

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 41 of 2011

In the matter of
Complaint filed by Shri Ankush Sitaram Gaikwad, under Section 142 of the EA
2003 and Regulation 22 of MERC (CGRF and EO) Regulations, 2006, against
MSEDCL alleging non-compliance of the Order dated 28.10.2010 passed by the
CGRF, Kolhapur Zone.

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Shri Ankush Sitaram Gaikwad Complainant

V/s

Maharashtra State Electricity Distribution Co. Ltd.
Through its Executive Engineer, Circle Office, Solapur.
and
Executive Engineer, Divisional Office, Solapur.Opponent

Present during the hearings:

For the Complainant: Shri Ankush Sitaram Gaikwad in person

For the Opponent: Shri Pravin Dhage, Shri Laxman R. Shahapur, Advocates,
with Shri Ravindra G. Kolap, Executive Engineer, Solapur
Division, MSEDCL.

ORDER

Date: 11th January, 2012

Shri Ankush Sitaram Gaikwad, the Complainant, a resident of Solapur city, filed a Petition, on Affidavit, against Maharashtra State Electricity Distribution Co. Ltd. (“MSEDCL”), the Opponent, under Section 142 of the Electricity Act, 2003 (EA2003), and, Regulation 22 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, alleging non-compliance of the Order dated 28th October 2010, passed by CGRF, Kolhapur Zone.

2. The prayers of the Complainant are:

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1. मा. कोल्हापूर मंच यांच्या आदेशाचे पालन प्रतिवादी यांनी करण्याचे आदेश व्हावा ही विनंती.
2. सर्व प्रतिवादी हे वितरण कंपनीचे ज्येष्ठ अधिकारी आहेत. मा. विद्युत लोकपालजी यांच्या सारख्या सर्वोच्च न्यायव्यवस्थेने सूचना देऊनही त्याची दखल न घेणे या सारखा उद्दामपणा नाही. प्रतिवादी यांना कायद्याची योग्य ती जरब बसणे गरजेचे आहे. या साठी केवळ अपवादात्मक वापरल्या जाणाऱ्या कलम १४२ ची अंमलबजावणी या ठिकाणी होणे अत्यंत गरजेचे आहे. अशी नम्र विनंती. ”

3. The facts of the case briefly are as follows:-

- a. The Complainant's house was ready but permanent supply was not given by the Opponent.
 - b. The Opponent submitted that a temporary supply was given to a *Gruh Nirman Sanstha* (Housing Society) for the construction of houses and from that supply, temporary supply was given to the Complainant among other consumers, who are occupying premises, pending completion.
 - c. Due to disputes between the consumers and the builder, the latter had disconnected the supply to them and temporary supply was provided to such consumers by the Opponent, on their demand.
 - d. There are dues pending from the *Sanstha*.
 - e. Also, the Opponent did not have any infrastructure to provide permanent supply, which includes underground cabling, etc. The infrastructure would be developed by the builder itself.
4. On the Complainant filing his grievance before CGRF, Kolhapur Zone, the Forum had passed an Order dated 28.10.2010, directing the Opponent, as follows:
- a. *The Complainant's power supply should be as per domestic supply tariff, since 29th Sept., 2008, the date of his application,*

- b. *The extra amount collected from the complainant since 29th Sept., 2008, until the date of the Order, should be refunded, within the future three billing cycles.*
5. A hearing in the matter was held before the Commission, on 11.05.2011, when the Complainant appeared himself, and the Opponent was represented by Advocate Shri Pravin Dhage and Shri Ravindra G. Kolap, Executive Engineer, Solapur Division, MSEDCL.
6. The Opponent submitted that it was in the process of filing a Writ Petition in the Hon'ble High Court of Bombay, against the Order passed by the CGRF, Kolhapur Zone. The Opponent submitted that no stay was yet granted by the Hon'ble Court.
7. The "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006", *inter alia* provide as follows -
- "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."
- "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."
8. Based on the material placed before it, the Commission, by the Order dated 30.05.2011, had directed the Opponent, MSEDCL, to show cause as to why penal proceedings should not be initiated against it for not complying with/ not implementing the Order of CGRF, Kolhapur Zone, dated 28.10.2010.
9. In response to the Order dated 30.05.2011, the Opponent vide its letter dated 20.06.2011, through its Advocate, M.V. Kini & Co., has submitted that "*As per CGRF Kolhapur Order, the Tariff of the said connection is only changed in the month of June, 2011 and one credit bill is issued - - -. This is done without any prejudice to the challenge made before the Hon. High Court at Mumbai in WP no. 3053 of 2011.*"

10. It has also been submitted that the said Order passed by the CGRF, Kolhapur Zone, is erroneous, on the grounds submitted by the Opponent. Hence, MSEDCL has filed a Writ Petition before the Hon'ble Bombay High Court, challenging the CGRF's Order. In view of the same, the Opponent requested the Commission to reject the Complaint or to postpone the hearings as the said writ petition was pending before the Hon'ble High Court.
11. Subsequently, vide a letter dated 20.06.2011, from the E.E.(Adm.) & Nodal Officer, MSEDCL, received by the Commission's Office on 29.06.2011, it is submitted that *the Nodal Officer, Solapur, informed the E.E., Urban Div., Solapur, to comply with the Order of CGRF, Kolhapur.* Also further, the office of CGRF has been informed that “ - - - *the consumer has not applied for permanent connection; accordingly, he may be allowed to avail permanent supply from the date of application for permanent residential power supply.* - - - ”
12. A hearing was held before the Commission on 02.09.2011, when the Petitioner appeared himself and the Opponent was represented by Advocate Shri Laxman R. Shahapur and Shri Ravindra G. Kolap, Executive Engineer, Solapur Division, MSEDCL.
13. The Complainant submitted that the Opponent has partially complied with the CGRF's Order, i.e. MSEDCL has given permanent connection with residential tariff from June 2011 but the amount is still not refunded. The Opponent submitted that as per the Order of CGRF, MSEDCL has given permanent supply with residential tariff from June 2011 onwards, but the amount as per the CGRF Order has not been refunded since the CGRF's Order itself has been challenged before the Hon'ble High Court, where the Complainant in this case is a Respondent, and, the matter has been slated for final hearing.
14. During the hearing held on 24.11.2011, both parties reiterated the submissions made earlier. On enquiry by the Commission about the status of the Writ Petition, the Opponent submitted that the case has been admitted but so far, no stay on the Order of CGRF has been granted by the Hon'ble High Court. The Opponent further submitted that it was already complying with the Order of CGRF on account of the following reasons –
 - (i) having given permanent supply to the Complainant and having changed its tariff accordingly, and
 - (ii) having started refunding of the amount as per the CGRF order, as per the MSEDCL practice of adjusting the amount in the consumer's bills.

On further enquiry by the Commission, the Opponent submitted that an amount of about Rs.38,000/- was to be refunded by MSEDCL to the Complainant, out of which since May 2011, approximately Rs.3,000/- had been refunded, based on the Complainant's monthly billing. The Commission observed that at this rate of refund, it would take approximately 6 years for the total amount to be refunded, as against the Order of CGRF to refund the amount within three billing cycles.

The Commission directs the Opponent to refund the balance amount to the Complainant, within next 2 months, from the date of the last hearing.

The Opponent is further directed to furnish a compliance report before the CGRF, Kolhapur Zone, latest by 05.02.2012, with a copy of the same to the Commission's office, as confirmation of compliance.

With the above, Case no. 41 of 2011, stands disposed of. No order as to costs.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman