

Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. **K/DOS/41/1040/2015-16**

Date of Grievance: 06/04/2015

Date of order : 06/05/2015

Total days : 30 days.

IN THE MATTER OF GRIEVANCE NO. K/DOS/41/1040 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 NON COMPLIANCE OF ORDER OF THIS FORUM IN GRIEVANCE NO.1026.

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 Pardesi - Suptd. Engineer

Shri Lahamge-Nodal Officers & Exe. Engineer,

Shri Barambhe-Dy. Exec. Engineer

Shri Kale-Dy. Executive Engineer.

Shri Sakpal-Accountant.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] This grievance is brought before us by consumer on 6/4/2015, contending that consumer received bill for February 2015. It's due date of payment was 26/3/2015 and quantum of current bill shown as Rs.24,96,990/- and Licencee issued notice dated 31/3/2015 u/s. 56(1) of Electricity Act, clarifying that said current bill be paid within 15 days otherwise supply will be disconnected. Consumer filed grievance about the

said notice and independently filed this application, alleging that though this Forum decided its grievance No.K/E/841/1026/2014-15 dated 16/2/2015 and directed for effecting change in the tariff category from HIC to HT-IN from January 2014 onwards and refund amount which is recovered by applying HT-IC tariff and is to be adjusted in the ensuing bill of consumer which is not complied and in the bill of February 2015 again consumer is charged as per HT-IIC tariff instead of HT IN tariff. On this count, consumer claimed direction to the Licencee towards non compliance.

2] This being a grievance towards non compliance of previous order. It is being dealt further, but for the sake of convenience it is allotted with the Grievance No. **K/DOS/41/1040/2015-16**.

The copy of grievance application and its accompaniments sent to Nodal Officer vide this office letter No. EE/CGRF/Kalyan 063 dated 6/4/2015 and matter was fixed on 10/4/2015.

On 10/4/2015, both sides attended for this matter and other three grievance applications i.e. 1039, 1041 and 1044. On behalf of Licencee time was sought to file reply. Hence matter was adjourned to 20/4/2015.

On 20/4/2015, Officers of Licencee filed reply, stating that Licencee has approached Hon'ble High Court, against the order of this Forum by filing Writ Petition Stamp No.11830 of 2005 and matter is subjudice. Further, it is contended that Forum has no jurisdiction to entertain this grievance and proper Forum for entertaining such complaint falls within the purview of Section 146 of Electricity Act with the Commission. It is contended that scope of Regulation 8.7 of CGRF and EO Regulation 2006, pertains to orders not properly implemented or required further clarification or to find out whether any part is complied or not but consumer cannot claim reliefs now sought vide prayer- 2 &3.

3] Consumer vide Prayer para 2 and 3 sought for direction to adjust the amount in the bill of February 2015 and to issue corrected bill and directed the Licencee to apply non continuous tariff from next month.

4] Consumer contended that this Forum decided its grievance No.1026 on 16/2/2015 and refund is directed in that matter. It is contended that said refund is of Rs.30,24,966/- as per its calculation. It is claimed that as per the order of this Forum, said amount was required to be adjusted in the ensuing bill i.e. of February 2015 which is not done. It is contended that if the order of this Forum could have been complied, then there would not have been any question to file this application.

5] In this matter, main ground is argued about writ filed in Hon'ble High Court against the order of this Forum. No doubt, it is seen from the reply that Licencee approached Hon'ble High Court, filing writ petition Stamp No.11380 of 2015. Admittedly, said writ is yet to be admitted and there is no stay to the order of this Forum. In this light, it cannot be said that order of this Forum is ineffective and can be said to be non executable. We find, unless, such order is stayed by the Hon'ble High Court, it had it's own force which cannot be denied. Order of Forum will become inoperative when it is set aside or it is stayed. Such situation has not arisen. No doubt, plea is taken in this matter for vacating interim order, but interim order is not passed in this matter, it is passed in Grievance No.1044, which is already decided.

6] Coming to the next point, all the while, Licencee is contending that this Forum has no jurisdiction to entertain the present representation. On this count, Licencee relied on the order of MERC in case No.23 of 2006. Said order is clear in itself. On close reading of that order, it is seen that totally four consumers by one petition i.e. case No. 23 of 2006, approached Hon'ble MERC, making out a ground about orders of CGRF, passed in their favour, not complied and hence, they sought relief, requesting the commission for invoking section 142 of Electricity Act for

issuing directions and passing orders. In the said matter, Licencee appeared and resisted application, contending that orders are complied. Though, consumer before Hon'ble MERC pointed out non implementation, MERC dismissed the said petition being not maintainable and observed that for implementation, non implementation, improper implementation, consumer to approach CGRF and CGRF is having powers to deal. Precise observation of Hon'ble MERC are in Para No.7 & 8, wherein reproducing Regulation 8.7 and sub Section 6 & 7 of Section 42 of Electricity Act summarized the powers of CGRF to entertain representations towards examining whether any party has complied it's order and on any such orders passed consumers are aggrieved those orders can be taken to Hon'ble Electricity Ombudsman. In respect of Regulation 8.7 Hon'ble MERC after reproducing it in para no.7 observed as under.

‘The consumer grievance Redressal Forum have all necessary powers to entertain Representations requiring it to examine. Whether any parties had complied with it's order. The Forum can adduce evidence on affidavits. The Forums are empowered to call for any record and /or required the attendance of any person in connection with any matter before it. The Forum may also initiate any proceeding suo moto and give such orders and directions as may be deemed necessary, including inter alia for services of notices to the affected parties and invite reply on the issues involved in the proceedings in such form as the Forum may direct.’

Hon'ble MERC in the concluding Para No.9 observed as under:-

‘In view of the above, the commission does not deem it fit to examine the specific cases of complainants and factual aspect there under since the jurisdiction to do so vests with the concerned CGRF or Electricity Ombudsman as the case may be. **The complainants may pursue their grievance and work out the remedies** with the concerned CGRF **including issues with respect to the binding nature of orders passed by CGRF**, as provided in the CGRF and EO Regulation. **There is no difficulty to the concerned CGRF to entertain the**

complaints in exercise of powers vested in them under Regulation 8.7 of CGRF and EO. In fact, said **Regulation empowers the concerned CGRF to take suitable action,** not being inconsistent with E.A. 2003 or Rules and Regulations made there under.

The aforesaid observations of Hon'ble MERC are clear. CGRF is having powers to entertain and deal with such applications, where there is grievance about non compliance, improper compliance etc. In this light we find no force in the contention of Licencee that this Forum has no jurisdiction to entertain and deal with the such complaints / grievances.

7] Once, if it is concluded that this Forum had jurisdiction to entertain the complaint/grievance, now question comes up what can be the direction in this matter. Admittedly, order is passed by this Forum, effect of refund to be given in the ensuing bill of consumer i.e. February 2015 which is not done. It is contended that order is passed by this Forum on 16/2/2015, sent it on 20/2/2015 and received on 24/2/2015 and ensuing bill issued on 12/3/2015 thereby time was too less in between. Though, this is a ground taken up, we find, Licencee approached Hon'ble High Court, it is nowhere prayed before this Forum, seeking time to bring stay from Hon'ble High Court. However, it is tried to be argued that as matter is in the High Court, this Forum cannot deal it further. It is a fact that till order of CGRF is stayed or set aside, it has it's own force. Under such circumstances, in no way it can be said that said order cannot be enforced or will not be enforced. Now consumer has brought to the notice of this Forum, that order is not complied by the Licencee. No doubt, towards non compliance, resorting to section 142 E.A. consumer can approach by filing complaint with MERC or even this Forum can forward the complaint of non compliance, which will /which may result in necessary penalty etc. However, if order is passed by this Forum, and it required any direction, can this Forum issue it or

not it is a question. We find, that it is not a fit case at this stage, for recommending it to the Hon'ble MERC for taking appropriate action about noncompliance under section 142 if E.A. But this Forum can issue necessary direction, not inconsistency with the provisions of Electricity Act.

8] We find, when there is subsisting order of CGRF, it needs to be enforced in it's true spirit. At least till, it is not stayed to the extent of it's quantum, there cannot be any coercive action towards disconnection demanding the dues. In this matter, as development had taken place and consumer faced notice u/s. 56 of Electricity Act, demanding the current dues and failure of it will result in disconnection, though consumer is entitled to refund which was more than bill of current month. Compliance was sought as per the order of this Forum, in the month of February 2015 which is not done, but action of disconnection u/s. 56 of Electricity Act was proposed. We find, it necessary to make it clear that order of this Forum cannot be ignored and till it is not stayed by the Hon'ble High Court, Licencee is to give effect to the said refund and to the extent of said quantum if any amount is due from consumer, cannot be recovered or any coercive action can be taken. We find, Licencee has to implement the said order. Now already bill of February 2015 is issued, even bill of March 2015 is issued and April being issued as submitted by Officers of Licencee. We find at least said quantum can be adjusted in the ensuing bill of May 2015. As per the order of this Forum consumer cannot be charged applying HT-IC from February 2015 and cannot be forced to pay such amount arrived at by applying HT-1C, in the light of order of this Forum while deciding the grievance.

Hence the order.

ORDER

Consumer's application is partly allowed.

Towards the prayer of consumer, in the light of above discussion, Licencee is directed to implement the order of this Forum, showing refund in the bill of May 2015 which ought to have been implemented in the bill of February 2015.

Towards the said due refund amount, Licencee not to take any coercive action to the extent of that quantum, in case any recovery is sought from consumer to that extent till such refund is given in the bill or adjusted in the bill.

Licencee was to implement order of this Forum from the month of January 2014, showing the tariff category HT-IN instead of HT-IC which is not done and it also be done from the bill of May 2015. Amount shown in the bills from February 2015 onwards applying HT-IC cannot be recovered resorting any coercive mode. In other words consumer is to pay as per the tariff category HT-IN.

Dated: 06/5/2015.

I agree

I agree

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

(Chandrashekhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan