

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 106 of 2010

In the matter of
Complaint filed by Shyam Oil Mill, Akot, Akola, against MSEDCL, under Sections 142 and 149 of the Electricity Act, 2003, alleging non-compliance of the Order dated 13th October, 2010, passed by the CGRF, Amravati Zone, in the matter of seeking refund of infrastructure cost and excessive charges.

Shri V. P. Raja, Chairman

M/s Shyam Oil Mill ...Complainant

V/s

Maharashtra State Electricity Distribution Company Limited ...Opponent
Through its' Executive Engineer, Akola (Rural)

ORDER

Date: 28th June, 2011

M/s Shyam Oil Mill, the Complainant, filed a complaint before the Commission on 23rd December, 2010, against Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), the Opponent, under Sections 142 and 149 of Electricity Act, 2003 (“EA 2003”), alleging non-compliance of the Order dated 13th October, 2010, passed by the Consumer Grievance Redressal Forum (“CGRF”), Amravati Zone, seeking refund of infrastructure cost and excessive charges.

2. The prayers made by the Complainant, are under:

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- a. *Direct MSEDCL to comply with the order passed by the Hon'ble CGRF in Case No. 59 of 2010.*
- b. *Impose penalty of Rs.1 lac under section 142 of EA, 2003 upon MSEDCL for non compliance of Hon'ble CGRF Order.*
- c. *Award cost of Rs. 15,000/- to Petitioner.*
- d. *Any other relief in the interest of Petitioner which Hon. Commission deems fit.”*

3. The facts of the matter submitted in the complaint, are brought out hereunder:
- a) The Complainant submitted that a completed application form was submitted on 21st March, 2007 to the Opponent (MSEDCL), for getting electricity supply (of 107 HP Load) for its Industrial Premises, at Akola.
 - b) On 29th December, 2007, the Opponent had sanctioned the supply and the estimates. Subsequently the Demand Note (intimation for the charges to be borne by the applicant) was issued on 2nd January, 2008, for Rs.1,16,249/- ((i.e. Rs. 6500/- as Service Connection Charge, Rs.100/- as stamp paper charges, Rs.1,07,000/- towards S.D., Rs.50/- as Processing Charges, and Rs.599/- as 1.3% Supervision Charges [*the sum actually working out to Rs.1,14,249*]), which was paid by the Complainant on 3rd January, 2008.
 - c) As per the estimates, the required infrastructure was erected by Complainant, through licensed electrical contractor at the applicant's own cost which was about Rs.2,50,000/-.
 - d) The Complainant submitted that the aforesaid Sanction by the Opponent, was in violation of the MERC Order dated 8th September, 2006 (Order No. 70 of 2005) and MSEDCL's own Circular dated 27th September, 2006 (Commercial Circular no. 43), and, that creation of infrastructure for giving power supply is the duty of Opponent. But, instead the Opponent directed the Complainant, to first create the infrastructure at its own cost and then get reimbursement under the ORC Scheme. The Complainant submitted that the Opponent was entitled to recover only 1.3% of the service connection charges i.e., Rs. 84/-, but it collected Rs.6500/-, i.e. Rs. 6415/- were recovered in excess.
 - e) The Complainant submitted that even after approaching the higher authorities of the Opponent, he did not get back the incurred infrastructure cost through its energy bill.
 - f) Therefore, the Complainant had approached the Internal Greivance Redressal Cell (**IGRC**) at Circle Office Akola and prayed for refund of infrastructure cost of Rs.2,60,518/- (*as per the Work Completion Report*) along with interest @15% p.a. from the date of release of connection i.e. 11th February, 2008, till repayment. He also prayed for refund of Supervision charges of Rs.2599/-, Transformer fee of Rs.3000/-, Electrical inspector's fee of Rs.2000/- etc., alongwith compensation for the delay of 8 months in communication of estimates in place of one month of application as per the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 ("SoP Regulations, 2005").
 - g) The IGRC passed an order dated 15th July, 2010 wherein it had ordered for refund of Rs 6416/-. However, in respect of the refund of cost of Infrastructure, IGRC directed MSEDCL to take decision after the decision of the apex court in the matter of MSEDCL's appeal No. 20340/ 07, regarding some refunds, and, declined to award compensation on the ground that work completion report was submitted on 8th February, 2008 and supply was released on 11th February, 2008.
 - h) Aggrieved by the IGRC order of 15th July 2007, the Complainant filed a grievance before the CGRF, Amravati Zone.
 - i) In response to the notice issued by the CGRF, the opponent filed a reply on 9th September, 2010, wherein the Opponent could not point out that under the ORC

Scheme consumer can be made liable to incur expenditure. The CGRF passed its order dated 13th October, 2010, directing the Opponent, as follows:

“MSEDCL Rural Division, Akola is ordered to refund the amount of Rs.2,60,517/- with interest at the rate of 10% from 11th February, 2008 till payment in one go. It should also pay interest of 10% p.a. on Rs.6415/- from 3rd January, 2008 to 30th June, 2010. It should also refund Rs.2599/- recovered on Supervision Charges, interest at the 10% p.a. from 3rd January, 2008 till payment. It should also pay Rs. 3400/- on account of SOP for delay in communication charges.”

The Member-Secretary of the CGRF, however, had a difference of opinion with other two Members of CGRF, and, on the basis of the MSEDCL's appeal no. 20340/07 still pending before the Hon'ble Supreme Court, with a stay given by the Court, had opposed refund of Infrastructure cost, besides reducing other amounts to be refunded as well as interest on the same.

- j) As submitted by the Complainant, the said Order of the CGRF, has not been complied with by the Opponent. Aggrieved due to non-compliance of the CGRF's Order by the Opponent, the Complainant filed the present complaint before the Commission.
4. On 31st January, 2011, the scheduled date of hearing by the Commission, the Commission's office received a Fax message, jointly signed by the common representative of the Complainants in three cases before the Commission (case no.106 of 2010, no.107 of 2010, no.108 of 2010) and the Opponent (also being common in the said three cases), which conveyed that the Opponent had challenged three impugned Orders of the CGRF (against the case nos. 59, 57 and 56 of 2010 before the CGRF, Amravati Zone, and subsequently filed before the Commission due to non-compliance by Opponent -as Case nos. 106, 107 and 108 of 2010), by filing Writ Petitions before the Nagpur Bench of Hon'ble High Court of Bombay.

It was further submitted that the Hon'ble High Court, on 28th January, 2011, has granted interim relief in favour of the Opponent, by a stay on the three said Orders of the CGRF, Amravati Zone, till 23rd February, 2011. With above, the Complainant and Opponent jointly requested the Commission to postpone the hearing in the matter.

5. During the hearing held by the Commission, in the matter on 31st January, 2011, no body appeared on behalf of the Complainant, whereas Shri M. V. Vaydande, Ex. Engineer, L.M. Section, MSEDCL, appeared on behalf of the Opponent. The Respondent reiterated the submission received by the aforesaid Fax message. Taking into consideration, the above made submission, the Commission adjourned the matter, and also taking into account that the other two matters, namely case no. 107 of 2010 and case no.108 of 2010, were of similar nature, scheduled a combined next hearing in the three cases (no.106 of 2010, no.107 of 2010, no.108 of 2010) on 9th March, 2011.
6. During the hearing held on 9th March 2011, combined for the three cases before the Commission (Case nos.106 of 2010, 107 of 2010 and 108 of 2010) no body appeared on behalf of the Complainant, whereas Shri M. V. Vaydande, Ex. Engineer, L.M. Section, MSEDCL and Shri S.S Ukande, Ex. Engineer, Akola(R), MSEDCL,

appeared on behalf of the Opponent. The Opponent submitted that the Respondent before the High Court (the Complainant in the present case) had sought additional time for filing of its reply to the Hon'ble Court, and the Stay Order given by the Court continued.

7. During the next two hearings, held on 4th May, 2011, and 10th June, 2011, combined for the three cases before the Commission (Case nos.106 of 2010, 107 of 2010 and 108 of 2010) on 4th May 2011, no body appeared on behalf of either side.
8. The Complainant through the said common representative's letter dated 4th June, 2011, and the Opponent vide its letter dated 2nd June, 2011, received at MERC office, by Facsimile message on 6th June 2011, once again requested for postponement of the hearing in the matter. The Opponent submitted that '*on 3rd May, 2011, the Hon'ble High Court is pleased to continue the stay during the pendency of the Petition*'. The submissions were taken on record.
9. From the copy of the Order passed by the Hon'ble High Court, on 3rd May, 2011, it is noted by the Commission that -having taken cognizance of the submission by MSEDCL that "*the issue involved in the instant petition is also involved in Spl. Leave Petition bearing no.S 20340/2007 and the Hon'ble SC has stayed the refund by an interim order dated 31st August,2007.*"- the Hon'ble High Court has noted that *the issue involved in this petition (covering the three matters before the Commission) is also involved in a bunch of writ petitions which are admitted by the order dated 6th December, 2010 (by another Hon'ble Judge of the Hon'ble High Court, and wherein future developments in the matter pending before the Apex Court, is awaited for).*

With above, the Hon'ble High Court has, on 3rd May, 2011, ordered that "*Ad-interim relief granted by this court on 28th January, 2011 is continued during the pendency of this petition. The parties are granted liberty to move this court in case the Hon'ble Apex Court decides the Spl. Leave Petition, one way or the other*".

In view of the developments as brought out above, the Commission is of the view that under the prevailing conditions, no purpose would be served by keeping the aforesaid Complaint in abeyance before the Commission. The Hon'ble High Court in its aforesaid order has granted stay in the matter before it during the pendency of the Writ Petition with a liberty to the parties to move the Hon'ble Court, in case the Hon'ble Apex Court decides the Spl. Leave Petition, one way or the other. Moreover, with the matter being sub-judice before the Hon'ble High Court, whose decision in the matter will be binding on both the parties, the Commission is of the view that at this stage neither would it be proper nor be judicially respectful to precipitate any action as sought for by the Complainant.

Accordingly, Case No. 106 of 2010 stands dismissed.

Sd/-
(V. P. Raja)
Chairman