

Consumers Representation in brief :

In reference to above, we have filed Grievance before the CGRF, Nashik vide Case No. 33 of 2017-18, for interest on security Deposit and SOP compensation, the hearing in afore said matter has been conducted on 03/08/2018. In hearing dtd. 03/08/2018, the licensee has referred one judgment dtd. 05/09/2007 of Bombay High Court in matter of Akanksha International V/s. MSEDCL.

In this regard we state that, the fact of said case is totally different and not applicable to present case. In said case the issue of new connection by auction purchaser was in dispute and hence Rs. 10.5 MERC Supply code-2005 was squarely applicable whereby incoming consumer was liable for payment of dues of erstwhile old consumer.

In the present case no such issue of application for supply on the premises of old consumer and payment of dues of old consumer was in issue but the issue of refund of security deposit of termination of supply was in dispute. The connection of M/s. Banbro was disconnected in year 1998 whereas Connection of M/s. Ramdas Ispat was released in year 2000 and PD in year 2014, which was at premises different other than the connection of M/s. Banbro and both having no concern with each other. The contention of MSEDCL was not acceptable for the simply reason if Ramdas Ispat was liable for arrears of M/s. Banbro, the MSEDCL would not have release supply of M/s. Ramdas in year 2000 pending the arrears of M/s. Banbro on being PD in year 1998. The MSEDCL himself agreed that these are two different company/unit not related to each other but as on today to avoid liability of payment of interest twisting this issue which is not acceptable.

The MSEDCL in its reply also confused the forum in regards of S. 47(4) of refund of security deposit on request. In this context we would like to bring kind attention of this forum to the page No. 28, consumers Security Deposit (Sr.No..4,5,6,9,11 & 12) : MSEDCL commercial Circular No. 275 dtd. 18/11/2016, from combined reading of all above provisions of circular and S. 47(4) of EA, 2003, it is clear that word used in s.47(4) refund on request is used in context of live consumer, when their SD get excess after recalculating at the end of each financial year such excess SD shall be refunded only on request of consumer. Whereas on termination of supply no such request on consumer side required and MSEDCL on his own shall refund the remaining SD after adjustment of dues of said consumer and not other consumer.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 02/08/2018 from the Superintending Engineer, Ahmednagar Circle Office and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. That, considering the entire submission of MSEDCL Hon'ble Electricity Ombudsman vide its order dated 11th July 2018 is pleased to remand the matter with directions to decide the case afresh in accordance with the law.
2. It is humbly submitted that, Regulation 3 of CGRF & EO Regulations 2006 enshrines the basic principles of following natural justice, he we seek equity must do equity, it is imperative that any one should approach to the Hon'ble Forum/Electricity Ombudsman with clean hands. Following Facts & circumstance would basically demonstrate that, applicant has concealed material facts & has not come with clean hands.
3. That, supply the consumer M/s. Ramdas Ispat & Metal Pvt. Ltd. Bearing consumer No. 162019004940 Plot No A-122/3, Nagapur MIDC Ahmednagar was disconnected on 31/01/2014. At the time of the disconnection, against this service connection No. 162019004940 there were arrears of electricity to tune of Rs. 68,39,028.75/-. There was no any request for closure of accounts at relevant time & admittedly consumer has filed

application of refund of Security Deposit of Rs. 1,26,45,881/- on 1/05/2017 after passage of such a long period Petitioner is seeking to represent that MSEDCL ought to have closed his account & should have refunded security deposit with interest immediately after his disconnection. Petitioner is selectively referring to the provisions U/sec 47 of EA 2003, Regulation 11 of supply code Regulations & Regulation 6.8/6.9 of SOP 2014 & so representing that there is delay on the part of MSEDCL Office.

4. That, it is here submitted that section 47 (4) of EA 2003 provides for refund of security deposit on request of the person who gave such security deposit. In adherence to this prevailing Regulation 9.4. of SOP Regulation 2005 specifies that, where the consumer applies for closure of account with the Distribution Licensee, the Distribution Licensee shall, subject to satisfaction of amounts due from the consumer, repay all outstanding amounts due to the consumer within a period of thirty days from the date of receipt of such application. Thus in the event of any situation of closure of the accounts, application of the consumer is essential & period of obligation to process the matter starts upon receipt of the application.
5. That, it is here submitted that, provision U/sec 47 of EA 2003, supply code Regulations 2005 & regulation 6.8/6.9 of SOP 2014, essentially differentiates the situation of disconnection otherwise & closer of accounts. Regulation 6.6 of supply code Regulation 2005 provides for notice of thirty days for termination of agreement & further provides rider that distribution licensee shall confirm such termination within fourteen days. This provision abundantly makes it clear that, application of the consumer is essential for closure of accounts. Further petitioner cites Regulation 6.9 of SOP 2014 & conveniently ignores the provision to regulation which provides that,

6.9 In case of closure of account (permanent disconnection), refund of credit amount (if any), advance consumption deposits/ consumption security and meter security along with "No-Dues certificate" should be made by the Distribution Licensee within thirty (30) days in class I cities and Urban Areas, and within forty five (45) days in Rural Areas from the date of application for closure of account.

Provided that in the case where the consumer has outstanding dues to the licensee, the timeline specified above would stand revised to higher of the applicable time line specified above and seven (7) days or ten (10) days after the date of making payment against such outstanding dues by the consumer in class I cities/ Urban Area Or Rural Areas respectively.

Thus provision of EA 2003 & all Regulations there under not only differentiates the situations of disconnection otherwise/closure of accounts but also it essentially also makes distinction in respect of consumer making regular payment of electricity charges & consumers having outstanding dues. In case of outstanding dues, timeline of obligation of licensee essentially starts after making the payment of outstanding dues by the consumer.

6. In present case supply was disconnected on 31/01/2014, no any request for closure of accounts was made at relevant time & after keeping silent for unreasonably excessive period application for refund of security deposit was made on 11/05/2017. Further, it is worthwhile to note here that, there were outstanding dues of Rs. 68,39,028.75/- against this service connection No. 162019004940.

Upon receipt of the application on 11/05/2017, concerned section processed the application, some delay was bound to happen for want of original money receipt & after

adjusting arrears against this connection & upon receipt of necessary approval amount of Rs. 58,06,852.25 was refunded on 15/11/2017. Thus petitioner is not in any way affected & have received the amount, not there was any reason to file application for compensation under SOP, which is mandatory to file it within sixty days, if so have been affected, as per provision to regulation 12.2 of SOP 2014.

Considering aforesaid factual aspects, it is humbly submitted there is no any delay on the part of Respondent Office & Petitioner is not entitled for refund of any further amount.

7. Apparently case of the petitioner appears to be plane , simply claiming interest on SD, but it is not so, since obvious question remains in the matter that, why petitioner was silent since from 31/01/2014 till 11/05/2017 for such inordinate period.

Petitioner herein has concealed the material facts, which would raise question of his entitlement of any further refund at all. Petitioner herein who is seeking to represent to be director of M/s. Ramdas Ispat in present case is also one of the judgment debtors of MSEDCL in Spl. Darkhast No. 13/2012 filed by MSEDCL to recover decreed amount of Rs. 3,81,89,311/- decreed in SPI.C.S. No. 102/2003.

Spl. Civil Suit No. 102/2003 to recover electricity dues was filed by MSEDCL against M/s. Banbro Steel Catings Pvt. Ltd. & its directors Shri. Ramdas Shivram Sangle & Babasaheb Kisan Bikrad. It would not be out of place to mention here that, both the directors of M/s. Banbro Steel were also Directors of Present M/s. Ramdas Ispat.

On 31/06/2007 said suit came to be decreed for Rs. 3,81,89,311/- with interest @ 18% p.a. from 2/05/2003 till realization. It is worthwhile to note here that, Hon'ble Court is pleased to direct all defendants to pay decreed amount jointly & severally to the plaintiff MSEDCL.

To recover decreed amount MSEDCL has filed Spl. Barkhast No. 13/2012. Shri. Ramdas Shivram Sangle who was JD o. 2, after service of notice for attachment was reported to be dead. Thereafter Decree Holder MSEDCL took appropriate steps to take LR's of JD No. 2 on record. It is worthwhile to mention here that all LR's of JD No. 2 including present petitioner have appeared in the Hon'ble Court through Advocate.

Further, in view of the fact that, Suit is decreed jointly & severally against all defendants Hon'ble Court by its order dated 19/03/3014 in Spl. Dkt. No. 13/2012 is pleased to direct LR's of JD Shri. Ramdas Shivram Sangle (including present petitioner) to not to alienate the properties so cited in Exh. 5. MSEDCL is pursuing its claim in Spl. Dkt. No. 13/2012 wherein present petitioner is one of the judgment debtors.

Having such direct nexus of the petitioners would certainly raise question of his entitlement of any further refund of any amount to the petitioner, Particularly in view of Regulation 11.8 of supply Code Regulation, which provides that.

The Distribution Licensee may apply any Security so Deposited, towards satisfaction of any amount which is due or owing from the consumer.

Under circumstances, any further relief to the consumer would absolutely amount to unjust enrichment Aforesaid facts would demonstrate that, petitioner is not coming with clean hands before the Hon'ble Forum & grievance of the consumer is liable to be dismissed.

Observations by the Forum:

1. This forum has already issued order on 11/05/2018 giving its decision on refund of security deposit alongwith interest till the date of refund .
2. The aggrieved by the above order the applicant approached to the Hon. Ombudsman. . The honorable ombudsman remanded the case to the consumer grievance Redressal forum, Nashik while its order dated 11th July, 2018 in representation No. 49 of 2018, in the matter of interest on security deposit.
3. As per MERC supply Court, 2005, regulation No. 11.11 MSEDCL is liable for payment of interest at RNI Bank rate on security deposit amount held with MSEDCL on each financial year.

As per MERC Regulation No. 11.12 Interest on cash security deposit shall be payable from the date of deposit by the consumer till the date of dispatch of the refund by the Distribution Licensee.

As per the Regulation 11.9 of MERC (Electricity Supply Code and other conditions of supply) Regulation, 2005 " Upon termination of supply, the Distribution Licensee shall, after recovery of the all amounts due, refund the remainder amount held by the Distribution Licensee to the person who deposited the Security with an intimation to the consumer, if different from Such a person".

As per the serial No. 8(ii) of the appendix 'A' of the MERC (Standards of performance of Distribution Licensee , period for giving supply and determination of compensation) Regulations 2014, it is mandated that the time period for payment of final dues is 45 days in rural area from the date of receipt of application otherwise compensation is to be paid.

4. The consumer made application for refund of security deposit alongwith interest on 11/05/2017. Therefore, the Distribution Licensee is required to refund the amount within 45 days i.e. before 25/06/2017. The company has paid the refund of amount on 15/11/2017. Therefore, the Distribution Licensee is required to pay compensation, from 25th June, 2017 to 15/11/2017 at the rate of Rs. 100/- per week.
5. Therefore, MSEDCL is required to refund Security Deposit alongwith interest upto day of refund.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. Order passed by this forum vide CGRF/Nashik/Nagar Circle/Nagar UCR Dn./643/33/17-18/69 dtd. 11/05/2018 be set aside.
2. The MSEDCL is directed to refund security deposit alongwith interest after adjustment of dues with the consumer. The interest on Security Deposit shall be calculated till the refund of amount i.e. upto date of refund.
3. MSEDCL shall pay the compensation at the rate of Rs. 100/- per week or part thereof from 25/06/2017 to 15/11/2017.
4. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the

date of this order.

5. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
6. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

Sd/-
(Smt. Vaishali V.Deole)
Member

sd/-
(Prasad P. Bicchal)
Member Secretary

sd/-
(Prasad P. Bicchal)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For Ex. Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. ,
Circle office, Ahmednagar .