



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/Others/09/1132/2015-16

Date of Grievance: 16/10/2015
Date of order : 30/12/2016
Total days : 442

IN THE MATTER OF GRIEVANCE NO. K/Others/09/1132 OF 2015-16 IN RESPECT OF NRC LIMITED, VILLAGE MOHONE, TAL. KALYAN, DISTRICT-THANE PIN-421 102 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF METER COST.

NRC Limited,
Village Mohone, Tal. Kalyan,
District-Thane.

Consumer No. 020169009628 HT

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Executive Engineer, MSEDCL,
Kalyan Circle-1, Kalyan

.... (Hereinafter referred as Licensee)

Appearance : For Consumer- Shri Killedar -General Manager
Shri Tulsidas - Manager-
For Licensee: Shri Kale- EE-cum-NO- KC-I.

[Coram- Sheri A.M.Garde-Chirperson, Shri L.N.Bade-Member Secretary and
Mrs.S.A.Jamdar- Member (CPO)].

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section

42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014'.

2] The grievance in short is that, being a consumer since 1980 for 5000 KVA, the consumer applied for additional C.D. of 2500 KVA on 28/12/2004 to make it 7500 KVA. CE (Com) accordingly sanctioned the same vide his letter Co-Ord-Cell/NRC 13828 dated 7th May 2005. Then S.E. Kalyan issued sanction letter No. SE/KCK/Tech/LSHT/ 02290 dated 3rd June 2005 along with copy of work estimate for Rs.6,20,852/-. The consumer carried out the job work as per given estimate.

3] The consumer has given the details of items of the cost incurred totaling to Rs. 10,34,182/- and claims refund of the same along with interest u/s.62(6) of Electricity Act, 2003.

4] Licensee gave a letter / reply dated 3/11/15. It is the basic contention of the Licensee that as per the circular CE/Dist./DIII/MERC/34307 dated 3/9/2007 the meter cost are to be refunded to all new released consumers only. Applicant is an old consumer asking for additional load and as per condition No.6 of the sanction and the undertaking submitted the meter cost is to be borne by it. The consumer vide letter dt. 25/5/2005 requested to release power supply being ready to carry out work of installation of 22 KV HTMK and to pay 1.3% supervision.

5] We have heard both the sides. There are rejoinders and sur-rejoinders which we have gone through. The Licensee claims to have acted as per regulations then in force vide the order of the Hon'ble Commission dated 5/5/1999 in case No.1 of 1999 which abolished the practice of meter rent and allowed the Licensee to charge meter cost from all the consumers with some exception mentioned therein in which the consumer does not fall. The consumer as against this submits that the Licensee is trying to mislead the Forum and quoted **19.1 of MERC (Electricity Supply Code and other Conditions of Supply) Regulations 2005**, which says that any terms and conditions of the Distribution Licensee whether contained in the terms and conditions of supply and / or any other circular, order notification, etc. which are inconsistent with the said regulations of 2005, shall be deemed to be invalid from the date of coming into force of the said Regulations. As against this, on behalf of the Licensee 18.4 of the same Regulations was brought to our notice which clearly makes a provision that up to the date of approval of new schedule of charges, the existing schedule should be continued. In the present case, the date of sanction is 7th of May 2005 while the new schedule of charges were approved on 8th of September 2005 with applicability and validity clause stating that the entire schedule of charges as approved by the Commission shall be applicable with effect from 8th of September 2006 and will continue to remain in force until further orders.

6] Above being the said state of affairs, Licensee had acted as per then prevailing Regulations which were fully and specifically saved by 18.4 of MERC (Electricity Supply Code and other Conditions of Supply) Regulations, 2005. The impugned terms or action of the Licensee in the present matter, therefore, cannot be said to be inconsistent with the above said Regulations of 2005 in view of the specific provision in 18.4 .

7] Mr. Killedar – the CR has produced certain Judgments, the first one being the order of CGRF in M/s. Century Rayon's Case. The said judgment, however, has not only being stayed by the Hon'ble High Court, but that it cannot even otherwise be cited as a precedent reasons being that 1] the judgment is of a Court of Coordinate jurisdiction, 2] the issue therein was not the same as in the present matter, in as much as it pertains to the meter installation post approval of new schedule of charges and 3] that there is no raising of an issue and giving of a reasoned finding thereon. In fact all the judgments cited by the CR pertain to installations post approval of new schedule of charges. Then, from Haribhau Khoper's case, Para 7 (b) was brought to our notice by the CR which we have gone through. Those are the submissions of the Licensee before the respective Court. The statements made therein, however, when carefully read speak about the new consumers. Though, there is reference to Electricity Act 2003, Regulations etc. there is mention of commercial circular no.43 dated 27/9/2006 issued on the basis of the new schedule of charges approved by the Commission on 8th of September 2005. That being so, the submissions in the Khoper's case pointed out to us relate to installations / sanction post approval of new schedule of charges on 8th September 2005 and the meter cost recovered in the meanwhile till the issuance of circular No.43 dated 27/9/2006. The said proposition finds support from the reference made in the submission to the Circular No.34307 dated 3/9/2007, which squarely speaks about applicability of new schedule of charges to new releases only.

8] It is in the above background, the Judgment of Humble High Court in the case of MSEDCL, V/s. Mr. Kaygaon Paper Mills Ltd. WP No.2032/2011 is to be seen. His Lordships Nirgude – J quoting the definition of Grievance in

2.1 (c) of MERC, (Electricity Supply Code and other Conditions of Supply) Regulations 2005, held in a similar case of meter cost refund as below:

By no stretch of imagination the grievance of respondent no.1, mentioned above, would be covered by this definition. A consumer's grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner company, as Distribution Licensee, had been imperfect or otherwise. The grievance of respondent no.1 is in respect of breach of statutory obligation, allegedly committed by the petitioner company. So the grievance would not fall within the four corners of term "grievance" defined under the Regulations.

---6 Shri H.F.Pawar, the Ld. Advocate appearing for respondent no.1 contended that the dispute even in respect of refund of expenses incurred by consumer would be a grievance as contemplated by the definition of the term grievance mentioned above. In order to support this contention, the Ld. Advocate for respondent no.1, first tried to show me a circular issued by the petitioner company, in which it was mentioned that when the petitioner company is under obligation to refund the expenditure incurred by the consumer, the same should be adjusted in the monthly bills of such consumers. Indeed, the dispute of this case could have been resolved to the application of the circular. But, the petitioner company has refused to refund the amount raising some objections, and therefore, this has become a dispute between the parties. Shri H.F.Pawar, the Ld. Adv. For respondent no.1., then tried to show me a court order passed by the Maharashtra Electricity Regulatory Commission . In the matter of complaint filed by certain consumer of the petitioner company for refund of the amount etc. The Commission directed the petitioner company to refund the amount to the consumer in those cases. I am afraid, even though in similar situation, the petitioner company was directed by the Commission to

refund the amount to their consumers, still such order are not cable of being utilized as a precedent. I have made sufficiently clear about that the dispute between the parties is of civil nature and would not be covered by term “grievance”. The Consumer Grievance Redressal Forum, which are passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. The respondent no.2 Forum, thus, could not have decided the dispute of this nature.

In above view of the matter, both on merits as well as on the point of jurisdiction, the grievance is liable to be dismissed.

13] This matter could not be decided within time as the Hon’ble Chairperson took charge on 20/09/2016 of this Forum and the matter was reheard.

Hence the order.

ORDER

The grievance application of the consumer is hereby dismissed.

Date: 30/12/2016.

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(L.N.Bade)
Member Secretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan.

NOTE

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or
c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

