



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO. K/ E/191/215 OF 2009-2010 OF
M/S. NIRMALA H. KOTHARI, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Nirmala H. Kothari
Gala No.13, Bldg. No.8
Agarwal Udyog Nagar, Waliv
Vasai (E), Dist.Thane 401 208

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Vasai Road (East) Sub-Dn.
Vasai, Dist.: Thane.

(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance

Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

- 2) The consumer is a L.T.-V above 20 KW consumer of the licensee with C. D. 54 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 27.02.2009 for Excessive Energy Bill. The details are as follows: -
Name of the consumer :- M/s. Nirmala H.Kothari
Address: - As given in the title
Consumer No : - 001840872153
Reason of dispute: Excessive Energy Bill.
- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/184 dated 27/02/2009 to Nodal Officer of licensee. The licensee filed reply vide letter No. DYEE/VSI/(E)/B/2284, dated 20/03/2009.
- 4) The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL, Vasai Division, on 20/12/08. The said Internal Redressal Cell given hearing date as 18.3.09 after registering his grievance in the CGRF, hence the consumer did not attend the IGRC hearing. The IGRC did not decide the grievance made by the consumer within 60 days & therefore, the Consumer has registered the present grievance before this forum on 27/02/2009.
- 5). The Members of the Forum heard both the parties on 20/03/2009 @ 16.00 Hrs. in the meeting hall of the Forum’s office. Shri Harshad Sheth,

representative of the consumer & Shri D.V.Mehatre, Dy.E.E.,& Shri S.B. Hatkar, Asstt.Acctt., representatives of the licensee attended hearing. Minutes of the hearing are recorded and same are kept in the record. Submissions made by each party in respect of each grievance shall be referred while deciding each of the grievances to avoid repetition.

6). The consumer has raised the following grievances in its letter dated 20/12/08 sent to the concerned Executive Engineer and of which copy the consumer has attached with the grievance made before this forum, and in the rejoinder dated 20/03/09, and considering the reply dtd 20/3/09 with CPL filed by the licensee, and submissions made by the parties, record produced by the parties, the finding or resolutions on each of such grievance is given against it, for the given reasons.

7). **As to grievance No.(a) to (f) - Refund of excess amount recovered by applying MD based tariff, PF penalty etc.** - The Consumer Representative (CR) submits that the licensee has charged MD based tariff to the consumer without 100% metering and its such action is illegal. He relies on zerox copy of operative order dtd.20.6.08 of MERC in case No.72 of 2007, MSEDCL circular No.81 dt.7.7.08 in support of his such contention. He further submit that as per order dated 12.9.08 of MERC in case 44 of 2008, the licensee can not impose MD based fixed charges, PF penalty and demand penalty/incentive without MD based tariff being made applicable to the concerned consumer but in the instant case, the licensee has applied the above charges or penalties without MD based tariff being applicable to it and hence such action of licensee is illegal. He further submit that thus the licensee has violated the Act, rules and orders of MERC and hence is liable for action under section 142 and 146 of the

Electricity Act 2003. He further submits that therefore the licensee be directed to refund the amounts of such illegally recovered charges together with interest at the rate which it applies to the defaulting consumer.

-As against above contention, the LR submits that the licensee has applied MD based tariff from Aug.08 on completion of 100% TOD metering and as per directives given in Clause 10.5 of Com. Circular No.81 dt.7.7.08. He therefore submits that whatever charges based on MD based tariff, are recovered by the licensee from the consumer are correct and legal and therefore the question of refunding the same to the consumer does not arise.

8). (View of Mrs. V. V. Kelkar, Member) As per licensee's reply on the subject referring circular No.81, clause No.10.5, they stated that the "the MD based tariff is applied to consumer from Aug.08." Clause No.10.5 is as follows:

"MSEDCL is thus allowed to charge MD based tariff immediately on completion of 100% metering. All Zonal Chief Engineers to immediately inform the IT centre under their jurisdiction about such completion and may also send certificate immediately to that effect to Chief Engineer (Dist).

The clause clearly states that after completion of the 100% metering the Zonal Chief Engineers are required to immediately inform IT centres under their jurisdiction about such completion for the change in charges of MD based tariff.

The licensee did not submit any letter / reply regarding above subject till to-day. Under the above circumstances I come to the conclusion that as the licensee is not able to substantiate this statement of 100% metering completion of their area, I also have a meter replacement report

submitted by the licensee in another similar case No.K/E/177/201 M/s. Maharashtra Pencil Factory, which indicates that the Electro Mechanical meter was replaced by static meter (Secure make) on 05/02/09. The date of replacement of meter is much later as compared to the period of grievance, in the present case. This confirms that the licensee has not installed the meter 100% (As per circular dated 5.2.09). Therefore the work is not yet completed and hence they can not charge MD tariff to the consumer from 05.07.08 to 05.08.08. The excess amount charged under this tariff from the consumer should be adjusted in the bills, with interest @ RBI Bank rate at rate prevailing at the date of decision of the forum.

9). As far as the grievance of consumer to the effect that the Licensee has recovered electric charges as per M. D. based tariff for the month of August 08 illegally is concerned Shri Shivdas, Member Secretary, differed from the above view taken by Sau. V. V. Kelkar, Member and therefore, the view taken and the reasons given by him for such view are separated recorded as under.

10). Para 47 of the Operative Order dt. 20/06/2008 of MERC in Case No. 72/2007, on the basis of which the licensee/MSEDCL issued Commercial Circular No. 81, dt. 07/07/08, reads as under

“47. In line with Commission’s ruling in the MYT order, since MSEDCL is yet to achieve 100% MD metering for LTV industrial consumers above 20 KW (around 97% completion has indicated by MSEDCL till date), the MD tariffs for LTV industrial consumers will not be made effective. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs, though the revenue has been assessed based on MD based tariffs”.

It is clear from the above order that while passing the said order or giving the said directions, MERC relied on the report about completion of 97% given by MSEDCL/licensee, without insisting for proof about it. It is clear from Clause No. 10.5 in commercial circular No. 81, dt. 07/07/2008 issued by the MSEDCL/licensee, reproduced in above para 18 (i) that in view of the above referred order in para 47 of order dt. 20/06/2008 of MERC in case No. 72/2007, the MSEDCL/licensee issued directives to all Zonal Engineers to immediately inform IT centres under their jurisdiction about such completion and further directed that they may also send a certificate immediately to that effect to Chief Engineer (Dist). The MSEDCL/licensee through Dy. Executive Engineer, MSEDCL Vasai Road (E) S/Dn. vide say cum letter dt. 9/2/2009, claims that on completion of 100% TOD metering and as per the directives given in circular No. 81, clause No. 10.5, the MD based tariff is applied to the consumer from August 2008. Moreover, the licensee in its circular No. PR-3/Tariff, dt. 05/02/2009 clearly stated that the MSEDCL has completed the 100% work of installation of TOD meters to LTV industries having load more than 20 KW. MSEDCL is a public institute and therefore, the same or its officers have no personal interest to falsely say that 100% TOD metering was completed and therefore MD based tariff is applied to the concerned consumers i.e. LTV Industries above 20 KW consumers. Under such circumstances, in my opinion, it would not be proper to insist for filing of documents about 100% completion of TOD metering. Therefore I accept the contention of MSEDCL that 100% TOD metering was completed by the end of July 2008.

- 11). It is clear from the provisions of 3.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & other conditions of Supply) Regulations, 2005 that MSEDCL/licensee can recover charges for the electricity supplied as per the tariffs fixed by the Commissioner (MERC) from time to time. It is clear from the order dated 20/06/2008, passed by MERC in case No. 72 of 2007 that the Commission (MERC) fixed tariffs for LT-V industries above 20 KW consumers on HP basis as well as on MD TOD basis with a direction that the TOD tariff shall be applicable after installation of MD meters. It is true that as per para 47 in the said order, the Commission (MERC) at that time allowed the licensee to charge as per earlier HP based tariffs but it was because at that time the licensee reported that the work of MD metering was completed to the extent of 97% only. It is further made clear in the said para 47 of the said order that till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs. Moreover, the fact that the Commission (MERC) in the said order also fixed & finalized the MD tariff or TOD tariff clearly show that the licensee was permitted to charge electricity charges as per the MD metering or TOD metering immediately after completion of 100% work of installation of MD meters, as clearly stated in the Commercial circular No. 81, dt. 07/07/2008 by the licensee. In view of this, and since in my opinion the licensee has already completed 100% installation of MD meters as discussed above, in my opinion the licensee has correctly charged the electricity charges to the consumer as per MD tariff and therefore, such charging cannot be said to be illegal as alleged by the consumer. Moreover in my opinion, the consumer should have approached the Commission (MERC) for his such grievance instead of this

forum, as the Commission (MERC) is the Competent Authority to decide as to whether the licensee has applied the tariff correctly. For all above reasons, the consumer is not entitled for refund of or adjustment of any amount on such count. Hence I hold accordingly.

- 12). Clause 8.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum) & Electricity Ombudsman) Regulations 2006, reads as under :

"On completion of proceedings conducted under Regulation 6, except where the forum consist of a single member, the forum shall take a decision by majority of votes of the members of the forum & in the even of equality of voles, the Chairperson shall have the second & casting vote."

It is clear from the above clause 8.1 of the Regulations 2006 that the Chairperson has been given a second or casting vote, in case of equality of votes, & it clearly means such equality of votes is meant to be equality of the votes of other two members.

- 13). In the instant case, there has been difference of opinion or view amongst two members, & therefore, Shri M. N. Patale, as a chairperson will have to give the second or casting vote & the view out of the different views taken by two members, seconded by Shri M. N. Patale Chairperson will become the view of the majority & hence such view will be the decision of the forum.

- 14). Shri M.N. Patale, after giving due consideration to the different views expressed by two members as above, approves or supports the view taken by Shri R. v. Shivdas to the effect that considering the tariff order issued by the Commission (MERC) & circular No. 81 issued by the licensee, read with the circular dated

05/02/2009 referred & other facts discussed by him it is clear that the licensee has completed 100% installations of meters & therefore correctly recovered the electric charges as per MD tariff or TOD tariff from the consumer & therefore the consumer is not entitled for any refund or adjustment of any amount on such ground.

15). As to grievance (g) – Bill adjustment charges:

The consumer claims that the licensee has added the debit bill adjustment charges of various amounts such as Rs.2445.70, Rs.807.44, and Rs.2170.28 in the bills for the billing periods Mar 07, Jul.07 and Aug.07 respectively. The licensee should justify such adjustments and refund, if the same are not justified. The licensee has claimed that the above mentioned debit adjustments are of current bill adjustment, TOSE @ of 4 np p/u for Dece.05 to Feb.06 and TOSE @ of 4 NP p/u for Mar 06 to Sept.06 respectively. The CR has relied upon the order dated 24th May 2005 passed by MERC in case No. 28 of 2004 in support of his contention that the licensee has earlier refunded the TOSE charged for the above referred periods as per the above referred order, but has again charged the same as above without any further order of MERC about it. The licensee has not filed any such order of MERC passed after the above order which enabled it recharge the TOSE. The licensee has also not given details of the first amount. Therefore, the licensee is directed to give explanation in writing giving details about the first amount & as to how it has recharged TOSE as claimed particularly in reference to the order dated 24/05/2005 passed by MERC in case No. 28 of 2004, to the consumer within a period of 30 days & on failure to do so, or in case of unsatisfactory explanation,

refund the excess amount if any, recovered as above, by giving it's credit to the consumer in the ensuing bill after 30 days.

- 16). As to grievance (h) – regarding Security Deposit". The consumer claims that the consumer has paid Earnest Deposit Rs. 11,700/- and Rs.19500/- i.e. total Rs.31,200/- at the time of taking new connection in Sept.05, but the bills were showing Deposit as Nil. Further the consumer paid SD of Rs.62400/- in Aug.07.The said amount is displayed on the bill. The licensee should verify the total amount of SD and should give credit of compound interest on it, to the consumer. The consumer also claims refund of excess SD. As against this, the licensee claims that the connection has been given to the consumer on 28.9.05. The SD paid at the time of connection was not displayed on bill. The interest will be paid as per rules. Considering the average bill, the balance amount will be refunded for which the consumer should produce original receipts. Considering the above contentions of the parties, the licensee is directed to verify the correct amounts of SD from time to time from its record and the record with consumer, display the correct amounts of SD, calculate the proper SD at this stage & refund the excess amount of SD & the interest at Bank rate of RBI on such amounts of SD at the prevailing rate, by giving it's credit to the consumer, in the ensuing bill after a period 60 days.
- 17). **As to grievance (i) – Refund of MD based fix charges from Oct.06 to Mar.07:** The consumer has claimed refund of an amount of Rs.11584.13 on this count as the tariff charges of the relevant period were reverted back to the HP based tariff from MD based fix charges, due to non completion of installation of MD meters in entire Maharashtra. The licensee claims that it has refunded of such difference in the month of Jan.07 and May 07. The

licensee, however, did not give details of such refunded amount and the way in which the said amount was refunded. Therefore the licensee is directed to give detailed calculations of the amount of such refund, the exact amount and the way in which it was refunded, and refund the balance amount, if any, together with interest at the Bank rate of RBI, by giving its credit to the consumer in the ensuing bill after a period of 60 days.

- 18). **As to grievance (j) - Refund of ASC :** The consumer submits that the connection is released on 28.9.05 so ASC should be calculated as per MSEDCL circular No. 62 dt. 10.9.07. However, the licensee has recovered excess ASC for Oct. 06, Nov. 06, March 07 & from May 07 to April 08 & therefore, the consumer is entitle for refund of Rs. 56,351/- on this count. The consumer further claims that since the electric supply is given to the consumer in Sept. 05, the licensee should treat it as new consumer & the licensee has recovered excess ASC due to it's failure to do so. It is clear from clause 6 (iii) (i) of the MSEDCL's commercial circular No. 62, dt. 10th Sept. 07 that the method of calculating the ASC given in the sub clauses 2 & 3 in the said clause 6 (iii) (i) is to be applied for calculating the ASC for all new consumers who have become MSEDCL's consumers at any time after 1st January 2005. Therefore, since this consumer has become consumer of MSEDCL on 28/09/2005, the above referred method will have to be followed for calculating ASC to be charged to it. The consumer complaints that the licensee did not follow the above referred method for calculating the ASC for it during the above referred period & it resulted excess recovery from it. Therefore, the licensee is directed to recalculate the ASC for the consumer for the period Oct. 06, Nov. 06, March 07 & from May 07 to April 08, & refund in case some excess amount is earlier recovered

together with interest at the Bank rate of RBI, by giving it's credit to the consumer in the ensuing bill after a period of 60 days.

- 19). As to grievances of (k) – Incremental ASC charges.:- The consumer claims that the licensee should refund incremental ASC for following period as per MERC order in case No.45 dt.17.9.08.

Jan.07 - 932.65

Feb.07- 656.04

Mar 07 – 399.96 and

Apr 07, 556.05

Against this, the LR submits that matter is being confirmed from IT.

The licensee is directed to verify incremental ASC charges recovered from the consumer and refund the same as per MERC order No.45 dt.17.9.08, if not refunded earlier, alongwith interest at the Bank rate of RBI by giving its credit to the consumer in the ensuing bill after completion of 30 days from the date of this decision.

- 20). **As to grievance (l) - Refund of capacitor penalty:-** The consumer claims refund of capacitor penalty for the period Sept.06 to Mar 07 total Rs. 22,485.09 (the detail statement enclosed with the grievance) as per MERC's order dated 14.7.05 in case No.2 and the order of Ombudsman in representation 39 of 2006. Against this, the LR submits that matter is being confirmed from IT. The licensee is directed to inform the consumer about the total amount charged as capacitor penalty during the period from Sept.06 to Mar 07, refund if any, give details of the same to the consumer in writing, within 30 days, and if not already given such refund or excess amount, if any, refund the same, as per MERC's order dated 14.7.05 in

case No.2 and the order of Ombudsman in representation 39 of 2006, by giving its credit to the consumer in ensuing bill after period of 30 days.

- 21). As to rejoinder dt. 20.03.09 submitted by the consumer, the consumer submits that MSEDCL has collected meter cost of Rs.33,000/- instead of Rs.16,500/-, as displayed in the Bill of Sept.07. So the excess amount collected Rs.16,500/- should be refunded to the consumer with interest. The Licensee has not given any reply to the rejoinder dated 20.3.09 to the consumer or to the forum till to day.

Therefore the licensee is directed to verify the exact cost of the meter which could be recovered from the consumer & in case any excess amount is recovered, as the cost of meter, refund the same together with interest at the Bank rate of RBI by giving it's credit to the consumer in the ensuing bill after a period of 30 days.

- 22). As per rejoinder dt. 20.03.09 submitted by the consumer, the consumer claims that in the month of Jan.07 bill, the licensee has shown tariff credit of Rs.2560.10 but actual credit given is Rs.1941=50. So difference of Rs. 618.60 should be refunded with interest. The Licensee has not given any reply to the rejoinder dated 20.3.09 to the consumer or to the forum till today. Therefore the licensee is directed to verify the exact credit given to the consumer in the month of Jan.07 and refund the difference, if any, alongwith interest at bank rate of RBI to the consumer by giving its credit to the consumer in ensuing bill after period of 30 days.

- 23). The consumer in it's rejoinder dated 20/03/09 also claimed that the consumer is entitle for refund of excess ASC, excess electricity duty recovered by the licensee from it together with interest, as mentioned in the chart annexed to the rejoinder. The licensee has not filed any reply to the

said rejoinder till today. Therefore, the licensee is directed to verify about the correctness of the ASC & electricity duty charged by it to the consumer during the period Oct. 06, Nov. 06, March 07 & from May 07 to April 08, & in case it is found that some excess amount has been recovered from the consumer, refund it together with interest at Bank rate of RBI, by giving it's credit to the consumer in the ensuing bill after a period of 30 days.

- 24). There has been no. of holidays and consequently less working days during last month. There has also been sudden increase in registration of grievances by the consumers before this forum since last two months, as result of which this forum is forced to hear arguments in two cases on every day and also to decide such a cases at the same rate. Therefore, there has been some delay in deciding this case.
- 25). After hearing both the parties, studying all available documents submitted by licensee as well as consumer & considering the majority view on the point of charging as per M. D. Based tariff, and unanimous decision on other points as above, the forum passes the following order.

ORDER

- 1) Prayer of consumer for the refund of the amount of electric charges recovered by licensee as per MD based tariff or TOD based tariff is rejected.
- 2) Licensee should follow the directions given in above para numbers 15 to 23.
- 3) The consumer's claim for an amount of Rs. 5000/- towards the compensation is hereby rejected.

- 4) The Compliance should be reported to the forum within 90 days from the date of this decision.
- 5) The Consumer can file representation against this decision to the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”*

Representation can be filed within 60 days from the date of this order.

- 6) Consumer can approach Maharashtra Electricity Regulatory Commission on the following address :

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

for compliance in case of non-compliance, part compliance or delay in compliance of this decision passed under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003”, under Section 142 of the Electricity Act 2003.

Date : 04/05/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan