

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
KOLHAPUR ZONE, TARABAI PARK, KOLHAPUR**

Con.Comp. No. 304 -2010/

Date :

JUDGMENT

- 1) M/s. Gaurav Machine Tools,
Gh.No. W-83, at village : Gokul Shirgaon MIDC
Tal : Karveer, Dist. Kolhapur

Appellant

V/s

- 1) Executive Engineer (Office) & Nodal Officer,
M.S.E.D.C.L. Circle Office, Kolhapur
2) Executive Engineer,
MSEDCL, Rural Division II, Kolhapur
3) Executive Engineer,
MSEDCL, Sub Division, Kagal.

Respondent

- Corum -**
- 1) Shri B.G. Pawar, Chairperson
 - 2) “ G. B. Pankar, Member Secretary
 - 3) “ G.C. Lele, Member

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
(Consumer Grievance Redressal Forum & Electrical
obudsman):Regulation 8.2 of Regulation 2006**

Judgement by Shri B.G. Pawar, Chairperson of C.G.R.F. Kolhapur Date :

(1) The grievance has been filed on 30th November, 2010 by M/s. Gaurav Machine Tools through its Proprietor against Distribution Licensee under 6.10 of Maharashtra State Electricity Distribution (Consumer Grievance Redressal Forum & Electrical Ombudsman) Regulation 2006. The brief facts narrated in the English application addressed to Chairperson dated 21.11.2010 are as follows :

(2) The consumer is H.T. consumer bearing the consumer No. 267720255550 of Distribution Licensee. The MSEDCL sanctioned load extension of 75 HP under NDDF Scheme. The work has been completed by the consumer with its own cost.

As per letter of Executive Engineer, R-II Dn. Kolhapur No. 1810 dated 1.4.2009 MSEDCL sanctioned audited refundable WCR amount Rs.2,54,819/- to consumer as mentioned in the letter. The work has been completed by the consumer as per H.O. sanction and Circular No. 22197 dated 20.5.2008. The concerned Executive Engineer has instructed to refund amount to consumer through energy bills. It is contended MSEDCL should pay the cost up to the metering point including cost of meter. The reference is made to Circular No. 43 issued by MSEDCL H.O. wherein it is stated cost of meter should not be recovered from the consumer in case meter is installed at his own cost, such cost should be refunded. The consumer has installed meter at his own cost, for which consumer incurred expenditure of Rs. 23,000/- which is refundable. The consumer has requested through his letters for timely deduction of amount of energy bills from audited refundable amount Rs. 2,54,819/- along with refundable cost of meter Rs. 23,000/-. However, the concerned MSEDCL Officer at Sub-Division started hardship to the consumer for payment of disputed bills, which was not liability of consumer. It is contended before Internal Grievance Redressal Cell by officer of MSEDCL Mr. Dhumal has given his statement that consumer is not paying energy bills. After several exchange of correspondence, MSEDCL has served copy of letter issued by MSEDCL in Feb. 2010 and started sending bills, from the refund @ 50% from the month of Nov. 2009 without any prior intimation to the consumer. It is contended that MSEDCL is charging the consumer by deducting 50% amount from the month of Nov.2009. The letter to this effect was issued to the consumer with copy to Gokul Shirgaon Manufacturers' Association. The consumer has asked for claim of Rs. 2.0 lakhs against loss and mental hardship, spoiling of goodwill in the market and it is contended why the concerned Officer should not be charged under SOP ?

In Para 14, it is contended that the consumer was paying regular energy bills under protest without interest and other charges. The Order of I.G.R.Cell dated 29.10.2010 is not acceptable, it is challenged in this appeal and prayed to cancel interest and other charges which is against MERC Rules and to refund meter cost of Rs. 23,000/- and to issue audited energy bills and monthly audited statement under the Rules and Regulations so as to clear amount by showing energy bills without interest and other charges.

(3) The Asstt.Engineer, Kagal addressed letter to Member Secretary of Forum on 16.12.2010 in respect of prayer of consumer and it is contended that the load extension of electric connection to M/s. Gaurav Machine Tools sanctioned under NDDF Scheme under which amount of infrastructure should be refunded through monthly bills. Load extension has come into effect from April, 2009 and from from the bill of Nov. 2009, refund of expenditure incurred by the consumer by adjusting monthly energy bills. It is contended that before Nov. 2009, the matter regarding refund of expenditure was pending before Supreme Court and MERC and no guidelines are received from H.O. regarding refund of amount. The guidelines have been received as per letter No. 39206 dated 21.12.2009 and the consumer was given immediate benefit of refund of amount from same month. The consumer was apprised of this development by oral communication and correspondence, still consumer demands total amount of expenses incurred by him be adjusted one time energy bill, which is against Rules. The Jr. Law Officer of MSEDCL opined that consumer is liable for all the arrears to be paid without any adjustment in it as the refund is already started through its energy bills, failing to which, the consumer is liable for temporary disconnection of supply.

It is contended proceeding before I.G.R.C. the consumer requested to give quotation for only energy bill without interest as the said matter is in IGRC as well as CGRF and after the decision from IGRC / CGRF regarding interest, he will pay accordingly. Thus MSEDCL issued quotation for energy bill up to Oct. 2010 without interest and no any harassment done by any of the engineer of MSEDCL for recovery of arrears, also no any false statements are done by any officer of MSEDCL against the consumer. Reliance is pressed upon I.G.R.C. Order dated 29.10.2010. The grievance was placed before Forum for hearing on 22.12.2010. On receiving application of consumer's representative, it was adjourned and taken for hearing before Forum on 12.1.2011. Shri Haribhau D. Khapare from Jath has filed authority being nominated as consumer's representative by the consumer and he has been heard in presence of consumer Proprietor M/s. Gaurav Machine Tools as well as Mr. Dhupal, Asstt.Engineer, Kagal S/Dn. He also filed written notes of arguments.

(4) Shri Khapare, representative of consumer narrated history of the consumer having connection with Distribution Licensee, initial load and after increase of load, deposited an amount. Shri Khapare referred to various correspondence between the consumer and Executive Engineer in respect of sanction and wherein reference to refund more particularly in letter dated 1.4.2009 for refund of the infrastructure amount incurred by the consumer. However, amount was not refunded. He referred sanction letter dated 24.9.2008 wherein estimated cost refundable is shown Rs. 266883/- and final sanction is given by letter No. 1810 dated 1.4.2009. He also submitted that the MSEDCL has recovered nearabout Rs. 14,000/- towards interest due to inaction for not starting refund which commenced from Nov. 2009.

A statement was made about amount deposited under ORC scheme Rs. 76000/- has been refunded. Meter cost Rs. 23,000/- has not been refunded. Rs. 1650/- cost of CT meter has not been refunded. Hence prayed to issue revised bills since amount towards refund is started from Nov. 2009. MSEDCL can not demand and recover interest and penalty. Moreover, in Para VII clause 2 of written notes at page 5, it is contended that final sanction for refund is from 1.4.2009 and the refund should have been started from April 2009 payable in May 2009 so that amount of interest recovered to be refunded after revised bills as per Circular.

(5) Shri Dhumal, Asstt.Engineer on behalf of the Company submitted the connection was under NDDF Scheme. As per WCR amount to be refunded is Rs. 2,63,000/-. It was submitted that before Nov. 2009, the matter regarding refund of expenditure was pending before Supreme Court and MERC and no guidelines are received from H.O. regarding refund of amount. It was contended that as the consumer failed to pay the bill, interest has been charged and claimed. Oral submission was made showing readiness for refund cost of meter Rs. 23,000/- , contended that such issue about refund was never made before him by the consumer. The following points arise for determination :

(6) 1) Whether consumer is entitled to refund meter cost of Rs. 23,000/- from Distribution Licensee with interest as prayed ?

Answer : Redundant and does not survive

2) Whether consumer is entitled to refund infrastructure cost incorporated in final sanction dated 1.4.2009 and for revision of bills and refund of interest recovered in the said bills ?

Answer :Yes

What Order ?

As follows :

Reasons

(7) It is a common case, the consumer is an industrial consumer of MSEDCL bearing No. 267720255550 located at industrial area Gokul Shirgaon. Initially in Dec. 1996 20 HP load was sanctioned in Dec. 2005, it was increased to 75 HP under certain conditions and Scheme ORC(P) i.e. outright contribution by the party under the supervision of Distribution Licensee work was to be completed. There is no dispute the consumer has paid price of CT meter Rs. 23000/- As per receipt No. 4923674 dated 28.2.2006. The amount of ORC deposited in Sept. 2006 has been refunded. Supervision charges Rs. 1650/- were deducted by refunding the amount deposited under ORC. Though there was increase of load sanctioned under NDDF to the consumer under two different Schemes sanctioned by MSEDCL at an estimate cost refundable Rs. 266883/- . But as per sanction letter No. 1810 dated 1.4.2009, direction were given to refund infrastructure amount to the consumer through energy bills as per WCR amount of Rs. 2,54,819/-. The fact remains that the cost of meter installed by the consumer Rs. 23,000/- has not been refunded, as per S.O.P. approved by MERC, Distribution Licensee Circular No. 43 dated 27.9.2006 issued on the basis of judgment and order of Hon'ble MERC in case No. 70/2005 Schedule of charges. At Sr. No. 5 under the caption " Cost of Meter and Meter Box" 5.1 and 5.2 which reads as follows :

5.1 The Company shall not recover any cost towards meter and meter box, except where the consumer opts to purchase meter from MSEDCL and in case of lost and burnt meter, the Company is permitted to recover cost as per Annexure-3.

5.2 The field officers shall note that the cost of the meter is recoverable only when a consumer elects to purchase the meter from the Company or in case of lost and burnt meter. The recoverable charges approved by the Commission shall be as per Annexure-3.

In this circumstances, the submission of Mr. Dhumal, Asstt.Engineer that issue was not raised before I.G.R.Cell Kolhapur about non payment of meter cost of Rs. 23,000/-. In H.O. Circular wherein direction given field officer not to recover meter cost and under what circumstances Distribution Licensee can recover the meter cost from the consumer, if the consumer is willing to purchase the meter from the Licensee in case of burnt and lost meter. The field officer has to implement the direction in the Circular by the Board. The Hon'ble MERC in its Order dated 17.5.2007 in case No. 82/2006 where Hon'ble Commission observed in Para IV of the Order

The Commercial Circular No. 43 dated 27.9.2006 issued by MSEDCL itself post pone Order dated Sept. 8,2006 is comprehensible enough and easy to understand. MSEDCL must refund to all consumers all overcharged amounts that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the Order dated 8.9.2006. In Para 5 at page 4 Hon'ble Commission directed MSEDCL to refund to Devang Sanstha and to all such consumers, all amounts collected towards ORC, CRA and cost of meter, together with interests. Due care should be taken while refunding such charges recovered in violation of the Order dated 8.9.2006. The refunding should be made by MSEDCL in a lump sum and at one go, and not via adjustments in future energy bills.

On page 6 of the Order Commission observes that the position of law is well settled under the Supply Code. The Commission directs MSEDCL should not collect any monies under any charge-item which is not defined under the Supply Code and / or the Order dated 8.9.2006.

In the circumstances, the issue was not raised before I.G.R.Cell Kolhapur for refund of meter cost of Rs. 23,000/-. Now let us see facts established about the claim of Rs. 23,000/-. The consumer before I.G.R.C. Kolhapur in his complaint dated 4.9.2010 has not raised issue of refund of Rs. 23,000/-towards meter cot. For the first time in appeal or grievance in Schedule A dated 21.11.2010. On page 4of the grievance, prayer is made for refund of deposit towards meter cost (विद्युत मिटरचे डिपॉझीट परत मिळणे बाबत). On page 2 of the grievance, it is stated by the consumer that he has installed the meter at his own cost of Rs. 23,000/-, which is also refundable to the consumer M/s. Gaurav Machine Tools. However, date of payment of meter cost has not been mentioned in the grievance. On noticing the fact, the receipt of Rs. 23,000/- is dated 28.2.2006 whereas sanctioned load extension of 75 HP under NDDF Scheme as per letter No. 1810 dated 1.4.2009 and audited refund as per WCR amount Rs. 2,54,819/-.

Consumer's representative Shri Khapare and Mr. Dhumal, Asstt. Engineer were reheard on 4.3.2011 on the point how this claim of Rs. 23,000/- of which receipt is dated 28.2.2006 is clubbed in a claim under this reference. Time was granted to clarify claim of Rs. 23,000/- towards meter cost. Shri Khapare reiterate his submission in respect of claim of Rs. 23,000/-. The Distribution Licensee is liable to refund, as amount is recovered contrary to the Schedule of Charges approved by M.E.R.C.

Mr. Dhumal, Asstt.Engineer, Kagal Sub Dn. was given time till 9th March to explain amount under receipt dated 28.2.2006 whether it is in respect of sanction by Ex.Engineer as per letter dated 1.4.2009 or otherwise. However, till 30.3.2011, neither consumer nor his representative nor Mr. Dhumal produced any written explanation or Say in respect of this claim. Considering the payment on 28.2.2006 towards meter cost as per receipt which is certainly not related claim in the to present grievance or in resanction letter in the year 2007-08. Amount of ORC Rs. 76,280/- after deducting supervision charges of Rs.1650/- have been refunded to the consumer on 9.1.2009. In absence of documentary proof to connect this meter cost of 28.2.2006 borne by the consumer to the scheme under consideration or in respect of the scheme of which refund is claimed or adjustment in the claim. In the circumstances, prayer of consumer asking to refund Rs. 23,000/- is an independent claim which can be extended against Distribution Licensee before the Competent Authority under the Act and Rules.

In the grievance dated 4.9.2010, for the first time in this appeal or grievance which is extended when established that this meter cost was incurred towards advance load extension under ORCP and subsequently resanctioned under No.EE/R-II/T/YMS/DDD/Ind/KGL/350 of 007-08 so the claim for Rs. 23,000/- has become redundant or it does not survive. It is well settled principle of Law that new plea can not be entertained at appellate stage.

(8) In respect of prayer of the consumer to issue direction to Distribution Lincesee regarding the period of refund from April, 2009 payable in the monthly bill of May, 2009 and for revision of bills from April to November, 2009.

On going through the arguments of the consumer and notes of the arguments in writing brought on record by representative of the consumer

Shri H.D. Khapare, there is no dispute Distribution Licensee increased load to 95 HP as per request of the consumer, thus on two occasions, load was sanctioned. Though there is mention in the sanctioned letter No. 5694 dated 24.9.2008 by Executive Engineer Rural II Dn. Kolhapur, estimated cost refundable shown as Rs. 2,66,883/- and final sanction letter No. 1810 dated 1.4.2009 as per WCR refundable infrastructure amount Rs. 2,54,819/- and instructions have been given in the letter to refund through energy bills. Both the parties have not disputed on factual aspect. The grievance is basically regarding Circular No. 22197 dated 20.5.2008. The field officer of MSEDCL actually started refund in Nov. 2009 instead of April, 2009 for which there is no explanation. Even as per Circular No.39206 of Chief Engineer (Commercial) dated 21.12.2009, the field Officer has started recovery from Nov. 2009. The field officer of Distribution Licensee failed to give any explanation for not commencing refund from April, 2009 when there was specific direction in letter No. 1810 dated 1.4.2009 itself specifying infrastructure audited amount of Rs. 2,54,819/-. Mr. Dhumal, Asstt.Engineer made a faint attempt in his oral submission before Forum that matter is referred to Supreme Court for which there is no justification or such submission is not substantiated by any document. Therefore, the action of field officer of Distribution Licensee starting refund from Nov. 2009 payable in Dec. 2009 is not justified and contrary to the sanction letter dated 1.4.2009 and Circular of Chief Engineer (Commercial) H.O. Mumbai dated 20.5.2008. Needless to mention here that this Circular has been referred by Hon'ble Commission in its Order dated 1.9.2010 in case No. 93/2008 wherein it is observed such infrastructure expenses forced on the consumers during the aforesaid period require to be refunded to respective consumers as per provisions of Circular dated 20.5.2008.

Thus by not commencing to refund amount to the consumer for the period from April to Nov., after 8 months, the consumer has been burdened with interest and penalty, which has been charged in the bills. The consumer paid the arrears and the Distribution Licensee has failed to implement its own Circular and direction of higher authorities i.e. Chief Engineer (Commercial). The consumer is entitled to refund the amounts as prayed in clause I, IV and VI in the written notes of arguments. Thus refund should be as per Final sanction letter No. 1810 dated 1.4.2009 and from the month of April, 2009 payable in May, 2009 until Nov. 2009 payable in Dec. 2009. Secondly, MSEDCL is required to issue revised bills of the said period by ensuring refund as per Circular thereby deducting quantum of interest and penalty. Point No. 2 is answered in the affirmative.

- (9) As regards I.G.R. Cell Kolhapur's Order, there is no justification for conclusion that bills issued to consumer are correct and direction to pay the bills with interest, is contrary to the facts. Needless to mention here that the consumer approached the Forum for Interim Order not to disconnect the power supply on account of payment of bill arrears and the Forum has issued directions to Distribution Licensee not to disconnect the supply and the amount of Rs. 3,42,870/- has been deposited by the consumer on 30th Sept. 2010.

..12..

ORDER

- 1) The grievance is partly allowed.
- 2) The refund of amount of WCR i.e. audited refundable infrastructure amount Rs. 2,54,819/- should commence from April, 2009 payable in May, 2009 till Nov.2009 instead of Dec. 2009 as done by MSEDCL.
- 3) The claim of consumer towards meter cost of Rs. 23,000/- is not considered at this stage in this grievance by the Forum.
- 4) The MSEDCL Executive Engineer, R-II Dn. Kolhapur is directed to issue revised bills to consumer from Dec.2009 where the Distribution Licensee can not charge interest and penalty.
- 5) Compliance should be reported within one month.
- 6) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai.

Date :

(B. G. Pawar)
Chairperson

1) Shri G. B. Panakar, Member Secretary :

2) Shri G.C. Lele, Member :

The decision of majority / unanimous be implemented