



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph– 2210707, Fax – 2210707, E-mail : cgrfkalyan@mahadiscom.in

No. K/E/804/963/2014-15

Date of Grievance : 09/06/2014

Date of Order : 31/10/2014

Total days : 136

IN THE MATTER OF GRIEVANCE NO. K/E/804/963 OF 2014-15 IN RESPECT OF M/S. JEEVAN PRODUCTS, PROP- ADITYA GOPAL AGRAWAL, PLOT NO. H-59, MIDC, MURBAD, DISTRICT THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF AMOUNT SPENT TOWARDS SHIFTING OF HT LINE, CHARGES OF INSPECTION BY ELECTRIC INSPECTOR AND METER CHARGES WITH INTEREST.

M/s. Jeevan Products,
Prop-Aditya Gopal Agrawal,
Plot No.H-59, MIDC,
Murbad, Dist-Thane
Consumer No.01801902029-HT)

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Superintending Engineer, O & M
Circle-II, Kalyan

.... (Hereinafter referred as Licencee)

Appearance : For Consumer –Shri Mudliyar-Consumer's representative.

For Licensee - Shri Indulkar-Superintending Engineer.

Shri Khan –Nodal Officer/Exe. Engineer

Shri Kasal-Asst. Engineer.

(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, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. {Hereinafter 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 and Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Consumer brought this grievance before Forum on 9/6/2014, contending that towards seeking new supply , he was required to spend amount to the tune of Rs.2,21,002/-and Rs.2,840/- towards laying down the service connection, meter cost and even for shifting of existing HT line, he was required to spend an amount of Rs.1,51,204/- and Rs.1966/- towards supervision charges. Further was required to produce testing report from Electric Inspector and for it, paid an amount of Rs.15,600/-. It is claimed that these amounts were not required to be spent by the consumer as per the MERC directions and provisions of Electricity Act. Said amount is spent as directed by the Licencee which is against the legal provision and hence, it’s refund is sought with interest. Consumer approached Licencee and IGRC on 1/4/2014, as there was no any response or order passed by said IGRC or Licencee, he approached this Forum, seeking relief.

3] On receiving this grievance it’s copy along with accompaniments sent to the Licencee vide this Office Letter No. EE/CGRF/Kalyan /0221 dated 9/6/2014. In response to it, Officers of Licencee appeared and filed reply on 21/7/2014, raising

objection towards disputed aspect. Consumer filed additional contentions on 23/6/2014, Licencee too filed additional say on 5/8/2014. Consumer on 7/10/2014 produced the receipt of an amount of Rs.2000/- paid to the Licencee towards meter testing fees. Arguments in this matter concluded on 7/10/2014 and while preparing the order we noticed some precedents hence both sides were again given opportunity to make submissions on 28/10/2014.

4] In the light of aforesaid contentions and reply, we heard both sides time and again. On it's basis, this matter needs to be decided first considering the validity of sanction order as DDF then we are to decide the matter under two heads, i.e. I] (A) Liability of Licencee to bear charges towards metering equipments and allied as per MERC Regulations. {B} Entitlement of consumer towards amount paid to Electric Inspector for testing to the tune of Rs.15,600/-, II] Liability of shifting existing Line and amount spent towards it.

5] In this matter though consumer sought new HT supply, sanction is given but he was asked to do it under DDF scheme. In this regard, during course of arguments on behalf of Licencee an attempt is done to say that in fact it is not a DDF/ORC (hereinafter for the sake of convenience it is referred as DDF) to the extent of service connection and metering cubical but it is covered by the order of MERC in case No. 70/2005 dated 8/9/2006, wherein if any work is undertaken by the consumer at his option then towards service connection he is required to pay normative charges at the rate of 1.3%. Accordingly, it is tried to be contended that said sanction orders are to be read under the head of normative charges as per the direction of MERC.

Consumer's representative during the course of arguments relied on the order of MERC in Case No. 56/2007 dated 16/2/2008, wherein MERC Supply Code clause-2 (g) is considered and laid down as under on page 5 of the order

'Thus in the distribution system, Dedicated Distribution Facility means a separate distribution feeder or line emanating from a transformer or a sub-station or a switching station laid exclusively for giving supply to a consumer or a group of consumers. The

transformer or a sub station can also form a part of Dedicated Distribution Facility. If, it is provided exclusively for giving supply to these consumers and no other consumer is fed from the said transformer/substation. Also, Dedicated Distribution Facility cannot be shared in future by other consumers. Such facilities cannot be imposed on a consumer.

If the consumer does not seek Dedicated Distribution Facility the Licencee has to develop it's own infrastructure to give electric supply within the period stipulated in Section 43 of EA , 2003 read with Mah. Electricity Regulatory Commission (Standards of Performance of Distribution Licencees, Period for giving Supply and Determination of Compensation) Regulations 2005. ----'

These observations of Hon'ble MERC are crystal clear and hence in this matter word DDF referred in the sanction order towards laying down service connection and providing metering cubical with CT will not come within the four corners of DDF.

6] Consumer approached with a grievance that he filed fresh application for seeking HT supply, but while considering his application, it is sanctioned on conditions and said sanction is in two parts. [I] sanction is towards service connection charges, plus meter and allied cost and (II) part pertains to shifting of existing line in the premises. This second part is being dealt separately hereunder and hence first part towards service connection charges and 22 kv metering cubical CT ratio 5/5A (which is hereinafter referred as Metering Equipment) are to be dealt. Out of these two, cost of metering equipment is to be dealt initially.

I] (A) Liability of licensee to bear charges towards metering equipment and allied as per Regulations:

7] It is a fact that it was a new connection sought by consumer, it was HT supply that too from 22kv line. Accordingly, his request was considered by Licencee

and on 3/9/2012, sanction was accorded. While according sanction, it is mentioned that consumer was to procure items for service connection and metering equipment.

He was to bear those charges at his own and on the total estimated cost, shown in the enclosed chart, with the sanction order, consumer was to pay 1.3% normative charges i.e. supervision charges to Licencee. In other words, to the extent metering equipments, it is seen that consumer was asked to spend for it, and Licencee estimated charges of it and on the said estimated cost consumer was asked to pay normative charges at the rate of 1.3% to the Licencee. Actually as per the sanction order consumer acted, provided metering equipment and paid to the Licencee normative charges.

8] Consumer basically contended that 'Meter' more particularly for HT connection, it includes HT cubical with CT and metering instrument, these are one unit and it is in tune with the definition of as 'Meter'. It is claimed that said 'Meter' is in fact required to be provided by Licencee and that too without charging any amount. It is submitted that subsequently if there is any case of meter lost or burnt, then consumer cannot seek 'Meter' free of cost from Licencee but he is to purchase it, may be from the Licencee and to pay as per charges prescribed by the MERC vide order in case No.70/2005. Cost prescribed in the said order in Annexure-III is of Rs.5,227/- towards H.T.TOD meter and for H.T. Metering Cubical including CT & PT of 22 kv it is of Rs.1,08,731/- and as modified from time to time. Even consumer may purchase from other sources. In other words, it is contended that for new connection 'Meter' is to be provided by Licencee and it cannot charge any amounts towards it.

On behalf of Licencee, Officers claimed that sanction order is issued on 3/9/2012, supply is also released, consumer after completion of the aspect of connection, now approached seeking refund. At the time of complying sanction order consumer has not objected. He has orally agreed and opted for it prior to sanction order. Hence he cannot avoid the liability and there cannot be refund.

In this regard, consumer contended that no any such oral consent was given. Accordingly, it is seen that Licencee is coming with a case of oral consent and

consumer is denying it. This aspect is dealt by the Hon'ble Ombudsman in Representation Nol. 46/2008 which is being dealt in the further discussion. At this stage, we find mere alleging oral consent, that too in a reply before the Forum, in the light of consumer's denial, clearly speaks that it has no merit.

In this regard, provision contained in section 47 and 55 of Electricity Act are material, on this point. Considering those two sections, MERC Supply Code 2005 is brought in to force and it's clause No.14 deals with 'Meters' 'supply & Cost of meter' 'Lost/Burnt' meters and total procedure is laid down, how 'Meter' is to be secured and installed. In Clause 14.2.4, there is provision which speaks about providing meter. It reads as under:

'14.2.4:Except in the case of burnt meter or a lost meter, Distribution Licencee shall not be authorized to recover price of meter more than once during the continuous of supply to the consumer'.

In other words, it is clear that **during subsisting supply only once price of meter can be recovered**. This aspect of providing meter is further specifically dealt by the Hon'ble MERC while deciding case No.70/2005 dated 8/9/2006. Hon'ble MERC taken up the matter for decision in the light of letters of Licencee dated 2/4/2005 and 15/6/2005. In the said order in II Section under heading of item 'Cost of meter and meter box' Clause 5.4 is ruling given by Commission it reads as under:

'5.4 :The commission directs MSEDCL not to recover any cost towards meter and meter box except where the consumer opts to purchase the meter from MSEDCL and in case of lost and burnt meter (Regulation 14.1 and 14.2 of Supply Code). The charges applicable in case the consumer elects to purchase the meter from MSEDCL & in case of lost and burnt meter are indicated in Annexure -3'.

In Annexure –3 referred above of the said order, details are stated and charges for HT metering cubical including CT & PT for 22 kv line ,shown as Rs. 1, 08,731/-.’

In the said case proposal given by MSEDCL to MERC about such cost, is dealt. **As per this order of MERC, there is a change in respect of charging meter cost. Accordingly whenever there is any new connection sought, then meter cost is to be borne by Licencee, it has to provide from it’s own stock. Accordingly, whenever any new supply is sought then as per this order of Hon’ble MERC meter is to be provided by Licencee** Situation arises at times that Licencee is not having stock of meter and cubical and hence consumer may procure it. Question then comes up whether Licencee can seek consent of consumer to procure it and then to reimburse. It follows that if it is not able to provide, it is to ensure that cost of meter is provided to the consumer.

On the point of reimbursement of such metering cost we have gone through the orders of MERC passed on 17/5/2007 in case No. 82/2006, review order of it dated 3/3/2008 in case No. 74/2007, MERC case No.93/2008, 109/2010, 79/2012 respectively decided on 1/9/2010, 30/3/2011, and 7/8/2013. We have gone through the order of Hon’ble Ombudsman in Representations No. 152/2010 and 74/2010, respectively decided on 30/3/2011, 23/7/2010. In these matters, there is clear direction of the Hon’ble MERC and Ombudsman for refund of metering cost recovered after the order passed in MERC case No.70/2005 and not to recover amount towards metering cost for new connection sought. Even there is a circular of Licencee dated 3/9/2007 bearing 34307 wherein specifically following direction is given by the Chief Engineer (Distribution)..

‘It is once again directed not to recover the meter cost on any pretext.’

The sprit of this circular followed in subsequent directions issued by Licencee, clearly establishes that in no case meter cost can be thrust on consumer when new connection is sought.

Though as noted above, Hon'ble MERC and Hon'ble Ombudsman given direction considering the legal position, we noticed apt observations are there in the orders of Hon'ble Ombudsman in Representation No.46/2008 in Paragraphs No.24,25 and 29 and in MERC Case No. 148/2011 in the last part of para No.7. These observations we brought to the notice of both sides during the hearing on 28/10/2014. For ready reference, those paragraphs are reproduced as under.

Representation No. 46/2008 decided on 27/8/2008. Para No.

'24': It is the Respondent's order dated 7/10/2006 that led to Appellant's letter dated 15/10/2006 informing the Respondent that it would be purchasing the cubical and hence the charges are not payable. The Forum while examining the issue has accepted the Respondent's contention that the appellant had indeed consented to purchase the cubical and therefore the cost of such purchase cannot be refunded to the appellant. On the other hand, the appellant contents that Respondent never sought it's consent to purchase the cubical and never offered to provide it free of cost as required under the 'schedule of charges'. Instead Respondent vide it's sanction order dated

7/10/2006 directed the Appellant to procure the metering cubical which is contrary to the 'schedule charges' approved by Commission. Had the Respondent advised the Appellant that as per the schedule charges, metering cubical would be provided by the Respondent at it's cost, there was no question of voluntarily agreeing to buy the cubical from market. The Respondent was duty bound to correctly advice the Appellant in consonance with provisions of Law and more particularly according to the schedule of charges approved by the Commission. Therefore, Appellant's letter dated 15th October, 2006 which came as a sequel of Respondent's direction in the load sanction order, cannot be treated as his consent to buy the cubical from the market.

'25': Close perusal of Annexure-3 and more specifically the quote in the bracket above serial No.6, leaves no doubt in concluding that cost of metering cabinet as well as cost of HT metering cubical with C.T. & P.T. (mentioned at Sr.No.7) apply only in case where consumer opts to purchase the same from Maharashtra State Electricity Distribution Co. Ltd. In all other cases, the Maharashtra state Electricity Distribution Co. Ltd. is duty bound to provide the cubical with C.T.T & P.T. unit at it's own cost. No other conclusion emerges from other position. Respondent's officials argued about the lack of clear mention in Annexure -3, requiring the Distribution Licencee to provide metering cubical at it's own cost. Having understood clearly that the meter includes not only bare kWh / kVA meter or TOD meter but also include cubical including C.T. & P.T. unit, this position being undisputed under the Law (The Act and Regulations), it is hollow and in vain to argue that there is lack of clarity in the Annexure-3 of the 'schedule of charges' in this behalf. The cost approved and provided for the metering cubical applied only in case the consumer opts to purchase

the cubical from MSEDCL alone and in no other case. Respondent's argument does not have any merit whatsoever and deserves to be brushed aside out right. ----

'29': Nevertheless, whatever may be the cost approved by the commission for HT metering cubical, the same does not apply to the Appellant in the present case, as he has not volunteered for consented to buy the cubical. Records show that it was at the instance of Respondent, more specifically the direction issued under the load sanction order of 7th October 2006, that the Appellant wrote a letter on 15th October, 2006 agreeing to buy the cubical. It had also pointed out to the Respondent that charges communicated by the Respondent in its load sanction order dated 7th October 2006 were not confirming with the 'schedule of charges' approved by the commission. Thus it cannot be treated as consent from the Appellant. In effect, by Load Sanction Order of 7th October 2006, the Respondent sought to enforce something which was legally invalid in the sense that it was made in a manner which was not confirming with the provision prescribed by the statute ('schedule of charges.') In the result, assuming but without holding that the appellant had consented to buy the cubical, obtaining such consent, not conformity with the law, would be impermissible to be enforced. Secondly, the Respondent was duty bound to communicate to the Appellant that it

would provide the metering cubical with C.T. & P.T., at its own cost as provided in the schedule of charges approved by the commission, and to clearly advise the Appellant to decide whether he still wants to buy the same from MSEDCL or from open market. Had the Appellant then volunteered to buy it from MSEDCL, then Respondent was required to charge and recovered Rs.67,958/- towards costs of metering cubical including 11kV C.T. & P.T. Alternatively, had the Appellant opted to it buy it from the market, then there is no question of any cost to be communicated since it would have been Appellant's option and price he pays in the market.-----

MERC Case No.148/2011-decided on 5/1/2012, Last Part of Para 7 (b)----

*'Commercial circular No.43, dated 27/9/2006 specifically mentions that MSEDCL shall not recover any cost towards meter and meter box except where the consumer opts to purchase meter from MSEDCL or in case of lost and burnt meter. However, in some cases meter and cubical cost might have been recovered unintentionally during the intervening period. Circular No.34307 dated 3/9/2007 has specifically been circulated to refund the cost of meter in such case and it has been directed therein not to recover meter cost on any pretext. **However, in some cases stock of meters and meter cubicles is not readily available in the store and the consumer is in hurry to get the connection. In such cases, he/she is allowed to purchase meter/cubical from outside, the cost of which is refunded afterwards as per local arrangements.** -----'*
(Emphasis provided).

Aforesaid observations of Hon'ble Ombudsman and MERC are totally applicable to present case on facts and on legal position.

Considering the above observations and order of Hon'ble MERC it is clear that for new connection sought after the order of MERC in case No.70/2005 dated 8/9/2006 meter cost are to be borne by Licencee. Accordingly, in respect of HT connection metering equipment in the case of new supply is to be provided by Licencee without seeking any price from consumer. Now it is contended in this matter that Licencee was bound to provide metering equipment but directed consumer to provide metering cubical which he provided and hence it's price is to be refunded.

9] It is seen from the file that in this matter, along with sanction order dated 3/9/2012, estimate is given and towards 22kv metering equipment charges are shown of Rs.98,652.44 Ps. However, it is necessary to note that in the order of MERC 70/2005 dated 8/9/2006 price for said metering equipment is quoted as Rs.1,08,731/-. Accordingly even the base on which cost of meter equipment is estimated is not clear. It clearly demonstrate that sanction order is not based on MERC order in case No. 70/2005 dated 8/9/2006 but now an attempt is being done to convert the said sanction granted under DDF/ORC to service connection charges and meter cost which is not correct.

Admittedly, cubical is purchased by consumer and he has placed on record the copy of bill showing that for said equipment he was required to pay Rs.2,02,248/- which is inclusive of excise duty, education cess and VAT but it's actual price shown in the bill is of Rs.1,60,000/-. Now he is seeking refund of this amount.

One thing is clear that consumer has purchased it and paid for it, it is used, and though it's estimation is given by Licencee for Rs.98,652/-, actual price paid by consumer is Rs.1,60,000/-. Further it is seen that though this estimate is given on 3/9/2012, on that date tariff order of Hon'ble MERC in case No. 19/2012 came into force. Said tariff order is of 16/8/2012, brought into force from 1/8/2012. Accordingly, said tariff order is to be read for considering relief in this matter. In case, if it is claim of sanctioning authority that said tariff order was not available as on the date of sanction order, course of revising the sanction order was always left open. Hence, there cannot be any deviation from rates prescribed by Hon'ble MERC in it's tariff

order passed in case No.19/2012. Said cost is approved by MERC as per suggestion of Licencee which was of Rs.1,30,000/- for metering cubical required for 22 kv line. Accordingly, though in the estimate, Officer of Licencee gave estimate as Rs.98,652.44 Ps., but as per the MERC order passed on 16/1/2012 said charges can be to the extent Rs.1,30,000/-. No doubt, those charges are prescribed for seeking that amount, in case consumer purchased meter from the Licencee. Considering the fact that said estimate is given by Licencee to the consumer, asking him to spend it and to pay 1.3% normative charges. It speaks that figure of Rs.98,652.44 Ps. is a price of cubical which can be considered if it is purchased by consumer from other source. But as noted above, asking the consumer to purchase the metering cubical is not expected and it was the duty of Licencee. In the order of MERC dated 8/9/2006, in case No. 70/2005 towards cost of 'Meter', there is no mention for charging normative charges which demonstrates that meter cost is not to be borne by consumer when new connection is sought. Hence any such direction to the consumer is to be read, as if metering equipment was not in stock of Licencee and consumer was asked to provide it. Under such circumstances it's cost is to be reimbursed in view of the orders of Hon'ble Ombudsman and MERC reproduced above in Representation No.46/2008 and case No. 148/2011 respectively.

We find though consumer spent Rs.2,02,248/ inclusive of other taxes etc. along with price of said metering cubical which is of Rs.1,60,000/-, but MERC prescribed the said cost as Rs.1,30,000/-. Hence consumer is to be provided cost only to the extent of Rs.1,30,000/-, though he paid actual price of Rs.1,60,000/-in the total bill is of Rs.2,02,248/-. In addition at the rate of 1.3% normative charges on the estimated cost of Rs.98,652.44 Ps. amount is recovered by the Licencee and it is also to be refunded proportionately.

10] After noting aspect pertaining to 'Meter' and metering equipment the rest of the portion pertaining to service connection is to be dealt. While giving sanction on 3/9/2012, sanction is given which is of composite nature and now it is clear that except 'Metering Equipment' the rest of the items shown in the estimate referred above are

covered under Service Connection Item. Said estimate refers to DDF and 1.3% service charges. However, after the order of MERC 70/2005, there is no question of service charges but those are normative charges. Further it is seen the aspect of service connection in no way can be attributed with DDF. As observed above in Para 5 it cannot attract DDF. As per the order of MERC 70/2005, in case consumer opts to spend for it, he is at liberty then as per the above referred order of MERC he is not bound to pay service connection charges, he is simply required to pay normative charges at the rate of 1.3%. Hence, the terminology used in the estimate tried to be read as the aspect covered under the order of MERC 70/2005 for allowing the consumer to act as per his option and to pay normative charges. It is clear that order of MERC is speaking about such option available and payment of normative charges. An attempt is done by the CR contending that consumer not opted for DDF and hence, these service connection charges were to be required to be borne by Licencee and Licencee is to reimburse the amount spent and as per the estimate given by Licencee, total estimate of Rs.2,18,180.69 and on it, 1.3% service charges are calculated to the tune of Rs.2,836.35 Ps. and ultimate final estimate is quantified as Rs.2,21,020/-. It is rounded figure in place of Rs.2,21,017.04 Ps. Now it is to be just considered that in the said estimate amount shown towards metering equipment is included and hence, said cost of metering equipment is of Rs.98,652.44 Ps. which is to be reduced from total cost of estimate i.e. Rs.2,18,180.69 Ps. Already in the above discussion metering equipment Rs.98,652/- is considered and the metering equipment which Licencee was required to provide or to reimburse its cost considered on the basis that it is a legal duty of Licencee to provide and if any option exercised by consumer, if accepted for the sake of arguments, the absence of clear advise required from Licencee as noted above in the order of Hon'ble Ombudsman, the option exercised to supply such metering equipment will not entitle the Licenee to refuse to bear the cost of metering equipment. On the other hand, towards service connection charges MERC specifically provided that there is option to do the work paying normative charges. But in respect of metering equipment there is no option available for exercise by consumer and such

option sought by Licencee or exercised by consumer will not take away the basic responsibility cost on Licencee and to reimburse the cost in case it is not provided. Accordingly, we have considered the legal liability of providing metering equipment by Licencee and optional mode available in respect of service connection to the consumer. Now equitably it can be considered in the background of the order of MERC in Case No.70/2005 that consumer is not let free from bearing charges towards service connection. In case service connection is provided by the Licencee he is required to pay the service connection charges as prescribed by MERC and in case if he is to do it exercising option he is to bear it's cost and in addition to pay normative charges at the rate of 1.3%. In this matter accordingly, payment is inevitable towards service connection. Additional burden consumer has borne, is towards normative charges is to the extent of Rs.1553.87 Ps. (Rs.2,836.35 Ps. -1282.48 Ps. proportionate percentage of the amount on Rs.98.653/- towards meter cubical charges) The fact that burden of bearing service connection items is not avoidable to the consumer and the refund to the extent of normative charges i.e. 1553.87 Ps. is too meager. There is no any sound reason to refund any amount on this count. In this light we find amounts spent by consumer towards service connection is covered in the MERC order 70/2005, whereby consumer is not burdened by recovery of service connection charges, but he is simply charged for 1.3% normative charges. In the estimate supervision charges are shown as Rs.2,836.35 Ps. which is for total estimate of Rs.2,18,180.69 Ps. but out of it supervision charges proportionate to the cost of the metering equipment Rs.98,652/- i.e. Rs.1228.48 Ps. is to be reduced and hence, the balance amount of supervision charges Rs.1553.87 Ps. are to be treated as normative charges for service connection. Hence, in respect of seeking refund of service connection expenses and normative charge proportionately recovered on that expenses cannot be refunded.

**Entitlement of consumer towards amount paid to
Electric Inspector for testing to the tune of Rs.15,600/-**

11] Further aspect relevant to the metering equipment matter, is pertaining to it's testing. It is a fact that said metering cubical CT is tested by Electric

Inspector. Bill of Electric Inspector is produced by consumer and it is for sum of Rs.15,600/-. Receipt is produced but independent head-wise inspection charges not provided by either side and hence Forum written to the Electric Inspector to provide the bifurcation. Accordingly, Electric Inspector communicated the bifurcation vide letter dated 12/9/2014. In the said bifurcation towards testing of CT in metering equipment amount of Rs.2,000/- is shown as inspection charges and we find when this metering equipment is a part of 'meter' its testing charges are also to be borne by Licencee. Hence, amount of Rs.2000/- out of Rs.15,600/- paid to the Electric Inspector is to be reimbursed by Licencee to the consumer.

Thirdly, it is brought on record during hearing that consumer has paid an amount of Rs.2000/- to the Licencee on 21/9/2012, and it is towards 'testing fee'. This testing fee is paid to Licencee, it is towards testing of meter provided by Licencee. This receipt is brought to the notice of Officers of Licencee during hearing on 28/10/2014. They have not raised any objection towards it or denied, Licencee's liability to bear it. Hence, even said amount of Rs.2000/- is also to be refunded by Licencee to the consumer.

12] In view of the above, towards metering equipment cost consumer spent amount and out of that amount spent, Licencee is to refund Rs.1,30,000/-. Further Licencee is to refund 1.3% normative charges recovered on the estimation of Rs.98,652.44 Ps, for metering equipment. Licencee is also required to refund to the consumer an amount of Rs.2000/- out of Rs.15,600/- spent by consumer for the inspection report of Electric Inspector. An amount of Rs.2000/- paid to Licencee for testing meter provided by Licencee is also to be refunded by the Licencee. All these amount are to be refunded with interest as per bank rate of Reserve Bank of India from the date of demand by the consumer i.e. 1/4/2014 when he approached Superintending Engineer of Licencee and IGRC.

13] Consumer sought refund of inspection charges paid to the Government Electric Inspector out of Rs.15,600/- on other two counts i.e. 22 KV high tension cable 0.20 meter Rs.2,500/-, lightening arrestor two sets Rs. 2000 each. It is

submitted that inspection charges can be refunded only towards meter/metering equipment. We have considered above for refund of Rs.2000/- towards testing of CT in the metering cubical. Electric Inspector on 12/9/2014 provided the bifurcation of testing fee of Rs.15,600/-. In the said bifurcation the consumer claimed refund of inspection charges paid i.e. . In respect of these two, it is submitted on behalf of consumer that inspection was to be carried out as required and it was the Licencee to bear the said cost and hence, these two items also be allowed. In respect of these two, it is contended by Officers of Licencee that those two items are not coming in the definition of meter. As meter is supplied by Licencee and metering equipment is part of 'Meter' responsibility of it's testing and bearing it's charges is on the Licencee, however, these two items are not the part and parcel of 'Meter' hence, towards these two items, there cannot be any refund. Items covered in the service connection charges prescribed by MERC in it's order in case No. 70/2005 and details of items covered under it, stated in tariff order 19/2012 are clear, and hence as per the estimate in this matter, except metering equipment rest are the part and parcel of service connection items. The normative charges paid by consumer are less than the inspection charges refund of which is now claimed, hence we find for these two items it is not incumbent on the Licencee to bear the expenses of inspection. Hence, there is no question of refund on account of these two items.

II} Liability of shifting existing Line and amount spent towards it.

14] It is a fact that while according sanction, for supply sought by consumer there is a direction about shifting of existing HT line in the area of consumer. Clause 11 of said estimate dated 3/9/2012, speaks about it. Further, in the sanction of estimate for shifting of HT line dated 23/11/2012. Office note enclosed about shifting of HT line passing through the premises. Said note is dated 17/11/2012 and in pursuance of it sanction is given on 23/11/2012. Consumer contended that though, such sanction is given and he spent amount towards it, it was not legally permissible or mandatory on the part of Licencee to direct the consumer to shift it at it's cost. It is contended that

though, as per the sanction order shifting is done, but it being not in tune with legal provision, amount spent is to be refunded.

15] On behalf of Licencee, it is contended that admittedly amount is spent by the consumer, line is shifted, there was no objection towards bearing the cost by consumer for such shifting . It is contended that even consumer prior to said sanction order, on 8/11/2012, given an undertaking to carry out the said work under DDF. This aspect is canvassed with full force, contending that it is the consumer who agreed to do it, he has not raised any objection and now he cannot claim the amount.

It is just necessary to bear in mind HT line to be shifted was not intended to be used by the consumer. DDF as per it's definition noted above is, exclusively for the benefit of consumer, but herein there is no such benefit. Secondly, on behalf of Licencee it is, contended that as per the legal provisions contained in Section 53 of Indian Electricity Act, safety is required to be considered and in this light, said work is done by consumer. We find obligation is on the Licencee to ensure the safety and to ensure things are proper and are being done/maintained as per rules. If anything is asked or forced consumer to bear the liability is to be supported by the provisions in the Electricity Act, Rules Regulations or order of MERC. Always there should be a express provision to hold consumer responsible for such shifting. In the first place, through line is passing through the consumer's premises and by shifting, it is not meant for his exclusive use. Supply is not being provided from it to the consumer and he is not it's exclusive benefit or he is not beneficiary. On the other hand, the supply being given, is, from different feeder and line to be shifted, is on a different feeder. Consumer is being asked to pay for taking the supply from other feeder, laying down service connection , providing metering equipment even was asked to remove existing HT line which is passing through the premises of consumer. This is a double payment which consumer is being asked to pay as he was in need of supply. The HT connection which was to be shifted, has, no any concern with the present consumer. An attempt is done by the Officers of Licencee there is a circular of Licencee for seeking such shifting of existing line but it is not clarified as to whether there is any

order of MERC supporting such liability to be imposed on consumer. The claim of Licencee towards such liability is not supported with any legal provision, rules or regulation. Licencee failed to show any such authority to thrust liability and there is no approval for such cost by MERC.

In the light of above, we find, it is a sort of exercise of thrusting on consumer the liability, which he is not supposed to bear. Hence, it is necessary to allow the prayer of consumer about refund of the amount spent for shifting of existing HT line in the premises of consumer and said expenditure is based on the estimate by Licencee it is of Rs.1,51,204/- and 1.3% service charges worked out to Rs.1966/-.

Consumer completed the work at his cost paid even said service charges. Now consumer's claim towards its refund needs to be considered. It is seen that though Licencee worked out the estimate and sanctioned it, working out the service charges. It is based on the price of material to be provided by the consumer producing the copy of quotation card from Ramdeo Traders dated 15/11/2012. On its basis note is prepared by the Licencee approved by its Officers on 17/11/2012 and sanction order is issued on 23/11/2012. In the said sanction order about 20 items are there whereas in the rate card only 13 items are there. Items No.4, 12,13,14,18,19 and 20 from the estimate are not shown in the quotation card and hence amounts spent on those is to be considered as per the estimate approved while giving sanction. It is necessary to mention that while giving sanction rates in the quotation, are, not accepted as it is but those are at lower side. Hence, amount as per the estimate of Licencee is to the tune of Rs.1,51,203.81 Ps. plus Rs. 1965.65 Ps. towards service charges. In other words if it would have been undertaken by the Licencee said amount could have been recovered. Now said work is completed by consumer. He paid for the items towards shifting of HT line and unless that aspect is completed the connection could not have been released. Hence, there is no question of finding any fault in the estimate quantum of amount of Rs.1,51,203.81 Ps. spent. The said amount consume was not required to spend. The direction by Licencee to that effect to the

consumer is not legal. Hence consumer is entitled to its refund of amount spent in the light of estimate along with service charges recovered to the extent of Rs.1966/-.

16] During hearing on 28/10/2014, we perceived that quantifying the refund amount or allowing such refund should be based on expenses incurred. It is clear that Licencee has not disputed the fact that shifting work is done as per its estimation by consumer he spent for it. This work of shifting though sanctioned on 23/11/2011, it is in continuation of sanction order dated 3/9/2011, more particularly in the light of Clause 11 in the said sanctioned order. The last part of sanction order dated 3/9/2012 reads as under:-

---‘The applicant should be requested to procure the material/equipments as per MSEDCL’s specifications and after getting approval from Testing Division/Competent Authority (i.e) not below the rank of Executive Engineer, before utilization work. It should be ensured that Round/fly armored cable is used for under ground cabling work . After completion of works WCR should be finalized in accordance with the instructions from H.O. and it should be ensured that the necessary entries are made Asset Registered by Accounts department. Before release/restore of power supplies ensure that the work should get carried out as per the approved method of construction and commissioning of asset should be confirmed from this Office. ---‘

We read over this portion to the Nodal Officer and asked whether anything remained to be completed as per this portion of sanction order. He has not disputed it. If all things are done as per this direction, then all relevant material is available with the Licencee showing the compliance and then only connection is released. It is clear that Licencee is not coming with any specific denial or alternative plea. It is coming with defence of total denial on the aspect of consumer’s entitlement for refund of amount on this count. Even alternatively, there is no denial about work done totally or expenses are less than the estimate given. During the course of hearing Nodal Officer submitted as the claim for refund on this count is resisted or disputed, there is no any submissions, specific on this ground. He contended that he is not to comment on this aspect except denying the responsibility of shifting the line. In spite of it we have given an opportunity to Licencee to place before the Forum the necessary WCR received before releasing the connection including the receipts etc. produced by the consumer towards complying the work of shifting HT line up to 30/10/2014.

17] In compliance to the liberty given on 28/10/2014. Nodal Officer produced copy of WCR on 30/10/2014. It is shown to consumer's representative on 31/10/2014. As per this WCR as against the estimated cost consumer has incurred expenditure of Rs.1,14,436/-. Consumer's representative has not disputed this figure. This figure includes appropriate percentage of labour charges and sundry items. Hence though estimate given is of Rs.1,51,203.81 ps. Now actual expenditure incurred is available it is to be refunded to the tune of Rs.1,14,436/-. In addition as already consumer has paid to the Licencee normative charges or service charges at the rate of 1.3% on estimated cost to the tune of Rs.1966/- and same is also to be refunded.

18] In view of the above, grievance of consumer is to be partly allowed.

19] This matter could not be decided within prescribed time, as both sides were to verify the legal position in the light of MERC orders and they concluded their arguments on 7/10/2014 but matter was required to be dealt for clarification on 28/10/2014 and 30/10/2014 and today.

Hence the order.

ORDER

Grievance application of consumer is partly allowed, to the extent of refund.

i] towards metering equipment secured. Out of the amount spent by consumer, it is allowed limited to Rs.1,30,000/- and refund of proportionate service charges/normative charges of Rs. 1282/- recovered, towards metering equipments estimating the said cost as Rs.98,652/-. Licencee is to refund aforesaid amount towards metering equipment, service charges/normative charges of Rs. 1282/- recovered proportionately on that count and

ii] inspection charges to the extent of Rs.2000/- out of Rs.15,600/- spent by consumer as a cost of testing of CT. Licencee is to further refund Rs.2000/- received towards testing fee of meter which was provided by Licencee.

iii] Licencee to refund to the consumer an amount of Rs.1,14,436/- spent by consumer towards shifting of HT line and Rs.1966/- recovered by the Licencee as supervision charges at the rate 1.3% on estimated cost.

The aforesaid amounts No. i to iii be refunded to the consumer with interest as per Reserve Bank Rate from 1/4/2014 i.e. the date on which consumer demanded the amount approaching Licencee and IGRC till to the date of payment by way of credit in the ensuing bills.

Compliance of it be reported within 45 days from the date of order.

Dated:31/10/2014

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
- c) 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”
- 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.

I] **Liability of Licencee to bear charges towards metering equipments and allied as per MERC Regulations:**

5] During hearing, CR relied on order of MERC in Case No. 70/2005 dated 8/9/2006 followed by order of the Hon'ble Ombudsman bearing case No. 35/2012, order of CGRF Nasik, in grievance No. 59/2011 dated 2/8/2011. In all those matters, it is reflected that metering charges are to be borne by Licencee and therein, direction given to Licencee to refund the cost of said meter to the concerned. This decision of MERC is delivered on the representation of Licencee as it was facing various difficulties.

It is argued from Licencee's side, that as per the sanction order, in this matter, consumer was to provide metering equipment. The question is whether it is to be read as a mere direction or compulsion to provide metering equipment by consumer. In other words, there is a provision available in Section 55 of Electricity Act wherein the consumer may provide his own meter. The word is used **when "consumer elects to have"** , in other words, it is a option available always to the

consumer. In this light, it is to be decided. whether in this matter consumer was asked to give option and it had opted for providing it's own meter.

6] Admittedly, on plain reading, of sanction order dated 03/9/2012, it is not giving an impression that option was asked and given by consumer, but it is explained by Officers of Licencee that existing position, as on that date, is, required to be borne in mind. In this light, they submitted that consumer has not objected for the sanction order, till to the date of complaint filed with the IGRC and Licencee on 1/4/2014. In the sanction order dated 3/9/2012, in Clause No.6 documents to be furnished stated and in clause No. 7 test reports to be submitted and Clause No.8 about metering to be provided, is, clearly mentioned and it is directed that it was to be done by consumer. It is contended that as per the sanction order, without any objection or resistance, consumer had complied it. Accordingly, it is contended that in case if, these aspects are complied by consumer then Licencee will not be able to charge any amount towards the said aspect by way of deposit/security/for meter or service charges towards laying down service line. It is contended that as per the provisions of Electricity Act referred above, it is an option exercised by consumer and hence this voluntary act cannot be read against the Licencee.

In reply, it is contended that Licencee not recovered any metering cost. Meter is provided by Licencee. Further it is contended that orally consumer has opted to purchase metering cubicle which was allowed as per Sec. 55 (1) of Electricity Act. It is contended that Licencee has charged 1.3% supervision charges (normative charges) of Rs.2,840/- against the estimated sanction. It is claimed that said work, consumer has undertaken, hence Licencee has applied the said supervision charges. It is further contended that the meter cubicle and allied equipments towards which consumer is seeking relief, remains to be it's property. On this ground, it is contended that consumer is not entitled for any refund as such towards these expenses.

7] Now question needs to be replied whether it can be said that consumer has exercised option, to provide meter and allied items or it is Licencee who forced the consumer to provide. If, it is concluded that consumer has opted it, then consumer will not be entitled to have refund of it's cost. If, it is concluded by drawing inference, that

consumer was forced to provide those meters, then consumer is entitled to reimbursement of the meter cost and expenses.

Along with grievance application on page no.20, there is chart showing estimate of expenditure. It covers different aspects. Consumer's representative claims it covers meter and allied works. He further claims that these expenses were to be borne by Licencee and as consumer has borne it, consumer is entitled to reimbursement. On behalf of Licencee, it is submitted that meter is provided by Licencee and the work is done under DDF. Consumer has opted for DDF and hence, consumer is not entitled to any reimbursement of it, it happens to be sole property of consumer and consumer was simply to pay 1.3% supervision charges. Accordingly, it is contended by the Licencee that total amount cannot be directed to be refunded. They referred to refund of cost of meter and claimed that it will not arise as it is provided by the Licencee.

8] We tried to find out exactly what is the scope of DDF. Though consumer is relying on the orders of MERC towards notion of DDF, we find it proper to refer to the definition of DDF in Supply Code Clause 2.1 (g). As per said definition meaning of DDF is 'providing some facilities' but it is specified that 'a service line' is not included in it. Accordingly service line is not covered in DDF. In this matter also Licencee claims that service line and meter are the only two aspects dealt as DDF. As perceived by us meter is installed, service wire connected to it and hence if, service line is not included in the DDF. Meter can not be said to be an item, attracting or included in DDF. It is a fact that second argument is already advanced that as per Section 55 and Section 47 of Electricity Act, there is provision for providing supply through electric meter and electric meter is to be provided by Licencee and there is an option available to the consumer to provide its own. Licencee provided the meter hence, question of refund of its cost will not arise. But question is, whether service line was said to be component available for including in DDF. It is a fact that in this matter no service line charges are recovered by Licencee from consumer. Service line charges are borne by consumer. Consumer claims that those were to be borne by Licencee, but he was forced by Licencee to bear it. Officers of Licencee claimed that

if they would have gone for providing service line, it's charges could have been recovered from the consumer, however, as consumer opted and agreed to lay down it's service line at it's own cost, it was permitted and only 1.3% supervision charges are recovered and hence, it is claimed that consumer is not burdened with service line charges. On this count, it is submitted that, it is the consumer who opted, but consumer's representative strongly submitted that consumer has not opted .

9] We find aspect of DDF is not at all applicable though in sanction order it is mentioned, it ought not to have been used. But only because it is used, it will not make the aspect as DDF. We are clear neither meter nor service line can be covered under DDF. Hence, arguments advanced by Licencee on this count are not acceptable.

However, it is clear that in respect of service charges there is a order of Hon'ble MERC i.e. 70/2005, wherein it is clearly laid down that service line can be laid down at the cost of the party and supervision charges to the extent of 1.3% are to be paid by the consumer to the Licencee. This is an aspect which is required to be just borne in mind. Officers of Licencee contended that consumer agreed to have his own meter and to lay service line, as at it's own cost agreeing to pay 1.3% supervision charges, which are actually complied except meter and not objected till complaint to Licencee. These things support the claim of Licencee that consumer has opted to go for his own meter as permissible U/s. 55 of Electricity Act. But in fact meter is provided by the Licencee. Even service line charges are borne by it, paying supervision charges. Precedent relied on by consumer on DDF and meter charges, needs no more discussion due to the option exercised by consumer. Under such circumstances, the claim for refund of meter charges or service line charges totaling to Rs.2 ,21,020/- is not tenable. It is not necessary to comment further on the aspect of any amount spent by the consumer towards service line. If, I would have been provided by the Licencee then consumer was required to pay service line charges for it. In other words, consumer is not relieved of payment.

I

