



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO. K/ E/269/296 OF 2009-2010 OF
M/S. VINAYAK INDUSTRIES, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Vinayak Industries
Gala No. 2, Bldg.No.8,
Agarwal Udyog Nagar,
Waliv Sativali Road,
Vasai (East), Dist.Thane

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Vasai Road (East) Sub-Dn.
Vasai, Dist. Thane.

(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance

Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers. This regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

- 2) The consumer is a L.T.-V above 20 KW consumer of the licensee with C. D. 54 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 15/06/2009 for Excessive Energy Bills. The details are as follows: -

Name of the consumer :- M/s. Vinayak Industries

Address: - As given in the title

Consumer No : - 001840505746

Reason of dispute: Excessive Energy Bills.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/572 dated 15/06/2009 to Nodal Officer of licensee. The licensee through Dy.EE MSEDCL Vasai (East) filed reply vide letter No. DYEE/VSI/ (E)/B/5280, dated 04/07/2009.
- 4) The consumer has raised these grievances before the IGRC and the Executive Engineer (O&M) Division, MSEDCL, Vasai Division, on 09/04/2009. The said Internal Redressal Cell did not give any hearing to the consumer & also did not send any reply resolving the said grievances to the consumer. Therefore, the consumer has registered the present grievance before this forum on 15/06/2009.
- 5). The Forum heard both the parties on 03/07/2009 @ 16.00 Hrs. in the meeting hall of the Forum’s office. Shri Harshad Sheth, representative of

the consumer & Shri R.G.Gharat, UDC., representative of the licensee, attended hearing. Minutes of the hearing including the submissions made by the parties are recorded and the same are kept in the record. Submissions made by each party in respect of each grievance shall be referred while deciding each of the grievances to avoid repetition.

- 6). The following grievances raised by the consumer in its letter dated 07/04/09 sent to the concerned Executive Engineer of which copy the consumer has attached with the grievance made before this forum, arise for consideration, and considering the reply dtd. 04/07/09 with CPL filed by the licensee, record produced by the parties, and submissions made by the parties, the finding or resolution on each of such grievance is given against it, for the given reasons.
- 7). As to grievance No. (1) – Regarding refund of difference between MD based tariff & H. P. based tariff & P. F. penalty recovered in the bills for Aug.08 :- The Consumer Representative (CR) submits that the licensee has charged MD based tariff to the consumer without 100% metering and its such action is illegal. He relies on operative order dtd. 20.6.08 of MERC in case No.72 of 2007, MSEDCL circular No.81 dt.7.7.08 in support of his contention. He further submit that as per order dated 12.9.08 of MERC in case 44 of 2008, the licensee can not impose MD based fixed charges, PF penalty and demand penalty/incentive without MD based tariff being made applicable to the concerned consumer but in the instant case, the licensee has applied the above charges or penalties without MD based tariff being applicable to it and hence such action of licensee is illegal. He further submit that thus the licensee has violated the Act, rules and orders of

MERC and hence is liable for action under section 142 and 146 of the Electricity Act 2003. He further submits that therefore the licensee be directed to refund the amounts of such illegally recovered charges together with interest at the rate which it applies to the defaulting consumer. The CR submits that the consumer claims refund of an amount of Rs.3900/- towards the difference in between the fixed charges as per MD based tariff and HP based tariff charged in the bill for the month Aug.08.

---As against above contention, the LR submits that the licensee has applied MD based tariff from Aug.08 on completion of 100% TOD metering and as per directives given in Clause 10.5 of Com. Circular No.81 dt.7.7.08. He therefore submits that whatever charges and PF penalty based on MD based tariff, are recovered by the licensee from the consumer are correct and legal and therefore the question of refunding the same to the consumer does not arise.

While deciding the question regarding the applicability of MD based tariff to the LT above 20 KW industrial units, the Hon. Electricity Ombudsman vide order dated 6.5.09 in representation No.33 of 2009, M/s. Crystal Industries V/S MSEDCL, relying on the MSEDCL's circulars dtd. 05.02.09 held that the MSEDCL has suo moto decided to start MD based tariff for LT V consumers from April 09 inspite of 100% installations of MD meters completed in Aug.08 and therefore the MSEDCL is liable to refund the excess fixed charges and PF penalty recovered from such consumer. Therefore following the above referred decision, the licensee is directed to refund the amount of MD charges collected over and above the fixed charges recoverable as per HP based tariff and the PF penalty recovered

from the consumer prior to the billing period of April 2009 together with interest at the Bank rate of RBI within 30 days from the date of this decision.

- 8). As to grievance (2) – Regarding refund of PF penalty :- The consumer claims that PF is shown as '1' in the bills for the months Aug.08, Sept.08 and Oct.08. A hand written bill without mentioning different para-meters has been issued for the month Nov.08 and by the said bill an amount of Rs.24231/- has been recovered as PF penalty. Thereafter PF is shown as 0.004 in the month of Dec.08 and the same is technically impossible. Therefore the PF penalty charged and recovered by the licensee as above is illegal and therefore the licensee be directed to refund the amount of said PF penalty together with interest, as it has not done so inspite of consumer's letter 26.11.08. As against this, the licensee claims that the MRI data will be retrieved and after verifying the facts, action will be taken accordingly. Considering the suspicion shown by the consumer and the say given by the licensee as above, the licensee is directed to find out the correct para-meters and the actual consumption during each of the months from Aug.08 to Nov.08 by retrieving the MRI report of the concerned meter and concerned months, and then recalculate the PF penalty, if applicable, and refund the excess PF penalty, if earlier recovered, together with interest at the Bank rate of RBI to the consumer by giving credit of such amount in the ensuing bill after a period of 30 days from the decision in this case.
- 9). As to the grievance No.(3) – Regarding grant of compensation for not taking meter reading:- The consumer claims that the meter was replaced

on 13.1.09. Thereafter the meter was not showing reading till Mar 09. Check report was prepared, but nobody from the office of licensee takes meter reading. Therefore, the consumer be granted compensation as per 'Standard of Performance'. As against this, the licensee claims that the meter was replaced on 13.1.09 and B-19/25 was fed to system in Feb.09. The bill was issued in April 09 as per the consumption recorded by the meter. It is clear from CPL for the months Feb.09 and Mar 09 that the meter readings were not taken in the said two months and therefore the meter reading was taken on 1.4.09. Therefore the licensee is directed to pay compensation of Rs.100/- (Rs. Hundred only) to the consumer as per Clause 7 (i) of Appendix –A to the MERC (SOP etc.) Regulation 2005, by giving credit of such amount to the consumer in the bill, within 90 days from the date of decision in this case.

- 10). As to grievance No.4 – regarding amounts of bill adjustments:- The consumer claims that the licensee has added the debit bill adjustment charges of various amounts such as Rs.2685.68, Rs.3086.08, Rs.4088.25 and Rs.1036.72 in the bills for the months Sept.07, Aug.07, March 07 and Jan.07 respectively. The licensee should justify such adjustments and refund total amount of Rs.10,896.73 with interest, if the same are not justified. The licensee claims that the above first and second amounts are of TOSE for the periods from Mar 06 to Sept.06 and from Sept.05 to Feb.06 respectively, the above third amount is that of FCA2 and IASC charges for Jan.07 and the above fourth amount is that of tariff difference of Oct.06/Nov.06. Thus the licensee has given explanation about charging the above referred third and fourth amounts. As far as the above first and

second amounts are concerned, the CR has relied upon the order dated 24th May 2005 passed by MERC in case No. 28 of 2004 in support of his contention that the licensee has earlier refunded the TOSE charged for the above referred periods as per the above referred order, but has again charged the same as above without any further order of MERC about it. The licensee has not filed any such order of MERC passed after the above order which enabled it to recharge the TOSE. In view of the facts as discussed above, the licensee is directed to give explanation as to how it has recharged TOSE as claimed particularly in reference to the order dated 24/05/2005 passed by MERC in case No. 28 of 2004, to the consumer in writing within a period of 30 days & on failure to do so, or in case of unsatisfactory explanation, refund the excess amount if any, recovered as above together with interest at the bank rate of RBI, by giving it's credit to the consumer in the ensuing bill after 30 days from the date of decision in this case.

- 11). As to grievance 5 – Regarding refund of IASC during the period Feb. 07 to May 07:-. The consumer claims that the licensee is to refund IASC charges recovered during Feb. 07 to March 07 as per order dated 15.9.08 passed by MERC in case No.45 of 2005, and such amount is Rs. 2044.97 (Rs. 714.15, - Feb 07, Rs. 686.00 – Jan. 07 and Rs. 644.82 – Mar. 07 i.e. total Rs. 2044.97) and therefore licensee be directed to refund the said amount to the consumer. The licensee claims that it has made normal petition vide case No.42 dt.10.12.08 in this behalf to the MERC. It is clear from the above referred order dated 17.09.08 passed by MERC in case No.45 that the MERC directed the licensee to refund the incremental ASC

for the period Oct.06 to Apr 07 to all the consumers who have contributed towards ASC. The licensee has not filed copy of concerned petition which it allegedly made to the MERC and also not filed copy of any order passed by MERC in such petition. Until the MERC passes any other order, its earlier order dt.18.9.08 in case No.45 will have to be followed. Therefore licensee is directed to refund the IASC if collected during the period from Jan.07 to Mar 07 from the consumer as per directions given in the above referred order of MERC to the consumer, by giving credit of such amount together with interest at the Bank rate of RBI to the consumer in the ensuing bill after 30 days from the date of this decision.

12). As to grievance No. (6) - regarding refund of Excess SD & interest on SD :

The consumer claims that it has paid SD of Rs. 15600/- and Rs.4900/- as Development charges at the time of taking new connection in Oct.95. However, bills upto May 08 were showing SD as Nil. Thereafter the consumer paid Rs. 38900/- as ASD and SD of Rs.15900/- was added in SD head. SD of Rs.54500/- was displayed in the bill for May 08. However, in the bill for Mar 09, an amount of Rs.28900/- is shown as SD and an amount of Rs.15600/- are shown as arrears of SD. The licensee has also not given credit of interest to the consumer. The licensee also collected an amount of Rs.28900/- as extra SD in May 08. Therefore, the licensee be directed to refund total SD of Rs.20,500/- and also pay interest of Rs.14,176/- to the consumer, by giving credit of such amounts in the bill. As against this, the licensee claims that the connection has been given on 28.10.95. The Security Deposit of Rs. 15600/- and development charges of Rs.4900/- = total Rs.20,500/- are not displayed in the bills. After

verifying the facts, details about SD adjustment will be given. Considering average bill, keeping the SD balance, excess SD will be refunded. In view of the above contentions of the parties, the licensee is directed to verify the correct amounts of SD from time to time from its record and the record with consumer, display the correct amounts of SD, calculate the proper SD at this stage & refund the excess amount of SD & the interest at Bank rate of RBI on such amounts of SD at the prevailing rate, by giving it's credit to the consumer, in the ensuing bill after a period 30 days from the date of decision in this case.

13). As to grievance No. (7) - Regarding refund of excess ASC : The consumer claims that the licensee has collected excess ASC by combining the consumption of Mar 08 and Apr 08 and by giving cheap power benefit of one month only. It further claims that the matter is not clear as the bill for April 08 is not issued. It therefore claims refund of Rs.12580/- as excess ASC recovered in April 08. It further claims that the licensee has also recovered excess ASC in Nov.06 and hence the same also be refunded. As against this, the licensee claims that the average bill charged in Mar 08 have been credited in Apr 08. However, about ASC charges, the review will be taken and accordingly action will be taken.

14). It is clear from the copy of bill for the month Mar 08 that the previous reading as on 2.2.08 given in the said bill is 350937 and current reading as on 3.3.08 is given as zero. Thus the said bill appears to have been issued without taking actual current reading. It is also clear from the copy of the bill for April 08 that the said bill is a hand written bill issued with previous reading as 350937 as given in the bill for Mar 08 and the current reading as

364528 as in April 08. In view of above facts, the allegation made by the consumer that the licensee has given benefit of cheap power of one month only, may be correct. Therefore the licensee is directed to find out the actual consumption during the months Mar 08 and Apr 08 and other parameters by retrieving MRI report of the concerned meter of the concerned months and then recalculate the ASC which could be charged to the consumer in the said months, and refund excess ASC, if any, to the consumer by crediting such amount together with interest at the bank rate of RBI, in the ensuing bill, after period of 30 days, from the date of decision in this case.

- 15). As far as the contention of the consumer to the effect that the licensee has recovered excess ASC in the bill for the billing month Nov.06 is concerned, the consumer has made grievance about it for the first time before the concerned Ex. Engr. and IGRC on 9.4.09 vide letter dated 7.4.09 i.e. more than two years after the cause of action for making grievance in respect of the said recovery has taken place. The cause of action for taking action against the said recovery can be said to have arisen at the most in Dec.06. Thus the consumer has made grievance in respect of the said alleged excess recovery of ASC before Ex. Engr./ IGRC and also before this forum, more than two years after the cause of action, and therefore in view of Regulation 6.6 of the MERC (CGRF & Electricity Ombudsman) Regulation 2006, this forum can not entertain such grievance. Hence such grievance of the consumer is rejected.
- 16). As to grievance No. (8) - Regarding refund of difference of MD based charges and HP based charges from Oct.06 to Mar 07 : The consumer has claimed refund of an amount of Rs.3518.81 out of total amount of

Rs.11,584.13 after deducting the amount of Rs.8065.32 refunded earlier on this count as the charges of the relevant period were reverted back to the HP based tariff from MD based fix charges, due to non completion of installation of MD meters in entire Maharashtra. The licensee claims that it has refunded an amount of Rs.8065.32 in the month of May 07 and the balance amount in June 09. However, the licensee has neither filed CPL for June 09 or any other document to show that it has really refunded such remaining amount in June 09. Therefore the licensee is directed to verify the total amount of such difference between the MD based tariff charges recovered and HP based charges of the period Oct. 06 to March 07, the amount refunded by it and to refund the remaining amount of such difference, if not already refunded, together with interest at the bank rate of RBI to the consumer by giving its credit to the consumer in the ensuing bill after a period of 30 days from the date of decision in this case.

- 17). As to grievance No. (9) - Regarding refund of Excess amount collected as penalty for violation of connected load and power factor : The consumer claims that the licensee has not refunded the penalty for violation of connected load and power factor recovered during the period from May 03 to Sept. 03 as per directions of MERC vide order dt. 14/07/05 in case No. 2, and the consumer is entitle for refund of total amount of Rs. 48,749 including the interest on this count. As against this the licensee claims that as per the para No. 33 (2) of above referred order of MERC, one and half time penalty is to be recovered by the connected method during the period from 10/06/03 to 30/11/03 and the same penalty is recovered from the consumer and therefore, the consumer is not entitle for any refund on this

count. Since excess recovery of connected load and power factor penalty is to be refunded as per the above referred directions of MERC, limitation of two years would not apply to the same as observed by Hon. Ombudsman in order passed in representation No. 39 of 2006, as contended by the consumer. Therefore, the licensee is directed to verify whether the penalty for excess load and capacitor penalty, recovered by it from the consumer prior to 10th June 2003 is as per Clause 31 (e) of the MSEB's conditions of supply, and recovered by it during the period from 10th June 03 to 30th Nov. 03 is as per para 33 (2) of the order dt. 14/07/05 passed by MERC in case No. 2 of 2003, and refund excess amount recovered if any, together with interest at the Bank rate of RBI to the consumer by giving credit of such amount in the ensuing bill after 30 days from the date of decision in this case.

- 18) As to grievance No. (10) – Regarding refund of SLC charges and Security Deposit (SD) deposited for additional load : The consumer claims that as per inspection dt. 30/03/03, the licensee issued letter dt. 23/05/03 and collected an amount of Rs. 21,928 as SLC charges for increase of 27.41 HP load, and Rs. 8,223 as SD for such additional load. It has however, not regularized and increase the load to 92.41 HP and has also not added the amount of Rs. 8,223 to the amount of SD. Therefore, the licensee be directed to refund the said total amount of Rs. 30,151 recovered as SLC charges and additional SD, together with interest of Rs. 9,950. As against this, the licensee claims that as per the MSEB's conditions of supply, whenever excess load was detected, SLC charges alongwith excess load charges were being levied. However, even after payment of such SLC

charges and additional SD, the consumer has to apply for regularizing or for increasing the load alongwith list of additional machines and relevant test report. However, it appears that the consumer has not submitted such an application and therefore, it's additional load has not been regularized. The additional SD deposited by the consumer will be displayed in the bills. The concerned incident regarding inspection and collecting SLC and additional SD by the licensee took place in the month of March to May 03 i.e. prior to coming into force of the Indian Electricity Act 2003. Therefore, the provisions of the MSEB's conditions of supply of electric energy would apply to the same. It is clear from condition No. 31 (f) (ii) of the said conditions that the licensee could provisionally charge the additional service line charges and additional SD for the excess connected load, in addition to billing it on the basis of actual connected load and penal charges for the unauthorized connected load, and therefore, the act of licensee charging the same to the consumer in this case, cannot be said to be illegal. It is also clear from condition No. 2 of the above referred conditions that a consumer is suppose to file application for supply or an additional supply of electrical energy. Therefore, in the instant case, the consumer was suppose to make an application for additional load after depositing the SLC charges and additional SD as per notice dt. 23/05/03 issued by licensee after the inspection dt. 31/03/03. However, since the consumer has not made such application, the act of licensee in not releasing additional load in it's favour cannot be said to be illegal and therefore, the consumer is not entitle for refund of such SLC charges and additional SD only because the licensee has not sanction additional load.

The consumer, however, can still apply for such additional load and on it such application, the licensee will have to consider the said application taking into consideration the SLC charges and additional SD amount paid by the consumer earlier. However, as far as the amount of additional SD of Rs. 8,223 deposited by the consumer as per notice dt. 23/05/03, is concerned, even if the consumer does not file any application for additional load as above, the licensee is directed to calculate the total SD amount of consumer and display the same in the bills, recalculate the proper SD amount for the consumer at this stage, and refund the excess SD if any, together with interest at the Bank rate of RBI to the consumer by giving it's credit in the ensuing bill after a period of 30 days from the date of decision in this case.

- 19) As to grievance No. (11) as per rejoinder dt. 03/07/09 – Regarding refund of excess ASC charged from June 07 to May 08 : The consumer claims that the licensee has charges ASC during the period from June 07 to May 08 by taking Benchmark consumption (BC) as 10393 units, whereas if the consumption during the period January 05 to December 05 as given in the bills for the months Feb. 05 to Jan. 06 is considered, the average monthly consumption during the said period i.e. the BC for the consumer was 10,634 units. Therefore, the act of licensee in considering 10393 units as BC during the said period has resulted in excess recovery of ASC from the consumer and therefore, the licensee be directed to refund such excess amount recovered by licensee on this count. The licensee did not file any reply to the rejoinder dt. 03/07/09 including this grievance till this date, even though it's representative undertook to file such reply by 13/07/09 at the

time of hearing. It is an admitted fact that the BC is the average monthly consumption during the year 2005. It is also a fact that to find out such average monthly consumption in the said year 2005, consumptions as shown in the monthly bills from Feb. 05 to Jan. 06 will have to be considered since normally consumption in a month is charged in the bill issued in the next month. Therefore, if one calculates total consumption of the consumer in the year 2005 as given in the bills for the months Feb. 05 to Jan. 06 as given in the CPL, the average monthly consumption comes to 10634 units and hence the BC for the consumer could be 10634 units, as contended by the consumer. It is however, clear from the copies of the bills for the months Sept. 07, Aug. 07 that the licensee has treated 10393 units as BC for the consumer and it must have resulted in excess recover of ASC from the consumer as alleged by it. Therefore, the licensee is directed to recalculate the ASC which could be charged to the consumer during the period from June 07 to May 08 by taking 10634 units as it's BC, and refund the excess ASC recovered if any, together with interest at the Bank rate of RBI to the consumer by giving credit of such amount in the ensuing bill after a period of 30 days from the date of decision in this case.

- 20) As to grievance No. (12) as per rejoinder dt. 03/07/09 – Regarding refund of RLC installments: The consumer claims that the refund of RLC started from July 08. RLC is to be refunded in total 58 monthly installments to the consumer. RLC amount is not displayed in the CPL. The consumer was given credit of Rs. 3,063.90 regularly upto Dec. 08 as per CPL. However, there after RLC is not given prorata for next two months and from March 09, calculation show that more amount is charged instead of giving credit.

The licensee should verify the above facts and refund the installments of the RLC, if the same are not earlier paid. The licensee did not file any reply to the rejoinder dt. 03/07/09 including this grievance till this date, even though it's representative undertook to file such reply by 13/07/09 at the time of hearing. It is clear from the copy of the bill for the month Feb. 09, filed by the consumer, that RLC refund of Rs. 3,063.90 has been given to the consumer. However, the consumer has not filed copies of the bills of other months from Jan. 09 onwards to show that RLC refund has not been given to it in all the said months. However, considering the doubt raised by the consumer, the licensee is directed to verify as to whether it has given RLC refund to the consumer from the month of Jan. 09 onwards, and if not give such refund as directed by the MERC.

- 21). In view of the findings on the grievances of the consumer as above, the forum unanimously passes the following order.

O-R-D-E-R

- 1) The grievance application is partly allowed.
- 2) The licensee to comply the directions given in above para Nos. 07 to 12, 14, 16 to 20.
- 3) The prayer of consumer for refund of alleged excess ASC recovered in Nov. 06 is rejected as barred by limitation, as observed in para 15.
- 4) The Compliance should be reported to the forum within 90 days from the date of decision.

5) The Consumer can file representation against this decision with the Ombudsman at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission, 606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”

Representation can be filed within 60 days from the date of this order.

6). Consumer, as per section 142 of the Electricity Act, 003, can approach Maharashtra Electricity Regulatory Commission at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

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”

Date : 06/08/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan