



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/170/193 OF 2009-2010
OF M/S. INDU MAHESH GANATRA, VASAI REGISTERED WITH
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE,
KALYAN ABOUT EXCESSIVE BILLING.

M/s. Indu Mahesh Ganatra
Gala No. 33, 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 05/02/2009 for Excessive Energy Bill. The details are as follows: -

Name of the consumer :- M/s. Indu Mahesh Ganatra

Address: - As above

Consumer No : - 001590788232

Reason of dispute: Excessive Energy Bill.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/092 dated 05/2/09 to Nodal Officer of licensee. The licensee submitted reply vide letter No. DYEE/VSI(R)/Bill/2030 dated 09/03/2009 received on 09/03/09 at the time of hearing.
- 4). The Members of the Forum heard both the parties on 09/03/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Consumer Shri Harshad Sheth, representative of the consumer & Shri Hemant Jadhav, Jr.Engr. and Shri S. B. Hatkar, Asstt. Acctt., representatives of the licensee attended hearing.
- 5) The consumer approached to IGRC on dated 29/11/08 but the licensee did not inform the consumer about any solution to his grievances & therefore the consumer approached this forum on 05/02/2009.
- 6). Consumer submitted that he got parawise reply from Dy.EE MSEDCL Vasai Sub Division vide letter No.2030 dt. 09/03/2009 received on 09/03/09. The reply given by the licensee is not satisfactory, therefore a letter

about queries raised on the parawise reply given to the licensee in the hearing, to the licensee as well as to the forum on 9/3/09/2009.

- 8). MD charges: The consumer representative (CR) submits that since Aug.08 i.e. billing month 05.08.08 to 05.09.08 they have been charged as MD based tariff. They have charged power factor penalty and TOD charges which is illegal. As MERC Case No.72 of 2007 dt.20.6.08 para 47 reads that unless 100% metering is done, MD based tariff can not be made effective. - On this issue the licensee's Representative (LR) submits that on completion of 100% TOD metering and as per directives given in Comm.Circular No.81 dt.7.7.08 clause No.10.5 the MD based tariff applied to the consumer from Auag.08 which is correct.
- 9). The C.R. submits that as per licensee circular No.81 dt. 7.7.08 para 10.3 to 10.5 it is mentioned 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 this issue the LR submits that on completion of 100% TOD metering and as per directives given in Comm.Circular No.81 dt.7.7.08 clause No.10.5 the MD based tariff applied to the consumer from Auag.08 is correct.
- 10). The CR submits that as per case No.44 of 2008 dt.12.09.08, clarification sought by MSEDCL on power factor, para No.5 and ruling given by MERC says 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. In this case, MERC has not yet permitted to charge MD based tariff, so licensee can

not charge MD based charges. 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 (Ann.3) – As per directives given in circular No.81 dt. 8.7.08 clause No.10.5 the bills are issued as per MD based tariff as well as MD fixed charges. The MD tariff based bills are issued to consumers from Aug.08. Hence question of refund from June 08 does not arise.

- 11). The CR submits that on the basis of above MSERC order, MSEDCL has issued circular No.88 dt.26.09.08 vide para No.4 which clearly reads as its applicability only to those consumers who have both i.e. MD meters and MD based tariff (Ann.4). - On this issue the licensee stated that on completion of 100% TOD metering and as per directives given in Comm.Circular No.81 dt.7.7.08 clause No.10.5 the MD based tariff applied to the consumer from Aug.08 which is correct.
- 12). The consumer further submits that in spite 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 E.Act 2003. - On this query the licensee stated that on completion of 100% TOD metering and as per directives given in Comm.Circular No.81 dt.7.7.08 clause No.10.5 the MD based tariff applied to the consumer from Aug.08 which is correct.
- 13). The CR submits that the meter is not showing the reading and zero consumption bills issued from period .8.08. The consumer gave letter dt. 17.11.08 and called licensee people. It shows reading some time and otherwise ‘no data’ displays. CR enclosed revised

proforma bill for Rs.28,139.77 with all the corrections made and deleting the excess amount of MD based demand charges and PF penalty and TOD charges. While issuing 4 months average bill, FAC for every month should be applied as per MSEDCL circulars and then final figures should be arrived for Ex.FAC for Aug.08 -27 paise and for Sept.08 it is 19 paise whereas the licensee charged flat 31 paise for all month (enclosed MSEDCL circular for information). IT software can not commit such mistake. – On this LR submits that the bill for Nov.08 is issued for 2657 units is as per consumption recorded by meter and the said meter is in working condition. The excess amount charges for Rs.1122.66 will be refunded in Apr.09 towards FCA. The PF penalty of Rs.1753.83 and TOD charges is correct being TOD meter.

14). The CR further submits that for Billing period Sept.08 and Oct.08, the licensee have charged MD fix Rs.2200 instead of Rs.1950 . Excess amount should be refunded with interest as charged to consumer for default amount. - The L.R. on reply submits that On completion of 100% TOD metering and as per directives given in circular No.81 dt.7.7.08 clause No.10.5 MD based tariff is applied to LT-V consumers from Aug.08 which is correct. Hence the question does not arise to revise the bill.

15). The CR submits that at the time of getting new connection in Feb.01, the consumer paid Rs.19,500 and Rs.23,000 as SD but bill is showing SD as Rs.19,500/- only. Interest to be paid by licensee on Rs.23400/- from Feb.01 till Nov.8 is Rs.10,979/- Also on Rs.19,500/- the licensee have given less interest rate and that too after 2 years and not immediately after end of year. The difference of interest is works out

to Rs.1918/- the same may be compounded on yearly basis and after adding in principle; respective year interest may be calculated and refunded. - On this, the L.R. stated that the initial SD amount paid for Rs.19500/- vide MR No.5109358 dt. 25.01.01 is displayed on bill and Rs.23400/- paid vide MR No.5109359 dt.25.1.01 towards ASD is not displayed on bill. Hence interest on ASD of Rs.23400/- is to be paid upto date which will be given in the bill for Apl.09.

- 16). The CR submits that the average monthly bill amount for 2007 to 2008 comes to Rs.6000/-. The licensee collected total SD of 42,900/- so amount of Rs.7900/- may be retained by MSEDCL and balance of Rs.35,000/- may be refunded in lumsump as per tariff policy. On this point the licensee agreed that the average monthly bill comes to Rs.6000/- and the total SD + ASD of Rs.42900/-. Hence the action to refund Rs.35000/- will be taken with the approval of competent authority. For this the consumer has to submit original receipts. Because any amount of refund, approval of CA is required.
- 17). . 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 11,584.13. Licensee should verify the same and if refunded any amount give details. – On this L.R. submits that the amount of Rs.8065.32 refunded to consumer in May 07.
- 18). . The CR submits that during the period July 02 to Feb.04, the licensee have collected capacitor penalty which is ordered by MERC to refund vide order No.2 of 2003 dt.14.7.05. It was to be refunded voluntarily by licensee and no more writing for consumer to approach. But still the licensee has not refunded the same. Since it

was in lieu of MERC order time period restriction of 2 years will not apply in this case. Licensee has to refund Rs.9426/- . The licensee may refer Ombudsman decisions of the respective period. – The licensee replied that regarding PF penalty charged upto Mar 04 action will be taken after confirmation from Head Office.

19. The consumer further submits that Interest at the rate being charged to consumer on default period i.e. 12% for first 3 months, 15% for next 3 months and 18% for period there after as per tariff booklet to paid on respective period and amounts as mentioned above provisional total comes to Rs.70,512.54. This should be refunded with interest.

20).The grievances of the consumer are -

- a) Illegal MD based tariff and PF penalty charged to LT V above 20 KW consumer.
- b). July 08 to Oct.08 'O' bill issued and thereafter 4 months total consumption bill given with wrong FAC and collected excess amount.
- c). SD amount paid 19500/- + Rs.23,400/- but bill displayed Rs.19,500/- so SD + interest on Rs.23,400/- may be refunded.
given on said amount So SD + interest may be refunded.
- d) Our average monthly bill is Rs.6000/- so excess out of Rs.19,500/- may be refunded. Rate of interest is not correctly applied so balance may be refunded.
- e). Refund of MD fixed charge during Oct.06 to Feb.07

- f) Capacitor penalty excess amount collected to be refunded as per MERC order in case No.2 dt.14.7.05 and Ombudsman representation No.39 of 2006.

17). He sought relief from CGRF for:

- a). Illegal and excess amount collected as above 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.
- 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 billing and excess units charged and hiding part SD

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 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.

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.

29). Wrong billing(four months) : The licensee agreed for refund excess FAC charged to the consumer, it will be reflected in the bill of April 09.

30). SD amount: On the point of interest for SD amount the consumer asked for the interest on ASD to be paid and difference due to lower rate of interest taken for calculation should be paid to the

consumer. CR also requested that the full amount of deposit (ASD + SD) should be displayed on the bill so as to avoid error in future.

The LR accepted the CR's statement and assurance for given by him that the correction will take place in the bill for April 09.

Forum advised to licensee that the recalculation of interest amount for the SD and ASD should be checked once again and interest amount should be paid to consumer, if there are any error in the calculation, as claimed by the consumer, within two month from the date of this decision.

d). Refund of excess SD amount:- As per LR's statement that the consumer has paid Rs.19,500/- vide MR No.5109358 dt. 25.01.2001 and Rs.23,400/- vide MR No.5109359 dt. 25.1.2001(Rs.29,500/- + Rs.23,400/- = Rs.42,900/-). Total amount of SD + ASD as Rs.42,900/- is with licensee. CR submits that now the average monthly bill of consumer is Rs.6000/- and therefore the total amount of SD with licensee is excessive and therefore licensee be directed to refund the excess SD amount with interest. The licensee should recalculate the amount of SD to be retained with licensee and refund the excess SD collected from consumer with interest.

e). Amount of difference in between MD fixed charges and HP based charges:- The consumer claim that she is entitle for refund of Rs.11,585.13 on this count. As against this, the claim that it has already refunded an amount of Rs.8065.32 on this count to the consumer in May 07. Therefore the licensee should once again recalculate the amount of refund to be given to consumer for the period Oct.06 to Mar 07 on this count and in case it is necessary to

refund some excess amount, adjust such excess amount in the ensuing bills of the consumer within 60 days from the date of decision

f). Capacitor penalty:- On the point of capacitor penalty the LR submitted that the regarding refund of penalty charged upto Mar 04 action will be taken after confirmation from our Head Office.

Though the MERC order is dated 14.7.05, licensee has failed to comply with this order. The licensee should refund capacitor penalty amount in line with MERC order for case No.2 /14.7.05 and Hon.Electricity Ombudsman's order in case No.39 of 2006, within a period of 60 days from the date of decision in this case.

23) .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.

ORDER

- 1) Prayer of consumer for the refund of the amount of eclectic charges recovered by licensee as per MD based tariff or TOD based tariff is rejected.
- 2) All the refund amount with interest, as stated above, be adjusted in the ensuring bills within 60 days from the date of decision in this case.
- 3) The prayer of consumer for compensation of Rs.5000/- for alleged documentation is hereby rejected.

- 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 : 04/04/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan