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Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg,Bhandup (W),
Mumbai – 400078.

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

Date

Case No. 613,614,615&616

Hearing Dt. 28.01.2016

In the matter of Change of Tariff

M/s. Balaji Builders and Developers and

M/s. Ceat Tyres

- Applicant

Vs.

M.S.E.D.C.L., Thane Circle

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil Bavthankar, Chairman, CGRF, Bhandup
- 2) Shri. Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Applicant

- 1) Shri. B.R. Mantri - Consumer

C - On behalf of Respondent No. 1

- 1) Shri. D. M. Jadhav, Dy. Law Officer, Thane Urban Circle.

Order (passed on 02.02.2016)

1. Above named consumer filed Writ Petition which is registered at Sr. No. 613, 614, 615 & 616 against the consumer who was original consumer before this

Forum in case nos. 544, 541, 542 and 543, which are decided by this Forum vide its order dated 24.06.2014.

2. It is connection of respondent utility that above proceedings were filed by original consumer under the name of M/s. Ceat Tyres Ltd and Ms/ Balaji Developers; for wrong application of (continuous and noncontiguous) tariff and inappropriate recovery of 2% additional surcharge from the consumer. Respondent utility submitted that when the matter was heard by this Forum, certain point which ought to have been considered was not placed before the Forum which justified application of this tariff and also further recovery of 2% additional surcharge from the consumer. The point which was now placed under the review application justified the liability of consumer on the ground that the supply obtained by consumer M/s. Ceat Tyres was HT consumer bearing consumer No.022929010128. The said consumer was earlier fed from 22/22KV Tata Salsete. It was later transferred on 22KV Bhandup GIS substation from December 2012. The new feeder GIS was laid for re-orientation on existing distribution network and continued to provide later with more reliable quality supply. MSEDCL has admitted that the feeding arrangement of the consumer was changed due to reorientation of existing distribution network from 220/22KV Bhandup Sub Station. Obviously it was the responsibility of MSEDCL to make necessary arrangement by providing meter at substation in compliance to its own directives contained in above circular. Therefore 2% surcharge is levied against consumer as per MERC directives on 12.09.2010 in case of 111 of 2009 MERC clarified as below "...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 connected on the said feeder), and **in case only one connection exists on the said dedicated**
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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 consumer's end (primes), whichever is higher, without any levy of voltage surcharge.” (Emphasis added).

3. In present case MSEDCL has not installed any meter at substation. There is only one meter in existence at consumer end at his premises. Therefore 2% voltage surcharge was levied in accordance with MERC directives which is appropriate and as per the Rules. Now there is clear direction from CGRF to refund with interest. But CGRF has directed to refund the surcharge amount with prime lending rate of SBI and ‘**interest**’ word was not then in operative order. As per observations made by the Forum, the consumer had prayed for only 9% interest and the relief was not granted to consumer as per section 56 (2) of I.E.A.2003. The difference of tariff determination under section 56 (2) is only refundable with interest. This interest is not applicable for voltage surcharge amount. the voltage surcharge is not part of tariff determination under 56(2). Therefore respondent utility submitted that amount towards interest and voltage surcharge is not payable as CGRF has not given any direction to refund voltage with surcharge interest. Therefore the question of refund of voltage surcharge amount with interest does not arrive. However utility has submitted that they have complied with the order and the amount is refunded under protest. By filing this review petition as per Regulation No. 19 of MERC (CGRF and Ombudsman Regulation 2006), it is requested to reconsider the earlier orders passed by CGRF considering new facts and pass appropriate order in favour of utility by applying correct legal provision. Respondent utility submitted all relevant documents justifying the connection sanction and relevant papers in case of consumer M/s. Ceat Tyres along with

supply arrangement sketch map of existent transfer, old and new situated on premises along with copies of earlier order passed by this Forum and copy of review judgment in respect of proposal for levy of voltage surcharge where there is supply of power as per SOP regulation in case for 71/2009 order dated 5 March 2005 and other relevant circulars and sanction orders passed by competent authority of the utility.

4. After filing this grievance in the form of review petition on 14.10.2015, we issued notice to the consumer. After service of notice consumer sent reply in review petition nos 613,614,615 and 616. Consumer has not submitted any grievance on 14/10/2015 which is registered at 613, 614, 615 in the office of Forum and requested not to confuse with the said fact.
5. We have given opportunity of hearing to respondent utility. Utility submitted a copy of agreement and a copy earlier order passed by this Forum in case of M/s. Balaji Developers. We have perused all documents filed by consumer and the respondent utility.
6. After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration:
 - 1) Whether Review Petition filed by responded utility under Regulation 19/2015 Ombudsman Rules and Regulation 2005 is maintainable.
 - 2) Whether respondent utility entitled for any orders.

Reasoning

7. We have given opportunity and heard detailed arguments of representative of respondent utility. Earlier order passed by this Forum in both the cases are submitted for my perusal.

It appears that

- The Forum already has decided the issue in various cases.
- The consumer filed clarification order petition and also filed litigation before MERC for non compliance of CGRF orders and seeking the relief.
- Even respondent utility has filed petition for clarification of order as '**interest**' word is missing in the order of the Forum.

8. During the course of arguments, legal representation Shri. Jadhav was told to verify the status of supply obtained by consumer at the both premises. Considering the request of respondent utility and in view of fair justice, we directed to hold joint inspection (of consumer Representative and respondent utility) and to verify any other point supply is in existence and installation of two meter for recording unit was Possible. Accordingly on 04.01.2016 joint inspection was held. Report and diagram map along with the letter was submitted before the Forum. We have perused the same. It appears that there is some point arrives by respondent utility for reconsideration of earlier judgment, which since to the roots of charging 2% additional voltage surcharge against the consumer.

9. As the competent Forum already has passed order and has refunded the voltage surcharge of 2% to the consumer and this order is already complied with, now reopening of substantial part of order of this Forum is absolutely not justified. As all the circumstances which are now placed before this Forum were already in existence when competent Forum decided this issue in earlier judgment and passed reasoned order. The Respondent utility should have

challenged this order before the Higher court in writ petition at appropriate time. Now the respondent utility is trying to obtain order from this Forum only to get benefit of period of limitation. This cannot be justified MERC/CGRF & EO /REG/2016/01452 Date: 8 February, 2016 PRACTICE DIRECTIONS REGARDING REVIEW OF OWN ORDERS BY CGRFs MERC (CONSUMER GRIEVANCE REDRESSAL FORUM AND ELECTRICITY OMBUDSMAN) REGULATIONS, 2006 reads as under

Preamble It has been brought to the notice of the Commission that a Consumer Grievance Redressal Forum (CGRF) has entertained applications made by a Distribution Licensee for review of its own Orders. While there is a specific provision for review by the Electricity Ombudsman, the MERC (CGRF and Electricity Ombudsman) Regulations, 2006 do not empower CGRFs to review their own Orders. Therefore, in exercise of the powers conferred under Regulation 26 of the Regulations, the Commission issues the following

Practice Directions:

1. The CGRFs are directed not to entertain applications from any party seeking review of their own Orders.
 2. If any instance of a CGRF entertaining such an application or reviewing its own Order comes to his notice, the Electricity Ombudsman may suo moto call for the papers and give appropriate directions.
 3. A consumer may take recourse to the Electricity Ombudsman if a CGRF reviews its own Order upon an application made by a Distribution Licensee, or entertains such an application.
10. After perusing the said judgment it appeared that learned legal Representative Shri. Jadhav is emphasizing and insisting that this Forum should reconsider the order passed earlier and hold that the respondent utility is entitled to charge 2% voltage surcharge to this consumer. It is clearly seen that he wanted to reverse the said order in favour of utility.

11. After giving conscious hearing to the legal Representative and after going through the record it appears that:-

1. The review petition is filed against the original order of Forum is beyond the period of limitation of 30 days and is absolutely time barred.
2. Merely non availing the opportunity to appear at the time of hearing and not making proper Representation cannot be a ground for filing this review petition.
3. Also the fact is that the order is already complied with by the utility.

12. To my view whether statute empowered this Forum to exercise the power of review at this stage. We are unable to express my view in this judgment whether power can be exercised by this Forum. It is to be decided by competent Forum under the rules and not by this Forum. At the conclusion in the view practice direction issue by MERC recently has mention above.

But under no circumstance we can allow the petition filed by the utility to review and to reverse the order. Hence, this review petition deserves to be dismissed.

Hence we proceed to pass following order.

Per Consumer Member Dr. Mrs. A. G. Sabnis

Agreeing totally with the order passed herein above, I would like to keep the following fact on record:

The legal officer Mr. Jadhav during the course of arguments, in the open court, threatened the Member Secretary of this Forum.

The Hon'ble Member Secretary of this Forum was **authoritatively** told by Mr. Jadhav that if the Member Secretary passes any order against the utility, he (Mr.

Jadhav) would report the same to the higher authority, and also to the Director and will get the Member Secretary transferred to some remote place.

Mr. Jadhav further had an audacity to say that the same had happened in the case of previous Member Secretary, and he was transferred for passing orders against the Utility.

We do not know how far the statements made by Mr. Jadhav in the open court are true and how much weightage the given threat carries.

We do not know whether Mr. Jadhav has any hold and authority over the persons quoted by him in the open court.

But it definitely reflects very badly on the part of the utility and its higher officials and the persons quoted by Mr. Jadhav.

It further creates a doubt in the minds of a lay man whether the Forum is only a farce created by the utility.

I therefore direct the concerned officers of the utility to take an appropriate action against the Legal officer Mr. Jadhav, if whatever statements made by him before this Forum as mentioned above are untrue and inform the Forum about the same.

This not just creates a bad impression, but also is contempt of this Forum.

ORDER

1. The consumer complaint No. 613,614,615 and 616 stands dismissed.

Both the parties be informed accordingly.

No order as to cost.

Proceedings closed.

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

Note:

1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman

The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

I Agree/Disagree

**DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP**

**ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP**

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