

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 23 of 2009

**In the matter of
Review of Order dated 4.03.2009 passed in Case No. 107 of 2008.**

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

Maharashtra State Electricity
Distribution Company Ltd.
Aurangabad

..... Petitioner

Vs.

Hotel Sangam, through Proprietor,
Sanjay Harbanslal Arora,
Jawahar Colony,
Aurangabad

..... Respondent

ORDER

Dated: August 17, 2009

Maharashtra State Electricity Distribution Company Ltd., (MSEDCL) filed a Petition seeking review of the Commission's Order dated 4.03.2009 passed in Case No. 107 of 2008. The Commission had, in its Order dated 4.03.2009, held the Petitioners guilty of non compliance of the order dated 21.09.2007 passed by the Consumer Grievance Redressal Forum (CGRF) in Case No. CGRF/AZ/AUR/U/54/2007/23. In its Order, the Commission had directed the Petitioner to comply with the order of CGRF. It further directed the Petitioner to pay a penalty of Rs.10,000/- and an additional penalty of Rs.1000/- per day during which the failure continues. It is averred in the Petition that however, the Petitioner had challenged the CGRF's order before the Civil Judge Junior Division, Aurangabad. On 18.9.2007, the IInd Joint Civil Judge Junior Division dismissed the suit for lack of jurisdiction, returning the plaint to be filed before the appropriate authority. Aggrieved, the Petitioner filed a Misc. Civil Appeal no.215 of 2008, before the



Hon'ble Court of District Judge-2, Aurangabad. The said appeal came to be allowed on 6.1.2009. On the same day i.e., 6.01.2009, the Petition in question was on board of the Commission for hearing and later, the Order was passed on 4.03.2009.

2. The Petitioner claims that it released a new connection for the Respondent on 5.01.2009, the day the Respondent had applied for it and that this fact was not pointed out by the Respondent to the Commission during the hearing. The Petitioner explains that the delay in providing the connection was owing to the objections raised by the General Power of Attorney Holder of the heirs of deceased Shri. P. J. Tamkhane, in whose name the connection stands. A separate matter is pending in Civil Court between the Respondent and the heirs. Petitioner claims that it has further complied with the direction of depositing Rs.10,000/-. It is alleged that there is no continuing delay on the part of the Petitioner as the challenge lies in the Civil Court against the Order of the CGRF. The Petitioner also gives justification for the delay of 22 days in approaching the Commission with the review petition. The Petitioner now seeks review of the Commission's aforesaid Order considering that the suit proceedings are pending before the Court of 2nd Joint Civil Judge Junior Division, Aurangabad.

3. The Petitioner has prayed as follows:

- (i) *This Hon'ble Court be pleased to condone the delay of 22 days occurred in the filing the Petition;*
- (ii) *This Hon'ble Court be pleased to allow the Petition and quash and set aside the Order dated 4th March 2009, passed in the Case No. 107 of 2008;*

Or alternatively

- (iii) *This Hon'ble Court be pleased to review / modify the Order dated 4th March 2009 and set aside the Order of additional penalty of Rs.1000/- and be directed that there is no necessity of reconnection of earlier connection in view that the Petitioner has already provided the new connection to the Respondent;*
- (iv) *Pending the hearing and final disposal of this Petition the effect, implementation, execution and further proceedings regarding the impugned Order dated 04/03/2009, be stayed.*

4. The Respondent has replied stating that the review petition is not maintainable and sustainable in the eyes of law as it suffers from grave legal infirmities. It supports its contention by claiming that the review petition has not been filed within the prescribed period of limitation and that there are no sufficient causes or genuine reasons provided by the Petitioner for such delay. It is submitted that even the mandatory requirements for the filing of review petition have not been fulfilled by the Petitioner and thus it should be dismissed. And that even if the Court of District



Judge-2, Aurangabad allowed Misc. Civil Appeal no.215 of 2008 on 6.01.2009, the Petitioner has not produced the copies of the original suits and application for the temporary injunctions and that strict proof should be produced by the Petitioner in this regard. As to whether the issue was pending before the Court of District Judge-2, when the Commission passed its Order on 4.03.2009 it is the contention of the Respondent that the Court of District Judge-2 has simply allowed the issue on jurisdictional grounds and no Stay Order has been passed on the CGRF's order of 29.1.2009. Thus, allowing the matter on jurisdictional ground will not help the Petitioner escape from paying the compensation towards the Respondent's harassment. The Respondent has also refuted the allegations of the Petitioner that on the day of hearing, the Respondent did not inform the Commission about the new connection. The Respondent has stated that the Petitioner's advocate and the officer present were not obstructed from informing the Commission about the new connection.

5. Alleging that the Petitioner harassed the Respondent by not complying with the order of CGRF, the Respondent had only remedy of approaching the Commission. The Respondent claims that it had applied and requested for several times, for the compliance of CGRF's order dated 29.01.2009, however nothing came out of it. Later, on approaching the Commission, it brought to light the Petitioner's inaction of non-compliance. Thus, it states that there is no apparent error on the face of the Order dated 4.03.2009 passed in Case No. 107 of 2008. Even if the Respondent was given a new connection after its application on 5.01.2009, the harassment it faced cannot be ignored. The Respondent also declares as incorrect and denies the submissions of the Petitioner owing to the delay in providing connection due to objections raised by the heirs of the deceased, Shri Tamkhane and owing to the matter being pending in this regard in a civil court. On the above grounds, the Respondent prays that the review petition be dismissed with costs.

6. A hearing was held on 6.07.2009. The Petitioner's Counsel submitted that the Commission's Order dated 4.03.2009, passed in Case No. 107 of 2008 should be reviewed as there is a suit pending before the Hon'ble Court of District Judge-2, Aurangabad, in Misc. Civil Appeal no.215 of 2008. The Petitioner claims that if the Order dated 4.03.2009 is executed in the present scenario, the Petitioner will have no remedy. The fact that the Respondent carried out business as the tenant of deceased Shri. P.J. Tamkhane, in whose name the electricity connection stood, was confirmed. However, after his death, the heirs of Shri. P.J. Tamkhane obstructed Respondent's electricity supply. On approaching MSEDCL for electricity connection, the Respondent was asked to obtain No Objection Certificate from Tamkhane's heirs. The heirs refused to issue No Objection Certificate to the Respondent. Further, in the meantime, a year and a half had passed and eventually the Respondent got new connection in its own name. Since then, MSEDCL has been acting as a service provider to the Respondent being its consumer.



7. Having heard the parties and after considering the materials placed on record, the Commission is of the view that the fact that the CGRF's order dated 21.9.2007 has been complied with by the Petitioner in that new connection has been given the same has not been done within the period directed by the CGRF. The CGRF's order was as under:

“

ORDER

The Distribution Licensee is directed to reconnect the electricity supply of the consumer within seven days from the date of this order.

The D.L. & the consumer shall comply with the above order and report compliance to the Forum.

Inform the parties and close the case.”

The Respondent has also not disputed the fact that a new connection has been given to it by the Petitioner. In the circumstances, for not complying with the CGRF's order in the first instance by not re-connecting or grating supply with the period of seven days from the date of the CGRF's order, the order of penalty under Section 142 was imposed upon by the Commission on the Petitioner under the impugned order. The said penalty has already been paid. Non-compliance of the CGRF's order has not been disputed by the Petitioner. The Petitioner has claimed that it released a new connection for the Respondent on 5.01.2009. The Respondent has not disputed this fact. The Respondent has stated that the Petitioner's advocate and the officer present were not obstructed from informing the Commission about the new connection. It is clear therefore that there will not be a case of a continuing failure so as to make the Petitioner liable to “an additional penalty of Rs. 1,000/- for every day during which the failure continues after contravention of the direction issued by the Commission”. That is the reason the impugned order states “In case of a continuing failure,..”.



8. The Commission does not sustain the contention of the Petitioner that the impugned order is required to be reviewed or stayed because the Petitioner had filed a Misc. Civil Appeal No. 215 of 2008 before the Hon'ble Court of District Judge-2, Aurangabad. Since, there exists no order of stay on the CGRF's order dated 21.9.2007, the said CGRF's order would operate in its full force and consequently non-compliance of the same would attract penalty in accordance with the provisions of Regulations 8.6, 8.7 and 22 of the "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006" read with Section 142 of the EA 2003. No order of stay has been produced by the Petitioner in this regard.

In the circumstances, the Commission is of the view that the review petition as filed is not maintainable as no case for review has been made out and the same ought to be and is hereby dismissed. No Order as to costs.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member

Sd/-
(V .P. Raja)
Chairman



(P.B.Patil)
Secretary, MERC