

Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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No. K/E/806/965 of 2014-15

Date of Grievance: 18/06/2014

Date of order : 08/10/2014

Period Taken : 112 days.

**IN THE MATTER OF GRIEVANCE NO. K/E/806/965 OF 2014-15 IN RESPECT OF NRC LIMITED, VILLAGE MOHONE, TAL. KALYAN, DISTRICT-THANE PIN- 421 102 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING PAYMENT OF INTEREST ON RLC AMOUNT AS PER THE ORDER OF ATE AND MERC.**

NRC Limited,

Village Mohone, Tal. Kalyan,

District-Thane.

Consumer No. 020169009628 HT

.... (Hereafter referred as consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

Executive Engineer, Kalyan -Circle-1, Kalyan .... (Hereinafter referred as Licensee)

Appearance : For Consumer-Shri Killedar -General Manager

Shri Tulsidas Manager-

Consumer's Representatives.

For Licensee Shri Lahange- Nodal Officer and Executive Engineer,

Shri Barambhe - Dy.Exec. Engineer

Shri Sakpal-Accountant.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] 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 sub-section 5 to 7 of section 42 of the Electricity Act, (36/3003). 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.

2] This grievance is brought before us by consumer on 18/6/2014, aggrieved by order of IGRC dated 26/2/2014. Grievance is pertaining to refund of interest on Regulatory Liability Charges (RLC), which was recovered from March 2004.

3] In this matter on receiving the grievance it’s copy along with accompaniments sent to the Nodal Officer vide this Office Letter No.EE/CGRF/0233 dated 18/6/2014.

In response to it, Licensee appeared through it’s Officers and submitted reply on 2/7/2014 and further additional contention is given on 30/7/2014, therein it is contended that aspect of payment of interest is subjudice before the Hon’ble Supreme Court, hence no order can be passed.

4] In this matter, both sides argued in tune with their contentions. On close reading of these contentions, a short question comes up whether consumer is entitled to interest as per the calculation sheet enclosed to the grievance application. Total interest worked out is to the tune of Rs.5,59,20,621.29 Ps.

There is no dispute that RLC was recovered from the consumer as per the order of MERC and said RLC recovered from March 2004 to October 2006. It is refunded. However, interest was not paid on it. It is submitted that though matter was taken to MERC for payment of interest. MERC rejected it and against the order of rejection appeals were filed before Appellate Tribunal for Electricity ( ATE) and Hon’ble ATE passed order directing payment of interest.

It is a fact that even matter was again taken to ATE for seeking clarification as to whether order of ATE is applicable to only parties who approached or to all. Accordingly, Hon'ble ATE in Appeal No.50/2011, passed order on 31/5/2011 clarifying that said order passed previously i.e. 5/8/2010 is in rem and that it is applicable to all subsidizing categories of consumers of distribution company who contributed the RLC amount to the distribution company as per the order of State Commission. Relevant portion of said order reads as under:-

‘Therefore, it is clear that all the similarly situated subsidizing category consumer’s like the appellant and intervening parties who have contributed substantial amount as RLC to distribution company would be clearly entitled to the payment of said amount.’

Accordingly, it is clear that RLC though refunded, interest was also to be paid.

5] As per the direction of Hon'ble ATE even MERC fixed the rate of interest i.e. 11.75 % per annum. Said order was passed in case No. 44/2010 on 1/3/2011.

6] Again some of the consumers approached MERC by filing case No.138/2011 seeking interest as per the order of ATE. MERC decided the said matter on 3/8/2012 giving public hearing and concluded as under in Para Nos. 6 and 7 of its order.

*6] ‘During the public hearing, MSEDCL submitted that the Hon'ble ATE delivered its Judgment on 6 September,2011 in Appeal No. 50/2011. However, MSEDCL has filed a Civil Appeal (Appeal No.2286/2012) before the Hon'ble Supreme Court of India against the aforesaid ATE Judgment.*

7] *In the said Civil Appeal No. 2286 of 2012, Hon'ble Supreme Court on 21 April, 2012 has passed the following order:*

*“Delay condoned.  
Exemption allowed.  
Permission to bring on record  
additional documents facts and grounds  
is granted.  
The Civil Appeal is admitted.  
Tag this Appeal with Civil Appeal No.  
10279-80 of 2010”*

*The Commission is of the view that once the matter is subjudice before the Hon'ble Supreme Court and the Hon'ble Supreme Court is seized of these issues as a result it would not be proper to precipitate any action this matter.*

*In view of the above, the petition stands adjourned sine die with the liberty to mention once the Hon'ble Supreme Court finally disposes of the aforesaid civil appeals.”*

7] The aforesaid order of MERC i.e. in Case No. 138/2011 speaks about the factual position right from beginning and lastly it is observed that as matter is subjudice in Apex Court on the aspect of interest which to be paid on RLC, matter is adjourned *sine die*. Accordingly, it is clear that aspect of interest though dealt by ATE it is subjudice before Hon'ble Supreme Court and MERC found it fit to keep the matter, seeking directions of implementation or order of ATE pending till matter is decided by Hon'ble Supreme Court.

8] While arguing on this count General Manager of consumer made reference to the precedent of Hon'ble Bom. High Court **19/1991 ECR 183 Bom. Coleridge Ltd. V/s. Union of India decided on 13/6/1991 and 19/1991 ECR 486**

**Punjab & Haryana Venus Ply woods Pvt. Ltd. V/s. Asst. Collector, Central Excise.** Both these matters are under Central Excise Act. The Ld. General Manager Mr. Killedar made submissions that these precedents are pertaining to aspect, as to whether matter can be heard and decided, when there is no stay from Higher Court i.e. Supreme Court to the order of ATE. On this analogy he submitted that in the present matter interest is being sought as per the order of Appellate Tribunal of Electricity (ATE) and though it is stated in the order of MERC bearing Case No. 138/2011 dated 3/8/2012 about pendency of matter in Hon'ble Supreme Court, there is no stay from Supreme Court and hence order of ATE is to be implemented. Accordingly, he submitted that present grievance application be allowed.

9] The first case referred by consumer's Manager clearly speaks that there was a order of Hon'ble High Court and said order was challenged before Division Bench which was summarily dismissed and against it Department had approached Hon'ble Supreme Court by filing SLP. During pendency of the matter Excise Appellate Authority as per the order of Hon'ble High Court, directed refund of amount. However Govt. of India, Ministry of Finance, served show cause notice to the petitioner as to why the order passed by Appellate Collector, awarding refund on 21/12/1979 should not be set aside. Said notice was challenged in the writ and their Lordships observed that issuance of such notice is not bonafide, it was open to the Department to seek stay to the operation of the order passed by Hon'ble High Court, taking appropriate proceeding before Supreme Court. Instead of it, issuance of such show cause notice is entirely illegal and is to be struck down.

The second Judgment relied on by the General Manager, speaks that there was a final order passed by the Division Bench of High Court in Writ Petition for implementation of the order of Tribunal within two months provided that there was no

stay against the implementation of the same from the Hon'ble Supreme Court. In spite of order of Hon'ble High Court, amount was not refunded, instead of it notice was issued by the Department to the company as to why their application for refund be not rejected, as the duty in question was not borne by company, but by customers ultimately. On this count, contempt petition was filed against said Asst. Collector who issued the notice, on the ground that it was violation of the order passed by Hon'ble High Court in writ petition. Their Lordships observed that there was no any stay order from Supreme Court, though SLP was pending. Under such circumstances, it was necessary to pass order for refund. Accordingly contempt petition is admitted.

We find these two precedents are not on the precise point which consumer's General Manager is canvassing in this matter. These are the precedents respectively towards disobeying the express orders of Hon'ble High Court, in absence of any stay from Supreme Court wherein orders of Hon'ble High Court were challenged. Hence these two precedents are not applicable to the present set of facts.

10] We find the jurisdiction of this Forum is too limited. When there is an order of Hon'ble MERC keeping the disputed matter *sine die* pertaining to interest, this Forum cannot pass order ignoring said view of Hon'ble MERC. Even the MERC (CGRF & Ombudsman) Regulation Clause 6.7(d) speaks that when matter is subjudice in Higher Court, this Forum cannot deal that aspect. In this light we find that this grievance cannot be dealt at this stage and liberty is to be given to the consumer to bring this matter as soon as Hon'ble MERC passes the final order in case No. 138/2011.

11] In view of the above this matter is to be disposed off.

12] This matter could not be decided in time as Officers of Licencee were to clarify the position pertaining to matter pending in Supreme Court, which they clarify on 30/9/2014.

Hence the order.

**ORDER**

Grievance of consumer is hereby disposed off .

Consumer is at liberty to approach this Forum after the final order of MERC in case No. 138/2011 which is kept pending *sine die* till decision of Hon'ble Supreme Court.

Dated:8/10/2014.

I agree

I agree

**(Mrs.S.A.Jamdar)**  
**Member**  
**CGRF,Kalyan**

**(Chandrashekhar U.Patil)**  
**Member Secretary**  
**CGRF,Kalyan**

**(Sadashiv S.Deshmukh)**  
**Chairperson**  
**CGRF, Kalyan**

**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,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.*
- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-  
*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*
- c) 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.

