

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 108 of 2010

In the matter of
Complaint filed by M/s Shivam Oil Industries, Barshi Takli, Akola, against MSEDCL, under Sections 142 and 149 of the Electricity Act, 2003, alleging non-compliance of the Order dated 12th October, 2010, passed by the CGRF, Amravati Zone, and seeking refund of infrastructure cost and excessive charges.

Shri V. P. Raja, Chairman

M/s Shivam Oil IndustriesComplainant

V/s

Maharashtra State Electricity Distribution Company LimitedOpponent
Through its' Executive Engineer, Akola (Rural)

ORDER

Date: 29th June, 2011

M/s Shivam Oil Industries, Barshi Takli, Akola, the Complainant, filed a Complaint before the Commission on 23rd December, 2010, against the 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 12th October, 2010, passed by the Consumer Grievance Redressal Forum (“CGRF”), Amravati Zone, and seeking refund of infrastructure cost and excessive charges.

2. The prayers made by the Complainant, are brought out hereunder:

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- a. Direct MSEDCL to comply with the order passed by Hon. CGRF in case no 56 of 2010
- b. Impose Penalty of Rs. 1lac under section 142 of EA 2003 upon MSEDCL for non compliance of Hon. CGRF order
- c. Award cost Rs.15000/- to petitioner
- d. Any other relief in the interest of petitioner which Hon. Commission deems fit.”

3. The brief facts of the matter in the complaint, are brought out hereunder:
- a) The Complainant submitted a completed application form on 8th October, 2007, to the Opponent (MSEDCL), for getting electricity supply (107 HP Load) for its Industrial Premises, at Akola.
 - b) On 17th October, 2007, the Opponent sanctioned the supply and the estimates, under ORC Scheme with 15% supervision, and that the quotation for same was issued under 1.3% supervision charges. The Complainant deposited the service connection charges of Rs.6500/-, supervision charges of Rs.2758/- and other charges, on 22nd October, 2007, as per the sanction letter.
 - c) As per the estimates, the required infrastructure was erected by the Complainant, through licensed electrical contractor at applicant's own cost of about Rs.2,75,000/-.
 - d) The Complainant after coming to know that it was the duty of the Licensee to create infrastructure for giving the power supply, and thus the said 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). The Complainant further submitted that creation of infrastructure for giving power supply was the duty of Opponent, but, instead the Opponent directed the Complainant, to first create the infrastructure at its own cost and then get reimbursement.
 - e) Therefore, the Complainant had approached the Internal Grievance Redressal Cell (IGRC) at Circle Office Akola, and prayed for refund of infrastructure cost of Rs.2,75,000/- (*as per the Work Completion Report*) along with interest @10% p.a. from the date of release of connection, till repayment. He also prayed for refund of Supervision charges of Rs.2758/-, Service connection Charges of Rs. 6500/- etc.
 - f) Before the IGRC, MSEDCL had contended that the estimate was sanctioned under ORC Scheme with the consent of the Complainant. Also that, the Civil Appeal No. 20340 of 2007 in the Hon'ble Supreme court in the matter of refund of ORC filed by MSEDCL, was still pending. Therefore, it was not possible to take a decision in respect of refund of cost of infrastructure.
 - g) The IGRC ordered the Opponent to refund Rs.6416/- towards the service connection charge (instead of Rs.6500/- demanded by Complainant) and supervision charges of Rs.2673/- (instead of Rs. 2758/-) without interest. The IGRC refused to redress the grievance of Complainant on refund of cost of infrastructure till the decision of the Hon'ble Supreme Court in the matter of ORC refund.
 - h) Aggrieved by the IGRC order, the Complainant filed a grievance before the CGRF, Amravati Zone. In response to the notice issued by the CGRF, the Opponent replied that it has already refunded Rs.9089/- (as per IGRC order). The Opponent submitted its reply towards refund of cost of infrastructure similar to as raised before the IGRC.
 - i) During the hearing held by the CGRF, the Complainant submitted that the Stay Order in the matter of refund of ORC as passed by the Hon'ble Supreme court was not applicable to the Complainant. And that it was entitled to get the refund along with interest because the Complainant had paid the cost of infrastructure under ORC Scheme which is not approved by the Commission, after the stay of the Court. Refund of excess service connection charges and supervision charges, also was demanded by the Complainant.
 - j) The CGRF passed its order dated 12th October, 2010, as follows:

“ MSEDCL Rural Division Akola is ordered to refund Rs.2,02,256/- alongwith reasonable interest of 10% per annum from the date of supply till payment. MSEDCL should also pay interest at the rate of 10% per annum on Rs 9089/- from 22.10.2007 to 30.06.2010.”

Compliance was to be reported within 30 days of the CGRF order.

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, and opined payment of interest at the prevailing rates of Reserve Bank of India on Rs 6146/- from 22.10.2007 to 30.06. 2010.

- k) 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 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 scheduled 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 Opponent 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. 106 of 2010 and case no.107 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) 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 remaining 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. 108 of 2010 stands dismissed.

Sd/-
(V. P. Raja)
Chairman