



Consumer Grievance Redressal Forum, Kalyan Zone
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No. K/E/834/1017 of 2014-15

Date of grievance : 12/12/2014

Date of Decision : 27/02/2015

Total days : 109

ORDER IN GRIEVANCE NO. K/E/834/1017/2014-15 IN RESPECT OF THE RUBY MILLS LTD., VILLAGE DHAMAN, SAVROL 1-KHARPADA ROAD, TAL. KHALAPUR, DIST. RAIGAD, MAHARASHTRA PIN 410 202 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING EXCESS BILL DUE TO WRONG METER REPLACEMENT REPORT.

The Ruby Mills Ltd.,
Village Dhaman, Savrol 1-
Kharpada Road,
Tal. Khalapur,
Dist. Raigad-
Maharashtra, Pin-410 202
(Consumer No._030909017951)

.... (Hereinafter referred as consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through it's
Nodal Officer, MSEDCL, Pen Circle

.... (Hereinafter referred as Licencee)

Appearance : - For Licensee: Shri Sanjay Dond- I/c Exe.Engineer
Shri Sayyed- Dy. Executive Engineer
For Consumer: Shri V.Y.Tahmane

(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

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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] Consumer is having HT supply from 1991 and charged as per HT-IC tariff. Initially consumer was having supply from Bombay Dyeing Feeder No.1 (BDI). Subsequently at its request shifted to other express feeder from 29/10/2004, which was commissioned in the year 2006. Thereafter on the said express feeder M/s. Navneetlal Pvt. Ltd. is added as consumer, that too with the consent of consumer and further supply was added to consumer's other unit which is at the distance of 4 to 5 k.ms. In respect of supply to this second unit, it is contended that Licencee not clarified to the consumer that by extending such supply to the said other unit at the distance of 4-5 k.ms. status of express feeder will go away. It is clear that second unit is not in a contiguous plot. Accordingly, though, consumer is having supply on express feeder with the consent of consumer, additions are given and accordingly, there are more than one connections on

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the said express feeder and one is on contiguous plot. Consumer sought enhancement of load vide application dated 29/10/2004 from 2500 KVA to 3750 KVA. Towards it, consumer paid 15% supervision charges to the extent of Rs.11,45,000/-as demanded, on 28/2/2005. It is claimed that said payment sought was after 20/1/2005 i.e. after SOP of 2005 was brought into force and that after the said payment work was to be completed within six months. Accordingly, said work completed and supply released after SOP 2005 came into force. Further consumer sought enhancement of power load from 3750 to 4250 KVA on 26/10/2006 and it is sanctioned on 6/6/2007. However, it is contended that when supply was enhanced to 3750 KV as per SOP of 2005, Licencee was required to give sanction for said enhancement on 33 KV level but sanction was given only on existing 22 KV and recovered from consumer voltage surcharge.

It is contended that as per order of Hon'ble MERC in 71/2009 dated 5/3/2010, surcharge was made applicable to the consumers on non express feeder (having supply for more than one consumer) and for the consumers on express feeder, there was no direction. Consumer had approached MERC by filing review petition No. 60/2010, but said petition was not allowed. However, direction was given to the Licencee to provide to the consumer, within one month the estimate towards EHV sub-station. It is contended that such estimate was not given though directed by MERC and supply given on 22 KV, continued and even voltage surcharge recovered. It is contended that as per the order of MERC giving supply on 22 KV level instead of required 33 KV level, was permissible in exceptional circumstances and as a temporary measure, but Licencee was to create infrastructure of 33 KV level. Licencee not provided such infrastructure, nor provided estimate as directed by MERC within one month and ultimately

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new SOP came in to force from 20/5/2014. As per new SOP consumer is not supposed to pay surcharges as limit of load utilization is raised up to 10000 KVA on 22 KV level. Accordingly, from 20/5/2014, consumer is not charged 2% surcharge. But for the previous period i.e. from 5/3/2010 to 19/5/2014, 2% surcharge is recovered and its refund is sought.

Consumer on this count approached to the IGRC on 22/7/2014 and IGRC decided it on 15/11/2014. IGRC rejected the application, observing that order of MERC in case No.71/2009 dated 5/3/2010 is not applicable to the consumer as consumer is having supply on express feeder on which there are more than one consumer.

3] Aggrieved by said order consumer approached this Forum on 12/12/2014, copy of grievance along with its accompaniments sent to the Nodal Officer vide Letter No.EE/CGRF, Kalyan/0437 dated 15/12/2015.

In response to it, Licencee appeared on 5/1/2015 and submitted reply dated 2/1/2015, even additional reply is submitted on 20/1/2015 therein maintained line of defence which was taken before IGRC. In short, supported the order of IGRC. Additional ground of bar of limitation is taken. It is also clarified that consumer is already provided with refund of voltage surcharge recovered pertaining to prior period as per the order passed by this Forum in Case No. K/E/295/325/2009 dated 7/10/2009.

4] We have heard this matter on three occasions, first on the initial date when reply was given by Licencee, thereafter when additional reply was given. Lastly we heard submissions on 23/2/2015 as CR sought to clarify the position and hence officer of Licencee was called and hearing given.

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5] On the basis of arguments advanced, factual aspects brought before us, following are the notable instances just to be borne in mind:-

a] Consumer is having supply on express feeder. In addition to consumer supply from said feeder with consent of consumer given to M/s. Navneetlal Pvt Ltd. in contiguous plot. Further supply given to its other unit at the distance of 4 to 5 k.ms. Accordingly consumer is having two units at Kharsundi and Dhamni.

b] Consumer from time to time sought addition of load and disputes starts from load addition sought vide application dated 29/10/2004, sanctioned on 17/1/2005 which was for enhancement from 2500 KVA to 3750 KVA . It is claimed that after SOP 2005,came into force **consumer was asked to pay the supervision charges vide letter dated 17/2/2005** which it paid thereafter on 28/2/2005 and then supply released, hence SOP of 2005, was applicable. It is claimed that as per said SOP, which came into force from 20/1/2005. load was required to be provided on 33 KV level. But as that facility was not available supply was continued on the old available level of 22 KV. Consumer further sought enhancement of sanction load from 3750 KVA to 4250 KVA on 26/10/2006 which was sanctioned on 6/6/2007 and it was also continued on 22 KV itself, though it was required to be given on 33 KV.

d] Hon'ble MERC for the first time allowed Licencee to collect voltage surcharge as per the order passed in case No. 71/2009 dated 5/3/2010. Said voltage surcharge was allowed to be recovered from the consumers having supply on non express feeder (more than one consumers) and it was not applicable to consumes on express feeder (having only one connection).

e] After the order of MERC, consumer has approached for review of the said order by filing case No. 60/2010 which was rejected on 13/12/2010 but direction was given to the Licencee to provide to the consumer estimates towards required EHV substation within one month and consumer was to consider the cost economics and to consider whether to have the EHV station or to pay surcharge. In the said order Hon'ble MERC reproduced its views from order in 71/2009 as to why 2% surcharge by way of interim relief is granted.

f] Consumer sought certificate from Licencee about existence of 33 KV level and certificate is issued on 3/5/2013, stating that in the jurisdiction of

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Khalapur Sub Divn, wherein unit of consumer is situating , such 33 KV level is not available.

g] Though order is passed by Hon'ble MERC in Case 71/2009, permitting Licencee to recover voltage surcharge as a interim relief and directed Licencee to provide technical details for finalizing new SOP and ultimately new SOP is brought in to force from 20/5/2014.

h] As per the new SOP of 2014, up to 10000 KVA load supply can be given from 22 KV level and accordingly as the supply of consumer is coming within this limit and thereafter not attracting any aspect of voltage surcharge from 20/5/2014 and accordingly after 20/5/2014 consumer is not charged.

i] Dispute now in this matter pertains to the period from order of MERC in 71/2009 i.e. from 5/3/2010 till new SOP came into force i.e. up to 19/5/2014. During this period consumer is charged 2% voltage surcharge, it is recovered and hence, consumer is seeking its refund on the ground that as per SOP 2005, it ought to have been provided supply on 33 KV but due to inability of Licencee supply continued on 22 KV and that Hon'ble MERC in the review order expressed view that inability of providing funds by Licencee or by consumer towards putting of EHV Station is no ground to give supply on a lower level and hence, though initial supply can be termed to be of exceptional nature for a temporary period but from 2005 to 2014, Licencee has not provided the required level and recovered from consumer voltage surcharge which is illegal and its refund is sought.

6] In this matter though bar of limitation was not a ground agitated before IGRC but in respect of aspect of limitation an unsuccessful attempt is made to contend that this grievance covers the period from March **2010** and hence, this Forum cannot deal the matter when cause of action is prior to two years. In this regard, it is seen that consumer had approached this Forum after approaching IGRC that too after the order of IGRC, within two years and as per the Regulations this Forum can admit such grievances if brought before the Forum within two years when order is passed by IGRC or is not passed by IGRC. Regulation Clause No.6.6 speaks about it. It is just necessary to mention that consumer can approach this Forum within two

years of cause of action, it may be even without approaching IGRC or within two years of the order of IGRC. There is a provision for approaching the Forum directly and in that case cause of action is to be considered, if it is within two years. But, if matter is coming after the decision of IGRC or when there is no order of IGRC within 60 days than it should be within two years of the date of order of IGRC or after 60 days of matter pending before IGRC. This legal position is totally clarified by our Hon'ble High Court in the case M/s. Hindustan Petroleum V/s. Mah. State Electricity Distribution Co. Ltd. in Writ Petition No.9455/2011 decided on 19/1/2012. In Para 13 Hon'ble Lordships made this position clear. Even we find, new SOP came into force on 20/5/2014 and this consumer paid 2% voltage surcharges up to 19/5/2014, hence straight way it cannot be said that the total claim is time barred. As observed by Their Lordships, there cannot be any bar of limitation. Hence we find no force in this argument.

7] Before proceeding with the disputed aspect, it is just necessary to consider the precise provision of SOP of the year 2005 and 2014. Relevant portions reproduced as under:-

-- *SOP of 2005, Clause No.*

“5.3, Except where otherwise previously approved by the Authority, the classification of installation shall be as follows;

-- [i] *AC system*

--- [e] *Three phase, 50 cycles, 33 KV – all installations with contract demand above 1500 KVA and up to 5000 KVA.*

SOP 2014:-

“5.3, Except where otherwise previously approved by the Authority, the classification of installation shall be as follows;

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--- [i] AC system

[iv] Three phase, 50 cycles, 22 KV – all installations with contract demand above the limit specified in Clause [ii] or Clause (iii) and up to 7500 KVA;

Provided that in Mumbai Metropolitan Region or in case of supply to an installation through an express feeder in other area, the contract demand limit would be 10000 KVA. “

After noting the aforesaid provisions of SOP, it is just necessary to take, brief account of order of Hon’ble MERC granting 2% surcharge wherein supply is given not as per the above SOP of 2005 but at the lower level. In this regard, it is seen from various orders more particularly MERC Case No.71/2009 decided on 5/3/2010, total history which led Licencee for approaching MERC for imposition of voltage surcharge noted. As per the contents of the said order and other orders passed by MERC and Hon’ble Ombudsman in this regard, it is disclosed that Licencee was charging consumers voltage surcharge but Writ Petition No.5206/2008 was filed in the Hon’ble High Court, by Licencee i.e. MSEDCL V/s. Surya Laxmi Cotton Mills. Said writ petition is decided on 1/12/2009 and both parties were directed to approach Hon’ble MERC as there was no any order permitting, charging and recovering voltage surcharge prior to it. In this light, Licencee approached MERC by filing Case No.71/2009. Said fact is noted by Hon’ble MERC while quoting the arguments of Licencee’s Officer in Para 8 of order. Accordingly, Hon’ble MERC decided the matter on 5/3/2010 and for the first time granted interim relief for levying voltage surcharge of 2%. The reason for granting such voltage surcharge is stated in Para No.17 which reads as under:

--- “17” *At the same time, it cannot be denied that distribution losses, including transformation losses, will increase on*

account of supply to consumers at voltages lower than that specified in the SOP Regulations. Accordingly, till such time, as detailed technical study is undertaken and the commission approves the levy of voltage surcharge based on detailed deliberations in this regard, the commission approves MSEDCL's request for interim relief, seeking permission to levy voltage surcharge of 2% additional units to be build, for supply to consumers at voltages lower than that specified in SOP Regulations. It is clarified that this voltage surcharge shall apply from the date of issue of this order, till such time as commission issued further order."

Accordingly, the above direction of Hon'ble MERC was in the back ground of loss, which Licencee perceived due to giving supply on lower level to all such consumers except the category of only one consumer on express feeder who is to pay as per the highest recorded units, reflected amongst two meters installed at the substation end and at consumer's end. For better understanding, the peculiar reliefs sought by Licencee which are reproduced in the order by MERC are of utmost importance, hence those from Para 2 are reproduced as under:-

--- "2, the main prayers in the petition are as follows:

1] *It is proposed to levy surcharge of additional 15% on the energy charges on all such consumers (existing as well as prospective] availing supply at a lower voltage level than stipulated.*

2] *Permit MSEDCL to enhance the load for the existing consumers up to 10 MVA at lower voltage level. The same will be decided on case to case basis strictly on the basis of technical feasibility and other constrains .*

3] *Permit MSEDCL to release load of prospective consumers up to 10 MVA at voltage level lower than*

specified subject to technical feasibility and other constrains.

4] *It is further prayed that Hon'ble commission be pleased to grant by way of interim relief, to continue levy of 2% of monthly consumption of energy consumed by the consumer in terms of extra units to the consumers whom the energy is supplied at lower voltage than prescribed voltage till the approval of 15% voltage surcharge.*

The above referred interim relief may be continued for the consumers connected on Non Express Feeders (More than one connection on the said feeder). It is further prayed by way of interim relief to allow to continue to charge consumer on the basis of consumption recorded by the meters installed at the source of supply. (EHV level) and at the consumer's end (premises) whoever is higher, in case only one connection on the said dedicated feeder."

8] Hon'ble MERC in its order noted the submissions made by Licencee pertaining to the constrains faced by Licencee for giving sanction /releasing the connection at the voltage prescribed in SOP Regulations. Those relevant portions from Para 3 (i) of order are as under:-

- 3- (i), *Due to various constrains, MSEDCL is unable to sanction /release the connections at the voltage prescribed in the SOP Regulations. To over come this and also to meet the universal service obligation of providing supply to all, the following practice was in vogue.*

A] *If the power supply is connected on dedicated feeder (only one connection on the said feeder).*

The monthly energy billing is done based on the consumption, whichever is higher between the meter

installed at source of supply (at EHV level) and at the consumer end (premises) (after ensuring that metering at both the S/S end and the consumer end are of same rating and clause of accuracy, and the cost involved is borne by applicant).

*B] If consumer is connected on **non-dedicated feeder (More than one connection on the said feeder).***

Levy of 2% extra units on the monthly energy consumed by the applicant.

In both the above methodologies, the power supply shall be released only after taking consent / acceptance from the applicant. The 2% criteria is as per the commissions assessment of T & D losses for express feeders, i.e. - 0.5% to 2% as mentioned in the commissions tariff order in case No. 2 of 2003 dated March 10,2004.---

Accordingly, it is clear that Licencee placed before the MERC the existing procedure followed and relief sought . It was also made clear that as matter reached Hon'ble High Court and High Court directed to approach MERC, said petition was filed. It is further clear that Hon'ble MERC allowed the said petition , granting interim relief to a limited extent and 2% surcharge is allowed to be recovered from the consumer having supply on ***non express feeder/non dedicated*** (more than one consumer on the feeder). Further, it is made clear that such surcharge will not be applicable to consumer on express feeder (having one connection on the feeder). This order is prospective in its nature as seen from the order itself. However, said order was considered by MERC in case No.111/2009 decided on 12th September 2010 and relevant portion is on Pages 172 and 173, it is of utmost importance , it reads as under:-

*‘Accordingly, that till such time as the detailed technical study is under taken and the commission approves the levy of voltage surcharge based on detailed celebration. In this regard, the commission approves MSEDCL’s request for permission to levy voltage surcharge of 2% additional units to be built, for supply to the consumers at voltages lower than that specified in SOP Regulations. Further, the commission has accepted MSEDCL’s request in the above said petition, and it is hereby clarified that the above interim relief is applicable for the consumers connected on Non **Express Feeders (more than one connection on the said feeder)**, and in case only one connection exists on the said dedicated feeder, the tariff should be charged on the basis of consumption recorded by the meters installed at the source of supply (EHV level) and at the consumers end (premises) whichever is higher, without any levy of voltage surcharge.*

9] It is a fact that thereafter MERC passed order in case No.52 of 2010 M/s. R.L.Steel Ltd. V/s. MSEDCL Ltd. on 9/11/2010 which is clarificatory order pertaining to case No. 71/2009. Hon’ble MERC in the said order in Para No. 3 (j) quoted petitioner’s submissions which is of utmost importance, it is reproduced as under;

---“ 3 (j) The petitioner further submitted that from prayers of MSEDCL in case 71/2009 and the order of commission it is very clear that in case of express feeder or dedicated feeder having one connection, the meter reading at the source of supply (EHV level) is to be taken, and billing will be on the basis of consumptions, whichever is higher. In case of Express Feeder, the meter readings taken at the source of supply (EHV level) then the distribution and transformation losses are accounted in the meter reading. Hence in such cases levy of voltage surcharge will result in to double levy of surcharge, which is illegal and against the order of commission.”

The above submission is dealt by the Hon'ble MERC in the order in Para 11 as under:-

- “ 11: In view of the above, the commission clarifies that under its order dated March 5, 2010 the levy of 2% extra units cannot be made if power supply is connection on Dedicated Feeder (only one connection on said feeder). Levy of 2% extra units on the monthly energy consumed is applicable if the consumer is connected to non dedicated feeder (more than one connection on the said feeder).

10] The aforesaid details are reflecting the chronology how Licencee approached for interim relief towards 2% voltage surcharge and allowed by Hon'ble MERC prospectively that too, to be recovered from consumers on non express feeder (having more than one connection) and there is no any direction to recover such surcharge from the consumer on express feeder (having only one connection). But in respect of express feeder observation is peculiar in itself and said observation is in the light of request of Licencee. Licencee requested that in case of consumer on express feeder (having only one connection), he is to be charged considering the highest reading available amongst the two meters installed respectively at the substation end and in the premises of the consumer. It is pertinent to note that the wording ‘**consumer on express feeder (only one on the feeder)**’ is of utmost importance and this will not cover the consumers on express feeder if they are more than one. In other words, position of multi consumers on express feeders will not be like that of, one consumer on express feeder. In this matter also consumer is having supply on express feeder and two other consumers are added i.e. M/s. Navneetlal Pvt. Ltd. and supply extended to second unit of consumer at the distance of

4-5 K.ms.. Accordingly, these are multi connections. Under such circumstances, there is no question of applying the first category and charging consumer considering the highest reading available out of two meters. Basically, consumers are more, hence there is no question of installing meter at the substation end and verifying it. Ultimately, it leads to the conclusion that present consumer will not fall in the first category. Accordingly, supply is provided at lower level to this consumer and on that feeder there are more than one consumers though it is on express feeder/dedicated line. The basic claim of Licencee dealt by MERC, is, towards the loss sustained due to such supply given on lower level. Hence this consumer though is having tag of express feeder but it is of multi connections and on lower level. Under such circumstances, loss aspect remains, hence, 2% surcharge will apply. This sprit is expressly laid down by the Hon'ble MERC in the last Para of order dated 5/3/2010 in case No. 71/2009.

11] An attempt is done to argue about dedicated feeder, non dedicated feeder, express feeder, non express feeder and implications thereof. Without adding any word to it, it can easily be concluded from the aforesaid prayers of Licencee and observations of Hon'ble MERC that express feeder is treated as dedicated feeder non express feeder is treated as non dedicated feeder(those wordings are highlighted in the above). Ld. CR tried to rely on the Judgment of Hon'ble High Court i.e. Writ Petition No.4059 of 2010 dated 21/6/2011 to demonstrate the precise definition is not available about terminology of express feeder. But, before the Hon'ble Lordships, question was which tariff category was to be applied to the

consumer. In the said matter Hon'ble Lordship (R.M,Sawant- J) in Para 7 clarified the issue involved and findings which are as under:-

-----The issue involved is as to whether respondent no.1 can be said to be HT-I non continuous consumer. It is the case of petitioner herein that respondent no.1 has been connected on 33 KV with connected load of 3477 KW on account of contract demand of 3000 KVA. The respondent no.1 according to the petitioner, enjoys express feeder facility. In as much as there is uninterrupted supply of electricity to the respondent no.1 without staggering holiday of the week. The petitioner in support of it's case had produced the tariff disclosing the power consumed by respondent no.1 on Wednesday which is staggering holiday for MIDC, Hingna. The said chart therefore inter alia disclosing that respondent no.1 has consumed the electricity on the said day also which is staggering holiday. The said fact that respondent no.1 has enjoy power on the staggering holiday is a pointer to the fact that respondent no.1 was consumer served an express feeder.

8J *Now coming to the order of CGRF, it is pertinent to note that CGRF has virtually imported the definition of 'Dedicated Distribution Facilities' appearing in the MERC Regulation 2005 and applied it to the term express feeder. Reading of the said definition discloses that DDF means such facilities, including service line forming part of the distribution system of the Distribution Licencee which are solely dedicated to the supply of electricity to a signal consumer or to group of consumer on the said premises or contiguous premises, obviously, as definition itself discloses that includes a signal consumer or a group of consumer on the same premises or contiguous premises. Though the said definition strictly cannot be made applicable to the term express feeder, assuming that the same is to be applied still the respondent no.1 does not qualify to be a non express feeder consumer only on t he ground that there is one more consumer getting supply from consume feeder and his premises is not contiguous premises, since the definition takes within it's sweet a group of consumer on the same premises of contiguous premises.*

9] *In my view, therefore, the CGRF had erred in applying the definition over documents the CGRF had erred in applying the definition of Dedicated Distribution Facility. Whilst considering the term 'express feeder' so as to come to a conclusion that petitioner is a non express feeder consumer on account of the fact that there is another consumer also availing a power supply on the same feeder. The Ld. counsel appearing for the petition drew my attention to the tariff order dated 12/9/2005 where modality for being reclassified as non express feeder and non continuous HT-1 express feeder has been prescribed hence, once consumer is a 'HT-1 consumer continuous' by enjoying the express feeders supply unless the modality mentioned in the tariff order issued from time to time is followed there cannot be a connection from HT-1 due to HT-1 non continuous consumer. Admittedly in the instant case as mentioned herein above the respondent no.1 has filed the application for conversion to HT-II non continuous on 30/3/2009. The said application being within time as prescribed by Regulation 2005 the same has been by the petitioner'. ---*

Hon'ble Lordships accordingly concluded that said consumer was enjoying the supply continuously . Hence he cannot be allowed to be treated as non continuous. The matter in hand we are not on the point of tariff category i.e. continuous or non continuous, but we are on the point of recovering 2% voltage surcharge. It will not be out of place to mention here, orders of the Hon'ble MERC are clear, a consumer, may be on express feeder can seek change of category from continuous to non continuous. Accordingly, we find the aforesaid observations, clarifications and directions given by Hon'ble MERC from time to time are clear. Consumer herein is admittedly provided with the supply at a lower level and Hon'ble MERC, inspite of SOP 2005 was in the field, granted interim relief to the Licencee for charging consumers, voltage surcharge and it pertains to multi consumers on the feeders.

12] It is necessary at this stage to consider the review petition filed by the consumer and the views expressed by Hon'ble MERC therein. It is a fact that case No.60 of 2010 filed by consumer is not allowed. In other words, the tone in which consumer was seeking relief is not given. Recovery of surcharge as a interim relief is maintained. But, reiterating the observations made in Case No. 71/2009 Hon'ble MERC expressed the views that as SOP 2005 is in the field, there cannot be any excuse for giving supply at a lower level, not even on the ground of no funds available with either side. Those views and ultimate order are of utmost importance which are in Para No.14 to 16 in case No. 71/2009. Out of it, in Review Case No. 60/2010 in the order Para 9 (b) paragraphs no.15 & 17 are reproduced and need for interim relief is explained and is maintained. At this juncture Para Nos. 14 to 17 from the order in case No. 71/2009 are of utmost importance, those are reproduced as under for ready reference.

*---14''Having heard the parties and after considering the material placed on record, **the commission is of the view as under:***

---15 'MSEDCL should ensure that supply is released in accordance with the voltages specified in the SOP Regulations for release of electricity supply connection. However, in certain circumstances, as high lighted by MSEDCL and reproduced below, there could be a need to release the supply connection at lower voltages.

- (i) Space constraint for construction of EHV substation.*
- (ii) Time required for construction of EHV substation.*
- (iii) A right of way / way leave / clearance problems.*
- (iv) Non availability of prescribed voltage level infrastructure.*

*It is clarified that even in above instances, the electricity supply may be released at lower voltages **only under exceptional circumstances,** and that too **only as an interim solution,** and the distribution Licencee has to ensure that supply is given at the specified voltage at the earliest.*

It is further clarified that the cost of EHV substation and the consumer's inability to afford the EHV substation cannot be the ground for releasing supply at lower voltages as the SOP Regulations do not make any allowances in this regard, and more consumers may claim non affordability as a ground for release of supply at lower voltages.

---16 Further the commission is presently in the process of amending the SOP Regulations and one of the amendments being proposed is in the context of the specified voltages depending on the different loads required to be sanctioned. Hence, the applicability of voltage surcharge would depend on the supply voltages specified in the final notified amended SOP Regulations.

*---17 Accordingly, that till such time as the detailed technical study is under taken and the commission approves the levy of voltage surcharge based on detailed celebration. In this regard, the commission approves MSEDCL's request for permission to levy voltage surcharge of 2% additional units to be built, for supply to the consumers at voltages lower than that specified in SOP Regulations. Further, the commission has accepted MSEDCL's request in the above said petition, and it is hereby clarified that the above interim relief is applicable for the consumers connected on Non **Express Feeders (more than one connection on the said feeder),** and in case only one connection exists on the said dedicated feeder, the tariff should be charged on the basis of consumption recorded by the meters installed at the source of supply (EHV level) and at the consumers end (premises) whichever is higher, without any levy of voltage surcharge.' (Underlines and highlights are provided)*

In the aforesaid review matter, this consumer has agitated that as 33 KV level not available supply is given on 22 KV level which is in breach of SOP 2005. Licencee admitted therein that as 33 KV level was not available, supply was given on 22 KV level, but further made it clear that in case consumer still insists for 33 KV level it can be provided, but consumer is to bear the cost of EHV substation. On that count, consumer has submitted therein that on receiving the estimate it will consider whether to go for its own EHV substation or to pay surcharge. Hon'ble MERC directed Licencee in the light of its submissions, that let Licencee should provide estimates within one month. However, said direction of Hon'ble MERC not complied by Licencee till this date, though said order was passed on 13/12/2010. There is no reason forthcoming from Licencee's side why there is no any compliance. During the course of submissions attempt is done by Officer of Licencee to find fault, with the consumer posing as if consumer was interested in not having such 33 KV level, to avoid the cost burden and hence has not pursued it. We find this approach is uncalled without maintaining the sensibility, towards following and complying the order of MERC. The failure of consumer is being highlighted disproportionately. The so called failure of consumer, in no way will exempt the Licencee from the rigour of non compliance. Consumer approached Officers of Licencee for seeking a certificate, as to whether 33 KV level is available in the jurisdiction of the area wherein it is situating. Certificate is issued, replying non existence of such level in that jurisdiction. Securing the certificate is attributed with some ulterior motive of the consumer, Officer submitted that the certificate is obtained or consumer has surreptitiously managed to have the certificate. We find no force in this submission, rather it demonstrates the unfair approach of the

officers, who are not caring for their ultimate duty, but trying to impute something to consumer.

13] As noted above, consumer is not coming in the category of having supply on ‘ Express Feeder (only one consumer on the feeder) and hence, the protection which it was seeking is not available. Precisely this aspect, after the order of MERC in review petition, even consumer tried to have a way out to have a relief with the joint efforts of other consumer on the same feeder which is stated in the application to IGRC in Para 10 which reads as under:

--- *Para 10 “ On receipt of the order dated 31st December, 2010, petitioner initiated talks with the other factory which is being supplied power from the same express feeder and in the mean time complainant’s company had too Labour Strikes. Discussion was to explore whether a joint representation could be made to MERC to add the readings on the meters of both consumers at Tambati substation at their factory and levy charge on the basis of higher of the two totals. However, the said talks did not fructify.’ ”*

Consumer is seeking relief on the ground that there is breach of SOP. Ld. CR argued at length that as per SOP supply was required to be given at the specified level, there is no any excuse of scarcity of funds or inability to do it and such inability cannot be the ground to recover surcharge as there is no fault with the consumer. We find when Hon’ble MERC in case No. 71/2009 dated 5/3/2010 dealt the SOP of 2005, granted interim relief in respect of consumer having supply on a lower level for bearing voltage surcharge, then that order holds field till said order is set aside, modified or finalized. Attempt of consumer to have a review of it was not successful and hence the way in which arguments are advanced that SOP of 2005 is to be implemented. But we find it is to be read along with

the order of Hon'ble MERC i.e. 71/2009 clarification issued from time to time and even considering the review order in 60/2010. In respect of directions given to the Licencee for providing estimate within a month is an order obtained by consumer from MERC and if there is any case of its non compliance then proper Forum available to the consumer is with the the Hon'ble MERC to agitate. More particularly when it was a review petition of consumer. If review is not allowed on the basis of arguments advanced at that time or position stated therein and its further development if affected the consumer then it is Hon'ble MERC to consider its orders. This Forum cannot express any view on it, as things moved on the basis of interim order passed by Hon'ble MERC and direction given by MERC in review petition for giving estimate within a month which Licencee not complied. This breach if, consumer intends to canvass it will be before the MERC and this Forum for such breach cannot substitute order of refund of 2% surcharge recovered from 5/3/2010 to 19/5/2014. Last but not least it is necessary to observe that during the course of arguments, CR submitted that from 2005 though supply was given on lower level than prescribed, in fact no any loss is sustained by the Licencee as in the new SOP effective from 20/5/2014 limit is increased up to 10000 KVA and consumer's supply is less than that. We find this is a plea on which no any view can be expressed by Forum as interim order of MERC during the period from 5/3/2010 to 19/5/2014 was holding the field. Hence we find there is no any ground to consider the claim of consumer. It is to be rejected.

14] This matter could not be decided within prescribed time as matter was argued thrice and lastly on 23/2/2015.

Hence the order.

ORDER

Grievance application of consumer is hereby rejected.

Dated: 27/2/2015.

I agree

I agree

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

(Chandrashekhkar U.Patil)
Member Secretary
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.

Present consumer is having industrial supply of Licencee from 1/6/1983 bearing consumer No. 030909017951. The Consumer is billed as per said tariff till March 2010, which is paid. Consumer registered grievance 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 in the aforesaid grievance applications. 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.

14] On receiving these grievances, the papers containing above grievances were sent by this Forum along with accompaniments vide letters No. EE/CGRF/Kalyan/ dated 5/1/2015 to Nodal Officers of Licensee. The Licensee appeared and filed reply on and additional submissions on 15/1/2015 placed on record. Copies were provided to the CR. Officers of Licencee in terms of their submissions contended that initial order of MERC i.e. 71/2009 is further clarified and dealt in 1111/2009 page 172 , then in case No.52/2010 para 11 and that consumer approached MERC seeking review of the order vide case No. 60/2010 and review was not allowed. On it's basis it is contended that 2% surcharge is permitted on the supply to consumer's on non express feeder. Secondly, it is contended that it is even applicable to express feeder supply wherein there are more than one consumer. In other words, they contended that exemption is there for consumer's express feeder, provided there is only one consumer. Accordingly they claimed that in this matter consumer is having supply continuous one, it is dedicated feeder. In addition to consumer's other two connections are there and hence the status of consumer for the purpose of levying 2% surcharge continuous and though it is express feeder, but supply is of consumer more than one, hence surcharge is to be applied. Accordingly, they made submission that claim of consumer cannot be allowed.

15] As against it, on behalf of CR, it is submitted that consumer did approach MERC, seeking review, review is not granted. MERC maintained

it's own order, but observed that 2% surcharge itself is of a temporary nature. Secondly, it is submitted that when supply is given on old level, then required it is in exceptional circumstances and as it is interim. Now it is contended that till May 2014, parameters of supply were same, but changed in May 2014 and though supply up to 10,000, limit is not covered for any surcharge. On this basis, it is contended that consumer was denied the legitimate supply from 2010 till 2014 that too in respect of directions of MERC. It being interim measure and within one month, details were to be communicated to the consumer, those are not complied and thereby charging 2% surcharge is not legal and proper. On this count, consumer is seeking refund of amount recovered at the rate of 2% additional charges.

16] Ld.CR submitted that there is total contradictions in reading express feeder and DDF. On this count, he relied heavily Judgments of Hon'ble High Court Bench, Nagpur. CR submitted that there is no definition anywhere about express feeder, but there is a definition of DDF on which there can be one or more consumers.

17] Ld. CR submitted that though there are more than one consumer on the DDF. He will not lose his status as a consumer on express feeder. (To resolve this particular dispute, it is necessary to minutely read MERC case Nos. 71/2009 Para -4, 1111/2009 page 172, 52/2010 Para 11 and consumer's review petition No. 60/2010).

18] During the course of arguments, from this side, an attempt was done to have in deliberation whether it was proper on the part of consumer to approach MERC as it has – order in it's review petition as it was required to pay 2% additional charges and that relief was not allowed by MERC,

maintaining it's own previous order and it's interpretation . In this regard, CR submitted that he is coming to the IGRC then to the as there is breach of order of MERC itself whereby MERC and that till now SOP is brought into force, there was no compliance by it Licencee for providing supply at the level required. Accordingly, he contended that it is breach of order of MERC, it is a cause of action to breach this Forum and he could not have approached MERC and MERC could have posed the question why he directly coming to us.

Dated: 27/01/2015.