



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. 15 OF 2006

In the matter of Wrong Billing and Disconnection

Shri Suresh Gangaram Dubbalwar..... 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 Suresh Dubbalwar

On behalf of the Respondent:

1. Shri V. R. Pampattiwar, Executive Engineer, Gandhibag, Nagpur, MSEDCL

Date: 07th April, 2006

Shri Suresh Gangaram Dubbalwar, the Appellant in the present case, is a consumer of the Respondent, Maharashtra State Electricity Distribution Co. Ltd. at Nagpur. The present appeal happens to be filed against the order of the Consumer Grievance Redressal Forum, Nagpur, in respect of Case No. CGRF(NUZ)096/2006. The Forum, in its order dated 23rd February, 2006 held that the Respondent's action of disconnection of electricity supply to the Appellant's premises was undoubtedly improper, unjust and illegal and awarded compensation of Rs. 2000/- to the Appellant. The Forum further held that the net amount of the energy bill of Rs. 22040/- including arrears for the past period is not recoverable, being time barred and directed the Respondent to withdraw the said bill.

2. The Appellant, in its representation filed on 14th March, 2006 states that he is satisfied with the Forum's order except for the amount of compensation awarded. The Appellant feels that the compensation of Rs. 2000/- awarded by the Forum is too meagre and hence the appeal. It has prayed that the compensation should be increased to Rs. 50,000/- in view of the damage of the product and the loss of business due to disconnection of electricity supply for 22 days. The Appellant has briefly stated his case as under:

3. The Appellant states that he is a consumer of the Respondent and runs a small ice cream shop located at B-7, Shendre Complex, Chhapru Chowk, Nagpur. The Respondent visited the shop of the Appellant on 6th September, 2005 and issued a bill of Rs. 32040/- on

28th September, 2005 for 11891 units. This pertained to the period from 11th March, 2003 to 6th September, 2005 and includes some bill adjustments. No details were given. The Appellant approached the Executive Engineer on 11th October, 2005 with his complaint. However, the Respondent, on 21st November, 2005 disconnected his electricity supply without giving any notice or intimation and thereafter on 30th November, 2005, removed the meter. Therefore, he issued a legal notice to the Respondent and filed a complaint on 1st December, 2005. He paid Rs. 10,000/- as part amount under protest to the Respondent towards the bill on 12th December, 2005 and got reconnection of supply. Alongwith the Representation, the Appellant submitted a copy of the Forum's order, his complaint about the huge bill, a copy of the legal notice issued to the Respondent and a letter from M/s. Dinshaw Dairy Foods Ltd, Nagpur declining to reimburse his loss of Rs. 15,000/- caused due to damage of the ice cream stock.

4. The Appellant in his representation has not detailed out the events, which led to disconnection of electricity supply to his premises. However, copies of the documents filed with the representation reveal the above sequence. It is seen from the records that the Appellant had a meter no. 9000005771 as shown on the bills and he used to pay the bill against this meter number regularly. There were no outstanding dues until 29th August, 2005. The Respondent issued a bill of Rs. 32,040/- for the billing cycle from 18th July, 2005 to 18th September, 2005 on 28th September, 2005 including past arrears showing the reading as 11095. He protested about this huge bill but the Respondent did not offer any satisfactory decision and disconnected the electricity supply on 21st November, 2005 without any intimation. The Appellant says that his meter was in order. He was not in agreement with this huge bill but still he paid Rs. 10,000/- under protest on 12th December, 2005 to reconnect the electricity supply.

5. Aggrieved with the action of the Respondent, he approached the Consumer Grievance Redressal Forum who heard and decided the matter by its order dated 23rd February, 2006. As mentioned above, the Forum held the disconnection of electricity supply to the Appellant's shop as illegal and directed the Respondent to pay Rs. 2000/- as compensation to the Appellant for the hardship caused to him. It also held the bill of Rs. 32,040/- as non-recoverable and further directed to adjust the payment of Rs. 10,000/- made by the Appellant against the net amount of energy consumption from the period 18th July, 2005 to 18th September, 2005.

6. Notice was issued to both the parties. They were advised to explore the possibility of working out a proposal to facilitate settlement through conciliation or mediation. The Respondent was directed to file the written statement of defence. There is no such proposal from either of the parties.

7. The Respondent filed its written statement of defence, which was received on 31st March, 2006. The Respondent conceded that the supply was disconnected and the Appellant was asked to pay some amount so that his grievance can be looked into and redressed. The Respondent also conceded that the supply was restored only on payment of Rs. 10000/-. The Respondent agreed the lapse of wrongly billing the Appellant for a long period of 30 months, which it says happened due to mistake of interchanging the meter number of the Appellant

with some other consumer. The correct bill was issued only in September, 2005 and it is based on the reading of the meter installed at Appellant's premises. The Respondent submitted that the Forum has erred in declaring the entire arrears of 30 months raised in September, 2005 as non recoverable under Section 56 (2) of Electricity Act, 2003. While agreeing that it had not issued the correct bill including arrears in time, still it has a right under Section 56 (2) to claim the electricity charges upto 24 months and not prior to that. It has contested the claim of the Appellant that it incurred loss of Rs. 15000/- due to spoiling of ice cream. It has also taken an exception to the Appellant's claim of loss of business worth Rs. 22000/- at the rate of Rs. 1000/- per day. It says that there is no ground or evidence put on record to prove this claim. The Respondent has also doubted authenticity of the letter from M/s. Dinshaw Dairy Food Ltd., which is not on the company's letterhead and is signed by someone Mr. Tiwari without mentioning his designation. Further, the Respondent submits that the Appellant had not sought any compensation in his grievance application to the Forum but only added this in the rejoinder subsequently filed on 17th February, 2006 shortly before the Forum decided the matter on 20th February, 2006.

8. The matter was heard on 4th April, 2006. Shri Suresh Dubbalwar, the Appellant was personally present. Shri V. R. Pampattiwari, Executive Engineer, represented the Respondent. The Appellant reiterated the sequence of events that led to disconnection of electricity supply to the shop. He deposed that he had been paying electricity bills regularly and even the bills issued on average basis until August, 2005. There were no arrears towards electricity charges as on that date. He was surprised to receive a huge bill of Rs. 32,040/- for the billing cycle from 18th July, 2005 to 18th September, 2005. The Respondent disconnected his supply on 21st November, 2005 without giving any notice or intimation for disconnection. He had to pay Rs. 10,000/- to get his supply restored. He then approached the Forum for redressing his grievance. The Forum issued the order holding the bill of Rs. 32040/- including the arrears as non recoverable and awarded compensation of Rs. 2000/-. Although, he is satisfied with the order of the Forum, he feels that the compensation awarded is too low as compared to the loss due to damage of ice cream and closure of the shop for 22 days as a result of disconnection. He prayed that the amount of compensation should be reviewed and revised to Rs. 50,000/-. He also produced a letter from M/s. Dinshaw Dairy Foods Ltd, declining to reimburse the amount of Rs. 15,000/- due to spoiling of the ice cream stock.

9. The Respondent argued on both the point of facts claiming compensation as well as on the Forum's order declaring the entire arrears as non-recoverable. The Respondent forcefully opposed to any grant of compensation on the ground that the Appellant has not produced any evidence to show that there was any loss of product. The letter from M/s. Dinshaw's Dairy Foods Ltd. is also stated to be not authentic and therefore unreliable. It was submitted that the Forum has not correctly interpreted Section 56 (2) of the Electricity Act, 2003 which bars the recovery of arrears older than 24 months and prays that the bill claiming the arrears with effect from September, 2003 onwards cannot be declared as non recoverable since the bills were raised in the month of September, 2005. It reiterated the grounds as made out in its detailed statement of defence.

10. Documents on record and proceedings during the hearing make it quite clear that the Respondent resorted to disconnection of electricity supply on 21st November, 2005 without

following due process of law. No notice or intimation of disconnection was issued to the Appellant. This action was held by the Forum as improper, unjust and illegal.

11. As regards the amount of compensation, the Appellant has not substantiated quantum of loss due to disconnection except producing a letter from Dinshaw's Dairy Foods Ltd. On perusal of the said letter, it is seen that the Appellant has not delivered the damaged product to the company. The Appellant has also not submitted the exact quantity of product, which it is claiming to have been spoilt. As regards to the claim of compensation demanded due to closure of the shop, it cannot be treated as a direct loss, if any, due to disconnection but at best may be seen as indirect or consequential loss. As regards the direct loss claimed for the spoilt ice cream, there is no evidence to quantify the loss as claimed by the Appellant. The letter from M/s. Dinshaw's Dairy Foods Ltd indicates that the Appellant has not delivered any quantity of the spoilt product to the company to claim reimbursement of loss, if any. It was necessary for the Appellant to produce evidence to prove its loss. It is not sufficient to rely on presumptions or preponderance of probabilities in this behalf. The National Consumer Disputes Redressal Commission while disposing of the First Appeal no. 57 and 119 of 2001, between New India Assurance Co. Ltd and M/s. Triveni Overseas Ltd reported in 2003 NCJ 39 (NC), has held that: -

“As regards quantum we are unable to appreciate as to how figure of Rs. 10.00 lakhs arrived at without there being any evidence produced by either of the parties. The least complainant could have produced was its books of accounts and the record of the Bank from where financial assistance was obtained. It is necessary for the complainant to produce evidence to prove its loss. The amount of insurance like this could not have been awarded by the State Commission merely on presumptions or ‘preponderance of probabilities’. There must be something for us to uphold the order of the State Commission on the question of quantum as we are not versed with the harvesting of prawns, the market value of full grown prawn at a particular place and the amount spent by the complainant in the project.”

12. The Forum has gone into issue of disconnection and rightly held that Respondent's action of disconnection of electricity was improper, unjust and illegal and that it indeed caused hardship to the Appellant. The Forum has awarded the compensation of Rs. 2000/- for the hardship caused to the Appellant, which appears to be fair and proper. It is not, therefore, necessary to interfere in the Forum's order as far as grant of compensation is concerned.

13. The Forum also analysed the evidence on record and ruled that the bill of Rs. 32,040/- including the arrears of Rs. 27,920.84 had become time barred. The Forum took the note of the payment of Rs. 10,000/- made by the Appellant and the net amount of Rs. 4119.16 towards the energy consumption during the billing cycle from 18th July, 2005 to 18th September, 2005. The Forum further ruled that, upon adjustment of credits and debits, the

remaining amount of Rs. 22,040/- is non recoverable, being time barred. While examining the issue, the Forum observed as under:

“It is crystal clear from record that the non-applicant has blatantly violated this legal provision in as much as arrear amount of Rs. 27920.84 was shown to be recoverable for the first time in the applicant’s energy bill dated 28th September, 2005 after two years from the date i.e. 11th March, 2003 on which this sum has become first due and also this sum was not shown as continuously recoverable as arrear of charges in the intervening period. Thus, the non-applicant’s claim of recovery of Rs. 27920.84 had become time barred. The non-applicant will, therefore have to withdraw this amount from the applicant’s energy bill.”

It is seen that the Forum while interpreting the provision of Section 56 (2), assumed that the sum of Rs. 27920.84 had become due from 11th March, 2003 and that this is shown for the first time in the bill of Rs. 28th September, 2005 i.e. after two years. On this basis, the Forum concluded that it has become non recoverable in terms of the provision under Section 56 (2). The assumption that the entire sum of Rs. 27920.84 became due on 11th March, 2003 does not appear to be correct since the number of energy units inadvertently not charged due to interchanging of meter numbers were proportionately consumed over a period of time and not alone in the month prior to March, 2003. In fact, these units were consumed between March, 2003 and September, 2005. Therefore, the amount due against the monthly consumption would get added up accordingly in a period of 30 months to result in the accumulated arrears. Therefore, it would be incorrect to assume that the entire amount of Rs. 27920.84 was due on 11th March, 2003. Assumption of the Forum would mean that the entire units corresponding to the amount of Rs. 27920.84 were consumed prior to March, 2003 and were left unbilled. This is not so. Therefore, the assumption of the Forum and declaration of the entire amount as non-recoverable under the provision of Section 56 (2) is clearly misplaced.

14. It is in this background that the Respondent’s prayer to correct the above error crept in the order of the Forum merit consideration. It is true that the Respondent has no right to appeal provided in the Electricity Act, 2003. Still, in the interest of justice, it becomes all the more necessary to treat this submission as cross objection and deal it accordingly. As otherwise, the apparent error in the order passed by the Forum would remain unattended. Here, it may be pertinent to note that the Appellant, in its grievance filed with the Forum had prayed that the case may be closed by giving him some minimum bill. He never denied the actual consumption of energy units although the Respondent did not give him correct bill due to inadvertent wrong feeding of meter numbers to the system. It is also worthwhile to note that the Appellant never prayed for complete withdrawal of the arrears by invoking the provision under Section 56(2) of the Electricity Act, 2003.

15. As the provision under Section 56 (2) reads, the Respondent in this case, loses its right to claim the arrears older than 24 months through the bill issued on 28th September, 2005, since the arrears for the earlier months from March, 2003 to August, 2003, were never raised within a period of two years. However, it would be perfectly in consonance with the provision contained in Section 56(2), to allow the Respondent to recover the dues pertaining to the period from September, 2003 to September, 2005. The order of the Forum to this extent is liable to be and is hereby set aside. The Representation is disposed of with the following order.

ORDER

1. The compensation of Rs. 2000/- awarded by the Forum to the Appellant for the hardship caused to him is just and fair. There is no reason to interfere with the order of the Forum in this respect as elaborated in the preceding paragraphs.
2. Prayer of the Appellant to award compensation of Rs. 50,000/- towards damage of products / loss of business is rejected for the reasons as elaborated in the preceding paragraphs.
3. Order of the Forum to withdraw the amount of Rs. 27920.84 from the Appellant's energy bill, as time barred, is set aside to the extent that the Respondent is entitled to recover arrears upto two years as per provision under Section 56(2) of the Electricity Act, 2003. The Respondent is accordingly allowed to recover the arrears for the period from September, 2003 to September, 2005. The arrears for the period from March, 2003 to August, 2003 are non recoverable.
4. This order shall be complied immediately and compliance reported within a period of one month from this date.

Sd/
(W. G. Gorde)
Ombudsman

Sd/
(S. N. Yadwad)
Secretary