

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

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**Case Nos. CGRF(NUZ)/ 104 to 109 /2006**

**Applicants** : (1) Shri Namdeorao Shrawanji Chahande

in case No. CGRF (NUZ) 104/2006

(2) Shri Nitin M. Salpekar,

in case No. CGRF(NUZ)/ 0105 /2006

(3) Shri Ravindra W. Khachane

in case No. CGRF(NUZ)/ 0106 /2006

(4) Shri N.S. Gajarlwar

in case No. CGRF(NUZ)/ 0107 /2006

(5) Shri Suresh V. Dharmadhikari

in case No. CGRF(NUZ)/ 0108 /2006

(6) Shri Uday M. Deshpande

in case No. CGRF(NUZ)/ 0109 /2006

All residents of Kishor Complex,  
Chhatrapatinagar,  
NAGPUR.

**Non-Applicant** : The Nodal Officer-  
Executive Engineer,  
Congressnagar 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.

3) Shri M.S. Shrisat  
Exe. Engr. & Member Secretary,  
Consumer Grievance Redressal Forum, NUZ,  
MSEDCL, Nagpur.

ORDER (Passed on 31.03.2006)

The aforementioned six applicants have filed their respective grievance application on 08.03.2006 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.

The grievance of each one of these six applicants is one and the same and it is in respect of the non-applicant's improper, unjust & illegal recovery claim of arrear amount of Rs. 82,637.13 shown to be included by him each one of the six applicants' energy bills dated 27.01.2006 against common consumer number 410012346577 which is standing in the name of Shri Kishor Chiddarwar.

Since all the six applicants are having exactly the same common grievance, a common judgment is given which is applicable to all these six cases.

Some of the undisputed facts of the case, in brief, are as under :

The applicants are owing their flats one each in the scheme constructed in the name and style of M/s. Kishor Complex which is situated on Plot No. 24, Chhatrapati Nagar, Nagpur. The complex of flats was built by the builder Shri Kishor Chiddarwar who was having two three phase electric meters bearing consumer no. 401102346593 and no. 410012346577. The connection vide consumer no. 410012346577 is being used as a common meter by the six applicants for lifting water, lighting the undivided portion etc. The other electricity connection having consumer no. 41102346593 standing in the name of Shri Kishor Chiddarwar went in arrear and the same came to disconnected on account of non-payment of arrear amount to the tune of Rs. 82,635.08. The builder Shri Kishor Chiddarwar was originally having a shop where electricity connection, bearing consumer no. 41102346593 was given. The non-applicant issued a notice, being notice dated 02.12.2003, addressed to Shri Kishor Chiddarwar, Kishor Complex, consumer no. 41103246593/1 informing him that P.D. arrear amount of Rs. 82,635/- outstanding against him has not yet been paid and that the same should be paid immediately within 7 days on or before 09.12.2003 failing which supply of electricity would be disconnected in terms of section 24 (1) of Indian Electricity Act, 1910. This amount was not paid and hence it was transferred to consumer no. 410012346577 in the name of Shri Kishor Chiddarwar in the billing

month of December, 2005 from the same consumer Shri Kishor Chiddarwar's disconnected connection vide consumer no. 41002346593. Accordingly, the six applicants received their energy bills each dated 27.01.2006 against consumer no. 410012346577 in which arrear amount of Rs. 82,637.13 was included for the first time.

The six applicants are aggrieved on account of inclusion of this arrear amount in their energy bills in respect of their common electricity meter, which is being used by them against consumer no. 410012346577 since the time they have occupied their respective flats in the scheme.

The applicants had disputed the non-applicant's notice dated 02.12.2003 by filing their reply dated 02.12.2003 addressed to the Executive Engineer, Congressnagar Division, MSEDCL, Nagpur contending therein that they should not be penalized for the fault of Shri Chiddarwar who was owning a commercial shop in the premises against whom the arrear amount in question was outstanding because of his default in making payments due to the non-applicant. They requested the Executive Engineer Congressnagar Division not to disconnected their common meter and deprive the applicants of the facility of common meter which is being used for lighting purposes and for lifting of water etc.

Although a notice dated 02.12.2003 was issued by the non-applicant as aforesaid in the name of Shri Kishor Chiddarwar, consumer no. 401102346593/1, the applicants have disputed their energy bills each dated 27.01.2006 on the ground that the erroneously included arrear amount of Rs. 82,637.13 is unjust & improper and illegal.

The matter was heard by us on 23.03.2006. Both the parties were given adequate opportunity to submit their respective say.

A copy of the parawise report submitted by the non-applicant in terms of the said Regulations was also given to the applicants and they were given opportunity to offer their respective say on this parawise report also.

The cases of all the six applicants were presented before us by their nominated representative Shri Namdeo Shrawanji Chahande who himself is one of the six applicants.

Following points arise for consideration in the cases of the present applicants :

- 1) Whether the recovery applicants are consumers of the non-applicant Distribution Licensee?.
- 2) Whether the claim of the non-applicant in respect of arrear amount of Rs. 82,635/- against the applicants vide consumer no. 410012346577 still standing in the name of Shri Kishor Chiddarwar is proper and legal?.

As regards the first point, the contention of the applicant's representative is that although name of Shri Kishor Chiddarwar is still recorded as a consumer against consumer 41012346577, the fact remains that Shri Kishor Chiddarwar is no longer the recipient of supply of electricity and that the present applicants are the de-facto users of electricity against the aforementioned consumer number.

Relying on this submission, the applicants representative vehemently argued that the present applicants are electricity consumers of the non-applicant Company.

He further contended that the applicants have been paying their respective energy bills against consumer no. 410012346577 regularly till they received, to their shock & surprise, the energy bill dated 16.12.2005 for a total amount of Rs. 82,950/- showing erroneous, unjust and improper inclusion of arrear amount of Rs. 82,635.08.

He strongly denied the entitlement of the non-applicant to recover the arrear amount in question which, according to him, was in reality legally claimable only from Shri Kishor Chiddarwar who was the real defaulter.

He admitted during the course of hearing that although the applicants occupied their respective flats way back in the year 1989, they did not take diligent steps so far to effect change of name of the applicants' Association in respect of meter no. 8000210030 in place of consumer Shri Kishor Chiddarwar consumer no. 410012346577. However, he strongly submitted that the non-applicants claim in question is illegal.

The non-applicant's say is that the contention of the applicants that the 3 phase meter connection vide consumer no. 410012346577 is being used as a common meter connection by the flat holders is of no consequence. According to him, Shri Kishor Chiddarwar is still the non-applicant Company's consumer and that he was legally entitled to recover the arrear amount in question from the present applicants. He added that so long as the applicants' names are not recorded in his record viz. Consumer's Personal Ledger as his consumers, none of them can be regarded as a consumer legally. He further submitted that Shri Kishor Chiddarwar was having two

connections namely consumer no. 410012346577 and consumer no. 40110346593. Since the second connection went into arrears and came to be disconnected on account of non-payment of arrear amount of Rs. 82,635=08, he was legally entitled to transfer this arrear amount into Shri Kishor Chiddarwar's first connection vide consumer no. 410012346577.

He argued that both these connections are still held in the name of one and the same person namely Shri Kishor Chiddarwar.

We are unable to agree with the submission of the non-applicant because the present applicants will have to be regarded as the non-applicant's consumers since their respective premises are for the time being connected for the purpose of receiving electricity.

The definition of word "Consumer" made in section 2 (15) of the Electricity Act, 2003 is crucial and relevant in the present cases.

The text of definition of word "Consumer" made in the Electricity Act, 2003 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 demonstrate that the present applicants are the defacto users of electricity their common meter vide consumer no. 410012346577. The non-applicant has

also admitted in his parawise report that the present applicants are using connection vide consumer no. 410012346577, meter no. 8000210030. It is true that Shri Kishor Chiddarwar's name still appears in the non-applicant's record as a consumer. It is also true that the present applicants have not recorded as yet their names in the non-applicant's record as consumers in place Shri Kishor Chiddarwar against consumer no. 410012346577. However, we hold that since the present applicants are the defacto users of the electricity supplied to them by the non-applicant, they can not be denied the rights of a consumer. It is in this context that the present applicants will have to be recognized legally as the non-applicant's consumers keeping in view the above definition.

The first point is thus answered in the affirmative. In other words, it boils down to this that the present applicants are the consumers of the non-applicant. The non-action on the part of the present applicants in respect of getting their names recorded as consumers in place Shri Kishor Chiddarwar cannot nullify their legal right as consumers.

The submission of the applicants' representative on the second point is that the non-applicant's claim of recovering arrear amount of Rs. 82,635.08 is not only unjust and improper but its also not legal. He added that there dues had accumulated because of the default of Shri Kishor Chiddarwar and none else.

According to him, the non-applicant ought to have recovered this arrear amount in the past from Shri Kishor Chiddarwar which the non-applicant failed to do. This arrear amount was pertaining to Shri Kishor Chiddarwar's electricity connection having



consumer no. 401102346593 which was permanently disconnected in the long past.

The submission of the non-applicant on the second point is that he was legally entitled to transfer this arrear amount into Shri Kishor Chiddarwar's second account having consumer no. 41012346577 because both these connections were held in the name of one and the same person namely Shri Kishor Chiddarwar.

He added that the arrear amount of Rs. 82,35.08 was continuously shown as recoverable in the CPL of Shri Kishor Chiddarwar, consumer no. 410012346577 since the time this connection was permanently disconnected. The arrear amount in question was transferred into Shri Kishor Chiddarwar's live account namely consumer no. 410012346577 in the billing month of December, 2005 from his other account having consumer no. 410012346577 for the purpose of recovery.

He relied upon Section 56 of the Electricity Act, 2003 and also the following citations.

- 1) Maharashtra State Consumer Disputes Redressal Commission, Mumbai's order dated 01.02.2006 passed in first appeal no. 867/2002 reported in 1978 Bombay at page No. 369.
- 2) Ruling given by the Supreme Court in Special Leave Petn. (C) No. 765 /1997 dated 24.01.1997 in the case of M/s. Swastic Industries Vs. MSEB reported in AIR / 1997 Supreme Court at page 1101.
- 3) Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal's judgment dated 04.10.2004 in appeal

no. 188/2003 in the case of M.P. Electricity Board Vs. Akhtar Bi reported in II/2005 CPJ at page 221.

- 4) Madras High Court's judgment dated 25.09.2003 given in write-petition No. 6194 and 7650 of 2003 reported in AIR 2004 NOC 276 (Madras).

Relying on the above citations, he contended is that he has rightly transferred the arrear amount in question from one account of Shri Kishor Chiddarwar to his second live account. According to him, nothing illegal has happened and that his claim of recovery against the present applicants is proper and legal.

Here also, we are unable to agree with the non-applicant's submissions.

In the first place, it is an undisputed fact that the present applicants are the consumers of the non-applicant against connection having consumer no. 410012346577 and that Shri Kishor Chiddarwar is no longer the defacto user of this connection. It is also not disputed that connection having consumer no. 401102346593 came to be permanently disconnected in the long past because of non-payment of P.D. arrear amount by Shri Kishor Chiddarwar.

In these cases, Section 56 (2) of the Electricity Act, 2003 will come into operation.

As laid down in Section 56 (2), no sum due from any consumer, under this Section, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges

for electricity supplied and the licensee shall not cut off the supply of the electricity.

It is a matter of record that although the arrear amount in question became first due way back in November, 1997 against consumer no. 401102346593 or may be even prior to November, 1997, the same was shown to be recoverable in December, 2005 for the first time against consumer no. 410012346577 which connection is legally being used by the present applicants as consumers, that too, much after lapse of the period of two years. The Electricity Act, 2003 has come into force with effect from 10<sup>th</sup> June, 2003. Hence, it becomes evident that this arrear amount was claimed by the non-applicant much after the period of two years from the date when this sum became first due.

It is also a matter of record that this sum was not shown continuously as recoverable as arrear of charges of electricity supplied in the connection having consumer no. 410012346577. Moreover, the defacto users of electricity connection vide consumer no. 410012346577 i.e. the consumer of permanently disconnected connection vide consumer no. 4011023456593. Hence, the action of the non-applicant is clearly violative of Section 56 (2) so far as recovery claim against the present applicants is concerned.

The citations relied upon by the non-applicant will not come to his rescue because the facts and circumstances involved in these cases are quite different from the facts and circumstances of the cases of the present applicants. Moreover, these citations refer to Section 24 of the Indian Electricity Act, 1910 which stood repealed w.e.f. 10<sup>th</sup> June, 2003 by the Electricity Act, 2003. Hence, rulings

pointed out by the non-applicant are not applicable to the present cases.

Hence, the decision on the second point also goes against the non-applicant. It, therefore, follows that the non-applicant's claim of recovering the arrear amount in question against the applicant's is time-barred in terms of 56 (2) of the Electricity Act, 2003. Hence, the non-applicant cannot, legally recover this arrear amount from the present applicants.

The non-applicant, during the course of hearing made a submission that the non-applicant Company would be put to a loss equivalent to the arrear amount in question if the same is not recovered from the present applicants who are the users of connection having consumer no. 410012346577. Here, we wish to make it clear that the non-applicant may avail of other legal remedies available to him under law for recovering this amount from the concerned defaulter. His right to recover this amount from the persons concerned other than the present applicants is not taken away by this judgment.

The applicants have made a statement before us that they will now take immediate steps to record their names as consumers in place of Shri Kishor Chiddarwar in so far as the connection having consumer no. 410012346577 is concerned.

In the result, we accept the present grievance applications and direct the non-applicant not to recover the arrear amount in question from the present applicants.

The non-applicant shall now issue revised energy bills to all the six applicants deleting therein the arrear amount in question. It is

also needless to say that the applicants' power supply shall not be disconnected.

The non-applicant shall report compliance of this order on or before 15.04.2006.

Sd/-	Sd/-	Sd/-
(M.S. Shrisat)	(Smt. Gouri Chandrayan)	(S.D. Jahagirdar)
Member-Secretary	Member	CHAIRMAN
<b>CONSUMER GRIEVANCE REDRESSAL FORUM</b>		
<b>MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's</b>		
<b>NAGPUR URBAN ZONE, NAGPUR</b>		