

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 19 OF 2020

In the matter of new electricity connection

Madoo Nuzhat Mateen.....Appellant

V/s.

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

Torrent Power Limited (TPL), Franchisee

Appearances

For Appellant : 1.MadooNuzhat Mateen
2. Nadir Saeed Ghori, Representative
3. Aklam A. B.

For Respondent : 1. Satish Dhope, Dy. Ex. Engineer, Bhiwandi
: 2. R.S. Shanbhag, AGM, TPL
: 3. HemangiBhogvekar, Asstt. Manager, TPL

Coram: Mr. Deepak Lad

Date of Order:27th April 2020

ORDER

This Representation is filed on 3rd February 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 23rdDecember 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).


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2. The Forum, by its Order dated 23.12.2019 has dismissed the grievance application in Case No.27/2019.

3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating in brief as below: -

- (i) The Appellant has made application for release of new electricity connection on 13.08.2014 at H.No.675, S.No.38, Katai Village, Bhiwandi. There was no electricity connection in the Appellant's name, as such, there are no dues recoverable from the Appellant. The Appellant was compelled to serve legal notice on 27.01.2015 to TPL. Despite that, TPL has not sanctioned connection in the Appellant's name till today and violated the Regulations of the Maharashtra Electricity Regulatory Commission (the Commission).
- (ii) In its reply to the legal notice, TPL through its Advocate informed on 10.02.2015 that the connection cannot be released as arrears due to vigilance case is not yet paid in respect of Service No.1354011951 to the tune of Rs.2,55,467/- and energy dues to the tune of Rs.22,165/- of Service No.1354011969. The said reply is false and frivolous.
- (iii) The Appellant is aggrieved by the action of TPL in asking the Appellant to clear the past dues of third party i.e., Mr. Afzal Rafique Bhoje. There is no relation for release of new connection and clearance of past dues.
- (iv) The Appellant had filed a Civil Application No.1823 of 2018 in Writ Petition No. 2756 of 2015 before the Hon'ble Bombay High Court seeking requisite relief in the above matter. The Hon'ble Bombay High Court, by its order dated 13.02.2019 has disposed the civil application by directing the Petitioner to approach the grievance redressal mechanism, the remedy available as per the Electricity Act, 2003 (the Act).
- (v) Thereafter, the Appellant made an application before the Internal Grievance Redressal Cell of TPL (IGRC) on 23.02.2019. The IGRC, by its order dated 20.05.2019 has dismissed the grievance stating Condition No. 17.8 of MSEDCL's Conditions of Supply of the Respondent based on the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).


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- (vi) Not satisfied with the order of the IGRC, the Appellant approached the Forum on 04.07.2019. The Forum, by its Order dated 23.12.2019 has dismissed the grievance.
- (vii) In fact, the Appellant personally is not in arrears of any electricity consumption charges or vigilance cases and that the Appellant is not responsible for other person's arrears of electricity dues or vigilance penalties. The Appellant has not issued any undertaking to the TPL for being liable to pay for any dues or outstanding of Mr. Afzal Rafique Bhoje at the time when the electricity meter was issued to him in his name. However, the TPL had presented certain documents before the Forum stating that the Appellant had issued a NOC regarding the release of the new electricity connection in the name of Mr. Rafique Abdullah Bhoje. The Appellant submits that Mr. Rafique Abdullah Bhoje had no authority to issue any NOC or create any third party interest in respect of the said property and also that the said NOC issued by the Appellant was specifically in the name of Mr. Rafique Abdullah Bhoje and not in the name of Mr. Afzal Rafique Bhoje in whose name the said service No.13545011951 and service No.13545011969 were issued by the TPL and against which, there are earlier dues and vigilance penalties.
- (viii) The Appellant had rented out the said premises again on 25.03.2009 to 24.02.2014 and had specifically mentioned that the said power loom Gala is given to the Appellant's tenant without any electricity meter or connection and also that the Appellant has not issued any undertaking to the TPL for being liable to pay for any dues or outstanding of Mumtaz Ahmed Abdul Salam Shaikh against whom there are vigilance penalties and other dues. And that Mr. Afzal Rafique Bhoje had intimated the TPL through a letter dated 07.04.2010 about the non-payment of electricity dues by Mumtaz Ahmed Abdul Salam Shaikh wherein he had also acknowledged the fact that the said use of electricity meter was permitted to Mumtaz Ahmed Abdul Salam Shaikh by him upon certain terms and conditions and mutual understanding. The Appellant submits that Mr. Afzal Rafique Bhoje being a tenant himself had no authority to issue any NOC or create any third-party interest in respect of the said property at any time during or post expiry of his tenancy agreement. And that Mr. Afzal Rafique Bhoje, post expiry of his tenancy period was required to surrender the said connection issued in his name to TPL, however, he authorized Mumtaz Ahmed


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Abdul Salam Shaikh to continue the use of electricity connection in his name without acquiring the Appellant's consent. And that TPL had also exceeded its illusory perusal to establish the Appellant's consent without having any undertaking or NOC signed by the Appellant authorizing or acknowledging any of the above transaction between Mr. Afzal Rafique Bhoje and Mr. Mumtaz Ahmed Abdul Salam Shaikh.

- (ix) TPL had booked a case of theft and registered three F.I.Rs i.e., i) F.I.R. No. II-1619/10 dated 14.04.2010, ii) F.I.R. No. II-867/11 dated 08.02.2011 and iii) F.I.R. No. II-1034/11 against both Mr. Afzal Rafique Bhoje and Mumtaz Ahmed Abdul Salam Shaikh in respect of the same vigilance dues and electricity arrears. The Appellant submits that TPL had already filed a F.I.R. of theft against Mr. Afzal Rafique Bhoje and Mr. Mumtaz Ahmed Abdul Salam Shaikh and the alleged recovery of dues and vigilance penalties have been already raised against them in the said case and therefore the TPL had by itself acknowledged Mr. Afzal Rafique Bhoje and Mr. Mumtaz Ahmed Abdul Salam Shaikh responsible for the alleged outstanding and therefore denying the new connection in the Appellant's name arbitrarily by trying to hold a parallel charge against the Appellant's property for recovering the same pending dues.
- (x) The Appellant submits that due to the prolonged delay and denial by the TPL for not issuing the new electricity connection in the Appellant's name on the said property as a result of which the said Gala remained closed.
- (xi) The Appellant submits that the order passed by the Forum is misconceived and bad in law and also the impugned Order is opposed to the facts on record and also opposed to the law and well-established precedents of law. The impugned Order is opposed to the principals of natural justice, equity and good conscience. The impugned Order passed by the Forum is purely based on conjectures and surmises.
- (xii) The Appellant submits that all the above facts had been precisely mentioned and argued before the IGRC and the Forum however they have not been addressed nor considered and neither any justifiable reason for the same has been recorded in their order.


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(xiii) The Appellant prays that the Respondent be directed to release the connection in the Appellant's name without recovery of the past dues.

4. The Respondent MSEDCL/ TPL has filed its reply dated 05.12.2019 stating in brief as under: -

- (i) TPL is a Distribution Franchisee of the Respondent MSEDCL in Bhiwandifor electricity distribution and billing for a period of 10 years initially from 26.01.2007 which is further extended to 10 years.
- (ii) The Appellant had made an application for connection on 13.08.2014 having acknowledgement No.14081311149 for the purpose of 3 phase motive power loom. As per the said application, address of the premises was shown as H. No. 675/4, Gala No. 4, S. No. 92/711, Katai Village, Khadipar Road, near Prakash Hotel, Bhiwandi 421308.
- (iii) The TPL is denying that it has made unreasonable delay in releasing the connection in the name of Appellant therefore the Appellant was compelled to serve a legal notice dated 27.01.2015. In fact, after receiving the application for the connection, TPL had carried out a survey wherein it was observed that there is already disconnected service with arrears of Rs. 3,94,200/- at the premises vide the service number 13545011951 which is in the name of Afzal Rafique Bhoje and the service number 13545011951 is also having vigilance cases under Section 135 of the Act for theft of electricity. The service was disconnected for non-payment of dues on 24.09.2009. A letter dated 13.09.2014 vide Ref No TPL/HVCS/2014-15/578 for 'Initiation for Compliance' on basis of survey was sent to the Appellant and has asked to comply the points as stated in the letter.
- (iv) As the Appellant has not reverted on the letter 'Initiation for Compliance' dated 13.09.2014, the TPL has issued another letter dated 27.11.2014, for Cancellation of Application of new connection on non-compliance of the letter dated 13.09.2014. The reason for cancellation was very well mentioned in the said letter.
- (v) The Respondent TPL has refused to allot the connection in the name of the Appellant due to non-compliance of the letter dated 13.09.2014 as earlier dues


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and vigilance cases on the service No. 13545011951 which is situated at the same premises are pending. Initially, the service was released in the name of the tenant of the Appellant, Afzal Rafique Bhojeon 31.07.2007, and the Appellant have issued a Consent letter (in Marathi) dated 22.06.2007 in the name of TPL. The Appellant is having knowledge and consented for, when her tenant has applied for new connection in 2007. Therefore, the Appellant is responsible to clear the payment of outstanding dues on the service No. 13545011951 allotted for the same premises on the same address. At the same time, the Appellant is hiding the fact by stating that there is no connection at the premises and trying to opt for new electricity connection. Therefore, the utility has refused to issue a new electricity connection.

- (vi) The Respondent received a letter dated 27.01.2015 from the Appellant which was appropriately replied on 10.02.2015.
- (vii) The Appellant then filed a Civil Writ Petition No. 2756 of 2015 before the High Court of Bombay which was disposed of on 04.01.2018 by the Hon'ble Bombay High Court. The Hon'ble Court has dismissed the Writ Petition and have instructed the petitioner to avail of the remedies as may be available in law, if so desire.
- (viii) The Appellant has made a review application as Civil Application No. 1823 of 2018 in Writ Petition No. 2756 of 2015 and have reviewed the Order passed in W.P. No. 2756/2015. The Hon'ble Bombay High Court disposed it on 13.02.2019. In the Review Application, the Hon'ble High Court have directed the Appellant to approach the grievance mechanism available under the Act.
- (ix) The Appellant therefore filed an application before the IGRC on 23.02.2019 and the IGRC referring the Condition No. 17.8 of the MSEDCL's Conditions of Supply based on the Supply Code Regulations dismissed the grievance by order dated 20.05.2019.
- (x) Aggrieved by the Order passed by the IGRC, the Appellant approached the Forum on 04.07.2019 which have dismissed the same by order dated 23.12.2019.
- (xi) The Hon'ble Electricity Ombudsman may take into consideration that,


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- a. This is not correct to say that, Appellant does not have any arrears in her name personally, therefore the Appellant is not responsible for the other person's arrears of electricity dues or vigilance penalties. This is also not correct to say that the Appellant has not issued any undertaking to TPL or liable to pay any dues or outstanding etc. in the Representation filed. It is the duty and responsibility being the owner of the alleged premises, that to take proper inspection of the premises as to who is using and creating the documents on the premises let out. At the same time, the Appellant is owner and should be aware about the activities going on in the premises let out.
- b. It is correct to say that the Respondent had booked theft cases and have registered FIRs vide number 1619/10 dated 14.04.2010, 867/11 dated 11.02.2011 and 1034/11 dated 02.03.2011 against both Mr. Afzal Rafique Bhoje and Mr. Mumtaz Ahmed Abdul Salam Shaikh in respect of vigilance dues and electricity arrears and therefore denying the new connection in the name of the Appellant only because the subject matter i.e. premises in both the cases are same. Therefore, under Condition No.17.8 of MSEDCL's Conditions of Supply based on the Supply Code Regulations, 2005, TPL has refused to release the connection without payment of dues. The said condition is reproduced as under:

"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


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consumer, unless the amount of all such charges due & payable by the erstwhile defaulting consumer are duly paid or deposited with the MSEDCL”

and as per guidelines for recovery of arrears by MSEDCL vide circular No. P-Com/ Accts/ N0 19021 dated 06.07.2013 at point number 8; it is clearly mentioned that, ‘the new connection cannot be released in the premises where there are outstanding arrears.

- c. Therefore, the owner/ occupier cannot deny or refuse to make the payment of arrears and dues which is on the same premises. At the same time, it shall be lawful for the utility to refuse to release the power supply or to restore the power supply or to give new electric connection to such person of the defaulting consumer, unless the amount of all such charges due and payable by the erstwhile defaulting consumer are duly paid or deposited with the utility.
- d. The service number 13545011951 was initially disconnected for nonpayment of dues on 24.09.2009.
- e. The vigilance cases are registered on the said service on 07.04.2010, 29.01.2011 and 08.02.2011 and FIR is lodged on all three vigilance cases under Section 135 of the Act vide number 1619/10 dated 14.04.2010; 867/11 dated 11.02.2011 and 1034/11 dated 02.03.2011 respectively.
- f. Further, the utility is requesting that, the grievance of the Appellant is to be dismissed on the ground as specified under the Point No. 17.9 (d) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 as under,

“The Electricity Ombudsman shall not entertain a representation:

(d) unless the Electricity Ombudsman is satisfied that the representation is not in respect of the same subject matter that has been settled by him in any previous proceedings;”

At the same time the Electricity Ombudsman may reject the Representation at any stage if it appears to him that the representation is:

“(a) frivolous, vexatious, malafide;

(b) without any sufficient cause;


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(c) there is no prima facie loss or damage or inconvenience caused to the consumer; or complicated in nature such that the representation requires consideration of elaborate documentary and oral evidence and the proceedings before the Electricity Ombudsman are not appropriate for adjudication of such representations.”

- (xii) Therefore, as per the aforesaid contentions, it is clarifying the case as well as the intention of the Appellant that, the Appellant is misleading the Hon'ble Electricity Ombudsman by giving false, frivolous and on insufficient ground. Thus, looking to the facts and circumstances of the Representation filed by the Applicantbe dismissed.

5. The hearing was held on 26.02.2019. During the hearing, both the parties argued in line with their written submissions. They reiterated their respective says in their submissions.

Analysis & Ruling

6. Heard both the parties and perused the documents on record. It is a case of release of new connection on the premises which is in arrears. In the instant case, there were two connections in past at the premises. One having Service No. 1354011951 and unpaid arrears to the tune of Rs.2,55,467/- due to vigilance case. The other one having Service No. 1354011969 with energy dues to the tune of Rs.22,165/-. Both these Service Nos. were disconnected for theft of energy and FIRs have been filed by the Respondent. Both these connections were not in the name of the Appellant. I also perused the document executed on 28.06.2007 by Smt. MadooNuzhat Mateen (the Appellant) on stamp paper of Rs.100/-. Through this document, she has given no objection for release of connection in the name of Rafique Abdullah Bhoje for 28 HP load. The document further says that she will be liable for payment of arrears, if any. The same connections were subsequently used by Mumtaz Ahmed Abdul Salam Shaikh. Mr. Afzal Bhoje son of Rafique Bhoje through a letter dated 07.04.2010 informed TPL that it has paid all arrears till the premises were being used by him. From 2009, the owner (Appellant) rented the premises to one Mumtaz Ahmed Abdul Salam Shaikh for the period 25.03.2009 to 24.03.2014 for which Leave & License Agreement was duly registered on 23.03.2009. Non payment of energy charges and theft of energy on three


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occasions occurred during this period of new tenant though the connections remained in the name of Mr. Bhoje.

7. In view of the document executed by the Appellant and Regulation 10.5 of the Supply Code Regulations 2005 which is reproduced below,

“Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises.”

Bare perusal of this Regulation clearly shows that it casts obligations on the owner to pay the unpaid arrears of the erstwhile tenant of the Appellant/owner to the Respondent. Therefore, the Respondent is right in denying new connection on the same premises unless previous arrears are paid.

8. While parting with the order, it is important to note down that both the parties were on the same page as far finding amicable solution to payment of arrears which will facilitate the release of connection. In pursuance of this, I requested both the parties to sit together and resolve the issue.

9. In view of the above, the representation is disposed of.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


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