

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 79 of 2009

In the matter of
Complaint filed by M/s. Pooja Packwell (I) Ltd., Nagpur, against MSEDCL
under Section 142 of Electricity Act, 2003 alleging non-compliance of the
Order dated 17.10.2005 passed by the CGRF, Nagpur Urban Zone.

Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member

M/s. Pooja Packwell (I) Ltd.

..... Complainant

Versus

Maharashtra State Electricity Distribution Company Ltd.
Through the Executive Engineer,
MIDC Division, Nagpur.

.....Opponent

ORDER

Date: February 25, 2010

M/s. Pooja Packwell (I) Ltd., Nagpur (“the Complainant”), a consumer of Maharashtra State Electricity Distribution Co. Ltd. (“MSEDCL”) has submitted a Complaint under affidavit before the Commission on 31.08.2009 under Section 142 of Electricity Act 2003 seeking directives of the Commission against MSEDCL for non-compliance of the order dated 17.10.2005 passed by the CGRF, Nagpur Urban Zone. The complainant has complained regarding wrong charges levied by MSEDCL, the Opponent, based on readings of a defective meter.



2. The prayers of the Complainant, are as follows :

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- a) *Allow this application and decide the same at the earliest.*
- b) *Take action as per section 142 of the Electricity Act against the respondent.*
- c) *Direct the respondent to refund the whole decreed amount to the applicant along with interest as per the order dated 17.10.05 passed by this Hon'ble Forum in Case No. CGRF (NUZ) 056/2005.*
- d) *Grant interim relief in terms of prayer clause (b).*
- e) *Grant any other relief which this Hon'ble Court deems fit in the interest of justice including heavy cost.”*

3. The facts as submitted by the Complainant are as follows:

- i. The Complainant, M/s. Pooja Packwell (I) Ltd. is a LT consumer of MSEDCL and is supplied with electricity having a sanctioned load of 40 H.P. The Consumer No. of the Complainant is 419993211495.
- ii. The Complainant has submitted that the electricity bill received by him for the months of September, 2002 and October, 2002 were excessively high, as compared to past. The Complainant was having “Secure” make meter that had been installed on 03.06.2002. After receipt of the bill for September, 2002, the Complainant had made a complaint to MSEDCL about this fact of excessive billing (46,619 units as compared to a maximum of 9,919 units within the previous one year) for which MSEDCL asked him to pay the fee for meter testing. The meter was tested by NUZ testing division at Nagpur on 26.10.2002, declaring that the meter was behaving erratically. Later, as per directions given by the Deputy Executive Engineer of MSEDCL the Complainant's meter was changed by MSEDCL on 02.11.2002 by a “Datapro” meter (Meter no. 01069988).
- iii. As recorded in the CGRF order, based on some internal assessments and other feed-back from MSEDCL's Testing Dept., MSEDCL had claimed that the erratic behaviour of the meter does not affect the kWH consumption and informed the Complainant vide letter dated 03.01.2003 that his energy bills were in order and no excess bill had been charged for the months of September, 2002 and October, 2002. Also, MSEDCL vide letter dated 02.01.2003 had asked the Complainant to pay the total amount of the then calculated due which amounted to Rs.3,39,424/- in two instalments. The Complainant has submitted that in order to avoid disconnection, the first installment of Rs.2,00,000/- was deposited on 28.12.2002 and Rs.1,39,424/- was paid as second installment on 24.01.2003.
- iv. The Complainant had approached the Internal Grievance Redressal Cell, Nagpur(U) of MSEDCL on 30.06.2005, but as per the Complainant, the IGR Cell did not provide any remedy to it within two months, the period specified in the Regulations.

The Complainant thereafter filed an application, in the matter, before the CGRF of MSEDCL at Nagpur Urban Zone, Nagpur on 01.09.2005. Here, the grievance of the Complainant was w.r.t. the excessive energy bill of Rs. 3,39,424/- pertaining to the months of September and October, 2002 showing abnormally high consumption of 83,123 units. The CGRF passed an Order on 17.10.2005 holding that the Complainant's meter was defective and the Complainant's bills for the months of September, 2002 and October, 2002 were erroneous, and it was also directed that the bills for the above two months were needed to be revised on the basis of the energy consumed during the preceding 3 months prior to September, 2002 and ordered MSEDCL to refund the calculated excess amount as paid by the Complainant along with interest @9% per annum. This was ordered to be complied with on or before 31.10.2005. CGRF, referring to Section 26(6) of Indian Electricity Act, 1910 had observed that it was for MSEDCL to have referred the dispute of the Complainant relating to defective meter to the Electrical Inspector, who is the only competent authority to decide the matter.

- v. MSEDCL had thereafter preferred a Writ Petition bearing No.1748 of 2006 before the Bombay High Court, Nagpur Bench, challenging the Order passed by the CGRF. The High Court, relying upon the fact that some details furnished by MSEDCL before the Court, were not submitted to CGRF, dismissed the case on 09.03.2007, with liberty to MSEDCL to demonstrate before the Electrical Inspector by using accu-check meter that there was no fault or error in the meter located in the premises of the consumer.
- vi. The Opponent approached the Electrical Inspector, Nagpur ("EIN"), in April 2007 with a request for testing the meter. It has been submitted by the Complainant that EIN vide letter ref no. D No. EIN/1735/2008 dated 30.06.2008 communicated to MSEDCL to be present on 04.07.2008 at 11:30 am in the office of the Testing Division, MSEDCL, Prakash Bhavan, Gaddigoddam, Nagpur along with meter and CTs which were used with the meter at the Complainant's site. But, on appointed date the testing was not done since MSEDCL failed to bring CTs with the meter.
- vii. Thereafter, testing was again scheduled on 18.07.2008, which was duly communicated to MSEDCL, but the EIN again could not carry out the test due to default on the part of MSEDCL by not submitting the CTs. Since in-spite of reminders from EIN, MSEDCL did not submit the CTs, EIN vide letter dated 27.05.2009, communicated to MSEDCL that even after being given three chances, MSEDCL had failed to demonstrate testing of meters as per the Order of Hon'ble High Court.
- viii. The Complainant submits that it had sent a notice dated 03.02.2009 through his counsel for recovery of the amount of Rs. 3,39,424/- along with interest @9% per annum as per the CGRF order dated 17.10.2005. It is also submitted that, even after receiving the notice, MSEDCL had neither responded, nor paid the amount to the Complainant. The Complainant had then preferred an Execution Application before the CGRF on 13.07.2009 for executing the order dated 17.10.2005, in response to which the CGRF communicated vide its letter dated 10.08.2009 that there was no provision to this effect.

4. The Complainant has therefore filed the present complaint before the Commission with prayers as above. The Complainant has submitted that MSEDCL is intentionally disobeying the CGRF order as well as the order of the High Court, and therefore, deserves to be punished as per law.

5. The Complainant submits that MSEDCL's officer is responsible for this and it is his duty to obey the order of the Hon'ble Courts. Due to such a default, the Complainant has suffered irreparable losses since 2005 since his lumpsum amount of Rs.3,39,424/- is due against MSEDCL for no fault of its own. The complainant also submits that due to the negligent act of MSEDCL, his money is lying with MSEDCL for a long time.

6. In reply to the letter from the Commission's office dated 12.10.2009 to MSEDCL, asking MSEDCL to inform the Commission about the steps taken by them to comply with the CGRF order, MSEDCL has by letter dated 06.11.2009, received by the Commission on 13.11.2009, submitted that on 21.08.2009, MSEDCL had submitted an Application vide CAW St. No. 13193 / 2009 before the High Court, to seek appropriate direction / modification of the order passed by the High Court. This was because the concerned CTs were not made available by MSEDCL to EIN, and, EIN vide letter dated 27.05.2009 had informed MSEDCL that, as per New Definition of Meter, under Maharashtra Electricity Regulatory Commission (Electricity Supply Code & other conditions of Supply) Regulations 2005, the CT is the part and parcel of the meter, and since MSEDCL had failed to submit the CTs, this would amount that MSEDCL has failed to demonstrate the testing of meter as per the Order of the Hon. High Court. MSEDCL submitted that it had approached the EIN showing its willingness to demonstrate from the Accu-Check Meter that the meter in question was not faulty.

7. It is also submitted by MSEDCL that the said application dated 21.08.2009 was still pending before the High Court and it was likely that the same would be listed in the near future. With above in view, MSEDCL submitted that the present complaint preferred by the Complainant is premature and therefore, not maintainable.

8. The Bombay High Court by its order dated 27.11.2009 has disposed of the Petitioner's Application, mentioned above. In the said order, the Bombay High Court observing that the original CTs are not traced out and the Electrical Inspector is not ready to check the accuracy of the meter without those CTs, held that it is apparent that these subsequent events cannot be relevant for modification or clarification of the order already passed. It was further held that the Complainant is at liberty to challenge the subsequent proceedings and the action of the Electrical Inspector before the competent forum in accordance with law.

9. The Commission vide Notice dated 22.12.2009, fixed an admissibility hearing in the matter on 12.01.2010. At the hearing, the Complainant was represented by Shri D. D. Dave, and the Opponent was represented by Shri M. S. Kele, SE NUC, MSEDCL, Shri A. S. Fulkar, MSEDCL, and Shri V. V. Vaydande, Ex. Engr, MSEDCL.

10. At the hearing, the Complainant submitted that recently a letter from MSEDCL was received by them conveying that MSEDCL was ready to pay an amount to the Complainant, which differed from the amount calculated by the Complainant. As read out by the Complainant from the copy of the letter received by him, an extract from the said letter is as follows:

“.....MSEDCL has intents to comply the order passed by the CGRF without exhausting the liberty granted by the Hon'ble High Court to file a fresh petition challenging the decision of the Electrical Inspector not to accept the demonstration of the meter without production of the CTs provided you accept the sum of Rs., as revision of bills amount and payable alongwith interest thereon from the date of passing the order of CGRF and the same will be given credit in your current bill of your connection bearing Consumer No.....”.

11. During further discussions in the matter, as desired by the Complainant, MSEDCL agreed during the hearing, to pay to the Complainant, the excessively charged amount, difference of TDL charges as well as electricity duty, and pay interest @9% per annum from the date of payment made by the Complainant.

12. MSEDCL vide its letter dated 25.01.2010, received by the Commission on 20.02.2010, has stated that it had paid the Complainant the sum of Rs.3,59,604/- vide cheque no. 852153 dated 18.01.2010 towards the refund of excess amount alongwith interest @9% on the said revised amount, as directed by the CGRF, Nagpur vide its order dated 17.01.2005, thereby reporting compliance of the CGRF order. It has also been submitted by MSEDCL in its letter that the Complainant has accepted and has acknowledged receipt of the amount paid by MSEDCL as full and final settlement. MSEDCL has also submitted a Joint Application in this regard signed by the Complainant as well as MSEDCL.

In view of the above admission by the parties, nothing survives in the matter.

Accordingly, Case No. 79 of 2009 stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary