



BEFORE THE OMBUDSMAN

(Appointed by the Maharashtra Electricity Regulatory Commission under Section 42(6) of the Electricity Act, 2003)

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051
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REPRESENTATION NO. 14 OF 2006

In the matter of Theft of Electricity

Smt. Savita Prabhakar Navkhare..... Appellant
V/s
Maharashtra State Electricity Distribution Co. Ltd., Nagpur..... Respondent

Present:

1. Shri W.G. Gorde, Ombudsman

On behalf of the Appellant:

1. Shri P.N. Navkhare on behalf of Smt. Savita P. Navkhare, the Appellant

On behalf of the Respondent:

1. Shri A. A. Dhote, Executive Engineer, Mahal, Nagpur, MSEDCL

Date: 07th April, 2006

ORDER

Smt. Savita Prabhakar Navkhare, the Appellant, in the present case has filed the representation on 8th March, 2006 against the order issued by the Consumer Grievance Redressal Forum, Nagpur Urban Zone. The Forum, in its order dated 22nd February, 2006 has held that in terms of the Regulation 6.4 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003, the Forum does not have jurisdiction to entertain grievance pertaining to offences and penalty as provided under Section 135 to 139 of the Electricity Act, 2003. Therefore, the Forum declined to interfere with the Respondent's action of charging the Appellant, an amount of Rs. 9511/- in a theft assessment case. The representation is registered at Serial No. 14 of 2006. The Appellant has briefly stated her case as under:

2. The Appellant is a consumer of Maharashtra State Electricity Distribution Co. Ltd (Nagpur Urban Zone) and is located at Bhisam Apartments, Chakradhar Nagar, Nagpur. She has a consumer no. 410013878106. The consumer is aggrieved with the order of the Consumer Grievance Redressal Forum, dated 22nd February, 2006 in respect of case no. 099/2006. She states that the said order was issued in a wrong manner. Her case was heard by the Forum on 21st February, 2006 and she was asked to give further details on 28th February, 2006. However, without waiting for her further submission, the Forum issued the

order on 22nd February, 2006. The Appellant requested that she is poor and may not be able to come to Mumbai for attending the hearing and prayed that the case may be heard at Nagpur.

3. The Appellant, alongwith the representation, submitted a copy of the Forum's order, copy of application in 'Schedule A' filed with the Forum and other letters of correspondence exchanged between her and the Respondent's office.

4. Perusal of the documents submitted by the Appellant reveal that the Appellant's meter was permanently disconnected due to non-payment of arrears of Rs.12, 260/- since July, 2005. The Respondent had alleged that the Appellant has indulged in theft of energy after her meter was permanently disconnected. She states that on 22nd December, 2005, the Appellant wrote a letter to the Respondent for reconnection of electricity. This was not done, but was followed by a notice dated 27th December, 2005 raising a provisional bill of Rs. 9511/- towards the assessment for theft of energy on the consumer's premises.

5. The letter written by the Appellant on 2nd January, 2006 to the Chief Engineer, Maharashtra State Electricity Distribution Co. Ltd., Nagpur shows that she has paid Rs. 12,260/-vide receipt no. 4829200 dated 15th December, 2005 towards the arrears on account of permanently disconnected consumer for restoration of supply. Instead of reconnecting the supply, she got a bill of Rs. 9511/- on 27th December, 2005 as assessment charges for theft of energy. She disagreed that there was any theft of energy in her premises.

6. Being aggrieved with the action of the Respondent alleging theft of energy, she approached the Consumer Grievance Redressal Forum, Nagpur for redressing her grievance. The Forum considered the matter and held that this being a case, falling under the provisions of Section 135 to 139 of the Electricity Act, 2003, the Forum has no jurisdiction to deal with the grievance. The Forum declined to interfere with the Respondent's action of charging the Appellant, an amount of Rs. 9511/- towards the energy theft assessment charges. The Appellant is aggrieved with the said order mainly on the ground that the matter was heard on 21st February, 2006 and that she was asked to produce certain details on 28th February, 2006 but the Forum issued the order on 22nd February, 2006 without waiting for her submission.

7. The Respondent submitted its written statement of defence during the hearing, copy of which was already made over to the Appellant. It refuted the argument of the Appellant that the Forum had fixed the hearing on 28th February, 2006 for passing the order. Instead it submitted that the hearing was concluded on 21st February, 2006 and the order was to be issued the next day. On the issue of the panchnama, it submitted that the panchnama was drawn on 10th December, 2005 and the assessment bill happened to be issued on 14th December, 2005. The Appellant reportedly showed her willingness to make payment of assessment of theft and in fact, approached the Assistant Engineer on 13th December, 2005 for this purpose. The Appellant again approached the Respondent on 27th December, 2005 to say that the earlier bill for assessment was misplaced and sought copy of the same on 27th December, 2005. The Respondent submitted that the Forum has rightly observed the actual position in the case and passed the order. On the basis of this submission, it prays that the appeal may be dismissed.

8. The matter was heard on 3rd April, 2006 at Nagpur as requested by the Appellant. Shri P.N. Navkhare was present on behalf of the Appellant while Shri Dhote, Executive Engineer represented the Respondent, MSEDCL. The Appellant mentioned the point in the representation to say that the Forum did not wait for details to be submitted by her till 28th February, 2006. However, she did not elaborate this argument, nor there was any material or letter put forth in this behalf. She explained to say that there was no theft of energy from her meter since it was already permanently disconnected. She was not given a copy of the panchnama drawn by the Respondent on 10th December, 2005. Moreover, while making payment of bill of Rs. 12,260/- on 15th December, 2005, no mention was made by the Respondent about the alleged theft of energy although the said panchnama is reported to have been drawn on 10th December, 2005. . She also raised the issue that the Respondent has not filed any FIR in the police station regarding the alleged theft of energy and finally prayed for proper justice in the matter. Upon query, the Appellant conceded that inspite of the disconnection of electricity in July, 2005, lights and utilities were on with the help of a connection taken from the meter of its close relations in the flat scheme. This, it says that was within the knowledge of the Respondent's officials.

9. The Respondent explained the sequence of events that led to detection of theft of energy. On query, he informed that the panchnama drawn on 10th December, 2005 was signed by as many as ten panchas, most of whom were the residents of the adjacent flats. Upon detection of the theft, the Appellant and her husband locked their flat and left without signing the panchnama and did not cooperate in the process. The Respondent conceded that this fact should have been mentioned in the panchnama. The Respondent, however, disagreed with the contention of the Appellant that it did not know about the assessment of theft charges until 27th December, 2005. Respondent produced a copy of the assessment bill drawn on 14th December, 2005 and a duplicate of this, was again given to the Appellant on 27th December, 2005. After the panchnama on 10th December, 2005, it took 3 to 4 days to finalise the assesement.

10. Perusal of the documents on record especially the order issued by the Forum show that the matter was examined at length by the Forum. The Forum has noted that the panchnama was drawn by the Junior Engineer of the Respondent on 10th December, 2005 mentioning therein the relevant details in respect of commission of the theft of electricity by the Appellant. The wire used for the theft was also seized and the fact is reported in the panchnama. The panchnama was signed by as many as 10 panchs. It is stated that the supply of electricity was taken illegally from the bus bars of the flat scheme. Based on the material on record, the Forum concluded that this is a theft case, and therefore, it is beyond its jurisdiction.

11. As regards the argument of the Appellant that the copy of the panchnama was not given to the Appellant, the Forum observed this is as a lapse on the part of the Respondent. It does not, however, mean that there was no commission of theft and does not invalidate the contents of the panchnama.

12. It is contended by the Appellant that the Respondent did not file FIR for theft of energy with the police. It is an admitted fact that the Respondent did not do so. The Forum while acknowledging this fact ruled that non filing of FIR does not negate the existence of theft of electricity. In this connection, it may be worthwhile to look at the relevant provisions in the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 in this behalf, which are reproduced below:

“8.5 Whoever indulges in any of the acts of the nature provided in clauses (a), (b) or (c) of sub-section (1) of Section 135 of the Act with the intention of dishonestly abstracting, consuming, or using electricity shall be liable to the consequences provided in the said Section:

Provided that nothing in this regulation shall apply to any unauthorized use of electricity provided in Section 126 of the Act.

8.6 An assessment under Section 135 of the Act shall be made for the entire period for which the dishonest abstraction, consumption or use of electricity under that Section can be clearly established by the officer authorized by the State Government in this regard:

Provided that the maximum period of assessment under this Regulation 8.6 shall be two years prior to the date of detection of such dishonest abstraction, consumption or use of electricity:

Provided further that the assessment shall be made at a rate equal to one-and-half times the tariff applicable to the category of services so assessed:

Provided also that where the period of dishonest abstraction, consumption or use of electricity under Section 135 of the Act cannot be clearly established, it shall be presumed to be six months prior to the date of detection.”

Plain reading of the above provisions reveal that an assessment under Section 135 of the Act has to be made for the entire period of dishonest abstraction, consumption or use of electricity under these Regulations as can be established by the authorized officers. This is an additional provision, independent of the provision in Section 135 of the Act. While, penalties mentioned under Section 135 can be imposed only upon conviction by the Court, the assessment as provided in the Regulation 8.6 above can be made by the authorized officer. It, therefore, follows that the Respondent may choose to act in accordance with the Regulations and it does not appear obligatory for the Respondent to file FIR and prosecute the consumer for theft of electricity.

Similar view is expressed by the National Consumer Dispute Redressal Commission in a revision petition 489 of 1998 decided on 8th February, 2002 between Secretary, KSEB V/s Hotel Maria, reported in 2003 NCJ 637 (NC).

“.....But then also there is nothing on the record to show that complainant had made any theft of electricity. District Forum also took note of the fact that no criminal prosecution had been lodged, though we do not think it is invariably necessary for the Electricity Board to prosecute a consumer if there is theft of electricity.....”

In the light of the above, I am inclined to agree with the Forum that non filing of FIR with the police does not negate the existence of theft.

13. As regards to the submission of the Appellant that the Forum had asked the Appellant to furnish complete details of the case on 28th February, 2006, there is no evidence put forth by the Appellant in this behalf. Nothing on record suggests that the matter was adjourned till 28th February, 2006 and that the Appellant was asked to furnish certain details. This allegation, therefore, cannot be relied upon, being unsubstantiated.

14. Based on the documents on record and submissions made during the hearing, I have no hesitation to hold that there is a prima facie case of theft of electricity. Therefore, the matter squarely falls within the ambit of Section 135 of the Electricity Act, 2003. The Forum has rightly concluded that the matter is beyond its jurisdiction in terms of the Regulation 6.4 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2003. In view of the above, I am inclined to concur with the views of the Forum to conclude that the case is beyond the jurisdiction of the Forum and also the Ombudsman. In view of this, it is not necessary to go into merit of the case. The representation is, therefore, not maintainable, as being beyond jurisdiction and is accordingly disposed off.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary