

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 961

Date: 21.01.2019

Hearing Date: 04.12.2018

CASE NO. 164/2018

In the Matter of Refund of Excess Demand Charges

M/s. Prem Industries,
Gala No. B-1, Part 1,27,
Acre Kothari warehouse, Manpada,
Thane (W)-400607.

.... (Hereinafter referred as Applicant)

Versus

Maharashtra state Electricity Distribution Company Ltd
Through it's Nodal Officer,
Thane Circle, Thane

..... (Hereinafter referred as Respondent)

Appearance

For Consumer – Hemant Hatkar Consumer representative
For Respondent - Shri. Vijay Ragunath Sonawale Additional Executive Engineer
Kolset Subdivision Mulund.

[Coram- Dr. Santoshkumar Jaiswal - Chairperson, Shri. R.S.Avhad -Member Secretary and Sharmila Ranade - Member (CPO)].

Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &

Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 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. [Electricity Supply Code and other conditions of supply Regulations 2005] Here in after 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.

Being aggrieved with order of IGRC Thane applicant filed grievances in form “A” to this Forum. The IGRC passed the order that as per MERC Regulation -2006, Clause no 6.6. The applicant application rejected as time barred.

The applicant herein is M/s Prem Industries Ltd bearing consumer No.000011896715/PC-0. The applicant has submitted that he is consumer of having sanction load 67 HP for his electricity connection. The applicant further submits that he had applied for additional load of 45 H.P MSEDCL and same was sanctioned by Wagale Estate Divison on dtd 20.05.2015 accordingly he paid charges on dtd 30.05.2018. The grievance raised by the applicant is that even payment of necessary charges the Respondent charged excess demand charges from month of June 2015 to August 2017 amounting Rs2,30,050/-.The applicant prayed for refund of excesses demand charges of amounting 2,30,050/- paid by him.

The Notice was issued to the Respondent to submit parawise reply, the Respondent has filed the reply dated 19-11-2018 stating as the applicant had submitted application

on dt 20/05/2015 for load extension of 45 HP load in addition to existing 67 HP along with the payment of Rs 63,300/- in respect of load extension charges.

The Respondent further submit that the application was not submitted with all relevant required documents such as sanction estimate, sanction load ,payment receipt copies ,list of machinery installed ,test report after sanction . The applicant has submitted documents in the month of June 2017 and the load extended in the billing month of July 2017. The application was submitted for load extension and not for Demand charges, there is not any valid reason to refund the demand charges which charged to consumer as per rules during the period of two years i.e. from the date of application to the date of execution as charges of Rs 63,300/- .The Respondent further submit that the applicant was aware of it and he paid all the bills without any protest till all formalities are completed in the of June 2017 hence application may disallowed.

I have given opportunity to consumer and his representative to appear before the Forum for hearing. I also gave equal and fair opportunities to representative of the Respondent utility and the dispute was heard. This Forum considered all the relevant point for determination of dispute. Here is the dispute of refund of excess demand charges for the period June 2015 to August 2017. The applicant firstly submit application to the Respondent on 24/07/2017 for refund excess demand charges after his load regularise in the month of June 2017 as per sanction estimate after submitting document . In this case only question arise whether the applicant application is time barred or not ? and whether excess demand charges paid by the consumer should be refundable?

On hearing both side and gone through the provisions of law, MERC (CGRF and OMBUDSMAN) Regulations 2005 and documentary evidence on the record that admitted fact is that the consumer had applied for Load extension and accordingly load

extension sanctioned . The applicant made the payment to utility and after submission of the documents the load extension feed and shows in the bill of July 2017.

It is then contended that Section 42 (5) mandates the petitioner to establish a Forum within 6 months from the appointed date or the date of grant of license, whichever is earlier, for the redressal of the grievances of the consumers. Section 42(6) enables a consumer to approach the Ombudsman if he is aggrieved by the decision of the Forum. Regulation 2(2.1)(c) of the 2006 Regulations defines a “Grievance” as under :-

“Grievance” means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a Distribution Licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of Distribution Licensees as specified by the Commission and includes inter alia (a) safety of distribution system having potential of endangering of life or property, and grievances in respect of non-compliance of any order of the Commission or any action to be taken in pursuance thereof which are within the jurisdiction of the Forum or Ombudsman, as the case may be.”

Regulation 2(2.1)(d) defines the “Cell” as under :-

“Internal Grievance Redressal Cell” or “IGR Cell” means such first authority to be contacted by the consumer for redressal of his/her Grievance as notified by the Distribution Licensee.”

Regulation 2(2.1)(e) defines a “Forum” as under :-

“Forum” means the forum for redressal of grievances of consumers required to be established by Distribution Licensees pursuant to sub-section (5) of section 42 of the Act and these Regulations.”

Regulation 6 (6.1 till 6.10) read as under :- “6. Procedure for Grievance Redressal :-

6.1 The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office(s) in each revenue district in the area of supply.

Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall endeavour to redress Grievances through its IGR Cell.

6.2 A consumer with a Grievance may intimate the IGR Cell of such Grievance in the form and manner and within the time frame as stipulated by the Distribution Licensee in its rules and procedures for redressal of Grievances.

Provided that where such Grievance cannot be made in writing, the IGR Cell shall render all reasonable assistance to the person making the Grievance orally to reduce the same in writing:

Provided also that the intimation given to officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of the IGR Cell established by the Distribution Licensee or the procedure for approaching it, shall be deemed to be the intimation for the purposes of these Regulations unless such officials forthwith direct the consumer to the IGR Cell.

6.3 (a) The office of the IGR Cell shall issue acknowledgement of the receipt of the Grievance to the consumer within five (5) working days from the date of receipt of a Grievance. Where the Grievance has been submitted in person, the acknowledgement shall be provided at the time of submission :

Provided that where the Grievance is submitted by email to the IGR Cell acknowledgement of the receipt of the Grievance to the consumer shall be provided by return email as promptly as possible :

Provided further that the IGR Cells shall keep such electronic records in hard form for ease of retrieval :

Provided further that where the Grievance is submitted by email hard copies of the same shall be submitted forthwith separately to the IGR Cell. (b) Notwithstanding sub-clause (a), the written acknowledgement of receipt of grievance provided by officials (who are not part of the IGR Cell) shall be deemed to be the acknowledgement for the purposes of these Regulations.

6.4 Unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the consumer may submit the Grievance to the Forum. The Distribution Licensee shall, within the said period of two (2) months, send a written reply to the consumer stating the action it has taken or proposes to take for redressing the Grievance.

6.5 Notwithstanding Regulation 6.4, a Grievance may be entertained before the expiry of the period specified therein, if the consumer satisfies the Forum that prima facie the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made there under or any order of the Commission, provided that, the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters.

Provided further that no such Grievance shall be entertained, before the expiry of the period specified in Regulation 6.4, unless the Forum records its reasons for the same.

6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.

6.7 The Forum shall not entertain a Grievance:

unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum; unless the consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations; unless the Forum is satisfied that the Grievance is not in respect of the same subject matter that has been settled by the Forum in any previous proceedings; and 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 already been passed by any such court, tribunal, arbitrator or authority.

6.9 The Forum may reject the Grievance at any stage if it appears to it that the Grievance is:

frivolous, vexatious, malafide;

without any sufficient cause;

there is no prima facie loss or damage or inconvenience caused to the consumer ;

Provided that no Grievance shall be rejected in respect of sub-clauses (a), (b) and (c)

unless the applicant has been given an opportunity of being heard.

What needs consideration therefore is that, as the Regulations of 2006 are framed u/s 42(5) of the 2003 Act, the consumer is given the option of approaching the Cell which is the first Authority to be contacted by the consumer for the redressal of his grievance.

The word used in Regulation 6.2 is "MAY" while permitting a consumer to intimate the Cell of its grievance with regard to the FAC Bill or any grievance. Regulation 6.2 provides that "a consumer with a grievance MAY intimate the IGR Cell of such grievance in the form and manner and within the time frame as stipulated by the distribution licensee in its rules and procedures for redressal of grievances." Under Regulation 6.4, a consumer can approach the Forum if the Cell does not decide the fate of his representation within 2 months from the date of intimation. Regulation 6.6 provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Regulation 6.7(a) provides that the Forum shall not entertain a grievance unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his grievance in the specified form to the Forum

In the above backdrop, it appears that a consumer may have the option of approaching the Cell before approaching the Forum. However, the language used in Regulation 6.7(a) indicates that the Forum 'SHALL NOT' entertain a grievance unless the consumer has complied with the procedure under Regulation 6.2. It was, however, concluded in

paragraph No.16 that, "Internal Consumer Grievances Cell" is not the Forum for redressal of the grievances of the consumer as contemplated by Section 42(5) of the Act but the C.G.R.F. is the said Forum established under sub section 5 of Section 42. The Regulation 6.6 uses the word "Forum" which obviously means C.G.R.F. and not the I.G.R.Cell of the Distribution License.

The cause of action in this case when to be consider from the date he approach to IGRC or after the payment for load extension applicant got the bill excess load penalty . In this case applicant had submitted application for additional load of 45 H.P to the Respondent and same was sanctioned by Wagale Estate Divison on dtd 20.05.2015 accordingly he paid charges on dtd 30.05.2018 but not submitted the documents sanction estimate, sanction load ,payment receipt copies ,list of machinery installed ,test report after sanction to the Respondent .The Respondent charged excess demand charges from month of June 2015 to August 2017 amounting Rs2,30,050/-. The applicant paid the electricity bills regularly and not made any grievance to IGRC or The Respondent office means the applicant aware that he got bill excess load penalty and not taken any objection to it . The applicant firstly submitted all required documents to the Respondent then his electricity load regularise from the month of June 2017. After that he has submitted application to the Respondent on 24/07/2017 for refund excess demand. It is crystal clear that applicant had got excess load penalty bill from June 2015 so he has to approach the Forum within 2 years from the date of cause of action but he neither approach IGRC cell nor the Respondent office. The applicant files application to the Forum 13/08/2018 but as per regulation 6.6. The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. The applicant grievance time bar as per provisions MERC

(Consumer Redressal Forum and Electricity Ombudsman) Regulation 2005.Hence I proceed to pass following order.

ORDER

The applicant in case 164/2018 hereby dismissed.

No order as to be cost

Both the parties should be informed accordingly.

The compliance should be report within one week.

I Agree/Disagree

I Agree/Disagree

**MRS. SHARMILA RANADE,
MEMBER
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, and Bhandup.

Note:

- 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, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051"
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon'ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or
- c) Delay in compliance of this decision issued under" Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003" at the following address:-

"Maharashtra Electricity Regulatory Commission, 13th floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05"

d) 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.

