

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 22 of 2009

In the matter of
**Petition of Saibaba Constructions Co., regarding supplementary bills from
MSEDCL on account of theft.**

**Shri V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S.B. Kulkarni, Member**

Saibaba Construction Co. ... Petitioner

Vs.

Maharashtra State Electricity
Distribution Company Ltd. ... Respondent

ORDER

Dated: August 17, 2009

M/s. Saibaba Constructions submitted a Petition on 15.4.2009 (and rectified deficiencies on 5.05.2009), being aggrieved with certain supplementary bills that they have received from MSEDCL on account of theft of energy. It is averred in the Petition that the Petitioner has two commercial electricity connections at Saidham building, Sarvodaya Nagar, Mulund (West). Both the connections have been released for commercial purpose by MSEDCL, one is for the supermarket on the first floor and the other is for the office in the basement. Petitioner also avers that it has used electricity as recorded in the meters and that the meters have not been tampered with.

2. The Petitioner states that on 26.07.2007, MSEDCL inspected the premises and on 21.08.2007, MSEDCL issued a supplementary bill of Rs. 2,95,189/- under Section 126 of the Electricity Act, 2003 ("EA 2003"), for unauthorised use of electricity. The Petitioner states that there are two LT three phase meters and the connection in the basement premises load was mixed but MSEDCL did not state where and in which meter the load is more. Petitioner claims that he used the supply as per his requirement and energy units consumed are purely as per the meter reading. Thus, he did not use the entire load at any time.



3. Being aggrieved with the supplementary bill, the Petitioner approached various authorities of MSEDCL Bandra office but no final order was passed under Section 126 of EA 2003. On 30.08.07, MSEDCL again inspected the premises on same day and ascertained actual connected load as 5.7 kW instead of 0.8 kW and prepared a revised final bill of Rs. 2,07,459/- for total 33790 units, under Section 126 of EA 2003. The Petitioner submits that Section 126 does not apply to the situation.

4. The Petitioner alleges that MSEDCL threatened him that electricity supply will be disconnected and police complaint will be lodged against him. Petitioner claims that he was thus compelled by MSEDCL to pay Rs.1,67,330/-.

5. The Petitioner then approached the Internal Consumer Grievance Redressal Committee, Thane circle and thereafter, the Consumer Grievance Redressal Forum (CGRF) Bhandup Zone. Again both the authorities refused to consider the application. Vide Order dated 7.10.2008, the CGRF observed that:

“the grievance relates to unauthorized use of power under Section 126 of the Electricity Act, 2003 and therefore is out of its jurisdiction in terms of provisions of Regulation 6.8 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006”

6. The Petitioner then filed a representation with the Electricity Ombudsman on 11.12.2008. Vide its Order dated 12.01.2009, the Ombudsman rejected the representation and observed that -

“the issue revolves around the question whether the Appellant has used electricity unauthorisedly or not. In the present case, the Respondent has already dealt the matter under Section 126 of the Electricity Act, 2003 and issued final order of assessment of electricity charges.”

The Electricity Ombudsman further advised the Petitioner that the Petitioner may approach the appropriate Appellate Authority under Section 127 of the EA 2003.

7. The Petitioner approached the Electrical Inspector, P.W.D. Chembur, he being the Appellate Authority under Section 127 of EA 2003. However, on 17.03.2009, this appeal was also rejected for not being in the specified format.

8. The Petitioner now prays to the Commission to consider the application under Section 57 of the EA 2003, and relies upon Para 3 at Sr. No. 33 of its Order dated 14.07.2005 in Case No. 2 of 2003, as under:

(3) Period from 1st December, 2003 onwards: If exceeding the sanctioned load has been measured by maximum demand recorded by meter, then two times the tariff applicable for the exceeded portion of the load (maximum demand minus



sanctioned load). No penalty will be applicable if exceeding of sanctioned load is claimed on the basis of connected load method.

(f) MSEB shall refund any amounts collected on account of invocation of Connected Load/ Power Factor penalty not in line with this dispensation, to the concerned consumers' along with interest at the rate applied by MSEB to their consumers, from the date of collection till the date of refund, but not later than three months from this Order.

9. The Petitioner has referred to one MSEDCL's Commercial Circular No. 11074 dated 16.05.2005 at Sr. No. F wherein it is stated that no penalty for excess connected load is levied simply based on physical verification and in cases where the consumer has already been issued with demand of penalty, the same should not be insisted for the time being till further instructions are given.

10. The Respondent in its submission has accepted that the premises of the Petitioner were inspected and the assessing officer issued provisional bill dated 21.08.2007 of Rs.2,95,180/- as it was of the opinion that the Petitioner indulged in unauthorised use of energy. However, it has denied that the said bill was raised on the ground of theft as alleged by the Petitioner.

11. The Respondent submitted that the Petitioner should opt for the procedure laid down under Section 126 of the Electricity Act, 2003, within the stipulated time rather than approaching various authorities. It also pointed out that only when the Applicant is aggrieved by the Order passed under Section 126, it can approach the Appellate Authority under Section 127 of the Electricity Act, 2003.

12. The Respondent has denied the allegations that it does not adhere to the directions issued by the Commission or comply with the Electricity Act 2003. It also denied the allegation that its intention is to harass consumers or to take advantage of their ignorance or that it threatened the Petitioner.

13. The Respondent has stated that it booked the Petitioner under Section 126 of the EA 2003 because the supply was not being used for those areas where in the power supply was sanctioned and connected and avers that the bill was raised as per the provisions of the Commission's Order dated 14.07.2005 in Case No. 2 of 2003. It claims that since the Ombudsman has rejected the application, this Commission has no jurisdiction to entertain the same and thus prays that the application be rejected.



14. The admissibility hearing was held on 7.07.2009. The Commission opined that there is a procedure provided under the Electricity Act, 2003. When an Order is issued under Section 126 of the Act, and the party is aggrieved by the Order, only then can the aggrieved party file an Appeal before the Appellate Authority under Section 127 of the Act. The Commission observed that the Petitioner has failed to avail the remedy under Section 126 in time and rather has approached the CGRF, Ombudsman and the Appellate Authority. The Petitioner cannot approach the Commission in this matter. The Petitioner contended that it could not avail of the remedy under Section 126 as no final bill was issued to it. MSEDCL submitted that it has served provisional bill on 21st August 2007 and final bill was issued on 8th October 2007. The Provisional Bill is signed by the consumer and thus the Commission observed that his signature is proof enough of service of bill by MSEDCL. The Commission was of the opinion that on receipt of such bill, any prudent man would have taken appropriate action to resolve the issue by approaching the relevant authority. In the present case, the appropriate remedy was not availed of.

In view of the above observations, the present petition stands dismissed.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V .P. Raja)
Chairman



(P.B.Patil)
Secretary, MERC