

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

Case No. CGRF(NUZ)/065/2005

- Applicant : Shri Abdul Gafoor sk. Gulab,
Plot No. 42, Azamshah Layout,
Ganesh Nagar,
Nagpur.
- Non-Applicant : The Nodal Officer,
Executive Engineer,
Mahal 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 25.10.2005)

The present grievance application is filed before this Forum on 05.10.2005 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 erroneous charging of amount of Rs.12,824=07 in the

applicant's energy bill dated 11.03.2004 for a total amount of Rs. 16,320/-.

The applicant had earlier 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 application dated 26.06.2005 under the said Regulations raising therein this grievance. However, this Unit utterly failed to provide any remedy to the applicant's grievance within the prescribed period of two months. Hence, the present grievance application.

The matter was heard by us on 25.10.2005 when both the parties presented before us their respective arguments. Documents produced on record 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 furnish before this Forum his parawise remarks on the applicant's application in terms of Regulations 6.7 and 6.8 of the said Regulations. Accordingly, the non-applicant submitted his parawise report dated 10.10.2005 before this Forum on 24.10.2005. A copy thereof was given to the applicant on 25.10.2005 before the case was taken up for hearing and he was given opportunity to offer his say on this parawise report also.

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

The Flying Squad checked the premises of the applicant on 25.06.2005 and this Squad detected that the applicant's connected load was 7.5 HP as against the sanctioned load of 5

H.P. The capacitor was also not found to be in working condition and M.T.G. seal was missing. The Flying Squad reported this matter to the Executive Engineer, Mahal Division, MSEB, Nagpur vide its report dated 20.07.2002. Accordingly, assessment in respect of connected load penalty and capacitor penalty was worked out by the non-applicant for the period from December, 2001 to January, 2004 and assessment amount of Rs.12,824=07 was charged to the applicant in his energy bill dated 11.03.2004 for the period from 31.01.2004 to 28.02.2004 for a total amount of Rs.16,320/-

It is this action of the non-applicant that is challenged before us by the applicant under the said Regulations.

It is the applicant's contention that the penalty amount charged for a period of 26 months was communicated to him for the first time in March, 2004 when he received his energy bill dated 11.03.2004 for the period from 31.01.2004 to 28.02.2004. It is his submission that he never exceeded his sanctioned load and further that the action of charging of the assessment amount in question is unjust, improper & not legal.

He has submitted copies of the following documents in support his contentions.

- 1) His complaint application in the prescribed annexure "X" dated 26.06.2005 addressed to the Internal Grievance Redressal Unit.
- 2) Testing report dated 06.04.2004 addressed by the Dy. Exe. Engineer, Testing Division, NUZ, Nagpur

addressed to the Jr. Engineer, Umred Road, Mahal Division, MSEB, Nagpur communicating that the working of capacitor of the applicant's unit was found to be satisfactory.

- 3) Test report dated 08.04.2004 furnished by the applicant before the non-applicant.
- 4) The applicant's energy bill dated 11.03.2004 for a total amount of Rs.16,320/- for the period from 31.01.2004 to 28.02.2004 showing inclusion of penalty assessment amount of Rs. 12,824=07.
- 5) The non-applicant's duplicate bill dated 17.02.2005 for Rs. 4000/-.
- 6) The meter change report dated 15.10.2004.
- 7) The applicant's unsigned application dated 06.09.2004 addressed to the Jr. Engineer, Umred Road office of MSEB, Nagpur requesting for withdrawal of excess amount charged to the applicant.
- 8) The applicant's energy bill dated 08.12.2004 for a total amount of Rs.19,630/- for the period from 31.10.2004 to 30.11.2004 showing inclusion of arrear amount of Rs.18,874=81.

The applicant lastly prayed that his grievance in question may be removed.

The non-applicant has stated in his parawise report that the applicant's premises came to be checked by the Flying Squad on 25.06.2002 when it was found that the

applicant's connected load was 7.5 H.P. as against his sanctioned load of 5 H.P. The Flying Squad also found that the capacitor was in disorder and that the M.T.G. seal was missing. Accordingly, assessment was worked out and penalty amount of Rs.11,700 + Rs.1124.07 for the period from December,2001 to January,2004 was charged in the applicant's energy bill for the month of February, 2004. Since the applicant did not pay this amount, his supply was disconnected.

He further contended that the applicant's premises was checked again on 06.04.2004 at the applicant's request and the connected load was found to be 5 HP.

He added that this matter pertains to un-authorized use of electricity in as much as physically connected load was found by the Flying Squad to be 7.5 HP as against his sanctioned load of 5 HP and hence, the applicant's grievance application may be rejected.

The non-applicant has produced a copy of applicant's Consumer Personal Ledger for the period from December 1997 to July, 2005.

We have carefully gone through the record of the case, all documents produced on record by both the parties and also all submissions made before us by both of them.

The applicant's main grievance is about erroneous inclusion of the assessment amount of Rs.12,824=07 in his energy bill dated 11.03.2004.

It is not disputed by the non-applicant that the penalty assessment amount of Rs.12,824=07 pertains to the

period from December, 2001 to December, 2004 i.e. for a period of 26 months and further that this amount is shown as recoverable for the first time in the applicant's energy bill dated 11.03.2004. This means that the penalty assessment amount in question is claimed to be recoverable after lapse of period of two years from the date on which this amount became first due for recovery. It is also an un-disputed fact that this amount was not shown as continuously recoverable in the applicant's monthly energy bills as arrear of charges until 11th March, 2004.

According to us, the legal provision contained in section 56 of the Electricity Act, 2003 is attracted in the instant case. The text of the section 56 reads as under.

“(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

PROVIDED that the supply of electricity shall not be cut off if such person deposits, under protest,--

(a) an amount equal to the sum claimed from him, or
(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything 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 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.”

From the plain reading of the aforementioned text of section 56, it is clear that these provisions apply to any sum other than a charge for electricity due from a consumer to a licensee. The words “any sum” mean and include any sum may it be pertaining to the assessment in respect of even the un-authorized use of electricity.

The non-applicant has also admitted before us that the penalty assessment amount for a period of 26 months has been charged in the instant case after expiration of period of two years from the date on which this sum became first due. It has also been admitted by him that this sum was not shown continuously as recoverable as arrear of charges in the applicant’s energy bill within the prescribed period of two years.

It is evident from record that the penalty assessment amount in question is charged to the applicant for the first time in his energy bill dated 11.03.2004. Section 56 of

the Electricity Act, 2003 has come into force w.e.f. 10.06.2003. Hence, it is crystal clear that the provision contained in section 56 are very much applicable to the instant case.

It is pertinent to note that the non-applicant admits in his parawise report that the Flying Squad, upon inspection of the applicant's premises on 25.06.2002, reported the matter to him in July, 2002. This means that the non-applicant was aware of the alleged un-authorized use of electricity since July, 2002. Against this background, the Executive Engineer concerned seems to have worked out the penalty assessment amount and charged it to the applicant as late as 11.03.2004. This demonstrates that the Executive Engineer kept quiet and did not take any action on the Flying Squad's report diligently though he duly received the report way back in July,2002. He kept the matter pending from July,2002 till 11.03.2004 without any plausible reason. In fact, he had adequate time at his disposal to work out the assessment amount and charge it to the applicant in or before January,2004 when the prescribed period of two years was expiring. He could have easily charged the applicant much before January,2004 since he had adequate time of about one year and five months i.e. from July, 2002 till January,2004. The delayed action on the part of the Executive Engineer, Mahal Division, M.S.E.DC.L., Nagpur has put the non-applicant Company to an avoidable loss of Rs.12,824.07/-.

In the result, we are inclined to hold and do hold accordingly that the non-applicant's action of recovering the penalty assessment amount of Rs.12,824.07/- from the

applicant is time-barred in terms of section 56 (2) of the Electricity Act, 2003.

In the light of above, we accept the grievance application of the applicant and direct the non-applicant that the amount in question shall not be recovered from the applicant and further that interest, if any, charged on this amount from March, 2003 onwards shall also not be recoverable from the applicant.

The non-applicant has already disconnected the applicant's supply of energy on the ground of non-payment of the assessment amount in question. Since we have held that the non-applicant's action of charging the assessment amount is time-barred, it follows that his action of disconnecting the applicant's power supply was also not legal.

We, therefore, direct that the applicant's supply of electricity should be restored on or before 27th October, 2005.

The non-applicant shall report compliance of this order to this Forum on or before 31.10.2005 without fail.

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.**