



Consumer Grievance Redressal Forum, Kalyan Zone
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Grievance Nos.K/Others/003/1003 &
K/E/827/1004 OF 2014-15

Date of Grievance : 01/11/2014
Date of Order : 20/02/2015
Period Taken : 112 days

**COMMON ORDER IN THE MATTERS OF GRIEVANCE NO.
K/OTHERS/003/1003 & K/E/827/1004 OF 2014-15 IN RESPECT OF M/S.
CENTURY RAYON, MURBAD ROAD, SHAHAD, DIST.THANE,PIN CODE NO. 421
103 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN REGARDING REFUND OF METERING COST AND
FUND OF 2% VOLTAGE SURCHARGE LEVIED IN ENERGY BILL FROM
MARCH 2010 TO OCTOBER 2012.**

M/s. Century Rayon,
Murbad Road, Shahad,
Dist. Thane,
Pin Code-421 103.
(Consumer No.020169009679)

(Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through it's
Executive Engineer, Kalyan Circle-I
Kalyan

(Hereinafter referred as Licencee)

Appearance : - For Licensee Shri Lahamge, Exe. Engineer
Shri A.M. Kale, Dy. Exe.Engineer
Shri Bharambe, Dy. Engineer
For Consumer: Consumer's Representative, Shri Ajit Patil
Dy. General Manager

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

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'.

2] Present consumer is having industrial supply of Licencee from 1/6/1983 bearing consumer No. 020169009679. The Consumer is billed as per said tariff till March 2010, which is paid. Consumer registered grievance No. 1003 and 1004 with the Forum on 1/11/2014 for refund of metering cost and excess amount charged from April 2010 to October 2012 towards 2% voltage surcharge respectively. As parties are same and consumer sought reliefs in these two grievances pertaining to the same consumer number, hence these are being decided by this common order.

3] On receiving these grievances, the papers containing above grievances were sent by this Forum along with accompaniments vide letters No. EE/CGRF/Kalyan/0384 and 0386 respectively dated 1/11/2014 to Nodal Officer of Licensee. The Licensee appeared and filed reply in both matters on 27/11/2014.

4] We have gone through the documents and paper placed along with the grievance and reply. We heard Consumer's Dy. General Manager Shri Ajit Patil and the Officers of Licensee. It is necessary to mention that matter was dealt from time to time and Licensee was to place material in the light of the calculation submitted by consumer as directed by the Forum, about the refund quantum. Said details are provided by Licensee on 22/1/2015 and on that day arguments are concluded. However, while preparing the final order it was found necessary to have clarifications from both sides, hence, today i.e. on 20/2/2015 Shri Ajit Patil for consumer and Shri Kale Dy. Executive Engineer were called and position got cleared.

5] Matter is too short and simple. It is a fact that present Consumer is having a supply on **Dedicated Express Feeder** and that additional load was sought by the Consumer on 26/4/2011 by filing application. Additional load was sanctioned on 6/5/2011. In the sanction order there was a condition that consumer was to install the meters at its own cost and even condition was put on the consumer to pay 2% additional voltage surcharge. Consumer as per the sanction order submitted affidavit/agreement on the stamp of Rs.200/- on 10th May 2011 thereafter supply was released. Meter was installed by consumer at its own costs in October 2012. As per the condition mentioned in the sanction order from November 2012 consumer is charged for the consumption shown highest out of the two meters installed at the receiving end and sub-station end for which there is no dispute. But dispute is for the period prior to November 2012 i.e. from April 2010 to October 2012.

6] Consumer approached Licensee, in respect of refund of metering cost, writing letters on 26/10/2012 and 15/7/2014. As those were not considered, consumer approached IGRC on 22/8/2014. IGRC not decided the said complaint, hence, on that count consumer approached this Forum on 1/11/2014 vide grievance No. 1003.

In respect of seeking refund of 2% voltage surcharge , recovered from April 2010 to October 2012, with interest as per RBI Bank Rate, consumer approached the Officers of Licensee by writing letter from 22/8/2012, Licencee considered request of consumer 2% refund and from June 2011 to October 2012, sanctioned refund on 3/5/2013 to the extent of 1.26% and 0.74% not refunded. It is claimed that said .74% is towards the energy loss sustained in the process from June 2011 to November 2012 which is worked out on the basis of supply noted from November 2012 onwards. It is a fact that there is no clarification or reference why the refund not allowed from April 2010 till May 2011.

Consumer is seeking the total refund of 2% surcharge recovered from April 2010 to October 2012 minus the refund amount which is already allowed by the Licencee. Even the Consumer addressed further letters dated 2/4/2014 and 15/7/2014 to Licencee. Consumer approached IGRC on 21/8/2014 and IGRC not passed any order. Hence consumer approached this Forum on 1/11/2014 vide Grievance No.1004.

7] There is no dispute about the fact that Consumer is having Industrial connection from 1983 . In the year 2011, the Consumer sought additional load which was sanctioned and **as per the terms of sanction order, dated 6/5/2011, the Consumer was to give an undertaking on the stamp paper of Rs.200/- agreeing to the terms in the sanction letter, including payment of additional 2% extra units on the energy units consumed and towards bearing metering cost.** Accordingly, such undertaking and agreement is submitted by the Consumer on 9th May 2011.

In the light of above these two claims are to be decided one by one.

I] Refund of 2% surcharge recovered in Grievance No. 1004:-

8] In tune with the aforesaid sanction order and undertaking given, supply was released and Consumer was charged additional 2% extra units on

the energy units consumed which is paid by the Consumer from time to time. Such surcharge is recovered not only after sanction of additional load but even it is recovered from April 2010. However, the said condition imposed in the sanction letter was specific. But now it is claimed by the Consumer that on the date of said sanction order, there was no any order from MERC or provision in Law for charging such surcharge. Even MERC in Case No.71/2009 vide order dated 5/3/2010 **directed for levying 2% surcharge from the date of order only on the consumer having supply on non express feeder.** It is claimed by consumer that it is having supply on express feeder and hence there is no question of charging additional surcharge. Though, Licensee approached MERC , filing case No. 71/2009 and was charging some consumers 2% surcharge from 2009 and for some from the date of order i.e. from 5/3/2010. It is claimed that **present consumer is charged additional 2% from April 2010 though it is not applicable to it as it is having supply on express feeder.** This precisely is the dispute towards which Consumer claimed that said additional surcharges recovered be refunded with interest as per RBI Bank Rate.

We tried to find out, whether there was any order of MERC for imposing such additional surcharge to consumer having supply on express feeder, on the date of sanctioning of additional load or obtaining the undertaking pertaining to this consumer. It is clarified that even prior to the year 2009, Licensee moved petitions before the Hon'ble MERC for such relief of charging additional surcharge, however, for the first time order came to be passed, in Case No.71/2009 on 5/3/2010 and that it was an interim order, allowing Licensee to collect 2% additional surcharge, as against the demand for 15% but it was not applicable to the Consumers on Dedicated Express Feeders.

9] It is the contention of the officers of the Licensee that in this matter when additional load was released, prior to it, as per the sanction order,

the Consumer has given an undertaking that 2% surcharge and metering cost will be borne by it which cannot be now denied. This aspect is heavily relied on by the officers of the Licensee.

As against it, consumer claimed that conditions in the sanction order are not in tune with the orders of MERC, those are in breach of MERC order, hence, the undertaking given, as per said sanction, order cannot be read and enforced against the consumer.

No doubt, clause is in the sanction order and undertaking dated 9/5/2011 supports Licencee. But question comes up whether there was any provision available, for levying such surcharge and directing consumer to bear metering cost, in the MERC Order / in the SOP? Order of MERC towards surcharge is admittedly effective from 05/03/2010. Prior to it there was no any such provisions of surcharge. The order of Hon'ble Ombudsman, Mumbai dated 30/3/2010 in Representation No.28/2010, M/s. Bhagwandas Ispat Ltd. v/s Maharashtra State Electricity Distribution Co.Ltd. is helpful at this stage, to some extent on the aspect of securing undertaking. The Hon'ble Ombudsman in para Nos.11 and 14 elaborated the position which reads as under:-

'11] Records also show that the Respondent had submitted petition to the Commission vide its letter dated 11th November, 2009, proposing levy of voltage surcharge to consumers who have been supplied power at lower voltage than the voltage, prescribed in the Standard of Performance Regulations. There was no approval from the commission to its proposal when the grievance application was before the Forum for consideration. The Forum, in this background, held that there was nothing wrong in recovery of charges for 2% extra units because, the Appellant had so agreed. However, nothing authorizes the Respondent to levy and recover charges which are not provided for, in the tariff. Moreover, release of power at lower voltage than prescribed in the Standards of Performance Regulation is also not permissible, unless it is specifically approved by the Authority. There is nothing on record to show that approval of the Authority you obtained to do so. In view of this, it has to be concluded that the Respondent's action of releasing power at lower voltage and obtaining undertaking to pay for extra units is not in consonance with the Regulations. Consequently, recovery of any charge, which is not provided for in

the tariff in the above manner, can, in no way be justified, and is not in accordance with the Regulations.’

14. *Close look at the above, would reveal that the Commission has now approved the respondent MSEDCL’s request for levy of surcharge for supply of power to the consumers at voltages lower than that specified in the SOP Regulations. But, it is expressly clarified that this voltage surcharge shall apply from the date of issue of the order (i.e. 5th March, 2010) till such time, as the commission issues further order. It is now evident that the Commission's permission / approval to levy of voltage surcharge has a prospective effect from 5th March, 2010. It will be thus incorrect to recovery any charges prior to the date of Commission’s approval. As observed earlier, the Respondent had no authority to recovery charges for 2% extra units, until the Commission’s order, as it was not provided in the tariff. Such recovery is not in keeping with the provisions of the tariff and therefore illegal*’

We find that the aforesaid observations are applicable to the present case, to the extent of, not to take any support of undertaking given by Consumer when load was increased and conditions were imposed for paying 2% surcharge and even for bearing metering cost. This clause itself was not in consonance with the MERC Order / SOP hence this stand of Licencee found not correct.

As contended by the Consumer there was no authority to Licencee, for levying the additional charges and those additional charges are not supported with the order of MERC hence required to be refunded. Recovery of 2% additional surcharge from 5/3/2010 is not permissible as it is not applicable to the Consumers who are having supply on Dedicated Express Feeder.

On behalf of Licensee, Officers relied on Para Nos. 3,4 & 5 of the reply to grievance application No.1004.

..... ’3] *The consumer has applied for 6500 KVA additional load making total contract demand 17000 KVA and according the same was sanctioned vide letter No. Co. Ord. Cell/Century Rayon/14605 date 06/05/2011. The load sanction given to the Consumer on 22 KV voltage*

level i.e. lower voltage level than the prescribed voltage level as per Standard of Performance.

The sanction to this case was given “As a Special case” by the competent authority on certain conditions which were mentioned in the sanction letter. As per the condition no.b. “two Apex meters should be provided one at EHV S/S , and other at consumer end on the consumer’s cost”. The consumer has given acceptance to this condition on Rs.200/- bond paper.

As per the conditions of the sanction letter the consumer has installed meter at substation end.

4] The energy meter at substation end was installed in the month of October 2012, accordingly energy bills were raised by comparing substation end consumption and consumer end meter consumption from the month of November 2012. 24 hours

5] The consumer has applied for refund of voltage surcharge to this Office on date 26/10/2012, accordingly the application of consumer was forwarded to the Head Office vide T O L No. SE/KCK-I/Tech/HT/4649 dated 27/11/2012. The Competent Authority has accorded approval for refund to consumer on the basis of consumption recorded at both the ends after installation of the meter in October 2012 and on prorata basis for the period June 2011 to October 2012. The line loss observed on the feeders was 0.7429%, deducting the loss from 2% voltage surcharge, refund of 1.26 % for the period June 2011 to October 2012 was given to the consumer.....

Even technical constraints faced are stated by Licencee in reply referring to the letter issued to the Competent Authority on 26/4/2011.

On the basis of the above plea, Officers of Licencee contended that instead of 2% refund only 1.26% only refund of surcharge is allowed and .74% is retained which is justified.

It is contended on behalf of consumer that though undertaking is obtained on 10/5/2011, in pursuance of sanction order, it being on express feeder, the recovery and demand towards additional charges not allowed by the MERC in the above said order i.e.71/2009. Accordingly, it is submitted

that recovery of surcharge by Licencee at the said rate from April 2010 to October 2012 is not legal and permissible.

10] In respect of 2% surcharge imposed and recovered, it is just necessary at this stage to consider the orders of the Hon'ble MERC and subsequent developments thereto which occurred as Petitions filed by other Consumers and said order challenged by the Licensee before the Appellate Forum which is already rejected. Those details are as under:

a) The aspect of permitting levy of surcharge and its recovery for the first time sought by the Licensee approaching the MERC filing case no.71 of 2009; it was presented on 13/11/2009; therein 15% additional surcharge was prayed for in prayer no.(1) of the Petition. Prayer no.(4) was seeking interim relief of levy of 2% additional voltage surcharge till approval of 15% voltage surcharge sought. The said Petition was dealt by the Hon'ble MERC and it granted interim relief allowing 2% additional surcharge only for those Consumers connected on Non Express Feeder and said order is passed on 5/3/2010.

b] After the aforesaid order in case no. 71 of 2009 dated 5/3/2010, the Hon'ble Commission while dealing Licensee's matter for APR-2009-2010 and tariff for 2010-2011 in case no.111 of 2009, which is decided on 12/9/2010, referred to the order passed on 5/3/2010 and made it clear by way of clarification that 2% additional surcharge is not applicable to Consumers connected on Express Feeder. But in case of supply available on Express Feeder, the tariff should be charged on the basis of consumption recorded by meters installed at the source of Supply (EVH level) or at the Consumer's end (premises), whichever is higher without any levy of voltage surcharge.

c] As noted above order in case no. 71 of 2009 was further clarified vide case no. 111 of 2009. Thereafter it is further clarified in case no. 52 of 2010 filed by M/s. R.L.Steel & Energy Ltd. v/s MSEDCL, The said case no. 52 of 2010 is decided on 9/11/2010. In the said clarificatory order, the Hon'ble MERC dealt the dispute even raised for circular issued by Chief. Engineer, i.e. Circular No.112 dated 15/4/2010 and ultimately clarified the order, stating that the voltage surcharge shall apply, from the date of order passed by the MERC i.e. from 5/3/2010 till such time as the Commission issues further order. It is clarified that the first order dated 5/3/2010 is not retrospective. Accordingly it clearly

lays down that the order dated 5/3/2010 is an interim order, permits the Licensee to recover 2% surcharge only on the supply available from Non Express Feeder. In other words, it is not applicable to supply available from Express Feeder.

d] The petition filed by M/s. R.L. Steel & Energy Ltd., i.e. case no.51 of 2010 though decided, position was made clear, the Consumer was not able to get the refund of the amount recovered towards 2% surcharge. It approached the Hon'ble MERC by filing case no. 31 of 2011 seeking action against MSEDCL towards non compliance of Commission's directions, regarding levy of voltage surcharge, passed on 9/11/2010. Said matter is decided on 2/6/2011 and in the said order the Hon'ble Commission, reiterated the clarification already given and directed the Licensee to refund to the said Company about amount recovered on the basis of 2% voltage surcharge, as directed; and further liberty is given if there is non compliance, the said company can file appropriate application seeking penal action against the Licensee.

e] After passing the order in case no.31 of 2011,dated 2/6/2011, the Licensee filed case no. 95 of 2011 seeking stay to the said order The said stay application rejected on 23/8/2011 by the Hon'ble Commission.

f] As the stay application sought vide case no. 95 of 2011 was rejected on 23/8/2011, the Licensee approached the Appellate Tribunal for Electricity vide Appeal No.109/2011 and the said appeal is dealt by the Appellate Tribunal on 23/8/2011. Ultimately the Appellate Tribunal passed the order, that the said Appeal filed is not maintainable and further observed that implementation of the order in case no. 31 of 2011 dated 9/11/2010 passed by the Hon'ble MERC cannot be challenged.

Accordingly the aforesaid chronology clearly speaks, about the manner in which, interim order is passed by the Hon'ble MERC, towards levy and recovery of 2% surcharge only on the supply available to consumer on Non Express Feeder from 5/3/2010, and supply on Express Feeder Consumer is to be charged as per tariff on the basis of highest reading available amongst the meter at the Sub Station level or at the Consumer's level. As noted above, it is also a fact that almost all claims of the Licensee challenging the disputed aspect, till 23/8/2011 is dealt. No doubt, the initial order passed in case no.71

of 2009 dated 5/3/2010 is of an interim nature and already while passing the order in aforesaid case no.31 of 2011 in para no. 6 the Hon'ble Commission observed as under:-

“... During the hearing, the Commission observed that the order dated 5/3/2010 I case no. 71 of 2009 regarding the levy of voltage surcharge grant only interim relief. But no final order has been passed, accordingly, the commission also directed MSEDCL to expedite its technical studies to determine the actual levy of voltage surcharge...”

The aforesaid sequence is once again serially recorded in the order by the Appellate Authority in Appeal No.109 of 2011 referred above in paragraphs nos. 17 to 20.

In the recent order passed by our Hon'ble High Court in Writ Petition No. 109365/2013 dated 24/1/2014 in the case MSEDCL V/s. M/s. Balbir Alloys Pvt. Ltd. & Anr, the legal position about 2% surcharge not applicable to consumer's on express feeder is upheld. Said matter was taken by the present Licencee to the Hon'ble High Court against the order passed by this Forum in Case No. K/E/713/843 dated 29/7/2013. Accordingly, this position is even settled by the Hon'ble High Court.

Even refund of 2% is principally acted upon the Licencee and out of it 1.74% of surcharge recovered is refunded for limited period.

11] In view of the above discussion and order passed by Hon'ble MERC, position is clear that there was no any provision for applying and recovery of 2% surcharge to any consumer prior to 5/3/2010. Secondly from 5/3/2010 there is no provision for charging 2% surcharge when Consumer is having supply through a express feeder. Hence claim of Consumer for refund of 2% surcharge which Licensee applied from April 2010 to October 2012 required to be allowed as Consumer had supply from dedicated feeder.

Accordingly allowing additional 2% extra units on the energy units consumed by consumer on non express feeder is an interim order which is existing till finalization.

In the light of above, the claims of the Consumer are to be allowed. Consumer is entitled to refund of 2% additional voltage surcharge recovered from April 2010 till October 2012. Said amount is to be refunded with interest as per RBI bank rate u/s. 62 of Electricity Act from the date of said respective, surcharge per month recovered till it is paid. As Licencee claim that from June 2011 to October 2012 refund is allowed @ 1.26 % said quantum if already paid it be deducted while arriving at the refund amount from April 2010 to October 2012.

12] In this matter during hearing we perceived that calculation of refund towards 2% additional surcharge not crystallized by the consumer or by the Licencee, hence we directed consumer to provide the precise calculation of 2% surcharge paid from April 2010 to October 2012 and interest on it as per Bank Rate. Further consumer was asked to clarify how much amount is paid by Licencee quantifying the refund @ 1.76% and whether interest is paid towards it. Licencee was also directed to clarify it. Consumer accordingly, placed on record the calculation sheet and provided copy of it to the Licencee on 29/11/2014. As per said calculation 2% surcharge towards refund is as under:-

a] The due amount from March 2010 to May 2011 is quantified to the tune of Rs. 12,007872, interest @ 9% up to November 2014 Rs.4,413474/ total Rs.16421345/-

b] Further due amount from June 2011 to October 2012 is of Rs.27,199,310/-. Interest on it @ 9% till November 2014 Rs.6854851, total Rs. 34054162/-. Towards it amount refunded in May 2013 to July 2013 is of

Rs.18,488,892 with interest on it at 9% up to November 2014 is of Rs.2,49,60,13/- and it's total Rs.20,98,49,95/- and total of this two period is of Rs. 29,49,05,12. Accordingly recoverable amount is quantified. Balance recoverable for said period is shown as Rs. 87,10,32,8/- and interest Rs.43,58,839/- and total Rs.1,30,69,167/-.

The total of above two period i.e. a + b is of Rs.16,42,13,45 + Rs.13,06,91,67 = Rs. 29,49,05,12/-. Accordingly recoverable amount is quantified by consumer.

----- Licencee was provided with these details of due amount, as claimed by consumer and was asked to verify the calculation of amount worked out by consumer, to the extent of it's correctness and submit it's calculation without prejudice to it's submissions/rights.

As directed by this Forum on behalf of Licencee without admitting the claim of consumer, verified calculations in the light of consumer's calculations placed on record of refund figure. It is worked out to the tune of Rs.2,38,74,110.98 Ps. as against claim of consumer for Rs.2,40,56,141.01 Ps. However, in the statement dated 29/11/2014 submitted by consumer of amount to be received by way of refund is Rs.2,94,90,512/-. Accordingly, there is difference in the amount i.e. Rs.2,94,49,512 – Rs. 2,38,74,111/-. On behalf of Licencee attempt is done to explain this difference, pointing out that in every previous current bills, **load incentive and bulk discount** given, however, for considering 2% refund of surcharge amount, proportionate load incentive and bulk discount given is required to be reduced. Bank rate is noted and in the figures worked out by consumer it is treated as 9% per annum, however, Bank rate was not consistent during the period but it was varying. Accordingly taking into account, these aspects figures are worked out hence there is difference. Accordingly, this explanation towards difference

when pointed out to consumer's Dy. Manager Shri Ajit Patil, he submitted that whatever is legal be considered and claim be allowed.

The above figure worked out by the Licencee is without prejudice to the contentions already raised. It is already concluded above by us that consumer is entitled to refund of 2% surcharge recovered. Calculations of consumer and Licencee though not tallying, the reason is apparent which is quoted by Officers of Licencee. While calculating the due amount consumer has not considered the discount, already allowed on two counts and it is added while calculating the refund. Even bank rate is not considered which changed from time to time. But in fact refund is to be worked out keeping in mind, bank rate and those discounts are to be ratably reduced, deducting the 2% surcharge and thereby discount already given to that extent is to be recovered by way of adjustment which is pointed out by Licencee. We find the explanation given by Officers of Licencee about difference in the quantum is to be accepted. Accordingly considering almost all aspects due amount to be refunded, is, now quantified to the tune of Rs. 2,38,74,111/-. Said quantum is to be allowed by way of refund. In this quantum interest is calculated up to the month of November 2014 on quantum of Rs.1,69,92,886/- and consumer is entitled to interest on said amount as per Bank Rate from December 2014 till amount is paid by the Licencee.

III] Refund of metering cost grievance No.1003:-

In the light of above, it is clear that MERC while allowing 2% additional surcharge to be recovered from consumer on Non Express Feeder, further considered the position of one consumer on express feeder and directed that such consumer is not to be charged with additional 2% surcharge but, he be charged, considering the highest reading available out of two meters installed at the sub-station end or in the premises of consumer i.e. receiving end. It is clarified in the order of MERC in Case No.31/2011, M/s. R.L. Steel

and Energy Ltd. V/s. MSEDCL, passed on 2/6/2011, the responsibility of fixing meters of same accuracy, at both sides in case of Express Feeder, is, with the Licensee.

We find that there cannot be any dispute that as per the order of MERC, responsibility is cast on the Licensee for installing meters at it's cost at both ends in case of supply available on express feeder. In this matter as per sanction order consumer was directed to bear the expenses towards metering cost and accordingly, as it was urgent, consumer has spent for said metering cost and it was installed in October 2012. From that date, as per the above order of MERC consumer is billed, considering the highest units recorded on one of those two meters. But question is of imposing condition of giving undertaking by consumer about installing the meter at it's cost. It is not permissible as per the order of MERC and in the light of above quoted extract from order of Hon'ble Ombudsman in **Bhagwandas Ispat** i.e. Representation No.28/2010 dated 30/3/2010.

Secondly in the reply by Licencee to grievance 1004 on this aspect it is stated as under in Para No.6:-

‘.....The meters required to be installed at sub-station end or ‘Apex’ i.e. special type (To accommodate measuring of consumption of multiple feeders) and not readily available with MSEDCL. Hence, it was not possible to install the meters before releasing of additional load.....’

Accordingly meter was not available readily with Licencee, is, clarified and hence consumer was made to provide it. This particular aspect specified in sanction order and Licencee sought it's compliance, Licencee claims that it is on consent of consumer. Question is whether consumer can be forced or can be asked to do what he is not supposed to do, as per requirements

of Law, Regulation or Order of MERC. MERC clearly laid down that generally meter cost is to be borne by the Licencee in MERC case No.70/2005 dated 8/9/2006. Even order of MERC pertaining to metering cost etc. clarified in case No.148/2011 speaks itself. We noticed apt observations are there in the orders of Hon'ble Ombudsman in Representation No.46/2008 in Paragraphs No.24,25 and 29 and in MERC Case No. 148/2011 in the last part of para No.7. These observations we brought to the notice of both sides during the hearing on 28/10/2014. For ready reference, those paragraphs are reproduced as under.

Representation No. 46/2008 decided on 27/8/2008. Para No.

'24': It is the Respondent's order dated 7/10/2006 that led to Appellant's letter dated 15/10/2006 informing the Respondent that it would be purchasing the cubical and hence the charges are not payable. The Forum while examining the issue has accepted the Respondent's contention that the appellant had indeed consented to purchase the cubical and therefore the cost of such purchase cannot be refunded to the appellant. On the other hand, the appellant contends that Respondent never sought its consent to purchase the cubical and never offered to provide it free of cost as required under the 'schedule of charges'. Instead Respondent vide its sanction order dated 7/10/2006 directed the Appellant to procure the metering cubical which is contrary to the 'schedule charges' approved by Commission. Had the Respondent advised the Appellant that as per the schedule charges, metering cubical would be provided by the Respondent at its cost, there was no question of voluntarily agreeing to buy the cubical from market. The Respondent was duty bound to correctly advise the Appellant in consonance with provisions of Law and more particularly according to the schedule of charges approved by the Commission. Therefore, Appellant's letter dated 15th October, 2006 which came as a sequel of Respondent's direction in the load sanction order, cannot be treated as his consent to buy the cubical from the market.

'25': Close perusal of Annexure-3 and more specifically the quote in the bracket above serial No.6, leaves no doubt in concluding that cost of metering cabinet as well as cost of HT metering cubical with C.T. & P.T. (mentioned at Sr.No.7) apply only in case where consumer opts to purchase the same from Maharashtra State Electricity Distribution Co. Ltd. In all other cases, the Maharashtra state Electricity Distribution Co. Ltd. is duty bound to provide the cubical with C.T.T & P.T. unit at its own cost. No other conclusion emerges from other position. Respondent's officials argued about the lack of clear mention in Annexure -3, requiring the Distribution Licencee to provide metering cubical at its own cost. Having understood clearly that the meter includes not only bare kWh / kVA meter or TOD meter but also include cubical including C.T. & P.T. unit, this position being undisputed under the Law (The Act and Regulations), it is hollow and in vain to argue that there is lack of clarity in the Annexure-3 of the 'schedule of charges' in this behalf. The cost approved and provided for the metering cubical applied only in case the consumer opts to purchase

the

cubical from MSEDCL alone and in no other case. Respondent's argument does not have any merit whatsoever and deserves to be brushed aside out right. ----

'29': Nevertheless, whatever may be the cost approved by the commission for HT metering cubical, the same does not apply to the Appellant in the present case, as he has not volunteered for consented to buy the cubical. Records show that it was at the instance of Respondent, more specifically the direction issued under the load sanction order of 7th October 2006, that the Appellant wrote a letter on 15th October, 2006 agreeing to buy the cubical. It had also pointed out to the Respondent that charges communicated by the Respondent in its load sanction order dated 7th October 2006 were not confirming with the 'schedule of charges' approved by the commission. Thus it cannot be treated as consent from the Appellant. In effect, by Load Sanction Order of 7th October 2006, the Respondent sought to enforce something which was legally invalid in the sense that it was made in a manner which was not confirming with the provision prescribed by the statute ('schedule of charges.'). In the result, assuming but without holding that the appellant had consented to buy the cubical, obtaining such consent, not conformity with the law, would be impermissible to be enforced. Secondly, the Respondent was duty bound to communicate to the Appellant that it would provide the metering cubical with C.T. & P.T., at its own cost as provided in the schedule of charges approved by the commission, and to clearly advise the Appellant to decide whether he still wants to buy the same from MSEDCL or from open market. Had the Appellant then volunteered to buy it from MSEDCL, then Respondent was required to charge and recovered Rs.67,958/- towards costs of metering cubical including 11kV C.T. & P.T. Alternatively, had the Appellant opted to buy it from the market, then there is no question of any cost to be communicated since it would have been Appellant's option and price he pays in the market.----

MERC Case No.148/2011-decided on 5/1/2012, Last Part of Para 7 (b)----

*'Commercial circular No.43, dated 27/9/2006 specifically mentions that MSEDCL shall not recover any cost towards meter and meter box except where the consumer opts to purchase meter from MSEDCL or in case of lost and burnt meter. However, in some cases meter and cubical cost might have been recovered unintentionally during the intervening period. Circular No.34307 dated 3/9/2007 has specifically been circulated to refund the cost of meter in such case and it has been directed therein not to recover meter cost on any pretext. **However, in some cases stock of meters and meter cubicles is not readily available in the store and the consumer is in hurry to get the connection. In such cases, he/she is allowed to purchase meter/cubical from outside, the cost of which is refunded afterwards as per local arrangements.** -----' (Emphasis provided).*

13] In the light of above, metering cost is to be borne by the Licensee and the so called sanction order, conditions therein about agreement/undertaking to be given cannot be read, so as to override the

orders of Hon'ble MERC. It is not possible to read, as claimed by Licencee that consumer had voluntarily agreed to install meters at its cost. Under such circumstances, we find metering cost needs to be refunded in the light of aforesaid discussion consider the order of MERC in Case No.70/2005.

14] In this matter about apex meter position is clear. As noted above, it is the sole responsibility of Licencee to provide it and install it as it is going to charge consumer, taking into account the highest reading available in one of the meter. It is not the general case of only one meter.

15] Even it is clear that this consumer is not seeking cost of both meters but only of Apex meter and expenses done for other items and installation. Licencee has given estimate for the said work for Rs. 11,42,921.60 Ps. However, in the said estimate Apex meter, Aluminum Palm Connector, Epoxy coating, copper cable for cubical, PVC cable at sub-station are not included and estimated cost not given. Consumer adding these items carried out the total work and quantified the expenses incurred to the tune of Rs. 48,85,493/- as shown in the bill summary, on page -11 filed with the grievance application. This quantum of expenses is against the estimate of Rs.11,42,921.60 Ps.

We on noticing this difference, sought Work Completion Report (WCR) from the Licencee. Accordingly, it was placed before us, but in the said WCR actual expenses incurred by consumer are not reflected. Simply, estimate figures are cut and pasted on the other side showing expenses of consumer. Hence further, we directed the Licencee, noting the fact that all receipts towards expenses are available with the Licencee, those actual figures be noted and those be shown in the chart keeping intact their WCR. Accordingly, they have placed it before the Forum and it is appended at the end with this order in a separate sheet as Appendix "A".

In the chart Appendix "A" Licencee specifically marked expenditure items shown by consumer in the first part, Sr. No. 2 to 6, stating that those are not acceptable, expenses are high as compared to estimate. In the same fashion, in the second part shown as a part "A" , objected for the expenses Sr. Nos. 1 to 5.

In this regard, it is clear that though, Licencee was supposed to carry out the work, but it directed consumer to do it and on completion of it WCR is prepared which is not correct. Even the estimate given is not complete for all items. It is not disputed that items used by consumer as stated in its details are necessary, but quantum of expenses are challenged.

We find at least to the extent of quantum which Licencee estimated cannot be disputed and those items are to be straight way allowed. In estimate item No.1 cable quantum is shown as 300 but actually used quantum is of 418, hence said quantum is to be allowed calculating the expenditure as per the estimated rate. In addition the items which are not shown in the estimate are to be considered. In that respect, towards Apex meter expenses are shown by consumer to the tune of Rs.19,20,360/-. However, there is no estimate given but Officer of Licencee during the course of arguments, pointed out that order of MERC dated 16/8/2012 in case No.19/2012, Page No. 258 wherein before MERC, there was a grievance about, not appropriately considering the cost of Apex meter. There was a grievance that Licencee is not appropriately considering and charging for Apex TOD meters. Two instances were quoted and rate therein dealt was of Rs.17,24,250/-. No doubt those meters were supplied by M/s. Signet Pvt. Ltd. Actually said Signet provided meter manufactured by M/s. Secure Meter Ltd. Accordingly, price limit is now canvassed by Officers of Licencee to the tune of Rs.17,24,250/-adopting the view of Hon'ble MERC.

On the other hand, in this matter the Apex meter purchased by consumer, is from Signet Products Pvt. Ltd. of Secure make and it's net cost is shown as Rs.19,20,360/-. Accordingly on the basis of above, we find that towards Apex meter amount of Rs.17,24,250/- is to be allowed. Further expenses for aluminum palm connector Rs.44,400/- and for copper cable for cubical Rs.27,935/-, PVC cable at substation Rs.49,715/- are to be allowed. Towards G I Strip (25 x 3mm , 201 kg), amount of Rs.11,467.05 Ps. is to be allowed and this is as against the claim of consumer for Rs.4,18,650/- (which even includes HT earthing set 12 costing about Rs. 3,422.52 Ps.).

16] In this matter as noted above there is a vast difference between the estimated cost wherever it is given and the actual cost incurred. Further in case of items towards which estimate is not given , those expenses are termed as of higher rate. Considering the expenses towards Apex meter as dealt by MERC, it is to be dealt making it limited to Rs.17,24,250/-. Similarly, in respect of Epox coating, item No.12 it is found to be an optional exercise, its estimation is not given, consumer spent for it and as it is optional that claim is not allowed. All others items for which estimates not given are allowed as those were necessary and amount spent. Sundry Expenses 5% are necessarily included in the estimates of expenses taking into account various Sundry items required which may not be possible to be enlisted in the estimate and same is to be allowed. Even 10% labour charges are also to be allowed on the aforesaid expenses keeping in tune with the principle followed in the estimated cost. Accordingly, following is the précised chart with remarks about the payment to be allowed to be refunded to the consumer.

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Sr. No.	Particulars	Amount
1	22 KV XLPE Cable 3Cx400 sqmm 418 meter	589480.32
2	HT Earthing Set	3422.52
3	22 KV Termination Joint (OD) for 3C x 400 Sqmm	196240
4	HT Metering cubicle	260000
5	Foundation for cubicle	20000
6	Excavation and cable laying	72000
7	Red Bricks	4400
8	RCC half Round pipe	10320
9	Danger Board	88
	PART A Items not covered in estimate As per Estimate	
10	Apex Meter	1724250
11	Aluminum Palm Connector	44400
12	Epoxy Coating	Not allowed.
13	Copper cable for cubicle	27935
14	PVC Cable at S/Stn	49715
15	GI Strip 25 x 3 201 Kg. --- ----- TOTAL	11467 3013717.89
16	Sundry Charges 5% (of the above total)	150685.90
	Cost of material (Total of above 1 to 16)	3164403.78
17	Labour charges 10% Total (Round of figure)	316440.37 3480844.16 3480845.00

REMARKS

a] In above Sr. No.1 estimate was only for 300 meters but actually of 418 meter was required and it is used. Hence as per estimation claim is to be allowed applying the rate quoted by Licencee in the estimate i.e Rs.1410.24 x 418 = Rs. 11,467.05.

b] In above Sr. No.10, Apex meter cost is shown in the chart by Licencee quoted by consumer as Rs.1920360/-, actually Licencee not given estimate of it, but relying on MERC Tariff Order 19/2012, it is made limited to Rs.17,24,250/-.

c] In respect of Sr. No.12 Epox Coating consumer spent Rs.54000/-, but Licencee claimed that such coating was not necessary, it was optional. Hence no any amount is allowed towards it.

d] In respect of Sr. No.16, Sundry charges 5% are generally allowed towards item No. 1 to 15 and hence same needs to be retained and total of 1 to 15 is of Rs.30,13,718.89 Ps. and its 5% comes to Rs.1,50,685.90 Ps.

e] In respect of Sr. No.17, labour charges 10% are usually worked out in the estimate by the Licencee. Hence same needs to be retained and on the total of Sr. Nos. 1 to 16, 10% figure is worked out which comes to Rs. 3,16,440.37 Ps.

17] Admittedly towards installing Apex meter ,estimate was given and consumer was required to pay an amount of Rs. 14,860/- as supervision charges @ 1.3% of estimate. As said payment was not necessary in view of aforesaid discussion, hence, it is also to be refunded by the Licencee. Receipt of said payment dated 20/10/2012 is placed on record.

Accordingly, claim of consumer is to be allowed.

18] This matter could not be decided within time as Licencee was to provide the details sought from time to time, those were provided on 29/1/2015 and their submissions are heard on that day and clarification taken on 20/2/2015.

Hence the Order.

ORDER

a] The grievance Applications No.1003 & 1004 of the Consumer are hereby allowed.

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b] Amount recovered by the Licensee towards additional 2% extra units on the energy units consumed, be refunded to Consumer for the period from April 2010 to October 2012. Said amount is to be tune of Rs.2,38,74,101/-. In the said amount interest is calculated up to the month of November 2014 on quantum of Rs.1,69,92,886/-. Further Licencee to pay interest on Rs. 1,69,92,886/-, as per RBI Bank Rate from December 2014 till amount is paid by Licencee and it be adjusted in the ensuing bills of consumer.

Licensee to refund any amount due to this change towards delayed payment charges, and others, if any, collected from the Consumer from April 2010 to October 2012.

c] Compliance of this order be done within 45 days on receiving the Order and it's report be submitted to the Forum within 60 days from the date of receiving this Order

d] Further Licencee is directed to refund metering cost of Rs.34,80,845/- plus Rs.14,860/- towards 1.3% supervision charges recovered, to the consumer with interest as per RBI Bank Rate from the date of it's demand i.e. 26/10/2012 till it is paid. This amount be paid by issuing cheque within 90 days from the date of this order failing which said amount be adjusted in the ensuing bills.

e] This original order be kept in Grievance No. 1003 and copy of this order be kept in Grievance No. 1004 of 2014-15.

Date : 20/02/2015

I agree

I agree

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

(Chandrashekhar U.Patil)
Member Secretary
CGRF,Kalyan

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

Grievance No.K/Other/003/1003 & K/E/827/1004 of 2014-15
APPENDIX "A"

As per Estimate					As per WCR			As per Consumer		
Sr. No.	Particulars	Qty	Rate	Amount	Qty	Rate	Amount	Qty	Rate	Amount
1	22 KV XLPE Cable 3CX400 sqmm	300	1410.2	423072	300	1410.24	423072	418	1543.94	645366.92
2	H T Earthing Set	12	285.21	3422.52	12	285.21	3422.52	LS	418650	418650*
3	22 KV Termination Joint (OD) for 3CX400 sqmm	16	12265	196240	16	12265	196240	16	19450	311200*
4	H T Metering Cubicle	2	130000	260000	2	130000	260000	2	240000	480000*
5	Foundation for cubicle	2	10000	20000	2	10000	20000	LS	183465	183465*
6	Excavation and cable laying	240	300	72000	240	300	72000	LS	201450	201450*
7	Red Bricks	2000	2.2	4400	2000	2.2	4400	Sub Total		2240132
8	RCC Half Round Pipe	120	86	10320	120	86	10320	As per Part A		2108057.0
9	Danger Baord	2	44	88	2	44	88	Total		4348189.0
	Sundries 5%			49477.12						
	Cost of material			1039019.64						
	Labour Charges 10%			103901.96						
	Total			1142921.60				Diff		3205267.4

PART A Items not covered in estimate

As per Estimate				
Sr. No.	Particulars	Qty	Rate	Amount
1	Apex meter	1	2E+06	1920360*
2	Aluminum Palm connector	12	3700	44400*
3	Epoxy Coating	30	1800	54000*
4	Copper cable for cubicle	LS	27935	27935*
5	PVC Cable at S/Stn		49715	49715*
6	G I Strip 25X3 mm	201	57.05	11467.05
				2108057

*** Costs shown are very high and cannot be accepted**

The Grievance of the consumer is not acceptable, also costs shown as above marked * are at very high and cannot be accepted

