

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 40 of 2011

In the matter of
Complaint filed by Shri Damji Samji Patel against MSEDCL, under Sections 142, 146 and 149 of Electricity Act, 2003, alleging non-compliance of the Order dated 06.12.2010, passed by the CGRF, Amravati Zone, in regard to infrastructure cost of switching over supply from Agricultural Feeder to Gaothan Feeder.

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Shri Damji Samji Patel

..... Complainant

V/s

Maharashtra State Electricity Distribution Co. Ltd.,
Through its Executive Engineer, Malkapur Division.

.....Opponent

ORDER

16th August, 2011

Shri Damji Samji Patel, the Complainant, a resident of Nimgaon, Distt. Buldhana, filed a complaint, on 10th February, 2011, against the Maharashtra State Electricity Distribution Company Ltd. ("MSEDCL"), the Opponent, under Sections 142, 146 and 149 of the Electricity Act, 2003 ("EA 2003"), alleging non-compliance of the Order dated 6th December, 2010, passed by the CGRF, Amravati Zone.

2. The prayers of the Complainant are as follows:

१. मा. आयोगाकडून मा. ग्राहक तक्रार निवारण मंच (CGRF) अमरावती परिमंडल, अकोला यांचेकडून प्रकरण क्र. ६४/२०१० मध्ये दिलेल्या आदेशानुसार कार्यकारी अभियंता मलकापूर यांचेकडून आदेशाची अंमलबजावणी होण्याबाबत आदेश व्हावा.

(Direct the Executive Engineer, MSEDCL Malkapur, to comply with the Order passed by the Hon'ble CGRF, Amravati Zone, Akola in case no. 64 of 2010.)

२. मा. ग्राहक तक्रार निवारण मंच, अकोला यांनी दिलेल्या आदेशाची अंमलबजावणी न केल्यामुळे कार्यकारी अभियंता महावितरण मलकापूर यांचेवर विज अधिनियम २००३ चे कलम १४२, १४६ व १४९ मधील तरतुदी नुसार रु. एक लक्ष दंड व इतर तरतुदी नुसार असलेली दंडात्मक कार्यवाही करण्यात यावी.

(For non-compliance of Hon'ble CGRF's Order, impose penalty of Rs.1Lac under Section 142,146,149 of EA, 2003, and take action under other provisions upon Executive Engineer, MSEDCL, Malkapur.)

३. याचिकाकरास नुकसान भरपाई म्हणून रु.१,८०,०००/- (अक्षरी एक लक्ष एंशी हजार) कार्यकारी अभियंता महावितरण मलकापूर यांचेकडून प्राप्त होण्याचा आदेश व्हावा.
(Direct Executive Engineer, MSEDCL, Malkapur, to pay the Complainant Rs.1,80,000/- as compensation).”

3. Key points and facts of the matter, in the complaint, are brought out hereunder:

- i The Complainant owns a Saw Mill, located at Nimgaon, Nandura, Buldhana. He is a consumer of the Opponent (**MSEDCL**) having three connections, Industrial (no.29325000585), Commercial (No.----2758) and Residential (no.-----140550).
- ii The Complainant has submitted that separate Gaothan feeder has been commissioned in the area, on 23rd September, 2009, but he is getting the electricity supply from the Agricultural feeder, even after making repeated requests to MSEDCL's officials, that supply should be provided to him from the Gaothan feeder.
- iii Aggrieved due to Opponent's action, the Complainant approached IGR Cell, at Buldhana on 22nd June, 2010, but remedy was not provided within the stipulated two months' period.
- iv The Complainant then filed a grievance before the CGRF, Amravati Zone, with request to direct MSEDCL, Malkapur, to provide supply from the Gaothan Feeder instead of Agricultural feeder, and, to award compensation of Rs.1,80,000/- for financial loss and mental harassment.
- v During the hearing held by the CGRF, Amravati Zone, the Executive Engineer of the Opponent had submitted that the scheme is only for Gaothan area and the premises of the Petitioner are not within Gaothan area, due to which he is not entitled to get supply from the Gaothan feeder. The Respondent also submitted that if the Petitioner was ready to incur the expenditure for erection of electric line (0.6-1.0 km long), the supply could be provided to him from Gaothan feeder instead of existing Agricultural Feeder.
- vi The Forum noted that the Respondent had not produced any document related with Gaothan Feeder Separation Scheme, to show any restrictions and also that the restrictions pointed out by the Respondent cannot be presumed. The Forum observed that '- - - if the consumer is not entitled to get supply from Gaothan feeder for the given reason by the Executive Engineer, it could not be gathered as to how he becomes entitled to get the supply on spending for infrastructure - - - '. Further, the Forum had observed '- - - If the purpose of the scheme is that the consumer of rural area (other than agri. consumer) should get supply as consumers of urban area are getting, with similar load shedding, the supply from the Gaothan Feeder to this consumer, will have to be provided at the cost of MSEDCL - - -'.

The Forum also observed that the Ex. Engineer had submitted that the supply from the Gaothan feeder, if ordered by the Forum, could be provided within 15 days.

vii The CGRF, Amravati Zone, passed its order, dated 6th December, 2010, with the directions, as hereinbelow:

“ 1. MSEDCL, Malkapur is ordered to provide the supply to the three connections of this consumer from Nimgaon Gaothan Feeder instead from existing Agri. Feeder within one month from the date of this Order.

2. Cost required for the infrastructure should be borne by MSEDCL.

Compliance be reported within 40 days.”

As recorded in the said CGRF Order, the Member Secretary of CGRF, Amravati Zone, had a different opinion from the other Members of the CGRF, and made a remark in the order, objecting to the contention that the cost against the infrastructure, for connecting the consumer from Agri. Feeder to Gaothan Feeder, should be borne by licensee, and thus concluded that since, the grievance is for betterment of supply, the MSEDCL is entitled to recover expenses from the consumer.

4. The Complainant submitted that in-spite of the CGRF's directions in the said Order, the Opponent has not complied with the Order. The Complainant, therefore, filed this complaint before Commission, with prayers as above.
5. A hearing was held by the Commission, on 15th April 2011, where Shri Pramod Narayan Khandagale, appeared on behalf of the Complainant alongwith the Complainant himself, and, the Opponent was represented by Shri Rajesh R. Bijwe, Asst. Engineer, MSEDCL, Malkapur. Both the parties reiterated their respective stands. The Opponent also submitted that it had filed a Writ Petition (No. 988/2011) before the Hon'ble Bombay High Court, Nagpur Bench, where a hearing was held and an Order was passed by the Hon'ble Court, on 3rd March, 2011, directing that “... *In the meanwhile, no coercive action should be taken by the respondents till the returnable date.*”

Taking into consideration the developments, as above, the Commission adjourned the matter till the final outcome of the Writ Petition filed before the Hon'ble High Court, Nagpur Bench, with a direction to the Opponent to submit a copy of the Hon'ble Court's Order in the matter, as and when it was passed.

6. Subsequently, hearings in the matter were held by the Commission, on 16th May, 2011, 23rd June, 2011, and on 23rd July, 2011. During the hearing held on 23rd July, 2011, Shri Pramod Narayan Khandagale appeared on behalf of the Complainant whereas Shri Rajesh R. Bijwe, Assistant Engineer, Malkapur Division of MSEDCL, appeared on behalf of the Opponent, and, it was submitted that in the matter of the aforesaid WP before the Hon'ble Bombay High Court, a judgment dated 7th July 2011 has been passed holding inter alia that the infrastructure cost have to be borne by the consumer.
7. The relevant extract from the said judgment of the Hon'ble Bombay High Court, Nagpur Bench, is reproduced hereunder [the Complainant before the Commission, being the Respondent No.2 in the WP before the Hon'ble High Court].

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13. *The learned counsel for the petitioner submits that the issue as to whether the Distribution Company can recover the expenses in so far as the consumers of the kind, to which the respondent herein belongs, is adjudged before the Apex Court and the payment therefore, even if made by the respondent for the said dedicated supply, would be contingent upon the decision of the Apex Court.*

14. *In the light of the above, the impugned order dated 6/12/2010 would have to be set aside and is accordingly set aside. However, it is made clear that if the respondent no.2 desires to have a dedicated supply to his Saw Mill, which is outside the Gaothan, the same would be provided, as has been stated on behalf of the petitioner - Company before the CGRF, at the costs of the respondent. In the event, the said cost of the infrastructure is paid by the respondent, needless to say that the same would be subject to the outcome of the proceedings in the Apex Court.*

Rule is accordingly disposed of in the above terms.”

8. In view of the Hon'ble Bombay High Court's above order, nothing survives before this Commission. The parties will have to act in accordance with Hon'ble Bombay High Court's above order.

Accordingly, the matter in Case No. 40 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman

Sd/-
(Kuldip N. Khawarey)
Secretary