



Consumer Grievance Redressal Forum, Kalyan Zone
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No. **K/E/986/1197 of 2015-16**

Date of Grievance : 09/03/2016

Date of order : 23/11/2016

Total days : 260

IN THE MATTER CASE OF GRIEVANCE NO. K/E/986/1197/2015-16 IN RESPECT OF M/S. NANDAN TEXTILES PVT. LTD., MIDC, B-31,32, BADLAPUR, DIST. THANE, PIN CODE 421 503 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF AMOUNT PAID AGAINST THEFT CASE (AS ACQUITTED BY HON'BLE HIGH COURT}.

Nandan Textiles Pvt.Ltd.,
MIDC, B-31,32,
Badlapur,
Dist. Thane.
Pin Code 421 503.

(Consumer No. 02153900392) (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited

through its Nodal Officer,

MSEDCL, Kalyan Circle-II, Kalyan (Hereinafter referred as Licensee)

Appearance : - For Licensee : Shri Palange-Nodal Officer-KC-II
For Consumer- : Shri Killedar- CR

{[Coram- Shri 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 consumer is having electric connection from 20/2/1972 bearing consumer No. 02153900392-2 having supply of 22 KV level. It is further contended by the consumer that on 1/2/1999 at 15:00 hours the Officers of Flying Squad visited their factory premises for inspection of metering unit. After completion of inspection work the officers handed over the Inspection report to the Manager. On 2/2/1999, the said officer again visited the factory along with police authorities and disconnected the power supply of the factory without giving any prior notice. The police have prepared the panchnama on 29/4/1999 and filed the FIR against the consumer bearing No. 113/1999 in Badlapur Police Station. The said Officers again visited the factory of the consumer along with police and

handed over the CT PT unit and meter to the police. The consumer denied all the charges vide letter dated 15/2/1999 regarding theft of energy as alleged and pointed out several discrepancies in the inspection report of the Licensee. The demand of Rs27,88,844.53 was raised by Licensee on 22/3/1999 against the alleged theft of energy. The consumer aggrieved by this, filed Writ Petition No.1868/1999 to Hon'ble High Court. As per the direction of Hon'ble High Court dtd. 8/4/1999 the consumer deposited Rs.3,00,000/-to the Licensee and then Licensee connected it's supply.

3] On 29/11/2005, the consumer filed appeal before Appellate Authorities. As per the final order of Appellate Authority dated 4/12/2006, Licensee vide letter dated 2/2/2007 issued a demand of Rs.826544.09 (after considering the payment of Rs.3,00,000/-) i.e. for total Rs.1126544.09.

4] The consumer on 21/3/2007, has paid amount of Rs.826544/- under the threat that electricity will be disconnected by MSEDCL.

5] The Hon'ble JMFC, Ulhasnagar acquitted the consumer/accused on 31/8/2009. The consumer has sent the notice through it's Advocate to the Licensee for refund of Rs.11,26,554.09 Ps along with interest @ 18% p.a. from the date of payment. The consumer has received the reply from Licensee saying that "The amount of civil liability deposited by accused persons need not be refunded.". Therefore, the consumer filed this present grievance application on 9/3/16. Consumer's grievance application along with accompaniments sent to the Nodal Officer vide this Office letter No.EE/CGRF/Kalyan/058 dated 09/03/2016.

6] The Licensee submitted reply on 31/5/2016 and contended that order of Hon'ble Ombudsman dated 24/7/13 is not squarely applicable in the present matter. The Licensee further contended that as per the direction

of Hon'ble High Court, the electric supply was reconnected on payment of Rs.3,00,000/- on 10/4/1999. Thereafter as per the direction of Hon'ble High Court, the consumer preferred an appeal to the Special Committee on 22/4/1999. However, after hearing and considering the material on record the Appellate Authority directed to revise the assessment bill and on 9/5/2001 S.E. KCK, issued the revised bill for Rs.53,15,882/-.

7] The Licensee further contended that the consumer has challenged the order of the Appellate Authority in WP No. 2412/2001. During the pendency of the writ Petition, the consumer again approached to the Special Committee with request that he desired to settle the matter out of the Court. The consumer filed its appeal on 29/11/2005 with Appellate Authority and requested for considering the assessment based on one shift working only and does not dispute the other factors of assessment computation and requested that he does not desire to go into the merits of case. The consumer has restricted the proposal only to the extent of determination of correct assessment which he is liable to pay. After scrutinizing the order of the Appellate Authority and considering the submission of the consumer, the special committee once again directed the concerned Office to revise the assessment bill of consumer on 4/12/2006. On 21/3/2007, as per the order of the Appellate Authorities, the consumer has paid the total revised assessment amount of Rs.8,26,544/-. The civil liability of the consumer has already been confirmed by the Appellate Authorities under the provisions of Condition No. 31 (e) Conditions and misc. charges for supply of electrical energy, 1976 .

8] The Licensee further contended that the consumer has not challenged the said order of the Appellate Authority before the court of Law.

The consumer has accepted his total civil liability. The consumer has withdraw the Writ Petition No.2412/2001 suo moto after being satisfied with the relief given by the Appellate Authority. The consumer has not challenged the final assessment bill before the Competent Authority. The order of Hon'ble Ombudsman dated 24/7/13 in Representation No. 59/2013 is not applicable in the present matter. The Licensee further contended that it is settled law that where an offence which entails both civil and criminal liability, even if the accused is acquitted / discharged of the criminal liability it does not waive the civil liability. There are many case Laws of the different Courts in which it has been held that acquittal in the criminal case of theft of energy will not absolved the consumer from the financial / civil liability. Some of the case laws are cited below for ready reference:

- a] Civil Appeal No.8394 of 2002 JMD Alloys Ltd. V/s. Bihar S.E.B. decided on 6/3/2003 by the Hon'ble Supreme Court.
- b] Revision Petition No. 4271 of 2010 decided on September 2011 by National Consumer Dispute Redressal Commission, New Delhi.
- c] W.A. (M.D) No.102 of 2010 A.V.K. Velayudha Raja V/s. Tamil Nadu Electricity Board, decided on 14/12/2010 by the Madras H.C.
- d] S.C. Case No. FA/299 of 2009, decided on 14/5/2010 by the West Bengal State Consumer Dispute Redressal Commission, Kolkata.

9] It is further contended by the Licensee that the Hon'ble JMFC Ulhasnagar has acquitted on benefit of doubts and the said order is not on merits. The Licensee further contended that the grievance is barred by limitation and prayed that the grievance is not allowed to entertain grievance unless it is filed within two years from the date on which the cause of action has arisen. The Licensee lastly prayed for rejection of the grievance of the consumer.

10] We have heard both the sides at length. As we see admittedly in the present matter there have been two independent proceedings held, first the Civil one in respect of the assessment made against the illegal extraction of electricity and bill tendered accordingly by the Licensee and the other, the criminal case. The consumer had approached the Hon'ble High Court, challenging the disconnection of electricity and thereafter as directed by the Hon'ble High Court, filed an appeal before the Appellate Authorities under the provisions of Condition No.31 (e) of Conditions and Misc. charges for Supply of Electric Energy 1976. Thus the consumer followed due process of law that was advised/directed by the Hon'ble High Court. Proceedings were accordingly duly conducted. The Appellate Authorities initially directed to revise the assessment, according to which revised bill of Rs.53,15,882/- was issued. The consumer challenged the same in Hon'ble High Court in WP no 2412 of 2001. During the pendency of the WP there was an out of Court settlement at the instance of consumer himself and accordingly, there was a revised assessment made and the consumer paid Rs.8,26,544/- towards final settlement of the dues and there was finality to the Civil proceedings on 21/3/2007. So-far-as the criminal proceedings were concerned, chargesheet was filed in the Court of Hon'ble JMFC, Ulhasnagar. The case was tried and the consumer was acquitted on 31/8/2009.

11] There were two questions raised one was of limitation and the other, that criminal proceedings were independent and that the Judgment of the J M F C Court Ulhasnagar had no bearing on the decision of civil proceeding. The same had also attained finality.

12] Now so-far-as the point of limitation is concerned, the incident of raid and inspection took place in the year 1999. The assessment for the

purpose of preparing the bills were made in or around 2001. The cause of action in respect of the bill amounts, therefore, arose somewhere in 2001 or thereabout. The present grievance is filed in the year 2016 after the period of about 15 years of the cause of action.

13] Now in the application consumer does not mention as to when the cause of action arose. As we have seen the cause of action arose in or about 2001. The present grievance filed after 15 years is, therefore, hopelessly barred by the limitation.

14] It is true, that there is mention in the application that the consumer was acquitted on 31/8/2009, indicating perhaps that on the said date the cause of action arose. At the outset, acquittal of the criminal charge does not give rise to any cause of action, in respect of civil liability arising out of the same facts. There is no such provision in Law. Even otherwise, the present grievance is filed after 6-7 years of the acquittal of the consumer of the charge of theft case. Some letters sent in the meanwhile by the consumer to the Licensee in that context do not save limitation. The grievance is therefore, barred by limitation.

15] The second point is that the civil and the criminal proceedings are independent and the acquittal of the consumer in criminal case does have any bearing on the on the decision of the Civil proceeding. The Licensee has successfully relied on several decisions in support of the said proposition, namely viz.

- a] Civil Appeal No.8394 of 2002 JMD Alloys Ltd. V/s. Bihar S.E.B. decided on 6/3/2003 by the Hon'ble Supreme Court.
- b] Revision Petition No. 4271 of 2010 decided on September 2011 by National Consumer Dispute Redressal Commission, New Delhi.
- c] W.A. (M.D) No.102 of 2010 A.V.K. Velayudha Raja V/s. Tamil Nadu Electricity Board, decided on 14/12/2010 by the Madras H.C.

d] S.C. Case No. FA/299 of 2009, decided on 14/5/2010 by the West Bengal State Consumer Dispute Redressal Commission, Kolkata.

16] Mr. Killedar the C R during arguments sought to rely on the decision of the Hon'ble Ombudsman in Representation no.59/2013. We have carefully gone through the Judgment cited.

17] At the outset there is basic question whether this forum has jurisdiction to entertain a grievance in case of illegal extraction of electrical energy in view of the provisions of Section 6.8 (a) of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 . Further, even if consumer gets acquitted of the Criminal charge the Licensee has a right to enforce recovery of the bill prepared by making assessment as against the illegal extraction of electricity except where the consumer's challenges the same before appropriate authority under clause 31(e) of the Conditions and misc.Charges for supply of Electrical Energy 1976,or sec 127 of the Indian Electricity Act 2003 as the case may be and succeeds therein.

18] Secondly, in the case cited unlike in the present one there were no civil proceedings initiated challenging the assessment nor any finding given much less had it attained finality. Therein,on deposit of part of the bill amount the licensee had reconnected the electricity to the consumer.Then in due course criminal trial was held and the consumer was acquitted. The part amount deposited unlike in the present case was not as per decision in a proceeding of a quasi judicial authority under clause 31(e) of Conditions and misc. Charges for supply of Electrical Energy 1976.

19] In any event the facts of the case cited are far very different from present one.

20] There was one more point raised that, due to passage of new Electricity Act 2003 and as per Section 185 thereof the old Act stood repealed. It is to be noted however that as per Section 185(2)(a) of the Act of 2003 anything done or any action taken inter alia as is not inconsistent with the provisions of the new Act is deemed to have been taken/done under the corresponding provisions of the new Act. That being so the decision taken under clause 31(e) of the old regulations that too under the direction of the Hon'ble High Court in the present matter and accepted by the consumer himself is squarely saved by section 185(2)(a) of the old regulations.

21] Mr. Killedar has quoted some Paras from the Judgment of the Hon'ble High Court in W P no.2821/2006, which we have gone through. Licensee on the other hand produced copy of the said judgment which at the outset shows that in that case the raid was effected and inspection was carried out on 7/1/2004: after coming into force of new Electricity Act 2003. Secondly, the question for consideration therein was whether the appeals filed by the consumers before the appellate authority under section 127 of E. Act 2003 were maintainable. The raid/inspection was carried out on 7/1/2004 after the coming into force of E. Act 2003. Obviously therefore clause 31(e) of the old regulations ceased to exist and Hon'ble High Court held that the appeals filed by the consumers therein under section 127 of the new Act of 2003 were maintainable.

22] In the present case the issue is totally different. Hence there is a decision of civil proceeding under clause 31(e) of the old regulations in respect of raid/inspection done in 1999 well prior to the new Act coming in

to force, that too under the direction of the Hon'ble High Court. The point sought to be made therefore is not available to the consumer.

23] In the result therefore the grievance fails.

Hence the order.

ORDER

Consumer's grievance application stands dismissed.

Date:23/11/2016.

(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.