

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

Case No. CGRF(NUZ)/055/2005

Applicant : M/s. Shri Radha Sarveshwar (P) Ltd.,
30, Sai Industrial Estate,
MIDC, Hingna Road,
Nagpur.

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

Quorum Present : 1) Shri S.D. Jahagirdar, IAS (Retd),
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 17.10.2005)

The present grievance application is filed on 01.09.2005 before this Forum in the prescribed schedule "A" by the applicant as per 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 the applicant is in respect of the abnormally excessive energy bill of Rs. 2,91,232/- pertaining to

the months of September and October, 2002 showing abnormally high consumption of 66613 units.

The matter was heard by us and both the parties were given opportunity to present their respecting say. Accordingly, both of them made their written and oral submissions before us. Documents produced by both of them are also perused and examined by us.

After receipt of the grievance application in question, the non-applicant was asked to submit his parawise remarks on the applicant's application before this Forum in terms of Regulations 6.7 and 6.8 of the said Regulations. Accordingly, he submitted his parawise report on 26.09.2005. A copy thereof was given to the applicant and he was given opportunity to offer his say on this parawise report also.

Before filing the present grievance application, the applicant had approached the Internal Grievance Redressal Unit headed by the Executive Engineer (Adm) in the office of the Superintending Engineer, NUC, MSEDCL, Nagpur by filing his complaint in the prescribed annexure "X" on 30.06.2005. However, it is regrettably noted that this Unit did not provide any remedy to the applicant within the prescribed period of two months as laid down in the said Regulations. Hence, the present grievance application.

The applicant's case has been represented before us by his nominated representative one Shri D.D. Dave.

It is the contention of the applicant's representative that a secure make electronic electric consumption-registering meter, being meter number MSE 02494, was installed in the applicant's Unit on 10.06.2000. The consumption of electrical energy recorded by this meter was

abnormally high in the months of September and October, 2002. In that, this consumption was shown to be 36948 units in the month of September, 2002 and the result was that abnormally high energy bill dated 09.10.2000 for Rs. 1,37,540/- was issued by the non-applicant. The excessive energy bill dated 13.11.2002 for Rs. 1,08,922.91 of the applicant's Unit for the month of October, 2002 also indicated abnormally high consumption of 29665 units. According to the applicant's representative, the non-applicant asked the applicant to pay meter testing fee upon receiving his complaint about excessive billing. Accordingly, this fee was paid by the applicant. There-upon the Testing Division, NUZ, Nagpur, tested the applicant's meter on 28.10.2002. The result of the test indicated that C.T. of "B" phase was over-heated and that the meter was behaving erratically. The Dy. Executive Engineer Incharge of Testing Division recommended in his report that the meter may be replaced alongwith cabinet. Accordingly, the Jr. Engineer concerned replaced the applicant's meter on 02.11.2002 by a datapro meter, being meter number 010699635. The Jr. Engineer sent an assessment proposal of 20765 units per month for September & October, 2002 as against the consumption of 66613 units. The Executive Engineer, MIDC Dn., Hingna Nagpur thereupon asked the Assistant Engineer to submit a revised proposal alongwith data retrieval report. Accordingly, the Assistant Engineer submitted revised proposal but without MRI. The replaced defective meter was with the Testing Division. On receiving the data retrieval from the Testing Division, the Executive Engineer noted wilful accumulation of consumed units and held that the bill revision proposal was deliberately submitted

by the concerned Jr. Engineer in order to give illegal credit to the applicant, there by putting the MSEDCL to a loss of Rs. 78,492/-. The Nodal Officer i.e. Executive Engineer also obtained clarification on the erratic behavior of the meter from the Executive Engineer, Testing Division who informed him that the erratic behavior does not affect the KWH consumption. There-upon, the Executive Engineer - Nodal Officer after comparing the readings reflected by MRI data retrieval with those recorded by the concerned Jr. Engineer concluded that the T.O.D. energy meter installed at the applicant's premises was not defective and that it was in order. He also informed the applicant that no excessive bill has been charged to the applicant for the months of September and October, 2002. According to the applicant's representative, the meter testing report dated 28.10.2002 clearly indicates that the applicant's meter was defective.

Relying upon the remarks noted in the meter testing report dated 28.10.2002, the applicant's representative vehemently argued that this report essentially mentions that the C.T.s in circuit with the meter were overheated and that the behaviour of the meter was erratic. He added that when testing fee is charged to the applicant the non-applicant should have given Test Performance Certificate indicating the procedure adopted in testing at the time of data retrieval. According to him, such an important test should have been carried out in the presence of the applicant-consumer in order to observe proper transparency and that this should not be an empty formality. Relying further on the remarks of the Testing Division in its test report dated 28.10.2002, the applicant's representative stated that it is not clear whether the

overheated C.T.s were replaced or not although the Testing Division clearly indicated that the meter may be replaced alongwith cabinet.

He further pointed out that the applicant's meter was replaced on 02.11.2002 while retrieval of data was done on 23.12.2002. Thus, according to him, there is an abnormal delay of more than 1 ½ months caused by the non-applicant in this regard. He also pointed out that the meter test was not conducted in the presence of the applicant or his representative. The full details of testing procedure adopted were not made known to the applicant. Relevant details like C.T.s in circuit, the quantum of load applied, method of testing and the parameters of C.T. testing etc were concealed from the applicant. He vehemently argued that all the relevant details should have been made known to the applicant particularly when testing fee is recovered from the applicant. He, therefore, challenges the entire action of the non-applicant and states that there is no transparency at all in the various actions of the non-applicant.

He further vehemently denied that the bill revision proposal was submitted by the concerned Assistant Engineer deliberately with a view to give illegal credit of Rs. 78,492/- to the applicant. What he is claiming is that proper billing should have been done. According to him, any erroneous excessive bill, if withdrawn, cannot said to be a loss of revenue and that the loss is caused to the applicant and not to the non-applicant.

Commenting upon the statement made by the non-applicant in his parawise report about wilful accumulation of consumed units, the applicant's

representative contended that there is no such case and that this observation of the non-applicant is imaginary and that it is without any valid justification.

The applicant's representative added that the Executive Engineer In-charge of Testing Division is silent on the remarks noted in the testing report to the effect that the C.T.s were getting overheated.

The applicant's representative also placed his reliance on section 26 (6) of the Indian Electricity Act, 1910 and contended that it was for the non-applicant to have referred the applicant's dispute in respect of defective meter to the Electrical Inspector for appropriate decision since the Electrical Inspector was the only competent authority to decide this matter in view of section 26 (6). According to him, the non-applicant would not have by himself decided that the meter installed was not recording the actual consumption because such a decision could only be given by the Electrical Inspector.

He lastly prayed that the non-applicant be directed to charge energy consumption based on the average of six months immediately proceeding 01.09.2002 which according to him works out to 8430 units for the months of September & October, 2002. He also prayed that excess amount already recovered may be ordered to be refunded to the applicant alongwith interest @ 12% per annum.

The applicant's representative has submitted copies of following documents in support of his contentions.

- 1) The applicant's letter dated 30.06.2005 addressed to the Internal Grievance Redressal Unit raising his complaint and requesting for refund of excess amount

of Rs. 2,91,232/- and interest + D.P.C. recovered by adopting improper tactics by the authorities.

- 2) The applicant's letter dated 16.10.2002 addressed to the Executive Engineer, MIDC Division, MSEB, NUZ, Nagpur requesting for correction of the excessive energy bill of Rs. 1,37,540/- for the month of September, 2002.
- 3) The applicant's letter dated 30.10.2002 addressed to the Executive Engineer MIDC Division, Nagpur reminding him to correct his energy bill for the month of September, 2002.
- 4) The applicant's letter dated 14.11.2002 addressed to the Executive Engineer, MIDC Division, Nagpur again reminding him to correct his energy bill for the month of September, 2002.
- 5) The applicant's letter dated 23.12.2002 on the subject of revised power consumption bill for the month of September, 2002.
- 6) The applicant's letter dated 29.03.2003 addressed to the Executive Engineer, MIDC Division, Nagpur on the subject of revised power consumption bill for the month of September, 2002.
- 7) Test report dated 28.10.2002 of Testing Division, Nagpur Urban Zone, Nagpur in respect of the applicant's meter, being meter number MSE 02494.
- 8) Test report dated 11.11.2002 of the Testing Division, Nagpur Urban Zone, Nagpur in respect of the applicant's second meter, being meter number 01069935.

- 9) The applicant's energy bill dated 09.10.2002 for Rs.1,37,540/- for the month of September, 2002 showing consumption of 36948 units.
- 10) The applicant's energy bill dated 13.11.2002 for the month of October, 2002 for Rs. 2,49,060/- including arrear amount of Rs. 1,40,139.63.
- 11) Duplicate bill dated 28.12.2002 for Rs. 1,50,000/-.
- 12) The applicant's energy bill dated 08.01.2003 for the period from 30.11.2002 to 31.12.2002 for Rs. 1,80,540/- showing inclusion of arrear amount of Rs.1,41,965.46/-.

He lastly prayed that his grievance may be removed and relief granted to the applicant in terms of his contentions.

The non-applicant has stated in his parawise report that the applicant's energy bills for the month of September & October, 2002 were found to be excessive compared to applicant's earlier average consumption for the last 12 to 15 months. Hence, responding to the complaint of the applicant, the Executive Engineer, Testing Division was requested to carry out testing of the applicant's meter, being meter number MSE 02495. Accordingly the applicant's meter was tested on 28.10.2002. This test report indicated that the meter was behaving erratically. Based on this testing report, the Assistant Engineer MIDC S/Dn-II submitted the bill revision proposal for 41530 units for the months of September & October, 2002 as against consumption of 66613 units recorded by the applicant's meter. This proposal was studied by the Executive Engineer, MIDC Division and the Assistant Engineer concerned was asked to submit a revised proposal

alongwith data retrieval reports. The revised proposal received from the Assistant Engineer was without M.R.I. and it also disclosed that the meter in question was handed over to the Testing Division for carrying out data retrieval. On receiving data retrieval report from the Testing Division, it was noted that there was a wilful accumulation of consumed units and that the bill revision proposal was deliberately submitted by the Jr. Engineer to give illegal credit to the applicant there-by putting the Company to a loss of revenue amounting to Rs. 78,492/-.

According to the non-applicant, a clarification on erratic behavior of the applicant's meter was also sought from the Executive Engineer, Testing Division who informed that erratic behavior does not affect the KWH consumption.

The non-applicant has also given a comparative statement indicating meter readings obtained through data retrieval and those taken by the Jr. Engineer concerned. Placing reliance on this statement, the non-applicant vehemently argued that the readings taken by the concerned Jr. Engineer were much less than those revealed by M.R.I. data retrieval. The applicant was, thereupon, informed that his energy bills are in order and that they can not be revised. He was also asked to pay 50% of the bill amount as first installment immediately and to pay the remaining balance on a later date.

The non-applicant concluded by saying that the T.O.D. energy meter installed in the applicant's Unit was not defective and that no excess bill is charged to the applicant for the months of September & October, 2002 and further that the applicant was also accordingly informed on 03.01.2003.

The non-applicant has produced following documents in support of his contentions.

- 1) His letter dated 03.01.2003 addressed to the applicant communicating to him that his energy bills are in order.
- 2) His letter dated 02.01.2003 addressed to the applicant asking him to pay the arrear amount of Rs.2,52,527/- in two installments, the first installment being of Rs.1,50,000/- to be paid before 28.12.2002.
- 3) The Jr. Engineer, MIDC S/Dn-II, MSEB, NUZ, Nagpur's proposal dated 17.12.2002 in respect of correction of the applicant's energy bills.
- 4) A letter dated 16.01.2003 of the Executive Engineer, Testing Division, NUZ, MSEB, Nagpur addressed to the Executive Engineer, MIDC Division Nagpur on the subject of data retrieval in respect of the applicant's meter.
- 5) A letter dated 29.11.2002 of the Executive Engineer, MIDC Nagpur addressed to the Assistant Engineer MIDC S/Dn-II Nagpur in respect of Testing of C.T. operated meters for the month of October, 2002.
- 6) A letter dated 07.11.2002 of the Executive Engineer Testing Division, MSEB, NUZ, Nagpur addressed to the Assistant Engineer, MIDC S/Dn-II, Nagpur on the subject of testing report of C.T. operated meters for the month of October, 2002 pertaining to as many as 21 industrial units in MIDC including that of the applicant.
- 7) A sheet showing the billing parameters for MRI data retrieval in respect of meter number MSE 02494.

8) Explanation of one Shri Fadanvis, Jr. Engineer, MIDC S/Dn-II dated 08.01.2003 addressed to the Executive Engineer, MIDC Dn., MSEB, Nagpur.

The non-applicant lastly prayed that the grievance application in question may be rejected.

We have carefully gone through all the documents produced on record by both the parties and also all oral and written submissions made before us by both the parties.

The main grievance of the applicant is in respect of excessive billing of his energy meter for the months of September & October, 2002 and in respect of his defective meter.

The contention of the applicant's representative is that his meter, being meter number MSE 02494, was found to be behaving erratically by the Testing Division, NUZ, Nagpur. Relying on the test report dated 28.10.2002 of the Testing Division, he has stressed that his meter was undoubtedly defective and the result was that excessive bills were received by the applicant for the months of September & October, 2002.

Looking to the submissions made by both the parties, the applicant's case needs to be examined from the view points of legal provisions as well as the facts leading to circumstantial evidence.

The applicant's stress is on the legal provision of section 26 of the Indian Electricity Act, 1910 while the non-applicant's stand is that there no case of applicant's meter being defective.

Section 26 (6) of the Indian Electricity Act, 1910 provides that where any difference or dispute arises as to whether any meter is or is not correct, the matter should be

decided upon the application of either party by an Electrical Inspector. This provision is, therefore, attracted only when a meter is defective. In view of this legal provision, it needs to be ascertained first whether the applicant's meter was defective or not.

The applicant has produced a copy of the test report dated 28.10.2002 of the Testing Division which reveals that 1) C.T. of "B" phase was over heated, and 2) the meter was found to be behaving erratically. There is also an endorsement in this report that the applicant's meter should be replaced alongwith cabinet. The non-applicant, on his part, has stated that the MRI data retrieval of the applicant's meter proves that the T.O.D. energy meter installed at the applicant's premises was not defective and that it was in order.

Against this background of contested claims of the parties, it is necessary for us to decide whether the applicant's meter can be construed to be defective or otherwise.

In the first place, it is pertinent to note that the process of data retrieval for the applicant's meter was carried out in the testing laboratory behind the back of the applicant. Even the non-applicant has admitted before us that the applicant was not given any pre-intimation about the Testing of the applicant's meter in the Testing laboratory when the process of data retrieval was to be undertaken. He also admits that such a pre-intimation ought to have been given. This fact alone amply demonstrates that there was no transparency in the non-applicant's action of testing the applicant's meter second time when the process of data retrieval was undertaken. The applicant's representative has strongly pleaded this point of absence of transparency in the

non-applicant's action. Secondly, it is also pertinent to note that the applicant was asked to pay for the meter testing charges and that this charge was duly paid by the applicant. In view of this position, it becomes more essential on the part of the non-applicant to have carried out the data retrieval in the testing laboratory in the presence of the applicant or his authorized representative. The principles of natural justice also strongly support this view. Since this has not been done, the applicant's contention in respect of total absence of transparency in the non-applicant's action will have to be accepted. According to us, any further action taken by the non-applicant pursuant to the testing report dated 28.10.2002 in respect of the meter in question ought to have been absolutely transparent particularly when the very first report of the Testing Division shows that the applicant's meter was defective. Even the bear reading of the testing report dated 28.10.2002 demonstrates that the applicant's meter was defective.

In the testing report dated 28.10.2002, the representative of the Testing Division has specifically remarked that the meter may be replaced alongwith the cabinet. There is no indication available either in the non-applicant's parawise report or for that matter in the submissions made before us as to whether the cabinet was replaced. It is also not forth-coming whether the C.T. was replaced or not.

Hence, the non-applicant's contention that the first test report dated 28.10.2002 was not correct can not be accepted by us in the light of above position.

Since the applicant's meter was defective as revealed by the Testing Division on 28.10.2002, the legal provision contained in section 26 (6) of the Indian Electricity Act, 1910 becomes applicable in the instant case. Initially, it was the applicant who raised a dispute about his meter being defective. There are no two opinions in this regard. Even the non-applicant also admits this fact. Hence, once the first testing report of the applicant's meter indicates erratic behaviour of the meter there-by clearly demonstrating that the applicant's meter was defective, it was essential for the non-applicant to get the dispute decided by the Electrical Inspector which alone was the course upon to him in view of section 26 (6). The non-applicant could not have by himself decided that the meter installed was not recording actual consumption because such a decision can only be given by referring the dispute to the Electrical Inspector. Admittedly, the non-applicant has not referred the dispute to the Electrical Inspector. Hence, the decision of the non-applicant in brushing aside the Testing Division's report dated 28.10.2002 by himself was not in tune with the legal provision contained in section 26 (6) of the Indian Electricity Act, 1910. The contention of the applicant's representative raised in this respect is not only convincing and correct but it also draws the legal support of section 26 (6).

The non-applicant has produced a copy of explanation given by a Jr. Engineer one Shri Sunil Fadanvis on 08.01.2003. Relying on this explanation, the non-applicant pleaded that the Jr. Engineer has admitted his mistake of erroneous meter reading and that hence this, in turn, proves that the meter was not defective. However, we are unable to

accept this contention of the non-applicant on the ground that the applicant's meter was firstly found to be defective by the Testing Division on 28.10.2002 and further that the non-applicant failed to refer the dispute to the Electrical Inspector as stated above. The mere admission of the Jr. Engineer obtained by the Nodal Officer cannot be of any help to the non-applicant.

The applicant's representative has, during the course of arguments, submitted that the procedure adopted at the time of MRI data retrieval has not been fully explained by the non-applicant. This contention deserves be accepted because the full test report of data retrieval has not been produced on record by the non-applicant. What is produced by the non-applicant is one simple sheet indicating certain billing parameters which is not adequate. Secondly, as stated above, there is a total absence of transparency in the non-applicant's action.

Since the applicant's meter was defective, it follows that the applicant's energy bills for the months of September & October, 2002 were erroneous and they will have to be revised by the non-applicant. In that, the non-applicant will have to arrive at the figures of applicant's energy consumption during these two months on the basis of average of preceeding three months prior to September, 2003.

The applicant's representative has also contended before us that the applicant has already paid the amounts of erroneous energy bills and he has claimed refund of excess amount of Rs.2,91,232/- + interest and DPC collected by the non-applicant. The applicant's case for refund is found to be

justified by us in view of the observations made by us in the preceeding paragraphs.

The non-applicant will, therefore, have to work out afresh the net amount of refund payable to the applicant keeping in view our observations.

In the light of above, we accept the applicant's grievance application and direct the non-applicant to revise the applicant's energy bill for the months of September & October, 2002 in terms of observations made by us in this order and to work out amount of refund and pay this amount to him alongwith interest @ 9% per annum.

The non-applicant shall report compliance of this order to this Forum on or before 31.10.2005.

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.**