Consumer Grievance Redressal Forum, Kalyan Zone
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No.K/E/756/916 of 2013-14

Date of Grievance: 05/02/2014
Date of order : 30 /05/2015
Total days : 479

IN THE MATTER OF GRIEVANCE NO. K/E/756/916 OF 2013-14 IN RESPECT OF NRC LTD. OF MOHONE, KALYAN (E) REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING EXCESS AMOUNT COLLECTED FOR RESIDENTIAL AND LESS AMOUNT FOR COMMERCIAL FOR ESTABLISHMENT OF THEIR INDUSTRIAL COLONY BY APPLYING HT-I TARIFF INSTEAD OF HT-VI FROM JUNE 1999.

M/s.NRC Ltd.,
Village Mohane,Tal.Kalyan,
District-Thane
Pin Code 421 102
(Consumer No.020169009628 HT connection) (Hereafter referred as consumer)
Versus
Maharashtra State Electricity Distribution
Company Limited through its
Executive Engineer, Kalyan –Circle-1,Kalyan …. (Hereinafter referred as Licensee)

Appearance : For Consumer–Shri Killedar -General Manager
Shri Tulsidas Manager-
Shri Killedar-consumer's Representatives.
For Licensee Shri Lahamge- Nodal Officer and Executive Engineer,
Shri Barambhe – Dy.Exec. Enginer
Shri Sakpal-Account.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

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. 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 and Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014'.

2] This grievance is brought before us by consumer on 05/2/2014, complaining that from June 1999 consumer is not properly charged by applying correct tariff and hence whatever is excess charged be refunded. In this matter copy of grievance application, along with it's enclosure sent to the Nodal Officer, vide this Office Letter No.043 dated 6/2/2014.

In response to it, Nodal Officer attended and filed the reply on 18/3/2014. Further additional reply submitted on 26/5/2014, 6/6/2014, 13/10/2014 & submission filed on 14/5/2015. Even consumer has given written submissions on 24/2/2014, 18/3/2014, 16/6/2014, 14/8/2014, 30/9/2014, 27/10/2014, 3/11/2014, 18/11/2014, 9/12/2014, 19/2/2014, and on 16/5/2015.

3] We took up matter for hearing from time to time and on hearing both sides, following factual aspects are disclosed:

a] Consumer is a Industrial unit bearing consumer No. **020169009628** and it was having supply from Tata Power Company for the period from 1953 to 1980. During that period said company issued bills, applying mixed tariff which consumer was paying. In the industrial complex of consumer, supply is extended to the industry, to the residential colony and even for commercial

establishment. Consumption of these three aspects were noted separately and charged separately for each of the consumption and ultimately common bill was issued which is said to be mixed tariff. It is contended that right from beginning, there is system of recording consumption in these three parts i.e. industrial, commercial and residential and recording of consumption was done and consumer was charged accordingly.

b] In the year 1980, MSEB took over supply from Tata Power Company. From May 1980 to May 1999, consumer is charged applying mixed tariff as it was done by Tata Power Company.

c] **Though, during the period from May 1980 to May 1999, MSEB applied mixed tariff. But from June 1999, it was not continued. Total units consumed in all three parts, were, charged as per HT-1, instead of HT-VI**. This aspect, consumer brought to the notice of Licensee vide it's letter dated 18/3/2013 and further approached IGRC on 16/11/2013. IGRC not decided matter in time, hence consumer approached this Forum on 5/2/2014. Thereafter, during pendency of this matter, that too after filing reply iIn this matter, IGRC decided the complaint of consumer on 5/4/2014.

4] Licensee in reply dt. 18.03.2014 admitted the contents of consumers Grievances Application Para No. 2, 4 to 8, 13 & 14. Accordingly, Licensee admitted the fact that prior to 1999 consumer was charged as per mixed tariff. Licensee in clear words pleaded as under :

> *'The mixed billing of the said consumer was stopped from the billing month June 1999. The reason for such stoppage could not be ascertained from the available records'.*

Licensee came up with defence that this grievance itself is barred by limitation. Secondly, it is contended that though consumer had now applied,

seeking refund for the disputed period from July 1999 onwards which was not raised previously and now it cannot be raised. Thirdly, it is claimed that as matter is of previous old period, record is not available and there is no any clue available to work out the refund amount. Lastly, it is contended that consumer had applied for application of mixed tariff on 18/3/2013 and in response to it, consumer was made aware of query and conveyed existing arrangement is not competent for measuring residential and commercial, usage separately. It is claimed that on compliance of this aspect, Licensee may consider the application of mixed tariff.

5] IGRC rejected the application of the consumer on the ground that claim is time barred. Secondly, it is observed that from 1999 to 18/03/2013, bills issued are paid, without raising any objection to the category and hence, there is no question now challenging it. Thirdly, it is contended that during the period from 2005 to 2009, there are agreements of CD enhancement and reduction etc. and even at that time, no dispute was raised about this tariff difference.

6] In this matter, considering the grievance of consumer, objection raised by Licensee, three main points are arising and are to be addressed serially.

I] Objection about bar of limitation;

II] Claim of consumer for applying tariff category HT-VI instead of HT -1, applied by Licensee during the disputed period from July 1999 to 14/11/2009.

III] Mode of calculation of refund, in absence of record with the Licensee and interest on refund.

I] **Objection about bar of limitation**;

7] Aspect of bar of limitation raised by Licensee before IGRC and now before this Forum. Question comes up whether there is any bar of limitation for the matter, brought before IGRC and this Forum. No doubt claim involved in this matter is from 1999 onwards and it is pertaining to non application of mixed tariff category, issuing bills at higher rate and revision thereof. Accordingly, claim is from 1999 to 2013 i.e. for 14 years.

It is pertinent to note that though, plea of limitation was canvassed before IGRC and it is upheld by IGRC, question comes up whether claim for total period involved in the matter is barred?

8] Though for the sake of arguments, not admitting the Licensee's plea if it is treated that bar of limitation will be applicable considering the period of two years, which is noted by IGRC and canvassed by Licensee, the present matter is covered the period of claim from July 1999 to 18/3/2013 i.e. a date on which consumer approached Officer of Licensee and 16/11/2013 the date when consumer approached IGRC. In other words, it is clear that in case Licensee and IGRC are of the view that claim sought after two years of cause of action is barred, then the claim which consumer has brought up to the date of approaching the concerned cannot be ignored as it is continuing cause which at least covers last two years. But this aspect is also not considered. We are clear that this observation is done for the sake of argument , appreciating the stand of Licensee and IGRC.

9] Basic question is whether in fact when consumer has approached Licensee and IGRC under the provisions of MERC (CGRF & EO) Regulations, is there any bar of limitation. This aspect is argued at length by both sides, relying on precedence of High Court and Ombudsman.

10] There is clear provision in MERC (CGRF & EO) Regulations wherein period of limitation is prescribed for approaching CGRF and after the order of CGRF to Hon'ble Ombudsman. **There is provision pertaining to IGRC, and time limit for approaching it, is, to be framed by the Licensee as provided in the Regulation and is to be followed by IGRC. Such rules are not framed by Licensee and not placed before us or made known to us about it. It is fact that in absence of any such rules, now aspect of limitation for bringing matter before IGRC, is being canvassed.** Hence it will be a question whether it can be said that complainant, having cause of action prior to two years barred.

11] At this stage, we find it necessary to consider the provisions of MERC Regulations pertaining to limitation prescribed for taking matter to IGRC, CGRF and Hon'ble Ombudsman. Those provisions are in Regulation 6.2, 6.4, 6.5, & 6.6 & 17.2 are as under:

> ----- 6.2'A- consumer with a Grievance **may intimate the IGR Cell of such grievance in the form and manner and within the time frame as stipulated by Distribution Licensee in its rules and procedures for Redressal of grievances:**
>
> Provided that, where such grievances cannot be made in writing, the IGR Cell shall render all reasonable assistance to the person making the grievance orally to reduce the same in writing.
>
> Provided also that the intimation given to the officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of IGR Cell establishes by the Distribution Licensee on the procedure for approaching it, shall be deemed to be the intimation for the purposes of these Regulations unless such officials forthwith direct the consumer to the IGR Cell.

---6.4- Unless a shorter period is provided in the Act, in the event that if consumer is not satisfied with the remedy provided by the IGR Cell to his grievance within a period of two (2) months, from the date of intimation or where no remedy has been provided within such period, the consumer **may submit the grievance to the Forum**. The Distribution Licensee shall within the said period of two (2) months send a written reply to the consumer stating that the action it has taken or proposes to take for redressing the grievance.

--6.5- Notwithstanding Regulation 6.4, a Grievance **may be entertained** before the expiry of the period specified therein, **if the consumer satisfies the Forum that prima facie the Distribution Licensee had threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any Rules and Regulations made there-under or any order of the commission, provided that the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters:**

Provided further that, **no such Grievance shall be entertained before the expiry of the period specified in Regulation 6.4, unless the Forum record it's reasons for the same.**

---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.'

---17.2, Any consumer, who is aggrieved by non Redressal of his Grievance by the Forum, may make a Representation for Redressal of his Grievance to the Electricity Ombudsman within Sixty (60) days from the date of order of the Forum.

(Emphases supplied)

The above extracted provisions of Regulations are crystal clear in respect of limitation. **In respect of IGRC it is a Licensee who was/is to**

frame rules pertaining to it and as noted above no such rules are framed by Licensee. Secondly, for approaching CGRF provision is clear that none can approach CGRF directly. However, in exceptional / urgent cases, consumer may approach and for entertaining such grievance directly, Forum is to record reasons. Matters can be brought to CGRF only when consumer's grievance is not dealt by IGRC within 60 days or if consumer is not satisfied with the relief granted by IGRC. **Accordingly, passing order by IGRC is a cause of action for approaching the Forum. Similarly, option is available to the consumer to approach the Forum in case IGRC not deciding the matter within 60 days.**

12] This matter was argued from time to time and order of Hon'ble Ombudsman in Representation No.120 of 2014 of present consumer against the present Licensee, was dealt on 18/9/2014 and therein **on the point of limitation said Representation was rejected, observing that claim is of 15 years and hence it is barred as cause of action occurred prior to two years.** This order of Hon'ble Ombudsman is further dealt in review petition No. 2 of 2015 decided on 20/4/2015 and therein previous **order is reviewed. Bar of Limitation earlier upheld is set aside that too relying on the Judgment of our Hon'ble High Court in Writ Petition No.9455 of 2011 dated 19/1/2012, M/s. Hindustan Petroleum Corporation Ltd. V/s. MSEDCL & others.** This review judgment, we brought it to the notice of both sides and were given an opportunity to make submissions towards it. Accordingly, on 14/5/2015, Licensee placed written submissions to which consumer filed reply on 16/5/2015.

13] We heard both sides on this count. On behalf of Licensee it is contended that order of Hon'ble High Court, relied on by

Hon'ble Ombudsman is based on the facts before Hon'ble Lordships which were peculiar and those are not applicable to present facts. Even it is contended that said Judgment of Hon'ble High Court is 'per-in curium'. Attempt is done to attribute a peculiar meaning to 'cause of action' and contended that said spirit is not considered by Hon'ble High Court. It is contended that said Judgment is not fulfilling any criteria for reading it as precedent and it is based on some 'perverse finding'. While relying on the aforesaid contention that order of Hon'ble High Court is 'per in curium' referred to the Judgment of Hon'ble Supreme Court i.e. (1988) 2 SCC 602,AIR 1955 SC 661, (1985) SUP SCC (280), (2000) 4 SCC (262) , (2007) 7 SCC (667).

14] We find principle laid down by Hon'ble Supreme Court is not in dispute, but question is whether in fact Judgment of our Hon'ble High Court referred above, is, hit by said principle. On close reading of said Judgment of our Hon'ble High Court and the discussion on it by Hon'ble Ombudsman in the Review order, it is crystal clear that Hon'ble High Court categorically in so many words on analysis of all provisions of MERC Regulations laid down the legal position and hence we are not able to accept the contentions raised by the Licensee. No doubt, in reply, consumer has resisted the objection taken by Licensee making various contentions. Suffice it to say that the contention raised by Licensee pertaining to the Judgment of our Hon'ble High Court is not correct. Though, consumer has relied on the Judgment of Hon'ble Supreme Court, (1979) 4 SCC 176, said judgment is on Limitation Act and respectfully we find , it will not be relevant for this matter. Section 3 of the said Limitation Act apply to suits appeals and applications taken to courts and hence it will not be applicable to the present matter.

15] Before closing the discussion on this point it is necessary to note that officers of licensee contended that Hon'ble ombudsman has taken contrary view in representation No. 113/2014 decided on 21.11.2014 M/s Bharat Forge Ltd. V/s MSEDCL. But we, ongoing through the said judgment more particularly end of para No. 11 and conclusion in para No. 23, said objection raised found not correct.

16] In view of aforesaid discussion, we find that the claim of consumer is from July 1999 up to the date of approaching the Licensee on 18/3/2013, it cannot be said to be barred by limitation.

17] After noting the objection about limitation one more thing just required to be noted, it pertains to the consumer limiting the claim up to 15/11/2009. This development occurred as consumer was facing action u/s. 126 of Electricity Act, taken out by Licensee and it covered, the period from 15/11/2009 to 2013. In this regard, consumer has subsequently sought amendment to the Grievance Application, on 14/8/2014, Licensee replied it on 13/10/2014 Licensee not objected for the amendment hence it is ultimately allowed. Accordingly, reserving the right to deal that aspect at a subsequent stage after the order of Hon'ble High Court, consumer is seeking relief for a limited period.

18) It is necessary at this stage to note that consumer had approached IGRC on 16.11.2013. IGRC not passed order in time hence consumer approached CGRF on 5.2.2014. Matter was taken up by this forum on 18.3.2014 and noted that matter before IGRC, not yet decided and hence forum expressed that it is better to wait for the progress of IGRC hence matter was adjourned. IGRC decided the matter on 5.4.2014 and thereafter this grievance is taken up.

II] Claim of consumer for applying tariff category HT-VI instead of HT -1, applied by Licensee during the disputed period from July 1999 to 14/11/2009.

19] It is already noted above that prior to June 1999 consumer was billed by Licensee applying mixed tariff but there after it is discontinued. On this ground consumer approached for refund of amount paid extra, by applying tariff HT1. Consumer's General Manager in short gave the background of such mixed tariff, existing prior to 1999 and thereafter.

20] Consumer's Manager submitted that as per the tariff order applicable from 1.7.1996 during the regime of MSEB, tariff applicable to the consumer for

Industry was HT-P I. However HT-P VI covers supply for residential and commercial complexes and rates for those residential and commercial complexes are stated and hence tariff was applicable to industry as per HT-PI to residential and commercial as per the HT-PVI.

21] Ld. Manager further submitted that similar tariff line, was, continued in the year 1998. Further for the year 2000-01 similar category continued. Referring to order of MERC dated 16.6.2000 in case No. 1/1999 & relying on Para 4, it is submitted that when there is supply from main meter at the entry point, which includes demand for residential and commercial complexes and if said demand is not recorded separately in that case, demand charges should not be billed.

22] Further he submitted similar system continued for the tariff applicable from 1.12.2003. As per tariff order for the year 2006-2007 said system was continued but category is shown as of HT-V i.e. bulk supply.

In support of above factual aspect, he produced the relevant copies of orders annexing to the grievance applications and referred in his written submission dt. 24/02/2014.

23) It is clear from the facts brought on record and argument advanced that dispute is pertaining to period covering from June 1999 to 15.11.2009. Consumer is having supply to industrial unit and it consists of industrial, residential colony & commercial. Till June 1999 consumer was provided with the bills showing total units consumed, separately calculating units of residential area, commercial area and industrial area, applying appropriate tariff of the concerned categories. However it was discontinued from June 1999. Now consumer is seeking refund of amount which is recovered from June 1999 to 15.11.2009, whereby Licensee treated total consumption towards industrial use.

24) **Admittedly, no record is available with the Licensee of disputed period, showing the consumption noted separately for residential area, commercial area and industrial area. This is admitted in so many words by the Licensee in reply dt. 18/03/2014 and clarified that the reason for such stoppage could not be ascertained from available record.**

25] However with the submission Dt- 18.11.2014 consumer placed on record monthly consumption from supply of licensee and even placed on record the monthly supply taken from it's own source i.e. CPP. Consumer pleaded CPP commissioned in the year 1999 which is not specifically denied by Licensee but no comment are offered towards it. Accordingly, it is contended that as Licencee not appropriately calculated amount towards residential supply and commercial supply applying mixed tariff hence, it is entitled to refund of said difference.

26) **Consumer contended the Licencee has not maintained the record and, it cannot be read, to the prejudice of consumer**, It is submitted that from record, previous consumption, prior to June 1999 is available separately for industry, residence and commercial. Hence it can be treated as of base and by applying it the respective figures can be reworked out as against the assumption already done treating total supply for industry.

27] At this stage, we find position is crystal clear, consumer was charged applying mixed tariff till June 1999. Thereafter, it applied Industrial tariff and not considered the respective tariff for residential and commercial. **Why this change done is not explained but contended that the reason is not known**. In other words if it was existing previously, then it was necessary to continue it or to assign reason for the change.

28] Consumer's General Manager placed on record the information collected resorting to RTI Act and contended that such mixed tariff is applied to other industries i.e. Century Rayon and Lollyds Steel etc. but not maintained and continued for his unit.

29] It is not in dispute that such mixed tariff is continuing for others. Accordingly, we find there is no reason for change in respect of consumer and in result consumer is charged for total supply as per the industrial tariff. Hence this contention of consumer is to be accepted as without any reason mode of tariff and billing, changed from mixed tariff. In this light consumer's grievance is having it's own force.

Objection about not claiming the relief for 15 years.

30] After concluding the fact that consumers claim is having a force, we are required to consider one more objection of licensee. Licensee objected for allowing the claim on the ground that claim is raised after above 15 years, consumer during this period, paid the bills issued, without raising any dispute. Further it is contended that previously contract demand (CD) of

consumer was changed. Incidentally bills are revised, consumer executed agreements and at no point of time this grievance was raised. Accordingly it is contended that present claim cannot be allowed.

31] Consumer resisted all these objections and claimed that when the consumer noted the fact that for other companies, industries mixed tariff is continued and still existing but for it's unit from June 1999 mixed tariff application is stopped. Accordingly it is contended that when consumer learnt this aspect approached this forum, towards which no any fault can be attributed.

32] We find Electricity Regulatory Commission Act 1998 came into a force from 2.07.1998. Tariff orders are passed from time to time. Those order are having binding force and licensee is bound by those orders, directions, issued by commission. If any action is taken or continued contrary to the orders or direction of commission, to that extent it will be illegal and ineffective. As noted above from 1996 tariff order are issued. If mixed tariff was existing from 1996 and was applied and continued for the consumer, till June 1999 then it's discontinuation in June 1999 needs to be explained by licensee. In absence of such explanation it will be clear that act of licensee is in breach of its legal obligation towards correctly applying tariff. If this obligation found not discharged then remedy will be to rectify it when rectification is sought by the consumer. The delay, as claimed by the licensee will not cure the said legal flaw. It is not a justification, for denying the claim of consumer. Delay will not defeat the claim unless it is barred expressly by any law. Already we have dealt objection of bar of limitation in the light of Regulations and Electricity Act. In this light, merely because grievance is filed after 15 years, will not make it untenable .

33] Secondly the developments which took place during this period about the CD changed, agreement executed and bills revised, will not affect

the present claim. This claim not raised by consumer previously or not perceived by licensee about the flaw, will not make the claim non-est. Any agreement if it is not in consonance with tariff order, it can not be read to the extent it is in breach of tariff order or contrary to it. In this light objection taken on the ground of delay has no force.

34] Now in view of the above it is clear that consumer is charged as per industrial tariff for the period from June 1999 to Nov 2009, though prior to June 1999 consumer was assessed applying the mixed tariff for the supply given industry, residential area and commercial. The said discontinuation of mixed tariff is without any reason. In this background consumer claim for applying mixed tariff from June 1999 to Nov 1999 cannot be denied and ultimately the difference by applying mixed tariff if found, it is to be refunded.

III] Mode of calculation of refund, in absence of record with the Licensee and interest on refund.

35] After arriving at the aforesaid conclusion of **refund**, **question comes up how it is to be worked out or assessed.** Licensee contended that for want of record said previous position cannot be ascertained and actual refund figure cannot be worked out. No doubt licensee is not able to assign reason why mixed tariff which was applied to the consumer prior to June 1999 discontinued from June 1999 and claims that record not available. These are the flaws on the part of licensee and its advantage cannot be taken for denying the claim of consumer. Though it is contended that exact quantum of refund cannot be worked out but other modes available to ascertain it, on some basis cannot be overruled in the light of arguments advanced.

36] No doubt record of disputed period not available with licensee but consumer submitted that the record pertaining the supply received from

licensee by it, is, available in the form of bills issued by licensee. Secondly it is submitted that the relevant record about quantum of electricity produced by its CPP is also available. It is claimed that supply of licensee and supply of its own i.e. of CPP, utilized by synchronizing both these. Accordingly it is claimed that if the quantum of supply taken from licensee and production of CPP if clubbed then total consumption will be available and out of it appropriately the consumption for industrial use, use for residential colony and use for commercial complex can be worked out, on the basis of previous consumption prior to June 1999 for which mixed tariff was applied. It is contended that such average of previous period can be based for considering what was the consumption for residential area for commercial area and deducting it from the total quantum consumed, balance remains for industrial consumption. Accordingly it is contended this average of residential and commercial supply can be read and carried forward for the disputed period and in this light applying mixed tariff, refund can be worked out.

37] It is contended by General Manager of Consumer that as per policy of Government, consumer was allowed to have it's CPP (Captive Power Plant) and hence production from CPP is used which needs to be shown towards consumption of the portion/section which attracts heavy rate. Accordingly, it is submitted that units utilized are to be first shown from CPP supply and which portion/section attracts heavy tariff and remaining supply taken from Licensee is to be calculated applying higher or lower rate for these three i.e. industry, residential and commercial. Consumer placed on record it's latest calculation with submission dated 18.11.2014 showing the refund amount Rs. 1,03,97520/- wherein interest not added. Even it is offered that if this average is not acceptable, average now prevalent can be considered which is

after the period covered by Section 126 of Indian Electricity Act which is sub judice in High Court.

38) It is contended by Licensee that it is necessary to note percentage of consumption for industrial, commercial and residential of supply prior to June 1999 and at the most it can be based. However, it is submitted on behalf of consumer that it will not be correct mode as things are so clear on record and it will be a guesswork which will prejudice the consumer, as industrial consumption will fluctuate due to production level etc. but consumption for residential and commercial there will not be any notable change. Further consumer's manager submitted that supply from CPP & supply from Licensee, synchronized and used for all these three. Officers of licensee submitted that if CPP is used for 29 days in a month and supply for 1 day is taken from licensee then said 1 day supply cannot be applied for an aspect of consumption towards item attracting lowest tariff. which will not be proper.

39) During course of arguments, it is also contended by General Manager of consumer that supply of CPP is to be deducted at the first instance, towards the supply consumed by it out of three aspects for which highest tariff is applicable. It is also noted that about consumption from CPP dispute was going on up to Hon'ble Supreme Court. We had asked consumer's Manager and Officer's of Licensee to place on record details of the Government circular, circulars of Licensee. Those are produced even consumer produced the aforesaid orders of MERC. Ultimately, circulars issued by Licensee bearing Nos. 602, 619, 643, 651 & 663 putting restriction that irrespective of production of CPP, consumer's are to bear 25% consumed units charges, set aside by MERC in case 49/2003 vide order dt. 21/05/2004 and said order is confirmed in appeal No. 29 of 2007 on

30/05/2007 by Appellate Tribunal for Electricity. Accordingly, said circulars and incidental circular issued by Licensee bearing No. 627 are not enforceable. Accordingly, we find the objection pertaining to CPP raised by Licensee to the extent of to the 25% cost to be borne lost it's strength.

40) Further consumer's General Manager submitted that in trading activity, always it is accepted principle that whenever energy used from CPP is to be considered for a tariff, first it is to be applied to part which attracts highest tariff and then balance received from Licensee is to be shown for parts attracting lower tariff. **It is submitted that consumer is having all these calculations i.e. what was the quantum of supply available from CPP and what was quantum taken from Licensee**. Said calculation submitted by the consumer with it's submission Dt- 18.11.2014. Accordingly, it is contended that using the aforesaid trade practice, calculations prepared be considered.

41] During the course of hearing we tried to have a clarification about reply filed by licensee on 6.06.2014, more particularly contents in Para No. 1. Said Para reads as under-

> *' The consumer started his own generation of electricity through his own CPP from the month **April 1999**. The consumer started using power for his residential colony through his own CPP and as per the statements submitted by the consumer on date 28.08.99; 30.10.1999 the usage for residential colony is NIL. (Copies of the statements are enclosed) As the consumer was not using power for his residential colony from MSEB source, question of refund for different tariff from May 1999 does not arise.'*

Licensee's officer submitted that it is on the basis of form submitted. However it is a fact that after commissioning of CPP supply is utilized by the consumer synchronizing supply of licensee and CPP. If this is the position then any calculation about utilization will be just segregation, for record purpose and is not actual. If supply from two sources used at a time by synchronizing, then exercise of separation will not be possible to attribute to any particular supply. In this regard there is no any proper explanation from licensee side. It is a fact at times such bifurcation is shown which is notional further such reports not available with the parties.

42] During hearing we attempted to find out the options available to work out the refund and basis for it in absence of record to the licensee. The option noted are :-

1] Admitted position prior to June 1999 during which consumer was applied mixed tariff. In other words the average of reasonable prior period.

2] The base taken by assessing officer towards passing order under section 126 of Electricity Act

3] Recent figures which are after the disputed period.

43] Considering these three options, both sides were called upon to undertake an exercise and work out the details to which both sides responded. Licensee responded on 17.10.2014 without prejudice to its rights and worked out recovery from the consumer of Rs. 17,73,000/-. Last such up to date calculation submitted by consumer on 18.11.2014 and worked out refund of Rs.1,03,97,520/-. Both sides though filed their own calculations they are not agreeable to calculations of other side.

44] It is noted above that actual record is not available with licensee. Consumer has pointed out in its calculation the figures of supply available from licensee and CPP which is shown in last 2 pages. We

perceived that in absence of actual record about noting mixed tariff, accurate refund cannot be worked out. Admittedly from June 1999 mixed tariff discontinued for consumer though it was made applicable and applying mixed tariff bills were issued and recovered. Hence except applying some reasonable mode of calculations there is no alternative. Such mode to be followed, will be by adopting a reasonable guess work. Though we noted three options but we are to apply reasonable option amongst those. Such option will be based on average pattern of consumption by consumer pertaining to the industry, residential and commercial for the period of 12 months prior to June 1999. This is found reasonable as it is of a actual use. In respect of the second option, pertaining to assessment done by assessing officer in the light of proceeding under section 126, will be on different base and third option of current use is found not useful, as due to lockout in the consumers industry those two consumptions, of residential and commercial may not be helpful as the quantum of supply for these two may have been affected. Accordingly healthy consumption during undisputed period is the best option available.

45] Now it is concluded that for working out the refund by applying mixed tariff for a disputed period average of healthy consumption of twelve months prior to June 1999 pertaining to residential and commercial will be proper.

46] After concluding the mode to be fallowed for arriving at the figure of refund, we are required to deal with the objection raised by the licensee. It is submitted by the licensee in such case percentage of supply consumed by these three parts will be proper base. On behalf of consumer it is submitted such base will not be proper as the further supply of a disputed period is not only of licensee but it is including supply of CPP that too by

synchronizing. We find as per the above discussion aspect of CPP is of vital importance. CPP is commissioned it is a encouragement to the consumer in the light of inability of licensee to provide the electricity, matching the needs and consumers were required to invest and spend. Naturally when supply is used synchronizing CPP supply and supply of licensee then mode of calculation of tariff plays vital role. It is contended by licensee the if consumer is using its total CPP supply and seeks that it be first shown towards supply consumed for a unit which attracts heavy tariff then supply of licensee will not be properly valued and assessed. It is submitted that even one days use of licensees supply, in a monthly assessment may be totally shown for a unit/section which attracts lowest tariff. On behalf of consumer it is submitted that bills are prepared on monthly basis and not on daily basis.

We are required to go for a guess work and hence it is having its own limits. Even in case of percentage wise calculation considering the previous average it will not be suitable as supply during the disputed period is inclusive of supply available from CPP. We are required to accept the contention of consumer that when CPP is installed amount is spent then its production cannot be directed to be shown, towards the quantum utilized by unit attracting lowest tariff. We are to accept the submission that it being the product of consumer, it is to show it for its benefit and as prayed towards the unit for which highest tariff is applicable. Accordingly for the disputed period total consumption is to be noted which will be inclusive of supply of licensee supply from CPP and out of it applying the average of previous 12 month prior to June 1999 for residential and commercial said quantum is to be first deducted from the total supply utilized and balance remains is to be treated towards industrial supply. Then which of the unit that is industrial commercial or residential attracts highest tariff is to be noted and supply of

CPP is to be allocated to it then to the second highest, if remains then to the third and accordingly supply of licensee is to be shown to the unit attracting lower rate. We were not provided by licensee any material, showing in which fashion the treatment is to be given to the supply available from CPP and from licensee.

47] In the light of the above, refund amount is to be worked out by the licensee collecting from the consumer the previous bills prior to June 1999 for working out average of 12 month. Even the figures pertaining to production of CPP supply from licensee towards disputed period be obtained from consumer and on its basis refund is to be worked out.

Claim for the Interest on refund :

48] After concluding the mode of the working out refund then interest claimed on it is to be dealt. In this matter consumer prayed for interest on refund amount hence first it is to be decided as to whether consumer is entitled to interest. If interest to be allowed then question will be at what rate and from which date.

49] Consumer prayed for awarding interest under Section 62 (6) of Electricity Act on the refund amount. On this count consumer relied on the judgment of Hon'ble Supreme Court dt. 20/04/2007 in M/s. N.T.P.C. Ltd. Vs M.P. State Electricity Board, & others (C.A. No. 2451/2007 & Four Others).

Further reliance is placed on the order of our High Court dt. 30/11 & 1/12/2009 in Writ Petition No. 5206 of 2008 MSEDCL Nagpur Vs Surya Laxmi Cotton Mills.

50] We find, awarding interest as laid down by Hon'ble Lordships of Supreme Court is to be followed and as per observations of our High Court, awarding interest is mandatory and it is to be paid as per bank rate.

51] Consumer's General Manager submitted in this matter interest be awarded as per the prime lending rate of State Bank of India. In this regard we find provisions of Banking Regulation Act 1949 more particularly Section 21 of it is of material importance. It speaks about the powers of Reserve Bank of India to prescribe rate of interest, towards controlling the credit policy. Such directions of RBI are having a binding force on all banking companies. As per Section 21(3) every banking company is bound by the Circulars and directions issued by RBI . In case of it's breach, powers are available to RBI to deal such situation. State Bank of India is also one of such bank to which the directions and circulars of RBI applicable. Accordingly, State Bank of India is also required to abide by RBI directives as applicable to other Schedule Banks including Nationalized Banks and SBI or Co-operative Banks. None of these banks can act in breach of aforesaid directives of RBI. Reserve Bank of India provides credit to these banks and charges interest. In turn these banks are engaged in advancing loan, charging interest more than what is charge by RBI. Which is generally termed as **'over bank rate' (OBR)**. Accordingly, 'bank rate' is a peculiar word attributed to the rate of interest RBI is charging, to banking companies. This aspect is precisely dealt in the book 'Tannan's Banking Law and Practice in India Volume I Treatise (21th edition 2005) published by Wadhwa & Co. Nagpur in Chapter 6 on page No. 165 & 166 it reads as under.

> *'1) **Bank Rate** - The Bank Rate is the rate of interest at which the RBI re-discounts the first class bills of exchange from commercial banks or other eligible paper. Whenever, the RBI wants to reduce credit, the bank rate is raised and whenever, volume of bank credit is to be expanded the bank rate is reduced. This is because by change in the bank rate, the RBI seeks to influence the cost of bank credit. In India bank rate has*

been changed frequently from 1951 onwards and today bank rate stand at 10%. However, the efficacy of bank rate depends on the extent of integration in the money market and also it depends upon how far the commercial bank resort to borrowing from the RBI.'

52] The aforesaid analysis clearly throws light on the terminology of Bank Rate. In Section 62(6) there is reference to 'bank rate' but there is no reference to any **prime lending rate of either State Bank of India of any other bank**. State Bank of India is having it's mode of charging interest which is not binding on any other bank. It binds State Bank and the concerned borrower entering in to the agreement for loan.

53] Heavy reliance is placed by consumer on the judgment of Appellate Tribunal for Electricity in Chhatisgad State Power Distribution Co. Ltd. Vs ISA Power Pvt. Ltd. in Appeal No. 47 of 2011 and I.A. No. 73 of 2011. In the said judgment in Para No. 3.9, Para No. 6 (V) Para 34 to 37 and Para 39(V) aspect is discussed pertaining to bank rate, in the light of Section 62(6) of Electricity Act and upheld the order of State Regulatory Commission awarding interest as per prima lending rate of State Bank of India.

54] In respect of said order of appellate authority it is seen that basically Chattisgarh Electricity Regulatory Commission passed order and awarded interest as per prime lending rate of State Bank of India and said order is confirmed in appeal. It is not clear on which ground CERC awarded interest as per prime lending rate of State Bank of India. Said order is passed in the particular matter considering the commercial aspect. However this forum is now required to consider payment of interest on refund of amount

which is received by licensee for 15 years, not appropriately applying the tariff i.e. mixed tariff. Considering this and keeping in mind that MERC already awarding interest as per bank rate of RBI in case of refund of security deposit etc. meaning of **bank rate** is to be inferred. While reading legal provisions we find a word carrying one meaning is to be preferred. If Bank rate of RBI is noted it will be applicable to all in the country. And will fulfill criteria of definite meaning. But if said word is considered with reference to prime lending rate of different banks then it will be uncertain and will be giving different meanings which is not useful for interpretations of legal provision. The proper interest rate to be applied in case of refund from Licensee to consumer will be the Bank Rate of RBI. It is just necessary to mention that it is not a transaction of advancing loans or earning profit. It is a case of service provider recovering amount more than the tariff order, which is not challenged immediately, as consumer was not aware but definitely it is not recovered by deceiving the consumer. Such amount lying with Licensee cannot be treated as a loan advanced for commercial purpose or it is a mode available to consumer to recover it treating as if consumer has advanced loan. In this light aforesaid analogy of applying prime lending rate of SBI cannot be applied. In this light, interest to be applied will be as per bank rate i.e. RBI rate. It is also noted that honorable MERC from time to time prescribed payment of interest as per bank rate i.e. RBI rate. Such reference is seen in tariff orders towards refund of security deposit. Even in above referred judgment of Bombay High Court in WP 5206/2008 decided on 30.11.2009 and 01.12.2009 refund is directed as per **bank rate** and not as per prime lending rate of State Bank of India or any other bank. Accordingly the order of Appellate Authority relied on by consumer will not be helpful to it. In result for the amount of refund consumer is entitle to interest as per the RBI bank rate.

55] Further question comes up from which date consumer is entitle to interest. Consumer claimed interest from the date of respective payments. It is a fact as per the bills issued consumer paid those bills. Without raising any dispute consumer continued it. Licensee also not perceived the flaw which continued.

Accordingly both sides were under wrong impression or were at a mistake. No sooner consumer perceived it approached licensee on 18.03.2013 and thereafter to IGRC on 16.11.2013. Accordingly the date when consumer claimed the amount approaching IGRC on 16.11.2013 is a date from which consumer will be entitled to interest as per the RBI bank rate.

56] In the above discussion at times terms are used such as section/parts / units and those are in reference to the supply provided to industry, commercial and residential those be read in that fashion.

In the light of above we find grievance of consumer is to be allowed.

57] This matter could not be decided within the prescribe time, as forum was required to here both sides in the light of litigation pending in High Court and other technicalities involved in it. We heard both sides on 16.05.2015 on the point of limitation and thereafter till 27.05.2015 we heard them on other technical aspects.

Dated: 30/05/2015.

I agree

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

(Sadashiv S. Deshmukh)
Chairperson
CGRF, Kalyan

Per Executive Engineer – cum- Member Secretary : -

I, Respectfully disagree with the above conclusion for the reasons stated below…

a) It is not understood why the consumer/ his representative not approached / communicated to then MSEB officials for issue of bill including R/C/I categorization after receipt of bill in June/ July 1999 without such categorization?

I do not mean from the above lines that it was the responsibility of the consumer . But, it was simply possible then during 1999, i.e. before 16 years, to sort-out such very peculiar dispute which does not fall under regular billing dispute nature.

As per 15.2.2 of MERC rules & regulation laid down in the supply code – "The Distribution Licenses shall, upon request by the consumer, explain the detailed basis of computation of the consumer's Bill".

Such computation/proper categorization according to then circumstances was quite possible as also the readings of HT consumers were jointly taken by filling MR- 9 & MR- 10 forms separately.

b) It is not coming before forum the then circumstances such as connectivity of CPP Generation to common Bus bar or directly to the consumer's R or C type of load .

Also, the reason for discontinuing such categorization from June 1999 is not coming before forum from either or side, i.e. neither from licensee or from consumer's side. If the forum is yet in darkness about the exact reason, it will not be justified to lead for taking the decision & allowing the application of consumer for giving effect of R/C/I categorization from June - 1999.

c) On above grounds, the further order for giving effect of CPP generated units to higher tariff category & MSEDCL unit to lower tariff category against prevailing approved R/C/I tariff for HT consumers is also not justified.

Hence overall, the Application/ Grievance should be rejected.

(Chandrashekhar U. Patil)
Executive Engineer – cum- Member Secretary,
CGRF, Kalyan Zone.

Order by majority

Grievance of consumer is hereby allowed.

Licensee directed to rework out the position of liability/refund for a disputed period from June 1999 to Nov 2009 applying mixed tariff to the consumer. Licensee to allow during said reworking out the claim, any benefit arising out of refund of amount, on account of DPC, prompt discount and interest charged due to late payment.

Licensee to collect from consumer the bills etc. issued for 12 months prior to June 1999 and work out the average consumption for the residential and commercial use. Said average be treated as a consumption for those two parts during disputed period and rest of the portion be shown towards industrial consumption. The Supply available from licensee and supply from CPP be clubbed and out of it quantum of CPP production be shown towards the unit to which higher tariff is applicable and balance of it, be shown to other two units attracting lower tariffs respectively and for balance supply of licensee, tariff be applied showing it to other units for which supply from CPP is not there or to the extent of such short fall is there. Consumer to make available within 15 days from the date of this order, to the licensee the required material and data as stated above pertaining to period of 12 months prior to June 1999 and bills during disputed period, with the data of CPP production during disputed period. Accordingly licensee to work out the position and refund it to the consumer with interest as per RBI bank rate from 16.11.2013 i.e. from the date of approaching IGRC till to the date of payment. Said refund amount with interest amount be adjusted in the ensuing bills.

Licensee to submit compliance within 30 days after adjusting the amount in the ensuing bills.

Date : 30.05.2015

I agree

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

(Sadashiv S. Deshmukh)
Chairperson
CGRF, Kalyan

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 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"

c) 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.