

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 15 of 2007

In the matter of
**Complaint filed by Shri. Haribhau Digambar Khapre, alleging non-compliance by
MSEDCL of the order dated February 9, 2007 passed by the CGRF, Kolhapur.**

Dr. Pramod Deo, Chairman
Shri. A. Velayutham, Member
Shri. S. B. Kulkarni, Member

ORDER

Dated: November 1, 2007

Shri Haribhau Digambar Khapre, Joint Secretary, Jat Taluka Vidhyutdharak Association, Taluka- Jat, District-Sangli filed a complaint on May 22, 2007 under Regulations 22 read with Regulations 8.7 and 17.18 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (“**CGRF Regulations**”), on behalf of nine agricultural consumers from Jat Taluka. The Complainant sought the invocation of Section 142 of the Electricity Act, 2003 (“**EA 2003**”), read with Sections 149 and 57(2) of the said Act, for the alleged non-compliance of the combined order dated February 9, 2007 passed by the Consumer Grievance Redressal Forum, (“**CGRF**”), Kolhapur Zone, in Consumer Complaint No.s 64 to 78 of 2006. The Complaint was filed against three functionaries of the Maharashtra State Electricity Distribution Company Limited (“**MSEDCL**”), namely, the Executive Engineer (Office) & Nodal Officer-MSEDCL-O&M Circle, Sangli, Vishrambagh, (“**Respondent No. 1**”), the Executive Engineer-O&M Division (Rural)-MSEDCL-Vishrambagh, Sangli, (“**Respondent No. 2**”), and the Assistant Engineer-O&M Sub-Division-Jat-MSEDCL, Taluka Jat, Sangli, (“**Respondent No. 3**”).

2. It is averred in the Complaint that a total of fifteen agricultural consumers of different villages from Sankh Taluka and Jat Taluka of Sangli District had preferred appropriate proceedings under CGRF Regulations before the Internal Grievance Redressal Cell (“**IGRC**”), Sangli. The proceedings were initiated for causing expedited release of electricity connections for drawal of water from agricultural pumps. Requisitions for electricity connections were pending in this regard mostly since the year 1997, despite completion of preliminary formalities towards electricity connection.

3. It is also averred in the Complaint that on the failure of the IGRC, Sangli, to pass any final order within sixty days from the date of initiation of proceedings, grievances were initiated before the CGRF, Kolhapur, under Consumer Complaint Nos. 64 to 78 of 2006. The CGRF, Kolhapur, passed a combined order dated February 9, 2007, (Order No. 35) disposing of all the aforesaid complaints with a common direction to MSEDCL to release connections within a period of three months from the date of order, in favour of those consumers who have made payment towards security deposit and who have also completed their respective paper work for the connections.

4. It is further averred in the Complaint that the agricultural consumers of Sankh Taluka were provided electricity connection within three months from the passing of the order dated February 9, 2007, i.e. May 9, 2007, as directed by the CGRF, Kolhapur. However, in connection with the electricity supply to the said nine consumers of Jat Taluka, the aforesaid order of the CGRF, Kolhapur, have not been complied with. Therefore, undue preference has been given to the said consumers from Sankh Taluka over the nine consumers from Jat Taluka, and connections have thus not been released.

5. It is further averred in the Complaint that the sub divisional office, MSEDCL Jat Taluka had vide their letter dated May 5, 2007 bearing Inward Reference No. 1453, engaged the services of M/s. Siddheshwar Electricals, Sangli, for the installation and infrastructure work connected with release of electricity connections. However, the complainant is forced to file the present Complaint due to the inordinate delay on the part of MSEDCL to provide electricity connections to the said nine consumers.

6. Based on the aforesaid submissions, the following main reliefs have been sought for in the Complaint:

- (i) ascertainment of the number of agricultural consumers who have not received electricity connection as per the directions of the CGRF, Kolhapur, vide its order dated February 9, 2007;
- (ii) directions upon MSEDCL to expeditiously release connections to consumers who have not yet been supplied with electricity connections;
- (iii) directions upon MSEDCL to pay damages to such consumers quantified on the basis of Rs. 100/- per week, from May 9, 2007, under Section 57 (2) read with MERC (Standard of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005;
- (iv) invocation of Section 142 and Section 149 of the EA 2003, and enquiry for payment of Compensation / penalty under Section 57(2) of the said Act.

7. On July 4, 2007, a Preliminary hearing was conducted in the matter. The hearing was attended by Shri. Haribhau Digambar Khapre; Shri. V.N. Jagtap, Chairman, Jat Taluka Vidhyutdharak Association; Shri. Satyajit Pawar, Deputy Law Officer-MSEDCL and other officials of MSEDCL. The Respondent Nos. 1, 2 and 3 and the Superintending Engineer-MSEDCL (Circle Office), Vishrambagh, Sangli, were present in person. Shri. Khapre

submitted that in terms of the said order dated February 9, 2007, MSEDCL had verbally assured the twelve aggrieved consumers that purchase orders for procurement of required infrastructure have already been placed by MSEDCL, in order to release connections as directed by the CGRF, Kolhapur. It was submitted that on June 1, 2007, the aggrieved twelve agricultural consumers sought information from MSEDCL under the Right to Information Act, 2005, as to the precise date by which all pending electricity connections shall be released. In reply to the same, MSEDCL, vide letter dated June 7, 2007, informed that electricity connections have already been released as against all pending requisitions, in compliance with the directions passed by the CGRF, Kolhapur. Shri. Pawar submitted that connections as directed by the CGRF, Kolhapur have already been provided by MSEDCL and an affidavit in support of such contentions shall be filed shortly. Shri. Pawar requested for some reasonable time for filing separate affidavits-in-reply on behalf of the Respondents. The hearing in the matter was adjourned thereafter providing the Respondents an opportunity to file reply.

8. On July 24, 2007, the Respondent Nos. 1, 2 and 3 and the Superintending Engineer-MSEDCL (Circle Office), Vishrambagh, Sangli, filed separate affidavits-in-reply. It has been submitted thereunder that primarily, the order dated February 9, 2007 passed by the CGRF, Kolhapur was officially received by the Respondents on February 21, 2007. It has been further contended under the said affidavits that M/s. Siddheshwar Electricals were appointed by MSEDCL on May 5, 2007, as private Licensed Contractor in terms of the directions of the IGRC, Sangli, to lay the infrastructure for releasing connections. The said M/s. Siddheshwar Electricals completed all infrastructure work by May 19, 2007 and thereafter, during May 28, 2007 to May 31, 2007 connections were released with regard to the nine pending requisitions from Jat Taluka. A compliance report to that effect was filed with the CGRF, Kolhapur, on June 6, 2007.

9. The Respondents have further contended that connections with regard to the six aggrieved consumers from Sankh Sub-Division and the nine aggrieved consumers from Jat Sub-Division have all been released. As against the nine aggrieved consumers from Jat Sub-Division, while the laying of infrastructure was completed on May 19, 2007, physical verification of the said infrastructure work revealed various lacunae. Electrical instruments like meter boxes, main switch, capacitor, earthing appliances, etc., were not duly installed. Thus, immediate connection could not be provided. It has been submitted that the nine aggrieved consumers from Jat Sub-Division were always kept informed of this reason, which delayed the release of connections. As soon as installation of these essential electrical instruments was completed, connections were released. The Respondents have denied all the allegations made under the present proceedings, with respect to non-compliance of the order dated February 9, 2007 passed by the CGRF, Kolhapur, and sought condonation of delay, if any, in the release of electricity connections. It has been further contended that the delay in releasing connections have not been on account of any willful disobedience, as alleged under the complaint.

10. At the hearing held on August 28, 2007, Shri. Khapre submitted that MSEDCL had preferred a representation before the Electricity Ombudsman in appeal to the order dated February 9, 2007 passed by the CGRF, Kolhapur, in Consumer Complaint No.s 64 to 78 of

2006. The Electricity Ombudsman passed an order upholding the order of the CGRF, Kolhapur and further directed MSEDCL to pay compensation to the aggrieved consumers who suffered inordinate delay in the release of connections. It was submitted that MSEDCL initiated proceedings under Civil Suit No. 5 of 2007 before the District Court, Joint Civil Judge, Junior Division, Sangli. Vide order dated March 15, 2007 passed by the said civil court, an interim application filed by MSEDCL seeking temporary injunction on the order of the CGRF, Kolhapur dated February 9, 2007 was rejected, for reasons set out thereunder. Thus, the operation of the said order passed by the CGRF, Kolhapur, has never been stayed in any subsequent proceedings. Shri. Khapre further submitted that MSEDCL have not taken proper initiative to submit a compliance report before the CGRF, Kolhapur, within the time frame stipulated under the order dated February 9, 2007 passed by the CGRF, Kolhapur. Per contra, Shri. Prakash Janardan Jedhe, Respondent No. 1, submitted that on physical verification, MSEDCL found that the infrastructure work undertaken by M/s. Siddheshwar Electricals for release of connections at Sub-Division-Jat were grossly incomplete. Various electrical instruments had not been installed by them. This accounted for the delay in not only the release of connections but also submission of compliance report before the CGRF, Kolhapur. On the issue of invocation of Sections 142 and 149, it was stressed by Smt. Deepa Chawan, Counsel for MSEDCL, that Section 142 cannot be invoked on technical grounds. Section 142 cannot be invoked on account of delay in the submission of any compliance report before the CGRF, Sangli or issuing a letter to Jat Taluka Vidhyutdharak Association. This delay does not outdo the fact that electricity connections have no doubt been released by MSEDCL as against all the pending requisitions. Counsel further submitted that the penalty provisions of a statute should not be invoked for technical breaches, which do not establish guilty intention. Counsel submitted that while the order dated February 9, 2007 required release of all connections by May 9, 2007, connections have been admittedly released by MSEDCL as late as May 31, 2007. Counsel in this regard referred to the decision of the Hon'ble Supreme Court in R. N. Dey & Ors. Vs. Bhagyabati Pramanik & Ors [(2000) 4 SCC 400] and invited the attention of the Commission to paragraphs 7 and 8 therein, reproduced as hereunder:

"7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contemnor and the court. It is true that in the present case, the High Court has kept the matter pending and as ordered that it should be heard along with the first appeal. But, at the same time, it should be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay is granted by the High Court, at most they are entitled to recover the same by executing the said award wherein the

State can or may contend that the award is a nullity. In such a situation, as there is no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified.

8. *Further, the decree-holder, who does not take steps to execute the decree in accordance with the procedure prescribed by law, should not be encouraged to invoke contempt jurisdiction of the court for non-satisfaction of the money decree. In land acquisition cases when a decree is passed the State is in the position of a judgment-debtor and hence the court should not normally lend help to a party who refuses to take legally-provided steps for executing decree. At any rate, the court should be slow to haul up officers of the Government for contempt of non-satisfaction of such money decree."*

11. On the issue of invocation of Section 57(2) of the EA 2003, Shri. Khapre submitted that the intention behind initiation of the present proceedings has not been for claiming compensation. Expedited release of connections as mandated by the CGRF, Kolhapur, is the actual intention behind initiation of the present proceedings. Shri. Khapre submitted that therefore reliefs sought for award of compensation are not being pressed for.

12. A representative from Jat Taluka Vidhyutdharak Association submitted that while connections have been released by MSEDCL to the aggrieved consumers as on May 31, 2007, MSEDCL has not caused transformer augmentation for the same. The viability of the said electricity connections is, therefore, doubtful as the appropriate number of transformers for the same has not been installed.

13. The Commission observes that under the separate affidavits-in-reply, the Respondents have submitted that the delay in the release of connections as against the grievance of consumers of the Jat Taluka, was on account of their finding on physical verification, that the infrastructure work performed by the private Licensed Contractor, as appointed, was grossly incomplete and installation of essential electrical instruments were not complete. Nevertheless, MSEDCL ought to have promptly monitored the work of the said Licensed Contractor, in order to ensure compliance of the CGRF Order, on time. MSEDCL should have reported the cause of this delay before the CRGF, Kolhapur and officially also reported the same to the aggrieved consumers.

14. The Commission further observes that invocation of punitive measures or penal provisions is within the discretion of the Commission on its concluding that indeed, any specific direction has been contravened in letter and spirit and the incidence of culpable or willful neglect was present during the act of contravention or omission. Culpable intention can be found out from the conduct of a person. In the present case, the conduct of MSEDCL does not reflect culpable intention, in view of the fact that, MSEDCL in the first instance, had complied with the order of the CGRF, which puts forth the fact that, MSEDCL, indeed had the intention of complying with the CGRF order. On subsequent hearing, the Respondents have submitted on affidavit, that they have complied with the said order of the CGRF. The said

submission has not been disputed by the Complainant. However, the delay on the part of the Respondents, in complying with the said order of CGRF has been disputed by the Respondents. The Respondents have submitted the reasons for the delay and also submitted that, there was a genuine effort in rectifying the delay for effecting due compliance of the CGRF order. The Commission is of the view that invoking Section 142 or Section 149 only on the basis of reason of delay in complying with the said order, would not be judicious and would not serve the interests of justice. The Commission observes that operation of Section 57(2) and the compensation which could be claimed thereunder read with the MERC (Standard of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005, is outside the purview of the Commission.

15. On the issue of causing transformer augmentation, the Commission observes that the utility-consumer relationship is a continual one and MSEDCL should employ cautious measures and initiatives so as to maintain the said relationship in harmony. MSEDCL should initiate adequate steps to maintain supply as per the various applicable regulations on standards of performance. Compliance of the order dated February 9, 2007 does not end in simply releasing electricity connections. The performance yardstick for MSEDCL shall be measured as per the reliability of their consumers on the connections thus released. MSEDCL should internally address such issues with concern considering that consumer growth in the agricultural sector is on the rise. Transformer augmentation is an essential element with regard to the performance of MSEDCL. The Commission observes that MSEDCL need to cross all technical hurdles that cause consumer dissatisfaction and the ideal way forward to settle the same in future must be worked out by MSEDCL most meticulously.

With the above observations, the Commission dismisses the complaint filed by Shri Haribhau D. Khapre in Case No 15 of 2007.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(Dr. Pramod Deo)
Chairman

(P.B. Patil)
Secretary, MERC