

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

Case No. CGRF(NZ)/46/2018

Applicant : Shri Harbanssing Saini,
Sher-E-Punjab Restaurant,
Dr. Ambedkar Road,
Nagpur – 440000.

Non-applicant : Nodal Officer,
The Superintending Engineer
(D/F), NUC, MSEDCL,
Nagpur.

Applicant represented by : 1) Shri. Harbanssing Saini,

Non-applicant represented by: 1) Smt. M.A. Amrute, Dy.Exe.Engineer,
MSEDCL.
2) Shri Vasim Ahmad, Asstt.Manager, SNDL.
3) Shri Dahasahastra, SNDL, Nagpur

Quorum Present : 1) Shri Vishnu S. Bute,
Chairman.
2) Shri N.V.Bansod,
Member
3) Mrs. V.N.Parihar,
Member Secretary

ORDER PASSED ON 22.06.2018

The applicant presented this grievance application feeling aggrieved by the order passed by the IGRC SNDL Nagpur in case no. 116/2018 on 27.04.2018.

The applicant is running a hotel, Sher-E-Punjab by name. A vigilance team of the respondent visited the premises of the applicant on 5.4.2018. The team noticed

that meter bearing No. SND 57332 was installed there. However the applicant was not paying the bill of that meter. The respondent proceeded as per the provision of section 135 of the Electricity Act 2003.

Initially the applicant approached the IGRC – SNDL Nagpur. However being not satisfied with the order passed by the IGRC, the applicant presented this application under the provisions of Regulation 6.4 of the MERC (CGRF & EO) Regulations 2006.

Before going into the merits of the case, it is necessary to discuss and decide the tenability of the instant proceeding.

After the hearing of the case was over the case was discussed among the members of the Forum. The Chairperson and the Member Secretary were of the opinion that since the respondent proceeded against the applicant as per the provisions of Section 135 of the Electricity Act 2003, the case is not tenable before this Forum. However the Member(CPO) expressed different view. A dissenting note given by the member reads as under,

Arguments of both parties heard and perused all papers on record.

(1) Applicant is consumer of non applicant having consumer No. 410016978951 with electric meter no. 65/G 1072799 and was paying electric bills regularly without any single default. Applicant is tenant of Mr. Inderjeetsing Jabbal and running “Sher-E-Punjab” Restaurant as proprietor since last 50 years.

(2) As per applicant notice of disconnection dated 5.4.2018 was served on him incorrectly with consumer No. 3564164676 (unbilled) with threat to pay alleged assessed bill amounting Rs.88292/- and also to stop availing supply from consumer No. 41001697851 else supply will be disconnected on 20.4.2018 and case will be booked v/s 138(B) of the Electricity Act 2003 and allegations were denied as false.

(3) Applicant said he is & was not having electricity connection vide consumer No. 3564164676 as alleged & no sum of Rs.88292/- is outstanding and neither he is providing any connection of line to any neighbour nor have any alternate meter in said premises and question of violation of Rules & Regulations does not arise. Applicant is not liable to pay as per demand notice dated 5.4.2018 and any action by non applicant will be illegal & malaside.

(4) Non applicant in reply said that vigilance team had been for Inspection on 11.7.2014 and observed 2 meters with applicant Electric bill of meter No. SND 57332 was asked but not produced and reading was 7084 and bill was issued but payment was not done by applicant spot inspection report. Panchnama & notice given to applicant by non applicant & denied allegations.

(5) IGRC observed that supply of consumer No. 3564164676 was disconnected 14.7.2014 but non applicant was silent on date of disconnection pertains to same premises having like connection in name of applicant i.e. consumer No. 410013978951.

IGRC further observed, applicant's meter is 3 phase for commercial purpose and bills received & paid.

IGRC observed that there was another electric connection in same premises with 1 phase meter No. SND 57332 but with no consumer number and electric bills were not received by applicant and inferred that connection was unbilled and meter reading was 7084 kwh.

IGRC observed that on 12.7.2014 assessment bill for 7084 units for Rs.88292/- was issued under section 135 of the E.A. 2003 which applicant did not pay.

IGRC observed that amount of assessment needs to be revised because the vigilance officer has calculated the amount under section 135 of the Electricity Act. 2003 by applying penalty of 1.5 times of Tariff which is not justified because unbilled connection cannot be treated as theft of energy and therefore section 135 of E.A. 2003 cannot be applied and amount of 7089 Units has to be calculated with normal tariff rate

without applying penalty of 1.5 times of Tariff Rate.

It is not the submission of non applicant that order of IGRC was complied & revise bill was issued and given to the applicant which proves the abitrariness of non applicant towards applicant. Secondly entire action of non applicant under section 135 is proved false and incorrect by IGRC. itself & action of non applicant deserves to be set aside.

Non applicant said the bill was issued on 12.07.2014 and disconnection was done on 14.07.2014 but no documentary proff of bill given or report of disconnection as per guide book of MSEDCL circular No. 111 dated 12.5.2017 which proves the fictious working of non applicant & its team.

The basic question before me is when they have booked case u/s 135 of the E.A. 2003 on 11.7.2014 and assessment sent accordingly on 12.7.2014 and so called disconnection on 14.7.2014 then why non applicant did not lodge FIR u/s 135 as case of theft which creates further suspicious about fictious, working of non applicant, needs to be condemned.

Non applicant sought adjoinment on 28.5.2018, Member CPO advised the representative of non applicant to submit 'A1' form of consumer No. 3564164676 and other details as well as details of single phase meter No. SMD 57332 i.e. date of allotment of meter, name of consumer with consumer number etc. and also seek information from manufacturer "Secure" but non applicant totally failed to produce before us for scrutiny and testing the bonafides of action u/s 135. Hence I am of the firm opinion that entire action of NA is false & fictions as well as suspicious.

On close perusal of so called Panchnama dated 11.7.2014 "सदर ग्राहकाचे मिटर हॉटेच्या समोर उभे राहिले असत डाव्या बाजूला भितीवर जमीनी पासून अंदाजे ४ ते ५ फूट उंच लाकडी बोर्डावर आहे. सदर ग्राहकाचे मीटरचे मीटर क्र. SND57332 आहे. मीटरचे दोन्ही सील साबूत आहेत मिटरला टमीनिल कव्हर लागलेले आहे.

सदर बाब विद्युत कायदा २००३ चे कलम १२६ नुसार असल्याचे उपस्थित ग्राहकाला सांगितले.

It is very surprising & shocking that in Panchnama at page 2, case is classified as a case of Section 126 and in spot inspection report page 2 noted as unbilled meter and page 3, it is noted as "meter has no record in the system. Hence a case is booked under section 135 as per electricity Act. 2003 which proves that non applicant team are not aware of provisions of section 126, 135 and classified applicant arbitrarily, but in the entire panchanamas there is no mention of removal of wires or serice line connection from pole to meter No. 35641664676 and from Meter No. 3564164676 to the shop of applicant which further proves the working of non applicant is not as per guide book of MSEDCL for theft or unauthorized use and proves to be false.

In so called spot panchanama & spot inspection reports dated 11.7.2014, it is noted that videography and photography was done but photos were not submitted and only one CD was submitted which appears to be distorted or manipulated and no videography of meter to the wiring till pole as well no wiring of connection to the premises of applicant indicates act u/s 135 or 126. Hence unreliable and deserves to be destored or tampared. Hence unreliable and deserves to be discarded.

There is no explanation of non applicant that why after issuance of bill on 12.7.2014 v/s 135 of E.A. 2003 for section 126 why they did not file FIR for theft and waited for 4 long years to issue notice dated 5.4.2018 to Mr. Harbanssing saini for unconcerned consumer No. 3564164676 (Unbilled0 i.e. v/s 138 B of E.A. 2003, Which further proves fictitious working of non applicant as well as false & arbitrary action of vigilance team needs to be condemned. Why non applicant could not detect the same and failed to mention the details of actual meter of applicant i.e. distance height etc. when so called meter is in front of Hotel.

"In rely on order of E.O. Nagpur in Representation No. 61/2018 dated 6.4.017 in case of M/s. Ekta Polymer v/s The Exe.Engr. MSEDCL, bhandara, in para 14 observed as under which is identical to this case of alleged theft.

“From the discussion during the hearing and the records brought forward, it is seen that the respondent failed to establish that the assessed bill was for theft carried out by the appellant. The procedure for establishing theft was not carried out as laid down in the Electricity Act, 2003 vide Section 135 (1A) which reads as under:

135(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may upon detection of such theft of electricity immediately disconnect the supply of electricity.

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorized shall disconnect the supply line of electricity.

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection.

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty eight hours of such deposit or payment.

In the present case, however, no immediate disconnection was carried out and no FIR was lodged with the Police regarding theft. This case was not treated as a theft case that would attract the provisions of Section 135 of the Electricity Act, 2003. Infact, no case of theft of electricity has been established by the MSEDCL at any point of time in this case. Secondly the assessment bills issued to the appellant (i) for Rs.5,05,400/- and (ii) for Rs.2,71,820/- on the basis of Energy Audits are

highly incredible and unreliable. It is not clear as to which assessment is the correct one”.

Thirdly notice dated 5.4.2018 under Section 56 (conditions not satisfied) for u/s 138 B of the E.A. 2003 is illegal and baseless after so called illegal case under section 135 with allegations of section 126 after period of 4 years and deserves to quash & setaside and non applicant shall not initiate any action under duress. IGRC has classified that it is not the case of Theft u/s 135 but without total scrutiny classified as unbilled meter like non applicant. Hence order of IGRC also deserved to set aside partly.

In view of the above observation, the application deserves to be allowed. Hence the following order.

ORDER

1. Non applicant is directed to cancel the Electric energy bill dated 12.7.2014 for Rs.88292/- and notice dated 5.4.2018 u/s 56 of E.A. 2003 as it is quashed & setaside.
2. Non applicant is directed that no coercive action shall be initiated in future against Applicant.

Compliance of this order shall be done within one month from the date of this order.

**Naresh Bansod
Member (CPO)**

We have perused the note. We have perused the record.

A vigilance team of the respondent visited the premises of the applicant on 11.07.2014. The team noticed that one unbilled meter was installed there. It was meter bearing no. SND 57332. The meter was showing the reading 7084 kwh.

The team carried out the Panchnama and spot inspection report giving details of the facts mentioned above.

On next day i.e. on 12.07.2014 the vigilance officer had issued assessment bill of 7084 units for Rs.88292/-. The bill was issued as per section 135.

The IGRC concluded that the respondent issued the bill as per consumed units, so it cannot be treated as the theft of the electricity.

However as per panchnama the meter was in the premises of the applicant. The applicant was using the power however he was not paying the bill. So we are of the considered opinion that the applicant was indulge in the theft of electricity. The respondent booked him under section 135 properly.

In view of the above discussion, we disagree with the Member(CPO).

Regulation 6.8 of the MERC (CGRF & EO) Regulations 2006 reads as under,

6.8 If the Forum is of the view that any grievance referred to it falls within the preview of the any of the following provisions of the Act the same shall be excluded from the jurisdiction of the Forum,

(a)

(b) Offences and penalties as provided under section 135 to 139 of the Act.

Since we are of the opinion that the proceeding was conducted under the provisions of section 135, the case is not tenable before this Forum. So we pass the following order by majority.

ORDER

1. The application is dismissed. The order passed by the IGRC SNDL in case no. 116/2018 on 27.04.2018 is set aside.

Sd/-
N.V. Bansod
MEMBER

Sd/-
Mrs. V.N.Parihar
MEMBER SECRETARY

Sd/-
Vishnu S. Bute,
Chairman