

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

Case No. 02 of 2010

Date: 03/03/2010

In the matter of Mr. Sandesh Rajendra Singh Sengar - Complainant

V/S

M.S.E.D.C.L. Nagarroad Division - Opponent

Quorum

Chair Person	Mr. A.V.Bhalerao
Member/Secretary,	Mr. L.G.Sagajkar
Member	Mr.Suryakant Pathak

- 1) Shri.Sandesh Rajendra Singh Sengar (Complainant for short) has come with number of grievances dating back 2002. The case made out by him in brief is that he purchased shop No.1 in Samarth House Vidyanagar on 12/11/2002. On complaint made by his father to Maharashtra State Electricity Distribution Co. Ltd. (Opponent for short), meters were installed for some flats, however in spite of demand of electric meter was not installed for his shop. As the opponent did not install the meter within one month as provided by Sect. 43 (i) of the Elect. Act-2003 (Act for short) his father gave him supply of electricity from his flat to his shop in the month of Oct-2006 wherein he had started a cyber café. Though he had obtained temporarily supply of electricity from his father's meter he was pursuing

for fresh connection to his shop by visiting Shri.Halnoor,Dy.E.E. of the opponent. Shri. Halnoor visited the site but instead of taking steps to provide new connection implicated him in a case of theft of electricity and demanded the amount of Rs. 11,930/- as an assessment under Sect.126 of the Act by a bill dt. 13/03/07 without following the procedure for assessment as laid down in that Section of the Act. The Dy.E.E. of the opponent also made a demand of compounding charges Rs. 20,000/- The complainant paid the amount of assessment Rs. 11,930/- on 15/03/07 and compounding charges Rs. 20,000/- on 16/03/07 and only thereafter the firm quotation for the supply of electricity of his hop was issued on 16/03/07 for the amount of Rs. 4,800/- . The complainant paid the said amount and the meter was installed for his shop on 17/03/07. The complainant has claimed compensation for the delay caused since 2002 till the supply of electricity was given on 17/03/07 He has also claimed compensation for harassment and agony to him and to his father who suffered heart attack in the month of Dec-2004.

2) After the supply of electricity was given to the complainant's shop under Con.No. 160231065277 the electricity bill were never raised based on reading recorded by the meter. One bill was raised for Rs. 25,000/- without giving reading and the units consumed directing the complainant to pay the amount on or before 28/10/09, the next bill dt.

05/11/09 was for 25 units and suddenly thereafter received a bill dt. 2/12/09 for the amount of Rs. 91,991.67 showing the units consumed as 2106. The complainant made a complaint on 18/12/09 to the opponent as the bill was raised suddenly for the huge amount. The complainant could not pay the amount claimed in the bill and therefore supply of electricity to his shop premises was cut off without giving a prior notice as provided under Sect. 56 of the Act. The complainant made a grievance about the irregularity in the bill thereupon he was directed to pay the amount of Rs. 92,310/- in three installments , first installment of Rs. 40,000/- instantly and second and third Rs. 25,000/- each on 25/01/10 and 25/02/10 respectively. After payment of Rs. 40,000/- the electricity was restored to the shop. In spite of making payment as directed by Dy.E.E. Supply was again cut off on 20/01/2010 without prior notice and it was restored only on making complaint on 21/01/2010.

- 3) The complainant further contended that the opponent till the date of the complaint did not pay the interest on security deposit Rs.4, 000/- . The complainant claimed compensation for illegal disconnection twice one on 15/12/09 second on 20/01/2010. The complainant claimed that meter should be tested for its accuracy and test report be supplied to him.
- 4) The opponent submitted its say and contended that the complainant first made application for supply of electricity to his shop in the month

of Sept-2006 and thereafter when complainant's premises were visited it was found that he was using electricity by committing theft and therefore an assessment was made and only after making payment of assessment and compounding charges, the supply of electricity was given to the complainant's shop. The opponent admitted that supply of electricity to the complainant's shop was cut off by the opponent's employee as complainant was shown in arrears in the list of the defaulters provided to him. The employee was not aware of the fact that complainant was given concession to make payment of the arrears in suitable installment and that he had already paid one installment of Rs. 40,000/- as agreed. So far as not raising bills on the basis of meter reading it was contended that there was a soft ware problem however the complainant at no time voluntarily demanded the bill when he did not receive bills regularly. It was averred by the opponent that the interest on the security deposit is paid yearly by making adjustment in the bill and it would be so adjusted.

- 5) On the date of hearing the complainant and his father remained present and argued the case and claimed compensation for disconnection which was done without prior notice. It was further argued that the opponent be allowed to recover the charges only for a period of 3 months preceding the date on which the bill was raised on the basis of meter reading.

6) On behalf of the opponent Shri.Halnoor, Dy.E.E. argued that the complainant by mixing the facts of supply of electricity to the residential premises in the 2002 and the supply of electricity to his shop is trying to mislead. The complainant had never made any application for supply of electricity to his shop premises in the year 2002. On application made by the complainant for the supply of electricity to his shop when the shop premises was inspected it was found that the complainant by committing theft was using the electricity for the shop premises and therefore only after payment of assessment for the use of electricity by theft and compounding fee the supply was given within reasonable time. It was further argued that the supply was cut off twice but when supply was cut off first it was only after notice and second time supply was cut off by mistake and on both occasion supply was restored immediately. ON first occasion when part payment was made and on second occasion mistake was realized and therefore opponent should not be penalized. It was agitated on behalf of the opponent that due to software problem, the billing in case of complainant was started late and in the mean time the bills were issued without reading on assumption basis. The complainant till the bill was given based on meter reading did not demand the bill on the basis of meter reading. He made a grievance only after the bill was raised in the month of Oct.2009 for the accumulated unit's right from the date of installation till Sept-2009. It

was further contended by the opponent that complainant never made a complaint that meter was defective. The same meter is there and the complainant did not raise any dispute about its correctness. The complainant has to pay the bill for the electricity used by him and can not claim that the amount for the electricity consumed by him only for 3 months preceding the month of Oct.2009 should be recovered as this is not a case of defective meter or a stop meter. On rival contentions raised following points arise for consideration.

- 1) Is the claim of compensation made by the complainant for not giving the supply of electricity within the time prescribed under the Act & Regulation barred by time?
- 2) Is the contention raised by the complaint challenging the recovery of the amount of assessment for the date and the amount of compounding excluded from the jurisdiction of this forum?
- 3) Is the complainant entitled to claim compensation for not raising the bill on the basis of meter reading from the date of supply till the month of Oct-2009?
- 4) Are the bills raised for the amounts in due month of Oct-09 , Nov-09 , of Dec-09 correct and recoverable?

- 5) Whether the supply of electricity to the complainant's shop was cut off without prior notice? If Yes what amount of compensation ?

All the above points are answered in the affirmative

REASONS

- 7) POINT NO. 1 :- It is gathered from the complaints of the complaint that complainant's father had made an application for supply of electricity to his residential flat and for the said flat the meter was installed in the year 2002 the said connection stands in the name of complainant's father Sengar R. Lalusing under Con. No. 160230490705 which is clear from the bill dt. 10/10/02 produced by the complainant. It is the case of the complainant that the same time he had demanded supply of electricity separately to his shop premises, however it was not given and therefore he made an application on 27/09/06 on complainant's application dt. 27/09/06 supply of electricity was given to his shop premises on 17/03/07. If the complainant wanted to claim compensation on the ground that the supply of electricity to his shop was not given within the time prescribed under the Act or under regulation of Maharashtra Electricity Regulatory Commission (Electricity Supply code and other

conditions of supply) Regulations-2005 (MERC ESC Reg 2005) he had cause of action on 17/03/07. From that date within 2 years he did not claim compensation. The present complaint made by him on 22/01/2010 is not within two years from the date when cause of action arose for him to claim compensation for the delay caused in giving supply of electricity and therefore it can not be entertained as provided under Reg.6.6 Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations-2006 (MERC, CGRF Reg.2006).

- 8) **POINT NO.2** The complainant in his complaint admitted that he obtained supply of electricity from the meter of his residential flat to the shop premises under the pretext that supply of electricity to his shop was not given in spite of application made. There is absolutely no evidence to show that earlier to 27/09/06 he had made any application for the supply of electricity to his shop. He unauthorizedly extended the line and obtained supply of electricity to his shop premises. When case of theft was made a Panchanama was drawn its zerox copy is produced by the opponent in which it is mentioned that supply of electricity was obtained to the shop premises from bus Bar for the said theft an assessment for civil liability Rs.11,930/- was paid by the complainant. The complainant also paid compounding fee Rs. 20,000/- The subject of civil liability for theft of electricity and the theft of electricity do not come within

the ambit of this forum as it is specifically excluded from the jurisdiction of this forum under Reg. 6.8 (a) & (b) of MERC, CGRF Reg.2006.

- 9) **POINT NO.3:-** It is not in dispute that the bill for the electricity used by the complainant was not raised on the basis of meter reading till Oct.09. Prior to that one bill was raised directing the complainant to pay the amount Rs. 25,000/- on or before 28/10/09 on assumed basis without giving details of the meter reading and the units consumed. The other bill dt. 05/11/09 was raised for the amount of Rs. 5,430/- showing random reading for 25 units. The opponent has produced the Consumer Personal Ledger (CPL) from which it is seen that in the month of Oct-09, the bill for accumulated units 16,000 used over 31 months was raised for Rs. 1, 04,408.41. The next bill was raised in the month of Nov-09 showing reading and units consumed for Rs. 91,991.67. Reg. 15.1.1 MERC ESC Reg 2005 require the opponent (Distribution Licensee) to issue the bill once in every two months in respect of consumers in town and city. Reg. 15.3 of the said Reg. says that in case for any reasons the meter is not accessible and therefore could not be read during any billing period the distribution Licensee has to send an estimated bill to the consumer and adjust the amount so paid in the next bill issued on reading the meter. It further provides that if meter remains inaccessible after two consecutive efforts then distribution licensee has to serve a notice to the consumer asking

him to keep open premises for taking the meter reading. From the above said provision it is clear that the distribution licensee has to issue bill to the consumer in town and cities on the basis of the meter reading at least once in a month. If the meter is not made accessible then distribution licensee has to serve a notice directing the consumer to make the meter accessible for reading. Appendix-"A" at Sr.No.7 to Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, period for Giving Supply and Determination of Compensation)(MERC SOP Reg.2005) Regulations, 2005 provides compensation Rs. 200/- per month or part thereof beyond the first month of delay if reading of consumer's meter is not taken once in every two months except Ag. Connection. The opponent issued bill based on meter reading for the first time in the month of Oct-09 i.e. for about 31 months bills were not raised and meter was never read for such laps on the part of the opponent the opponent has to pay the compensation for 28 months at the rate of 200/- per month as provided in appendix "A" Sr.No.7 (i) to MERC SOP Reg.2005 which comes to Rs. 5,600/-

- 10) **Point No. 4 :-** From the CPL it is seen that the bill was raised on the basis of meter reading for the first time since the date of supply for a period of 31 months showing the previous reading as one and current reading as 16,000/-. While calculating the amount of the electricity, units consumed were spread equally over 31 months without delayed payment charges and interest. Next bill was issued in the month of Nov-09 for units 2106. For the net bill from the

previous month's bill Rs. 1,04,408.41 the DPC charges Rs. 2,107.79 and the current bill for 2106 units were added and the amount paid by the complainant Rs. 25,000/- and Rs 5,430/- on 28/10/09 and 19/11/09 respectively were deducted. For the month of Dec-09 the net bill Rs. 53,468.93 was arrived at after deducting the amount of Rs. 40,000/- paid by the complainant on 19/12/09 and adding current electricity bill for 82 units. From the above calculation it is clear that the net amounts were rightly claimed in each bill.

- 11) It is argued on behalf of the complainant that opponent has no right to claim the bill in the month of Oct-09 for preceding 31 months . It can at the most claim the bill only for 3 months preceding Oct-09 The complainant to substantiate his contention relied upon a decision in writ Petition NO.264 of 2006 Brihanmumbai Municipal Corporation Thru' the General Manager Best Undertaking Vs. Yatish Sharma & Ors. Decided on 18/01/07. The said ruling is of no help to the complainant to substantiate his case as it was a case of stop meter not recording the units consumer covered under IInd proviso to Reg. 15.4.1 of MERC ESC Reg. 2005 while the present case is not of stop meter not recording the units consumed or even a defective meter. It is a case of accumulated consumption though the period is of 31 months which exceed two years it is within time

as observed in the same ruling Brihanmumbai Municipal Corporation Thru' the General Manager BEST Undertaking Vs. Yatish Sharma & Ors. Decided on 18/01/07. The facts of the said case were that no meter reading was taken between Jan -2000 & May-2000. On 27/05/2000 a site inspection was carried out at which it was revealed that the Electronic meter was found to have stopped and there was no display thereon. The Electronic meter was replaced on the same day by another electronic meter and the replaced meter function satisfactorily. In the absence of meter reading between months of January-2000 & May-2000 for 5 months the bills were issued on assumed basis. The petitioner's case was that immediately preceding period of 341 days prior to the installation of an electronic meter on 19/01/2000 the average monthly consumption recorded on the conventional meter was 1,992 KWH units when new electronic meter was installed on 27/05/2000 the average monthly consumption during the period of 370 days subsequent to the installation of the meter worked out to 361 KWH units. The petition raised a supplementary bill for the period from 19/01/2000 to 27/05/2000 on the basis of the average taken on 3621 KWH units per months. By the supplementary bill a demand of Rs. 78,187.17 was raised on the consumer and debited to the account in the bill for the month of April-2004. When the

case went to the Ombudsman it was held that since the supplementary bill was raised after a period of 4 years from the date when it first became due the amount was not recoverable under the provision of Sec. 56 (2) of the Act.

Taking in to consideration Sect. 56 (1)&(2) of the Act, ruling in H.D.Shourie VS Municipal Corporation of Delhi 219 it was held by Hon. High court.

“Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus, for the purpose of sub section (1) and sub-section (2) of Sect.56, amount can be regarded as due from the consumer only “after a bill on account of electricity charges is served upon him. It was concluded with observation that the ombudsman was therefore clearly in error in postulating that the claim was barred on the ground that the arrears for consumption became due immediately on the usage of energy. This finding is ex facie contrary to the provisions of sub section (2) of Sect.56. In the instant case the amount on the basis of meter reading was first claimed in the month of Oct-09 and therefore the said amount became first due in the same month and thereafter it has been shown continuously as recoverable as arrear of charges for the electricity supplied without cutting of the supply. It is seen that in

the month of Dec-09 the supply was cut off and it was restored in the same month if at all the time limit of 2 years is to be started it is from the month of Dec-09 or at the most from the month of Oct-09 and therefore that amount is still recoverable being not barred by time. In the instant case it is pertinent to note that till Oct-09 complainant never raised dispute. He raised dispute only after he received a bill of the accumulated units of 31 months in the month of Oct-09. As long as he was not getting any bill or the bill for the less amount compared to the actual bill which would have been raised on the basis of actual units consumed he kept silence. It was also his duty under Reg. 15.5.2 of MERC ESC Reg. 2005 to report to the officer designated by the opponent the fact of not receiving the bill for over a period of 31 months.

- 12) If even after reporting if he had not received the bill based on meter reading he should have made a grievance to this forum. The same meter is now there and for the month of Dec-09 and Jan-10 it has recorded 82 units and 71 units. If the complainant wants to make allegation that the said meter is defective then he is at liberty to get the meter tested by making an application and upon payment of charges as provided in Reg. 14.4.2 of MERC ESC Reg. 2005. In case meter is found defective then as provided in Reg.

15.4.1 the bills will be adjusted for maximum period of 3 months prior to the month in which he would raise a dispute. The amounts claimed for Oct-09, Nov-09 & Dec-09 as shown in the CPL are thus legal and recoverable.

- 13) **Point No. 5** :- The opponent admitted that in the month of Dec-09 the supply of electricity to the complainant's shop premises was cut off however, it was after giving 15 days notice as provided in Sect. 56(1) of the Act and the same was restored on complainant making payment of the arrears in parts as agreed. The complainant alleged that supply was cut off on 15/12/09 while the opponent alleged that it was cut off on 18/12/09. There is no dispute it was restored on 19/12/09. Question is on what date the supply was cut off either 15 or 18. If the supply had been cut off on 15/12/09, normally the complainant would have approached the opponent on the same day however, the application produced by him shows that it was received by the opponent on 19/12/09 and therefore there is a reason to believe that after disconnection was made on 18/12/09 the complainant had approached the opponent for restoration of supply on 19/12/09. After the complainant had approached the opponent an agreement was reached in which the complainant was allowed to pay the arrears in 3 installments first of Rs. 40,000/- and second and third Rs. 25,000/- each. The supply was restored on

complainant making payment of first installment Rs. 40,000/- on 19/12/09 . In the application dt. 18/12/09 nothing has been mentioned about disconnection however, subsequently at the foot of the said notice in hand writing the para is added alleging that supply was cut off on 15/12/09.

- 14) The date mentioned of disconnection of supply in the foot note is not supported by any evidence and therefore the opponent's case that the supply was disconnected on 18/12/09 appears to be probable. The opponent has contended that supply was cut off only after expiry of 15 days from the notice dt. 25/11/09. The opponent has further alleged that the complainant refused to accept the said notice. If the complainant had refused to accept the said notice the opponent ought to have served it by affixing it on the premises of the complainant in presence of independent persons which could have been accepted as reliable evidence, however no such attempt was made further the copy of the said notice produced, does not bare the outward No. and therefore unmistakable conclusion is that the supply was cut off without prior notice. The opponent admitted in its say that supply was cut off by its employee Janmitra as in the list given to him the name of the complainant was shown as defaulter. The said disconnection was admittedly on 20/01/2010 and it was restored on next day 21/01/2010. The complainant after

approaching the opponent got concession to make payment of the amount of arrears in installment the first of which was paid on 19/12/09. The person to whom the list of defaulter was given might not be aware of the fact that complainant had made payment of the part of the amount of arrears on 19/12/09 and therefore he might have disconnected the supply but the said supply was in any way without prior notice contravening the provision under Sect.56 (1) of the Act. The complainant's supply was thus cut off two times without following the mandatory provision contained in Sect-56 (1) of the Act for which the complainant is entitled to the reasonable compensation Rs. 2,000/- for each occasion.

- 15) The complainant has raised a grievance that on the amount of security deposit the opponent has not paid the interest. On behalf of the opponent it is admitted that no interest has been paid to the complainant as yet as the billing based on meter reading commenced from Oct-09 and practice to pay interest is yearly. Sect-47 (4) of Act read with Reg. 11.11, 11.12 of MERC ESC Reg.2005 reveals that interest is to be paid from date of deposit at the bank rate. The opponent is therefore directed to pay the interest on the security deposit to the complainant from the date of deposit at the bank rate on yearly basis by crediting it to the complainant's account.

ORDER

- 1) The bills raised for the month of Oct-09 , Nov-09 & Dec-09, as shown in the CPL are legal and recoverable.
- 2) The opponent to pay compensation to the complainant Rs. 5,600/- (Rs. Five thousand six hundred only) for not reading the meter from the date of supply 17/03/07 till the month of Oct-09
- 3) The opponent also do pay total amount of compensation Rs. 4,000/- (Rs.Four thousand only) to the complainant for disconnection of supply twice without notice
- 4) The opponent to pay the interest on the security deposit to the complainant as observed.
- 5) The amounts of compensation as ordered above is to be paid by making adjustment in the next bill to be issued.

Sign:

Mr. L.G.Sagajkar,
Member/Secretary

Mr.Suryakant Pathak
Member

Mr.A.V. Bhalerao
Chair Person

Date: 03/03/2010