

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 57 of 2009

**In the matter of
Petition of Shri Haroon Noor Mohd. Memon against Electricity Ombudsman's
Order dated 05.12.2008**

**Shri V. P. Raja, Chairman
Shri S. B. Kulkarni, Member
Shri V. L. Sonavane, Member**

Shri Haroon Noor Mohd. Memon

..... Petitioner

Vs.

Maharashtra State Electricity Distribution Company Ltd.
(Through M/s. Torrents Power Ltd., Bhiwandi)

..... Respondent

ORDER

Date: 23rd November, 2009

Shri Haroon Noor Mohd. Memon, the Petitioner herein, is a consumer of electricity supplied by M/s. Maharashtra State Electricity Distribution Co. Ltd., Bhiwandi (hereinafter referred to as 'MSEDCL'). The Petitioner on being aggrieved by the Electricity Ombudsman's Order dated 05.12.2008 in Representation No. 77 of 2008, filed a Petition under Affidavit before the Commission on 19.03.2009. The Petitioner has submitted that through Departmental Circular (Commercial) No. 715 dated 11.08.2004 and further through Commercial Circular No. 11 dated 27.09.2005, the erstwhile MSEB had declared a comprehensive scheme for powerloom industry and has prescribed subsidy in tariff available for powerloom industry, operating in a common shed or individual shed and using electricity for the purpose of powerloom industry. The Petitioner has two sanctioned meters on his premises. One of them is Con. No. 013010000267 used for power loom purpose in the premises at Palls compound, Kalyan Road, Bhiwandi and the second is Con. No. 013010806237 used for the purpose of Waring in the premises at H. No. 26, Nagaon-I, Opp. Asbib Manzil, Kalyan Road,



Bhiwandi. Though the addresses of both the consumers are different, both connections are in the same premises.

2. The Petitioner has submitted that by his letter dated 31.03.2008 sent to The Nodal Officer, MSEDCL, he requested to convert the second meter i.e. Con. No. 013010806237 for power loom purposes, since it is being used for the said allied purpose of Warping Unit. The Petitioner has also submitted Electricity Bills for the months of March 2007, September 2007, August 2008.

3. Petitioner submits that after failing to get any clarification from the Respondent regarding the conversion of the purpose of second meter, the Petitioner filed his grievance before the Internal Consumer Grievance Redressal (“IGR”) Committee on 01.04.2008. The case was taken up as Case No. 178 and after hearing conducted on 25.05.2008, the IGR passed its Order dated 29.08.2008 stating:

“As the two connections belong to one consumer, but each having different activity (Power-loom and Warping), so the tariff of warping connection (Con. No. 13010806237) can not be changed to power loom tariff.”

4. The Petitioner submits that, being aggrieved by the Order of IGR, the Petitioner filed his grievance with the Consumer Grievance Redressal Forum (“CGRF”), Bhandup vide Case No. 210 dated 22.08.2008 praying for the following relief:

“As both the premises are owned by Shri Haroon N. Memon, utility should consider a warping machine is an allied activity of the power loom industry. Hence, tariff of warping (OPL) is to be change to power loom (PL).”

After hearing was conducted on 19.09.2008, Order was passed dated 25.09.2008 vide Order No. 250 stating that the case did not stand on merits and hence dismissed with no order as to costs.

5. The Petitioner further submits that, on being aggrieved by the order passed by CGRF, he approached the Electricity Ombudsman through his representative, “Maharashtra Electricity Consumer Association” by way of a letter sent dated 18.10.2008 to the Electricity Ombudsman praying for the same relief. The Petitioner’s application was filed on 14.11.2008 as Representation No. 77 of 2008. The Petitioner submits that he had also prayed for interim order vide Regulation 17.16 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 vide his letter to the Electricity Ombudsman dated 13.11.2008 since they had received a Notice bearing No. 4147/5/12/4551/790 dated 21.10.2008 from MSEDCL, Bhiwandi directing them to pay the outstanding dues of Rs. 65,128/- within 15 days, else the electricity supply would be disconnected. But since, none of the parties appeared or even communicated anything in writing, the Electricity Ombudsman vide Order dated 21.11.2008, dismissed the application for interim order in default with no order as to costs.

6. The Petitioner submits that MSEDCL had submitted their reply to the above representation by their letter to the Electricity Ombudsman dated 24.11.2008.

7. The Petitioner not being content with the Electricity Ombudsman's final Order dated 5.12.2008 in Representation No. 77 of 2008 has approached the Commission with the present Petition dated 03.03.2009. The prayers made in the Petition essentially seek to consider the warping machines as allied activity in the light of MSEDCL Cir. No. 715 dt. 11.08.2004 and Cir. No. 11 dt. 27.09.2005.

8. MSEDCL submitted their reply in this matter on 15.10.2009.

9. An admissibility hearing was held on 16.10.2009. The Petitioner stated the facts mentioned in the Petition and argued on the points of jurisdiction emphasizing that the Commission has jurisdiction to entertain the present case.

10. The Respondent in its reply cited the ratio of the Judgement of Supreme Court in respect of individual grievances in Civil Appeal No. 2846 and 3551 of 2006 decided on 14.08.2007 (MERC vs. Reliance Energy Ltd. & ors.):

"In given facts it is proper to direct that licensees or distributors in State do issue general public notice stating that whosoever feels aggrieved by excessive supplementary bill will approach licensees or distributors within 3 months from publication of such notice for Redressal. If he is not satisfied with decision of licensees/distributors he can approach forum under Section 42(5) of Act and if still not, then Ombudsman under Section 42(6) of Act because Section 86 does empower Commission to look into complaints of individual consumers."

The Respondent has also cited the findings of the Commission in Case No. 24 of 2009 (Shri M. H. Kakkad vs. The Supd. Engineer, MSEDCL, Bhiwandi), where by Order dated 6.8.2009, it was held that:

"Any complaint raising the grievance against the impugned order passed by the Ombudsman cannot be admitted as the Ombudsman's award is final against which no appeal will lie with Commission. The Commission holds that the present Complaint is not maintainable and is hereby dismissed."

11. Having heard the parties and after considering the materials placed on record, the Commission is of the view that in the present case, the CGRF and the Electricity Ombudsman have already gone into the merits of the case of the Petitioner herein and both the authorities have dismissed the Petitioner's representation. The Petitioner seeks to appeal against such Order dated 05.12.2008, before this Commission. But the present case would not be maintainable before the Commission for want of jurisdiction. In this regard, the ratio laid down in the following judgements of the Appellate Tribunal for Electricity on the aspect of jurisdiction would squarely apply to the present case. The



Appellate Tribunal has, in its judgement dated 30.3.2009 in Appeal No. 180 of 2008, held *inter alia* as under: -

“14. On going through the Judgements referred to above and also the provisions under Sections 42(5) and 42(6) of the Act, it is clear that there cannot be any controversy with regard to the position of law which has already been settled to the effect that the consumer has got the remedy to get the grievance redressed by filing a complaint before the Grievance Cell and thereafter by filing the Appeal before the Ombudsman which is final and no Appeal could be filed before the State Commission.”

In its judgement dated 30.3.2009 in Appeal No. 181 of 2008, the Appellate Tribunal held as under: -

“Even when there is no appeal provided as against the above order passed by the Ombudsman, the State Commission cannot usurp the jurisdiction of the Grievance Redressal Forum or the Ombudsman by going through the validity of the order passed by the Ombudsman.

.....This contention cannot be countenanced in view of the decision taken by this Tribunal as well as Supreme Court wherein it has specifically been held that the Consumer cannot approach the Commission for redressal of his grievances as there is specific remedy available for the Consumer to approach the concerned authorities like the Grievance Cell and the Ombudsman whose award is final and against which no appeal will lie with the Commission.

12. In view of the above judgements, the present case raising a grievance against the impugned order passed by the Electricity Ombudsman cannot be admitted as the Ombudsman's award is final against which no appeal will lie before the Commission. The Commission holds that the present Petition is not maintainable and is hereby dismissed.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(V. P. Raja)
Chairman



(Sanjay Sethi)
Secretary, MERC