

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

Case No. CGRF(NUZ)/66/2012

Applicant : M/s. Chaitanya Rice Mill,
At Dumri Khurd, Mansar Road,
Distt. NAGPUR.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Rural Circle,
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 14.8.2012.

The applicant filed present grievance application before this Forum on 26.6.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

1. The applicant's case in brief is that as per application of the applicant for power supply, M.S.E.D.C.L. sanctioned a load of 250 kVA as per order Dated 24.8.2010. In accordance with this order, the applicant paid various charges, procured metering cubicle and also carried out the work of

erection of HT Line as per the estimate of M.S.E.D.C.L. Now the applicant learnt that many of the provisions of M.S.E.D.C.L. order are not in conformity to the charges approved by M.E.R.C. As per Circular of Commercial Section of M.S.E.D.C.L. No. 43 Dt. 27.9.2006, cost of infrastructure is to be borne by M.S.E.D.C.L. Therefore, the applicant claimed the said cost amounting to Rs. 76,848/-. There was hearing before I.G.R.C. in August 2011 but no order is received from I.G.R.C. to the applicant. The applicant was desirous to file the grievance application in September 2011. However, in 3 of the orders passed by this Forum in Case of 1) M/s. Arihant Ispat Dt. 26.8.2011, 2) M/s. Darpan Multi Poly Pack and 3) M/s. Lulla Metals Dt. 2.9.2011 in case No. 29/11, 32/11 and 33/11 respectively, it was ordered by this Forum that the refund cases were not within the jurisdiction of CGRF, hence grievance application was not filed at that time. The applicant recently came to know that as per the order of Hon'ble Supreme Court, this refund is very much within the jurisdiction of C.G.R.F. and therefore the applicant is filing this application. In view of above, it is requested that delay in filing this application may kindly be condoned and case be accepted. The applicant claimed following relief namely –

- i) Refund of cost of infrastructure amounting to Rs. 76,848/-.
- ii) To pay interest at standard rate from the date of application to IGRC till the date of refund.

iii) Direct M.S.E.D.C.L. to issue statement showing calculation of refund amount.

2. Non applicant denied the case of the applicant by filing reply Dt. 21.7.2012. It is submitted that as per **Schedule of charges** approved by Commission on Dt. 8.9.2006 in case No. 70/5, M.S.E.D.C.L. is ready to refund Rs. 67,958/- towards the cost of metering cubicle. M.S.E.D.C.L. is also ready to refund the cost towards testing fees Rs. 500/- to the applicant. Cost of metering cubicle, testing fees and 2.3 % supervision charges as per the estimate will be adjusted in preceding electricity bill of the applicant. M.S.E.D.C.L. denies the claim of the applicant towards cost of agreement charges as it is not regulatory and mandatory charges. M.S.E.D.C.L. submitted that the work of 0.2 Kms. Line is carried out by the applicant through Licensed Electrical Contractor. For getting early supply, the applicant had given consent on Stamp Paper of Rs. 100/- that he is ready to bear the cost of infrastructure. Accordingly, M.S.E.D.C.L. had prepared an estimate under 1.3% supervision charges. In above said estimate, the applicant was supposed to carry out the work of infrastructure through Licensed Contractor paying 1.3 % supervision charges. Being the supervision charges, M.S.E.D.C.L. denies to refund the supervision charges amounting to Rs. 3690/-. The claim of the applicant may be rejected.

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

4. On Page No. 4 of the Grievance application in Column of "Details of Grievance" at the bottom the applicant submitted that the delay is caused in filing the application and requested to condone the delay. However, there is no provision in the said Regulations for condonation of delay and therefore delay can not be condoned as prayed by the applicant. The applicant himself is claiming condonation of delay and therefore in other words applicant is admitting that the Grievance application is barred by limitation, hence deserves to be dismissed.

5. It is note worthy that in Para 4 of reply of M.S.E.D.C.L. Dt. 21.7.2012, it is submitted that "for getting early supply the applicant had given consent on Rs. 100/- Stamp Paper that he is ready to bear the cost of infrastructure". It is noteworthy that along with reply, M.S.E.D.C.L. had produced important documents i.e. consent given by the applicant on Stamp Paper of Rs. 100/- vide Ann. 2 along with reply of M.S.E.D.C.L. It is note worthy that in this consent on Stamp Paper of Rs. 100/-, the applicant had clearly given in writing that applicant wants early supply to his crusher. Therefore the applicant opt to execute the estimated work and ready to bear the cost of infrastructure required as per MSEDCL Circular No. CE(Distt.)/D-III/22/97 Dt. 20.5.2008. "Subject to final proceedings pending with Hon'ble Supreme Court and MERC. Hence the estimate may please be sanctioned. This consent on Stamp Paper of Rs. 100/- is signed by partner of M/s. Chaitanya Rice Mills, Mr. T.

Suryabhagwan. In view of this consent now the applicant can not claim any refund during the pendency of the matter before hon'ble Supreme Court and on this sole ground, the grievance application deserves to be dismissed.

6. In this matter the applicant is claiming cost of infrastructure created to provide power supply to him by M.S.E.D.C.L. Initially, we have to consider whether Claim, Prayer and relief claimed by the applicant fall within the definition of "Grievance" as contemplated under the provisions of Regulation 2.1 (c) of the said regulations.

7. Regulation 2.1 (c) defined "Grievance" as under :-
"Grievance" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes *inter alia* (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non – compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be".

8. Hon. High Court of judicature at Bombay appellate side, Bench at Aurangabad in writ petition no. 2032 of 2011, the

MSEDCL Rural Circle, Aurangabad ---- Vs. M/s. Kaygoan Paper Mill Limited “Manisha” behind Axes Bank Aurngabad in judgment dated 01.07.2011 hold -----

“By no stretch of imagination the grievance of respondent No. 1, mentioned above, would be covered by this definition. A consumer’s grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner-company, as distribution licensee, had been imperfect or otherwise. The grievance of respondent No. 1 is in respect of breach of statutory obligation allegedly committed by the petitioner-company. So, the grievance would not fall within the four corners of the term “grievance” defined under the Regulations”.

In the same authority cited supra writ petition no. 2032 of 2011 MSEDCL Vs. M/s. Kaygaon Papers Mill Limited Hon. His lordship held.- - - - -

“Shri H.F. Pawar, learned Advocate for respondent no. 1 then tried to show me certain orders passed by the Maharashtra Electricity Regulatory Commission in the matter of complaint filed by certain consumers of the petitioner-company for refund of the amount etc. The Commission directed the petitioner-company to refund the amount to the consumer in those cases. I am afraid, even though in similar

situation, the petitioner-company was directed by the Commission to refund the amount to their consumers, still such orders are not capable of being utilized is of civil nature and would not be covered by the term “grievance”. The Consumer Grievance Redressal Forum, which had passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. Respondent No. 2 – Forum thus could not have decided the dispute of this nature. Therefore the orders passed by the Commission will be of no use to respondent No.1”.

Facts of the present case and facts of the Judgment cited are similar and identical. Therefore relying on the Judgment of Hon. High Court, Forum holds that the dispute between the Parties, is of Civil nature and would not cover by the terms “grievance”, therefore this Forum has no jurisdiction to entertain a complaint of this nature. Therefore grievance application deserves to be dismissed.

Further more Hon. High Court of judicature at Bombay Nagpur Bench Nagpur in writ petition no. 988 of 2011 MSEDCL Vs. Consumer Grievance Redressal Forum Amravati Zone, Akola decided on 07.07.2011 hold- - - - -

“The learned counsel for the petitioner submits that the issue as to whether the Distribution Company can recover the expenses in so far as the consumers of the kind, to which the respondent herein belongs, is subjudiced before the Apex Court and the payment therefore, even if made by the respondent for the said dedicated supply, would be contingent upon the decision of the Apex Court.

In the light of the above, the impugned order dated 06.12.2010 would have to be set aside and is accordingly set aside. However, it is made clear that if the respondent no. 2 desires to have a dedicated supply to his Saw Mill, which is outside the Gaathan, the same would be provided, as has been stated on behalf of the petitioner – Company before the CGRF, at the costs of the respondent. In the event, the said cost of the infrastructure is paid by the respondent, needless to say that the same would be subject to the outcome of the proceedings in the Apex Court.”.

9. Relying on judgement of Hon'ble Bombay High Court, bench at Aurangabad so also bench at Nagpur cited supra, the Forum hold that at this moment no relief can be granted to the applicant as prayed for.

10. In Grievance application, the applicant submitted that he was expecting to file grievance application in September 2011. However, in case No. 29/11, M/s. Arihant Ispat Vs. MSEDCL decided on 26.8.2011 2) Case No. 32/11 M/s. Darpan Multi Poly Pack decided on 2.9.2011 and 3) Case No. 33/11 M/s. Lulla Metals decided on 2.9.2011, this Forum held that to refund cost of infrastructure is not within the jurisdiction of this Forum but now the applicant recently came to know that as per order of Hon'ble Supreme Court, this refund is very much within the jurisdiction of CGRF.

However, it is noteworthy that the applicant had not given any detail particulars of citation of above Hon'ble Supreme Court's order and had not given the Case Number, Name of parties and Date of order of Hon'ble Supreme Court. Copy of order of Hon'ble Supreme Court is also not produced on record. Therefore the applicant did not produce anything on record that any such order is passed by Hon'ble Supreme Court. Therefore we find no force in the Grievance application of the applicant. As we have already pointed out, there is nothing on record to show that order passed by Hon'ble Bombay High Court, bench at Aurangabad and Nagpur are set aside by Hon'ble Supreme Court. As per our knowledge, the matter is still subjudice and pending before Hon'ble Supreme Court and therefore during the pendency of matter before Hon'ble Supreme Court, the applicant can not claim any amount from M.S.E.D.C.L. That is the reason why the applicant had given consent on Stamp paper of Rs. 100/- that he opt to executive the estimated work and ready to bear cost of infrastructure required as per M.S.E.D.C.L. circular subject to final proceeding pending with Hon'ble Supreme Court and M.E.R.C. Therefore, it is clear that matter is pending before Hon'ble Supreme Court and therefore no relief can be granted to the applicant at this moment.

11. For these reasons, in our opinion, grievance application deserves to be dismissed.

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

ORDER

1) Grievance application is dismissed.

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