



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.42 OF 2005

In the matter of Subsidy to Power Loom Industries

Smt. Kanta Dayaldas Lokwani..... Appellant
Opp. Radhaswami Satsang Hall,
Kalyan Ambarnath Road,
Ulhasnagar-3

Versus

Maharashtra State Electricity Distribution Co. Ltd.,..... Respondent
O&M Sub Divn.II, Divn.I,
Plot No. 178, Kalyan Ambarnath Road,
Ulhasnagar – 421 003.

Present:

1. Shri W.G. Gorde, Ombudsman
2. Shri S. N. Yadwad, Secretary

On behalf of the Appellant:

1. Smt. Kanta D. Lokwani through her nominated representative Shri Gopal D. Lokwani, Proprietor
2. Shri Kishin J. Gopalani, Accountant

On behalf of the Respondent:

1. Shri H.A. Pise, Ex.Engineer, MSEDCL
2. Shri K.B. Gorde, Dy.Ex. Engineer, MSEDCL
3. Shri J.R. Reddy, Asst. Engineer, MSEDCL
4. Shri T.N.E. Chandran, Sub Engineer, MSEDCL

Date: 19th December, 2005

1. Smt. Kanta Dayaldas Lokwani, the Appellant in the present case filed the representation on 27th October, 2005 against the order of the Consumer Grievance Redressal Forum, Kalyan. The order issued by the Forum on 1st September, 2005 directed the Maharashtra State Electricity Distribution Co.Ltd. (hereinafter referred to as the Respondent) to withdraw the assessment bill amounting to Rs. 3,93,000/- issued for a period of over 3 years in the past, to the Appellant. Instead, the Forum allowed the Respondent to withdraw subsidy granted to the Appellant, applicable to energy tariff for Power Loom with effect from only 09th August, 2002 and issue a fresh bill accordingly. Respondent issued a fresh provisional bill in accordance with the Forum's Order.

2. The Appellant in his representation dated 27th October, 2005, has sought withdrawal of the provisional bill and requested for issue of new bill as applicable for

Power Loom purpose and not for industrial purpose. She also prayed that the balance amount after issue of fresh bill should be refunded. Brief details of the case submitted by the Appellant are as under:

3. The Appellant is in the business of Power Loom since the year 1987 and manufactures grey cloth. She uses twisting machines, winding machines, warping machines, kandi machines, etc as a part and parcel of Power Loom machinery. The Government circular issued in the year 2001 provides subsidy for use of these machines. She claims as a owner of Power Loom machinery as well as other machines like twisting, winding, warping, etc that are entitled for subsidy in the energy tariff.

4. She states that the Power Looms and the above machinery are in the same premises and the officials of Maharashtra State Electricity Distribution Co. Ltd, the Respondent, are aware of it. They have not raised any objection for location of the Power Loom machinery as they stand today since long and owned by the Appellant. She refuted the claim of the Respondent that she is engaged in thread work alone with the help of twisting machines. She says that the Respondent has started raising bills at the industrial tariff instead of the Power Loom tariff although he is entitled for subsidy provided by the Government.

5. The Appellant had approached the Consumer Grievance Redressal Forum at Kalyan seeking redress on the bills raised by the Respondent at industrial tariff, with retrospective effect from May, 2001. The matter was heard by the Forum and by its order dated 1st September, 2005, the Forum set aside the assessment bill of Rs. 3,93,000/- issued for the period from May, 2001 to October, 2004 seeking to recover the subsidy wrongly claimed by the Appellant. The Forum also set aside the interest and delayed payment charges on the above amount. Instead, the Forum allowed the Respondent to levy and raise fresh bill by withdrawing subsidy with effect from 9th August, 2002 i.e. for two years prior to the detection of the use of power for different purpose instead of Power Loom. The Order is made by the Forum in accordance with the provision of Section 56(2) of the Electricity Act, 2003.

6. The Respondent submitted its reply on 5th December, 2005 explaining its stand on the points raised by the Appellant. It says that the Commercial Circulars No. 567, 715, 398 and 685 are issued to explain the concessional tariff applicable to Power Loom industries. It emphasised forcefully that subsidy extended to Power Loom units is available only if the industry uses Power Loom alongwith the other machines like twisting, winding, kandi, etc. as preparatory for weaving activity. In the present case, the Appellant has been using electricity only for the twisting, winding and kandi machines as under:

	<u>No. of machines</u>	<u>Sanctioned load used</u>
Twisting Machines	4	25 HP
Winding Machines	2	2 HP
Kandi Machines	1	1 HP
Total	7	28 HP

7. Sanctioned load of the Consumer is 30 HP out of which 28 HP is used for above machines. There is no Power Loom installed in the consumer's premises and as such, the consumer was not entitled for subsidy or concessional tariff in accordance with the Government orders and various circulars issued by the Respondent. The Flying Squad of Maharashtra State Electricity Distribution Co. Ltd. discovered on 9th August, 2004 that the Appellant was using only twisting, winding and kandi machines as above, and wrongfully claiming the subsidy amount for use of Power Looms since May, 2001.

8. After the detection of wrongful use of electricity, the Respondent made an assessment for the period of 3 years prior to the date of inspection i.e. 9th August, 2004 and a supplementary bill for Rs. 3,93,000.36 was raised. The Respondent further states that the consumer carried out alterations and repairs to electrical installation without necessary permission from the Respondent and without submitting any test report to that effect. Thus, the Appellant wrongfully extracted the benefit of the concessional tariff and the subsidy. The consumer has kept the Respondent in dark, although he was expected to keep the Respondent informed and the permission should have been duly obtained. The Appellant is therefore liable to pay the differential amount of tariff, to the extent of entire benefit wrongfully derived by him.

9. The Respondent further says that the Forum has allowed to recover the amount towards the differential amount of tariff only for the period of two years by invoking the provisions of Section 56 of the Electricity Act, 2003. It feels that the Forum's order will not meet the ends of justice, as there has been a loss to the Respondent for a longer period. The Respondent prays under Section 17 of the Limitation Act, 1963, the amount due can be recovered for 3 years and therefore the Forum should not have invoked the provisions of Section 56 of the Electricity Act, 2003.

10. The matter was heard on 8th December, 2005. Shri Pise, Executive Engineer, represented the Respondent while Shri Gopal Lokwani and Shri Kishin Gopalani represented the Appellant. Shri Gopal Lokwani took stand that the Appellant has been using electricity for the purpose of Power Loom and the other machines like twisting, winding, warping, etc. These are the part and parcel of the manufacturing business of power loom and can be verified if necessary. The concessional tariff and subsidy available to Power Loom should therefore be applicable to the Appellant. It is aggrieved with the order of the Forum in so far as the Forum has not considered the argument that he uses electricity for Power Loom also.

11. The Appellant's representative was asked during the hearing whether the Power Looms are connected through the same meter with the same consumer number from which the twisting, winding and kandi machines are connected. He conceded that the meter from which the power looms are connected is not the same, which is used for recording electricity supplied to winding, twisting and kandi machines. When asked whether there is any separate meter in the name of the Appellant which is used for Power Looms, he replied in negative and confirmed that there is no other meter in the name of Smt. Kanta Lokwani. He repeatedly pleaded that he is in the business of grey cloth manufacturing which requires the use of twisting and winding machines apart from

looms. He did not, however, put forth any evidence to show that Smt. Kanta D. Lokwani has any electricity connection for running Power Looms or he owns and has installed any loom in the same premises. Further, out of the sanctioned load of 30 HP in the name of the Appellant 28 HP is used for the twisting, winding and kandi machines and there is no evidence to show that the Appellant uses electricity for Power Loom alongwith the twisting, winding and kandi machines, so as to claim the benefit of subsidy or subsidised tariff.

12. The Respondent during the hearing explained that the Inspection Squad, on 9th August, 2004, detected that the Appellant does not have any power loom in the premises and uses electricity as an industrial load of 28 HP out of the sanctioned load of 30 HP for the purpose of twisting, winding and kandi machines. The Government order of 11th February and 21st February, 2004 alongwith the various circulars issued by the Respondent in this behalf, clearly lay down the procedure for extending subsidy to power loom units. The Appellant, although originally was sanctioned electricity for power loom purpose has been using it for twisting, winding and kandi machines only. She is therefore not eligible for any subsidy or concession in tariff. Benefit wrongfully availed by the Appellant from May, 2001, therefore, needs to be recovered.

13. On the issue application of Section 126 of the Electricity Act, 2003, for unauthorised use of electricity, the Respondent did not pursue the point during the hearing although this was raised before the Forum. The Forum had considered the point and ruled that the application of Section 126 is not relevant in the case and it is a matter, limited to admissibility of subsidy in tariff for power loom units. The Maharashtra Electricity Regulatory Commission, while determination of tariff vide order dated 5th May, 2000 has observed that, there is no need for a separate categorisation of power loom consumers, this category was created during 1997 unnecessarily. Therefore, this category was abolished and these consumers were directed to be billed at LTP-G tariff with effect from 1st April, 2000. Use of electricity whether for power looms or for any other industry remains an industrial use (LTP-G tariff). Use of electricity for other than power loom (twisting, winding, etc) in the present case cannot be treated as unauthorised use within the meaning of Section 126 of the Electricity Act, 2003. The point for decision now remains whether the Appellant is entitled for subsidy in tariff in the given situation.

14. It is an undisputed fact from record that out of sanctioned load of 30 HP, 28 HP used by the Appellant for twisting, winding and kandi machines in her premises. There is nothing to suggest that the Appellant uses any power loom on her meter. Despite the opportunity given to the Appellant, she could not put forth any evidence to indicate that she has any power loom in her name in the premises. On the contrary, it is seen that entire sanctioned load of 28 HP is used only for twisting, winding and kandi machines. Series of circulars and Government orders submitted and referred by the Respondent makes it abundantly clear that subsidy or subsidised tariff is applicable to power loom industries using them alongwith the machines like sizing, twisting, warping, winding, etc. The Respondent under the circulars is expected to carefully ascertain the eligibility of any particular industry, claiming subsidy in this behalf so that the benefit goes to the right

user as contemplated in the circulars. In view of this, the Respondent's action in withdrawing the subsidy wrongfully granted to the consumer cannot be faulted.

15. The only other issue that remains to be decided is the Forum's order on limiting the withdrawal of subsidy and permitting to recover the subsidy for two years instead of 3 years as claimed by the Respondent. Section 56(2) of the Electricity Act, 2003 reads as under:

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

16. Withdrawal of subsidy retrospectively for two years would mean raising supplementary bill for the amount of benefit wrongfully granted to the Appellant although it was not eligible for subsidy. The Respondent noticed this wrongful use of electricity for other than power looms, only on 9th August, 2004. The Respondent claimed that the Appellant has been using electricity for twisting and winding machines, etc for more than 3 years i.e. after the fire in the factory on 15th January, 2000 when the looms were shifted out of the premises. As such, the Respondent has preferred withdrawing it from May, 2001, date on which the subsidy was first made available. The Respondent has referred Section 17 of the Limitation Act, 1963 to claim that it should be allowed to recover this amount for 3 years, instead of two years as allowed by the Forum.

17. It should be understood that the general law of Limitation could be referred and followed in case where there is no specific provision in the Act to this effect. It is true that the Limitation Act, in such cases, would normally provide a period of 3 years to seek the remedy in the appropriate court, from the date on which the cause accrues. The Limitation bars the remedy but by itself does not extinguish the right of the Respondent to recover the amount. However, the Electricity Act, 2003 under Section 56(2) has made a specific provision to bar the recovery of any sum due under the Act after a period of two years from the date when such sum becomes first due, subject to conditions mentioned in the sub section. In the present case, the recovery of the amount of wrongful grant of subsidy became first due in the year May, 2001. The Respondent was well within its right and obligations to recover such wrongful grant of benefit any time. It should not have waited until 9th August, 2004 to discover this wrong use. It cannot therefore be allowed to take the shelter under the provisions of the Limitations Act, 1963 to claim the recovery for more than two years preceding the discovery of wrongful use. It must be understood that provisions in the Electricity Act, 2003 should take precedence over the corresponding provision, if any, in the general enactment. Section 174 of the Electricity Act, 2003 has clearly provided that the provisions of this Act shall have the effect not withstanding anything inconsistent that is contained in other laws for the time being in force. It is in this context that I am inclined to agree with the Forum invoking the provisions of the Section 56(2). In view of this, sum accrued due to wrongful grant of subsidy for more than two years has become non-recoverable. I do not appreciate the

argument made by the Respondent on application of the Limitation Act for the present purpose. Therefore, I do not consider it appropriate to deviate from the views expressed by the Forum in this behalf.

ORDER

1. Appellant's prayer for withdrawal of the provisional bill and issue of new bills for power loom purpose giving subsidy as notified by the Government of Maharashtra for power loom industries, has no justification and is therefore rejected for the reasons elaborated at paragraph 17 above.
2. The Respondent cannot claim recovery of subsidy amount wrongfully granted in the past for more than two preceding years as provided under Section 56(2) of the Electricity Act, 2003 for the reasons elaborated at paragraph 17 above. Respondent's claim for recovery of subsidy granted for more than preceding two years is rejected for the same reason.
3. The Consumer Grievance Redressal Forum's order dated 1st September, 2005 is in consonance with the provisions of the Electricity Act, 2003 and circulars issued by the Respondent from time to time. The Order of the Forum, therefore stands.

Sd/
(W.G.Gorde)
Ombudsman

Sd/
(S.N.Yadwad)
Secretary