



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West)
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IN THE MATTER OF GRIEVANCE NO. K/ E/ 0168/ 0191 OF 09-10
OF M/S. EXCELLENT ENGINEERS, VASAI REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE,
KALYAN ABOUT EXCESSIVE BILLING.

M/s. Excellent Engineers
Gala No. 32, Suryakirti Ind. Estate,
Chinchpada, Village : Gokhiware,
Tal : Vasai, Dist : Thane

(Here in after
referred to
as Consumer)

Versus

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

(Here in after
referred to
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 & also 1 KW consumer of the licensee with C. D. 25 KVA & 1 KW resp. The Consumer is billed as per Industrial tariff & Commercial tariff resp. Consumer registered grievance with the Forum on 04/02/2009 for Excessive Energy Bill & with a grievance regarding refusal of disconnection of Single Phase Connection. The details are as follows: -

Name of the consumer :- M/s. Excellent Engineers

Address: - As given in the title

Consumer No : - 1)001590790679 – 25 KVA – IP Consumer

2)001590791314 – 1 KW – Single Phase – Comm.

Reason of dispute: Excessive Energy Bill & refusal to disconnect single phase commercial phase connection.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/083 dated 04/02/2009 to Nodal Officer of licensee. The licensee vide it's reply vide letter No. DYEE/VS1/B/1558, dated 25/02/2009 & annexed CPL in respect of the consumer No. 001590790679 to it. The licensee also subsequently filed additional reply vide letter No. DYEE/VS1/B/1559, dated 25/02/2009 & annexed CPL in respect of consumer No. 001590791314 to it.

- 4). The consumer raised his grievances excluding the grievance regarding disconnection of single phase commercial connection before Executive Engineer, (O&M) Division, MSEDCL., Vasai Division, Vasai (East) vide letter dated 29/11/2008. He has also requested the Assistant Engineer, MSEDCL., Billing Unit 4359, Vasai (East), & Dy. Executive Engineer, MSEDCL., Vasai Division, Vasai (East) vide letters dated 17/11/08 & 20/12/08 resp. for permanently disconnecting supply of meter No. 8000011285 of the single phase commercial connection. However, the said authorities did not resolve his grievances & not replied to it's letters. Therefore, the consumer has filed the present grievance before this forum & the same was registered on 04/02/2009.
- 5). The Members of the Forum heard both the parties on 25/02/2009 @ 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., & Shri M. K. Rathod, representative of the licensee attended hearing.
- 6). Consumer Representative (CR) Shri Harshad Sheth stated 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) para 47 reads that unless 100% metering is done.
- 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 a MD based tariff is applied to the consumer from Aug.08 which is correct.

7). The representative of consumer (CR) further submits that MSEDCL circular No.81 dt.7.7.08 para 10.3 to 10.5 reads that 100% n 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 to be given ultimately to MERC for verification and finally date of effect to be given by MERC.

- 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 a MD based tariff is applied to the consumer from Aug.08 which is correct.

8). CR stated that MERC in case No.44 of 2008 dt.12.09.08 directed that power factor penalty/incentive shall be applicable only to those 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.

- The licensee stated regarding para C that power factor penalty/incentive is charged to consumer having MD base meter. 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 adjusted through energy bill in Feb.09/Mar.09.

- 9). **CR added that on the basis of above MERC order, MSEDCL has issued circular No.88 dt.26.9.08 vide para No.4 . As such MD based tariff is not yet approved by MERC for LT V Industries so it is illegal to charge Demand based charges, demand and PF penalty to consumers who have HP based tariff at present.**
- **Upon the query regarding para D, the licensee stated 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). **CR further stated that inspite of such clear order from MERC and MSEDCL HO, if the licensee does 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, the consumer request 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). **CR stated that for billing period from July 08 to Oct.08, the licensee have charged MD fix charges of Rs.2300 instead of Rs.1950. Refund required Rs. 200x4 = 800 + PF penalty of Rs.14,862.43 alongwith interest as the licensee charged to consumer for default amount.**

- Upon the above query, the licensee stated that as far as the excess M. D. charged is concerned, 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). CR stated that at the time of getting new connection in January 2004, we paid Rs. 9000/- (+) Rs. 5500/- as SD but bill was showing SD as Nil upto May 08. There after we paid ASD Rs. 3400/- total of Rs. 17,900/- . So the consumer enclosed the calculation sheet of interest to be paid by MSEDCL on the amount of Rs.14,500/- from Dec.03 to Nov.08 for Rs.4096/-. Same may be compounded on yearly basis and after adding in principle, respective year interest may be calculated and refunded. The CR further stated that the consumer's average monthly charges for 2007 to 2008 comes Rs. 3000. Therefore retain extra SD amount of Rs. 3400/- with licensee and so keeping Rs. 3400/- with MSEDCL balance Rs.14,500/- may be refunded in single stroke as per tariff booklet.
- The licensee's representative (LR) not agreed to CR's proposal to refund old SD of Rs.14500/- paid at the time of new connection and keep new SD Rs.3400/- collected. He submits that the SDs will be updated in the month of March 09 and interest thereon upto March 09 will be paid in April. 09. The LR in reply further stated that the excess SD Rs.14500/- 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

LR said that the SD is not shown in the CPL and the same will be shown from March 09 onwards.

- 13). The CR stated that for billing period July 08 to October 08 MD fix charges have recovered Rs. 1000 instead of Rs. 900/- So it should be refunded. Such amounts comes to Rs. 100 x 4 = 400. The said amount alongwith interest as the defaulting consumer is charged be refunded to the consumers.
- 14). The CR stated that from Oct.06 to Mar 07 the licensee had to refund difference of MD based charges and HP based charges to 5345.17 (Oct.06 charged 2734.77 less actual 900.00 and Nov.06 to Feb.07 charged 1770.60 instead of actual 900 differ 877.60x4 months). Verify the same and if refunded any amount, give details.
- On this point LR stated that the refund given to the consumer in May 07 is as per I.T. programme.
- 15). The CR stated that while giving new connection the licensee collected Rs.16,500/- towards meter cost on 24.11.03. The meter is not showing readings & during inspection on 17.11.2008 by licensee, it was identified as stopped & not working. As per MERC (ECS & OCS) regulations 2005 Sec. 14.2.4 reads as “Except in case of lost or burnt meter, D. L. shall not be authorized to recover the cost of meter. So consumer’s meter should be replaced at the earliest & bill should be issued to the consumer as per MERC (ECS & OCS) Regulations 2005 Sec. 15.4.1 para 3 (maximum 3 months bill on average of 3 months preceding to last month in which bill was contemplated. The

licensee should give details of the same as to how the said amount has been adjusted in the bills. If it is not adjusted, being illegal amount and non uniformly collected, it should be refunded along with interest.

16). The CR stated that his single phase commercial supply should be disconnected and excess amount recovered by the licensee be refunded to the consumer's LT-V supply account. He further stated that in respect of disconnection of supply, the action should be taken within one month from the date of application, otherwise penalty can be imposed.

17). Forum observations:

(i). As to grievances a), b), c), d) & e) 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 its 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.

18)(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 votes, 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.

19). Considering the fact that the consumer has given it's grievances in detail in the copy of letter dt. 29/11/08 by which he made such grievances to the Executive Engineer, & the licensee

also in it's reply dated 25/02/09, replied the said parawise grievances made in the said letter dated 29/11/08, for the purposes of brevity & clarity, the consumer's grievances are considered & decided as given in the said letter dt. 29/11/08 with reasons on each of the same .

20). As to grievance F – these are, in fact three grievances & each of such grievance shall be hereinafter considered separately for it's consideration. Though the consumer in his grievance application did not make it clear as to about which exact meter, it's such grievances are, it is clear from the documents [Annexure 5 (b), 5 (i), 5-b(ii), 5(c)] relied upon by it, that it's such grievances are in respect of meter with consumer No. 001590790679.

21). Such first grievance of the consumer is that it has paid Rs. 16,500/- towards meter cost on 24/11/2003. The meter of the consumer is not showing any reading & during inspection by employees of licensee on 17/11/08, it has been identified as “stop & not working meter”. Therefore, the licensee should replace the said meter without any cost. The licensee in it's reply did not deny the above fact, & merely stated that cost is recovered for changing the meter when the earlier meter is burnt. Copy of receipt (Ann. 5-a) shows that the consumer has deposited an amount of Rs. 16,500/- with licensee on 24/11/2003 & thus the said amount could be of earlier meter. Copy of letter dt. 17/11/08 (Ann. 5-c) shows that the consumer has informed the licensee about the fact that it's meter is not displaying any

data & therefore, the same be changed. CPL produced by the licensee with reply dt. 25/02/09 shows that the meter of the consumer is showing zero consumption since the time when reading was taken for issuing bill for the month of July 2008. The licensee also did not deny the contention of consumer that it's officials check & examine the said meter on 17/11/08 & found it to have stopped & therefore, there is no reason to disbelieve such contention of the consumer. The licensee does not claim that it has found any tempering with the said meter. As per Clause 14.4.1 of MERC (Electricity Supply Code & other conditions of supply) Regulations, 2005 (hereinafter referred as Regulations 2005 only), it is the duty of the licensee to maintain the meters. Therefore, considering the said clause & clause 14.2.4 of the said Regulation 2005, the licensee to test the meter of the consumer with consumer No. 001590790679, if the same is not so far tested, & if found faulty, to change the same without charging any cost to the consumer within a period of 30 days.

However, the amount of Rs. 16,500/- deposited on 24/11/2003, cannot be the amount deposited for new meter required in Nov. 2008, & therefore, the request of consumer for refund of the said amount is rejected.

- 22). Such second grievance of consumer is that in view of the fact that it's meter has stopped & is showing zero consumption, the licensee should give it's bill as per para 3 of the clause 15.4.1 of the Regulations 2005. The licensee has not stated anything**

about it in its reply. The second proviso (referred as para 3 by the consumer) of clause 15.4.1 reads as under :

“15.4 – Billing in the event of defective meters :

15.4.1 -----

Provided-----

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period, for which the meter has stopped recording, upto a maximum period of three months, based on the average metered consumption for 12 months immediately preceding the three months prior to the month in which the billing is contemplated.”

It is thus clear from the above proviso that the contention of the consumer that the licensee should issue bills of the period in which meter was stopped taking average consumption of earlier three months as alleged by it in grievance & in the model corrected bill (ann.5-b) annexed by it with grievance, is not correct. Moreover, it is clear from the CPL with reply dt. 25/02/09 that the licensee has so far billed during the period of stopping of meter i. e. from July 2008 to Feb. 2009, taking the consumption as zero & not as per the average consumption of any period. However, it can do in future. Therefore, it is made clear that the licensee can revise the bills of three months i.e. from July 08 to Sept. 08 only (if the concerned meter is found to have stopped), taking average consumption of earlier 12 months as consumption in each of such month, & not the bills for subsequent period from Oct. 08 onwards, & therefore, the

licensee is directed to do so in compliance with the above referred second proviso to clause 15.4.1 of Regulation 2005.

23). Such third grievance of the consumer is that the licensee has charged wrong F.A.C. for 5 months average bills. It further claims that the licensee has charged flat rate of 31 paise for all such months, though such rate for FAC for July 08 is 3 paise, for Aug. 08 is 27 paise & for Sept. 08 is 19 paise. It is clear from the model bill (Ann. 5-b) annexed with the grievance that the consumer claims that the licensee has charged excess FAC for the months June 08 to Oct. 08. It is however, clear from the CPL filed by the licensee with reply dt. 25/02/09 that the concerned meter has metered consumption as 643 units for the month June 08 & therefore, the question of considering average consumption for the said month does not arise, & therefore, the calculation of FAC for the said month considering the average consumption of 253 units is incorrect & hence cannot be accepted. As far as the quantum of FAC which is to be charged for further period from July 08 to Oct. 08 is concerned, it is already made clear above that as per the provisions of second proviso to clause 14.4.1, average consumption of previous 12 months earlier to July 08, can be treated as consumption of each month during the period from July 08 to Sept. 08. Thus the average consumption taken to be consumption for such months by the licensee in it's model bill (Ann. 5-b) is incorrect, & consequently it's calculation of FAC for the said months is incorrect. Therefore, no such refund of amount on such account as calculated by the consumer in it's

model bill (Ann. 5-b), as prayed by the consumer, can be granted & hence it's such request is rejected. However, the licensee is directed to revise the bills of the months from July 08 to Oct. 08 during which the meter stopped & is showing zero consumption, if it is found that the meter has so really stopped after duly testing the same, as per the provisions of second proviso to clause 15.4.1 of the Regulations 2005, as discussed above, & keeping in mind the MSEDCL's circular Nos. 82, 83, 84, & 85 (Ann. 6-a, b, c) relied upon by the consumer, & in case some excess amount towards FAC is recovered from the consumer, give it's credit to the consumer in the next bill from the date of decision in this case.

- 24). As to grievance (G) - The licensee claims that the licensee has charged MD fixed charges for billing period July 08 to Oct. 08 (i.e. in the bills for the months of Aug. 08 to Nov. 08). It's such say is correct from CPL of the said months filed by the licensee with reply dt. 25/02/09. It is also clear from the said CPL for earlier months that MD fixed charges of Rs. 900/- were being charged till earlier month of June 08. The consumer claims that excess amount of Rs. 100/- per month towards MD fixed charges charged by the licensee, has been wrongly charged,. The licensee claims that the bills are revised from time to time as per latest circular No. 4039, dt. 5/2/2009 & refund is given in bill Feb. 09 & Mar. 09. Hence the licensee should verify the correct position regarding MD fixed charges during the said period & regarding the fact as to whether any credit of excess amount has

been given to the consumer in the subsequent bills & inform about it to the consumer, & in case some excess amount is recovered, as alleged by the consumer, give it's credit to the consumer, in the next bill from the date of decision.

- 25). As to grievance H : The consumer claims that it has paid SD of Rs. 9000/- + Rs. 5500/- on 24/11/03 while taking new connection but the bills upto May 08 have been showing SD as NIL. It further claims that the licensee, thereafter, collected additional SD of Rs. 3400/-, making the total SD of Rs. 17,900/-. It has, therefore, prayed for directions to the licensee to give it the credit of interest on such amount as calculated by it in Ann. 8-a. The licensee admits deposit of SD of Rs. 9000/- on 24/11/03 & further claims that it has updated it in the month of April 09 & interest thereon upto Mar. 08 will be paid in the month of Apr.09. It disputes the payment of additional SD of Rs. 5500/- on 24/11/03 & further deposit of additional SD of Rs. 3400/- subsequently. Xerox copies of demand notice dt. 17/11/03 (Ann.8-b, receipt dt. 21/11/03 & receipt dt. 24/11/03 prima facie show deposit of Rs. 9000/- on 21/11/03 & Rs. 5100/- on 24/11/03 as SD. Therefore the licensee is directed to verify the exact amount of SD deposited by the consumer from the record available with it & the consumer, & if necessary obtain affidavit or indemnity bond as may be necessary from the consumer about it, & then update the total amount of SD in the future bills & give the credit of the interest on it at the prevalent rate to the consumer in the next bill from the date of this decision.

26). As to grievance I : The consumer claims that thus now total SD of Rs. 17,900/- is with the licensee & it's average bill amount for 2007 & 2008 comes to Rs. 3000/- & so amount of Rs. 3400/- may be retained by the licensee & SD & balance of Rs. 14,500/- be refunded to it. The licensee claims that initially deposit of Rs. 17,900/- is collected from the consumer & excess amount of Rs. 3400/- shall be refunded through the energy bill in April 09. Considering the above rival contentions, the licensee is directed to recalculate the proper amount of SD for consumer, considering the average of the billing to the consumer for the last 12 months as per clause 11.2 of the Regulations 2005, & give the credit of excess amount if any, to the consumer in the next bill from the date of this decision.

27).*As to grievance J* : The consumer claims that the licensee has to refund the difference of MD based charges & HP based charges of the period from Oct. 06 to Mar. 07, amounting to Rs. 5345.17 (Oct. 06 charged Rs. 2734.77 less actual Rs. 900/- , & Nov. 06 to Feb. 07 charged Rs. 1777.60 in each of such month instead of actual Rs. 900/- per month, & thus difference comes to Rs. 877.60 X 4). As against this the licensee claims that refund of Rs. 3721/- on this count given to the consumer in May 07 is as per IT program. The licensee has not given any further explanation about it. The CPL for the month of Nov. 06 to Mar. 07 shows that the consumer has been charged with charges of Rs. 2735.33, Rs. 1777.60, Rs. 1777.60 & Rs. 1777.60 resp. for the

said months, & the CPL of earlier months & subsequent months show that the fixed charges during the relevant period were Rs. 900/- per month. Thus the total MD based charges recovered from consumer during the said period comes to Rs. 8068.10 & the fixed charges comes to Rs. 3600/-, & therefore, the consumer is entitled for refund of Rs. 4468.10, out of which the licensee has refunded Rs. 3721/-. Therefore, the consumer is entitled for refund of additional amount of Rs. 747/- on this count. Therefore, the licensee is directed to refund & to give credit of such amount of Rs. 747/- on this count to the consumer, in the next bill from the date of this decision.

- 27). As to the grievance regarding disconnection of single phase commercial 1.00 KW supply - The consumer claims that it has demanded disconnection of the said single phase commercial supply since according to it in view of the clause 19.1 of MERC (ESC & OCS) Regulation 2005 implemented from 20th Jan. 2005, all irrational circulars & orders of MSEDCL are invalid, & tariff booklet definition & MERC operative order says that supply at low voltage except use of agricultural pump is allowed under LT-V & therefore, it does not need separate single phase commercial supply. It has also mentioned the same reason in support of his request/demand for disconnection in it's letter dated 17/11/08 about it to the Assistant Engineer. The licensee in it's additional reply dt. 25/02/09 disputed such claim of consumer on the ground that the concerned power supply is used for commercial purpose & office will be charged as

commercial, so it is not necessary to disconnect the said supply through the concerned meter for commercial purpose permanently.

Clause 19.1 of above referred Regulations 2005, on which the consumer relies, reads as under :

“19.1 : Any terms or conditions of the Distribution Licensee, whether contained in the terms & conditions of supply & / or in any circular, order, notification or any other document or communication, which are inconsistent with these regulations shall be deemed to be invalid from the date on which these regulations come into force.”

The consumer has not made clear in his grievance as to exactly what type of activities it is carrying on in the premises for which it has earlier taken the said supply for commercial purpose. The CR also could not show any recent circular or order by which at present the supply given for Industrial purposes can also be used for commercial purpose also. Therefore, earlier restrictions if any, about it, cannot be said to be invalid on the basis of above referred Clause 19.1. However, it is a matter of commensence that, a person cannot be forced to continue to have particular type of supply against it's wishes. Therefore, the licensee is directed to disconnect the said supply through meter No. 8000011285 with consumer No. IC – 13717 Gokhiware (001590791314 – PC – 2) to the consumer at the risk of consumer within 30 days from the date of decision in this case, & there after transfer the SD amount together with interest till the date of

such PD & all other credits including the amount of RLC as per MERC operative order 77 of 2007 if any, of the consumer in the said connection, to it's other industrial connection within a period of 30 days.

- 28). It is clear from the above discussion that the concerned officer of licensee has not so far granted the request of consumer for permanently disconnecting the commercial supply to the consumer for the reason that according to him the consumer cannot use the supply on industrial connection in the concerned premises for which commercial connection is given & therefore, the request of consumer for granting compensation to it for the failure of licensee to permanently disconnect the said supply to it, is rejected.
- 29). The consumer has sought the following reliefs & considering the findings on various grievances made by the consumer as above, the findings on such reliefs are given against each of it :
- (1) Illegal & excess amount collected as above to be refunded, interest should be given by MSEDCL as they charged to the consumer as default amount – Request of consumer for refund on the alleged ground of MD based tariff charges is rejected.
 - (2) SD plus extra amount paid plus unpaid interest to refund – As directed in para No. 25.
 - (3) MERC order is violated. Get assurance that it is not violated repeatedly or E.A. Act 2003 Sections to be invoked – In view of the majority decision on the point of MD based tariff,

there is no any such violation, & therefore, such request of consumer is rejected.

(4) Average billing for more than one month is violation, so the consumer should be financially compensated – The consumer has not mentioned in his application/grievance the exact period or months in which average billing was done & the CPL produced by the licensee also does not show any such billing for more than one month. Therefore, the request of consumer for compensation in this regard is rejected.

(5) Faulty meter should be replaced & regularize the billing – As directed in para No. 22.

(6) Single Phase commercial supply should be disconnected & excess amount should be refunded to the consumer's LT-V supply account – As directed in para No. 28.

(7) Compensation of Rs. 5000/- for charging extra FAC, average billing & excess units charged & hiding part of SD - Rejected.

30). In view of the findings on the grievances of consumer as above & also the findings on the reliefs as above, the forum with majority view on the point of MD based tariff, & unanimously on the other points, the forum passes the following order :

O-R-D-E-R

- 1) Request of consumer for the refund on the count of applicability of MD based tariff is rejected.
- 2) The licensee to test the meter of the consumer with consumer No. 001590790679, if the same is not so far tested, & if found faulty, to change the same without charging any cost to the consumer within a period of 30 days.
- 3) Request of consumer for refund of Rs. 16,500/- is rejected as observed in Para No. 17 above.
- 4) Licensee to revise the bills of three months i.e. from July 08 to Sept. 08 only (if meter is found stopped), taking average consumption of earlier 12 months as consumption in each such months, in compliance with the second proviso to clause 15.4.1 of Regulations 2005, as observed in Para No. 22.
- 5) Licensee to revise the bills of the months from July 08 to Oct. 2008, if the concerned meter is found to have stopped, as per second proviso of Clause 15.4.1 of the Regulations 2005, & in case some excess amount is already recovered towards FAC, to give it's credit to the consumer in the next bill from the date of decision in this case, as observed in Para No. 23 above.
- 6) Licensee to verify the correct position regarding MD fixed charges during July 08 to Oct. 08, & in case some excess amount is recovered, give it's credit to the consumer in the next bill from the date of decision in this case.

- 7) Licensee to recalculate the total SD of consumer & give credit to the consumer regarding the interest on it at the prevailing rate & show the correct amount of total Security Deposit, in the next bill from the date of this decision, as observed in Para No. 25.
- 8) Licensee to recalculate the proper amount of SD for the consumer & give credit of the excess amount to the consumer in the next bill from the date of this decision, as observed in Para No. 26.
- 9) Licensee to give credit an amount of Rs. 747/- towards the refund of difference of MD based charges & HP based charges, to the consumer in the next bill from the date of this decision as observed in Para No. 27.
- 10) The licensee to disconnect permanently the single phase commercial connection within a period of 30 days at the risk of the consumer, & then transfer the SD amount & all other amounts in credit to the consumer in the said connection to LT-V connection of the consumer within 30 days as observed in Para No. 28. Request of consumer for compensation of Rs. 5000/- is rejected.
- 11) Compliance should be reported to the forum within 90 days from the date of this decision.
- 12) 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.

- 13) 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 : 04/04/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan