



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/169/192 OF 2009-2010 OF M/S. KALINA ENGINEERING PRIVATE LIMITED, VASAI REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE BILLING.

M/s. Kalina Engineering Pvt.Ltd.
Gala No. 34, Suryakirti Ind. Estate
Village : Gokhiware, Chinchpada
Tal : Vasai, (E) Dist : Thane



(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 regulation of "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 connected to their 415-volt network. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on dated 04/02/2009 for Excessive Energy Bill. The details are as follows: -

Name of the consumer: - M/s. Kalina Engineering Pvt.Ltd.

Address: - As above

Consumer No : - 001590477997

Reason of dispute: Excessive Energy Bill

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/086 dated 04/02/09 to Nodal Officer of licensee. The licensee submitted its say/reply vide letter No. DYEE/VSI/ B/1833, dated 03.03. 2009 received on 03/03/09 at the time of hearing.

- 4). The Members of the Forum heard both the parties on 17/02/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Consumer Shri Sanjay Shah, Shri Harshad Sheth, representative of the consumer & Shri D. V. Mehetre, Dy. Ex.Engr., Shri S. B. Hatkar, Asstt.Acctt., Shri D.A. Apandkar, LDC. representatives of the licensee attended hearing.

- 5) The consumer approached to IGRC on dated 02/12/2008 but the licensee did not inform the consumer about any solution to his grievances & therefore the consumer approached this forum on 04/02/2009.

- 6). The consumer representative (CR) submits that since Aug.08 i.e. billing month 5.8.08 to 5.9.08 the consumer has been charged as MD based tariff. The consumer has been charged fixed charges, power factor penalty and TOD charges which is illegal. As per MERC Case No.72 of 2007 dt.20.6.08 unless 100% metering is done, MD based tariff can not be made effective. The licensee's representative (LR) in reply stated that on completion of 100% TOD metering and as per directives given in Cir.81 Clause No.10.5, the MD based tariff is applied to the consumer from Aug.08 which is correct.
- 7). The consumer representative submits that the MSEDCL Circular No.91 dt.7.7.08 para 10.3 to 10.5 stipulates that 100% metering is not done and respective information of metering of express feeders, DTC 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. On the above, the LR submits that the commercial circular issued are made applicable to all consumers since circular are issued on the basis of MERC's order.
- 8). The consumer representative submits that the MERC case No.44 of 2006 dt.12.09.08, clarification sought by MSEDCL on power factor, para No.5 & ruling given by MERC says that power factor penalty/incentive shall be applicable only those consumers who have MD based tariff and are provided with meters to measure their power factor. In present case, MERC has not yet permitted to change MD based tariff. So MEDCL can not charge MD based fixed charge, P.F.penalty/incentive and Demand

penalty/incentive. The 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 bills are revised accordingly. The LR submits that as per directives given in circular No.91, clause No.10.5 the bills are issued as per MD based tariff as well as MD base fixed charges. The MD tariff based bills are issued to consumer from Aug.08 hence the question does not arise to refund from June 08.

9). The CR submits that on the basis of above MERC order MSEDCL has issued circular No.88 dt.26.09.08 vide para No.4 on applicability of PF penalty and incentive which clearly reads as its applicability only to those consumers who have both i.e. MD meters and MD based tariff. As such MD based tariff is not yet approved by MERC for LT V industries above 20 kW, so it is illegal to charge demand based charges, demand and PF penalty to consumers who have HP based tariff at present. The L.R. in reply submits that on completion of 100% TOD metering and as per directives given in Cir.81 Clause No.10.5, the MD based tariff is applied to the consumer from Aug.08 which is correct.

10). The CR submits that Meter is not showing the reading and Zero consumption bills issued from period 5.7.08 to 5.10.08. The consumer gave letter dt.17.11.08 and called licensee people. The consumer simply protest this type of data collection taken by licensee’s people with the data collecting instruments. The licensee check the meter of the consumer for its normal working. It shows reading some time and at other times , no data is displayed. The licensee has submitted revised proforma bill for Rs.28,139.77 with all the corrections made deleting the

excess amount of MD based demand charges & FP pentlay and TOD charges. While issuing 4 months averagae bill, FAC for every month should be applied as per MSEDCL circulars and then final figure should be arrived. The LR in reply submits that on completion of 100% TOD metering and as per directives given in Cir.81 Clause No.10.5, the MD based tariff is applied to the consumer from Aug.08 which is correct. Hence there is no violation of Act/ Rules /Orders of MERC.

- 11). The CR submits that for billing period July 08 to Oct.08, the licensee has charged MD fix Rs.2300 instead of Rs1950/- A refund of Rs.1226.99 with interest as the licensee charge to consumer for default amount should be refunded. The LR in reply submits that on completion of 100% TOD metering and as per directives given in Cir.81 Clause No.10.5, the MD based tariff is applied to LTV consumers from Aug.08 which is correct. Hence the question does not arise to revise the bill.
- 12). The consumer representative submits that the licensee has shown bill adjustment for the billing period from Aug.07, July 07, June 07 and Feb.07, Rs.796.24, Rs.567.44, 106.00 and Rs.800.13 respectively and recovered the concerned amounts. The consumer wants full justification for these bill adjustments. If not justified, refund of Rs.2269.81 on this count be granted. LR submits that the concerned amounts are charged as tax on sale.
- 13). The consumer representative submits that at the time of getting new connection in May 1967, we paid Rs.29,250/- as SD but bill was showing SD as Nil upto May 08. Thereafter consumer paid Rs.12,300/- but licensee shown total amount of SD as Rs.13,300/- only from Aug.08. So the licensee has to give interest on the amount of Rs.29,250/- from

June 97 to May 08 of Rs.16,782. The same may be compounded on yearly basis and after adding in principle, respective year interest may be calculated and refunded. The consumer's average monthly bill amount during 2007 to 2008 comes to Rs.10,820/- as per statement. The licensee has collected extra S.D.amount of Rs.13,200/- in May 2008 again. So total deposit comes to Rs.42,450/- out of which, keeping Rs.12,450 with licensee, balance of Rs.30,000 may be refunded in lump sum as per tariff booklet. The LR submits that the deposit paid by consumer for Rs.29,250/- vide MR No.184104/28.5.97 while releasing the connection on 14.06.97 is not displayed on bill. However interest on SD will be given to consumer in April 09.

- 14). The consumer representative submits that Additional supply charges (ASC) are collected in excess from Oct.06 onwards. Benchmark consumption of year 2005 is taken as 2428 unit per month. Oct.06 consumption is 2059. 89% of consumption 2428 comes 2161 units thus Rs.284.05 is extra charged.

From July 07 to Sept.07, the licensee has taken average reading and that too very high consumption shown. Consideration is that previous 3 months average should be taken. Previous readings was 1926 + 1876 + 2187 average gives 1996 units, B.C. is 2484 so below 2161 units. Thus excess amount collected comes to Rs.1428/-. Refund of these amounts be granted. As against this the LR replied that the ASC is calculated as per IT programme which is correct.

- 15). The consumer representative submits that in year 2007, three months average units is $1996 \times 3 = 5988$ units against which in July 07 – 2372 units + 6320 for Aug and Sept.06 6692 units less 5988 =

2704 units cost is taken extra which comes to Rs.10,816.16 the same should be refunded. The LR submits that the tariff charged from May 07 in which flat rate is upto 27 HP Rs.3/- and above 27 HP is Rs.4/- per unit. Hence consumer billed is correct being load is 65 HP.

16). The consumer representative stated that from Oct.06 to Mar 07 the licensee had to refund difference of MD based charges and HP based charges to Rs.111,584.13 (Oct.06 charged 5925.33 less actual 1950 (0 and Nov.06 to Feb.07 charged 3852.20 instead of actual 1950-diff.1902.20x5 months) verify the same and if refunded give the details. The LR submits that credit of the amount of Rs.8065,32 is given to consumer in May 07 is as per IT programme.

17). The consumer representative submits that during the period June 02 to May 03, the licensee has collected capacitor penalty which is ordered by MERC to refund vide order No.2/2003/14.7.05 it was to be refunded voluntarily by MSEDCL and no more waiting to consumer to approach, but still the licensee has not refunded the same. The LR submits that after confirmation from higher authority/IT the action will be taken as per rules.

18).Following grievances have registered by the consumer.

- a). Illegal MD based tariff, P.F.penalty and TOD charged to LT-V above 20 KW.
- b).July 07 to Oct.07 zero consumption bill issued and thereafter 4 months total consumption bill given with wrong FAC and collected excess amount.
- c). Amount collected under bill adjustment – no explanation.
- d).SD amount paid Rs. 29250 but bill displayed zero. Interest was not

- given on said amount, so SD + interest may be refunded.
- e). ASC for Oct.06 and during July to Sept.07 collected excess by applying novel calculation.
 - f). For Jul. Aug. Sept.07 irrational excess amount collected for 2704 units to be refunded.
 - g). Refund of MD fixed charge during Oct.02 Feb.07.
 - h). Capacitor penalty excess amount collected to be refunded as per MERC order in case No.2/14.07.05 and Ombudsman Representation No.39 of 2006.
- 19). Nature of relief sought from forum:
- a). Illegal and excess amount collected as above to be refunded.
 - b). Interest should be given by MSEDCL as they charged 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 Section to be invoked.
 - e). Average billing for more than one month is violation so we should be financially compensated.
 - f). Compensation of Rs.5000/- for charging extra FAC and average and billing and excess units charge.
- 20). 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 MSEDCL/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 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.

21) (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) hri 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.

- 22). Bill adjustments:- The licensee is not able to give the satisfactory explanation to the consumer's query about bill adjustments for the billing period of Feb.Jun.Jul. and Aug.07. The licensee has not explained as to of which period the tax on sale is shown as bill adjustment in the concerned bills of the above billing period.

As the explanation given by the licensee is not satisfactory, the licensee should give the details about the periods of which tax on sale is shown as bill adjustments in the bills of the above referred billing period to the consumer within period of 30 days, and on failure to do so, give credit of the said amounts, if any, to the consumer in the next bill.

- 23). Security Deposit amounts:- The licensee admits the consumer's contention that the consumer has made security deposit of Rs.29,250/- at the time of grant of connection in May 97 but the same has not been displayed in the bills. The consumer claims that he has paid Addl.SD of Rs.13,200/- and such amount of Rs.13,200/- is shown as SD from the bills of the month of Aug. 08. The licensee did not specifically deny this fact. Moreover, the bill for the month of May 08 (A-9 a) shows amount of Rs.13,200/- as SD arrears and the bill for the month of June 08 (A.9 b) shows SD as Rs.13,200/- . Thus the said bills clearly shows that the said amount of Rs.13,200/- has been recovered by the lice see from the consumer as SD in May or June 08. Therefore the above contention of consumer appears to be correct.Moreover the L R during hearing has also assured that the

credit of the interest on the total SDs will be given and total amounts of SD will be shown in the bill for the month of April.09. Therefore the licensee should treat the total SD of the consumer as Rs.42,450- from June 08 and amount of Rs.Rs.29,250/- for the earlier period, calculate interest on such amounts at the prevailing rate and give credit of the amount of such interest after deducting the credit which may have been given earlier, to the consumer in the bill for the month of April 2009.

- 24). ASC for Oct.06:- The licensee is failed to give the proper justification to the ASC charges for the billing period Oct.06 and July to Set.07. Under the circumstances consumer's claim for the refund of excess ASC charges is appears to be genuine. Therefore the licensee should recalculate the ASC charges for the above period and refund / give credit to the consumer in the next bill, if it is found that same is execs charged.
- 25). Average Billing :- The licensee is unable to justify the calculation of average no.of units considered for billing purposes for the months Aug. and Sept.08.Therefore the licensee should recalculate the average during the relevant period for billing for the months of Aug. & Sept.08 from the CPL record and give credit, if any, to the consumer in the next bill.
- 26). M.D.fixed charges :- The consumer claims that he is entitle for Rs.11,584.13 towards the difference of MD based charges and HP based charges for the period from Oct.06 to Mar 07. As against this the licensee claims that such a difference of Rs.8065.32 has been given to the consumer in May 07 as per IT programme. The LR

during hearing assured that such difference shall be recalculated and balance if any shall be given to the consumer. Therefore the licensee is directed to verify such difference and if any excess amount is found, its credit be given to the consumer in the next bill.

- 27). **Capacitor penalty:-** The licensee's replied on this particular point that they are waiting for the confirmation of higher authority for refunding the capacitor penalty excess amount collected. The licensee should refund the capacitor penalty amount in line with MERC order for Case no.2/14.5.07 and Hon. Electricity Ombudsman order in case No.39 /2006, within a period of 30 days.
- 28). **Compensation:-**Excess amount recovered from the consumer is being refunded or adjusted in the ensuing bills of the consumers as per the above findings. The consumer has also not mentioned the specific months during which reading of the meter was not taken for more than two months . In view of this, the prayer of the consumer for compensation is rejected.
- 29) After hearing both the parties, studying all available documents submitted by licensee as well as consumer, majority view on the point of charging as per M. D. Based tariff, and unanimous decision 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 is rejected.
- 2). The claim of compensation of the consumer is hereby rejected.

- 3). Prayer of consumer for getting assurance from the licensee that they will not violate the MERC order frequently / repeatedly should be taken in the right spirit. The licensee is advised to be more careful in future.
- 4) Compliance should be reported to the forum within 90 days from the date of this 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 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 : 02/04/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan