



Consumer Grievance Redressal Forum, Kalyan Zone

Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. KE/863/1057 of 2015-16

Date of Grievance : 18/04/2015

Date of order : 06/10/2015

Total days : 172

IN THE MATTER CASE OF GRIEVANCE NO. K/E/863/1057 OF 2015-16 IN RESPECT OF M/S. BMS INDUSTRIES PLOT NO. M6, ADDL.MIDC,KUDAVLI TAL. MURBAD, DIST. THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF ELECTRICITY DUTY IN REF. TO PREVIOUS ORDER K/E/721/851 DTD 31/7/2013.

M/s. B.M.S.Industries ,

Plot No. M 6, Addl. MIDC,

Kudavli,

Murbad-421 401

(Consumer No. **018019019787**)

..... (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited

through its Nodal Officer,

MSEDCL, Kalyan Circle-II, Kalyan

..... (Hereinafter referred as Licensee)

Appearance : - For Licensee : Shri Khanande-EE-cum -Nodal Officer

Mrs. P.B.Kale-ASst. Accountant, KC-II

For Consumer-Consumer's Representative, Shri B.R.Mantri

(Per C.U.Patil-Executive Engineer – cum- Member Secretary

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e.

“Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. Hereinafter referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

Consumer M/s. BMS Industries located at Kudavli, Murbad is HT consumer bearing consumer No. **018019019787**.

The grievance of the consumer is having it’s old reference of CGRF order dated 31/7/2013 in case No. K/E/721/851 of 2013-14. The consumer approached now to CGRF for implementation of the said order in which Licensee was directed to refund the additional tax (electricity duty) collected from the consumer for the period prior to 1/2/2010. Also guidelines were given in this order for working out appropriate refund amount considering the amount worked out by the consumer as per his statement. The order also includes with the instructions to the Licensee for refund of due amount after verification with interest as per the bank rate from 14/2/2013, i.e. from the date of demand of the consumer vide letter dated 12/2/2013, written to the Superintending Engineer. The Licensee was further directed to work out dues for it’s payment within 45 days and

compliance was asked within 60 days from the date of receipt of the order dated 31/7/2013.

Now, consumer approached with his grievance to this Forum on 18/4/2015. Grievance was allotted registration No. K/E/863/1057 dated 18/4/2015. The hearing was scheduled on 5/5/2015 at 13:00 hours and letter No.098 dated 22/4/2015 was delivered to the Nodal Officer of KC-II accordingly for attending the hearing.

The Licensee attended the hearing with their submission vide letter No. SE/KC-II/HTD/1752 dated 2/5/2015. As per the submission, the Licensee contended that the Forum has no jurisdiction to entertain the representation for non compliance of it's own order. They further argued that the proper Forum for entertaining the complaint strictly falls within the perview of Section 142 and 146 of the Electricity Act. The Licensee also submits that the Forum can entertain under Regulation 8.7 of the CGRF Regulation 2006, only the orders passed by CGRF which are not properly implemented or the order of CGRF requires further clarificatory of the order or requiring it to examine whether any part has complied within it's order. It further contended that therefore, applicant cannot claim relief as it is sought in his prayer as it comes purely under perview of section 146.

Hearing was adjourned to 16/5/2015 and further to 30/6/2015.

Meanwhile Licensee vide it's letter 1846 dated 13/5/2015 submitted their contention that the issue of refund of electricity duty is involved in the Writ petition No.6332/2013 of M/s. Balbir Alloys and WP No.26072/2013 of M/s. Technocraft , in which Hon'ble High Court has granted the conditional stay to the order of this Forum. The copy of WP No.6332/2013 is enclosed by them. In the submission they further clarified that due to heavy load, Hon'ble High Court did not grant the circulation in

WP No.1139 of 2013 in case of BMS Industries. The Licensee requested to grant some short time for seeking relief from the Hon'ble High Court in the captioned matter of M/s. BMS Industries.

Licensee also contended that as nobody appeared on behalf of the complainant, Hon'ble High Court has been pleased to keep the matter on 29/6/2015. Therefore, they prayed for the adjournment till that day.

On 30/6/2015 the Licensee again requested to grant some more time as the matter before the Hon'ble High Court was yet to be heard.

Accordingly the matter was adjourned to 17/7/15 on which Licensee submitted the status of the writ petition vide letter no.2853 dated 17/7/15 and stated that as the representatives from the consumer's side were not present on the date of hearing inspite of service of notice dated 24/4/15 for appearance before the Hon'ble High Court, the said matter is accordingly to be listed in coming week. The Forum considering their prayer kept for hearing on 11/8/15.

On 11/8/15 the Licensee submitted that hearing before the Hon'ble High court scheduled on 20/8/15 and requested to grant some short adjournment. Considering the prayer, the hearing was adjourned to 24/8/15.

On 24/8/15 the Licensee attended with their submission vide letter No.3350 dated 21/8/15 and again requested for some short adjournment. The copy of writ petition No.11139 /2013 in the case of M/s BMS Industries was enclosed by the Licensee. The Forum observed that the petition is including prayer of Licensee "that pending hearing and final disposal of the petition in the impugned common order dated 31/7/15 passed by CGRF, Kalyan Zone in grievance No. K/E/721/851 may please be set aside. Ad-interim and interim reliefs in terms of prayer was granted".

From the consumer's side, CR contended that CGRF Kalyan Zone has passed the order in the year 2013, but till the date MSEDCL has not complied the same. We have approached the CGRF for non compliance of their order in the month of April-2015. Last two years MSEDCL has informed the Forum that they are challenging the CGRF's order and High Court, but till the date MSEDCL **has not available to the such stay from Hon'ble High Court**. CR submitted the MERC order in case No.154/2014 dated 19/12/2014 and argued the some guidelines given by Hon'ble MERC included in Para 9 of the said order which is read as below :

“9. Without going into the merits of its Order dated 18 February, 2014, the Commission notes that the CGRF had directed compliance by 5 March, 2014 and its reporting by 20 March, 2014. MSEDCL has admittedly not done so. Instead, more than two months after SAPSS approached the Commission and five months after the CGRF Order, MSEDCL filed a Writ Petition before the Bombay High Court. The High Court has not stayed that Order, and the Writ Petition is still at pre-admission stage. (The website indicates the next hearing date as 22 December, 2014.) MSEDCL was bound in law to implement the CGRF Order within the stipulated period. No harm would have been done had MSEDCL done so pending the filing of the case in the High Court or its outcome. Considering that a stream of such cases continues to be received, the Commission has had to direct MSEDCL, in a recent Order, to undertake regular reviews of compliance of the Ombudsman's and CGRF's directions”.

CR requested not to consider any request from MSEDCL, as in last hearings the CGRF has given sufficient time to MSEDCL to submit the Stay order before 22/8/15 and requested to pass the order.

The Forum also considered the Commission's order dated 16/7/15 in case No.183/14, wherein in Para 29, the Commission laid down

that **“it is a standard principle that unless there is specific stay from the Higher Court and the implementation of an order cannot be avoided”**.

In the present case, Licensee has approached to Hon’ble High Court, but failed to seek stay from the Hon’ble High Court (in Writ Petition No.11139/2013).

The directions given by the Hon’ble Commission in the said order dated 19/12/2014 (Case No.154/2014) as mentioned in above para, the matter is very clear that MSEDCL is bound to implement the CGRF’s order within stipulated period, if the Hon’ble High Court has not stayed any such particular order.

The consumer’s second prayer to get the compensation of Rs.2000/- for non compliance of CGRF’s order and mental harassment.

It is observed by the Forum that in the matter, the writ petition was filed by the Licensee on 6th September 2013, i.e. after placing of CGRF order dated 31/7/2013. In WP No.11139 of 2013, the Licensee has prayed to the Hon’ble High Court for ad-interim stay to the Forum’s order. However, it is also noticed that till April 2015, no any positive approach or efforts have been taken from MSEDCL’s side. Licensee also submitted that the process fee was not paid as per schedule and hence it delayed in listing of the case before the Hon’ble High Court, which shows a casual approach of Licensee towards either for seeking stay or for implementation of the order of CGRF.

On the above aspect, it is very difficult to keep aside the consumer’s prayer for getting compensation towards non compliance.

The consumer claimed for the compensation towards non execution of Forum’s order dated 31/7/2013. The fact cannot be ignored. The Forum vide Clause 8)e) laid down in the MERC Regulation 2006 can pass any other order deemed appropriate in the facts and circumstances of

the case. Accordingly Forum finds it fit to consider the compensation of Rs.1000/- to be given to the consumer towards delaying execution of the order.

This matter could not be decided within time as Licensee was to provide the details sought from time to time, those were provided on 24/8/2015 and their submissions are heard on that day and clarification taken on 28/9/2015.

Hence the order.

ORDER

The Licensee has not complied the Forum's order dated 31/7/2015 passed in Grievance No. K/E/721/851 of 2013-14. The amount claimed by the consumer for refund of electricity duty collected from 14/1/2010 to 31/1/2010 is Rs.41,162,64 Ps. The Licensee is directed to refund this amount with interest as per Bank Rate from the date of 14/2/2013, till the repayment of the amount.

The Licensee is also directed to pay Rs.1000/- (Rs. One Thousand only) to the consumer towards compensation for delay in execution of the original order.

The order should be complied within 15 days positively and the compliance should be submitted accordingly.

Date: 06/10/2015.

I agree

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

**(Chandrashekhar U.Patil)
Chairperson-cum- Member Secretary
CGRF,Kalyan**

**** (In the sitting of Forum, the Chairperson is not available. As per MERC Regulations (2006), Clause 4, the technical member shall be the Chairperson of such sitting in which Chairperson is not available and hence in the present case, the technical member performed the role of Chairperson of the Forum).**

NOTE

a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51”.

b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

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

d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.