

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 73 of 2008

In the matter of
Complaint filed by Shri. Ramesh Eknath Manjule under Section 142 of EA 2003
for Non compliance of the CGRF order dated 26.07.2007.

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

ORDER

Dated: May 20, 2009

Shri. Ramesh Eknath Manjule
10, Salas Society
Rambaug, Lane No. 4, Kalyan
Complainant

...

Vs.

Maharashtra Electricity Distribution Company Limited
Tejashree, Karnik Road, Kalyan
Opponent

...

Shri. Ramesh Eknath Manjule submitted a complaint before the Commission on 15th February, 2008 seeking relief on account of “non compliance” and “delay in compliance” under Section 142 of the Electricity Act, 2003 (“EA 2003”). In this regard, the Complainant has referred to order dated 26th July, 2007 in Complaint No. K/E/099/0113 of 2007-08 passed by the Consumer Grievance Redressal Forum, Kalyan Zone (“CGRF”) in the case of the Complainant herein which holds that “Licensee’s Supplementary Bill of Rs. 19700/- based on above test result, therefore needs to be withdrawn as per orders contained in para 46(o) of Case No. 19 of 2004 dated 23/02/2005 of Maharashtra Electricity Regulatory Commission”. The direction of CGRF that recovery of an amount of Rs.19,700/- in the supplementary bill be withdrawn due to want of “test result” and be adjusted in two billing cycles, has been kept pending without decision by the Licensee for a period from 27th July, 2007 to 14th February, 2008. Complainant has alleged that the said order dated 27th July, 2007 passed by the CGRF is not being complied with by the Maharashtra State Electricity



Distribution Company Ltd (“the Opponent”). It is alleged that the order and direction of the CGRF is clearly being flouted. It is also alleged that the Complainant anticipates that without deciding his complaint, his electricity supply will be terminated. He has therefore prayed that the Commission may look into the matter and prevent the disconnection of his electricity supply. The particulars of connection of Shri. Ramesh Eknath Manjule are Consumer No. 020020360420, P.C. 1, B.U. No. 4168.

2. The Complainant has submitted that he has written a letter dated 17th November, 2007 to the Asst. Engineer, Maharashtra Electricity Distribution Co. Ltd., Sub-division 1, Tejashree, Kalyan requesting him to personally peruse the aforesaid order passed by the CGRF. In the said letter, Shri. Manjule had submitted that as per the aforesaid CGRF’s order, the time of two billing cycles allowed to revise the bill has lapsed. However, the revision of bill has still been kept pending, resulting in the violation of the aforesaid order of the CGRF. Shri. Manjule had submitted in the said letter that the CGRF had directed MSEDCL to comply with the order dated 23rd February, 2005 passed by the Commission in Case No. 19 of 2004. Therefore, by not complying with the orders of the CGRF, MSEDCL has also violated the orders of the Commission. By the said letter, Shri. Manjule had called upon the Dy. Executive Engineer, MSEDCL, Sub-division 1, Tejashree, Kalyan to take action in the matter within 7 days from receipt of the said letter dated 17th November, 2007.

3. The Opponent filed its reply on 29th September, 2008 through its Executive Engineer, Kalyan West Division. It is stated in the reply that the Complainant’s meter was tested on 23rd September, 2003 in the routine cycle of meter testing programme and the meter was found 74.90 percent slow and was replaced on 3rd November, 2003 in the presence of the consumer. It was found to be a case of theft of electric energy. Hence, supplementary bill of Rs. 19,364/- (rounded off to Rs. 19,700 by CGRF Kalyan Zone) was added in the bill of November 2003. As per the Commission’s Order dated 23rd February, 2005 the said Supplementary Bill was required to be withdrawn. It is submitted that the grievance made by the consumer before the CGRF was in respect of theft of energy although no jurisdiction is vested on the CGRF to entertain cases of theft. Even as per Section 154(5) of the EA 2003, it is the special court which can determine the civil liability against the Complainant. The CGRF in its aforesaid order had taken an assurance from the Executive Engineer that the Commission’s Order dated 23rd February, 2005 in terms of the direction to make refund would be given effect to. The operative part of the said CGRF’s order does not contain any direction against the Opponent but only contains observations. In the bill dated 19th May, 2005, there was an adjustment of Rs. 18,356.52 and accordingly, the Complainant had been given credit for Rs. 18,356.52. However, the said amount includes Rs. 93.10 being the interest on Security Deposit. Thus, the credit in respect of Supplementary Bill was for Rs. 18,263.42. In the Bill dated 7th November, 2007 there was adjustment of Rs. 1,101.03 and the interest on the amount of Supplementary Bill adjustment was Rs. 5,159.45. Thus, the consumer has got full adjustment and credit as above. In addition, an interest was paid on the amount of Supplementary Bill adjustment for Rs. 5,159.45. On or about 15th November, 2007, Opponent has submitted a report of compliance to the CGRF. In the circumstances, the allegations made by the Complainant are false, and therefore, the Complaint deserves to be dismissed.



4. The Complainant filed his rejoinder on 15th November, 2008. He has stated therein that the Opponent has accepted the aforesaid order passed by the CGRF and had not preferred any appeal before the Electricity Ombudsman. Therefore, it is clear that the order passed by the CGRF had attained finality and was accepted by the Opponent and the compliance thereof was the complete responsibility of the Opponent. He states that it is evident that the Opponent did not comply with the order dated 27th July, 2007 passed by the CGRF upto 8th July, 2008 i.e., for one year. It is alleged by the Complainant that, this non compliance has been continued by the Opponent even thereafter. It is clear that the Opponent is in default for over a year. It is alleged that the reply filed by the Opponent after the filing of the present complaint is clearly an after thought. It is alleged by the Complainant that, the Opponent has not provided any documentary evidence in support of its contention raised in the reply affidavit. Without any documentary evidence, the case of the Opponent clearly falls flat. It is alleged by the Complainant that, therefore, the Opponent is required to prove its case with necessary supporting documentary evidence. The CGRF took on file and registered the complaint on 6th July, 2007. The CGRF heard the parties on 21st July, 2007. Upon hearing the parties, the CGRF passed its order on 27th July, 2007. It is alleged by the Complainant that, the Opponent failed to comply with the said order in the given time limit. The Complainant on 8th July, 2008 filed the complaint before the Commission for non compliance of the said order passed by the CGRF. It is alleged by the Complainant that, it is clear that for the period from 6th July, 2007 to 8th July, 2008, the Opponent never stated that this is a theft case. It is alleged by the Complainant that, if this complaint was not filed before the Commission, the Opponent would never have contended that this is a theft case. It is alleged by the Complainant that, since, it was evident that the Opponent was guilty of non compliance; the Opponent only to save itself from the charges of non compliance has taken up the contention that this is a theft case. It is contended by the Complainant that, the Opponent has not produced any documentary evidence indicating a theft case, till the decision of the CGRF and even thereafter. The Opponent has not produced any documents in this respect either before the CGRF or the consumer or his representative. Therefore, it is alleged by the Complainant that, the Opponent has by making false statement on oath has tried to mislead the Commission. It is clearly evident that by such false statements, the Opponent is defrauding the Commission. On this basis, it is contended by the Complainant that, without any documentary evidence, the affidavit filed by the Opponent may be rejected.

5. The Complainant has submitted that whilst the complaint was pending before the CGRF, the electricity supply was terminated.

6. The Complainant has submitted that it is clear from the paragraph Nos. 7 and 8 of the CGRF order that this was not a theft case. The complainant pointed out that as per Regulation 6.8, the CGRF cannot admit theft cases. The fact that the CGRF entertained the complaint and passed orders thereon clearly proves that it was not a theft case. Therefore, the contention taken by the Opponent at paragraph Nos. 4 and 5 on page No. 2 of their affidavit falls flat. It is alleged that it is clear that the Opponent has committed this act in violation of the mandatory rules of the Commission and is flouting the legal provisions. It is alleged that this fact has been admitted by the Opponent at paragraphs 3 and 4 on page No. 2 of their affidavit. The Complainant has



submitted that the CGRF cannot entertain a theft case. The Complainant has submitted that if one peruses the affidavit dated 29th September, 2008 filed by the Opponent pursuant to the notice issued from the Commission in Case No. 73 of 2008/1821 dated 15th September, 2008 along with the various documents at Exhibit Nos. 1 to 8 and Exhibit Nos. 14 to 18, it can clearly be observed that these documents were of the year 2007 and prepared pending the decision of the CGRF and thereafter. Exhibit No. 2 dated 15th November, 2007, Exhibit Nos. 3 and 4 dated 10th October, 2007, Exhibit No. 5 dated 23rd August, 2007, Exhibit No. 6 dated 3rd September, 2007, Exhibit No. 8 dated 7th August, 2007, Exhibit No. 14 dated 8th August, 2007, Exhibit No. 16 dated 23rd July, 2007, Exhibit No. 17 dated 21st July, 2007, Exhibit No. 18 dated 21st July, 2007, Exhibit Nos. 19 to 26 dated from the year 2003 to 2004 do not indicate any theft during this period. Upon perusal of Exhibit Nos. 2 to 8 of the affidavit dated 29th September, 2008 filed by the Opponent before the Commission, it clearly indicates that these documents showing that this is a theft case were prepared at later date subsequent to hearing. The documents at Exhibit Nos. 19 to 26, which relate to the period 2003 to 2004 do not have a mention of the fact that this was a theft case. The Complainant has alleged that the Opponent has therefore by making false statement on oath defrauded and misled the Commission. The Complainant has submitted that the Commission requires to conduct necessary enquiry into this matter.

7. Having heard the parties on 19th November, 2008 and after considering the materials placed on record, the Commission's finding is as follows:-

- (i) Reliance placed by the Complainant on the Commission's Order dated 23rd February, 2005 passed in Case No. 19 of 2004 cannot be sustained because the said order was set aside by Appellate Tribunal for Electricity vide its judgment dated 29th March, 2006 and has finally merged with the Hon'ble Supreme Court's Judgment dated 14th August, 2007 in Appeal (Civil) No. 2846 of 2006. Accordingly, billing disputes of any nature between consumers and distribution licensees are to be initiated with the CGRFs and thereafter with the Electricity Ombudsman. The Commission cannot entertain such grievances and billing disputes.
- (ii) The Opponent in its reply filed on 29th September 2008 has stated that the grievance as made by the Complainant to the CGRF was in respect of theft of electric energy. However from the CGRF's order dated 26th July 2007 it is observed that there is no mention about any theft of electric energy. Notwithstanding any thing contained in the above observation, the Commission cannot accede to the demand of the Complainant to conduct enquiry in the matter as the Commission does not have jurisdiction to deal with cases coming under Section 135 of the EA 2003.
- (iii) In the rejoinder filed on 15th November, 2008, the Complainant did not dispute the submissions made by the Opponent in its reply filed on 29th September, 2008 pertaining to adjustment/credit for Rs. 18,356.52 given to the Complainant. Also, there is no dispute to the submission made by the Opponent with respect to the adjustment of Rs.1,101.03 and the interest on the amount of Supplementary Bill adjustment of Rs. 5,159.45, given to the



Complainant. The Opponent has submitted that the Complainant has received full adjustment and credit as above. The main complaint of the Complainant is regarding the non-compliance of the CGRF's order dated 26th July 2007. However, it has been submitted by the Opponent that on or about 15th November, 2007, the Opponent has submitted a report of compliance to the CGRF. The said submission of the Opponent has also not been disputed by the Complainant, in his aforesaid rejoinder filed on 15th November, 2008.

- (iv) As for the prayer to stop disconnection, it cannot be entertained by the Commission, since it arises from the issue of non-payment of electricity bill by the Complainant and falls under the category of billing dispute in which it has no jurisdiction.

In the circumstances, the request that the Commission requires to conduct necessary enquiry into this matter, cannot be entertained. The complaint stands dismissed.

(S.B. Kulkarni)
Member

(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC

