date of Flying Squad's inspection was not at all less by 34%.

He is also challenging the competence of the Jr. Engineer who inspected his meter on 19.10.2005. His say on this point is that a Jr. Engineer of Flying Squad is not competent to carryout inspection of meters of consumers.

In short, he is disputing and challenging the Flying Squad's inspection report.

The reply of the non-applicant on the second issue is that Section 126 of the Electricity Act, 2003 pertaining to un-authorized use of electricity is very much applicable to the instant case. According to him, assessment of Rs.30,578/- worked out in relation to un-authorized use of electricity is correct and legal. He added that the Flying Squad also found

that the applicant's connected load was exceeded by 4.250 KW and that the applicant's meter was found to be running slow by 34%. Relying on the observations made in the inspection report, his say is that the applicant was rightly charged for Rs.30,578/- under Section 126 of the Electricity Act, 2003.

He also vehemently argued that grievance cases pertaining to un-authorized use of electricity as provided in Section 126 of the Electricity Act, 2003 are specifically excluded from the purview of this Forum and hence, the present grievance application can not be entertained by this Forum.

He also stated that the applicant did not file any appeal under Section 127 of the Electricity Act, 2003 before the prescribed appellate authority against the assessment bill in question.

His submission on the point of competence of the Jr. Engineer to inspect the electricity meters of consumers of behalf of the Flying Squad is that the Dy. E.E., Flying Squad, Nagpur Urban, MSEDCL, Nagpur had duly authorized the Jr. Engineer one Shri S.G. Mahode of Flying Squad to carry out usual inspections / detection of theft cases in his absence vide his letter no. 167 dated 13.10.2005, a copy of which has been produced on record by him. The applicant on seeing this authorization letter was satisfied about the competence of the Jr. Engineer to carryout the inspection of meters.

It is the Regulation 15.4.1 of the M.E.R.C. (Electricity Supply Code and Other Condition of Supply) Regulations, 2005 that is applicable to the second issue under

consideration. This Regulation lays down in its first proviso that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 and in case of tampering as per Section 126 or 135 of the Act, depending on circumstances of each case.

What is seen from the Flying Squad's inspection report is that no tampering evidence was found inside the meter. Only the outer seals were found to be damaged or broken. Hence, the applicant's meter ought to have been tested for defectiveness. The record shows that the applicant's meter in question was only replaced by a new meter and that his old meter was not tested for its defectiveness. The non-applicant is silent on the point whether the applicant's replaced meter was sent to the Testing Laboratory for checking its accuracy and if so, what was the result. Only because the applicant's meter was found to be running slow by 34%, it can not be concluded that his meter was tampered. There could be some inherent defect in the meter resulting into recording of less consumption. It is clear from the inspection report that the applicant's meter was not tampered from inside. The non-applicant has also been able to prove before us that the applicant's meter was tampered.

In view of this position, it can not be said that there was un-authorized use of electricity in terms of Section 126 of the Electricity Act, 2003. This become evident from the explanation given in Section 126 of the Act. Under this

explanation, un-authorized use of electricity means the usage of electricity ---

- (i) by any artificial means, or
- (ii) by a means not authorized by the concerned person or authority or licensee, or
- (iii) through a tampered meter, or
- (iv) for the purpose other than for which the usage of electricity was authorised.

The present case does not fall in any of the four categories mentioned above. Hence, it is crystal clear that Section 126 of the Electricity Act 2003 will not be applicable to the instant case.

The contentions raised by the non-applicant are not accepted by us since they do not hold any legal support.

The net result is that the applicant deserves to be charged only for a maximum period of three months as per Regulation 15.4.1 of the aforesaid Supply Code Regulations.

The assessment carried out for a period of six months is, therefore, not legal and correct and as such the assessment bill for Rs.30,578/- in question will have be quashed.

In the result, we accept the present grievance application and direct the non-applicant to withdraw the disputed assessment bill for Rs.30,578/-. We further direct the non-applicant to charge the applicant afresh only for a maximum period of three months immediately preceding the date of Flying Squad's inspection as provided in Regulation

15.4.1 of the Supply Code Regulations and accordingly issue a revised bill to the applicant.

The non-applicant shall report compliance of this Order to this Forum on or before 15.03.2006.

Sd/-
(Smt. Gouri Chandrayan)
Member

Sd/-
(S.D. Jahagirdar)
CHAIRMAN

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**

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