

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 44 OF 2020

In the matter of new connection with arrears of previous occupier

Dattaram Vitthal Shreegadi..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. (Bhiwandi)..... Respondent

Appearance

For Appellant : Pravin Thakkar, Representative

For Respondent : Rajesh Shanbag, MSEDCL / Torrent Power Ltd.

Coram: Deepak Lad


Date of Hearing: 23rd July 2020

Date of Order : 10th August 2020

ORDER

This Representation is filed on 9th March 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 11th February 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).

2. The Forum vide its order dated 11.02.2020 has partly allowed the grievance application in Case No. 38/2019 and the operative part of the order is as follows:


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“2. The applicant shall pay the outstanding amount of Rs.33, 518/- in the name of Sandeep Thakkar on behalf of his land lord Ramesh Thakkar, being father of Sandeep R. Thakkar and continue the electricity connection.

3.The utility shall refund the amount of Rs.25000/- along with interest at the rate of 9% from the date of order 15.10.2019 till date realization of the applicant”

3. Aggrieved by the order of the Forum dated 11.02.2020, the Appellant has filed this representation. The drafting of the representation is such that it is not at all cohesive and highly confusing. The sum and substance of the representation is as below:-

- (i) That the suit premises (Room No.108), first floor, House No.215, Telipada, Ramesh Thakkar Building, Bhiwandi is taken on rent for a period 01.05.2019 to 30.04.2021 through a Registered Leave & Licence Agreement in the office of Bhiwandi Registrar on 10.07.2019.
- (ii) That the Appellant intends to have new connection at the suit premises.
- (iii) That the Appellant denies that there was some electric connection at the suit premises.
- (iv) There is no any dues pending in the name of the Appellant nor in the name of Ramesh Thakkar who is landlord of the property, however the arrears were pending in the name of Sandeep Ramesh Thakkar, who is son of Shri Ramesh Thakkar. The electric connection was permanently disconnected in the year 2010. The Respondent has never claimed dues in the period of last 10 years. After two years, these dues became time barred. As per record, the Meter was installed in Room No. 1 having Consumer No. 13010299793, however, the Appellant applied electricity connection in Room No. 108.
- (v) There is no any provision in the Regulations of the Maharashtra Electricity Regulatory Commission (the Commission) to recover the said dues. The Appellant also pleaded that the arrears on the suit premises is on account of Permanently Disconnected (PD) connection.
- (vi) That while denying that there was no connection, the Appellant also pleaded that the arrears on the premises was not of the Appellant. He further pleads that the distribution licensee / franchisee cannot recover the past arrears in view of Section 56 (2) of the Electricity Act, 2003 (the Act). The cause of


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action arose on 10.07.2019 when the Respondent informed orally regarding the arrears in suit premises.

- (vii) That he is left with no option than to pay the arrears in view of Section 126 and 135 of the Act and as a result paid Rs.33,520/- vide Receipt No. 407446 dated 23.10.2019 which needs to be refunded by the Respondent.
- (viii) That there are many orders issued by the Electricity Ombudsman in such cases.
- (ix) That the Appellant is ready to pay the arrears if it is recalculated in view of Section 56 (2) of the Act and DPC and the interest till 31.03.2020 is waived of.
- (x) The Appellant prays as under: -
 - (a) Kindly consider refund of the amount paid in respect of Service No.13010299793 of Rs.33,528/- on 23.10.2019 vide Receipt No.407446 and the Appellant's connection may be continued.
 - (b) Kindly consider to issue directive for issuing the bill as per final reading 2651 of the meter, withdrawal of interest and DPC till 31.03.2020 for entire period.

4. The Respondent MSEDCL / Torrent Power Ltd. filed its reply on 10.07.2020 by email stating in brief as under: -


- I. At the outset, the Respondent denies each and every claim, contention, allegation or insinuation made in this Representation that is any manner contrary to and/or inconsistent with what is stated herein.
- II. The Respondent is totally relying upon the order dated 01.10.2019 passed by Internal Grievance Redressal Cell (IGRC), final order of the Forum dated 11.02.2020 and its interim orders dated 17.09.2019 and 15.10.2019.
- III. The Respondent would like to bring to the notice of the Hon'ble Ombudsman the following facts as below:
 - a. The Appellant, Mr. Dattaram Vitthal Shreegadi, is alleged to be a tenant of Mr. Ramesh Thakkar (land lord of House No. 215), who has applied for new electric connection on 22.05.2019 in MSEDCL/Torrent Power


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Limited (TPL) for residential use at Room No.108 situated at House No. 215, 1st floor, Bhiwandi owned by Mr. Ramesh D. Thakkar.

- b. It was noticed that at the said premises, there existed an old service connection having Consumer No.13010299793 released by MSEDCL in the name of Mr. Sandeep Thakkar, son of Ramesh Thakkar, having an outstanding dues of Rs.33,520/- and the same was confirmed in joint inspection with MSEDCL on 23.08.2019.
- IV. On 23.09.2010, Mr. Sandeep Thakkar had applied for permanent disconnection and gave undertaking dated 30.09.2010 to TPL through his representative Mr. Pravin Thakkar in which he had confirmed his liability to pay dues of Rs.33,520/- of MSEDCL in respect to service No. 13010299793.
- V. In pursuant to contractual obligation to recover MSEDCL dues, as per Section 17.8 of Conditions of Supply of the MSEDCL based on the Electricity Supply Code & Other Conditions of Supply, Regulations, 2005 of the Maharashtra Electricity Regulatory Commission (Supply Code Regulations) the new connection cannot be released unless the dues of MSEDCL are cleared. The TPL has informed the Appellant, Mr. Dattaram Vitthal Shreegadi to pay the outstanding dues of MSEDCL which he denied and demanded to release the service connection in his name.
- VI. The Appellant, Mr. Dattaram Vitthal Shreegadi being aggrieved, filed a direct complaint with the Forum on 04.07.2019 bearing Case No.38 of 2019. The Forum directed the Appellant to file his grievance before the IGRC as per Regulation 6.2 of the CGRF Regulations.
- VII. Thereafter, the Forum considered the request of the Appellant for supply of electricity connection on depositing security deposit Rs.25, 000/- . The Forum vide its interim order dated 17.09.2019 directed TPL to release the connection to the Appellant after depositing all necessary charges of regular connection with security deposit and additional fixed security deposit of Rs.25,000/-. The amount was deposited by the Appellant and connection was released in the suit premises.
- VIII. The grievance of the Appellant, Mr. Dattaram Vitthal Shreegadi was heard by IGRC and by its order dated 01.10.2019 has rejected his grievance and directed



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him to clear the outstanding energy dues for the Service No. 13010299793 of MSEDCL.

- IX. Not satisfied with the order of the IGRC dated 01.10.2019, the Appellant approached the Forum on 15.10.2019 in Case No.38/2019 to seek redressal of complaint. On 15.10.2019 the Appellant submitted application for refund of Rs. 25000/-. Hence, the Forum further vide its order dated 15.10.2019 has modified the interim order and directed the Appellant to deposit full amount within 10 days. Accordingly, the Appellant deposited full outstanding amount and continued his service.
- X. The Forum, after hearing both parties in its final order dated 11.02.2020, held that the electricity connection was in the name of Mr. Sandeep Thakkar with outstanding amount Rs.33,520/- in the same premises. The same premises is now given on the rent to the Appellant, Mr. Dattaram Vitthal Shreegadi. There is a nexus between Mr. Sandeep Thakkar and his father Mr. Ramesh Thakkar, the landlord. The Forum upheld the right of the utility to recover the outstanding amount and rejected the grievance of the Appellant directing him to deposit Rs.33,520/-. It further directed that TPL shall refund amount Rs.25,000/- along with interest at the rate of 9% from the date of interim order dated 15.9.2019. Accordingly, MSEDCL refunded deposit amount to the Appellant.
- XI. The Appellant was satisfied by the order passed by the Forum, hence he had paid full outstanding dues of MSEDCL and TPL continued the electric supply. Even though the Appellant, Mr. Dattaram Shreegadi through his representative Mr. Pravin D. Thakkar has filed this present Representation before the Hon'ble Ombudsman to challenge the order passed by the Forum, without any sufficient cause, without any prima facie loss or damage or inconvenience caused to the Appellant.
- XII. Appellant has to satisfy that the Appellant is a "consumer" and the dispute raised by it is a "grievance" as per CGRF Regulations.

The CGRF Regulations defines "grievance" as per Regulation 2.1 (c) as under:
- "Grievance" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to


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be performed by a Distribution Licensee in pursuance of a license, contract, agreement or under the Electricity Supply Code in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and (b) grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be."

The Appellant, for the reasons stated above does not constitute a grievance as per the Regulations. The issue raised by the Appellant, therefore, does not fall within the purview of Forum or Ombudsman for that matter.

XIII. The Hon. Supreme Court in its Judgment in Paschimanchal Vidyut Vitran Vs. M/s. DVS Steels & Alloys Pvt.Ltd. & Ors in SLP [C] No.14003 of 2007, held that:

"When the purchaser of a premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises" "a stipulation by the distributor that the dues in regard to the electricity supplied to the premises should be cleared before electricity supply is restored or a new connection is given to a premises, cannot be termed as unreasonable or arbitrary" "in this case, the first respondent had voluntarily paid the said amount to the appellant to obtain a fresh electricity connection It cannot seek refund on the basis of any subsequent order of the Commission, in the absence of a specific direction for refund. The first respondent having paid the said amount in pursuance of its undertaking as a condition for obtaining fresh connection, is estopped from claiming the amount back"

XIV. It is further submitted, as per Regulation 17.8 of the MSEDCL Conditions of Supply based on Maharashtra Electricity Regulatory Commission (Electricity



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Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) that new service cannot be released without clearing old electricity dues of the premises where new connection is applied-

"A consumer whose power supply has been disconnected by the MSEDCL for breach of any of the conditions of the MSEDCL's Conditions of supply or breach of the any of the conditions of the agreement of power supply or for neglecting to pay to the MSEDCL any charges for the electricity supplied by the MSEDCL or on account of failure to deposit with the MSEDCL amount of security deposit in accordance with the provisions of the Act and the Clause No. 10.5. of MERC Supply Code Regulation, dies or transfers, assigns, or otherwise dispenses with the undertaking or the premises to which electricity was being supplied by the MSEDCL, any person claiming to be heir, legal representative, transferee, assignee or successor of the defaulting consumer, with or without the consideration in any manner, shall be deemed to be liable to pay the entire up to date arrears of charges for the electricity supplied by the MSEDCL, including the arrears of security deposit or compensation, if any, and it shall be lawful for the MSEDCL to refuse to release the power supply or to restore the power supply or to give new electric connection to such person claiming to be the heir, legal representative, transferee, assignee or successor of the defaulting consumer, unless the amount of all such charges due & payable by the erstwhile defaulting consumer are duly paid or deposited with the MSEDCL"

- XV. It is submitted that the Regulation No.10.5 of the Supply Code Regulations states that the dues are attached to the premises and same can be recoverable from the legal heirs / representatives/owners/occupier. Regulation 10.5 authorizes the utility to recover the dues of disconnection supply from legal heirs / representatives of the consumer. However, the Appellant, Mr. Dattaram Vitthal Shreegadi is new occupier/tenant at the same premises, where old service No. 13010299793 was existing with outstanding dues of MSEDCL, which is to be recovered from the Appellant and hence it indirectly supports the action of Respondent No.2, TPL.


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- XVI. That electricity dues, where they are statutory in character under the Electricity Act, 2003 and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself more specifically Section 56 of the Act.
- XVII. The Appellant referred three orders of this Hon'ble Electricity Ombudsman which are explained as under:

- (a) In reference to order in Representation No. 75/2016 (Mr. Mohd. Mirza Rahman Shaikh v/s MSEDCL), in this case the Appellant gave letter to MSEDCL to get service connection, confirm his liability to pay arrears of MSEDCL. Further Appellant submits to give indemnity bond i.e. undertaking in respect to his liability thus, Hon'ble Ombudsman directed to release service connection.

In this present case the Appellant, Mr. Dattaram Vitthal Shreegadi tenant/occupier applied to release service connection at the alleged premises having existing service No. 13010299793 with dues of MSEDCL. Mr. Sandeep, son of Ramesh Thakkar has given undertaking confirmed his liability to pay outstanding due of MSEDCL in respect to service No.13010299793 at the alleged premises. Further, the Appellant has submitted that he has agreed to pay full arrears of Rs. 33,520/- of MSEDCL. Thus, the Forum modified its interim order 15.09.2019 and directed the Appellant to deposit amount within 10 days. Accordingly, the Appellant deposited the full amount and his service was continued. Thus, the Forum disposed the complaint case of Appellant.

- (b) In reference to second order in case No. 29/2016 (Mr. Shakeel Ahmed Noor Mohd. Chouhan v/s MSEDCL & TPL), in this case, the Appellant, submitted to pay the outstanding dues of six months against two connections taking into account both the connections were permanently disconnected in 2009. Thereby considering Appellant's submission Hon'ble Ombudsman directed to release the connection.


Whereas, in present representation, the Appellant gave submission to pay the outstanding dues of MSEDCL hence, the Forum passed interim order directing the Appellant to pay full amount of MSEDCL and directed to continue the service connection. Accordingly, the Appellant


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paid dues of MSEDCL and service has been continued. Thus, the Forum disposed the complaint case of the Appellant.

- XVIII. The above referred orders do not support the contention of the Appellant. The third order in Representation No. 98 of 2013 (Mahesh B Kanoria) is wrongly stated. Hence, the three orders of Hon'ble Ombudsman mentioned by the Appellant are not supporting to the contentions of Appellant.
- XIX. It is submitted that the Appellant, Mr. Dattaram Vitthal Shreegadi has already paid the full outstanding charges of MSEDCL and thereby his service is continued at the alleged premises, therefore the question of seeking remedy by the Appellant to recover this amount by way of filing this Representation does not arise.
- XX. It is submitted that, in above facts and circumstances the Representation filed by the Appellant is devoid from merits without any sufficient cause, without any prima facie loss or damage or inconvenience caused to the Appellant, and is to be dismissed with cost.
5. The Appellant on 22.07.2020 submitted a rejoinder stating as below: -
- (i) Demand of Respondent is without any support of law and Regulations of the Commission.
 - (ii) The Forum passed the Interim Order on 15.10.2019 giving direction to deposit Rs.33,520/- against the arrears of C.No.13010299793 otherwise connection will be disconnected.
 - (iii) As per Joint. Inspection Report dated 22.05.2019, it is not clear and clarified that the C.No.13010299793 was installed in Room No. 108, 1st floor, Bhiwandi.
 - (iv) As per TPL report, the C. No. 13010299793 was installed in Room No.1, Telipada, and Bhiwandi.
 - (v) It is observed that as per PD report, final reading is 2651 units and principal amount, accurate legally dues. As per Section 56 (1), 15 days' notice must be issued and if it is not paid within that period, the interest and delayed payment charges (DPC) may be charged. However, in the Appellant case, the principal amount accurate, legal dues actual payable is never informed till today and


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simply charged the interest and DPC. This may be kindly withdrawn, reverse for the entire period till the date of final order, revised bill issued to the Appellant.

- (vi) In the light of above facts and factors, the Appellant once more humbly prayed to grant as below: -
- (a) Kindly consider Section 56 (2) as per PD report dated 05.10.2010 after the period of 2 years (24 months) the amount becomes time barred, it cannot be claimed and demanded by me.
 - (b) Kindly consider the amount of Rs.33,520/- dated 23.10.2019 of C.No.13011299793 for refund.
 - (c) Kindly consider the amount as per final meter reading units 2651 as per Section 56 (2). Notice of 15 days was not issued to the appellant, interest and DPC may kindly be considered for withdrawn.

6. Hearings, in general, could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence of the parties. The hearing in the instant case was scheduled on 23.07.2020 on e-platform after the consent from the parties. During the hearing, the representative of the Appellant argued that he had demanded new service connection at Room No. 108 whereas the arrears of Rs.33,520/- was against Room No.1 having service connection No. 13010299793 which was permanently disconnected with final reading of 2651. Both the premises are totally different. Room No. 108 has the documents amongst which the registered lease agreement is there.

7. The Respondent, TPL argued that as per municipality record, it is House No. 215 where the application for new connection is opted. The municipality tax property receipt shows House No. 215. Appellant's A1 form indicates House No. 215 which is permanently disconnected in 2010 with arrears of Rs.33,520/-. House No. 215 is a multi-storeyed building of six flats at present and owned by Ramesh Thakkar, brother of Pravin Thakkar who is the representative in this case and Sandeep Thakkar is the son of Ramesh Thakkar, in whose name the arrears are shown. This whole building had three connections out of which only one is in arrears. The Appellant is a tenant of Mr. Ramesh Thakkar, who is the property


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owner. The premises is leased for 24 months for the period of 01.05.2019 to 30.04.2021 and the earlier connection was in the name of Sandeep Thakkar who is the son of Mr. Ramesh Thakkar who has given undertaking on a stamp paper on 27.09.2010 for payment of arrears of MSEDCL. This is one type of modus operandi for avoiding payment of arrears of the Respondent.

Analysis and Ruling

8. Heard the parties and perused the documents on record. The confusion appears to have been created by giving different identities to the suit premises. As it fell from the arguments of the parties, it is clear that there is no Room No.215, as a matter of fact it is a House No. 215 on parcel of land on which a multi-storeyed building exists. The said building is pretty old.

9. I have noted following important issues in the case.

- (i) The Appellant applied for connection on 22.05.2019 whereas the Leave & Licence Agreement is registered on 10.07.2019.
- (ii) The rent of the premises is merely Rs.500/- and deposit amount is Rs.1500/- only.
- (iii) The period of the license is 01.05.2019 to 30.04.2021.
- (iv) The connection was permanently disconnected somewhere in 2010 since then why no other connection is taken or for that matter why the connection was PD.
- (v) It is on record that Mr. Sandeep Ramesh Thakkar has submitted an undertaking on 27.09.2010 agreeing that there are MSEDCL arrears against the connection No.013010299793 and there is dispute about revision of the bill. After the dispute is resolved, he is liable to pay the bill of MSEDCL.
- (vi) It is not brought on record as to the status of the structure on a piece of land under the suit before 2010 and after it because earlier there were three connections, one of which is the matter under this representation. Therefore, there is ambiguity in identification of the premises as to the House No. 215, Room No.1 and Room No. 108.


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10. Despite ambiguity, non-cohesive submission of the Appellant and further not bringing full facts on record by both the Appellant and the Respondent, one thing is very clear that the connection No. 013010299793 did exist at the suit premises and it was in arrears.


11. The Appellant intended to have a new connection at the same premises which was in arrears. The Appellant, on one hand, denies that there was a connection at the said premises while on the other hand, it agrees to pay the arrears on either of two accounts, (a) under Section 56 (2) of the Act or (b) if DPC and interest is waived of on the amount of arrears. It is not understood why the Appellant is ready to pay the arrears when there was no connection at all. When the Appellant was confronted with this controversy, he was spellbound. I also noted that the Respondent has not levied any interest and DPC after permanent disconnection from 2010 onwards.

12. In view of the specific undertaking given by Sandeep Ramesh Thakkar to pay arrears against the connection and Regulation 10.5 of the Supply Code Regulations and further, the Hon. Supreme Court Judgement quoted above, the Appellant is bound to pay the amount of arrears of permanently disconnected consumer which was at the suit premises. The Appellant tried to create confusion by misleading the undersigned stating that the suit premise is different from that where the permanently disconnected consumer existed so as to avoid payment of arrears.

13. In view of the facts of the case as brought out by the Respondent, I am of the opinion that no case is made out by the Appellant and the representation appears to be frivolous with the sole intention of avoiding payment of arrears and therefore there is no reason to interfere with the order of the Forum as it is reasoned and speaking one. The Respondent is, therefore, not required to refund the payment made by the Appellant towards arrears due.

14. The Representation is disposed of accordingly.

Sd/-
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