

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

Case No. CGRF(NUZ)/51/2012

Applicant : M/s. Shiva Industries,
Shri Parmanand G. Moryani,
87, Wanjra Layout, Pilli Nadi
Kamptee Road, NAGPUR.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
M.S.E.D.C.L. NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Smt. Gouri Chandrayan,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON 4.7.2012.

The applicant filed present grievance application before this Forum on 30.4.2012 under Regulation 6.5 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

1. In Main Grievance application, applicant had also claimed Interim Relief under regulation 8.3 of the said Regulations.

2. The applicant's case in brief is that since 30.1.2012 he is filing various applications to M/s. SPANCO, Franchisee of distribution licensee that his meter is faulty and not in proper working condition. On 3.2.2012, applicant filed an application for replacement of meter. On 26.4.2012, officers of M/s. SPANCO visited the factory of the applicant with new meter but no C.T. and hence the said meter was not replaced. On 27.4.2012, the subject meter was taken out and supply was made direct at 11 P.M. and assured that installing new meter within day or two. On 27.4.2012 at 11.15 A.M., as there was no written order by SPANCO for direct connection, the applicant reported the matter to Police Station. Then applicant received electricity bill on average basis for March 2012 for Rs. 89,890/-. The applicant filed objection with SPANCO on 28.4.2012. Power supply of the applicant was disconnected without notice under section 56 of Electricity Act 2003, on 28.4.2012. Business of the applicant is seasonal being Ice Factory. The peak season was coming since April to June. Therefore disconnection without notice is illegal and it was necessary to reconnect electricity supply till disposal of the matter on merit. For that purpose, applicant also claimed interim relief under regulation 8.3 of the said regulations. After hearing both the sides Forum on the basis of majority view passed interim order Dt. 30.4.2012 directing M/s. SPANCO to restore the electricity supply of the applicant with immediate effect and not to disconnect the same till disposal of the matter. The matter was fixed for final hearing.

3. On merits, it is the contention of the applicant that entire action of M/s. SPANCO is illegal. The applicant had not committed any offence. There is no prima-facie case under section 135 of electricity Act 2003. Bill of energy issued by M/s. SPANCO for the month of March 2012 on average basis is illegal. After passing of interim order by the Forum, non applicant was issuing illegal theft bill and pressurizing the applicant to pay immediately, otherwise they are not ready to reconnect the supply. Since business of the applicant is seasonal and due to disconnection of electricity entire business of the applicant was vanished and there is heavy loss to the applicant. Therefore the applicant has no other alternative but to pay the same for continuation of supply "Under Protest", The applicant has paid the bill of Rs. 73,415/- under protest with a clear cut understanding that no theft was detected till today. The applicant had paid amount of Rs. 73415/- towards adjustment of average bill of March to April 2012 and he is liable to pay energy bill onwards 27.4.2012. M/s. SPANCO was not issuing proper bills till today. It is necessary to issue correct bill to the applicant and credit for the sum of Rs. 73415/- may be granted to the applicant.

4. Non applicant M/s. SPANCO denied the applicant's case by filing reply Dt. 22.6.2012. It is submitted that without availing the alternate remedy of approaching IGRC, the applicant filed present application directly before this Forum and therefore it is untenable at law. The applicant is booked under section 135 of electricity act 2003 and

therefore this Forum has no jurisdiction to entertain the complaint. The applicant deposited theft assessment of Rs. 73415/- and therefore the grievance application deserves to be dismissed.

5. It is further submitted that on 27.4.2012, Flying Squad of SPANCO had inspected the meter and it was revealed that the applicant is using electricity service connection through a tampered meter. On 27.4.2012, the said meter was inspected before representative of the applicant and it was found that applicant is using the electricity service connection through tampered meter as per section 135 of Electricity Act 2003. Representative of the applicant refused to accept the acknowledgement of the documents and forcefully avoided seizer of the meter, snatched the meter and feed from the factory. Consequently, even after detection of offence of the theft, tampered meter could not be seized for further investigation and laboratory testing. In respect of said incident, police complaint has been lodged in Yashodharanagar police station against the applicant. It is a case under section 135 of electricity act 2003 for theft of electricity for which assessment bill of Rs. 73415/- was served on the applicant. The grievance application is false and deserves to be dismissed.

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

7. So far as this matter is concerned, there is difference of opinion amongst members of Forum. Therefore judgment is based on majority view of Hon'ble Chairperson and Hon'ble member of the Forum whereas dissenting note of Hon'ble member / secretary is noted at the bottom being part of the order.

MAJORITY VIEW OF HON'BLE CHAIRPERSON AND
HON'BLE MEMBER OF THE FORUM

8. On careful perusal of the record, it appears that there is no prima-facie case under section 135 of electricity act 2003. It is pertinent to note that in reply of the non applicant Dt. 22.6.2012, in Para 2, non applicant M/s. SPANCO submitted that in respect of Incident of theft of electricity police complaint has been lodged against the applicant in Yashodharanagar Police Station. However, it is rather surprising to note that copy of report lodged by M/s. SPANCO in Yashodharanagar Police Station or copy of printed F.I.R. of police station is not produced on record for the reasons best known to the non applicant. According to "5th Proviso" of Section 135 of Electricity Act 2003, it is specifically provided as under:-

"Provided further that such officers of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to commission of such offence in police station having jurisdiction within 24 hours from the time of such disconnect".

9. According to reply of M/s. SPANCO Dt. 22.6.2012 they have inspected the spot on 27.4.2012 and detected alleged theft. Therefore according to above said "Proviso" of Section 135 of Electricity Act 2003, it was incumbent on the part of non applicant to lodge report in the police station. It is the contention of non-applicant that report is lodged in Yashodharanagar police station. However, as we have already pointed out copy of the report and printed FIR of police station is not placed on record for the reasons best known to the officers of M/s. SPANCO. Therefore forum has no other alternative but to come to the conclusion that there is no prima facie case under section 135 of electricity act 2003.

10. It is the case of non applicant M/s. SPANCO that applicant was using the electricity service through tampered meter. However, it is surprising to note that there is no seizer of alleged tampered meter by M/s. SPANCO. No such seizer panchanama of tampered meter is produced on record. Even detail spot panchanama of the happening of all events is not produced on record. Nothing is admittedly seized from the spot. "According to Section 135 (2) (b) and according to section 135 (3) of Electricity Act 2003, non applicant is authorized to seize and remove all such devices, instruments, wires, and other facilitators or articles which has been or is being used for unauthorized use of electricity and occupant of the place of search or any person on his behalf shall remain

present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupants or person who shall sign the list". However, in this case, nothing is seized from the spot, even not alleged tampered meter. No list of seized material is prepared. It is note worthy that only one spot panchanama is alleged to have been prepared by officers of M/s. SPANCO. However, there is no signature of the applicant or his representative on the spot panchanama. Therefore alleged spot panchanama is arbitrary, behind the back of the applicant and principals of natural justice are not followed. We can understand that at the time of hearing of interim relief, officers of M/s. SPANCO, due to shortage of time may not have produce FIR, seizure panchanama and other necessary documents. However, after passing of interim order Dt. 30.4.2012, more than sufficient time is already passed. Therefore if really, M/s. SPANCO lodged report in the police station, it was necessary on their part to produce copy of report, printed FIR of the police station, seizer panchanama and other documents to prove that there is prima facie case under section 135 of Electricity Act 2003. In absence of all those important documents on record, we hold that there is no prima facie case under section 135 of Electricity Act 2003 and therefore this Forum has jurisdiction to decide this matter.

11. Evidence on record shows that it is the applicant who filed the application to M/s. SPANCO on 3.2.2012 in writing that since 30.1.2012, his meter is faulty and not in

proper working condition and therefore requested to change the meter. Even then since 3.2.2012 his faulty meter which was pointed out by the applicant is not changed. There is endorsement of receiving this application by M/s. SPANCO on 3.2.2012. Therefore, it appears that the applicant is honest enough to bring to the notice of M/s. SPANCO on 3.2.2012 itself that since 30.1.2012, his meter is not working properly and it is faulty. In our opinion, the person alleged to have tampered the meter will never pre intimate M/s. SPANCO before one or 2 months that meter is faulty and to replace it. In such circumstances, there is absolutely no possibility of alleged theft. Therefore there is no prima facie case under section 135 of Electricity Act 2003.

12. Further more evidence on record shows that it is the applicant who reported the matter for the first time to police station on 27.4.2012 itself, that M/s. SPANCO has without written order made supply direct from the live wire with apprehension that in future the applicant is likely to be roped in false allegation of theft. Therefore the apprehension of the applicant was most reasonable that in future he is likely to be roped in false allegation of theft. The applicant took all reasonable care and caution and proved that it is not the case under section 135 of Electricity Act 2003 and therefore this Forum has jurisdiction to decide the same.

13. It is the contention of the non applicant that before filing this grievance application, the applicant did not

approach to I.G.R.C. and therefore the grievance application under regulation 6.4 of the said regulation is untenable at law. However, we do not agree with this contention because the grievance application filed by the applicant is submitted under regulation 6.5 and not under regulation 6.4. It is positive contention of the applicant that without service of notice under section 56 of Electricity Act 2003, his supply was disconnected in the peak season of the Ice Factory and therefore claimed interim relief under regulation 8.3 of the said regulation to restore the supply. It is noteworthy that wording of regulation 6.5 is very specific and clear. In such type of case as described under regulation 6.5 of the said regulation, present grievance application is tenable at law.

14. It is the specific contention of the applicant that after passing of interim order by the Forum, non applicant were issuing illegal theft bill and pressurized the applicant to pay the same immediately otherwise they were not ready to reconnect the supply. There was no other alternative and therefore the applicant paid bill of Rs. 73,415/- under protest with clear cut understanding that there is no theft till today. Therefore it can not be said that amount of Rs. 73415/- is paid by the applicant knowingly, willingly and without protest. On the contrary, the said amount was paid under protest. For these reasons, in our opinion, entire action of M/s. SPANCO is illegal and needs to be quashed. Consumer has paid amount of Rs. 73415/- towards adjustment of average bill of March 2012 to April 2012 and he is liable to pay energy bill onwards

27.4.2012. Therefore it is necessary that M/s. SPANCO shall issue correct bill to applicant and amount of Rs. 73415/- paid by the applicant shall be adjusted.

15. The applicant also claimed damages of Rs. 25,000/- per day. However, no detail particulars of said damages is given by the applicant. Considering the facts and circumstances of the case, evidence on record and relevant regulations framed by MERC, in our opinion, applicant is not entitled for any damages or compensation.

DISSENTING NOTE OF HON'BLE MEMBER -
SECRETARY

“1) The present Grievance application filed by the applicant in the Forum on Dt. 30.4.2012 in Schedule ‘A’. The nature of relief sought from the Forum as mentioned in the Schedule is, ‘supply of the consumer reconnected immediately and quash the action and compensation of Rs. 25,000/- per day till supply is restored’. The applicant in his grievance application attached with Schedule ‘A’ also requested to connect the applicant’s supply and quash the action taken by M/s. SPANCO authorities and impose heavy penalty for the loss caused to the applicant due to fault of M/s. SPANCO company in the interest of Justice.

2) The above prayers clearly indicate that the grievance of the applicant is regarding illegal disconnection only and

compensation sought is because of sufferance due to illegal disconnection. Therefore it is necessary to know the reason of disconnection. The documents on record and interim hearing held on 30.4.2012, revealed that disconnection was due to the action by non applicant for booking the applicant under section 135 of Electricity Act 2003. In my dissenting note Dt. 30.4.2012, I had clearly mentioned that -

“5) This part clearly indicates that the connection which booked under section 135 shall be disconnected by the authorized person. The officers of SPANCO are authorized as per the Appropriate authority for dealing the case u/s135 and he has informed to the forum that the process of filing FIR with the corresponding police station is under process. Therefore the action of SPANCO is just and legal as per EA. Hence in my opinion, there should not be any reconnection because the case is booked u/s 135 and the Forum has no jurisdiction to deal such cases as per MERC (CGRF and Electricity Ombudsman) Regulations 2006, Regulation 6.8 (b)”.

3) Further, the documents on record also revealed that the applicant paid the assessment amount of Rs. 73,415/- under protest. After that, the supply was resumed and till date it is connected. In other words, the grievance is resolved as the supply of the applicant was resumed. There is no question of further entertainment, because the Forum in majority view has also given relief against disconnection. In addition to this, in my opinion, the grievance is regarding the action by the non

applicant under section 135, therefore this Forum has no jurisdiction to go into the merits of the case.

4) As per MERC (CGRF & Electricity Ombudsman) Regulations 2006, regulation 6.8 -

“ 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;*
- (b) Offences and penalties as provided under sections 135 to 139 of the Act;*”

The first two lines of above regulation specify that if the Forum is prima-facie of the view that any Grievance referred to it falls within the purview of Section 126,135 to 139 of the Act, the same shall be excluded from the jurisdiction of the Forum. This regulation does not mean that Forum has to prima-facie decide whether the grievance falls within the purview of Section 126, Section 135 to 139 of Electricity Act 2003. The documents on record and submissions of the non applicant clearly indicate that the applicant is booked under section 135. Therefore, the Forum has no jurisdiction to entertain or to decide anything of the grievance filed by the applicant. The applicant cannot escaped by making assessed amount u/s 135 under protest. Also failure on the part of non-applicant to file FIR cannot prove that the assessment and

charges imposed on the applicant u/s 135 is withdrawn by the non-applicant.

5) Therefore, in my opinion, Grievance should be dismissed as it is out of the jurisdiction of the Forum”.

16. For these reasons, majority view of the Forum is of the considered opinion that entire action taken by non applicant is illegal and therefore needs to be set aside and quashed. The applicant has paid an amount of Rs. 73415/- towards adjustments of average bill of March 2012 to April 2012 and he is liable to pay energy bill onwards 27.4.2012. It is necessary for SPANCO to issue correct bill to the applicant and amount of Rs. 73415/- paid by the applicant shall adjusted. However, we hold that the applicant is not entitled for any compensation or damages.

17. We must mention here that present grievance application is filed by the applicant on 30.4.2012 and therefore it was necessary for the Forum to decide it within 60 days i.e. on or before 30.6.2012. However, record shows that applicant was all the while prolonging the matter. On 22.5.2012, the case was fixed for hearing but applicant filed adjournment application and requested that hearing may be adjourned by 3 weeks. As per the order of the Forum Dt. 22.5.2012, the matter was fixed for hearing on 18.6.2012 at 12.00 P.M. However, it was rather surprising to note that on 18.6.2012, again the applicant filed adjournment application and

requested to adjourn the case by 3 weeks. It is note worthy that on 18.6.2012, the applicant and representative of the applicant, both were absent till 1.20 P.M. Hearing of the matter was adjourned and fixed for 22.6.2012 at 12.45 P.M. On 22.6.2012, the applicant Shri Deepak Moryani was present. Officers of MSEDCL and SPANCO were present. Arguments of both the sides were heard and case was closed for order. However, after some time "LATER ON" the applicant requested for submission of written arguments on the reply of non applicant. Forum granted time to file the written notes of arguments till Tuesday 26.6.2012. However, it is surprising to note that again on 26.6.2012 the applicant filed application that 3 days time may be granted to him for filing written submission. On that application speaking order is passed by Forum and in the interest of justice and to follow the principles of natural justice, 3 days time was granted to the applicant to file written notes of arguments as a last chance till 4.7.2012 and it was specifically ordered that the applicant will be held responsible for order finalization beyond 60 days period. Therefore, it is only because of prolonging tactics of the applicant, the forum could not decide the matter within 60 days. Therefore the applicant is responsible for order finalization beyond 60 days period. It is only due to the applicant, the Forum could not decide the matter within 60 days. Today on Dt. 4.7.2012, the applicant filed written notes of arguments and Forum is deciding this matter immediately on the same day. Due to these reasons delay is caused because of the applicant for not disposing the matter within 60 days.

18. Resultantly, the Forum proceeds to pass following order :-

ORDER

- 1) Grievance application is partly allowed
- 2) It is hereby ordered that entire action of flying squad of SPANCO Dt. 27.4.2012 is hereby quashed and set aside.
- 3) M/s. SPANCO is hereby directed to issue correct bill for the month of March 2012 to the applicant as per the provisions of Regulation 15.4.1 of MERC (Electricity Supply Code & other conditions) Regulations 2005 and sum of Rs. 73415/- paid by the applicant under protest shall be adjusted in the bill of March 2012 to April 2012.
- 4) Prayer of the applicant regarding compensation and damages is hereby dismissed.
- 5) Non-applicant shall comply the above order within 30 days from the date of order.

Sd/- (Smt.K.K.Gharat) (Adv.Smt.GauriChandrayan) (ShriShivajirao S.Patil) MEMBER SECRETARY	Sd/- MEMBER	Sd/- CHAIRMAN
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