

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 76 of 2008

In the matter of
**Complaint filed by Shri. Vishwas Maruti Patil under Sections 142, 149, 57(2) of
the Electricity Act 2003**

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

Shri Vishwas Maruti Patil
Vishwas Industries, Arjunnagar
Taluka: Kagal, Dist: Kolhapur
Pin Code: 591 269

....Complainant

Versus

1. Chief Engineer
Maharashtra State Electricity Distribution Co.Ltd.
Tarabai Park, Kolhapur – 416 003
2. The Superintendent Engineer
Maharashtra State Electricity Distribution Co.Ltd.
Division Office, Tarabai Park, Kolhapur-416 003
3. The Executive Engineer
Maharashtra State Electricity Distribution Co.Ltd.
Rural Division -2, Tarabai Park, Kolhapur-416 003

....Opponents

ORDER

Dated: December 19, 2008

Shri. Vishwas Maruti Patil, a consumer of MSEDCL, filed a complaint before the Commission on 8.9.2008. He has sought to invoke Sections 142, 149 and 57(2) of the Electricity Act, 2003 (“E.A. 2003”). Shri Patil has alleged that MSEDCL has failed to meet the standards of performance specified by the Commission by not ensuring uninterrupted and continuous power supply to his factory and for which he



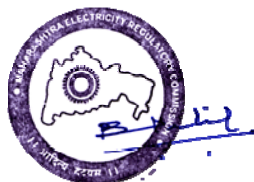
has suffered immense losses. He has also contended that not only him but several industrialists in Kolhapur have suffered losses due to the increase in load shedding by MSEDCL. Complainant has also submitted that due to these reasons the industrialists are not able to derive the concessions and benefits given to them by the Government of Maharashtra. Complainant has also made representations regarding this to the highest machineries of the Government. In response, Opponent No.1 had even promised that uninterrupted and continuous power supply will be provided expeditiously within 6 months. Complainant has also submitted that he had approached the Internal Grievance Redressal Machinery (IGRC) and CGRF of MSEDCL at Kolhapur. He submitted that instructions were given by the said Forums to effect the work of separation of Gaothan Feeder of 11kV emanating from 33/11 kV Kapsi sub-station. However, no such instructions have been carried into effect by MSEDCL on the ground that the CGRF's orders are not binding on MSEDCL. In this regard reliance has been placed on Letter No.6914 dated 14.8.2006 of IGRC and further reliance has been placed on CGRF's order No.157 dated 31.10.2006 in Complaint No.54/2006 regarding completion of Hamidwada and Lingnoor feeder to give uninterrupted power supply to the Complainant. However, it is stated that the said work was not completed within the time stipulated by the CGRF. Therefore, the Complainant approached the Electricity Ombudsman who has held that the duty to install distribution lines is on MSEDCL as against the stand taken by MSEDCL that to get relief from load shedding the Complainant has not paid for the electricity lines. In that proceedings the Complainant had demanded Rs.5 lacs for the losses incurred by him because of the non-compliance by MSEDCL of the orders passed by the CGRF. The Electricity Ombudsman was also pleased to hold that the IGRC's orders and instructions as well as CGRF's orders are binding on MSEDCL. The Complainant states that it is learnt that after the hearing before the Ombudsman the Gaothan feeder has been separated.

2. The Complainant has contended that the above said non-compliance of the CGRF order amounts to contravention of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 and therefore penalty under Section 142 is to be imposed on MSEDCL.

3. It is averred in the complaint that till date the Complainant has not been provided with uninterrupted power supply for his factory by Opponent No.1 inspite of instructions from the CGRF and assurances given by MSEDCL.

4. It is averred in the complaint that the same is not barred by the law of limitation because the complaint pertains to non-compliance of orders by MSEDCL.

5. Opponent No.3 has filed a reply on behalf of MSEDCL as well as other opponents on 4.10.2008 completely denying the facts stated in the complaint as wrong, irrelevant and contrary to law. It has been submitted therein that the contentions of the Complainant regarding concessions/schemes of the Government of

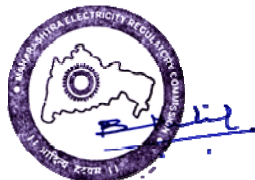


Maharashtra are totally vague and should be directed to be produced. It has also been stated therein that the efforts of MSEDCL has been endorsed by the Complainant under its letter dated 29.7.2008 wherein it has been stated that *“In the past we were getting power supply from Kapashi on Lingnoor feeder which was feeding to agricultural consumers and four villages. Because of that within fraction of seconds the load on Kapashi sub-station was going 125 to 140 amperes from 100 amperes. We have incurred losses because of interruption and lot of complaints. At present Gaothan feeder work is completed, so Jainyal village, Kardyal village, Lingnoor village, Arjuni village and Arjunnagar Industrial Area are getting power supply on Lingnoor feeder from Kapashi sub-station. As a result the load of Kapashi sub-station is 5 to 15 amperes and interruption, low voltage and other complaints are totally stopped.”*

6. Opponent No. 3 in his reply states that the deposition and prayers of the Complainant, in present case, are replica of like deposition and prayers made through Case No.11 of 2007 and Review Petition Case No.27 of 2007. Both the cases were heard and decided with mutual consent of the parties and orders were passed on 12.3.2007 (Rep. No.11 of 2007), and 17.5.2007 (Review of order in respect of Rep. No.11 of 2007) by the Electricity Ombudsman. The Order of Electricity Ombudsman dated 17.5.2007 has quoted as under:

“After hearing the rival contentions and having perused submissions from both the parties, it is evident that the Respondent has been trying to complete the work of separation of agriculture load from Gaoathan and industrial load on Lingnoor feeder from Kapashi sub station. It has, in the meantime, commissioned the gaothan feeder from Sonage sub station to extend more reliable supply to the Appellant’s industries. The remaining work of Lingnoor feeder from Kapashi sub station is at the advanced stage of completion. The Respondent, upon completion of the said work, has assured to examine whether it is feasible to cater the power supply to the Appellant’s area from this separate feeder as compared with the present arrangement made through the gaothan emanating from Sonage sub station.

The facts and circumstances of the case, reveal that there has been no purposeful avoidance by the Respondent in terms of implementation of the Forum’s order. The Appellant agreed during the hearing that his plea for constant supply does not mean to provide an express feeder and he is aware of the reality of load shedding in the present situation. Secondly, there are no new facts or evidence brought out by the Appellant to warrant a review in terms of the provision under the Regulation 19. It appears more a case of compliance of the order issued by the I.G.R. Cell and the Forum and not a subject matter for review under Regulation 19. Thus, there is no case or ground made out for any compensation.



The said Review application is disposed off with the above observation. No order as to cost.”

7. Opponent No. 3 states in his reply that MSEDCL has fully complied with the requirements of the above orders and have also reported compliance thereof within the stipulated period as per requirement of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation 2006. Opponent No. 3 has reiterated MSEDCL's commitment in implementing orders passed and directions issued by designated authorities as per requirement of MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation 2006.

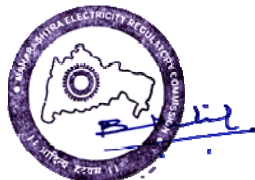
8. Opponent No. 3 contends that the Complainant intends to seek review of the order of the Electricity Ombudsman dated 17.5.2007 in the matter of review of order in respect of Rep. No.11 of 2007, in Case No.27 of 2007 and the same is not tenable on the ground of limitation. From the clear facts of the case it is evident that the provisions of Sections 142 and 149 of the Electricity Act 2003 are not all applicable to MSEDCL. Opponent No. 3 has requested the Commission to allow to put up the facts of the case in detail, in the interest of justice, as follows:-

(i) Power supply to Complainant's M/s. Vishwas Industries and other industrial consumers, situated at Arjunnangar, Tal. Kagal, Dist. Kolhapur is released as per the Conditions of Supply and Miscellaneous Charges for Supply of Electrical Energy of the Board (applicable to the MSEB) and MERC (Electricity Supply Code and other Conditions Of Supply) Regulations, 2005.

(ii) Power supply to the Complainant was made through Distribution Transformer on 11 kV Lingnoor feeder emanating from 33/11 kV Kapashi Sub-station. The Complainant's representation to MSEDCL for uninterrupted quality supply is perfectly in order, and MSEDCL has been acting proactively to satisfy the consumer as explained earlier as above.

(iii) In the past there were problems due to inadequate and over loaded infrastructure of both sub-station and 11 kV line, and MSEDCL could not have helped the Complainant much within the means and ends at their disposal. However the endeavour of MSEDCL has always been to deliver uninterrupted quality supply barring interruptions due to natural calamities beyond control, UFR operation and protocol of Planned Load Shedding which MSEDCL is required to follow as imposed from time to time with due approval of the Commission.

(iv) MSEDCL has acted sensibly in implementing the order of the Consumer Grievance Redressal Forum dated 31.10.2006, as ordered by Hon'ble Electricity Ombudsman in case No.11 of 2007 (Order dated 12.3.2007). Supply to Complainant's M/s. Vishwas Industries, was extended through 11 kV Hamidwada Gaothan Feeder emanating from 33/11 kV Sonage Sub-station w.e.f 5.3.2007.



(v) Further, on completion of work of Gaothan feeder separation of 11 kV Lingnoor feeder, supply to Complainant's M/s. Vishwas Industries is extended permanently through 11 kV Jainyal Gaothan feeder emanating from 33/11 kV Kapashi sub-station, as ordered by Hon'ble Electricity Ombudsman in case No.27 of 2007 through order dated 17.5.2007; as the same is more beneficial comparatively w.e.f. 24.12.2007.

(vi) Opponent No.1 has acted proactively towards communication received from Government of Maharashtra to inform the concerned regarding steps taken to resolve grievance vide L.No.4688 dated 3.7.2006.

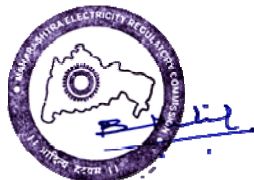
(vii) MSEDCL has included such works like Augmentation of power transformer at 33/11 kV Kapashi sub-station and addition to capacity at 33/11 kV Sonage sub-station in their Infrastructure plan of urgent six months and have completed these works as assured.

(ix) The request of the Complainant for uninterrupted continuous 24 hours supply as applicable to MIDC areas cannot be considered by MSEDCL for the simple reason that the industries including Complainant's M/s. Vishwas Industries have never been part of approved MIDC or Industrial Estate approved by Government of Maharashtra. There are no special provisions, as claimed by the Complainant, to exclude these industries from coverage of planned load shedding. MSEDCL is not aware of any or specific concession/scheme applicable to industries belonging to Marathi citizens who set up industry in Maharashtra. The Complainant has been approaching various authorities for redressal of his grievance without quoting any specific order or provision on record. MSEDCL, even now, are willing to pass on concessions applicable to the Complainant if details of the same are communicated.

(x) Opponent No. 3 denies the allegation regarding so called alleged statement made during conversation. The proceeding in case No.11 of 2007 and Case No. 27 of 2007 also confirm accordingly.

(xi) Nothing as stated by the Complainant that "*there are ten industrialists including petitioner's Vishwas Industries in the industrial area at Arjunnagar, Tal. Kagal in the border of Maharashtra-Karnataka. They are facing load shedding and in remaining period there are frequent interruptions, so it is difficult for them to run the factory*", has appeared in the order passed by Consumer Grievance Redressal Forum vide L.No.157 dated 31.10.2006. But the same does not confirm the status of Industrial estate to the area where M/s. Vishwas Industries is located.

9. The above being the legal status and facts in the present case the Opponent's have prayed for relief as under:

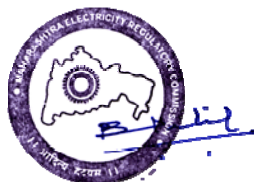


(i). The present Complainant having no ground whatsoever to approach the Commission under the provisions of Regulation 22 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, the Complaint may be summarily rejected/dismissed with cost.

(ii) The Complainant be admonished suitably under the provisions of Regulation 17.18 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

10. A hearing was held on 14.10.2008. The Complainant reiterated his submissions as made in the complaint. He also submitted that it is a right of consumers to receive power at requisite voltage and frequency. He submitted that even after separation of 11 kV feeder he is not satisfied with the power supply. He prayed for a direction to MSEDCL to give uninterrupted and continuous power supply to him. Per contra, Smt. Deepa Chavan, Advocate appearing on behalf of the Opponents contended that the order passed by the Ombudsman has attained finality because the said order has not been challenged by the Complainant. She also contended that as clarified by the Electricity Ombudsman the CGRF's orders are binding on MSEDCL and therefore MSEDCL is willing to implement CGRF's order in the right spirit. Accordingly, MSEDCL has taken steps to complete the work of newly commissioned gaothan feeder and the supply is given to the Complainant from that feeder. As a result load shedding to the premises of the Complainant has come down from 12 - 14 hours to 6 hours. MSEDCL has taken care to minimize interruptions, excluding the period of planned load shedding. However, the Complainant reiterates his grievance that MSEDCL has not fully completed the Hamidwada and Lingnoor feeders as promised earlier and instead supply to his factory is given from the Sonage sub-station through a newly commissioned feeder. The Complainant expected that MSEDCL ought to have augmented the Kapashi sub-station and completed the work of separation of agricultural and other load from the industries and thereby improve the reliability in supply.

11. During the hearing the Complainant conceded that the work on the said feeder is more or less 90% complete and expected that MSEDCL should complete the remaining part of the work early so that supply could be resumed from the separate feeder instead of from Sonage sub-station. To a specific query raised by the Commission he agreed that the load shedding has now come down to six hours from earlier 12 to 14 hours after commissioning of the Gaothan feeder from Sonage sub-station. MSEDCL explained the progress of completion of the work of Lingnoor and Hamidwada feeder as promised earlier before the CGRF. The work according to Complainant is more or less complete except extension of bay at Kapashi sub-station.

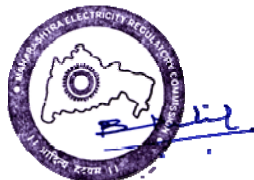


12. MSEDCL further stated that the situation of power supply to the Complainant's premises and the area around it, has substantially improved. The supply is extended from Sonage sub-station to relieve the overloaded power transformer at Kapasi sub-station. Even the Ombudsman has held that after hearing the rival contentions and having perused the submissions from both the parties, it is evident that MSEDCL has been trying to complete the work of separation of agriculture load from Gaothan and industrial load on Lingnoor feeder from Kapashi sub-station. It has in the meantime commissioned the gaothan feeder from Sonage sub-station to extend more reliable supply to the Complainant's industries. The remaining work of Lingnoor feeder from Kapashi sub-station is at the advanced stage of completion. MSEDCL upon completion of the said work has assured to examine whether it is feasible to cater the power supply to the Complainant's area from this separate feeder as compared with the present arrangement made through the gaothan feeder emanating from Sonage sub-station. The Ombudsman held that the facts and circumstances of the case reveal that there has been no purposeful avoidance by MSEDCL in terms of implementation of the Forum's order. This is a clear finding and observation of the Electricity Ombudsman. Ombudsman also held that the Complainant agreed during the hearing that his plea for constant supply does not mean to provide an express feeder and he is aware of the reality of load shedding in the present situation. Secondly, there are no new facts or evidence brought out by the Complaint to warrant a review. Ombudsman held that it appears more a case of compliance of the order issued by the I.G.R. Cell and the Forum and not a subject matter for review under Regulation 19. Thus, Ombudsman held that there is no case or ground made out for any compensation. This observation by Ombudsman (as submitted by MSEDCL) has attained finality. Smt. Deepa Chavan submitted that at present MSEDCL is giving supply from Kapashi sub-station. She submitted that the Ombudsman has held that *"The Respondent, upon completion of the said work, has assured to examine whether it is feasible to cater the power supply to the Appellant's area from this separate feeder as compared with the present arrangement made through the gaothan feeder emanating from Sonage sub-station."*

13. It was admitted by the Complainant that he is receiving power supply from Kapashi Station for his factory but his grievance is that he is not receiving supply at proper voltage on the Gaothan Feeder and the percentage V.R. on this feeder from Kapashi sub-station is still around 10 %.

14. Having heard the parties and after considering the material placed on record, the Commission is of the view that the present proceedings cannot go beyond the prayers made by the Complainant, which are as under:

- (i) To declare that it is the duty of Distribution Licensee to follow the decision of Electricity Ombudsman and IGRC;
- (ii) To declare that inspite of clear directives from Forum and Ombudsman, MSEDCL has neglected the original complaint and has not provided



uninterrupted supply to industrial area. Licensee has implemented only the Gaothan feeder separation scheme;

(iii) To take action against the Respondents, under Section 142 (Regulations 8.7 and 17.18) as - (a) MSEDCL has not followed the decision of the Forum and Ombudsman; and (b) MSEDCL has taken the stand that it is not binding on them to follow the directives of the IGRC;

(iv) To award compensation of Rs. 5,00,000/- to the Complainant, for the loss caused, due to the aforesaid non-compliance of the Order passed by the IGRC and CGRF.

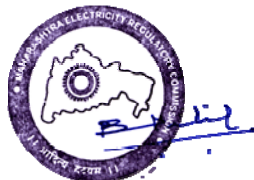
As regards the first prayer, the Commission is of the view that it is not only the duty of Distribution Licensee to follow the decision of the CGRF's and Electricity Ombudsman but it is a statutory mandate on it to do so. In this regard the following regulation is reproduced herein:

MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006

“22. Punishment for non-compliance of orders

Without prejudice to any penalty which may be imposed or prosecution proceeding which may be initiated under the Act, non-compliance of Regulations 8.7 or 17.18 in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Commission may initiate proceedings suo motu or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Act.”

As regards the second prayer, it is noted that the Complainant is actually receiving the power supply albeit at lesser voltage than that specified in SoP or quality of supply is not to his satisfaction viz-a-viz his requirement. During the hearing, the Complainant conceded that the work on the said feeder is more or less 90% complete and expected that MSEDCL should complete the remaining part of the work early so that supply could be resumed from the separate feeder instead of from Sonage sub-station. To a specific query raised by the Commission he agreed that the load shedding has now come down to six hours from earlier 12 to 14 hours after commissioning of the Gaothan feeder from Sonage sub-station. MSEDCL has submitted that the remaining work of Lignoor feeder from Kapasi sub-station is at the advanced stage of completion. MSEDCL stated that upon completion of the said work it has assured to examine whether it is feasible to cater the power supply to the Complainant's area from this separate feeder as compared with the present arrangement made through the gaothan feeder emanating from Sonage sub-station. The Electricity Ombudsman also held that the Complainant agreed during the hearing before him that his plea for constant supply does not mean to provide an express feeder and he is aware of the reality of load shedding in the present situation. The Electricity Ombudsman held that



the facts and circumstances of the case reveal that there has been no purposeful avoidance by MSEDCL in terms of implementation of the Forum's order. This is a clear finding and observation of the Electricity Ombudsman. To reopen a finding of the Electricity Ombudsman is not within the jurisdiction of the Commission. In view of the above, the second prayer is rejected.

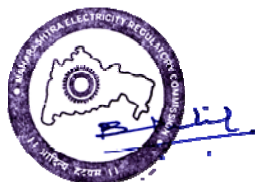
As regards the third prayer, in view of the position as above, the Commission holds that this is not a fit case for imposing penalty on MSEDCL under the provisions of Sections 142 or 149 of the EA 2003. Therefore, the complaint so far as it seeks to invoke Sections 142 or 149, is dismissed.

As regards the fourth prayer, that is to award compensation of Rs. 5,00,000/- to the Complainant, for the loss caused, the Commission is of the view that the basis of loss caused has not been explained. Indirect and consequential losses cannot be claimed on such issues. However, if the Complainant wishes to seek compensation for interruptions in power supply (other than load shedding) he will have to file a claim with MSEDCL in accordance with Regulation 12.1 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 ("SoP Regulations") which provides as under:

"12.1 Where the Distribution Licensee finds that it has failed to meet the standards of performance specified under these Regulations, either of its own knowledge, or upon written claim filed by any person affected, the Distribution Licensee shall be liable to pay such person and all other persons similarly affected, such compensation as has been determined by the Commission in **Appendix A** to these Regulations."

In accordance with Section 57(1) of the EA 2003, the Commission has made the SoP Regulations wherein the various standards of performance have been specified. Any aggrieved person may seek remedy by filing a written claim with the concerned distribution licensee. The level of compensation payable is also specified therein. The Commission therefore is not inclined to intervene on a matter where the provision has already been made in the regulations as stated above.

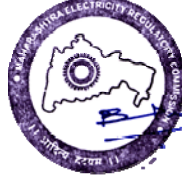
As regards the issue of Maintenance of voltage within the specified range of the declared voltage, the SoP Regulations allows a transitional period to the distribution licensees before compensation is payable by them for not being able to maintain the voltage within limits. The reason for this allowance is to enable distribution licensees to put up or upgrade/ strengthen the infrastructure in order to be able to maintain the voltage profile within the limits specified in the SoP Regulations. Therefore, while the Commission does not feel the need to order payment of compensation for supply of power at the desired voltage, MSEDCL is directed to make all necessary endeavours to supply power at the specified voltages.



With the above, the present complaint stands disposed of.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC