

**Before Maharashtra State Electricity Distribution Co. Limited
Consumer Grievances Redressal Forum, Pune Zone,
925, Kasabapeth Building, I Ind flr. Pune-11**

Case No. 33/2012

Date: 14/03/2013

**In the matter of
M/s.North Star Ice
Equipment Co.Ind.Pvt.Ltd.
A/P Ambervet Tal. Mulshi.**

- Complainant

V/S

M.S.E.D.C.L. Mulshi Division

- Opponent

Quorum

Chair Person	Shri.S.D.Madake
Member/Secretary,	Shri.B.M.Ivare
Member	Shri.Suryakant Pathak

- 1) M/s. North Star Ice Equipment Co. Ind. Pvt. Ltd. Company situated at Sr.No.327 Ambervet, Tal. Mulshi Dist. Pune is a consumer of MSEDCL vide Con.No 183090069729 having L.T. sanction load 65 HP (LTP-G) since 15/04/1983
- 2) The allegations of the complainant are briefly stated as under MSEDCL issued bill of Rs.89,640/- (Eighty nine thousand six hundred forty only) in Feb-2006 under the heading of "bill adjustment" without details. Consumer paid 30% amount under protest. The said amount of bill adjustment was claimed on the basis of report of inspection of flying squad on 11/05/2004. The consumer also made a grievance regarding excess fixed charges excess connected load penalty, capacitor penalty

RLC refund and interest on arrears etc. billed in the bills .The consumer from time to time demanded regarding the details, however no cognizance was taken by MSEDCL. The complainant further claimed compensation of Rs. 75,000/- for the harassment.

- 3) Consumer, moved before IGRC for redressal but the application came to be rejected on the ground of limitation as per clause 6.2 of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Reg.2006 vide order dt.06/12/2012
- 4) According to MSEDCL the bill of Rs.89,640/- was claimed on the basis of flying squad inspection dated 11/05/2004 in the bill issued in Feb-2006 due to irregularities found viz un authorized load extension and capacitor not provided etc. Again MSEDCL credited an amount of Rs. 28,080/- in April-2006 to consumer. The interest worked out on flying squad adjustment bill has been credited in Feb-2012 to the amount of Rs.25,880.60 The MSEDCL returned delayed payment charges (DPC) from Feb-2006 to March-2012 to the amount of Rs.10,543.43 in the bill of March-2012.

The adjustment bill amount of Rs.89,640/- consist of following amounts.

1) Meter cost-	Rs.22,400/-
2) Add. Load penalty -	Rs.28,080/-
3) Capacitor penalty -	Rs.39,160/-

Total-	Rs.89,640/-

- 5) In the letter dt.28/12/2012 MSEDCL submitted that utility is willing to withdraw the meter cost of Rs.22,400/- The MSEDCL expressed willingness to refund all the charges which were accepted due to mistake. Further MSEDCL is humbly requested that as per MERC (CGRF

and electricity Ombudsman) Regulation 2006 Clause No. 6.2 the case is time barred, therefore condonation for time delay may not be granted.

- 6) Heard both parties. Perused all documents submitted by complainant and opponent. The complaint argued that the dispute arose when the respondent levied Rs.89,640/- in the bill of February-2006 as "Bill adjustment" without giving any information details, reason or justification. The complainant has submitted written subsequent submission during hearing on 09/01/2013. The complainant plead that the application be allowed with delay is condoned and be adjudged on its merit instead of rejecting under section 6.2 of MERC regulation 2006 for CGRF. The complainant has aggrieved for matter of refund claims made under various points of dispute as bellows.

Sr. No	Point of dispute	Financial claim of refund
1	Bill adjustment amount	Quashing of entire demand of Rs. 89,640/-and refund of 30% deposited amount.
2	Refund of excess fixed charges	About Rs. 90,000/- + Interest
3	Refund of capacitor penalty already paid	About Rs. 29,080/- + Interest
4	R.L.C. Refund	As per point
5	Refund of intrest on arrears	As per bill
6	Compensation	About Rs.75,000/-

Complainant further contended that fixed charges during each electricity bill to be charged Rs.1980/- as per tariff order dt.1 Dec-2003, instead of that it was actually charged of Rs.4980/- from July-2004 to March-2007. Hence Rs.90,000/- is additionally collected by MSEDCL.

Complainant further stated that total capacitor penalty of Rs.29,077/- during period from June-2004 to July-2005 is charged during each monthly electricity bill. It is not allowed as per tariff order dt.01/12/2013, so long as power factor is measured. In addition to above RLC & interest levied in bills is also to be refunded.

During hearing MSEDCL stated bill adjustment amount of Rs. 89,640/- was claimed on the basis of flying squad inspection dt. 11/05/2004 in the bill of Feb-2006. Further the amount of Rs.28080/- was credited in the bill of April-2006 to consumer by withdrawal of additional load penalty. Opponent further concluded that they are ready to withdrawn meter cost of Rs.22,400/- . However part of capacitor penalty of Rs.39160/- from bill adjustment amount is to be paid by consumer as capacitor not installed and as per the MERC tariff orders.

The MSEDCL representative further contented that other issues such as fixed charges, capacitor penalty are not raised previously by complainant, hence it is time barred, so pleaded that it is to be rejected.

- 7) In the matter of connected load i.e. case No. 2 of 2003 the Hon'ble Commission, MERC vide its order dt.14/07/2005 has mentioned as below.

"In case of load drawal exceeding sanctioned load, to be measured through the MD meters (Trivector or the Accu check meters as the situation demands) the consumer shall be billed based on the actual drawn demand and shall be levied penal charges for the unauthorized demand beyond the sanctioned load.

In the present case connected load was not measured by maximum demand recorded by the meter. On the basis of the documents and submission, it is noticed that connected load was measured physically. Therefore imposing of penalty on the basis of unauthorized load is not proper. Complainant was entitle for refund of the same and accordingly the said amount was refunded by MSEDCL in the month of April-2006. We have verified the electricity bill of the consumer vide bill No.722 dt.12/04/2006 and found that an amount of Rs.28,080/- was credited in favour of consumer.

- 8) As per MERC order in case No.26 of 2002 dt.28 June-2005 as per para 11 & 12 stated as below.

11- From the above chronology and account, the position should be clear, viz. that, with effect from 10th January-2002 (the 2nd tariff order) and upto 19th January-2005 (i.e. up till the date of the supply code). Meter cost can be recovered from the consumer upon replacement.

a) Only once during his continuance as a consumer, except in cases of burnt or lost meters (the earlier payment of meter rent is not to be treated as the cost having been paid)

b) Subject to the above, in the case of agricultural consumers with land holding less than 1 hectare, only 50% of such cost may be recovered(applicable from 5th May-2000 to 19th January-2005.)

c) In line with the Commission's ruling in order dated 19th July-2004 , where the consumer had earlier elected to purchase his own meter, as he is entitled to do under law, the cost of any replacement required by MSEB can not be recovered from him (except for lost/burnt meters)

12- Effective from 20th January-2005 , the supply code regulations provide (Regulation 14.2.4) that :

"Except in case of burnt meter or a lost meter, the Distribution Licensee shall not be authorized to recover the price of the meter more than once during the continuance of supply to the consumer".

It is noticed that MSEDCL charged meter cost of Rs.22,400/- on Feb-2006 in the name of bill adjustment. Complainant is entitled to refund of the cost of the meter, recovered in the name of bill adjustment to the amount of Rs.22,400/- with interest, as the consumer is liable to pay meter cost only once in life except in case of burnt or lost meter. The MSEDCL expressed willingness to refund the said amount vide filing reply dated 28/12/2012.

- 9) Capacitor penalty of Rs.39,160/- is levied in the "Bill Adjustment" amount during Feb-2006. Complainant submitted that the observations and remarks of the flying squad are without quantitative measurement of capacity of the capacitors and hence any penalty in lieu of the same may be quashed.

As per the Condition 22k of Annexure VI under rule 27 of the Indian Electricity Rules, 1956, stipulates that, consumer's apparatus shall have power factor of not less than 85 percent at normal working load. Further the condition 19 of the said Annexure, stipulates that if any consumer adopts any electrical appliance which is likely to affect the supply to other consumers, the licensee may discontinue the supply so long as such appliances is not kept in proper order. The Licensee is not bound to give or continue supply as long as such appliance is not kept in proper order.

Further the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of supply) Regulations, 2005, came into force from January, 2005. Regulation 12 reads:

"12. Power factor / Harmonics

12.1 It shall be obligatory for the consumer to maintain the average power factor of his load at levels prescribed by the Indian Electricity Rules, 1956, with such variations, if any adopted by the Distribution Licensee in accordance with Rule 27 of the Indian Electricity Rules, 1956 and accordance with the relevant orders of the Commission,

12.2,

Provided that the Distribution Licensee may charge penalty or provide incentives for low / high power factors and for harmonics, in accordance with relevant Orders of the Commission"

Hence it is obligatory for the consumer to maintain the average power factor of his load at levels prescribed by the Indian Electricity Rules 1956 and in accordance with relevant orders of the commission. The Distribution Licensee is entitled to charge penalty or provide incentives for low/high power factor.

Hence MSEDCL is entitle to charge capacitor penalty of Rs. 39,160/- in accordance with above rules and regulation.

- 10) The Forum therefore hold that MSEDCL has to pay complainant as per statement below.

Sr.No.	Particulars	Amount(Rs)
1	MSEDCL to refund meter cost to consumer	22,440/-
2	Complainant already paid 30% amount against the bill adjustment which is to refund consumer	26,900/-
3	Complainant is required to be paid capacitor penalty to MSEDCL	(-) 39,160/-
	Net amount to be refunded by MSEDCL	10,140/-

As the additional load penalty already refunded in the bill of April-2006. Therefore MSEDCL is liable to refund balance amount of Rs.10,140/- with interest as applicable as per Reserve Bank of India and be adjusted in future bill.

- 11) The proportionate RLC to be refunded to applicant as approved by Hon'ble Commission MERC vide tariff order dt.16/08/2012 in case No. 19 of 2012 for the year 2012-2013
- 12) The complainant has claimed relief in respect of bills raised during the period between 2004 and 2007 . The complainant has filed application

for condonation of delay on 01/012/2012 . As per clause No. 6.6 of MERC (CGRF & electricity ombudsman) regulation 2006, the complainant has to file complaint within two years. However same is filed in 2012 i.e. after five years from cause of action.

The law on delay condonation is laid down in following cases.

- (A) 12) Apex Court in "Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC)" laid down that;

"It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer Foras."

- (B) Delhi High Court in New Bank of India Vs. M/s Marvels (India): 93 (2001) DLT 558, has held;

"No doubt the words "sufficient cause" should receive liberal construction so as to advance substantial justice. However, when it is found that the applicants were most negligent in defending the case and their non-action and want of bonafide are clearly imputable, the Court would not help such a party. After all "sufficient cause" is an elastic expression for which no hard and fast guide-lines can be given and Court has to decide on the facts of each case as to whether the defendant who has suffered ex-parte decree has been able to satisfactorily show sufficient cause for non-appearance and in examining this aspect cumulative effect of all the relevant factors is to be seen."

(C) In Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors. AIR 1994 Punjab and Haryana 45, it has been laid down that;

“There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence”.

As per law laid down by Hon'ble court, it is clear that consumer is claiming refund of money, which he paid during 2004 to 2007 . The delay is not properly explained, as per law. Hence the relief in respect of these bills is barred by limitation; other reliefs are granted as per law.

13) To redress the Grievance this forum tried to find out the mutual settlement between complainant and respondent during hearing on 09/01/2013. According time period is given for period of fifteen days to settle the grievance mutually. However amicable settlement has not made with each other and both submitted their revised “Say” on 24/01/2013 by MSEDCL and then on 11/02/2013 by complainant. Forum wants to settle issue mutually since pending long time. In view of this time is required to pass the order.

In the result, we pass the following order.

ORDER

- 1) The MSEDCL is ordered to refund the balance amount of Rs. 10,140/- (Rs. Ten thousand one hundred forty only) of "bill adjustment" with interest as per the rates applicable as per direction of Reserve Bank of India and be adjusted in future bill.
- 2) MSEDCL is directed to refund the proportionate RLC as per directives by Hon'ble Commission, MERC as per tariff order dt. 16/08/2012 in case No. 19 of 2012.
- 3) No order as to cost.

B.M.Ivare,
Member/Secretary

Suryakant Pathak
Member

S.D.Madake
Chair Person

Date: 14/03/2012