

Before Maharashtra State Electricity Distribution Co. Limited Consumer Grievances Redressal Forum, Pune Zone, 925, Kasabapeth Building, IInd flr. Pune-11

Case No. 16/2010

Date: 02/06/2010

In the matter of Mr. D.A.Deshpande

- Complainant

V/S

M.S.E.D.C.L. Kedgaon Division

- Opponent

Quorum

Chair Person

Mr. A.V.Bhalerao

Member/Secretary

Mr. L.G.Sagajkar

Member

Mr. Suryakant Pathak

- 1) Shri. Dattatraya Anant Deshpande (Complainant for short) purchased the property admeasuring 750 Sq.Mtrs. out of Gat No.156, 154, 168, 171 situated at village Sanaswadi, Ta.Shirur, Dist Pune originally owned by Shri.Amidali Ibrahim Gelani M/s. ASM Steel Foundry in an auction sale held by Debts Recovery Tribunal Pune. After purchasing the property the complainant made an application dt.02/07/2009 for supply of electricity to Maharashtra State Distribution Company Limited (Opponent for short). The opponent by its letter dt. 18/09/09 informed the complainant to make compliance by submitting interalia "NO dues certificate of the charges of electricity in respect of the property to which he had demanded the supply of electricity.The concerned Ex.Engineer made a reference dt. 25/09/09 to the S.E.Baramati Rural Circle to take steps to recover the arrears of the electricity charges due from the erstwhile owner of the property purchased by the complainant. The S.E. Baramati by his

letter 14/01/2010 informed the complainant that before releasing the supply of electricity to the property purchased by him it was necessary for the complainant first to pay six months unpaid charges of the electricity supplied to the premises for the period Nov-97 to April-98 Rs. 1,66,885/- due in respect of that property and also an undertaking in the prescribed form duly notarized with a stamp duty Rs. 200/- The complainant approached the Internal Grievance Redressal Cell (IGRC) but the IGRC did not give any relief to the complainant informing him that the previous owner of the property was a defaulter and the amount of Rs.28,24,968/- was due from him towards Electricity Charges by the end of Sept-2009 and as he wanted the power supply to the said premises it was necessary for him to pay out of the total dues at least six months charges Rs. 1,66,885/- and an undertaking in the prescribed form as directed by the opponent. The complainant not being satisfied with the decision given by the IGRC preferred the complaint to this forum to direct the opponent to release the connection for the supply of electricity without asking him to make compliance of any condition.

- 2) The opponent filed its say and stated that to the property in respect of which the complainant demanded the supply of electricity was occupied by M/s. ASM Steel foundries)and was getting supply of 130KVA with the contract demand 130 KVA and connected load 145 KW under Con.No. 18481902041-1. The original owner was in arrears of the electricity charges Rs. 28,24,968/- The original owner was served with notice of disconnection but he did not clear the arrears and therefore supply was temporarily cut off w. e. f. 31/03/2000. As the original owner did not pay the arrears due from him the special civil suit No. 795/200 was filed against him in the court of civil Judge Senior Division Pune which is still pending. It was

contended that as the complainant purchased the said property in an auction sale in respect of which there were a dues of the electricity charges the complainant was directed to pay the last six month charges as provided under Reg. 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply code and other conditions of supply) Regulations-2005 (MERC ESC Reg 2005) and to execute an undertaking in the prescribed form in view of commercial circular No. 53 dt. 07/05/2007 to obtain the supply of electricity to the said premises. It was further contended that the complainant did not comply the necessary condition of making payment of six month unpaid charges by the original owner and to furnish the undertaking to abide by the decision which would be given by the supreme court in an appeal pending before it the complaint made by complainant to receive the supply without fulfilling those condition be dismissed.

- 3) On the date of the hearing the complainant in person and his representative Mr. Soman were present they submitted that the complainant who is the purchaser of the property should not be fasten with the liability of the arrears of the electricity charges due from the original owner. It was also contended that demand of such arrears from the complainant is barred by time. It was further contended that the undertaking asked for is un warranted.
- 4) On behalf of the opponent Shri. Iware, Ex.Engineer, Circle Office Baramati submitted that unless the complainant pays six months unpaid charges by the original owner whose property the complainant has purchased can not claim supply of electricity to the same premises as provided under Reg. 10.5 of MERC ESC 2005. It was also argued that as the matter of creation of charge for the electricity dues on the property is pending before the supreme court there is nothing wrong in asking the complainant to give an

undertaking to abide by the decision that would be given by the supreme court. The complainant and opponent both produced the documents in support of their cases which will be referred to at the appropriate places in the course of judgment.

5) On rival contentions raised by the parties following point arise for consideration.

1- Is the opponent right in directing the complainant to pay six months unpaid charges of the electricity by the original owner in respect of the property which the complainant has purchased and to execute an undertaking in view of Cir.No. 53 dt. 07/05/2007 to abide by the decision that would be given by Supreme Court in an appeal pending before it for creation of charge for electricity dues on the property.

The above point is answered in the affirmative for the reasons given below.

REASONS

6) **POINT NO.1** :- On behalf of the complainant relying upon decision in super and stainless HI Alloys Ltd. VS State of Maharashtra and others reported in 2003 (i) Mh.L.J. Page 1001 it was argued that liability of the previous owner for unpaid charges of the electricity supplied to the premises can not be fasten upon the purchaser. In the above referred decision a ruling in Isha Marbal VS Bihar State of Electricity Board reported in (1995) 2 Scc 648 was followed wherein the supreme court of India held that " On sale under Sect.29 (i) of State financial corporation Act of the premises for which supply of electricity had been disconnected for non clearance of consumption of charges by the previous consumer/owner would not render auction purchaser liable to meet the liability of the previous Consumer in order to secure reconnection. The supreme court further held that "

The Law as is it stands is inadequate to enforce the liability of the previous contracting party against the auction purchaser who is a third party and is in no way connected with the previous owner/occupier . Therefore there is no nexus of relationship or privity of the contract between the auction purchaser and the Board using such bills unpaid by the previous consumer can be recovered by auction purchaser.

- 7) The above said ruling is of no use to the complainant to avoid to liability to pay six months unpaid charges by the previous owner of the charges of electricity supplied to the premises as there was no regulation creating such liability upon the purchaser in force governing the facts of the case before the supreme court and therefore the supreme court in that ruling observed that the law as it stood was inadequate to enforce the liability of the previous contracting party against the auction purchaser but so far as present case is concerned there is Reg. 10.5 of MERC ESC Reg. 2005

Section 50 of the Elect. Act-2003 empowers the state commission to specify an electric supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non payment, restoration of supply and other cognate matters. In exercise of the power conferred by Sect. 50 the state commission has framed the MERC ESC Reg. 2005. Reg. 10.5 specifically makes a provision creating a liability upon the purchaser to pay un paid charges to the maximum period of six months for the electricity supplied to such premises Reg. 10.5 reads as follows.

Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner/occupier of any premises, as a case may be shall be a charge on the premises transmitted to the legal representatives/successors-in-law or transferred to the new owner/occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner/occupier of the premises, as the case may be.

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.

- 8) In view of the above referred Reg. the complainant who is a purchaser of the property from the owner who was a defaulter in making payment of electricity charges to the tune of Rs. 28,24,968/- is liable to pay at least six months unpaid charges of the last six months preceding the date on which supply was cut off as provided in Reg. 10.5 MERC ESC 2005.
- 9) It was argued on behalf of the complainant that opponent can not recover even six months unpaid charges as they are of the period not following within two years immediately preceding the date of demand made by the opponent relying upon the decision in writ petition No. 6783 of 2009 in MSEDCL VS Venko Breeding Farms Pvt.Ltd. decided by Hon. Justice Mrudula Bhatkar of Bombay high court in which the order passed by learned electricity ombudsman in representation No. 7/2009 was confirmed. Neither the decision by the learned the electricity ombudsman nor the order in the writ is of in any help to the complainant in this case as the facts involved in that case before

the learned ombudsman in representation No. 7/2009 or in the writ petition NO.6783/2009 before the Hon.ble Bombay High Court were altogether different. In that case the licensee had claimed the differential amount from the consumer even of the period beyond 2 years from the date of the demand notice upon which the ombudsman held that the licensee can not claimed the electricity charges of the period beyond two years from the date of the demand. In the instant case the opponent has not claimed the amount as arrears of the electricity charges under Sect. 56 (1) of the Elect. Act-2003 on the ground that the complainant made a default to pay them but the amount of charges of the electricity for the period of six months not paid by he complainant's transferor have been claimed from the complainant who is a transferee under the provisions of Reg. 10.5 of MERC ESC Reg.2005 . The opponent as such has not come to claim the relief of recovery of the arrears of the electricity dues but wants the complainant to discharge its liability if he wants the supply of electricity to the premises in respect of which the dues were not paid by the previous owner and for that default the supply was already cut off. The present case is not governed by Sect. 56 of the Elect. Act to attract the limitation of 2 years to demand six months unpaid charges as provided under Reg. 10.5 of MERC ESC 2005. To make such demand as provided under Reg. 10.5 of MERC ESC 2005 the cause of action accrues to the opponent whenever the purchaser makes an application for getting supply of electricity either fresh or by way of reconnection and therefore in this case there arises no question of such demand being barred by time.

- 10) Besides the above ground so far as the present case is concerned the recovery of the arrears of the electricity charges Rs. 10,31,353/- as on 30/03/2000 the opponent has instituted a special civil suit No.

797/2000 which is pending in the court of civil judge senior division Pune. As the said matter is sub judice this forum has no jurisdiction to harp on it as it is excluded from its jurisdiction as per Reg. 6.7 (D) Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) (MERC CGRF Reg. 2006)

11) It has been argued that opponent has asked the complainant to give in writing an undertaking to abide by the decision that would be given by the supreme court in an appeal pending before it. From the contents of commercial circular No.53 dt 07/05/2007 it is seen that in an appeal No. 5312, 5313 of 2003 when the question arose before the Hon.ble Supreme court as to whether electricity dues constitute a charge on the property as far as transferor and the transferee of the unit are concerned it was referred to Hon. Chief Justice of India for necessary directions to hear the said matter by the three judge bench. The opponent by asking the complainant to give an undertaking only wants the complainant to abide by the decision that would be given in the appeal No. 5312, 5313 of 2003. In doing so the opponent is not doing anything illegal.

12) It has been brought to our notice by the opponent on producing a simple xerox copy of the order in writ petition No. 4214/ 2009 passed by the High Court of Judicature at Bombay appellate side bench at Aurangabad by which the MSEDCL was directed to consider the application of the consumer on consumer making payment of six months unpaid charges and on giving the undertaking to the effect that consumer will abide by the outcome of the supreme court decision. In the instant case on the same line the opponent has directed the complainant to make compliance of making six months unpaid charges of the electricity by the previous owner whose property he has purchased in an auction sale and to give an

undertaking to abide by the decision that would be given by the supreme court in a pending appeal before it. If the complainant wants the supply of electricity to the premises he will have to make compliance as asked by the opponent.

ORDER

The complaint stands dismissed.

Sign:

Mr.L.G.Sagajkar
Member/ Secretary

Shri.Suryakant Pathak
Member

Mr. A.V. Bhalerao
Chair Person

Date: 02/06/2010