

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

Case No. CGRF(NZ)/91/2018

Applicant : Shri Ramesh Krishnarao Pawar,
User Shri Deepak N. Kukushas,
370, Rambhau Mahalgai Nagar,
Nagpur-440024.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F), NUC, M.S.E.D.C.L.,
Nagpur.

Applicant represented by : In Person,

Non-applicant represented by: 1) Shri V.R.Sonkusle, Exe.Engr.,
MSEDCL,

2) Shri Dahasahastra, SNDL, Nagpur

Quorum Present : 1) Shri Arvind Jayram Rohee,
Chairperson.
2) Mrs. V.N.Parihar,
Member Secretary
3) Mrs. Asmita Avinash Prabhune,
Member(CPO)

ORDER PASSED ON 01.10.2018

1) The applicant filed the present grievance application before this forum on 01/08/2018, under clause 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations 2006.

2) Non applicant (N.A.) denied applicants case by filing reply dt. 30.08.2018.

3) Forum heard arguments of both the sides on 11.09.2018 & carefully perused the case record.

4) Applicant Shri Ramesh Krishnarao Pawar is the original consumers. However facility is used by Shri Deepak N Kakuhas, Plot No 370, Mahalgi Nagar, Nagpur bearing Consumer No 410018568601, having electricity connection from dt 07/12/2013 for residential use. The user filed this grievance application for refund of paid amount of Rs 11100/- denying the responsibility for the recovery effected by N.A. against PD arrears towards the theft committed by previous occupier.

5) Non applicant in his reply dt. 30/08/2018 denied the contention of Applicant & stated that electricity connection was provided to owner Shri Ramrsh Krishnarao Pawar, Consumer Number 410012522936 since 18/04/1987 under residential (Domestic) Consumer category on his native address. Thereafter, Shri Homeshwar Ajabrao Davyakar purchased the said house from Shri Ramesh Krishnarao Pawar & used electricity connection without transferring connection in his name. Electricity theft was detected on dt 31/01/2012 (For Consumer Number 410012522936 by the said person/owner) & F.I.R. No 3154/2012 under Section 135 of the Electricity Act 2003 was lodged on dt 03/02/2012. Electricity bill for the amount of Rs 26253/- was issued as theft assessment. Thereafter, Shri Dipak N. Kakuhas present user purchased the said house in year 2013 from Shri Homeshwar Ajabrao Davyakar and new Electricity connection

was granted in the Name of Shri Deepak N Kakuhas on dt 07/12/2013 with Consumer No 410018568601 under residential (Domestic) Consumer category. Non applicant requested Shri Kakuhas on dt 26/07/2018 to deposit 6 months amount of Rs 11100/- as he had purchased house having previous liability of Theft assessment amount of Rs 26253/- which was revised to Rs 11100/- fixing 6 months liability upon Shri Kakuhas as per provisions of MERC Supply Code Regulation, 2005. In pursuance there of Shri Kakuhas deposited Rs 11100/- vide receipt number 1170243 dt 26/07/2018. He was not satisfied with recovery of Rs 11100/- from him, since he was not liable for theft of electricity by his predecessor. He therefore, submitted grievance before IGRC, SNDL, Nagpur for directions to refund said amount of Rs 11100/-. IGRC, SNDL, Nagpur dismissed grievance vide order dt 27/07/2018. Thereafter, he submitted present grievance before this forum on dt. 31/08/2018. Non Application prayed for dismissal of grievance application considering the liability upon new purchaser regarding previous arrears as per the provisions of MERC Supply Code Regulation, 2005.

6) In view of the above facts, documents and submissions made before us, we noticed that the following issues are involved in the present dispute.

a) It is well settled position of the law that N.A. has full right & authority to recover arrears of the previous occupier from present occupier as per the provisions of Section 10.5 of MERC Supply code Regulations, 2005.

b) It is noticed that N.A. has not recovered Theft assessment amount of Rs 26253/- from Shri Homeshwar Ajabrao Davyakar, although Electricity theft was detected on dt 31/01/2012 (For Consumer Number 410012522936) & F.I.R. No 3154/2012 under Section 135 of the Electricity Act 2003 was lodged on dt 03/02/2012 against him. It was his personal liability under criminal law as he was charged for theft of electricity, but N.A. failed to recover from him. N.A. cannot be permitted to recover theft assessment liability from the new occupier as new occupier has no concern with the alleged theft of electricity & with the said connection and premises during the said period when theft was detected. We have come across a decision rendered by Hon Electricity Ombudsman, Mumbai has decided identical issue & observations recorded in that order are squarely applicable for the present dispute. The details are as under.

Hon. Electricity Ombudsman, Mumbai in an order dated 17th June 2009 in matter of Shri Rajesh Bhimrao Bhosale V/s. MSEDCL, REPRESENTATION NO. 55 OF 2009 (In the matter of recovery of past arrears) has observed as under:-

12 Facts being as they are, the Respondent does not deny that it was the previous owner who was responsible for theft. Therefore, the assessment, if any, logically and legally is required to be recovered from the person who was responsible for the alleged theft of electricity. On the contrary, the Respondent preferred to recover it from the present Appellant who is admittedly not concerned with the theft. The Respondent's defence in this behalf rests on the provisions of

Regulation 10.5 of the Supply Code Regulations. *The Respondent says that any assessed amount on the premises is remitted and is recovered by the licensee from the new owner or occupier of the premises. Here, the theft of energy in the said premises is detected prior to the present Appellant occupying the flat and when the connection was not in his name. In view of the above, it is necessary to test the Respondent's argument with the provision underlined with Regulation 10.5 of the Supply Code Regulations. The Regulations reads:*

"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, in 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."

13. *The Regulation provides that when any connection is transferred in the name of another person in case of transfer of ownership or occupancy of premises, it shall be done after completing the formalities stipulated in the Regulation. It includes, apart from proof of ownership, payment of charges for electricity or any sum other than the charges for electricity due to the distribution licensee which remains unpaid by the erstwhile owner / occupier. In the present case, there are no electricity charges which were pending or any arrears at the time of change of name, carried out on 18th September, 2007. This is clear from the September, 2007, bill which in fact shows credit in favour of the Appellant.*

15. *As regards, occurrence of theft of energy or quantification of assessment, etc., it is neither intended nor permissible for this Electricity Ombudsman to go into those details in the present representation. It is for the Respondent to take suitable action against any person who is responsible for theft. It is the Regulation 10.5 of the Supply Code Regulations which comes into play while deciding the present matter. The words "any other sum other than the charge for electricity" appearing in the Regulation, cannot certainly include amount of theft assessment charges in which the present Appellant is not even remotely concerned. In view of this, the Respondent cannot be allowed to take benefit of Regulation 10.5 to rope in the Appellant in the charges for theft of energy, in a manner in which it has been done. Forum's order can not be allowed to sustain and is therefore hereby set aside.*

16. *Having held as above, the Respondent's action of recovering Rs. 10940/- towards the assessment of theft charges is neither fair nor legal in terms of the provision under Regulation 10.5. Respondent's submission that 'any sum other than a charge for electricity' includes the assessment for theft, in the present context, is clearly misplaced. The Respondent also referred to and relied upon its circular no. 381 dated 22nd September, 2003, in this behalf, extract thereof quoted by the Respondent, reads:*

"On verification of the documents from the new incoming Consumer And after verifying past history of the Consumer, if arrears of energy Bills Exists, then the whole liability of payment of arrears / dues shall Rest on Incoming Consumer. In such cases old arrears to be cleared By new Incoming Consumer before effecting change of name / Ownership of Installation"

Essence in the above extract conveys that the Distribution Licensee can ask the incoming consumer to pay liability in relation to arrears of energy bills pending against the outgoing consumer. By no stretch of imagination, it can mean that the Respondent can recover, apart from the energy charges, also the assessment of theft charges of the past consumer. Therefore, reference to the above circular, does not come to the rescue of the Respondent in defending its incorrect action. The Respondent's argument in this behalf has no substance and deserves to be rejected outright.

17. Facts being as they are, the Appellant cannot be held responsible for payment of theft assessment charges which are really attributable to the previous owner. In view of this, the Appellant's representation deserves to be allowed. The Respondent is directed to refund the amount of Rs.10940/- collected from the Appellant in terms of Regulation 10.5. This does not, however, take away the Respondent's right to recover the assessment charges, if any, for theft of energy by following due process of law, from the person who is responsible for it.

7) The above view find support from the decision Dt. 27/01/2015 rendered by Hon,ble High Court of Madras in WA No. 719 of 2014 in WP No. 8713 of 2011 the Assistant Engineer/O&M, Tamilnadu Electricity Board, Chennai Electricity Distribution Circle, Chennai 39 Vs Sabasthi Ammal & another. Perusal of the set Judgment shows that same facts of theft of electricity by previous owner/consumer & its recovery from the successor / transferee was involved. While dismissing writpetition, The following operative order is passed.

19. In view of the foregoing reasons, this Court holds that the demand/claim made by the Appellant/First Respondent through its letter No.AE/O&M/V.Va.No.53,dated 17.03.2011, claiming a sum of Rs.15,53,975/-towards theft of energy charges as penalty from the First Respondent/writ petitioner is clearly unsustainable in the eye of law and to that effect, we concur with the view taken by the Learned Single Judge in the Writ Petition. However, this Court bearing in mind, Clause 17(9)(a) of the Tamil Nadu Electricity Supply Code, 2004, directs the Appellant/First Respondent to issue a fresh demand notice/communication requiring the First Respondent/writ Petitioner to pay the lawful due electricity consumption charges of the previous occupier/tenant, reconnection charges or other ancillary/incidental charges by specifying the time limit as per relevant rule of the Tamil Nadu Electricity Supply Code, 2004, within a period of two week from the date of receipt of a copy of this order. Further, upon payment of the said claim amount by the First Respondent/Writ Petitioner, the Appellant/TNEB is directed to reconnect/restore/provide new service connection as the case may be forthwith.

20. With the aforesaid observations and directions, this Writ appeal is disposed of leaving the parties to bear their own costs

c) N.A. ought to have collected those arrears (on Premises) from new occupier, Shri Deepak N Kakuhas, before releasing new electricity connection on dt 07/12/2013 to him as PD arrears But N.A. failed to recover those arrears without assigning any reason and recovered it in part after 5 years by giving credit to applicant.

d) It is evident from the order of IGRC that Vigilance Officer of N.A disconnected electricity supply due to refusal by Shri Deepak N Kakuhas to pay arrears. N.A. had not placed 'any Notice of Disconnection under Section 56 (1), on records although it was mandatory to issue 15 days notice before effecting disconnection of electricity supply. Therefore, in absence of previous notice, disconnection in the present matter is Illegal act & absolute abuse of the power by Vigilance officer of N.A. It is matter of record that instead of admitting lapses, the N.A. suppressed these vital facts about disconnection in the reply filed before this forum on 30th August 2018 & tried to mislead that N.A had requested Shri Deepak N Kakuhas to deposit charges & further discussion between them revealed that he had already deposited Rs 11100/- amount in the Name of Sh Ramesh Krishnarao Pawar vide receipt number 1170243 dt 26/07/2018. In fact, Shri Deepak N Kakuhas has unwillingly effected payment solely due to disconnection of electricity and with a view to get it restored.

e) It is also evident in the matter that N.A's woke up in the matter after 5 years & tried to cover up own lapses even by adopting

coercive measures & misusing power by illegally disconnecting electricity supply of applicant. Such actions of N.A. can be termed as '**CHOR SODUN SANYASHALA FASHI**'. Such attempt to recover previous arrears after 5 years under the provisions of Section 56 (1) & (2) of the Electricity Act 2003 is totally incorrect & time barred because Section 56(2) permits to recover charges upto 2 years only & moreover, it is pertinent to note that those arrears were not shown as arrears during the five year period. Therefore, action on the part of N.A is liable to be rejected on this count also.

8) From the above discussion, it is obvious that refund has been claimed on two grounds viz. the applicant is not liable to pay the amount of theft assessment since he is the successor-in-title having no knowledge about theft of the electricity committed by his predecessor and secondly the electricity supply was disconnected without issuing notice. In other words the applicant alleged violation of principles of natural justice which stipulates that nobody should be condemned unheard. The applicant had shown bonafides by depositing the amount as claimed by the Non-applicant with a view to get the electric supply restored. The same was accordingly done. However the fact remains that there is clear cut violation of statutory provisions by the officials of the Non-applicant which prescribes issuance of a notice to the consumer before disconnection of electric supply with a view to give him a chance to explain. There is nothing on record to show that any such notice was issued to the

applicant before disconnecting the electric supply. Hence on this ground the applicant is justified in claiming refund of the entire amount deposited by him.

9) Secondly plain reading of the provisions of clause 10.5 of Supply Code Regulations contemplates the legitimate mode of use of electricity obtained legally and not by illegal means i.e. by theft of electricity or by tampering the meter. Admittedly in the present case the predecessor of applicant indulged in obtaining electric supply by committing theft for which he himself and his legal representative are certainly liable to make good the loss sustained by Distribution Licensee in the form of electricity charges. The applicant being transferee since he purchased the property on which the electric meter was installed, obviously can not be held liable for making payment of amount of theft assessment, although the original amount was substantially revised by the Non-applicant. In other words had the electric supply been obtained by legitimate ways i.e. without theft in that event the applicant would have been liable to pay arrears while applying for new connection in his name, since previously supply was already disconnected.

9) Looking to the facts of the case through any angle it can not be said that the applicant is liable to pay the amount claimed by the Non-applicant and hence he is entitled to get the refund. Hence the **following order.**

(a) In view of the above findings, the Applicant's applications deserves to be allowed. The order of the IGRC is unsustainable, hence set aside.

(b) The N.A is directed to refund the amount of Rs. 11,100/- deposited by the Applicant in terms of Regulation 10.5. This does not, however, take away the N.A's right to recover the assessment charges, if any, for theft of energy by following due process of law, from the previous consumer who is responsible for it.

(c) Before parting with order, it is observed that the present dispute could have been settled with slight intervention of higher authorities. Field staff has misused the powers & caused financial loss to NA by ignoring legal provisions and by illegally disconnecting the supply. Hence copy of the order be sent to the Chief Engineer, MSEDCL, NZ for issuing appropriate directions to the concerned for avoiding recurrence of such illegal action in future.

(d) The N.A. is directed to initiate departmental action against erring official for issueing order of disconnection of electricity supply without issuing notice to the applicant & fix liability & recover amount of Rs.11,100/- from his salary.

e) No order as to cost.

Sd/-
(Mrs. Asmita A. Prabhune)
MEMBER(CPO)

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

Sd/-
(Arvind J. Rohee)
CHAIRPERSON

NAGPUR

Dt. : 01.10.2018

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