

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 20 of 2008

In the matter of
**Complaint filed by Shri Shahabuddin Aamin Magdum alleging non-compliance by
MSEDCL of CGRF's Order dated September 6, 2007.**

**Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member**

Shri Shahabuddin Aamin Magdum
Sawantpur Colony
Post: Kirloskarwadi
Tal – Palus, Dist. Sangli

... Complainant

Versus

- 1) Superintending Engineer
MSEDCL, O&M Circle,
Vishrambaug, Sangli
- 2) Executive Engineer (O) and
Nodal Officer O&M Circle,
MSEDCL, Vishrambaug, Sangli
- 3) Executive Engineer (O&M)
MSEDCL, Urban Division, Sangli
- 4) The Chief Engineer, MSEDCL
Kolhapur Zone
- 5) The Executive Director II
MSEDCL, Mumbai.
- 6) The Managing Director, MSEDCL

... Opponents

ORDER

Dated: July 15, 2008

Shri Shahabuddin Aamin Magdum filed a complaint on April 23, 2008. It has been contended by the complainant that MSEDCL asked him to pay outstanding dues of earlier defaulting consumer of the premises for which the complainant had applied for a new power connection on July 17, 2006. Shri Magdum further contended that the sum that was demanded by MSEDCL was not consistent with Regulation 10.5 of the



MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005. Shri Magdum is aggrieved with the fact that electricity connection was not been provided to him within the period stipulated under Section 43 of the Electricity Act, 2003 ("EA 2003"). Being so aggrieved, he approached the Consumer Grievance Redressal Forum at Kolhapur. The said forum passed an order dated September 6, 2007 directing MSEDCL to report compliance before October 31, 2007. Since MSEDCL did not report compliance to the forum the present complaint has been filed before the Commission. Complainant has submitted that as per the provisions of Regulation 8.7 of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 read with Regulation 22 of the said regulations, in case if a distribution licensee does not comply with an order passed by the forum within the stipulated time period, the Commission would be empowered to order penalty or prosecution proceedings under Section 142 and/or 149 of the EA, 2003 either suo-motu or on a complaint filed by any person. Complainant has further submitted that as there has been continuance of non-compliance by MSEDCL of the order passed by the forum which non-compliance has continued for 110 days after contravention of the first such direction that is from November 1, 2007 to February 19, 2008, the provisions of Section 142 would require not only to impose a penalty of Rs.1,00,000/- but also an additional penalty which may extend to Rs.6000/- for every day during the continuance of the non-compliance after contravention of the first such direction.

2. Complainant has submitted that the following officials of MSEDCL viz., Superintending Engineer, Executive Engineer (O) and Nodal Officer-O&M Circle office, Vishrambaug, Sangli, and the Executive Engineer (O&M), Urban Division, Sangli are liable to be punished under Section 149(1) of the EA, 2003. It is also Shri Magdum's submission that in case the aforesaid officials could prove that the offence is committed without their knowledge or that they had exercised all due diligence to prevent the commission of the offence, then the focus of responsibility and accountability of the offence would shift to the following officials of MSEDCL viz., Chief Engineer, Kolhapur Zone, the Executive Director – II – Mumbai Head Office and the Managing Director – Mumbai Head Office, who, as contended by the complainant are also guilty of connivance.

3. MSEDCL has filed its reply on May 30, 2008 wherein it has contended that the present complaint is not maintainable in view of the fact that a similar complaint seeking similar relief was disposed of by the Commission by its Order dated May 7, 2008 in Case No.58 of 2007. The fact that in the present complaint, certain more officials have been impleaded as Respondents does not make the complaint maintainable any more. The present complaint has been filed with malafide intentions and that the complainant has suppressed the fact that similar proceedings were pending before the Commission.

4. The above matter was heard on June 3, 2008. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the present complaint is not maintainable as identical issues have been disposed of by the Commission by its Order dated May 7, 2008 in Case No.58 of 2007. No new facts have been brought to light in the present complaint which was not there in the complaint which has been disposed of by the aforesaid order. The present complaint is



barred by the principle of res judicata. The Commission cannot try the present complaint in which the matter directly and substantially in issue has been directly and substantially in issue in the earlier case between the same parties, or between parties under whom they or any of them claim litigating under the same title before the Commission which has already heard such issue and finally decided the same by its Order dated May 7, 2008. In Case No.58 of 2007, MSEDCL submitted that single-phase electricity connection was released to the premises of the complainant on February 19, 2008. The Commission need not dwell further into the factual matrix of the earlier case and the present case, which are identical in nature. Suffice it would be to hold that the supply have been effected by MSEDCL there would be no justification to order penalty under the provisions of Section 142 and 149 of the EA 2003. The main grievance of the Petitioner of non-supply having been met by MSEDCL, no benefit would be obtained by penalizing MSEDCL with a financial penalty. However, the Petitioners are entitled to initiate appropriate proceedings before the CGRF, Kolhapur in order to seek compensation, if any, for delaying supply/restoration of electricity.

5. The Commission holds that Shri Magdum has been misinformed about the provisions of law governing res judicata. However, it would not be justified to order costs or any adverse financial implication on an ordinary consumer who has been aggrieved due to the delay in electricity supply by a distribution licensee. As submitted during the hearing, the Commission has taken a note that Shri Magdum was under a genuine belief that he was required to submit a fresh Petition making a mention of Section 142 and Section 146 in order to claim specific reliefs against MSEDCL and that therefore he has filed the present complaint.

With the above observations, the present complaint stands dismissed with no order as to costs.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC