

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 93 of 2011

In the matter of
Complaint filed by Shri Vithoba Moglappa Pogul against Maharashtra State Electricity Distribution Company Ltd., under Section 142 of Electricity Act, 2003, alleging non-compliance of the Order No. 239-2010/1511 dated 14.12.2010, passed by the CGRF Kolhapur Zone.

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

Shri Vithoba Moglappa Pogul

..... Complainant

V/s

Maharashtra State Electricity Distribution Co. Ltd.
Through its' (1) E.E. & Nodal Officer,
(2) E.E., (Kolhapur (U)-Div.)
(3) Dy.EE (Kolhapur(U)-Div.)

..... Opponent

ORDER

Date: 14th September, 2011

Shri Vithoba Moglappa Pogul, the Complainant, filed a complaint, on Affidavit, on 05.07.2011, under Section 142 of the Electricity Act, 2003 ("EA 2003") against Maharashtra State Electricity Distribution Company Ltd. ("MSEDCL"), the Opponent, alleging non-compliance of the Order dated 14th Dec., 2010, passed by the Consumer Grievance Redressal Forum ("CGRF"), Kolhapur Zone, in regard to not giving electric connection due to pending payment of arrears.

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

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- i. मा. कोल्हापूर मंच यांच्या आदेशाचे पालन प्रतिवादी यानी करण्याचे आदेश व्हावा ही विनंती. मा. आयोगाने वादी याना वीज पुरवठा देण्याची मा. कोल्हापूर मंच यानी दिलेल्या आदेशाचे पालन प्रतिवादी यानी केलेले नाही हे निश्चित झाले असलेने विद्युत अधिनियम २००३ च्या कलम १४२ नुसार रु.

१,००,०००/- ची शास्ती व पुढील उल्लंघनासाठी, ज्या दिवसांमध्ये नियमित पणे कसूरी चालू राहिल, अशा प्रत्येक दिवसासाठी, सहा हजार रुपयांपर्यंत अतिरिक्त शास्तीची रक्कम प्रदान करणेचा आदेश व्हावा ही विनंती.

(The Opponent be directed to comply with the order passed by CGRF, Kolhapur Zone. That the Opponent has not complied with the order for giving connection to the Petitioner, passed by the CGRF, Kolhapur, is confirmed, hence Rs.1,00,000/- fine & additional fine of Rs.6000/- for each day, for further non-compliance may be directed by the Commission as per section 142 of E.A. 2003).

- ii. सोलापूर मंडल कार्यालयात मा. मंच पर्यायाने मा. आयोगाच्या आदेशांचे पालन करण्यात अत्यंत उदासिनता, बेफिकीर दाखविली जाते, असा वादी यांच्यासह इतर अनेक ग्राहकांच्या कटू अनुभव आहे. वेळप्रसंगी ग्राहकाना कायदेशीर कारवाई करू असे धमकावले जाते. प्रतिवादी याना कायद्याची योग्य ती जरब बसणे गरजेचे आहे. या साठी केवळ अपवादात्मक वापरल्या जाणाऱ्या कलम १४२ ची अंमलबजावणी या ठिकाणी होणे अत्यंत गरजेचे आहे. अशी नम्र विनंती आहे.

(It is bad experience of the present Petitioner as well as other consumers that, in Solapur Circle there is a tendency to ignore and neglect the order passed by the Forum, and thus to neglect indirectly the Order passed by the Commission. Sometimes the consumers are pressurized by threatening them of legal action. It is very necessary to teach the Opponents the importance of law, and hence, it is humbly prayed that, there is a need to implement, in this case, the Section 142 which is very sparingly and rarely used)."

3. The brief facts of the matter as submitted by the Complainant are setout hereunder:
- The Complainant, Shri Vithoba Moglappa Pogul, staying at 342, Sakhar Peth, Solapur, had applied to Opponent for supply of electricity of 0.80 kW, single phase, new connection, for its Plot No. 152/5, MIDC Akkalkot Road, Solapur. The application, dated 03/05/2010, was in the name of Shri Vithoba Moglappa Pogul, M/s Samarth Processing House, Plot No.152/5, Akkalkot Road, Solapur, registered with Opponent No.3 on 04/05/2010.
 - Before the application for new connection, the Complainant was ready to pay arrears of plot No. 152/5, having given a written application on 26/04/2010, in this respect.
 - Superintending Engineer, Circle Office, Solapur, had then informed the Complainant vide letter No.3033 dated 30/04/2010 that, as on 26/04/2010, M/s Samarth Processing House, Plot No.154, Pogulnagar, Solapur, had to pay to the office, the arrears with interest and the legal expenses of Rs.1,07,905. The Complainant submits that arrear with interest (Rs.1,01,663), and legal expenditure (Rs.6238), totalling Rs. 1,07,905, were paid, against receipt No.7175726 dtd. 30/04/2010.
 - Thus, as submitted, the Complainant having paid the arrears with interest and legal expenses, the Complainant then made a new application on 03/05/2010 to Opponent No.3, for supply of electricity.
 - That, the Opponent conveyed to the Complainant that this electricity connection cannot be sanctioned, due to following reasons:
 - Earlier, there was an electricity connection in the name of M/s Samarth Processing House, Solapur, at the place of plot No. 152/5 (at old Plot No. 154), consumer no. being 330249002224, to which the electricity supply was permanently disconnected on 30/09/1999, due to arrears. The Opponent had filed a case, due to these arrears, before the Solapur Court (Case No. 1000/1999). The outcome of the case in Sep.,

2003, was in favour of the Opponent. The Hon'ble Civil Judge, Solapur, had ordered M/s Samarth Processing House, Solapur, to pay the arrears with interest.

- Until and unless the above arrears are paid, new connection will not be given to the Complainant.
- f. That the Opponent did not accept the (new) application, having raised a new issue that the requirement of new connection by the Complainant, is in plot No.152/5, that earlier had no. as 154. Now the Plot No. 152 is divided into 8 parts viz. 152/1 to 152/8. It means that the Complainant should pay arrears of all remaining plots, too.
- g. That the occupants of the remaining plots, including a Police Station, had already been given electricity connections; and the Opponent had now demanded that the Complainant should pay arrears of those plots, too. This, as submitted by the Complainant, was against the letter no. 21958 dated 26th June, 2009 from MSEDCL's Chief Engineer (Comm.) to all the Chief Engineers of Zones, conveying that '*where the old consumer is having arrears and the land, where the connection was taken, is sold out to number of persons, in such cases, before release of connection, arrears on pro-rata basis (of land area) shall be recovered from the new occupants*'.
- h. Terming the demand as unjustifiable, the Complainant had approached CGRF, Kolhapur Zone, with his grievance. The CGRF, Kolhapur Zone, on 14.12.2010, passed its Order, directing the Opponent, as follows:-
 - .1 According to Regulation 10.5, the Complainant has paid arrears as per information given by Opponent. So Complainant's application for new connection should be accepted.
 - .2 An estimated expenditure quotation (Chalan) should be given to the applicant Shri Pogul.
 - .3 After receiving and verifying related documents, according to Regulations, supply should be given within 3 months.
- i. That, repeated follow-ups with the Opponent no.3 for compliance of the said Order of the CGRF, was in vain. In fact, the Complainant was threatened that the Opponent will go to court against the CGRF's Order and that the Complainant should keep quiet until orders from the Courts.
- j. The Complainant has submitted that it had also approached the Electricity Ombudsman, in the matter of compliance, but this matter being about non-compliance under Section 142, the Complainant had withdrawn the case from the Ombudsman.

Thereafter, aggrieved by the Opponent's non-compliance of the said Order, passed by the CGRF, Kolhapur Zone, the Complainant filed the present complaint before the Commission, with aforesaid prayers.

- 4. During the hearing, held by the Commission, on 27th July, 2011, Shri Vithoba Moglappa Pogul appeared himself, and, Advocate Kumari Shweta Sharma, alongwith Shri B.S. Nakate, and, Shri R. G. Kolap, Ex. Engr., of MSEDCL, appeared on behalf of the Opponent.

The Complainant reiterated its submission and nothing new was added. The Opponent submitted that the complaint was liable to be rejected as the order of the CGRF dated 14.12.2010, is itself under challenge before the Hon'ble High Court of Bombay, through

a Writ Petition (No.3516 of 2011) filed by the Opponent. The said WP was listed for hearing, before Hon'ble Justice Shri S. C. Dharmadhikari, on 20.07.2011, and the Hon'ble High Court was pleased to direct the serving of notice both through the Departments as well as by private service within two weeks. The Opponent also submitted that, it is erroneous on the part of the Complainant for seeking compliance of the CGRF Order at this stage.

The Opponent submitted that it has filed the WP under Articles 226/227 of the Constitution of India before the Hon'ble High Court at Bombay, to test the legal validity of the said Order passed by the CGRF, Kolhapur Zone. Also that, the matter before the Hon'ble High Court is now posted for further hearing on or after 2nd August, 2011.

5. Having heard both the parties and taking into consideration the materials on record, the Commission is of the view that the fact remains that with reference to the direction given by the CGRF, Kolhapur Zone, by its Order dated 14th Dec., 2010, the Opponent has not given electrical connection to the Complainant, even after a period of seven(7) months. The Opponent must comply with the Order passed by the CGRF, Kolhapur Zone.

In view of the fact there is no stay given by Hon'ble High Court against the compliance of the Order passed by the CGRF, Kolhapur Zone, in the present matter before the Commission, the Commission directs that the Opponent should comply with CGRF Order by giving electricity connection to the Complainant, on urgent basis. As far as the matter of recovery of arrears is concerned, the Opponent can continue with appropriate legal action.

The Opponent is directed to submit compliance report, on Affidavit, within one month from the date of this Order.

With above, Case no. 93 of 2011 stands disposed of.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman