



## 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. 9 OF 2006

In the matter of Recovery of Arrears of Old Consumers.

Shri Yeshwant Gopal Pendse..... Appellant  
V/s  
Maharashtra State Electricity Distribution Co. Ltd..... Respondent

Present:

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

On behalf of the Appellant:

1. Shri Yeshwant Gopal Pendse

On behalf of the Respondent:

1. Shri Bharat Kumar B. Pathak, Junior Engineer, Mandai, MSEDCL, Pune
2. Shri B.M. Koshti, Assistant Auditor, MSEDCL Pune.

**Date: 21<sup>st</sup> March, 2006**

### **ORDER**

Shri Yeshwant Gopal Pendse, resident of 1787, Sadashiv Peth, Ekdant Cooperative Housing Society, Pune has submitted the representation on 15<sup>th</sup> February, 2006 against the order of Consumer Grievance Redressal Forum at Pune. The Forum, in its order on 16<sup>th</sup> December, 2005, has concluded that Maharashtra State Electricity Distribution Co. Ltd. was right in recovering the arrears of the old consumers of the premises from the members of the housing society before releasing the connection to four members of the society. The Forum also did not agree with the contention of the Appellant that Regulation 10 of M.E.R.C (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 does not apply in the present case. The Forum did not interfere in the recovery of past arrears already made by the Maharashtra State Electricity Distribution Co. Ltd.

2. Aggrieved with the above order of the Forum, Shri Pendse, the Appellant in the present case has filed the representation, which is registered at Serial No. 9 of 2006. In the Representation, the Appellant has briefly submitted his case as under:

3. Shri Pendse, the consumer of Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as the Respondent) is the Chairman of Ekdant Cooperative Housing Society, located at 1787, Sadashiv Peth, Pune. The electricity connection to 19 residential and 8 shops in the society were released by the Respondent in the year 2001. Additional F.S.I. was available at the location and therefore four more residential flats were constructed and allotted to respective owners. The new allottees applied to the Respondent for release of power connection, sometimes in October, 2004 with necessary documents. The Respondent, in turn, wrote back on 5<sup>th</sup> November, 2004 informing that there were arrears of Rs. 30050.46 due from the four occupants of the premises no. 1787 before construction

of the new housing society. The Appellant was called upon to pay the arrears before the release of electricity connections to the new flats. No explanation was given, as to under which clause the recovery of old arrears is proposed to be made.

4. The Appellant followed up the matter with the officials of the Respondent from time to time. In the meantime, the Respondent levied Rs. 939.07 under the head 'Bill Adjustment' in each of the bills of the consumers in the building to recover the arrears. The Appellant then approached the Internal Grievance Redressal Cell of the Respondent. The matter was considered by the Cell, which informed Shri Pendse, the Appellant, that the arrears of Rs. 30049/- are already recovered from 28 existing and two new consumers. The Cell also justified the recovery on the ground that such arrears, if not paid by the earlier consumers of the premises, are recoverable from the new occupants / consumers before the supply is reconnected. Since all the consumers have already paid the arrears, there is no question of refunding the amount.

5. The Appellant, not satisfied with the above reply, approached the Consumer Grievance Redressal Forum mainly on the grounds that Shri P.J. Joshi, in whose name the old arrears were shown, is no more alive and that the premises where Shri Joshi was staying is no more in existence. The Respondent has provided electricity supply to the newly constructed building on 27<sup>th</sup> March, 2001 without asking any arrears. Regulation 10.5 of the M.E.R.C (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, does not apply in this case, as the said Regulations were published on 20<sup>th</sup> January, 2005 i.e. after the electricity was connected to the building.

6. The Appellant also raised the issue of limitation since the arrears pertain to the year 1998. The Forum heard the matter and disposed off by its order dated 23<sup>rd</sup> January, 2006. The Forum did not agree with the contention of the Appellant that the arrears are not recoverable from the members of the society and that provisions of the MERC (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 do not apply. The Forum also ruled out the argument that the Respondent's claim was time barred.

7. The Appellant, in his Representation, reiterated the same points, which were raised in his grievance submitted to the Forum. He says that the Respondent's demand for old arrears is improper and no explanation was given in this respect. Upon application for electricity by the four new consumers, the Respondent gave firm quotations on 6<sup>th</sup> April, 2005. Out of the four applicants, the firm quotations were given to two applicants on 20<sup>th</sup> April, 2005 after making payment of arrears while the bills for arrears were given to the other two consumers on 19<sup>th</sup> April before installing the meters. The Respondent recovered Rs. 939/- each by way of bill adjustment from 28 consumers to whom the electricity was already supplied on 22<sup>nd</sup> March, 2001.

8. The Appellant claims that MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 were published on 20<sup>th</sup> January, 2005 and cannot be applied retrospectively. Moreover, Regulation 10.5 dealing with recovery of old arrears, does not apply in the present case, since the main Regulation no. 10, relates to only "change of name" cases. There was no application for change of name, etc and therefore, it is not proper to apply this Regulation for effecting recovery of old arrears. The Appellant is not satisfied with the decision of the Forum that the arrears have not become time barred and prays that the Respondent is not empowered to collect arrears, which are 7 years old.

9. Both the parties were issued notices requesting to explore the possibility of working out a settlement by mutual agreement. No such proposal is received from either of the parties. The Respondent, on 2<sup>nd</sup> March, 2006, filed its written statement of defence. The Respondent confirms that initially electricity connections to 28 consumers were given in the reconstructed building. The

additional construction was carried out subsequently, for which the Chairman of Ekdant Cooperative Housing Society, applied for connections for four new consumers. The Respondent says that the old construction existed at the place where the present society has come up. The electricity connections in the name of four old consumers of the erstwhile premises, were used for construction purpose. Charges for electricity used for the construction remained as arrears, which are recoverable from the occupants of the new building. This was informed to the society. Two defaulting occupants in the meantime paid their arrears. However, due to constant follow up of the society, the remaining amount of arrears was equally distributed amongst all the members and recovered as per rules through the electricity bills. The amount was also recovered from the two new consumers before their connections were released.

10. The Respondent made further submission on 14<sup>th</sup> March, 2006. It clarifies that Shri P. J. Joshi, one of the four consumers referred to in this case, made payment of bill on 30<sup>th</sup> July, 1998. His meter continued to function until 22<sup>nd</sup> March, 1999 when it was permanently disconnected. Therefore, the arrears for past six months remain unpaid from this consumer. This was therefore, recovered from the other consumers of the society in equal proportion. The recovery of arrears is in consonance with the provisions under Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005.

11. After making the payments, Shri Pendse, the Appellant approached the Internal Cell of the Respondent on 14<sup>th</sup> June, 2005, seeking refund of the amount which was already paid towards the arrears. This request was denied. The Appellant, thereafter, approached the Consumer Grievance Redressal Forum on 26<sup>th</sup> October, 2005. The matter was heard and the request of the Appellant was rejected. The Forum ruled that arrears of electricity charges of the old consumers are recoverable in terms of the provisions of Regulation 10.5 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. The Respondent also referred to Circular No. 44 to say that the purpose of the circular was to provide guidelines to enable recovery of arrears as early as possible. It is nowhere provided that the arrears should not be recovered. The Appellant seeks to wrongly interpret the said circular. The Respondent concludes that arrears of the electricity charges already recovered as per the rules cannot now be refunded. It prayed that the representation made by the Appellant in this behalf should be rejected. The matter was posted for hearing on 16<sup>th</sup> March, 2006.

12. The matter was heard on 16<sup>th</sup> March, 2006. Shri Pendse, the Appellant, was present personally. Shri Bharatkumar B. Pathak, Junior Engineer, Mandai, MSEDCL, Pune and Shri B.M. Koshti, Assistant Auditor, MSEDCL, Pune represented the Respondent. Representatives of the Respondent did not remain present at the appointed time of 1100 hours and nor was there any intimation from the Respondent. The hearing had to be, therefore, rescheduled at 1130 hours.

13. Shri Pendse, the Appellant explained his case. He stated that since the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 came into force on 20<sup>th</sup> January, 2005, it could not be applied retrospectively to the consumers, as the arrears pertain to the earlier period. He quoted the Regulation 10 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 to say that the Regulations refer to the change of name of the consumers. Since, there were no applications for change of name in this case, contents of the Regulations 10.5 could not be applied to recover past arrears of the erstwhile consumers. He further, argued that the arrears were more than 3 years old and therefore the recovery thereof is barred by time limit as quoted in the departmental circular no. 44 of the Respondent, issued on 22<sup>nd</sup> February, 1964. Upon query, he clarified that he has nothing to add beyond what is submitted in the representation and stated during the hearing.

14. The Respondent argued that the Regulation 10.5 is very much applicable since it authorizes recovery of the past arrears from the new occupants / consumers of the premises. It was further clarified that the contents of the departmental circular no. 44 referred to above, merely indicate the guidelines to ensure the timely recovery of arrears and it nowhere stipulates that the recovery delayed beyond the limit should not be made. He conceded that the title of the Regulation 10 mentions "change of name" of the consumer but further stated that sub Regulation 10.5 specifically allows the recovery of charge for electricity which remains unpaid by the erstwhile occupier of any premises, from the new occupiers. The Respondent also cited from the extracts of the CPL that the arrears of the old erstwhile consumers were shown right from the year 1998 and were continuously reflected thereafter. The CPL of the erstwhile defaulting consumers was also produced for perusal. The Respondent argued that the bills towards the arrears were issued right from the year 1998 as shown in the CPL and are now recovered from the society members in equal proportion in accordance with the Regulations 10.5. The Respondent conceded that Shri P. J. Joshi, one of the defaulting consumers, had paid his bill last on 30<sup>th</sup> July, 1998 and that the arrears of Rs. 6749/- remain unpaid from that date onwards. These arrears were therefore reflected in the bill of November, 1998. Additional arrears on this account become payable due to the consumption of electricity through this meter for construction purpose and were accordingly added to the earlier arrears of Rs. 6749/-

15. Submissions made during the hearing and documents on record bring out the following issues for decision

- a) whether the provisions of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, more specifically the Regulation 10.5 can be applied to effect recovery in the present case
- b) whether the arrears claimed and recovered by the Respondent were time barred.

16. As regards to the first issue, it is an admitted fact that the Regulations came into effect from 20<sup>th</sup> January, 2005.

*Regulation No. 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, 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."*

17. Regulation 10.5 above makes it clear that any charge for electricity due to Distribution Licensee which remains unpaid by the erstwhile owner / occupier of any premises, shall be charged on the premises transmitted to the legal representative / successor in law or transferred to the new owner / occupier of the premises. Such sum is recoverable as due from such new occupier of the premises. In this case, old construction with some tenants existed prior to the year 1998. The said construction was demolished to construct the new building for the cooperative housing society, on the same premises occupied by the members of the society. As such, provision under the said Regulation 10.5 can be rightly invoked to enable the Distribution Licensee (Respondent in this case) to recover the arrears from the members of the housing society. The arrears were so recovered sometimes in the month of May, 2005 i.e. after the Regulations came into force. Although none of the parties mentioned in their submissions or during the hearing, whether or not there was any corresponding provision for recovery of

arrears under the old conditions of supply applicable at that time, perusal of the “conditions and miscellaneous charges for supply of electrical energy” published by the Respondent indicate a similar provision at Serial No. 23 under the head “Assignment or transfer of agreement”. This allows the Respondent to recover the arrears from the new occupants. Action of the Respondent in informing the society on 5<sup>th</sup> November, 2004, demanding the arrears of the old consumers cannot therefore be termed as illegal, even under the earlier provisions.

18. As regards issue of the bills raised by the Respondent, it is seen from the records of the CPL that the arrears were raised right from the year 1998 and were thereafter continuously reflected in the CPL until the recovery was made in the year 2005. There is therefore no question of the arrears getting time barred.

19. The Respondent’s submission made on 14<sup>th</sup> March, 2006 mentions that the arrears recovered from the society members pertain to only six months period up to 22<sup>nd</sup> March, 1999. Perusal of the CPL however indicates a different position. The Respondent during the hearing conceded that Shri P.J. Joshi had paid his bills last on 30<sup>th</sup> July, 1998, leaving the arrears of Rs. 6749/-. These were reflected in the bill of November, 1998. This clearly shows that arrears of Rs. 6749/- pertain to the period between July and August, 1999.

20. In order to examine whether the Respondent recovered the arrears in consonance with the proviso contained in sub Regulation 10(5), it would be worthwhile to go through the proviso of the said sub Regulation which reads as under.

*“Provided that, 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.”*

21. The above proviso restricts the recovery of arrears to a maximum period of six months in case of transfer of connection to consumers who are not legal heirs. In the present case, the new members / consumers are not legal heirs of the old defaulting members. None of the parties have made such a claim. As such, the Regulation would restrict the recovery of arrears, maximum upto six months. In the present case, therefore, the arrears of Rs. 6749/- which pertain to period of July – August, 1998 would render non recoverable under this provision. The remaining part of the arrears recovered by the Respondent is in accordance with the Regulation.

22. In the light of the above, the Order of the Forum in allowing the recovery of arrears from July, 1998 to March, 1999 would stand partially modified to restrict the arrears to only for six months. Amount of Rs. 6749/- recovered from the members of the society towards the arrears are illegal and must be refunded along with the interest if any recovered from the society on this amount.

23. The representation is disposed off with the directions as elaborated in the preceding paragraphs. The Respondent is directed to comply with this order and report compliance within 30 days from the date of this order.

Sd/  
(W.G. Gorde)  
Ombudsman

Sd/  
(S. N. Yadwad)  
Secretary