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

Con.Comp. No. 61-2010/ Date :

JUDGMENT

1) M/s. Geeta Pumps Pvt.Ltd.
B-17, MIDC, Shiroli, Dist. Kolhapur Appellant

V/s

1) Executive Engineer (Office) & Nodal Officer,
M.S.E.D.C.L. Circle Office, Kolhapur Respondent
2) Executive Engineer,
M..S.E.D.C.L. Urban Division Office, Kolhapur
3) Dy.Executive Engineer,
MSEDCL, Market Yard Zone (U) Kolhapur

Corum 1) Shri B.G. Pawar, Chairperson
2) " B.A. Jadhav, Member Secretary
3) " G.C. Lele, Member

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
(Consumer Grievance Redressal Forum):
Regulation 8.2 of Regulation 2006

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

(1) Present grievance has been filed in Schedule ' A ' before the Forum under Rule 6.10 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electrical Ombudsman) Regulation 2006 on 8th March 2010 by M/s.Geeta Pumps Pvt. Ltd. through Mr.M.N.Pilai, Managing Director authorising its representative Shri P.G. Hogade/ Shri J.B. Momin.

(2) The facts are as follows :

M/s. Geeta Pumps Pvt. Ltd. is a consumer of M.S.E.D.C.L., Market Yard Zone (Urban Dn. Kolhapur) Circle Office, Kolhapur bearing consumer No. 266779101533 classified as HT Industrial.

It is the case of consumer billed for the month of Sept. 2009 received from Circle Office, Kolhapur finds mention of Additional Supply Charges Adjustment, as per Appellate Tribunal Order dated 12.5.2008. Thus demanded Rs. 11,55,833.36 towards ASC for the period from 1st May 2007 to 31st May 2008. The complainant made payment under protest. The complainant approached Internal Grievance Redressal Cell, Kolhapur on 14.12.2009. I.G.R.C. dismissed the complaint on 11.2.2010. According to the complainant, after considering the manner of assessment of charges by respondent Co. and orders of the Appellate Tribunal regarding assessment of eneregy consumed is entirely incorrect and wrong.

Complainant has relied upon para 21 of Tariff Order dated 18th March, 2007 which extracted as below :

In view of the above, we modified Clause 7.4 (g) of the Tariff Order dated 18th March, 2007 to read as under :

" In the case of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December, 2005 the reference period may be taken as billing period after six months of the increase in the sanctioned load/ contract demand OR the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increased contract demand that has been recorded prior to the increase in sanctioned load/ contract demand".

Complainant further contends the contract demand for 10 month's period from Jan. 2005 to Oct. 2005 was 450 KVA and average bench mark consumption for 450 KVA was 2,04,324 units. Subsequently, in the month of Nov. 2005, contract demand was increased to 650 KVA and therefore the complainant is liable for assessment as per Orders of Hon'ble Appellate Tribunal. It is further contended during the period 1st May 2007 to 31st May 2008 of these 13 months, consumption for one month was minimum 2,16,060 unitd and maximum 3,37,360 units. The respondent Company considered the fact that, in Nov. 2005 contract demand has been increased after six months i.e. May 2006, consumption of energy 2,35,380 units has been taken as bench mark comnsumption and May 2006 has been assumed as reference period. It is contended, considering order of the Appellate Tribunal which has amended clause 7.4 (g) subsequent part after OR the billing period after 6 months in which the consumer has utilized **at least** the same ratio of eneregy consumption as percentage of increased contract demand.

$$\frac{650 \text{ KVA}}{450 \text{ KVA}} \times 2,04,324 \text{ units} = 2,95,134 \text{ units}$$

As per ratio and order the consumption of energy in Dec. 2006 is 3,09,660 units so reference period should be Dec. 2006 and bench mark consumption 3,09,660 was required to be fixed for extending claim of payment of ASC. According to complainant, if these units and bench mark assessment for the said period of 13 months i.e. 1st May 2007 to 31st May 2008, total assessment would be less than demanded or recovered.

(3) In respect of decision of I.G.R.C., the complainant observed the consumption of energy in 3rd, 4th and 5th month was good. If assessment would have been on that basis, there was no reason to file appeal. But consideration of this point is irrelavent in the context of decision of Appellate Tribunal.

The complainant also admitted that increased demand, maximum utilization on higher side, accepting the demand of 501 KVA as per MSEDCL the bench mark consumption comes 2,65,091 units as per following ratio -

$$\frac{650 \text{ KVA}}{501 \text{ KVA}} \times 2,04,324 \text{ units} = 2,65,091 \text{ units}$$

However, consumption is more than this, after 6 month's initially in the month of July, 2006 which is not considered by the respondent Company as well as I.G.R.C. Kolhapur.

(4) The respondent Co. filed review petition bearing case No. 5/2008 against judgement and order dated 12.5.2008 in appeal No. 135/207 decided by the Appellate Tribunal which has been rejected at the admission stage. It is further contended, in order to treat the consumer equally (rationally) 7 months the first part fixed by the Company is not correct. The second part rationally is correct and proper to treat all the consumers equally. It was contended for whatsoever reasons the consumption is less in 7^{th} month's with any contingencies, the consumer should not be put to loss. The Appellate Tribunal mentioned second part (OR) in its order dated 12.5.2008. Hence, it is prayed that in order to assess additional supply chargees consumption of 2,35,380 units is incorrect, instead of it, 3,09,660 units should have been taken as basis for assumption and directions be issued to Company to that effect for consumption on the said unit basis. The complainant prayed for interest under Section 62 of Sub Section 6 of Electricity Act 2003 over the amount recovered in excess for which order be passed, directing the respondent to refund the same with interest or adjust the said amount in subsequent bills with interest.

To support the claim made in the grievance, the complainant has separately given details of energy consumption of 450 KVA in the year 2005 and consumption after increase in load, total contract demand 650 KVA in Nov. 2005 which are extracted below :

Average Consumption at 450 KVA in the year 2005

Sr. No.	Month and year	Contract Demand in KVA	Units consumption	Remarks
1	Janunary 2005	450	2,29,285	
2	February 2005	450	2,24,570	
3	March 2005	450	1,84,940	
4	April 2005`	450	2,00.425	
5	May 2005	450	1,97,075	
6	June 2005	450	1,98,350	
7	July 2005	450	2,17,855	
8	August 2005	450	2,01,995	
9	Sept. 2005	450	2,43,450	
10	Oct. 2005	450	1,45,790	

Total Contract Demand 650 KVA from November 2005

Sr. No.	Month and year	Units consumption	Remarks
1	Nov. 2005	2,23,435	
	Dec. 2005	2,59,590	
1	Janunary 2006	3,10,750	
2	February 2006	2,88,290	
3	March 2006	2,92,310	
4	April 2006`	2,71,510	
5	May 2006	2,35,380	Assumed by MSEDCL
6	June 2006	2,39,130	
7	July 2006	2,78,240	
8	August 2006	2,94,200	
9	Sept. 2006	2,76,440	
10	Oct. 2006	2,27,040	
11	Nov. 2006	2,45,110	
12	Dec. 2006	3,09,660	as per ATE Order

(5) The respondent Company in its Say filed on 29th March 2010 through Nodal Officer, Kolhapur opposed the prayer and passed comments which are reproduced as follows :

1) It is observed that there unit seems to have achieved stabilization in 3rd and 4th month of the increased in contract demand.

2) He has been using the demand at an average of 501 KVA rather than 450 KVA sanctioned to their Unit, thereby the % increase stated in the grievance seems to be incorrect.

3) In Appellate Tribunal Order on Review Petition No. 5 of 2008, it is mentioned that, " Biling periods for bench marking of reference periods for ASC computation in both the alternative of the modified clause 7.4 (g) are to be identically same as there is no rational for stabilization period to be different for the same system".

   As such Company has taken 1st option for computing the benckmark consumption to be rational to all consumers, without any discretion since 7 months are enough for stabilization for any industry. The main object for modification of clause 7.4(g) was to give reasonable time for industry to achieve stabilization.

4) Also the consumption of this industry being of non-continuous nature it will no good reason to mark his benchmark to the consumed units after six months in the ratio of energy consumption as the increase in contract demand, since thereafter also the units consumed seems to be of unstable nature.The main purpose of ASC was to reduce the consumption by 11% or 24% then the benchmark consumption which could not be ignored.

5) The decision taken by Chief Engineer (Commercial) regarding applicability of ASC bench mark is common to all such consumers throughout Maharashtra and any change in the method of calculation in the bench mark consumption will be regarded as the policy matter and hence was referred to Chief Engineer (Commercial) and vide letter No. PR3/ Tariff/6308 dated 2.3.2010 Chief Engineer (Commercial) has repliled that the benck mark consumption is prepared as per APTEL's Order and is implemented in the billing software, which is correct.

(6) The grievance was taken for hearing before the Forum on 19.4.2010. The representative of the complainant Shri P.G. Hogade present. Shri Adake, Nodal Officer and Shri Ahuja, Asstt.Engineer on behalf of respondent Company present.

Shri Hogade, representative of the consumer submitted that Rs.11,55,853.36 additional supply charges have been demanded which are wrong, but payment is made under protest as per letter 20.10.2009. The respondent Company revised ASC for the period from 1.5. 2007 to 31.5.2008 as per the judgement and order dated 12.5.2008 by the Consumer Tribunal in appeal in case No. 135/2007. It is further submitted in appeal by M/s. Erotex Industries (Appellant in case No. 135/2007) challenging the orders of Hon'ble M.E.R.C. dated 18.5.2007 modifying the clause 7.4(g) of the Tariff Order. Instead of levy of ASC and stress is laid upon para 21 of internal page 16 of the said judgement where Hon'ble Tribunal modified clause 7.4(g) Tariff Order which reads as under :

"In the case of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December, 2005 the reference period may be taken as billing period after six months of the increase in the sanctioned load/ contract demand **OR** the billing period after six months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increased contract demand that has been recorded prior to the increase in sanctioned load/ contract demand".

It was submitted that bench mark consumption if fixed 3,09,660 units then levy of ASC for 13 month is certainly less than the charges recovered through the bill. There is no denial to pay ASC charges. He also criticised the judgement and order of I.G.R.C. for ignoring the directives and observations of Tribunal. The reasons given to dismiss the grievance are not proper and legal. Hence prayed to allow the grievance and direct the respondent Company to refund the excess amount with interest. In respect of Review Petition No. 5/2008 preferred by respondent Co. has been dismissed at the admission stage. According to him, second clause of the Tariff 7.4 (g) modified by Hon'ble Tribunal shall be applicable giving equal treatment to all the consumers.

(7) In a Say filed on 28.5.2010, in response to production of documents by respondent Company on 23.4.2010 original copy of I.A.No. 327 of 2009 in Appeal No. 101/2008 and copy of judgement in Appeal No. 101/2008. It was submitted decision of Appellate Tribunal dated 2.7.2009 in Appeal No. 101/2008, wherein the decision in Appeal No. 135/2007 dated 12.5.2008 has been considered.

It does not affect the claim of complainant made in this grievance. As regards, case of Menon & Menon Ltd., a pleadge raised in respect of units of electricity in the 7 months as a bench mark consumption, the respondent Co. after completion of 5 month use of electricity, another 6 months resumed the bench mark consumption, which is incorrect. This has been challenged by Menon & Menon Ltd. before the Tribunal which has no relavance to the facts of the present case. On 4th June, 2010, I call upon Shri Ahuja, Asstt.Engineer, MSEDCL, Circle Office, Kolhapur to verify whether MSEDCL able to bring on record copy of the Order in Review Petition No. 5/08, which has been produced. Its judgement and order dated 30.4.2009. Since in the judgement of I..G.R.Cell and parawise comments to this grievance, reference is made towards the observations by the Hon'ble Tribunal in the order dtd. 30.4.2009.

(8) Shri Ahuja, Asstt.Engr. on behalf of the respondent Company referred to the tariff clause 7.4 (g) approved by M.E.R.C. in its original order dated 18.5.2007 specifying the fixing of bench mark unit to calculate additional supply charges in respect of the consumers, which is reprodced or extracted as follows :

" In case of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December, 2005, the reference period may be taken as billing period after six months of the increase in the sanctioned load/ contract demand or the billing period of the month in which the consumer has utilized at least 75% of the sanctioned load / contract demand, whichever is earlier". But the Hon'ble Tribunal has not considered it. It is further submitted that the respondent Company and its Managing Director accepted the first option or first part which according to him, will be applicable for assessment of additional supply charges as mentioned in para 21 of the judgement in case No.135/2007 dated 12.5.2008. It reads -

In the case of consumers whose sanctioned load / contract demand has been duly increased after the billing of month of December 2005, reference period may be taken as the billing period of 6 months has increased in the sanctioned load / contract demand and the section clause or section para shall not be applicable as such. He further submitted, if assessment of additional supply charges as per section para, the Company will be put to loss nearabout Rs. 1.40 crores. Thirdly, he submitted that applications preferred by Menon & Menon Ltd. seeking clarification / directions in respect of Order dated 2nd July 2009 in Appeal No. 101/2008 passed by the Hon'ble Appellate Tribunal for Electricity, copy of which has been produced on record on 23rd April, 2010. Lastly, Shri Adake, Nodal Officer and Shri Ahuja, Asstt.Engineer submitted the grievance is not maintainable in view of Rule 6.7 Clause (d) of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation 2006. Since according to them, subject matter in the present grievance as well as relief prayed is similarly raised by M/s. Menon & Menon Ltd. before Hon'ble Tribunal in proceeding initiated by them.

(9) On the basis of pleadings of the parties and oral submissions, the following points are raised for determination.

1) Whether complainant consumer establishes consumption of 3,09,660 units basis for charging of ASC by applying second or latter part of order of Hon'ble Tribunal dated 12.5.2008 in appeal No. 135/2007 ?

Answer : Yes

2) Is the complainant entitled to get refund of the amount with interest as prayed or adjusting in future bills ?

Answer : Yes

REASONS

(10) A few admitted facts of the case can be stated as follows :

It is undisputed thata the complainant is HT Industrial consumer who has made payment of Rs. 11,55,853/- towards ASC reflected in the bill of Sept. 2009, under protest. On 20.10.2009, he approached I.G.R.C. Kolhapur in the month of Decemebr 2009 seeking refund with interest. The grievance has been rejected / dismissed by I.G.R.C. Kolhapur.

In order to understand gist of the prayer, it is necessary to go to the root of the Tariff Order. As per Section 61 of Electricity Act, under the head " Tariff Regulations ", Hon'ble Commission has powers to specify terms and conditions for the definition. Determination of Tariff Clause (d) is relevant, it reads –

" safeguarding consumers' interest and at the same time recovery of cost of electricity in a reasonable manner". As per Sub Section 4 of Section 62 under the head " Determination of Tariff" it reads

" No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified".

To support his claim, the consumer heavily relied upon judgement of the Hon'ble Appellate Tribunal in appeal No. 135/2007 decided on 12.5.2008 relevant paragraph 21. Before adverting to the relevant paragraph 21 of the order, it is necessary to mention, in the appeal before Hon'ble Tribunal, appellant challenged the order of MERC passed on 19.9.2007.

The Appellant filed a review Petition before the Hon'ble Commission on 22nd June, 2007 under Regulation 85 of CBR seeking review of Commission's order dated 18.5.2007 passed in case No. 65 of 2006 in the Multi Year Tariff Petition filed by MSEDCL for the control period from financial year 2007-08, 2008-09 and 2009-2010 and tariff for financial year 2007-08. Hon'ble Commission passed Order on 18.5.2007 which came into effect from 1st May 2007 approving the Clause 7.4(g) of Tariff. It is necessary to reproduce Clause 7.4(g) of the original order dated 18.5.2007 specifying the fixing of bench mark units to calculate additional supply charges of consumer is reproduced below :

" In case of consumers whose sanctioned load/ contract demand had been duly increased after the billing month of December, 2005, the reference period may be taken as billing period after six months of the increase in the sanctioned load/ contract demand or the billing period of the month in which the consumer has utilized at least 75% of the sanctioned load / contract demand, whichever is earlier".

(11) Thus it is clear in order to decide the reference bench mark for the consumption level as per this clause 7.4 (g), following criteria requires to be fulfilled.

a) billing period after six months of the increase in the sanctioned load/ contract demand

b) billing period of the month in which the consumer has utilized at least 75% of the increased sanctioned load / contract demand.

c) Whichever of the above criteria is achieved earlier shall be the reference period for calculation of bench mark units for determining ASC.

In the second clarificatory Order in case Nos. 26 of 2007 and 65 of 2006, Hon'ble Commission passed Order on 11.9.2007 in respect of reference billing period for HT Foundries in cases of increased contract demand has stated as under :

" In case of consumers whose sanctioned load / Contract Demand had been duly increased after the billing month of December 2005, the reference period may be taken as the billing period after six months of the increase in the sanctioned load / Contract Demand or the billing period of the month in which the third occasion of the consumer utilizing at least 75% of the increased sanctioned load / contract demand after increasing the Contract Demand is recorded, whichever is earlier".

It is also clarified on pages 14th and 15th of the said Order that "Clause 7.4 (g) of the Order reproduced will be applicable only in cases wherein contract demand is equivalent to 25% or more of the Contract Demand during the reference period from Jan. 2005 to Dec. 2005 ".

" While disposing of the Review Petition of the Appellant the Commission observed that, " reconsideration of the issue raised by the Appellant was not necessary and in so far as the bench marking the units for calculation of ASC was concerned the clarification provided by the above clarificatory orders dated 24th Aug.2007 and 11th Sept. 2007 would have general effect ".

The Hon'ble Commission has specified that the reference period may be taken as the billing period after six months of the increase in the sanctioned load / contract demand for the billing period of month in which consumer has utilized 75% of the increased sanctioned load of the contract demand whichever is earlier. Hon'ble Tribunal modified clause 7.4 (g) of the Tariff Order dated 18.5.2007 which is extracted as below :

" In the case of consumers whose sanctoned load / contract demand had been duly increased after the billing month of December 2005 the reference period may be taken as billing period after six months of the increase in the sanctioned load / contract demand OR the billing period after 6 months in which the consumer has utilized at least the same ratio of energy consumption as percentage of increased contract demand that has been recorded prior to the increase in sanctioned load ' contract demand ".

The directions given to the first respondent to refund and adjust against future billings, the amount of energy charges and other incidental charges paid by the Appellant on the basis of benchmark units fixed in the third month (i.e. June 2006) and additional supply charges be calculated accordingly.

In view of the above discussion or Operative Ordere of the Appellate Tribunal the submission of Shri Ahuja, Officer of the respondent Company, that word " whichever is earlier " has been used in the order by the Commission, can not be accepted, since in view of judgement it has lost sanctity.

(12) Turning to the submission of Shri Hogade, representative of the consumer, reference period should be December 2006 and bench mark consumption should be 3,09,660 units on the basis of Appellate Tribunal for Electricity's Order dated 12.5.2008 it has to be accepted. It is pertinent to note that the details of average consumption at 450 KVA for the year 2005 and consumption after increasing the load, total contract demand 650 KVA from Nov. 2005 described in two separate statements with complaint, in Schedule A , have not been disputed or challenged by the respondent Company as such.

To strengthen, the statement zerox copies of the bills are produced. It seems respondent Company treated 7th month i.e. Dec. 2006 as reference period and 2,35,380 units bench mark consumption as per the first part (before OR) of AT Order dated 12.5.2008. Therefore, reference was made by respondent Company to the H.O. Mumbai being policy matter. As stated in para 5 of the Say dated 29.3.2010, the reply therein by Chief Engineer (Commercial) thata the bench mark consumption is prepared as per APTLS Order, but it does not specify, it is based upon former (first) part. However, as submitted by Shri Hogade respondent Company has not considered second part or latter part (i.e. after OR) of the said Order which is according to Shri Hogade is actually applicable to his Unit. Since ATE has clearly mentioned the word " at least ", hence the month Dec.2006 and not May, 2006. Having observed that Hon'ble Tribunal has modified Order of Commission deleting word "whichever is earlier". Therefore, on the basis of observations in the latter part of the Order,

" at least " only second option will be applicable to the present case in the given circumstances.

(13) The respondent Company heavily relied upon observation of the Hon'ble Tribunal in Review Petition No. 5/2008 in Appeal 135/2007 decided on 30.4.2009. Representative of the complainant from inception i.e. filing of grievance mentioned in para 3 stated that the said Revieiw Petition has been dismissed at the stage of admission and there is no change in the original Order of the Tribunal dated 12.5.2008 in appeal 135/2007. However, I.G.R.C. referred in its judgement and in the parawise comments filed on 29.3.2010. On going through the paragraph 13 of page 9 of the said judgement of Review Petition, Hon'ble Tribunal observed,

" Before parting with the order we may clarify that the billing periods for bench marking of Reference Periods for ASC computation in both the alternatives of the modified clause 7.4 (g) are to be identically same as there is no rationale for stabilization period to be different for the same system ".

" Thus, the billing period after six months of increase in sanctioned load / contract demand load will be treated as Reference Period for the purpose of ASC computation and even if , the expanded system has not recorded any consumption in the Reference Period, it will be deemed to have at least utilized the energy in the same ratio that existed prior to increase in sanctioned load or contract demand.

As seen from the Order, Hon'ble Tribunal held Review Petition is not maintainable and it has been rejected at the admission stage itself. It is not the case of respondent they approached to Supreme Court challenging the rejection of Review Petition. Now we will have to consider what is the effect of such observation mentioned in para 13 of the Order, when findings in respect of Review Petition being not maintainable. Admittedly original Order dated 12.5.2008 passed by Tribunal in appeal 135/2007 and in the said appeal respondent Company was respondent. On going through the entire body of the judgement of the Hon'ble Tribunal, Review Petition has been rejected being not maintainable. In the circumstnaces, the observation in paragraph 13 will be little assistant or help to the respondent Company to substantiate their claim of justifying the recovery. The rejection of Review Petition by Tribunal amounts to no finding on the points raised in it therefore original order of the Hon'ble Tribunal in the appeal 135/2007 has achieved finality. It seems there is no appeal by MSEDCL challenging the Order before Supreme Court.

For one more reason, I am of the opinion that observation in para 13 of review 5/2008 are of little consequence or little help to the respondent Company. Copy of the appeal No. 101/2008 decided on 2nd July, 2009 is brought on record by the respondent Company. Appeal is by M/s. Menon & Menon Ltd. against ordere of 6th May, 2008 in case No. 96/2007 against Tariff Order dated 18.5.2007. Appellant sought review of the Tariff Order in the said appeal so far it relates clause 7.4 (g) of the tariff allowed by the Commission. Incidently, review by M/s. Erotex Industries has been dismissed by Order dated 19.9.2007. The appeal has been disposed in terms of paragraph 21 of judgement dated 12.5.2008 in appeal No. 135/2007 which is relied by consumer. In para 4 of the said order, advocate for respondent i.e. MSEDCL made a statement, without prejudice to the rights of the respondent 1 that judgement dated 12.5.2008 is generic and governs all concern. The Review Petition No. 5/2008 has been disposed by Tribunal on 30.4.2009. Hon'ble Tribunal disposed appeal No. 101/2008 on 2nd July, 2009. Confirming or agreeing with modification in Clause No. 7.4 (g) of Tariff Order by Hon'ble Tribunal on 12.5.2008 in appeal 135/2007. Moreover, there is reference in para 4 of the Tribunal Ordere dated 2nd July, 2009 judgement dated 12.5.2008 generic and governs all concerned.

(14) In view of the above discussions, the Order of I.G.R.C. rejecting the grievance is certainly not legal and proper which is liable to be set aside. The grienvance of the complainant, while charging ASC , the consumption of 2,35,380 units is incorrect. His further submission 3,09,360 units consumed has to be taken as bench mark consumption and assessed the ASC charges has to be accepted. In para 4 of the application with prescribed format A,

his contention, " करार मागणी वाढीच्या प्रमाणात वीज वापर " principle laid down by Tribunal its ignorance by I.G.R.Cell amounts intervention in the judgement, laid down by higher Appellate Authority, under the statute i.e. Electricity Act 2003. So Point No. 1 is answered in the affirmative.

The complainant prayed to award interest on the amount to be refunded by the Company to him for which reference is made to section 62, sub section 6 of I.E.Act 2003. It reads as follows :

" If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee ".

(15) Section 62 sub section 6 provides interest equivalent to the bank rate on the excess amount recovered from the complainant by the Co. A judicial note can be taken of the fact. Rate of interest of the nationalised bank is 12% at present. Even otherwise, we come across case wherein initially MSEDCL charged interest at the rate of 12% towards payment of dues and subsequently 16% or 18% as the case may be. Moreover, as per Tariff Order of MERC on internal page 226 of 231 HT Tariff is applicable with effect from 1.5.2007 under heading ' Rate of interest on arrears'. The rate of interest chargeable on arrears given as below which however not be applicable in case of existing for payment of arrears in instalments. At sr.no. 1, payment on due date after 3 months, interest rate 12%.

This clearly support to my conclusion, this is fit case to award the interest at the rate of 12% over the amount, directed to be refunded after proper assessment. Therefore, 12% interest over the amount mentioned in the letter dated 20.10.2009 i.e. Rs. 11,55,833.36 as such. Therefore, finding of point No.1 in the affirmative concluding that the complanant is entitled to interest as claimed in the grievance in view of Provisions under Section 62 Sub Section 6 of Electricity Act 2003.

(16) The respondent Co. Nodal Officer Shri Adake and Shri Ahuja Asstt.Engineer submitted that in view of subject matter in the present grievance is subjudice or pending before the Hon'ble Tribunal in the case of Menon & Menon Ltd., so according to them, as per Rule 6.7 Clause (d) of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electrical Ombudsman) Regulation 2006, the grievance is not maintainable and copy of the application preferred by Menon & Menon Ltd. bearing No. IA-327 of 2009 in Appeal No. 101/2008 is relied. Clause (d) of the Rules read as follows :

" where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any Court, tribunal or arbitrator or any other authority, or a decree or award or a final order has aready been passed by any such court, tribunal, arbitrator or authority ".

In order to atract bar about maintainability of the grievance, certain criterian has to be fulfilled. Representation of present consumer in respect of same grievance requires to be pending in any proceeding before any Court, Tribunal, Arbitrator or any other Authority and subsequently the decree or award or final order has been passed by any such Court, Tribunal, Arbitrator or any other Authority, so the previous proceedings initiated by the consumer for the representation in respect of the same grievance pending before Tribunal.

There is no such a case. As per IA No. 327/2009 filed by M/s. Menon & Menon Ltd. would not certainly come in the way of present grievance of the complainant as such. Moreover, it is not known whether such application has been admitted, heard, pending. The objection raised by respondent Co. Officer for the first time before the Forum in respect of maintainability of the grievance, is devoid of merit.

The grievance has been filed before Forum on 8.3.2010. Immediately notice was issued to the respondent Co. to file Say . On 29.3.2010 Say has been filed and the same has been fixed for hearing before Forum on 19.4.2010 and heard on that day. Since many other cases of quotations and non- compliance of SOP received from Sangli Circle particularly Kavathe Mahankal Division awaiting for judgement. The judgement could not be delivered within 2 months. Later on respondent filed documents on 23.4.2010 which were served to complainant and the reply written notes of arguments were received in this Office on 29.5.2010.

In view of finding of point No. 1 in the affairmative, the consumer who approached the Forum with his grievance in respect of incorrect charging of ASC by the respondent Co. succeeded in seeking refund of the amount recovered in excess with interest as prayed. Followng Orders.

ORDERS

1) Grievance of consmer is allowed.

2) The respondent Company is directed to accept 3,09,660 units as bench mark consumption. To recover Additional Supply Charges in respect of 2,35,380 has done while issuing the bills and recover the amount from the complainant.

3) The respondent Company is directed to refund such amount after calculating Additional Supply Charges on the basis of 3,09,660 units bench mark consumption with interest @ 12% from Oct. 2009 till payment. the payment to be adjusted towards future bills of the complainant.

4) The Respondent Distribution Company should report immediately to the Forum Implementation of this Order as per CGRF & Electrical Ombudsman Regulation 2006 8.7.

5) 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 B. A. Jadhav, Member Secretary :

2) Shri G.C. Lele, Member :