

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

---

**Case No. CGRF(NUZ)/72/2013**

Applicant : Dr. Siddharth Jiwan Kamble,  
1/2, VHB Colony, Kukde Layout,  
NAGPUR.

Non-applicant : Nodal Officer,  
The Superintending Engineer,  
(Distribution Franchisee)  
MSEDCL,  
NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil  
Chairman,  
  
2) Adv. Subhash Jichkar,  
Member,  
  
3) Smt. Kavita K. Gharat  
Member Secretary.

**ORDER PASSED ON 18.6.2013.**

1. The applicant filed present grievance application before this Forum on 30.4.2013 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 applicant purchased H.No. 1/2 VHB Colony, Kukde Layout Nagpur from Mrs. Sarita Kimmatkar in the year 2006. The applicant is subsequent purchaser of this house and user of residential electrical connection bearing Consumer No. 410010360688. House of the applicant is admeasuring

about 1000 sq.ft. Out of six rooms the applicant is using two rooms i.e. front and back room for Insurance Training for unemployed youth working in the field of Insurance. Remaining four rooms are exclusively used for residential purpose. No commercial activities are carried out in this premises. The applicant received electricity bill for the month of November 2009 informing about adjustment charges of Rs. 21020/-. After enquiry of the applicant with M.S.E.D.C.L., it is informed that the applicant was using electricity for the activities other than residential use. The applicant represented Dy. Executive Engineer on 11.11.2009 informing that activities carried out by the applicant are under Charity Trust Act, to give training to unemployed youth. The applicant has registration of charitable trust. However, M.S.E.D.C.L. did not send any reply to the letter of the applicant Dt. 11.11.2009. Therefore applicant issued notice dated 11.1.2010 to Dy. Executive Engineer. Thereafter applicant received a letter from M.S.E.D.C.L. Dt. Nil vide letter No. DySO/R/Nov/184 informing that the said meter was used as a commercial meter and therefore charges amounting to Rs.21020/- are correct. This letter is arbitrary establishing the monopoly without giving any opportunity to the applicant. Therefore amount of Rs. 21020/- charged by M.S.E.D.C.L. is illegal and needs to be revised.

3. Non applicant denied applicant's case by filing reply Dt. 10.5.2013. It is submitted that present grievance application is not filed within two years and therefore deserves to be dismissed according to regulation 6.6 of the said regulations. The applicant is not the consumer within the meaning of Section 2 (15) of Electricity Act 2003 and therefore application is untenable at law. It is

submitted that it is the domestic connection for residential use. The applicant used the supply for commercial purpose. Therefore M.S.E.D.C.L. had assessed bill u/s 126 of Electricity Act 2003. Therefore this Forum has no jurisdiction according to regulation 6.8 of the said regulations. Smt. Sarita R. Kimmatkar vide Consumer No. 410010360688/2, took residential connection on 12.8.1972. The applicant used electricity supply for the purpose of Insurance Training and therefore bill was assessed amounting to Rs. 19710/- being the difference of amount u/s 126 of Electricity Act 2003 and it was shown in the bill of November 2009. Residential tariff of the applicant is changed into commercial tariff. This action is illegal as per MERC Case No. 116. The applicant deposited Rs. 7500/- on 9.12.2009, Rs. 8000/- on 11.1.2010 and Rs. 8280/- on 1.2.2010/-. The applicant filed application to I.G.R.C. on 8.3.2010 but filed present application on 30.4.2013 before this Forum. The application deserves to be dismissed.

4. Forum heard arguments of both the sides and perused the record.

5. So far as this matter is concerned there is difference of opinion amongst the members of Forum. Therefore judgement is based on majority view of Chairperson and Member of the Forum. However, dissenting note of Member / Secretary of the Forum is noted at the bottom of the judgement which is part and parcel of the order.

MAJORITY VIEW OF CHAIRPERSON AND MEMBER OF THE  
FORUM

6. It is specific contention of the applicant that he purchased House No. 1/2, V.H.B. Colony, Kukde Layout, Nagpur from Smt. Sarita Kimmatkar in the year 2006 and since then he is user of present electricity connection. Therefore it is clear that applicant is user and occupier of the premises and electricity connection and therefore he is the consumer within the meaning of definition of “Consumer” laid down u/s 2 (15) of Electricity Act 2003.

7. It is the positive case of the applicant that his house is admeasuring 1000 sq.ft. having total six rooms. Out of six rooms, the applicant is using only two rooms i.e. front and back room for the use of Insurance Training for the unemployed youth, working in the field of insurance and these activities are carried out under Charity Trust Act to give training to the unemployed youth. Record shows that applicant also submitted registration of the trust along with his application to I.G.R.C. Nagpur so also other requisite documents.

8. Therefore it is clear that applicant has residential house consisting total six rooms, but out of these six rooms applicant is using two rooms i.e. front and back room for the Insurance Training for the unemployed youths working in field of insurance. **In Case No. 111/09, Hon’ble MERC in order dt. 12.9.2010 in sub para (g) on page No. 242 of 269 held as under : -**

LT I: L.T. –Residential

Applicability

Electricity used at Low / Medium Voltage for operating various appliances used for purposes like lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in the following places:

- a) Private Residential premises,
- b) .....
- c) .....
- d) .....
- e) .....
- f) .....
- g) Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants, etc., **in furtherance of their professional activity in their residence** but shall not include Nursing Homes and any Surgical Wards or Hospitals.

9. Therefore it is clear that applicant is using electricity supply in four rooms for residential purpose and in two rooms i.e. front and back room for the use of Insurance Training for unemployed youths in the field of insurance under Charity Trust Act and it is in furtherance to his professional activities in his part and parcel of residential use and therefore according to MERC order in Case No. 111/09, residential tariff has to be charged for these two rooms also i.e. front and back room as applicant is carrying on activities **in furtherance of his professional activities in his residence within** the meaning of MERC Case No. 111/09 decided on 12.9.2010, vide page No. 241/269 and 242 of 269. Therefore residential tariff is applicable to this entire house and not commercial tariff.

10. Therefore bill assessed by M.S.E.D.C.L. either amounting to Rs. 19710.60, or Rs. 21020/- recovered from the applicant is illegal and needs to be revised.

11. In case No. 19/12 Hon'ble MERC on Page No. 315 of 352 held as under : -

LT I: L.T. –Residential

Applicability

Electricity used at Low / Medium Voltage for operating various appliances used for purposes like lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in the following places:

- a) Private Residential premises,
- b) .....
- c) .....
- d) .....
- e) .....
- f) .....
- g) Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants, etc., in furtherance of their professional activity in their residence but shall not include Nursing Homes and any Surgical Wards or Hospitals.

12. Therefore relying on MERC order in Case No. 111/09 Dt. 12.9.2010 Page No. 242 of 269 vide Sub-Para (g) and MERC Case No. 19/12 for MERC order for tariff determination of Financial Year 2012-  
Page 6 of 16 Case No. 72/13

13, Page No. 315 of 352 and 316 of 352 (g) we hold that residential tariff is applicable to entire house of the applicant and hence applicant is entitled for refund of excess amount of Rs. 21020 from M.S.E.D.C.L. Applicant paid amount of Rs. 21020/- in the year 2009-10 and therefore applicant is entitled to claim interest @12 pcpa on this amount from the date of payment till realization.

13. In reply of the Non applicant Dt. 10.5.2013, it is simply mentioned that applicant was using electricity for Insurance Training and therefore bill is assessed u/s 126 of Electricity Act 2003. However, it is noteworthy that there is nothing on record to show that Spot Panchanama was prepared on any particular date of inspection. No detail spot Panchanama prepared u/s 126 of Electricity Act 2003 is produced on record by M.S.E.D.C.L. that too, signed by the applicant. There is absolutely no material on record to show that non applicant had applied section 126 of Electricity Act 2003. Along with reply of the non applicant, non applicant produced one document named & styled as "Inspection Report". However, it is noteworthy that no date is mentioned anywhere in this entire document. Therefore this document is illegal and appears to be prepared later on. Secondly, it is nowhere mentioned in this entire document that section 126 of Electricity Act 2003 is applied. There is no signature of the applicant or his representative on this document. It appears that employees of M.S.E.D.C.L. had only signed at the bottom of the document. Therefore this document is completely arbitrary and exparte. It is undated document. Section 126 of Electricity Act 2003 is not mentioned in this document. There is no prima-facie case u/s 126 of Electricity Act 2003. No separate spot Panchanama in details

produced on record to show that how many rooms of the residential house were used for residential purpose and how many rooms are used for Insurance Training for unemployed youth. We have carefully, scrupulously and meticulously scanned alleged "Inspection Report" produced by M.S.E.D.C.L. on record which undated. It is rather surprising to note that in Column No. 6 of Inspection report, reading is shown as 01535 on **Dt. 10.5.2013**. It is nowhere case of M.S.E.D.C.L. that they prepared spot Panchanama on 10.5.2013. Even then, this specific date **10.5.2013** is mentioned in Column 6 of inspection report. It is important to note that date of reply of M.S.E.D.C.L. before this Forum is also 10.5.2013. Therefore it is clear that this false inspection report is prepared on date of filing of reply i.e. on 10.5.2013 and that is the reason why date 10.5.2013 is mentioned in Column 6 of inspection report. Therefore it is clear that certain officials of M.S.E.D.C.L. can go to any extent to commit fraud and to extract amount from the consumer. Contents and recitals of inspection report specifically Column No. 6 shows beyond any shadow of doubt that this inspection report is later on prepared on the date of filing of the reply by the non applicant in this Forum i.e. on 10.5.2013 and at the same time wrote some marathi notes on reverse side of this inspection report. Therefore this inspection report (undated) or dated 10.5.2013 is fraudulent, bogus and illegal document and it is prepared subsequently to fill up the lacuna. Therefore we hold that in fact there was absolutely no spot inspection and no inspection report was prepared in November 2009 but illegally assessed bill for Rs. 19710/- and recovered the amount of Rs. 21020/- from the applicant. It is rather surprising to note that on the reverse side of this inspection report somebody had taken notes in marathi. However, below these



notes in marathi on the reverse side of the inspection report, there is no signature of any officer or employee of M.S.E.D.C.L. and therefore no evidential value can be added to marathi notes prepared by somebody on the reverse side of inspection report having no signature. It is rather surprising to note that in this marathi note also load is shown as under :-

1. A.C. - 1.
2. Ceiling Fan - 3+1
3. CFL - 5+1
4. Tube Light - 1

14. Even if for the sake of arguments, it is presumed that any room was used for insurance training of unemployed youth working in the field of insurance in any part of the room, even then the above said load can not be treated for commercial purpose. It is a common sense that much more load is necessary even in residential house than the load noted on the reverse side of the inspection report. In Column 13 of inspection report also same load is mentioned. Under no stretch of imagination this much load can be for commercial purpose.

15. In the bill of November 2009 difference of tariff is added Rs. 21020/- but it is nowhere mentioned in entire record for which past period difference of tariff is charged. As per Section 56 (2) of Electricity Act 2003, M.S.E.D.C.L. is empowered to recover arrears within 2 years. But this difference of tariff Rs. 21020/- appears to be arrears since purchase of house i.e. since 2006 considering the load.

Therefore assessment bill Rs. 21020/- since 2006 is barred by limitation.

16. M.S.E.D.C.L. produced copy of one I.T. document about adjustment tally statement for the month of November 2009 as per letter dated 20.5.2013. We have carefully perused this I.T. document produced by M.S.E.D.C.L. It is noteworthy that in this I.T. document also adjustment amount of Rs. 19710/- is shown but it is no where mentioned in this document that it is the assessment u/s 126 of Electricity Act 2003 and it is the assessment of difference of tariff. Therefore this document of I.T. regarding adjustment tally statement for the month of November 2009 generated on 11.12.2009 goes against M.S.E.D.C.L. This document of M.S.E.D.C.L. shows that there is no prima-facie case u/s 126 of Electricity Act 2003.

17. M.S.E.D.C.L. produced another hand written document of November 2009. It is true that in Column No. 1 "Ref. to Bill Rev." figure 126 is shown. However, it is not mentioned that this figure 126 pertaining to section 126 of Electricity Act 2003. Secondly, this hand written document of November 2009 is also undated and unsigned by anybody else. No date is mentioned anywhere on this document and nobody signed it at the bottom or anywhere. Therefore this document is not useful for M.S.E.D.C.L. It appears that this document is prepared later on to fill up the lacuna illegally. Forum put up a query to the officers of M.S.E.D.C.L. that in I.T. document generated on 11.12.2009, there is no reference of section 126 of Electricity Act 2003 and there is no signature on hand written document. Therefore later on, to fill up the lacuna, M.S.E.D.C.L. produced one another document

of November 2009 in which section 126 is shown under the date 6.11.2009. However, no consumer number and name of the consumer is mentioned in this subsequently produced page No. 8. Therefore it appears that this page No. 8 is also subsequently prepared by M.S.E.D.C.L. to fill up the lacuna.

18. No photographs of the entire action or C.D. is produced by M.S.E.D.C.L. on record. Therefore considering all these aspects in our opinion, there is no prima facie case u/s 126 of Electricity Act 2003 and hence this Forum has jurisdiction to entertain this grievance.

19. So far as limitation is concerned, according to the applicant he received the bill for the month of November 2009 informing adjustment charges Rs. 21020/-. The applicant complained Dy. Executive Engineer on 11.11.2009 but no reply was sent. Applicant issued a notice to Dy. E.E. Dt. 11.1.2010. Thereafter M.S.E.D.C.L. sent one letter dated NIL vide Letter No. Dy.SO/R/Nov./184. Applicant also produced one copy of letter sent by post to M.S.E.D.C.L. specifically to Dy. E.E. Manewada Sub-Division, M.S.E.D.C.L. Tukdoji Square Nagpur by post on Dt. 20.12.2012. Even then his grievance is not redressed. Therefore there was no other way for the applicant and he filed present grievance on 30.4.2013 before this Forum.

20. Considering the facts and circumstances of the grievance, it is crystal clear that cause of action arose in this case is continuous cause of action and therefore grievance application is within limitation and tenable at law. M.S.E.D.C.L. can go to any extent.

M.S.E.D.C.L. prepared inspection report on 10.5.2013 illegally and fraudulently and opposing grievance application on the grounds of limitation. In our opinion, it is clear cut injustice to the applicant. In reply of M.S.E.D.C.L. Dt. 10.5.2013 on Page No.2, it is submitted that applicant deposited Rs. 7500/- on 9.12.2009, Rs. 8000/- on 11.1.2010 and Rs. 8280/- on 1.2.2010. Therefore according to M.S.E.D.C.L. limitation applies to consumer only and not to M.S.E.D.C.L. as if they can recover the amount from the consumer at any time. According to M.S.E.D.C.L. it is amount of adjustment charges Rs. 21020/-. However, it is noteworthy that no detail particulars are given, since which date up to which date this assessment is calculated for past period. There is no date of inspection on record. It is nowhere mentioned in inspection report for how much previous months, this difference of tariff is charged. In absence of any specific material on record, we hold that this amount of Rs. 21020/- charged as the difference of tariff is itself a time barred amount and therefore M.S.E.D.C.L. has no right to recover it even then M.S.E.D.C.L. recovered this time barred amount and unauthorized amount and hence considering this specific fact and circumstances of the case, there is continuous cause of action for filing of this application and hence grievance application is within limitation. Limitation Act applies equally to both parties and not only to consumer. It is indeed injustice with the consumer. Considering these aspects we hold that there is continuous cause of action for filing of this case and hence grievance application is tenable at law.

21. Therefore in majority view of the Forum, grievance application must be allowed. Applicant is entitled to recover the amount of Rs. 21020/- carrying interest @ 12 pcpa from the date of payment till realization from M.S.E.D.C.L.

DISSENTING NOTE OF MEMBER / SECRETARY OF THE FORUM

22. The applicant's grievance in brief is Dr. Siddharth Jeevan Kamble, the applicant, is a residential consumer of M.S.E.D.C.L. with Consumer No. 410010360688. In the month of November 2009, he received a bill with amount Rs. 21020/- as adjustment charges. On enquiry with non applicant he has been told that he is using electricity for the activities other than domestic use. Therefore applicant submitted a letter dated 11.12.2009 to Dy. Executive Engineer, Manewada Sub-Division for review of bill as penalty towards use of commercial. The applicant's stand in this case is that the activity which was carried out at the time of inspection was under Charity Trust Act to give training to the unemployed youth. Also he has one more activity in the name of Buddhist Sunday School which is also an activity undertaken under the Charity Trust. Hence he requested to revise the bill as per rules of M.S.E.D.C.L. But non applicant did not respond to this complaint. So once again he submitted another application to the non applicant on Dt. 10.3.2010, thereby requested to officers of non applicant to provide two meters bifurcating the load of domestic and commercial. Also the activities which are carried out under charity trust act is exempted from commercial activity, therefore exempt him for charges on commercial basis. On this letter also, the non applicant did not respond.

Aggrieved by this, the applicant filed the grievance to the Forum on Dt. 30.4.2013 and requested to Forum to refund excess amount of Rs. 21020/-.

23. The case was heard on Dt. 14.5.2013 in the Forum. The applicant reiterated his statement as mentioned in his grievance application. The Non applicant also stuck to his reply Dt. 10.5.2013. In the reply letter the non applicant raised three points –

a) As the applicant filed grievance after two years from its cause, the Forum should not admit it as per MERC (CGRF & EO) regulations 2006, regulation No. 6.6 because the grievance arose in November 2009.

b) Electricity connection stands in the name of Smt. Sarita R. Kimmatkar. However, the grievance is filed by Dr. Siddharth J. Kamble. Hence the applicant is not the consumer as defined in section 2 (15) of E.A. 2003.

c) The assessment amount charged to the applicant in 2009 was for unauthorized use of electricity u/s 126 of Electricity Act 2003. The Forum has no jurisdiction for such case as per regulation 6.8 of MERC (CGRF & EO) Regulations 2006.

24. During the hearing the non applicant was directed to file the records available with respect to the case booked u/s 126 against the applicant. The non applicant filed some documents with letter dated 20.5.2013. The attached documents are adjustment tally statement for the month of November 2009 which is the IT generated statement. The other document is a copy of B-80 register which

shows that the assessment sheet against the connection No. 410010360688 is for assessment under 126 with adjustment amount of Rs. 19710.60. This is duly signed by Accounts Officer and Billing incharge. This statement was fed by the non applicant to I.T. center on Dt. 6.11.2009 under the heading “Section 126”.

25. From the above documents I agree with non applicant’s submission that the assessment was charged u/s 126 of E.A. 2003. Therefore as per regulation 6.8 (a) of MERC (CGRF & EO) regulations 2006, this Forum has no jurisdiction.

*“6.8(a) If the Forum is prima facie of the view that any grievance referred to it falls within the purview of any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum :-*

*(a) Unauthorized use of electricity as provided under section 126 of the Act.....”*

26. I also agree with the non applicant on the point that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen as per regulation 6.6 of MERC (CGRF & EO) Regulations 2006. The documents on record clearly show that applicant raised grievance in December 2009 and filed grievance application to the Forum in April 2013 which is beyond two years.

27. For the above reasons, in my opinion, the Forum has no jurisdiction to entertain this case and hence should be rejected. The

applicant has other remedy available as per section 127 of EA 2003, which is not availed till now.

28. In majority view of the Forum grievance application is tenable at law. It is well within limitation and applicant / user is entitled to file the present grievance application. M.S.E.D.C.L. has illegally recovered amount of Rs. 21020/- from the applicant. Therefore M.S.E.D.C.L. shall refund this amount to the applicant along with interest. Hence in majority view of the Forum we proceed to pass the following order : -

#### ORDER

1. Grievance application is allowed.
2. M.S.E.D.C.L. is hereby directed to pay amount of Rs. 21020/- to the applicant alongwith interest @ 12 p.c.p.a. from the date of payment by the applicant to M.S.E.D.C.L. till its repayment by M.S.E.D.C.L. to the applicant.
3. M.S.E.D.C.L. shall comply within 30 days from the date of order.

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

Sd/-  
(Adv.Subhash Jichkar)  
MEMBER

Sd/-  
(ShriShivajirao S.Patil)  
CHAIRMAN