



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/1091/1312 of 2016 -17

Date of registration : 30/12/2016

Date of order : 06/12/2017

Total days : 342

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1091/1312 OF 2016 -17 IN RESPECT OF M/S JAY INDUSTRIAL CHEMICALS PVT.LTD., A-104, 114, 155, MIDC, DOMBIVALI (E) PIN NO - 421 203 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING FAC.

M/s Jay Industrial Chemicals Pvt. Ltd.,
A-104, 114, 155, MIDC, Ph-1,
DOMBIVALI (E) PIN NO - 421 203.
(Consumer No.020129007714) (Hereinafter Referredas Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited,
through its Nodal Officer,
MSEDCL, Kalyan Circle - I, (Hereinafter referred as Licensee)

Appearance : For Licensee : 1) Smt.Uma Barigheid,Nodal Officer, Kalyan Circle-I
2) Shri. Chavan, Dy.Exe.Eng., Kalyan Circle-I
3) Smt. Shilpa Bagade, Asst.Law Off., Kalyan Circle-I

For Consumer : Shri. B.R.Mantri (C.R.)

[Coram- Shri A.M.Garde- Chairperson, Shri A.P. Deshmukh-Member Secretary
and Mrs. S.A.Jamdar- Member (CPO)].

- 1) 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.

[Electricity Supply Code and other conditions of supply Regulations 2005] 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.

- 2) The consumer has filed a grievance application contending excess recovery of FAC charges against 6 installments from June'2012 to Nov'2012 by issuing one more supplementary bill.
- 3) The copy of grievance application and its accompaniments sent to Nodal Officer vide this office letter No. **EE/CGRF/Kalyan/006 dated 02/01/2017**.
- 4) The Licensee appeared and submitted its reply on date 13/1/2017 contending that the grievance is not maintainable before forum on the grounds of limitation regulation 6.6 of MERC (CGRF &EO) regulations 2006. Also the recovered amount of Rs 1483/- Crore is as per Post facto approval given by Hon MERC.
- 5) As we see in this matter vide order in case no.43 of 2012, MERC authorized MSEDCL to recover the accumulated amount of Rs.1483/- crores from its consumers through monthly energy bills in six equal installment from June-2012 to November-2012. MSEDCL recovered the amount from 14/05/2012. The issue therefore is of the amount recovered for the period from 14/05/2012 to 31/05/2012 being not authorized by Hon'ble MERC. However Licensee points out that, in detailed vetting report submitted by Licensee to the MERC on 13 Feb-2013 in Para 2.7 as per order in case no 43 of 2012, they have started recovery of the same from the month of June -2012. The vetting and approval of the said additional FAC recovery by MSEDCL will be done at the end of the said six month period as allowed by the commission i.e. at the time of vetting of the FAC submissions for the month of November-2012. Any discrepancy in the recovery of additional FAC of Rs.1483/- crores will need to be addressed appropriately at that time. Then in detailed vetting report it has been submitted by MSEDCL to MERC in Para 2.7 that accordingly MSEDCL has recovered the same and the under recovered amount till November-2012 has been added to the FAC for the month of Jan-2013 and accordingly to be recovered in the month of Jan-2013. Thus the entire recovery procedure followed by MSEDCL has been vetted and approved by MERC. It is to be noted that there is no grievance that any excess amount has been recovered by MSEDCL form the consumer . MSEDCL has to in fact follow the direction of ceiling as per 82.6 of MERC (Terms and Condition of Tariff) Regulation 2005, as such carry forward the under recovered amount is the month of Jan-2013. This being so the action on the part of the MSEDCL cannot be said to be contravening MERC order or regulations.

- 6) In the above background it can be seen that consumer does not make grievance till 2017, though the recoveries were made in 2012. It's the contention of the Licensee that the grievance barred by limitation by virtue of 6.6 of MERC (CGRF & ombudsman) Regulation 2006.
- 7) On behalf of the Consumer it was submitted that bar of limitation does not apply to CGRF proceeding. Also some judgments of the Hon'ble High Court and ombudsman were relied on Licensee also relied on the judgments of ombudsman. In the case of M/s. Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no.9455 of 2011) it has been held by the Bombay High Court. That the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was infringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from.

In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & ombudsman) Regulation 2006. which may be reproduced for advantage as below.

"6.6 The forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

Nowhere the provision even whispers about IGRC and its decision. No doubt there is a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL itself. There is no limitation period prescribed for moving IGRC. It is however expected that a Consumer moves IGRC immediately or at the earliest.

The Hon'ble Bombay High Court in the case of M/s Sarolkar (W.P. 1650 of 2012) has dealt with the above question. The case of M/s Hindustan Petroleum (W.P.9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give its decision within two months. Consumer may wait for two months for the IGRC decision but has to file grievance before the forum within two years from the date of cause of action.

Consumer has shown the decision of the Bombay High Court in the case of M/s Shilpa Steel (W.P. 3997 of 2016) which toes the line of Hindustan Petroleum case. It is to be noted however that M/s Sarolkar's case was apparently not cited before the Bench in M/s shilpa steel case. Only the case of Hindustan Petroleum was cited.

It was submitted that as held in the case of D.V. Laxmanrao Vs. State of Karnataka when there are two conflicting judgments of similar bench on same issue, the latter one will prevail. (Full text of the judgment not given) Herein however in the case of M/s Shilpa steel which the Consumer seeks to refer and rely, the decision of M/s Sarolkar's case was apparently not cited as such the principal laid down in D.V. Laxmanrao's case will not apply there.

There is also an order of the electrical ombudsman Mumbai in case no. 125 of 2016 in which a similar claim of the consumer on identical facts there in was rejected.

The issue limitation was very differently viewed by Ombudsman in Representation no.65 of 2006. Therein there was excess recovery in contravention of MERC Tariff order. The relevant paras may be reproduced herein below.

. (18) As is observed above, it is mandatory for the Respondent to implement the Commission's Order and the tariff order and to do whatever is required to be done in terms of the above. In no case, Respondent is expected to wait for any consumer to approach it, before it acts in terms of these orders. There may be several consumers who may be entitled for such refund. It is the Respondent's liability / responsibility to work out and refund the excess amount so collected without waiting for any consumer to raise the grievance. By the same logic, the present consumer was not at all required to approach the Respondent and raise a grievance seeking refund of excess collected amount when there exist the tariff order as well as the Commission's Order in this behalf. He cannot be, therefore, be penalized by way of losing his refund amount to which he is fully entitled under the Tariff Order and the Commission's Order for approaching either the IGR Cell or the Forum.

. (23) Let us look at the issue from another angle. What would have been the fate of the refund which the Appellant is lawfully entitled, had he not approached the Cell or the Forum at all? This has to be answered in affirmative in view of the provisions of the tariff order and the Commission's order. Nothing can disentitle the consumer of his claim for refund with the interest, including the Appellant's action of approaching the Cell or the Forum for redress. It would be not only unfair but also ridiculous, as all other consumers who do not approach the Forum for redress, are still entitled for refund. Moreover, the action of the Respondent in not refunding the excess amount may amount to non-compliance of directions of the Appropriate Commission under Section 142 of the Electricity Act, 2003 and with the consequences stipulated therein. Further, application of Regulation 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, holding the cause of occurrence of grievance as 1st December, 2003, would adversely affect

implementation of the tariff order as well as the Commission's order, apart from the fact that such an interpretation would neither be logical nor in the interest of the consumer. To sum up, the Appellant is entitled to get refund of excess amounts recovered with interest with effect from 1st December, 2003. The Forum's order to this extent is therefore liable to be and is hereby modified.

There are two opposite views on the point of limitation given by the Hon'ble Ombudsman in the above cases. However case no. 125 of 2016 is on facts identical to the present case in which the consumers claim was denied being beyond the period of two years in view of Regulation 6.6 . This judgment of the Hon'ble Ombudsman in case no. 125 of 2016 concurs with the judgment of the Bombay High Court in M/s Sarolkar's case. We are of the view that the principle laid down in M/s Sarolkar' case & the Ombudsman in case no. 125 of 2016 will bind this forum with greater force.

As such the claim of the Consumer is barred by limitation as per Regulation 6.6. as mentioned above.

- 8) The Delay is due to a complicated question involved and the arguments heard from time to time. There were heavy work load of AEC / FAC cases hence after disposal of those cases this case taken for discussion.

Hence the order.

ORDER

- 1] Grievance application of consumer is hereby rejected.

Date: 06/12/2017

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

(A.P.Deshmukh)
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, BandraKurla 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.