



**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.34/2016

Date of Grievance : 14.09.2016

Date of Order : 07.11.2016

In the matter of recovery of arrears of P.D. consumer against present (new) consumer.

Mrs.Rahematu Nisa Khan,
Ghar No.16, Ghorpadigaon,
Near Mahskobamandir,
Pune - 411001.
(Consumer No.160256516770)

Complainant
(Hereinafter referred to as Consumer)

Versus

The Executive Engineer,
M.S.E.D.C.L.,
Rastapeth Division,
Pune.

Respondent
(Hereinafter referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Smt.B.S.Savant
Mr.S.S.Pathak

Appearance

For Consumer

Mr.Amir Khan (Representative)

For Respondent
Ex.Engr.Rastapeth Dn.

Mr.G.T.Ekade,,

Mr.U.J.Kawade, St.Marry Sub/dn.

1. The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations, 2006.

2. Being aggrieved and dissatisfied by the order dated 3rd Sept. -2016 passed by IGRC Rastapeth Urban Circle, Pune, thereby rejecting the grievance, the consumer above named prefers present grievance application on the following amongst other grounds.
3. The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Rastapeth Dn., Pune vide letter no. EE/CGRF/PZ/Notice/34 of 2016/212 dtd.14.09.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 04.10.2016.
4. We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) Consumer namely Mrs. Rahematru-Nisa Khan, having consumer No. 160256516770 was connected on i.e. 08.07.2015 under category LT-1 Residential- 1 phase having sanctioned load 1.00 KW.
 - ii) At the time of releasing supply of electricity to the said premises, the said consumer (Mrs. Rahematru-Nisa Khan) submitted an affidavit on the stamp paper regarding payment of arrears (if any) that she has been residing at H.No.16 Ghorpadigaon, Pune 411001 since last 15 years & liable to pay arrears of electricity bills (if any) on the said premises & that she has no documentary evidence as to the ownership of the said premises.
 - iii) The Licensee noticed that arrears of electricity bills of P.D. consumer namely A.S.Kawade, having consumer No.170011624653 having address, 16, Ghorpuri village, Pune who connected on 1.1.1979 is outstanding & due to the arrears

the said consumer was permanently disconnected (P.D.) in the month of Dec.2005.

- iv) The Licensee issued notice dated 9.10.2015 to the present consumer (Mrs. Rahematru-Nisa Khan) to pay the arrears of P.D. consumer having cons. no. 170011624653 within 7 days else supply will be disconnected without any notice & that the legal complaint will be filed against her for filing of false affidavit and thereby cheating the MSEDCL.
 - v) The Licensee issued letter dated 14.10.2015 to one Mr.Amir Khan that the consumer having consumer no.170011624653 is in arrears of Rs.53851/-. Thereafter the Licensee disconnected the supply of the present consumer.
 - vi) By letter dated 4.3.2016 the representative of the present consumer namely Amir Ajij Khan requested the Licensee to reconnect the supply on depositing partial arrears of Rs.5000 against P.D. consumer having no. 170011624653 as directed by the MSEDCL official.
 - vii) The Licensee transferred arrears of P.D. consumer in the name of present consumer in the month of May-2016.
 - viii) The Licensee vide letter dated 29.6.2016 informed the consumer that the consumer having no. 170011624653 has deposited energy bill on 26.7.1991 as per CPL but thereafter did not deposit any amount of energy bill till date.
5. The consumer representative Mr. Amir Ajij Khan submitted that the consumer has been residing at the said address since 2002. The Licensee released electric supply to her premises in the month of July-2015 & thereafter she had been regularly depositing electricity bills as per consumption from the date of connection. The consumer received notice dated 9.10.2015 from Section Office Wanawadi that the previous consumer of the premises namely A.S. Kawade vide

consumer no. 170011624653 is in arrears of bills & therefore to pay the said arrears within 7 days else supply will be disconnected without any notice and consumer will be prosecuted for filing of false affidavit. He further submitted that thereafter the consumer met to the authorities of the Licensee. However her supply was disconnected. Thereafter the representative of the consumer met to the Chief Engineer of the Licensee about disconnection. At that time the said official directed that electric supply be reconnected on depositing Rs.5000/-. Accordingly the consumer deposited amount of Rs.5000/- on 29.3.2016 & supply was restored. Thereafter on 26.4.2016 concerned officer of the Licensee directed to deposit Rs.25000/- as PD arrears but consumer did not deposit the same. He further submitted that it is injustice on the present consumer directing to deposit arrears of another consumer. Addresses of the previous consumer namely Mr.Kawade & the present are different. In the notice dated 9.10.2015 amount of arrears is not specifically mentioned nor given any meter number therefore the said notice is not legal and valid. The premises is owned by the Government and therefore consumer is not liable to pay arrears of the previous consumer. He further submitted that according to provisions of Section 56 of the Act the Licensee cannot recover the arrears more than 24 months & therefore the Licensee is illegally trying to recover arrears of another consumer from the present consumer.

6. On the other hand, Mr. Ekade, Ex. Engineer, Rastapeth Division submitted on behalf of the Licensee that the said consumer namely Mrs. Rahematru Nisa Khan, consumer No. 160256516770 was connected on i.e. 08.07.2015 under category LT-1 Residential- 1 phase having sanctioned load 1.00 KW. The said consumer has been submitted the affidavit of Rs.200/- on stamp paper regarding payment of any previous arrears of electricity bills if any. In the said

affidavit the consumer has mentioned that she was staying in the said premises since last 15 years. He further submitted that in the said premises Shri.A.S.Kawade having consumer no.170011624653 connected on 1.1.1979 for residential purpose & due to arrears of amounting to Rs.53851/- the said connection was permanently disconnected in Dec.2005. Considering these facts, the Licensee is trying to recover the previous arrears amount of Rs.53851/- of the old consumer from the new incomer consumer i.e. Mrs. Rahematru Nisa Khan, as per affidavit submitted by the appellant. The new connection in the name of Rahematru Nisa Khan is live & it is the responsibility of this consumer to pay the previous arrears as per agreement submitted by her. As per the agreement/affidavit submitted the liability of the old consumer was transferred to the new consumer i.e. Rahamatru Nisa Khan in May-2016.

7. He further submitted that the disconnection notice had served to the consumer on 9.10.2015 but the full amount has not paid by the consumer & agreed for partial payment of Rs.5000/- on dated 29.03.2016 with installments of balance amount & ready to pay the balance amount thereafter. And after partial payment made by the consumer, the electricity connection was reconnected in the month of March-2016 as per the Rules & Regulations. The representative of the appellant Mr. Amir Khan has submitted request letter on dated 4.3.2016 for reconnection. The balance amount of arrears was due & charged to the consumer in the month of May-16 in the regular bills and bill revision was done as per guidelines of MERC. But the consumer did not respond to the notice dated 29.06.2016 & the installments has not yet paid.
8. Admittedly P.D. Consumer Mr.A.S.Kawade having consumer no.170011624653 was connected on 1.9.1979. The address of the said consumer as mentioned in the CPL is as under.

16, Ghorpuri village,
Village - Pune.

The present consumer Rahmuatru-nissa Khan is connected on 8.7.2016. The address of the said consumer as mentioned in the energy bills is as under :

House No.16,
Near Mhaskoba Mandir,
Ghorpadigaon, Pune - 411001.

Therefore above mentioned addresses of both consumer are not exactly same. The address of earlier consumer Mr. Kawade mentioned number as 16 but does not mention as House Number. That number may be of survey number, Gat Number, or house number or Building number. Similarly in the address of Mr.Kawade as mentioned above, there is no any identification mark of nearby locality. Admittedly both the parties have not produced any documentary evidence about ownership of the disputed premises. The consumer in her affidavit submitted to the Licensee has mentioned that she has no any documentary evidence as to ownership of the said premises. Moreover, the consumer has not produced any documentary evidence as to how she came in the possession of the said premises. It is seen that the Licensee did not verify as to who is owner of the said premises and whether the possession of the present consumer is lawful. But only on the basis of under taking (affidavit) connection was released in favour of present consumer.

9. It is to be noted that only those charges for a period of two years previous to the demand are recoverable under the provisions of section 56(2) of the Electricity Act, 2003. Section 56 (2) reads as under:

(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.

10. The Licensee is trying to recover amount of Rs.53,851/- for the past period standing in the name of Mr.A.S.Kawade, whose connection was permanently disconnected in the month of Dec.2005 from the present consumer. According to provisions of Section 56(2) of the Act arrears of charges for electricity supplied more than two years could be recovered if those arrears are continuously has been shown as recoverable. In the present case the Licensee has produced CPL of the P.D. consumer Mr. A.S. Kawade from April-2003 to June-2016. It is pertinent to mention that though the arrears of the said consumer have been continuously shown from April-2003 but the Licensee could not produce any documentary evidence to show that when said arrears (sum) became first due. It is seen that the disputed amount is due prior to April-2003. During the course of final hearing the Licensee was called upon to produce CPL of the said consumer prior to April-2003 i.e. from the date when such sum became first due as contemplated under Section 56 (2) of the Act. However the Licensee failed to produce any document to show when such sum became first due. The letter dated 29.6.2016 issued by the Licensee to the consumer discloses that said arrears are outstanding from 1991. Therefore the amount in question is time barred under Section 56 (2) of the Act and cannot be recovered.
11. The Licensee can recover arrears of electricity of the deceased consumer or the erstwhile owner/occupier of the premises as due from the

new owner/occupier or successor in law as the case may be of the premises under MERC supply code Regulation No.10.5 which reads as under

10.5. 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.

12. As mentioned above both the parties have not produce any documentary evidence as to ownership of the said premises. The consumer did not produce any documentary evidence as to how she made entry in the said premises. The Licensee transferred arrears of P.D. consumer having no. 170011624653 in the name of present consumer in the month of May-2016 however the Licensee did not produce any documentary evidence as to what steps they have taken against the P.D. consumer who was permanently disconnected in the month of Dec.2005. It is to be noted that to bring the case under Section 56(2) of the Act for recovery of arrears the Licensee should have served any letter order or notice to the consumer demanding arrears, to ascertain such sum became first due. It is to be noted MERC supply code (electricity supply code and other conditions of supply) Regulations, 2005 has come into force w.e.f. 28th Jan.2005. The said Regulations have come into force from the date of their publication in the official Gazette. It means the said Regulations have prospective effect and therefore the said arrears prior to publication of MERC supply code

Regulations 2005 cannot be recovered retrospectively against the present consumer. The Supreme Court in the case of Miss. Tulsa Bansi Dongre Vs. MSEB, Mumbai & ors. reported in 2006 (4) All M.R.193 held that when the premises comes to be owned or occupied by auction purchaser, when such purchaser seeks supply to Electricity Energy he cannot be called upon to clear the past arrears as condition precedent to supply.

13. For the reasons stated above the Licensee cannot recover past arrears of the P.D. consumer which are not legally recoverable against the present consumer. The grievance of the consumer is required to be allowed.

Lastly we proceed to pass the following order.

ORDER

1. Grievance of the consumer stands allowed with cost.
2. The Licensee shall not recover arrears of P.D. consumer from the present consumer.
3. The Licensee shall not disconnect the supply of the present consumer for recovery of arrears of the P.D. consumer.
4. The Licensee to report the compliance within one month from the date of this order.

Delivered on: -07.11.2016

S.S.Pathak
Member
CGRF:PZ: PUNE

B.S.Savant
Member/Secretary
CGRF:PZ:PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note: - The consumer if not satisfied may filed representation against this order before the Hon.' ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg., Bandra Kurla Complex,
Bandra (E), Mumbai-51.