



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/167/190 OF 2009-2010 OF M/S. TAKDIR INDUSTRIES, VASAI REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE BILLING.

M/s. Takdir Industries
Plot No.93, Sector-1,
Vasai Taluka Industries Estate
Gouraipada, Gokhiware,
Tal : Vasai, Dist : Thane421 208

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Vasai (East) Sub-Division

(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 conformed 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. 50 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 20/01/2009 for Excessive Energy Bill. The details are as follows: -
Name of the consumer :- M/s.Takdir Industries
Address: - As given in the title
Consumer No : - 001890789231
Reason of dispute: Excessive Energy Bill.
- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/079 dated 03/02/2009 to Nodal Officer of licensee. The licensee replied vide letter No. DYEE/VSIT/1374, dated 18/02/2009.
- 4) The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL., Vasai Division, Vasai East on 02/12/08. 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 03/02/2009.
- 5). The Members of the Forum heard both the parties on 18/02/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, representative of the consumer & Shri S. B. Hatkar, Asstt. Acctt., and Shri M.K.Rathod, Jr.Engineer, representatives of the licensee attended hearing.

6). The Consumer Representative (CR) Shri Harshan Sheth submits that Since July 06 i.e. billing month 5.7.08 to 5.8.08 the consumer has been charged as M.D. based tariff. He has been charged MD based fixed charges, power factor penalty which is illegal. He has enclosed Xerox copy of MERC case No.72 of 2007 dt.20.6.08 (operative order) with the grievance. He submits that para 47 of the said order (A-1) reads that unless 100% metering is done, the MD based tariff can not be applied. The licensee in their reply stated that on completion of 100% TOD metering and as per directives given in Circular No.81 clause No.10.5 the MD based tariff is applied to the consumer from Aug.08 which is correct.

7). The CR submits that MSEDCL circular No.81 dt.7.7.08 para 10.3 to 10.5 reads that 100% metering is not done and respective information of metering of express feeders, DTSC meters and consumer data of sanctioned load and contract demand to be submitted to IT section, then to MSEDCL HO and the to be given ultimately to MERC for verification and finally date of effect to be given by MERC. (A.2)

The licensee in their reply stated that on completion of 100% TOD metering and as per directives given in Circular No.81 clause No.10.5 the MD based tariff is applied to the consumer from Aug.08 which is correct.

8). The CR submits that MERC case No.44 of 2008 dt.12.09.08 – ruling given by MERC says that power factor penalty/incentive shall be applicable only to the consumers who have MD based tariff and are provided with meters to measure their power factor. So MSEDCL can not charge MD based fixed charge P.F.penalty/ incentive and Demand

penalty/incentive. Para 4 of page 1 of order 44 of 2008 reads as “The commission hereby directs MSEDCL to ensure that clarifications given in this order are implemented with effect from June 1,2008 and the consumers bill are revised accordingly (A.3). The representative of licensee submits regarding Para C that power factor penalty/incentive is charged to consumer having MD based meter. As regarding demand penalty MSEDCL has issued guidelines vide letter No.4039 dt. 5.2.09 to withdraw/refund the demand penalty already charged in Aug.08 and Sept.08 and the same is to be adjusted through energy bill in Feb.09/Mar.09.

- 9). The CR submits that on the basis of above MERC order, MSEDCL has issued circular No.88 dt.26.9.08 . As such MD based tariff is not yet approved by MERC for LT V Industries so it is illegal to charge MD based charges and PF penalty to consumers who have HP based tariff at present (A.4). - Upon the query, the representative of licensee submits regarding Para D that as per directives given in Circular No.81 Dt.7.7.08 clause No.10.5, the bills are issued as per MD based tariff.
- 10). The CR further submits that inspite of such clear order from MERC and MSEDCL HO, if the licensee do not revise bills, it will be a clear violation of Act, rules and orders of MERC which will attract Sections 142, 146 of I.E. Act 2003. To avoid further complications, consumer is requesting the licensee to regularize the matter. The licensee replied that the bills are issued as per Com.Circular No.81 dt.7.7.08 clause No.10.5 and hence there is no any violation of Act/rules etc.

- 11). The CR submits that for billing period from July 08 to Oct.08, the licensee have charged MD fix Rs.2300 instead of Rs.1950. Refund required $Rs.200 \times 4 = 800$ + PF penalty Rs.14,862.43 alongwith interest as the licensee charged to consumer for default amount. Upon the above query, the representative of licensee submits that charging of excess MD penalty and PF penalty, instructions are given to I.T. to withdraw/ refund the same vide letter No.4039 dt.5.2.09 and same is being given in the bill for the month of Feb.09 & Mar 09.
- 12). The CR submits that the licensee has shown bill adjustment for the billing period i.e. Aug.07 Rs.544.12, July 07 Rs.580.24, June 07 Rs.106.00 and Feb.07 Rs.477.36. The licensee should give details of the same and reasons for levying such charges and if not justified Rs.1,717.72 may be refunded along with interest as the licensee charge to consumer. - On the above, the Licensee's Representative (LR) submits that details regarding billing adjustment in the month of Feb.07, Jun 07, Jul.07 and Aug.07 shall be collected from I.T. centre and the consumer will be informed accordingly.
- 13) CR submits that at the time of getting new connection in Nov.2002, consumer paid Rs.18,000/- as SD but bills upto May 08 were showing SD as Nil.. Thereafter consumer paid ASD of Rs.9000/- in May 08 but the licensee has shown total amount of SD as Rs.9000/-only. So the consumer enclosed the calculation sheet of interest to be paid by MSEDCL on the amount of Rs.18,000/- from Dec.02 to Nov.08 which comes to Rs.5895/-. The same may be compounded on yearly basis and after adding in principle amount, respective year interest may be

calculated and refunded. The CR further submits that the average electric charges for 2007 to 2008 comes to Rs.9000 per month. Therefore SD amount of Rs.18,000/- with licensee is in excess and so keeping Rs.9000/- with MSEDCL, balance Rs.18,000/- may be refunded in single stroke as per tariff booklet. The licensee not agreed to CR's proposal to refund old SD of Rs.18000/- paid at the time of new connection vide MR No.1703457 dt,2.11.00 and keep new SD Rs.9000/- collected. The SDs will be updated in the month of March 09 and interest thereon upto March 08 will be paid in April. 09. The licensee in reply further stated that the excess SD of Rs.9000/- shall be refunded through energy bill in April 09. The SD collected during the time of release of connection will be kept with licensee. The licensee said the SD will now be shown in the CPL and bill will be reflected from March 09 onwards. Since SD is shown as nil, interest is also shown nil.

- 14). The CR submits that from Oct.06 to Mar 07 the licensee had to refund difference of MD based charges and HP based charges to 10,691.46 (Oct.06 charged 5470.66 less actual 18.00=3670.66 and Nov.06 to Feb.07 charged 3555.20 instead of actual 1800 differ 1755.20x4 months = 7020.80). Verify the same and if refund any amount, give details. - On this point LR submits that the refund of Rs.7442.40 given to the consumer in May 07 is as per I.T. programme.
- 15). The CR submits that while giving new connection licensee has collected Rs.10,800 on 2.11.02 mentioning as 6 months minimum bill deposit. Licensee should give details of the same as how it has

been adjusted in the bills. If it is not adjusted, being illegal amount and non uniformly collected, it should be refunded alongwith interest and according to him, the to be refunded on this count comes to Rs.10,800 + interest Rs.3,537 (A.9a, 7c). The LR on the above submits that the amount of Rs.10,800/- collected by licensee is as per existing rules and it is correct.

16).The grievances of the consumer are

- a) Illegal MD based tariff and Pf penalty charged to LT V above 20 KW consumer.
- b). Collected amount under debit bill adj. with no details. To be verified and if not justified, to refund.
- c). SD amount paid 18000/- but bill displayed 'O' .Interest not given on said amount So SD + interest may be refunded.
- d) refund of MD fixed charge during Oct.06 to Feb.07
- e) Amount of 10,800/- collected while giving new connection in the name of 6 month minimum bill which is illegal. So this amount with interest to be refunded.
- f). ASC was not applicable for Oct.06 period but collected the amount. So refund to be given.

17). He sought relief from CGRF for:

- a). Illegal and excess amount collected as per his submission to be refunded.
- b). Interest should be given by MSEDCL as they charge to the consumer on default amount.
- c) SD + extra amount paid + unpaid interest to refund
- d). MERC order is violated. Get assurance that it is not violated repeatedly or E.Act 2003 sections to be invoked.

18). Forum observations:

(i). Excess MD charges :- (View of Mrs. V. V. Kelkar, Member) As per licensee's reply on the subject referring circular No.81, clause No.10.5, they stated that the "the MD based tariff is applied to consumer from Aug.08." Clause No.10.5 is as follows:

"MSEDCL is thus allowed to charge MD based tariff immediately on completion of 100% metering. All Zonal Chief Engineers to immediately inform the IT centre under their jurisdiction about such completion and may also send certificate immediately to that effect to Chief Engineer (Dist).

The clause clearly states that after completion of the 100% metering the Zonal Chief Engineers are required to immediately inform IT centres under their jurisdiction about such completion for the change in charges of MD based tariff.

The licensee did not submit any letter / reply regarding above subject till to-day. Under the above circumstances I come to the conclusion that as the licensee is not able to substantiate this statement of 100% metering completion of their area, I also have a meter replacement report submitted by the licensee in another similar case No.K/E/177/201 M/s. Maharashtra Pencil Factory, which indicates that the Electro Mechanical meter was replaced by static meter (Secure make) on 05/02/09. The date of replacement of meter is much later as compared to the period of grievance, in the present case. This confirms that the licensee has not installed the meter 100% (As per circular dated 5.2.09). Therefore the work is not yet completed and hence they can not charge MD tariff to the consumer from 05.07.08 to 05.08.08. The excess amount charged under this tariff from the consumer should

be adjusted in the bills, with interest @ RBI Bank rate at rate prevailing at the date of decision of the forum.

(i) (a) As far as the grievance of consumer to the effect that the Licensee has recovered electric charges as per M. D. based tariff for the month of August 08 illegally is concerned Shri Shivdas, Member Secretary, differed from the above view taken by Sau. V. V. Kelkar, Member and therefore, the view taken and the reasons given by him for such view are separated recorded as under.

(i) (b) Para 47 of the Operative Order dt. 20/06/2008 of MERC in Case No. 72/2007, on the basis of which the licensee/MSEDCL issued Commercial Circular No. 81, dt. 07/07/08, reads as under

“47. In line with Commission’s ruling in the MYT order, since MSEDCL is yet to achieve 100% MD metering for LTV industrial consumers above 20 KW (around 97% completion has indicated by MSEDCL till date), the MD tariffs for LTV industrial consumers will not be made effective. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs, though the revenue has been assessed based on MD based tariffs”.

It is clear from the above order that while passing the said order or giving the said directions, MERC relied on the report about completion of 97% given by MSEDCL/licensee, without insisting for proof about it. It is clear from Clause No. 10.5 in commercial circular No. 81, dt. 07/07/2008 issued by the MSEDCL/licensee, reproduced in above para 18 (i) that in view of the above referred order in para 47 of order dt. 20/06/2008 of MERC in case No. 72/2007, the MSEDCL/licensee issued directives to all Zonal Engineers to immediately inform IT centres under their jurisdiction about such

completion and further directed that they may also send a certificate immediately to that effect to Chief Engineer (Dist). The MSEDCL/licensee through Dy. Executive Engineer, MSEDCL Vasai Road (E) S/Dn. vide say cum letter dt. 9/2/2009, claims that on completion of 100% TOD metering and as per the directives given in circular No. 81, clause No. 10.5, the MD based tariff is applied to the consumer from August 2008. Moreover, the licensee in it's circular No. PR-3/Tariff, dt. 05/02/2009 clearly stated that the MSEDCL has completed the 100% work of installation of TOD meters to LTV industries having load more than 20 KW. MSEDCL is a public institute and therefore, the same or it's officers have no personal interest to falsely say that 100% TOD metering was completed and therefore MD based tariff is applied to the concerned consumers i.e. LTV Industries above 20 KW consumers. Under such circumstances, in my opinion, it would not be proper to insist for filing of documents about 100% completion of TOD metering. Therefore I accept the contention of MSEDCL that 100% TOD metering was completed by the end of July 2008.

- (i) (c) It is clear from the provisions of 3.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & other conditions of Supply) Regulations, 2005 that MSEDCL/licensee can recover charges for the electricity supplied as per the tariffs fixed by the Commissioner (MERC) from time to time. It is clear from the order dated 20/06/2008, passed by MERC in case No. 72 of 2007 that the Commission (MERC) fixed tariffs for LT-V industries above 20 KW consumers on HP basis as well as on MD TOD basis with a direction that the TOD tariff shall be applicable after installation of MD meters. It

is true that as per para 47 in the said order, the Commission (MERC) at that time allowed the licensee to charge as per earlier HP based tariffs but it was because at that time the licensee reported that the work of MD metering was completed to the extent of 97% only. It is further made clear in the said para 47 of the said order that till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs. Moreover, the fact that the Commission (MERC) in the said order also fixed & finalized the MD tariff or TOD tariff clearly show that the licensee was permitted to charge electricity charges as per the MD metering or TOD metering immediately after completion of 100% work of installation of MD meters, as clearly stated in the Commercial circular No. 81, dt. 07/07/2008 by the licensee. In view of this, and since in my opinion the licensee has already completed 100% installation of MD meters as discussed above, in my opinion the licensee has correctly charged the electricity charges to the consumer as per MD tariff and therefore, such charging cannot be said to be illegal as alleged by the

Consumer. Moreover in my opinion, the consumer should have approached the Commission (MERC) for his such grievance instead of this forum, as the Commission (MERC) is the Competent Authority to decide as to whether the licensee has applied the tariff correctly. For all above reasons, the consumer is not entitled for refund of or adjustment of any amount on such count. Hence I hold accordingly.

- 19)(i) Clause 8.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum) & Electricity Ombudsman) Regulations 2006, reads as under :

"On completion of proceedings conducted under Regulation 6, except where the forum consist of a single member, the forum shall take a decision by majority of votes of the members of the forum & in the even of equality of voles, the Chairperson shall have the second & casting vote."

It is clear from the above clause 8.1 of the Regulations 2006 that the Chairperson has been given a second or casting vote, in case of equality of votes, & it clearly means such equality of votes is meant to be equality of the votes of other two members.

(i)(a) In the instant case, there has been difference of opinion or view amongst two members, & therefore, Shri M. N. Patale, as a chairperson will have to give the second or casting vote & the view out of the different views taken by two members, seconded by Shri M. N. Patale Chairperson will become the view of the majority & hence such view will be the decision of the forum.

(i)(b) Shri M.N. Patale, after giving due consideration to the different views expressed by two members as above, approves or supports the view taken by Shri R. v. Shivdas to the effect that considering the tariff order issued by the Commission (MERC) & circular No. 81 issued by the licensee, read with the circular dated 05/02/2009 referred & other facts discussed by him it is clear that the licensee has completed 100% installations of meters & therefore correctly recovered the electric charges as per MD tariff or TOD tariff from the consumer & therefore the consumer is not entitled for any refund or adjustment of any amount on such ground.

20). Debit bill adjustment: As per licensee's statement, the licensee should review the concerned bills in which the amounts of bill

adjustments are shown and after getting the clarification from higher authority and IT, necessary explanation be given to the consumer within 15 days from the date of decision in this case. In case, adjustment of such amounts is wrongly made, credit of such amount be given to consumer in the next ensuing bill.

- 21). Payment of refund and interest in Security Deposit:- It is observed that there was an error not indicating the SD amount properly in the monthly bill and interest of SD amount was not given to the consumer. Licensee accepted the error and agreed to rectify the same and it will get reflected from the bills of April 09 and onwards. The licensee also agreed for refund of excess SD amount of Rs.9000/- with interest in the month of April 09.

- In view of the above, the licensee should refund the excess amount of SD with interest. The licensee should ensure that all SD amounts should be displayed in the bills.

- 22). Refund of fixed MD charges: - The consumer had demanded refund of Rs.10,691.46 (as difference of MD based charged to HP base fixed charges) to which licensee relied that as per their calculation an amount of Rs.7442.40 has been already refunded to the consumer and same is reflected in the bill of May 07.

The licensee should again recalculate the above difference and adjust surplus amount, if any, in the next ensuing bills from the date of decision.

- 23). Refund of Rs.10,800/- collected in 2.11.02 towards 6 month's minimum bill. The CR is asking the explanation for the collection of Rs.10,800/- towards six months minimum bill deposit. The licensee claims that the said amount is collected as per its existing practice. The LR also

repeated the same and further stated that the said amount is collected as per rules.

- As the licensee has not given any satisfactory explanation to the forum as to under which rule the above amount was collected from the consumer, therefore, the licensee should treat the said amount as addl. Security deposit and give credit to the consumer of interest @ prevailing rate till to day on the said amount, and recalculate fresh SD amount and refund excess amount, if any, within 60 days from the date of this decision.

- 24) In view of the majority view on the point of MD based tariff, and unanimous findings on other points, the forum passes the following order.

O-R-D-E-R

- 1) Prayer of consumer for the refund of the amount of electric charges recovered by licensee as per MD based tariff or TOD based tariff, Demand Charges, P. F. Penalty, is rejected.
- 2) Licensee to follow the directives about calculation of interest on Security Deposit and giving such credit (as per para 21 & 23 above).
- 3) . The licensee should review the concerned bills in which the amounts of bill adjustments are shown and after getting the clarification from higher authority and IT, necessary explanation be given to the consumer within 15 days from the date of decision in this case. In case, adjustment of such amounts is wrongly made, credit of such amount be given to consumer in the next ensuing bill.
- 4) Compliance should be reported to the forum within 90 days from the date of decision.

- 5) Consumer can file appeal against this decision with the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”*

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

- 6). Consumer, as per section 142 of the Electricity Act, 2003, 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 :02/04/09

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan