

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

Case No. 08/2010

Date: 21 /04/2010

In the matter of Mr. Vaibhav Ghalsasi

- Complainant

V/S

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

- Opponent

Quorum

Chair Person

Mr. A.V.Bhalerao

Member

Mr.Suryakant Pathak

- 1) The facts giving rise to the present complaint from the documents produced in brief are that Vaibhav Ghalsasi (Complainant for short) purchased unit No.6 on second floor of a building named Govind Chambers Co.Op.Hsg.society in C.T.S. No. 47/2B Plot No. 70/2B situated at Hingane BK. from one Parimal Hiralal Gole under a registered sale deed dt. 08/05/08 after purchased of the said property the complainant made application to MSEDCL(Opponent for short) for supply of electricity to the said premises on 20/06/09 the opponent vide letter dt. 03/07/09 informed complainant that on the premises to which supply of electricity was asked for their were dues for the electricity consumed by the previous owners and therefore a legal opinion was sought. The opponent gave a firm quotation dt. 30/07/09 with condition that connection could be released subject to the payment of arrears amount to Rs. 76,060/-The complainant vide

letter dt. 31/07/09 directed the opponent to furnish the details mentioned in that letter about the amount claimed as arrears as pre condition for releasing the new connection. Apprehending that delay would be caused in getting regular new connection, the complainant made application for temporary supply of energy to his premises. The said temporary supply was immediately given to the complainant's premises. The complainant did not receive the details of the amount of bill which was claimed as a condition precedent for the release of regular new connection he made a grievance to Internal Grievance Redressal Forum(IGRC) on 14/09/09 as the IGRC did not given any relief within two months from the date of the complaint made to it the complainant made grievance to this forum on 05/03/2010 and claimed the relief of supply of electricity to his premises and appropriate justice.

- 2) The opponent by notice dt. 08/03/2010 was directed to file its say. The opponent filed its say on 09/04/2010 contending that on information given by Parimal Gole when the premises was inspected it was found that the electricity was supplied to the said premises through a meter No. 29653 and accordingly a verification report was prepared and bill for the amount of Rs. 76,060 was given to Mr.Gole, however in the month of May-2008 as it was found that there were arrears for a period more than one year the supply was cut off. It was further contended that in the month of June-09 the complainant made application for new connection at which time. The complainant was informed about the previous arrears and was given quotation dt. 30/07/09 subject to the condition that new connection would be given only on clearing the arrears. It was also contended that pending the enquiry before IGRC The complainant had approached CGRF and therefore it was decided to take decision about release of

new connection to the complainant premises only after the decision by CGRF.

- 3) During the pendency of the grievance before this forum the IGRC vide decision dt. 17/03/2010 directed the opponent to release the new connection to the complainant's premises without claiming charges of electricity which had remained unpaid by the erstwhile owners of the said premises and also directed the opponent to pay compensation as provided in Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, period for Giving Supply and Determination of Compensation)(MERC SOP Reg.2005) Regulations, 2005
- 4) After the decision given by IGRC the opponent gave firm quotation dt. 06/04/2010 to the complainant. The complainant paid the quotation charges on 31/03/2010 and submitted test report on 06/04/2010. The opponent on the same day i.e. 06/04/20 released the new connection and started the supply of electricity to the complainant's premises.
- 5) On the date of hearing the complainant's representative Mr. Velankar argued that in pursuance to decision given by IGRC the complainant received the supply of electricity to his premises without clearing the previous arrears however, the compensation as provided in MERC SOP Reg. 2005 was not received by the complainant and the same should be granted. The representative Shri.Velankar further argued that the compensation for the delayed period at the rate of Rs. 4000/5000 per month also be granted to the complainant as the complainant suffered the loss for want of supply of electricity to his premises which he would not have suffered had the electricity been supplied earlier. It was also argued by Shri.Velankar that the decision given by the IGRC about releasing new connection without making

payment of previous dues can not be questioned before Consumer Grievance Redressal Forum. (CGRF)

- 6) On behalf of the opponent the J.E.Mrs. Dahake submitted that immediately after the application for the supply of electricity was received from the complainant on 20/06/09 the complainant was informed that there were previous arrears for the electricity charges in respect of the property for which supply was asked for and therefore the matter was referred to legal opinion. In the mean time the complainant made an application for Temp. supply of electricity which was immediately given on 05/11/2009 . It was submitted that there was a legal hurdle of recovery of arrears and as long as it was not solved there was a difficulty in releasing new connection for the supply of electricity to the complainant's premises.
- 7) Before the matter was heard on 12/03/2010 the opponent had released the new connection to supply the electricity to the complainant's premises on 06/04/2010 subject to the decision given by CGRF.
- 8) On facts and documents produced following points arise for consideration.
 - 1) Is the decision given by IGRC to release the new connection without claiming previous arrears from the erstwhile owners correct?
 - 2) Is complainant entitled to the compensation as provided under the provisions of MERC SOP Reg.2005

3) Is complainant entitled to the compensation for loss of profit for opportunity for not being able to give the premises on lease?

The above points are answered as per final order for the reasons given below.

REASONS

9) Point No.1 – No fault can be found out in the order passed by IGRC in directing the opponent to release new connection to supply the electricity to the complainant's premises forthwith however, the decision given by it directing the complainant not to claim previous arrears in respect of the said premises is apparently contrary to the provisions of Reg. 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply code and other conditions of supply) Regulations-2005 (MERC ESC Reg 2005) which reads as follows

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 of 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 same 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.

- 10) In the instant case the complainant purchased the property by registered sale deed from Shri.Gole. From the documents produced it is seen that the said property was originally own by one N.A.Bhasme. YCO BANK put the said property to sale as it was mortgaged to it by way of security to the loan advanced. In the auction sale, the said property was purchased by Gole who subsequently sold it to the complainant. while the property was possessed by Mr. Gole , it was found that the meter No. 29653 was installed therein through which the supply of electricity was being given to the said premises the verification report dt. 29/03/2008 prepared to that effect, the complainant purchased the said property from Gole and therefore he being a new owner or occupier of the said premises is liable to pay unpaid charges restricted to a maximum period of six month of the electricity supplied to such premises for which there is a charge on the said premises. Now the question is what is the amount of previous arrears restricted to the period of six months of unpaid charges for the electricity supplied to the said premises. From the CPL produced which is in the name of Mr. N.A.Bhasme it is seen that meter installed in that premises had a No. 60042321 (2321) in the month of August-2004 the supply to that premises was cut off. Before that the unpaid charges of the electricity were 79338.79 in the month of June-04 however, the charges of the electricity during the month of June-2004 were not on the basis of actual user. From the CPL it is seen that from August-2000 till June2004 the bills were issued without reading the meter as current and previous reading for all this months is 13039. It is therefore

difficult to find out what are the unpaid charges of six months. The verification report dt. 29/03/2008 shows that the meter installed in the premises had a No. 29653 in the CPL the meter shown throughout upto May 2008 is 2321 there is no record to show how the units 6411 have been utilized month to month due to which it is difficult to calculate the liability of the complainant restricting it to a maximum period of 6 months. As the opponent has not maintained the proper record of the CPL of erstwhile owners it has lost its right to recover the unpaid charges restricted to a maximum period of six months from the complainant as provided in Reg. 10.5 of MERC ESC 2005

10) Point No.2:- It is not in dispute that the complainant made an application for new connection on 20/06/2009 and he was given firm quotation on 30/07/2009 but the said quotation was a conditional one subject to the payment of previous arrears Rs. 76,060/- or subject to legal opinion. The claim of entire previous arrears was totally uncalled for. It was in contravention to the provision contending REg.10.5 of MERC ESC 2005 which restrict the complainant liability only to unpaid charges for six month. If the opponent needed any legal opinion it should have sought it within the period of one month stipulated in regulations for giving supply from date of completed application. The conditional firm quotation dt. 30/07/07 is thus a meaningless quotation subsequently the quotation was given on 26/03/2010 thereafter the complainant paid the charges mentioned in the firm quotation on 31/03/2010 and new connection was released on 06/04/2010 after the test report dt. 06/04/2010 was submitted. After the payment of quotation charges and submission of test report the supply was given within one month as provided in Reg. however,

the firm quotation i.e. intimation of charges to be borne by the the complainant was not given within 15 days from the date of application and therefore the opponent is liable to pay compensation as provided at Sr.No.1 (ii) Appendix-A to MERC SOP 2005 at the rate of Rs. 100/- per week for part thereof of the delay.

12) Point No. 3 :- The complainant's representative Shri. Velankar contended that besides the compensation as provided under MERC SOP Reg.2005 the complainant be awarded compensation as he could not let the premises and suffered a loss Rs. 3,000/4,000 per month. He insisted that specifically it should be mentioned in the judgment that such compensation was demanded on behalf of the complainant. On behalf of the opponent it was argued that there was no negligence on the part of the opponent as there were unpaid charges in respect of the electricity supplied to the premises in question for which opinion from legal expert was required and accordingly the complainant was informed by letter dt. 03/07/2009

13) The relief of compensation for the loss caused to the complainant as the complainant could not let the premises can not be entertained as Reg. 8.2(c) of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) (MERC CGRF Reg. 2006) in a proviso to it states "Provided however that in no case shall any consumer be entitled to indirect, consequential, incidental, punitive, or exemplary damages, loss of profits or opportunity. The compensation claimed by complainant for not being able to let the premises is a compensation for loss of profit or opportunity. It is also indirect for consequential for the above reason alone the

compensation claimed on behalf of the complainant shall have to be rejected.

- 14) The said prayer can not be considered as it has not been specifically averred in the complaint . The prayer made in the complaint for the relief is as vague as it could be. Want of specific pleading in the complaint deprives the opposite side to defend itself. It is no doubt true that the forum is not bound by the provisions of civil procedure code or the evidence Act. But the forum has to follow the principles of natural justice while deciding a case. If the other side is taken by surprise it does not get the opportunity to defend which violets the principles of natural justice. It is interesting to note that the complainant in any letter to the opponent or in his complaint to IGRC has not claimed the compensation for the loss caused to him in not letting the premises. The various Regulations enacted under the Elect. Act 2003 becomes a part of the agreement between consumers and the licensee. If the supply of electricity is not given within the prescribed time the Regulation provides fix amount of compensation at the rate of Rs. 100/- per week or part thereof of delay. When fix amount of compensation is provided for in case of breach it becomes a case of liquidated damages. In view of Sect. 74 of the Indian Contract Act (Act of IX of 1872 the party complaining of the breach is entitled whether or not actual damage for loss is provided to have been caused thereby to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named or as a case may be the penalty stipulated for. In the instant case in the case of breach a provision for the compensation is provided for and therefore the complainant is not entitled to any thing more than

what is provided at Sr.No.1(ii)of Appendix-A to MERC SOP Reg.2005.

- 15) In the instant case if the complainant had before purchasing the premises in question from one Mr. Gole who had purchased it in an auction sale held by YCO Bank had made an enquiry about the arrears of the electricity supplied to the premises in question and settled it with the erstwhile owners there would not have been any delay in making supply of electricity.
- 16) Before parting it is necessary to mention that in the instant case utter carelessness has been shown in maintaining the CPL of the erstwhile owner of the premises in question. Once permanently supply was cut off in the month of June-2004 it is surprising that supply was reconnected without recovering the dues. It is also surprising that without keeping any record a new meter was fixed in the premises and the supply was given to premises in question. Is therefore necessary to make enquiry to initiate the departmental enquiry against the delinquent.

ORDER

- 1) The opponent is directed not to demand from the complainant charges of the electricity which remained unpaid by the erstwhile owners even of six months as the opponent has failed to show how much are the unpaid charges of the actual electricity used by the erstwhile owners during any period of six months.
- 2) The opponent is directed to pay the complainant the compensation for not supplying the electricity as prescribed in MERC SOP Reg. 2005 for period from 20/06/2009 upto

26/03/2010 excluding 15 days @ Rs. 100/-per week or part thereof by adjusting the said amount in the next bill.

- 3) The complaint's prayer for compensation for the alleged loss of profits or opportunity in not letting the premises in question is rejected.
- 4) The opponent is directed to make enquiry and initiate disciplinary action against those who failed to keep the account of the electricity used by the erstwhile owners and not taking steps against them for recovery at appropriate time.
- 5) The opponent is directed to report the compliance of this order on or before 25th May-2010.

Sign:

Mr.Suryakant Pathak
Member

Mr. A.V. Bhalerao
Chair Person

Date:21 /04/2010