

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 39 of 2008

In the matter of
Petition of Shri Pratap Hogade regarding illegal levy of Service Line Contribution charges and refund thereof to consumers

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

Shri. Pratap Hogade
President
Maharashtra Rajya Veej Grahak Sanghatna
12/388, Mahatma Phule Road
Ichhalkaranji 416 115 , Dt: KolhapurComplainant

Versus

Reliance Energy Limited
Reliance Energy Centre / Electricity House
Santacruz (East), Mumbai 400 055Opponent

ORDER

Dated: November 05, 2008

Shri. Pratap Hogade filed a complaint on 26.6.2008 against Reliance Energy Limited (formerly Bombay Suburban Electric Supply Limited and now renamed as Reliance Infrastructure Ltd) seeking investigation under Section 128 and ordering penalty under Section 142 of the Electricity Act, 2003 (“EA 2003”). His allegation is that M/s. Reliance Energy Ltd., (“REL”) has illegally recovered Service Line Contribution during the period October 2004 to 1st November 2006 from the consumers who have taken new



electricity connection. He has sought a direction that the same charges which has been recovered illegally be ordered to be refunded.

2. The facts of the case as averred in the complaint are as under:

(i) The Commission had issued an Order dated 2.11.2006 in Case No. 25 of 2006 approving 'Schedule of Charges' for Reliance Energy Limited's Distribution business;

(ii) Service line charges were levied by REL in exercise of the powers of the licensee under the "*Bombay Suburban Electric License, 1926 - Conditions of Supply and Miscellaneous Charges*" which were approved by the Government of Maharashtra ("GOM") under Resolution No. LBT.1663/104083-Elec.I dated 12th October 1965 and 9th November 1965, amended from time to time up to 12th May, 1998 and were in force till 1st November, 2006. During such period, any amendment to the rates could only be made by BSES after seeking prior permission from the Commission. However, without taking such permission, BSES has obtained from new consumers from October 2004 (for 25 months), a sum of Rs.1500/- or Rs.1475/- under the head "Service Line Contribution" instead of Rs.6/- as "Connection Fee". It is the Complainant's contention that these charges were illegally levied which should be refunded back to the consumers. The "*Conditions of Supply and Miscellaneous Charges*" stipulates a charge of Rs. 6/- as connection fee for every new installation to the supply mains. The Complainant has explained that clause 4 read with Part II of the "*Conditions of Supply and Miscellaneous Charges*" stipulates that the Licensee shall lay free of charge a service line upto a length of 30.5 metres from its nearest distributing main outside the limits of the property in respect of which the requisition is made. Any length in excess of 30.5 metres as defined above and the whole of the service line within the limits of the property in respect of which the requisition is made shall be paid for by the applicant. Therefore, REL is entitled to recover charges for laying service line beyond a distance of 30.5 metres from the distributing mains, at actual cost. Service line of 30.5 meters should be laid from the distribution main free of charge. If the distance is more than 30.5 meters, the actual cost plus 15% supervision charges should be charged for new electricity supply; installation of meter alongwith connection fee should be charged at the rate of Rs.6/-.

(iii) Additional amount charged: - During the period October 2004 to 1st November 2006 there could be cases of lakhs of consumers whose service lines were less than 30.5 meters. Every consumer has been charged Rs.1500/- or Rs.1475/- instead of Rs.6/-. This works out to an additional amount of Rs.1494/- or Rs.1469/- which has been obtained by REL. It is essential that the Commission appoints investigating officer to inspect the cases of such consumers who have taken new electricity supply and paid additional amounts.

(iv) In terms of the "*Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005*" the schedule of charges



are required to be approved by the Commission under Regulation 18.1 thereof. In terms of Regulation 18.4, the existing schedule of charges of the Distribution Licensee would continue to be in force until such time as the schedule of charges submitted by the Distribution Licensee under Regulation 18.1 is approved by the Commission. Reliance Energy Ltd., (Distribution) has submitted the new schedule of charges on 15.3.2005 to the Commission. The Commission by its order dated 2.11.2006 in Case No.25 of 2006 has approved the new schedule of charges and from that date the new schedule of charges will be applicable. This means that till 1.11.2006 the schedule of charges specified by the GOM should be applicable and the consumers charged on that basis. However, REL has illegally charged "Service Line Contribution" charges and has earned crores of rupees.

(v) In its Order dated 8.11.2006 in Case No. 19 of 2006, the Commission was pleased to hold as under:

"13. ...

(g) In view of the answers to the issues above, the Commission is of the view that the 'Electricity Service Estimate' dated 8th February 2005, as raised by the Respondents, do not reflect the "actual cost" for the rest of the service line beyond a distance of 30.5 metres. Charges for the service line laid on the basis of any formula deducing the average payment for the actual full cost of laying down service lines in a specific area, are not contemplated under the existing "Conditions of Supply and Miscellaneous Charges" as has been approved by the GOM which are saved under the said Regulation 18.4. In view thereof, the 'Electricity Service Estimate' dated 8th February, 2005 is hereby set aside and the Respondents are directed to charge from the Petitioner for service lines in accordance with Part II of the existing "Conditions of Supply and Miscellaneous Charges". The actual cost of the service line should be arrived at depending on the load to be catered, size and cost of cable, and should not be discriminatory in nature amongst consumer categories but may differentiate according to the load applied for."

The Complainant has submitted that there are lakhs of consumers, who are entitled to refunds in accordance with the above order of the Commission. In this regard the Complainant has attached a list of such consumers. The Complainant has further submitted that the present complaint has been filed in the interest of consumers in order to get justice for such type of consumers.

(vi) The Complainant has further submitted that the Hon'ble Supreme Court in its Judgement in Appeal (Civil) No. 2846/2006 dated 14.8.2007 has held that the Commission has powers to protect consumers from such type of harassment under Section 128 of the EA 2003. So, therefore, the Commission has been requested to take action under Section 128.



(vii) The above instances of non-compliance calls for imposition of penalty on REL under the provisions of Section 142 of the EA 2003;

(viii) Any delay in filing of the present complaint may be condoned.

3. The Complainant has prayed as under:

- (i) Action for investigation under Section 128 of the EA 2003 be initiated, as Reliance Energy Ltd. has illegally and unlawfully taken Rs.1500/- or Rs.1475/- under the head “*service line contribution*” instead of Rs.6/- as “*connection fee*” from consumers availing electric supply (tapping connection) involving service line less than 30.5 meters;
- (ii) REL be directed to refund excess amount collected from new consumers for the period October 2004 to 1st November 2006;
- (iii) Severe action be taken under Section 142 of the Electricity Act, 2003 against REL for willful non-compliance of the Regulations of the Commission.

4. A reply has been filed by REL on 7.8.2008 opposing the admission of the complaint. The following contentions have been raised therein:

- (i) the Complainant has not given the particulars of consumers in respect of whom the relief has been sought for the refund of amounts collected in excess of Rs. 126/- for grant of new connections for the period October 2004 to 1.11.2006;
- (ii) the Complaint has been filed by the Complainant in a representative capacity as the President of Maharashtra Rajya Veej Grahak Sanghatana, however, no particulars, whatsoever, has been given as to the members of the said body or whether the 120 persons whose names have been annexed to the complaint are members of the said body;
- (iii) The Complaint is not bona fide;
- (iv) The Complainant has no *locus standi* to file the complaint, as the address given in the complaint that of Kolhapur does not correspond to the areas in question in the complaint which are in Mumbai;
- (v) There is no authorisation from any consumers of REL entitling the Complainant to file the complaint;



(vi) No case has been made out by the Complainant for investigation under Section 128 and hence there is no violation or non-compliance of any direction by the Commission;

(vii) no individual consumer has filed any complaint / grievance before the Consumer Grievance Redressal Forum (“CGRF”);

(viii) the Commission does not have jurisdiction to entertain, try and dispose of grievances of the nature sought to be agitated in the present complaint.

5. REL has also submitted that it has put up a network of service lines in the areas of Maharashtra Nagar, New Bharat Nagar, Mahul Village, Vashi Gaothan, Matang Rishi Nagar, Pereria Wadi, Govandi, and Annabhau Sathe Nagar, Mankhurd near Chembur, and Devi Pada, Kaju Pada, Ambedkar Nagar, Kulupwadi, etc., near Borivali in Mumbai, which are essentially slum areas on the basis of the anticipated demand that is by assessing the number of connections that would be required by REL’s prospective consumers in the said areas. Under the *Conditions of Supply and Miscellaneous Charges*, between October 2004 to November 2006 (and even prior thereto), REL was entitled to recover charges for service line in excess of 30.5 meters on public road from the distribution mains of REL and further whole of the service line within the limit of the private property in respect of which a requisition is made for connection. Such charges were at actual cost plus 15% to cover supervision charges. The applicants were bound to pay the same so as to entitle the applicants to receive power. The charges recoverable from the prospective consumers in the said areas were arrived at on the basis of total cost incurred which worked out to approximately Rs. 1500/- per connection. REL has clarified under letter dated 24.10.2004 to the Commission that after the first applicant pays for service line expenses which are sometimes as high as Rs. 50,000/- all applicants from that area are charged a connection fee of Rs. 6/-. In slum areas it becomes difficult for any one of the slum residents to deposit such large amount towards service line expenses at the time of making a requisition for supply and there are instances where slum lords, etc., pay the expenses and later claim ownership of the service cables and restrain other applicants from obtaining electricity connection. With a view to eliminate such illegal franchisees, REL has adopted a uniform payment structure of an average of the total cost towards laying of complete initial infrastructure for electricity connection as Service Line Contribution of Rs. 1475/- per connection. All charges were collected from consumers under the head “*Service Line Contribution*” which are thereafter deducted from the “*Capital Base*” prior to calculation of “*Reasonable Return*” and excess, if any, will flow back to the consumers during ARR review. If this amount is not recovered as “*Service Line Contribution*” then the capital expenditure requirement will go up and the same will cast a burden on all the consumers. The amount which has been recovered is “reasonable” and has been approved by the Commission in its Order dated 2.11.2006. As regards reliance placed by the Complainant on the Order dated 8.11.2006, REL has submitted that the Order dated 8.11.2006 is not applicable to the present case because the



said Order dated 2.11.2006 did not apply to the Petitioner therein, and has referred to the under mentioned portion of the said Order dated 8.11.2006:

13. “(h) Therefore, the schedule of charges as approved under Order dated 2nd November, 2006 in Case No. 25 of 2006 shall not have application to the case of the Petitioner as the approved schedule of charges do not have retrospective effect.”

REL has submitted that a major part of the claim for refund is barred by limitation under the general law.

6. A hearing was held on 13.8.2008. Shri. Pratap Hogade appeared for the Complainant body. Shri. Santunu Dixit represented Prayas (Energy Group). Smt. Anjali Chandurkar appeared for REL. The parties reiterated the submissions as made by them in the complaint and the reply thereto.

7. Written submissions have been filed by REL on 20.8.2008. Besides the contentions taken in its Reply, the written submissions contend that:

- (i) The Commission exercises powers under Section 86 of the EA 2003 and this provision does not entitle the Commission to adjudicate disputes between consumers and licensees;
- (ii) The grievance if any ought to be filed before the concerned CGRF. In this regard, reference has been made to the Commission's Order dated 16.7.2008 in Case No. 3 of 2008;
- (iii) Reliance placed on the Hon'ble Supreme Court's Judgement in Appeal (Civil) No. 2846/2006 dated 14.8.2007, is incorrect because therein the Hon'ble Court had held that the Commission cannot give a blanket direction for refunding the entire amount without making proper investigation on whether the issue of supplementary / amended bills were really warranted or not in every case;
- (iv) The matter in the present complaint is not of such a nature that would involve taking a drastic step of invoking Section 128 of the EA 2003;
- (v) The Complainant is not authorized by the Commission under Section 94(3) of the EA 2003 to represent the interests of consumers and in any case is not entitled to file a class action on behalf of other consumers.

8. The Complainant submitted their written submissions on 27.8.2008, inter alia, contending therein that:

- (i) The reply filed by REL is denied on the ground that there is no merit in the same and the same has been filed with a view to avoid its liability and responsibility and with a view to cover up the wrongs committed by them;



(ii) The reference made by REL to Section 42(5),(6),(7) of the EA 2003 are irrelevant because these provisions deal with grievance of an individual consumer whereas the grievance put forth in the present complaint is of generic nature and relates to the contravention and breach committed by REL;

(iii) The Commission has already decided the following cases which were similar to that contained in the present complaint: (a) Case No. 2 of 2003; (b) Case No. 50, 55 and 56 of 2006; (c) Case No. 82 of 2006;

(iv) As per the Hon'ble Supreme Court's Judgement in Appeal (Civil) No. 2846/2006 dated 14.8.2007 the Commission will have the power to entertain the present complaint. Certain portions of the said judgment have been referred to as under:

“13. Under Section 128 the Commission can make investigation of certain matters where it is satisfied that the licensee has failed to comply with any of the conditions of licence or failed to comply with any of the provisions of the Act or the rules and regulations made thereunder....”

“14. A comprehensive reading of all these provisions leaves no manner of doubt that the Commission is empowered with all powers right from granting licence and laying down the conditions of licence and to frame regulations and to see that the same are properly enforced”

15. Thus, insofar as the first contention of the learned counsel for the respondents that the Commission has no power is concerned, we are of the view that the same is wrong. In this behalf the provisions of The Electricity Act, 2003 are quite clear and categoric and Section 128(6) empowers the Commission to get the conditions of licence enforced. ...

“16. After all, it is the duty of the Commission under Sections 45(5), 55(2), 57, 62, 86, 128, 129, 181 and other provisions of the Act to ensure that the public is not harassed. ”

“18. Thus while we hold that the Commission has power to issue a general direction to licencees that they should abide by conditions of the licence issued by them and charge only as per the tariff fixed under the Act so that the public at large should not be harassed.....”

(v) The complaint has not been filed either on behalf of or for the benefit of the consumers mentioned at Annexure III to the complaint but it is filed in order to have the wrongs committed by REL, investigated and to get them rectified. Therefore, the contentions raised by REL regarding the details of those consumers are irrelevant as far as the present complaint is concerned;



(vi) The Complainant also wishes to rely on the written submissions of Prayas (Energy Group).

9. Prayas (Energy Group) is a consumer representative organisation authorised on a standing basis under Section 94 of the EA 2003 to represent the interest of consumers in the proceedings before the Commission. They submitted their written submissions on 29.8.2008, contending inter alia, therein that:

- (i) The arguments of REL would deny consumers the opportunity of even seeking investigation by the Commission to ensure the licensee's compliance with the legal provisions;
- (ii) Action under Sections 128, 129, 130 and 142 be initiated against REL;
- (iii) Approximately, 75,000 consumers are affected because of the levy of "Service Connection Charges" and if all these consumers seek remedy from the CGRFs then it will choke up the functioning of these bodies;
- (iv) The Commission has the power under the MERC (Conduct of Business) Regulations, 2004, to entertain the present complaint as under:

"32. The Commission may initiate any proceedings suo motu, or on a Petition filed by any affected or interested person."

- (v) It has been urged that the Commission should order investigation under Section 128 and depending upon the outcome further decisions regarding refund of excess charges or otherwise should be taken.

10. Having heard the parties and after considering the material placed on record, the Commission is of the view that the contentions and factual matrix in the present complaint and those taken by the Respondents, is quite similar to that in Case No. 19 of 2006 which was disposed of by an Order dated 8.11.2006. The Petitioner in Case No. 19 of 2006 had also sought a direction to the Respondents (REL) to levy legally approved costs towards providing electricity connection and not to levy costs that are not approved as required under statute. The Petitioners therein had submitted that the Respondents ought to have demanded service connection charges from the Petitioner either as per their existing "Conditions of Supply and Miscellaneous Charges" or demand service connection charges with the approval of the Commission. The Respondents had stated that the amount of Rs. 1500/- were being charged by them since October 2004. In its Order dated 8.11.2006, the Commission had directed the Respondents to charge from the Petitioner for service lines in accordance with Part II of the existing "Conditions of Supply and Miscellaneous Charges". It was also directed that the actual cost of the service line should be arrived at depending on the load to be catered, size and cost of cable, and should not be discriminatory in nature amongst consumer categories but may differentiate according to the load applied for.



In both Case No. 19 of 2006 and in the present Case No. 39 of 2008, the contention is same as to whether the amount of Rs. 1475/- towards "Service Line Contribution" and Rs. 120/- towards "Security Deposit" totaling to Rs. 1595/- was levied in exercise of the powers of the licensee under the "Bombay Suburban Electric License, 1926 Conditions of Supply and Miscellaneous Charges" approved by the GOM under Resolution No. LBT.1663/104083-Elec.I dated 12th October 1965 and 9th November, 1965, amendment to the said *Conditions of Supply and Miscellaneous Charges* approved by the GOM vide Order No. BSES/1097/PRA.KRA6706/Urja-4 dated 12th May 1998, or not in accordance with the said "Conditions of Supply and Miscellaneous Charges. Therefore, the Commission is of the view that the directions given to REL in Case No. 19 of 2006 would apply in the present case also. To defeat the present Complaint on technicality of *locus standi*, etc., would not be judicious. The affected consumers may, therefore, approach REL individually to seek refund of the appropriate amounts in each case. In case they have further grievance in the matter, they may approach the concerned Consumer Grievance Redressal Forums to seek remedy. With this, the contentions regarding filing of class action becomes irrelevant, and so does the need to invoke Section 128 of the EA 2003.

With the above, Complaint No. 39 of 2008 stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



Secretary, MERC