

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400 005.
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Case No. 107 of 2010

In the matter of
Petition filed by Shri Deepak Shankarlal Agrawal, Akola, under Section 142 of the EA, 2003, and Regulations 8.7 & 22 of MERC(Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006, alleging non-compliance of Order dated 13th October, 2010, passed by CGRF, Amravati Zone, in the matter of seeking refund of infrastructure cost and excessive charges.

Shri V. P. Raja, Chairman

Shri Deepak Shankarlal AgrawalComplainant

V/s

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

ORDER

Dated: 29th June, 2011

Shri Deepak Shankarlal Agrawal, filed a complaint against Maharashtra State Electricity Distribution Company Ltd. ("MSEDCL"), the Respondent, on 23rd December, 2010, under Section 43, 45, 46 of the Electricity Act, 2003 (hereinafter referred as EA 2003) and Regulations 8.7 and 22 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forums and Electricity Ombudsman) Regulations, 2006, alleging non-compliance of the Order passed by the CGRF, Amravati Zone.

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

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1. Direct MSEDCL to comply with the order passed by the Hon'ble CGRF in case no. 57 of 2010,
 2. Impose penalty of Rs. 1 lac under section 142 of EA, 2003 upon MSEDCL for non compliance of Hon'ble CGRF order,
 3. Award cost of Rs. 15,000/- to petitioner. ”

3. The facts of the matter submitted in the complaint, are brought out hereunder:
- A. The Complainant, a consumer, had applied for a new electric connection of 99 HP, for industrial purpose, on 6th February, which was sanctioned by the Respondent on 11th May, 2007. The Demand Note was issued by the Respondent on 18th May, 2007, covering the charges like Service Connection Charge, Supervision Charge, Security Deposit, etc., which were paid by the Complainant on 24th May, 2007. Supply was released on 24th July 2007.
 - B. As per the Complainant, it came to know subsequently, that the aforesaid sanction was in violation of the Commission's Order dated 8th September, 2006 in Case No. 70 of 2005 and also the Respondent's Circular dated 27th September, 2006, due to the following reasons:
 - a) The Complainant had spent about Rs.3,00,000/- for erection of the infrastructure. However, these charges were to be borne by the Distribution Licensee (i.e. Respondent) itself.
 - b) The Complainant had to pay various charges on service connection, supervision, processing fees, security deposit, agreement charges, and meter costs etc. which were not entitled to be recovered from the consumer.
 - C. With above grievance, the Complainant approached the IGR Cell (**IGRC**), for refund of the above mentioned amount. However, the Respondent replied to the IGRC that the aforesaid connection was sanctioned under Out Right Charges (ORC) Scheme, on request of the consumer. The Respondent had further submitted to IGRC that in view of a similar matter pending in the Supreme Court (with Petition No. 20340/07), it was not possible (for the Respondent) to take any decision till the Hon'ble Supreme Court decides the Case.
 - D. The IGRC vide its Order dated 15th July, 2010, directed MSEDCL to refund the charges collected for meter costs of Rs.22,360/- and the Service Connection Charge of Rs. 6,416 (without interest) within 15 days from the date of the Order. Further, the Order said that the rest of the refund on the charges would be determined on the decision by the Supreme Court.
 - E. Aggrieved by the IGRC's Order, the Complainant filed a grievance with the CGRF, Amravati Zone.
 - F. In reply to the CGRF's Notice, MSEDCL filed a reply on 1st September, 2010, stating that it was not disputed that the consumer had applied for the supply on 6th February, 2007, and the consumer was informed about the charges to be paid by him on 18th May, 2007, and there was delay of 11 weeks. Also, that the sanction was given to the consumer, on his request under ORC 15% supervision charges, and therefore, the amount of Rs.3,394 was recovered on account of the supervision (1.3%). Further, with submission that it had paid the amounts ordered by the IGRC, MSEDCL conveyed about the Hon'ble Supreme Court's stay Order dated 31st August, 2007.
 - G. The CGRF, Amravati Zone, however, of the view that the proceedings were filed on 26th July, 2010 and therefore the said Order of Hon'ble Supreme Court, was not applicable to the case, and also, that the ORC scheme is not approved by the Commission and the Distribution Licensee has to incur expenditure for the service line, issued an Order dated 13th October, 2010 (Case No. 57 of 2010), where it directed MSEDCL to refund all the charges which were not in accordance with the Schedule of Charges approved by the Commission in its Order dated 8th September, 2006.

The CGRF, Amravati Zone, in its Order dated 13th October 2010 directed that “MSEDCL Rural Division Akola is ordered to pay Rs.2,33,060 along with interest of 10% p.a. from the date of supply i.e. 24th July, 2007. It should also pay interest on Rs.22,360 and Rs.6,416 from 24th May, 2007 to 31st July, 2010. It should also pay Rs.3,394 along with interest of 10% p.a. from 24th May, 2007. It should also pay Rs.1,100 on account of compensation for delay in communication of charges as per the SOP Regulations”. The Order was to be complied within a month’s time.

The Member-Secretary of the CGRF, Amravati Zone, 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, beside reducing other amounts to be refunded as well as interest on the same at the prevailing rate of Reserve Bank of India.

H. Aggrieved due to non-compliance of the CGRF’s Order by the Opponent, the Complainant has filed the present complaint before the Commission.

4. On 31st January, 2011, 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 scheduled hearing held by the Commission, in the matter on 1st February, 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 Opponent reiterated the submission received by the aforesaid Fax message. Taking into consideration, the said submission, the Commission adjourned the matter, and also taking into account that the other two matters, namely case no. 106 of 2010 and case no.108 of 2010, were of similar nature, scheduled a combined 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. 107 of 2010 stands dismissed.

Sd/-
(V. P. Raja)
Chairman