

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 23 of 2006

In the matter of
Complaint filed by Shri. Harshad Sheth on behalf of Shri L. D. Sheth,
Shri S.A. Dhurve, M/s Udhalik Steel Industries and Shri Loya Hiralal Pandurang
under Sections 142, 146 and 150 of Electricity Act, 2003

Dr. Pramod Deo, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

ORDER

Dated: 11th October, 2006

A complaint has been filed on 8th August 2006 by Shri. Harshad Sheth on behalf of Shri L.D. Sheth, Shri S.A.Dhurve, M/s. Udhalik Steel Industries and Shri Loya Hiralal Pandurang under Sections 142, 146 and 150 of the Electricity Act, 2003 (“EA 2003”). Shri Harshad Sheth has submitted that he is the authorised representative/ nominee of the aforesaid complainants and has been duly authorised to represent them before the Commission. Memorandums of authorization have been filed in this regard. In the joint complaints filed on behalf of the aforesaid complainants, it has been contended that, on submission of specific grievances by the complainants before the Consumer Grievance Redressal Forum (“CGRF”) of Maharashtra State Electricity Distribution Company Limited (“MSEDCL”) at Latur Zone, the CGRF had passed orders in respect of the grievances of the aforesaid complainants. Essentially, the complainants state that, despite the issuance of orders by the CGRF in favour of the complainants, the same has not been implemented and complied with by MSEDCL. Therefore, it has been prayed that the Commission invokes the provisions of Section 142 of the EA 2003 and punishes MSEDCL and/ or the concerned officials who are responsible for non-implementation of the orders of the CGRF and who have neglected to do so. It has been prayed that the provisions of Sections 146 and 150 of the EA, 2003 be considered for levying penalty and punishment on such defaulting officers of MSEDCL. The complainants have stated that the following orders passed by the CGRF, Latur Zone have not been implemented by MSEDCL—

- (a) Order dated 28th April, 2006 passed by CGRF No. 192, Latur Zone, in Consumer Complaint No. 55/18/2006 in the matter of Shri L.D.Sheth, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.



- (b) Order dated 29th April, 2006 passed by CGRF No. 196, Latur Zone, in Consumer Complaint No. 57/20/2006 in the matter of Shri S.A. Dhurve, Sambhaji Nagar, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.
- (c) Order dated 6th June, 2006 passed by CGRF No. 252, Latur Zone, in Consumer Complaint No. 67/30/2006 in the matter of M/s Udhalik Steel Industry, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.
- (d) Order dated 19th June, 2006 passed by the CGRF No. 267, Latur Zone, in Consumer Complaint No. 75/38/2006 in the matter of Shri Loya Hiralal Pandurang, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.

2. Briefly, the facts as borne out in the Compliant are summarized as under:

- (a) *Order No. 192 dated 28th April, 2006 passed by CGRF , Latur Zone, in Consumer Complaint No. 55/18/2006 in the matter of Shri L.D. Sheth, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent*

Citing the Commission's Order dated 14th July, 2005 in Case No. 2 of 2003, particularly the direction to MSEB (i) to re-assess violation by consumers of sanctioned load in terms of paragraph 33(e) of the said Order; and (ii) to refund amounts collected on account of invocation of connected load/power factor penalty alongwith interest at the rate applied by MSEB to their consumers, in terms of paragraph 33(f) of the said Order, it has been contended by the Complainant that despite the aforesaid directions of the Commission the charges that were imposed on the Complainant were not in terms of the assessment methodology as directed by the Commission. Being aggrieved the Complainant filed a grievance (Consumer Compliant No. 55/18/2006) before CGRF, Latur Zone, for refund of the amounts charged unlawfully by the MSEDCL.

The CGRF passed an Order No. 192 dated 28th April, 2006 directing that:

- (1) the excess amount recovered from the consumer be refunded without any delay;
- (2) the interest on the excess amount recovered by the Distribution Licensee be refunded to the consumer as per rules/regulations, to be calculated from the date of payment of the same by the consumer till the date of refund. The interest is to be recovered by the Distribution Licensee from the officers responsible for the delay and the same is to be refunded to the consumer and a compliance report of the same should be submitted by MSEDCL to the Forum. The interest upto 16th August, 2005 be recovered from the billing authorities and thereafter, from the Executive Engineer of the Internal Consumer Grievance Redressal Cell and for non-performance of duty within time. A disciplinary action be initiated against him.



However, MSEDCL has not implemented any of the directions in the said order passed by the CGRF. The Complainant has prayed that MSEDCL should be directed to pay an amount of Rs. 10,74,250/- towards excess amount refundable together with interest which is required to be paid in one stroke, and an amount of Rs. 50,000 towards compensation for harassment, traveling expenses, etc.,

- (b) *Order No. 196 dated 29th April, 2006 passed by CGRF, Latur Zone, in Consumer Complaint No. 57/20/2006 in the matter of Shri S.A. Dhurve, Sambhaji Nagar, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.*

The Complainant had filed a grievance before the CGRF, Latur Zone for directions to MSEDCL to refund of excess amount recovered due to the difference in the Tariff Slab arising on account of Door lock reading for a period of one/ two months and adding the same to the reading of the next bill leading to an excess units bill and directions to MSEDCL to desist from using approximate readings for the purposes of raising the bill. The Complainant had also prayed before the CGRF for warning to be issued to the Meter Reader, Lineman and Junior Engineer in respect of the same. By an Order dated 29th April, 2006, the CGRF directed that due to the failure by the Meter Reader to read the meter, which had led to an increased bill in one month showing excess consumption of units in an excess bill, MSEDCL should rectify the consumer's bill and refund the excess amount recovered as per Slab-wise Tariff or give the consumer credit in the next bill. MSEDCL was further directed to pay the consumer an amount of Rs 500/- within one month as compensation for the mental/ economic distress suffered by him.

It has been contended by the Complainant that despite the said Order of the CGRF, MSEDCL has not implemented any of the directions in the said order passed by the CGRF. It has been prayed that MSEDCL should be directed to comply with the said CRGF order No. 196 dated 29th April, 2006 and further be directed to pay an additional amount of Rs. 500/- towards penalty for non-compliance of the said order.

- (c) *Order No. 252 dated 6th June, 2006 passed by CGRF, Latur Zone, in Consumer Complaint No. 67/30/2006 in the matter of M/s Udhalik Steel Industry, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent.*

The Complainants have submitted that they had made representations in the year 2002 before the Electrical Inspector on being aggrieved by over-charging by MSEB (now MSEDCL) on account of erroneous meter reading. The Electrical Inspector had passed an Order directing refund of the balance of the amount collected on account of Delayed Payment Charges and interest by MSEB (now MSEDCL). It is the contention of the Complainant that MSEB did not make payment towards DPC and interest. Therefore, a complaint was lodged with the Internal Grievance Redressal Cell on 26th April, 2006. The Complainants have submitted that they did not get any remedy from the IGR Cell and, therefore, the Complainant filed a grievance before the CGRF, Latur Zone, seeking the following directions:

- (i) that the amount collected in the form of DPC and interest be refunded;



- (ii) that the interest be paid on the delayed payment of amount refunded as per the order of the Electrical Inspector, Ahmednagar. The CGRF passed an Order No. 252 dated 6th June, 2006 directing MSEDCL to pay interest to the Complainant on the amount paid by the Complainants, till the time the amount is refunded to the Complainant i.e., one month from the date of the order of the Electricity Inspector till June, 2005 as per the rules and submit the compliance report to the Forum.

The Complainants have submitted that MSEDCL has not implemented any of the directions in the aforesaid order passed by the CGRF. The Complainants have prayed that MSEDCL be directed to pay (1) interest on unpaid DPC (interest amount since December 2002 as Rs. 31,248/- upto June 2006 plus interest till the amount is credited in the Complainant's account; (2) that the excess amounts charged (Rs. 6300/- plus interest from June 2002 of Rs. 12780/- plus interest till the amount is credit to its account be paid to the Complainant; (3) compensation of Rs. 10,000/- be paid by MSEDCL to the Complainant due to negligence on the part of the S.E. office.

- (d) *Order No. 267 dated 19th June, 2006 passed by the CGRF Latur Zone, in Consumer Complaint No. 75/38/2006 in the matter of Shri Loya Hiralal Pandurang, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent*

Citing Orders passed by the Commission, it is the contention of the Complainant that MSEB has in violation of the Orders of the Commission charged SLC as per its Circular No. 631 and charged Rs. 550/hp instead of Rs. 300/hp. The contention is that as per the Orders of the Commission, MSEB were supposed to charge SLC as per its Circular No. 487 and Circular No. 631 was not to be applied as the same was to be kept in abeyance as per the Commission's Orders. Therefore, a demand was made by the Complainant before MSEDCL for refund of the excess amounts recovered. The Complainant approached the Internal Grievance Redressal Cell of MSEDCL and raised the aforesaid issue alongwith another issue, that being recovery of excess security deposit. The Complainant explained that the security deposit, as per the Tariff Booklet since 1st January 2002 should be as per one billing cycle. However, the same is being charged by the Latur Circle at an abnormal excess rate of Rs. 800/hp. On not being provided with any remedy, the Complainant filed a grievance before the CGRF, Latur Zone seeking the following directions - (1) Excess SLC be refunded with interest and (2) Excess Security Deposit be refunded with interest.

The CGRF passed an order No. 267 dated 19th June, 2006 directing that:

- (1) In respect of SLC, SLC collected by the Distribution Licensee as per Commercial Circular No. 631 dated 22.10.99 be cancelled and as clarified by Circular No.647, the said SLC be collected as per Circular No.487 at Rs.300/- per HP (for Zone'D') and the consumer be refunded excess amount with interest as per rules/ regulations;
- (2) Security Deposit, subject to MERC's Regulation specified by the Commission be collected equal to one billing cycle and excess amount collected be refunded with interest to the consumer. Further, on the consumer producing the original Security Deposit receipts, the same be rectified. The CGRF had also directed that the orders be complied with, within the ensuring two bills and compliance report of the same be submitted to the CGR Forum.



The Complainant has submitted that MSEDCL has not yet finalised the refund amount. As per the Complainant, MSEDCL should refund (i) SLC amount of Rs. 16,250/- plus interest of Rs. 20,777/- totaling to Rs. 37,027 plus amount till refund is actually made; (ii) security deposit amounting to Rs. 37,000/- plus interest amounting to Rs. 33,381/- totaling to Rs. 70,381/- plus amount till refund is actually made. The Complainants have claimed an amount of Rs. 20,000/- towards compensation.

3. A Notice was issued by the Commission on 18th August, 2006 directing Shri. Harshad Sheth, authorized representative/ nominee of the aforesaid Complainants to serve a copy of the joint complaint to MSEDCL and the consumer representatives (authorised on a standing basis under Section 94(3) of EA, 2003 and further fixing the date of admissibility hearing on 5th September, 2006. Thereafter, a reply was filed on affidavit on 5th September, 2006. by Shri. Kishan, Chief Engineer, MSEDCL, Latur Zone on behalf of MSEDCL. It has been contended by MSEDCL that the complaint is frivolous, time-barred and has not been filed before the appropriate authority. As per MSEDCL, the appropriate authority which has jurisdiction to hear the complaint is the Electricity Ombudsman and not the Commission. MSEDCL has also contended that in the complaint, the Managing Director and Director (Operations) and Technical (T&D) of MSEDCL have been made respondents. As per MSEDCL, this would amount to non-joinder / mis-joinder of necessary party. MSEDCL has further contended that the complaint raises no questions of law and fact. It has also been contended that the claim of the complainants are not supported or corroborated by way of supporting evidence or proof. On technical grounds, MSEDCL has contended that the joint complaint is not supported by a registered Power of Attorney in favour of Shri Harshad Sheth. Therefore, the joint complaint cannot be admitted as valid authorization does not vests in favour of Shri. Sheth.

4. MSEDCL has given specific replies for each of the complaints, which are summarised as under:

- (a) Refuting the claim made by Shri L.D. Sheth, MSEDCL submitted that it has given refund to Shri L.D. Sheth in terms of order dated 28th April, 2006 passed by CGRF No. 192, Latur Zone. The refund was given in the month of April 2006 for Rs. 15,000/- and in the month June 2006 for Rs. 81,254/- which has been given affect to/adjusted in the bills of the Complainant in the months of April 2006 and June 2006. MSEDCL has also submitted that it has given effect to the direction, to re-assess violation by consumers of sanctioned load in terms of paragraph 33(e), in terms of the Commission's Order dated 14th July 2005 in Case No. 2 of 2003. The basis of calculations has been provided in MSEDCL's reply in this regard.
- (b) MSEDCL has submitted that the order dated 29th April, 2006 passed by CGRF No. 196, Latur Zone, has been complied with as the bill has been revised by dividing the accumulated consumption in three by charging the monthly benefit of tariff rate and the necessary adjustments have been made in the bills of the consumer. Rs. 500/- as directed by the CGRF has been paid by way of carrying out adjustments in the bills for the month of August 2006. Necessary directions have also been given by MSEDCL to the meter readers (outsourced in this case). MSEDCL has refuted the claims of the Complainant by submitting that there has been no violation of the CGRF's Order.



- (c) With respect to the order dated 6th June, 2006 passed by CGRF No. 252, Latur Zone, it has been contended by MSEDCL that since the said order does stipulate the rate of interest to be applied, MSEDCL would pay interest as per the postal saving rate. in Consumer Complaint No. 67/30/2006 in the matter of M/s Udhalik Steel Industry, MIDC Area, Latur (Consumer Applicant/ Complainant) V/s MSEDCL., Latur (Distribution Licensee) Respondent
- (d) In regard to the order dated 19th June, 2006 passed by the CGRF No. 267, Latur Zone, considering that the SLC would be chargeable at the rate of Rs.300/hp, excess SLC of Rs. 16,250/- (principal amount) has been refunded by MSEDCL, however, interest of Rs. 3337/- has been paid at the postal saving rate/RBI rate in the absence of any specific stipulation as regards the rate of interest to be applied in the said order of CGRF. These amounts have been credited in the account of the consumer and these would be shown in the bill for the month of August 2006 to be issued by or on 15th September, 2006. Excess security deposit of Rs. 37,000/- has been refunded in terms of the order of the CGRF, by way of credit in the account of Shri Loya Hiralal Pandurang and adjustments would be made in the said bill for the month of August 2006. Interest of Rs. 5950/- has been calculated at the postal saving rate/RBI rate.

MSEDCL has further submitted that the aforesaid orders of CGRF have indeed been implemented by MSEDCL and this fact has been suppressed by the complainant.

5. An admissibility hearing was held in the matter on 5th September, 2006 when opportunity was given to both the parties to present their case. Having heard both the parties and after considering the material placed on record, it would appear that it is strictly not a case of non-compliance or non-implementation of CGRFs orders by MSEDCL. At best, the joint Complaint may be described as one emanating from parties being aggrieved due to MSEDCL not fully complying or not fully implementing or not implementing the aforesaid orders passed by the CGRFs in the "true spirit" or implementing in a manner with which the complainants are not fully satisfied. While, the complainants have contended that MSEDCL has not implemented the said orders passed by the CGRF, MSEDCL has in their reply as well as during the hearing, submitted that compliance have been made by them of the said orders including directions passed therein. MSEDCL has in effect refuted the contentions of the complainants. The complainants have neither contested the submissions of MSEDCL during the hearing, nor have contested the same by filing any rejoinder. The issue with which the complainants are aggrieved is the calculation or quantum of the amounts that have been refunded and/or the calculation of interest, by MSEDCL. It has been submitted that the CGRFs orders do not stipulate the rate of interest that was to be applied by MSEDCL. The Commission notes that in the reply filed by Shri Kishan, Chief Engineer, Latur Zone on behalf of MSEDCL, its Managing Director and Director Operations and Technical (T&D), although it has been submitted that copies of input document towards credit adjustment bill and CPL alongwith calculation sheets showing the refund amount are enclosed, such enclosures have neither been annexed with the said reply nor delivered later on. The Commission observes that in the event of any discrepancy or incorrectness or inaccuracy, Shri Kishan shall be personally held responsible and liable for the statements made in the said reply under affidavit.



6. In the circumstances, the Commission is of the view that neither would it be appropriate for the Commission to re-open the four cases which had been referred to the CGRF nor would jurisdiction vest in the Commission to hear these complaints as these complaints do not fall within the purview of Sections 142, 146, 149 or 150 of the EA, 2003 or Regulation 22 of the MERC (Consumer Grievance Redressal and Electricity Ombudsman) Regulations, 2006 (“CGRF&EO”). Contravention or offence requires to be established by the CGRFs in these matters, in the first instance, for the penal provisions that may be invoked by the Commission. Considering the submissions of the complainants and counter reply by MSEDCL made on affidavit, the Commission is of the view that the appropriate course of action under law would be for the complainants to move the concerned CGRF which passed the orders, on a new motion in the same proceedings (which culminated into the respective orders) or initiate proceedings afresh under the CGRF&EO for proper implementation of the orders passed by the CGRFs or for issue of clarificatory orders by the concerned CGRF.

7. Regulation 8.7 of the CGRF&EO provides as under:—

“8.7 Any order passed or direction issued by the Forum shall be implemented or complied with by the Distribution Licensee or the person required by the order or direction to do so and within the time frame stipulated in the order/ directions and further intimation of such compliance shall also be made to the Forum within the time frame stipulated in that regard in the order/ directions.”

The consumer grievance redressal forums have all necessary powers to entertain representations requiring it to examine whether any party has complied with its orders. The Forum can adduce evidence on affidavits. The Forums are empowered to call for any record and / or require the attendance of any person in connection with any matter before it. The Forum may also initiate any proceedings *suo motu* and give such orders and directions as may be deemed necessary, including, *inter alia*, for service of notices to the affected parties and invite reply on the issues involved in the proceedings in such form as the Forum may direct.

8. If at all the complainants are aggrieved with the orders of the CGRF and believe that proper redressal has not been provided to them by the CGRFs, they are entitled to prefer a representation before the Electricity Ombudsman in accordance with the CGRF&EO Regulations. In this regard, the provisions of sub-sections (6) and (7) of Section 42 of the EA, 2003 provides as under:

“(6) Any consumer, who is aggrieved by non-redressal of his grievance under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.”

9. In view of the above, the Commission does not deem it fit to examine the specific cases of the complainants and factual aspects thereunder since the jurisdiction to do so vests with the concerned CGRF or Electricity Ombudsman as the case may be. The complainants may pursue their grievance and work out the remedies with the concerned CGRF including issues with respect to the binding nature of the orders passed by CGRF as provided in the CGRF&EO Regulations.



There is no difficulty on the concerned CGRF to entertain the present complaints in exercise of powers vested in them under Regulation 8.7 of the CGRF&EO. In fact, the said Regulation empowers the concerned CGRF to take suitable action, not being inconsistent with the EA, 2003 or rules and regulations made hereunder.

10. In view of the above, the Commission dismisses the complaints filed by Shri Harshad Sheth on behalf of Shri L. D. Sheth, Shri S.A. Dhurve, M/s Udhalik Steel Industries and Shri Loya Hiralal Pandurang, being not maintainable.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr Pramod Deo)
Chairman



Secretary, MERC