



Consumer Grievance Redressal Forum, Kalyan Zone
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No. **K/Others/06/1014/2014-15**

Date of Grievance : 17/11/2014

Date of Order : 16/01/2015

Total days : 59

IN THE MATTER OF GRIEVANCE NO. K/OTHERS/06/1014 OF 2014-15 IN RESPECT OF M/S. MAITRI PLASTIC INDUSTRIES PLOT NO.4-1 ADDITIONAL MIDC, TAL. MURBAD, DIST. THANE. REGOSTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF AMOUNT SPENT TOWARDS CHARGES OF INSPECTION BY ELECTRIC INSPECTOR AND METERING CUBICAL CHARGES WITH INTEREST.

M/s. Maitri Plastic Industries,
Plot No.4-A, Additional MIDC,
Tal. Murbad, Dist-Thane
Consumer No.018019053910-HT

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited though its
Superintending Engineer, O & M
Circle-II, Kalyan

.... (Hereinafter referred as Licencee)

Appearance : For Consumer –Shri Mudliyar-Consumer's representative.
For Licensee - Shri Khan –Nodal Officer/Exe. Engineer
Shri Kasal-Asst. Engineer.
Mrs. P.P.Kale-Accountant.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the

notification issued by MERC i.e. “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission. {Hereinafter referred as ‘Supply Code’ for the sake of brevity}. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Consumer brought this grievance before Forum on 17/11/2014, contending that towards seeking **new supply**, for metering cost, he was required to spend and Rs.1,70,893/-. Further was required to produce testing report from Electric Inspector and for it, paid an amount of Rs.26,200/-. It is claimed that these amounts were not required to be spent by the consumer as per the MERC directions and provisions of Electricity Act. Said amount is spent as ordered by the Licencee in sanction order which is against the legal provision and hence, it’s refund is sought with interest. Consumer approached Licencee and IGRC on 9/6/2014, as nothing was heard about it hence it approached this Forum, seeking relief.

3] On receiving this grievance it’s copy along with accompaniments sent to the Licencee vide this Office Letter No. EE/CGRF/Kalyan /0413 dated 17/11/2014. In response to it, Officers of Licencee appeared and filed reply on 17/12/2014 and raised objection towards disputed aspect. Further submitted work completion report (WCR) on 7/1/2015.

4] We heard both sides. On it’s basis, this matter needs to be decided taking into account, the plea raised about (I) bar of limitation and then (II) Liability of Licencee to bear charges towards metering equipments allied items as per MERC

order/Regulations and entitlement of consumer towards amount paid to Licencee and Electric Inspector for testing. IGRC rejected consumer's grievance on the point of limitation and on merit inferring option exercised by consumer.

Towards considering these two aspects initially aspect of limitation is to be taken as it is hitting to the initiation and continuation of proceeding.

{1} **Bar of limitation :-**

5] Licencee raised objection in its reply dated 17/12/2014 to this grievance, contending that grievance is time barred, it cannot be entertained and dealt by this Forum. It is contended that sanction for supply was accorded on 3/12/2010 and consumer filed grievance before IGRC on 9/6/2014 and with CGRF on 17/11/2014 which is after two years from the date of cause of action i.e. from the date of sanction order. In short, Officers of Licencee relied on MERC Regulation 6:6 .

6] In respect of bar of limitation consumer's representative submitted that grievance is not time barred, consumer has initially approached Superintending Engineer by Writing letter and then complaint dated 9/6/2014 to IGRC which are not dealt within two months. Those ought to have been dealt. As nothing was heard from IGRC till 17/11/2014 grievance is filed before this Forum. Accordingly, **it is contended that that there is no bar of limitation prescribed for approaching Licencee and IGRC.** This matter is not brought to CGRF directly but it is filed after 60 days of approaching Licencee and IGRC and that is the cause of action. In case of approaching CGRF directly then it should have been within two years from the date of cause of action which is not the fact in this matter.

In this matter, facts are clear, consumer for the first time, approached Licencee i.e. Superintending Engineer and IGRC on 9/6/2014. **As per MERC Regulation, grievance to Officers of Licencee is also to be treated as grievance to IGRC. Hence, cause of action in this matter arose and IGRC not decided complaint of consumer within 60 days and thereafter consumer is having liberty to approach this Forum, within two years from the cause of action. Cause of action in this matter, as contended by consumer is after 60 days from 9/6/2014.**

In this regard Officers of Licencee contended that IGRC decided the matter on 31/10/2014 but in the grievance filed before this Forum on 17/11/2014, consumer contended that “Nothing heard” in IGRC. The wording ‘Nothing heard’ mentioned in the grievance application with CGRF is read and interpreted as if consumer contended that no hearing was given to the consumer and in this light Officers of Licencee gave vent to the feeling that this is totally a false allegation. Further attempt is done to contend that already on 31/10/2014, IGRC passed order, sent copy to the consumer and inspite of it, consumer’ says nothing is heard which is not correct.

In this regard CR submitted that order of IGRC is not served on the consumer and he learnt it during the hearing of this matter on 17/12/2014, when Licencee filed reply and enclosed copy with it. Accordingly, service of order or receipt of order is denied by consumer. Officers of Licencee claimed that there is record available about the order sent to the consumer and now a false contention is raised about order not received. CR maintained that as there was no knowledge of any such order passed and as copy was not received, consumer stated in Grievance application that he had approached IGRC but nothing is heard. He clarified that he has not alleged that hearing is not given but claimed that about finalization or order of IGRC, nothing is heard. Officers of Licencee tried to draw inference that in the official working it is to be presumed that order sent, is received, by the consumer in ordinary course . No doubt in respect of official acts such inference can be drawn but it is rebuttable. CR denied service of any such notice and we find if there would have been any such order served then definitely consumer would have referred it in the grievance application filed with the Forum, but it is simply stated “Nothing heard”. Accordingly, there is denial from consumer’s side and hence it was incumbent on the Officers of Licencee to demonstrate the service of said order. But they have not placed on record any such proof. They rather heavily relied on the presumption. But we find when there is rebuttal, presumption cannot be accepted and drawn. Accordingly we find in this matter consumer has not directly approached the Forum.

But approached Superintending Engineer of Licencee and IGRC, however, as there was no any order within 60 days of approaching IGRC , consumer approached this Forum. In this regard Officers of Licencee maintained that as per MERC Regulation 6.6 this grievance is time barred, considering the date of sanction i.e. 3/12/2010 as cause of action. They claimed that the date of cause of action is 3/12/2010, grievance should have been filed before the IGRC and CGRF prior to 3/12/2012 i.e. within two years and hence complaint filed before the IGRC on 9/6/2014 and this grievance filed before Forum 17/11/2014 are barred.

9] CR submitted that interpretation of the officers about bar of limitation is not correct. In the Regulation no bar of limitation is prescribed for approaching Licencee or IGRC with a complaint but limitation is prescribed when matter is brought to CGRF directly or matter is brought to CGRF aggrieved by non action or finding recorded against consumer in the order, passed by IGRC. It is submitted that consumer can approach CGRF directly in urgent and exceptional cases when there is a threat of disconnection etc. and in that case CGRF is to record reason for accepting the grievance if brought directly. Accordingly, it is submitted that the grievance brought before this Forum by consumer as per Regulation Clause 6.4 read with 6.7.b is well within limitation.

10] This particular situation is dealt by our Hon'ble High Court in **Writ Petition No.9455/2011 M/s. Hindustan Petroleum Corporation v/s. MSEDCL Judgment dated 19/1/2012**. This being verdict of Hon'ble High Court which Forum came across and dealt in other cases, during hearing it was brought to the notice of Officers of Licencee. Hon'ble Lordships in the said case considered peculiar facts. In the said matter Hindustan Petroleum Corporation received bill for the month of July 2008 as per the new tariff order whereby it was charged as HT-II (commercial). Said corporation made a representation on 26/8/2008 to the Officer of Licencee and said Officer sought guidance of Chief Engineer (Commercial) who directed vide his letter dated 24/9/2008 that classification of Petroleum Corporation for the purpose of tariff is correct and tariff of HT-II Commercial is the appropriate tariff applicable. This

particular conclusion communicated to the corporation on 22/10/2008 and corporation on this count without approaching CGRF approached District Consumer Disputes Redressal Forum under Consumer Protection Act. However, said Forum dismissed the grievance on 28/7/2010 observing that it is not maintainable. Thereafter, corporation approached IGRC on 14/10/2010. Said IGRC on 27/10/2010 communicated to consumer that it's complaint cannot be considered in view of Judgment reported in AIR 1992 Gujrat-237 State of Gujrat V/s. Kosan Gas Co. and Judgment dated 18/3/2009 of Kerala State Electricity Regulatory Commission. Then consumer approached CGRF Kolhapur. CGRF Kolhapur while dealing the matter on limitation, referring to Regulation clause 6.6 Forum concluded it had no power and jurisdiction to admit any grievance unless it is filed within two years from the date on which cause of action has arisen. Said Forum noted that cause of action was on 1/7/2008 and grievance was brought to the Forum on 14/10/2010. Against the said order consumer approached Hon'ble Ombudsman filing Representation No. 82/2011 and vide order dated 17/8/2011 Ombudsman dismissed the representation maintaining the view of CGRF on the point of limitation. Thereafter Corporation approached Hon'ble High Court vide writ Petition No.9455 of 2011 and while considering the aspect of limitation, Their Lordships in Para 10 to 16 laid down that grievance before the Forum was within limitation. We find at this stage, the observations of Their Lordships are of utmost importance and hence those are reproduced as under for ready reference.

'.....10]

In so far as the first ground is concerned. I propose to decide the question of limitation by this Order in my opinion, the grievance made by the Petitioner was well within limitation. Regulation No.2(c) of the MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations,2006 (herein after referred to as the 2006 Regulations),defines the term grievance. Regulation Nos. 2 (d), (e) and (f) reads thus:-

“2(d) Internal Grievance Redressal Cell” or IGR Cell” means such first authority to be contacted by the consumer for Redressal of his/her Grievance as notified by the Distribution Licensee.

2(e) “Forum means the forum for Redressal of grievances of consumers required to be established by Distribution Licensees pursuant to sub-section (5) of section 42 of the Act and these Regulations;

2(f) “Electricity Ombudsman” means an authority appointed or designated by the Commission, in pursuance of sub-section (6) of section 42 of the Act and these Regulations, to whom any consumer, who is aggrieved by non-Redressal of his grievances by the Forum, may make a representation” .

11] Regulation No.4 provides for Constitution of a Forum for Redressal of Consumer Grievances consisting of three members.

Regulation No.6 provides for Procedure for Grievance Redressal which reads thus:-

6.1 The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office (s) in each revenue district in the area of supply.

Provided that where the area of supply is the city of Greater Mumbai and adjoining area the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall Endeavour to redress Grievances through its IGR Cell.

6.2. A Consumer with a Grievance may intimate the IGRC Cell of such Grievances in the form and manner and **within the time frame** as stipulated by the Distribution Licensee in its rules and procedures for Redressal of Grievances.

Provided that where such Grievance cannot be made in writing, the IGR Cell shall render all responsible assistance to the person making the Grievance orally to reduce the same in writing.

Provided also that the intimation given to officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of the IGR Cell established by the Distribution Licensee or the procedure for

approaching it, shall be deemed to be the intimation for the purposes of these Regulations unless such officials forthwith direct the consumer to the IGR Cell.

6.3 (a) The office of the IGR Cell shall issue acknowledgment of the receipt of the Grievance to the consumer within five (5) working days from the date of receipt of a Grievance. Where the Grievance has been submitted in person, the acknowledgment shall be provided at the time of submission. Provided that where the Grievance is submitted by email to the IGR Cell acknowledgment of the receipt of the Grievance to the consumer shall be provided by return email as promptly as possible.

Provided further that the IGR Cells shall keep such electronic records in hard form for ease of retrieval. Provided further that where the Grievance is submitted by email hard copies of the same shall be submitted forthwith separately to the IGR Cell.

(b) Notwithstanding sub-clause (a), the written acknowledgment of receipt of grievance provided by officials (who are not part of the IGR Cell) shall be deemed to be the acknowledgment for the purpose of these Regulations.

6.4 Unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by IGR Cell to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the consumer may submit the Grievance to the Forum. The Distribution Licensee shall, within the said period of two (2) months, send a written reply to the consumer stating the action it has taken or propose to take for redressing the Grievance.

6.5 Notwithstanding Regulation 6.4, a Grievance may be entertained before the expiry of the period specified therein, if the consumer satisfies the Forum that prima facie the Distribution Licensee has threatened or is likely to

remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made there-under or any order of the Commission.

Provided that, the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters.

Provided further that no such Grievance shall be entertained, before the expiry of the period specified in Regulation 6.4, unless the Forum records its reasons for the same.

6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.

12] *Regulation No.6.7 reads under:-*

6.7 The Forum shall not entertain a Grievance:

(a) unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum;

(b) unless the consumer is aggrieved on account of his Grievance being not redressed by the IGR Cell within the period set out in these Regulations;

(c) unless the Forum is satisfied that the Grievance is not in respect of the same subject matter that has been settled by the Forum in any previous proceedings: and

(d) where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

13] *It is thus clear that the Consumer cannot directly approach CGRF but as to first approach the Internal Grievance Redressal Cell (IGR Cell) to record and redress grievance in timely manner.*

14] *Regulation No.6.4 makes it clear that unless a shorter period has been provided in the Act, in the event that the consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within a period of two months from the date of intimation or wherever no remedy has been*

*provided within such period, the consumer may submit a grievance to the Forum. **Thus, cause of action for submitting a Grievance to the CGRF arises when the IGR Cell does not redress the grievances.***

15] *A perusal of the impugned order shows that the CGRF and the Ombudsman have proceeded on an erroneous assumption that cause of action has arisen on 1st July, 2008 and, hence, the grievance filed before the 'Forum at Sangli on 14th October, 2010 is beyond two years. Thus reasoning clearly over looks the definition of the word "Grievance" as provided under Regulation 2 (c) of the 2006 Regulations. Though time spent by the petitioner before the Consumer Court cannot be excluded, **one cannot lose sight of the fact that the petitioner approached the Internal Consumer Grievances Cell for the first time on 14th October, 2010 and that grievance was rejected by the Internal Consumer Grievances Cell on 27th October, 2010. This, according to me is the date on which the cause of action for filing a complaint or Grievance before the Forum as defined under Regulation 2 (c) really arose.** It is necessary to quote sub sections 5 and 6 of Section 42 of the Electricity Act, 2003 which reads thus:-*

"Sub-Section 5: Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for Redressal of grievances of the consumers in accordance with the guideline as may be specified by the State Commission.

"Sub-Section 6: Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the Redressal of his grievances to an authority to be known as Ombudsman to be appointed or designated by the State Government."

16] *Internal consumer Grievances Cell is not the Forum for Redressal of the Grievances of the Consumer as contemplated by Section 52(5) of the Act but the CGRF is the said Forum established under Sub-section 5 of Section 42. The*

*Regulation 6.6 uses the word "Forum" which obviously means CGRF and not the IGR Cell of the Distribution Licensee.
(Emphasis supplied)*

11] In this light, we find there is no any force in the objection raised by Licencee on the ground of bar of limitation. Grievance is well within the period of limitation.

II] Liability of Licencee to bear charges of metering equipment, allied items as per MERC Order / Regulation, it's refund to consumer along with testing fee paid to Licencee and Electric Inspector.

12] In this regard, during course of arguments on behalf of Licencee an attempt is done to say that in this case option is exercised by the consumer to provide metering cubical and other items and on it's basis sanction is accorded, work is undertaken by the consumer voluntarily. Only consumer was required to pay normative charges to the Licencee at the rate of 1.3% of estimate which is complied by the consumer. . Accordingly, it is tried to be contended that said sanction order cannot be faulted. Consumer opted to provide his own meter hence, he was allowed and now he is not entitled to any refund towards metering cost.

13] Consumer's Representative claimed that consumer filed fresh application for seeking HT connection, but while considering application, it is sanctioned on conditions that metering cubical and allied charges are to be borne by consumer but no such option was exercised it was without consent and consumer was forced to.

14] It is a fact that it was a new HT connection, sought by consumer. Accordingly, his request was considered by Licencee and on 3/12/2010, sanction was accorded for the estimate of Rs.2,16,200/- which includes items required i.e. for metering cubical and allied items. While according sanction, it is mentioned that consumer was to procure items towards metering equipment allied material and was to bear those charges at it's own and on the total estimated cost shown in the sanction

order, consumer was to pay 1.3% normative charges i.e. supervision charges to Licencee. In other words, to the extent of metering equipments, it is seen that consumer was asked to spend for it, and Licencee estimated charges of it and on the said estimated cost consumer was asked to pay normative charges at the rate of 1.3% to the Licencee. Actually as per the sanction order consumer acted, provided metering equipment and paid to the Licencee normative charges.

15] Consumer basically contended that 'Meter' more particularly for HT connection, it includes HT cubical with CT and metering instrument, these are of one unit and it is in tune with the definition of 'Meter'. It is claimed that said 'Meter' is in fact required to be provided by Licencee and that too without charging any amount. It is submitted that subsequently if there is any case of meter lost or burnt, then consumer cannot seek 'Meter' free of cost from Licencee but he is to purchase it, may be from the Licencee and to pay as per charges prescribed by the MERC vide order in case No.70/2005. Even consumer may purchase it from other sources. Cost prescribed in the said order in Annexure-III for H.T. Metering Cubical including CT & PT of 22 kv it is of Rs.1,08,731/- and further revised in tariff order 19/2012 dated 16/8/2012. In other words, it is contended that for new connection 'Meter' is to be provided by Licencee and it cannot charge consumer for any amounts towards it.

On behalf of Licencee, Officers claimed that sanction order is issued on 3/12/2010. At the time of acting on sanction order, consumer has not objected. It has agreed and opted for it. It is submitted that said option is supported by the act of consumer who handed over letter on 4/2/2011, communicating that instead of cubical of 10/5 Amp it be allowed to purchase cubical of 25/5 Amp, considering the enhancement of intended load in further six months and that said cubical was already purchased on 11/1/2011. supply is also released after 3/3/2011. Consumer after completion of the aspect of connection, belatedly approached, seeking refund, hence it cannot avoid the liability and there cannot be any refund.

In this regard, consumer's representative contended that no any such consent was given but it was the order issued by Officers of Licencee. Accordingly, it is seen that Licencee is coming with a case of consent and option exercised but consumer is denying it. Such contention is taken by the consumer in a letter given to Superintending Engineer prior to approaching IGRC on 9/6/2014.

16] At this stage, we find it is just necessary to consider the legal position, contained in Electricity Act, Supply Code, orders of Hon'ble MERC and Hon'ble Ombudsman, pertaining to providing meter to the new consumers without any charge and option to be exercised by the consumer voluntarily.

In this regard, provision contained in section 47 and 55 of Electricity Act are material, on this point. Considering those two sections, MERC Supply Code 2005 is brought in to force and it's clause No.14 deals with 'Meters' 'supply & Cost of meter' 'Lost/Burnt' meters and total procedure is laid down, how 'Meter' is to be secured and installed. In Clause 14.2.4, there is provision which speaks about providing meter. It reads as under:

'14.2.4:Except in the case of burnt meter or a lost meter, Distribution Licencee shall not be authorized to recover price of meter more than once during the continuous of supply to the consumer'.

17] In other words, it is clear that **during subsisting supply only once price of meter can be recovered**. This aspect of providing meter is further specifically dealt by the Hon'ble MERC while deciding case No.70/2005 dated 8/9/2006. Hon'ble MERC taken up the matter for decision in the light of letters of Licencee dated 2/4/2005 and 15/6/2005. In the said order in II Section under heading of item 'Cost of meter and meter box' Clause 5.4 is ruling given by Commission it reads as under:

'5.4 :The commission directs MSEDCL not to recover any cost towards meter and meter box except where the consumer opts to purchase the meter from MSEDCL and in case of lost and burnt meter (Regulation 14.1 and 14.2 of

Supply Code). The charges applicable in case the consumer elects to purchase the meter from MSEDCL & in case of lost and burnt meter are indicated in Annexure –3’.

In Annexure –3 referred above of the said order, details are stated and charges for HT metering cubical including CT & PT for 22 kv line ,shown as Rs. 1, 08,731/-.’

18] In the said case proposal submitted by MSEDCL to MERC about such cost, is dealt. **As per this order of MERC, there is a change in respect of charging meter cost. Accordingly whenever there is any new connection sought, then meter cost is to be borne by Licencee,** it has to provide from it’s own stock. Accordingly, whenever any new supply is sought then as per this order of Hon’ble MERC meter is to be provided by Licencee Situation arises at times that Licencee is not having stock of meter and cubical and hence consumer may procure it. Question then comes up whether Licencee can seek consent of consumer to procure it and then to reimburse. It follows that if it is not able to provide, it is to ensure that cost of meter is provided to the consumer.

19] On the point of reimbursement of such metering cost we have gone through the orders of MERC passed on 17/5/2007 in case No. 82/2006, review order of it dated 3/3/2008 in case No. 74/2007, MERC case No.93/2008, 109/2010, 79/2012 respectively decided on 1/9/2010, 30/3/2011, and 7/8/2013. We have gone through the order of Hon’ble Ombudsman in Representations No. 152/2010 and 74/2010, respectively decided on 30/3/2011, 23/7/2010. In these matters, there is clear direction of the Hon’ble MERC and Ombudsman for refund of metering cost recovered after the order passed in MERC case No.70/2005 and not to recover amount towards metering cost for new connection sought. Even there is a circular of Licencee dated 3/9/2007 bearing 34307 wherein specifically following direction is given by the Chief Engineer (Distribution)..

‘It is once again directed not to recover the meter cost on any pretext.’

The spirit of this circular followed in subsequent directions issued by Licencee, clearly establishes that in no case meter cost can be thrust on consumer when new connection is sought.

20] Though as noted above, Hon'ble MERC and Hon'ble Ombudsman given direction considering the legal position, we noticed apt observations are there in the orders of Hon'ble Ombudsman in Representation No.46/2008 in Paragraphs No.24,25 and 29 and in MERC Case No. 148/2011 in the last part of para No.7. These observations we brought to the notice of both sides during the hearing on 28/10/2014. For ready reference, those paragraphs are reproduced as under.

Representation No. 46/2008 decided on 27/8/2008. Para No.

'24': It is the Respondent's order dated 7/10/2006 that led to Appellant's letter dated 15/10/2006 informing the Respondent that it would be purchasing the cubical and hence the charges are not payable. The Forum while examining the issue has accepted the Respondent's contention that the appellant had indeed consented to purchase the cubical and therefore the cost of such purchase cannot be refunded to the appellant. On the other hand, the appellant contends that Respondent never sought it's consent to purchase the cubical and never offered to provide it free of cost as required under the 'schedule of charges'. Instead Respondent vide it's sanction order dated

7/10/2006 directed the Appellant to procure the metering cubical which is contrary to the 'schedule charges' approved by Commission. Had the Respondent advised the Appellant that as per the schedule charges, metering cubical would be provided by the Respondent at it's cost, there was no question of voluntarily agreeing to buy the cubical from market. The Respondent was duty bound to correctly advice the Appellant in consonance with provisions of Law and more particularly according to the schedule of charges approved by the Commission. Therefore, Appellant's letter dated 15th October, 2006 which came as a sequel of Respondent's direction in the load sanction order, cannot be treated as his consent to buy the cubical from the market.

'25': Close perusal of Annexure-3 and more specifically the quote in the bracket above serial No.6, leaves no doubt in concluding that cost of metering cabinet as well as cost of HT metering cubical with C.T. & P.T. (mentioned at Sr.No.7) apply only in case where consumer opts to purchase the same from Maharashtra State Electricity Distribution Co. Ltd. In all other cases, the Maharashtra state Electricity Distribution Co. Ltd. is duty bound to provide the cubical with C.T.T & P.T. unit at it's own cost. No other conclusion emerges from other position. Respondent's officials argued about the lack of clear mention in Annexure -3, requiring the Distribution Licencee to

provide metering cubical at it's own cost. Having understood clearly that the meter includes not only bare kWh / kVA meter or TOD meter but also include cubical including C.T. & P.T. unit, this position being undisputed under the Law (The Act and Regulations), it is hollow and in vain to argue that there is lack of clarity in the Annexure-3 of the 'schedule of charges' in this behalf. The cost approved and provided for the metering cubical applied only in case the consumer opts to purchase the cubical from MSEDCL alone and in no other case. Respondent's argument does not have any merit whatsoever and deserves to be brushed aside out right. ----

'29': Nevertheless, whatever may be the cost approved by the commission for HT metering cubical, the same does not apply to the Appellant in the present case, as he has not volunteered for consented to buy the cubical. Records show that it was at the instance of Respondent, more specifically the direction issued under the load sanction order of 7th October 2006, that the Appellant wrote a letter on 15th October, 2006 agreeing to buy the cubical. It had also pointed out to the Respondent that charges communicated by the Respondent in it's load sanction order dated 7th October 2006 were not confirming with the 'schedule of charges' approved by the commission. Thus it cannot be treated as consent from the Appellant. In effect, by Load Sanction Order of 7th October 2006, the Respondent sought to enforce something which was legally invalid in the sense that it was made in a manner which was not confirming with the provision prescribed by the statute ('schedule of charges.') In the result, assuming but without holding that the appellant had consented to buy the cubical, obtaining such consent, not conformity with the law, would be impermissible to be enforced. Secondly, the Respondent was duty bound to communicate to the Appellant that it

would provide the metering cubical with C.T. & P.T., at it's own cost as provided in the schedule of charges approved by the commission, and to clearly advise the Appellant to decide whether he still wants to buy the same from MSEDCL or from open market. Had the Appellant then volunteered to buy it from MSEDCL, then Respondent was required to charge and recovered Rs.67,958/- towards costs of metering cubical including 11kV C.T. & P.T. Alternatively, had the Appellant opted to it buy it from the market, then there is no question of any cost to be communicated since it would have been Appellant's option and price he pays in the market.----

MERC Case No.148/2011-decided on 5/1/2012,

Last Part of Para 7 (b)----

'Commercial circular No.43, dated 27/9/2006 specifically mentions that MSEDCL shall not recover any cost towards meter and meter box except where the consumer opts to purchase meter from MSEDCL or in case of lost and burnt meter. However, in some cases meter and cubical cost might have been recovered unintentionally during the intervening period. Circular No.34307 dated 3/9/2007 has specifically been circulated to refund the cost of meter in such case and it has been directed therein not

to recover meter cost on any pretext. However, in some cases stock of meters and meter cubicles is not readily available in the store and the consumer is in hurry to get the connection. In such cases, he/she is allowed to purchase meter/cubical from outside, the cost of which is refunded afterwards as per local arrangements. -----
(Emphasis provided).

Aforesaid observations of Hon'ble Ombudsman and MERC are totally applicable to present case on facts and on legal position.

21] Considering the above observations and order of Hon'ble MERC it is clear that for new connection sought after the order of MERC in case No.70/2005 dated 8/9/2006 meter was to be provided by Licencee. Accordingly, in respect of HT connection metering equipment in the case of new supply is to be provided by Licencee without seeking any price from consumer. Now it is contended in this matter that Licencee was bound to provide metering equipment but directed consumer to provide metering cubical which it provided and hence it's price is to be refunded.

22] It is seen from the file that in this matter, along with sanction order dated 3/12/2010, estimate is given and towards 22kv metering equipment, charges are shown of Rs.1,06,988.94 Ps. However, it is necessary to note that in the order of MERC 70/2005 dated 8/9/2006 price for said metering equipment is quoted as Rs.1,08,731/-. Accordingly even the base on which cost of metering equipment is estimated is not clear. It clearly demonstrate that sanction order is not as per MERC order in case No. 70/2005 dated 8/9/2006 but now an attempt is being done to convert the said sanction granted under DDF, to service connection charge/normative charges and meter cost which is not correct.

Admittedly, cubical is purchased by consumer and he has placed on record the copy of bill showing that for said equipment he was required to pay Rs.1,70,893/- which is inclusive of excise duty, education cess and VAT but it's actual price shown in the bill is of Rs.1,35,000/-. Now he is seeking refund of the total amount.

23] At this stage, we find mere inferring consent, that too in a reply by Licencee before the Forum, in the light of consumer's denial needs to be appreciated in proper prospective. As observed by Hon'ble Ombudsman in the above referred order there should be a clear communication to the consumer that Licencee is ready to provide the metering cubical and inspite of it consumer intends to have it's own then it may opt and provide. In other words, Hon'ble Ombudsman laid down that consent should be clear with pre intimation of readiness to provide own metering cubical by Licencee which is lacking in this matter. When there is no option sought as laid down by Hon'ble Ombudsman subsequent communication of consumer dated 4/2/2011 seeking permission to have cubical of 25/5 Amp instead of 10/5 Amp makes no any difference. Even cost wise such change will not incur more amount. It is sought by consumer in right time but if at all it would have been demanded after six months it was incumbent on the Licencee to provide at it's own cost. Hence, the inference which Licencee is trying to draw is not correct and not acceptable in the light of aforesaid observations of Hon'ble Ombudsman.

Similar aspect is dealt by Hon'ble Ombudsman in a recent case arising out of order of this Forum in Grievance No.949 in Representation No. **106/2014 M/s. Veltech Forging Pvt. Ltd. V/s. MSEDCL** dated 11/11/2014, wherein it was canvassed by Licencee that consumer has purchased metering cubical prior to the date of sanction which amounted to exercise of option and was considered by CGRF but Hon'ble Ombudsman set side the order of CGRF and allowed the refund of metering cubical. Accordingly, the grounds agitated by Licencee are not correct.

At times, in sanction order word is used as "DDF" but there is no question of any DDF, claims pertains to providing service line and meter. As per the order of Hon'ble MERC in 70/2005 direction is available for recovering service connection charges at a fixed rate by Licencee from consumer or if consumer opts, then he is to spend for service connection and to pay only 1.3% normative charges to the Licencee. But in case of metering cost, there is no any question of paying 1.3% normative

charges and towards the said metering cost if it is purchased from Licencee then consumer is to pay only cost as prescribed. Accordingly, as per the said order there is clear division of recovery of service connection charges and recovering cost of meter. The estimate/sanction provided to consumer in this matter on 3/12/2010 is cumulative one including both service connection and metering cost. On that estimate treating it as "DDF" 1.3% charges are recovered as normative charges. But as discussed above, towards metering cost it cannot be thrust on consumer, being a new connection sought. In this matter, consumer prayed for refund of Rs.2,16,220/-, but it covers the total amount paid for purchasing the cubical worth Rs.1,35,000/- and in addition excise duty, education cess, transport etc. totaling to Rs.1,70,893/- and amount is made limited to sanctioned estimate of Rs.2,16,200/-. But in the said sanction order estimate of service connection charges added. As per MERC order estimate for metering cubical is only to the tune of Rs.1,08,731/- and hence we find that to the extent of this amount consumer is entitled to refund from Licencee towards amount spent for metering cubical. It's actual cost is of Rs.1,35,000/- and others are taxes etc. Accordingly, towards metering cubical, consumer is entitled to Rs.1,08,731/-. In addition rateably amount recovered as per estimate normative charges are also to be refunded. Said refund amount comes to Rs.1529/-.

24] In respect of refund of inspection charges paid to the Electric Inspector, it is clear that to the extent of Rs.5000/- out of Rs.26,200/-. Consumer is entitled to refund as it was towards the testing of metering cubical including CT. Letter for such testing was given by Licencee, amount is paid by consumer and as per WCR (Work Completion Report) said amount spent is admitted. Metering cubical was to be provided by Licencee, it's inspection charges were also to be borne by Licencee, hence amount of Rs.5000/- out of Rs.26,200/- is to be refunded by the Licencee to the consumer. Bifurcation of Rs.26,200/- is noted on the letter issued to the Electric Inspector and it is to be presumed that bifurcation is within the knowledge of Licencee. However, we are clear in other matter of similar nature, this Forum had called for bifurcation of amount which is provided by Electric Inspector and this

Forum concluded an amount of Rs.5000/- is liable to be refunded. Consumer has completed all things and paid Rs.2000/- to the Licencee as inspection charges, in fact, it being the new supply, it was to be conducted by Licencee at its own. Hence, said payment of Rs.2000/- which is supported with payment receipt dated 4/1/2010 clearly speaks that this amount Licencee is to refund. Accordingly, aforesaid three items are to be allowed by way of refund. Rest of the portion falls in the category of service connection charges and either consumer was to pay to the Licencee said amount or was to simply pay 1.3% normative charges on the estimate. In this matter, we find liability of consumer towards service connection charges cannot be avoided and hence, equitability as consumer has spent for it and paid 1.3% normative charges to that extent there is no need of any direction for refund.

25] As noted above, it was the Licencee who was to bear the expenses and to provide metering cubical to the consumer but consumer was made to pay it. Accordingly, these are the charges which consumer was required to bear though was not bound to bear it. In this light, consumer has sought interest. In this regard, Officers of Licencee submitted that there is no question of providing any interest and it is not falling u/s. 62(6) of Electricity Act. We find no force in it, always it is accepted thing i.e. anything is made to pay though not required and for such charges consumer is to be provided interest as per the Bank Rate. Above referred orders of Hon'ble MERC and Ombudsman area clearly speaking about such refund with interest as per bank rate. Accordingly, we find that aforesaid amounts are to be refunded with interest as per Bank Rate u/s. 62(6) of Electricity Act, from the date of claim of consumer with IGRC i.e. on 9/6/2014, till to the date of payment.

In view of the above grievance of this consumer is to be allowed.

Hence the order.

ORDER

Grievance of consumer is hereby allowed.

Licencee is directed to refund to the consumer an amount of Rs.1,08,731/- towards expenses incurred for purchasing metering cubical. Further refund rateable amount recovered as per estimate, 1.3% normative charges which comes to Rs.1529/-.

Licencee is directed to refund to the consumer an amount of Rs.5000/- towards inspection of metering cubical and Rs.2000/- towards inspection charges of meter, collected by Licencee from consumer.

Aforesaid amounts are to be paid with interest as per Bank Rate from 9/6/2014 i.e. from the date when consumer sought refund, till to the date of payment. Said amount be paid by issuing cheque within 45 days from the date of this order and its compliance be reported within 15 days thereafter.

Dated: 16/1/2015.

I agree

(Chandrashekhkar U.Patil)
Member Secretary
CGRF, Kalyan

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

NOTE: -

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

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

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

- c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

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

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be

available after three years as per MERC Regulations and those will be destroyed.

I] Liability of Licencee to bear charges towards metering equipments and allied as per MERC Regulations:

5] During hearing, CR relied on order of MERC in Case No. 70/2005 dated 8/9/2006 followed by order of the Hon'ble Ombudsman bearing case No. 35/2012, order of CGRF Nasik, in grievance No. 59/2011 dated 2/8/2011. In all those matters, it is reflected that metering charges are to be borne by Licencee and therein, direction given to Licencee to refund the cost of said meter to the concerned. This

decision of MERC is delivered on the representation of Licencee as it was facing various difficulties.

It is argued from Licencee's side, that as per the sanction order, in this matter, consumer was to provide metering equipment. The question is whether it is to be read as a mere direction or compulsion to provide metering equipment by consumer. In other words, there is a provision available in Section 55 of Electricity Act wherein the consumer may provide his own meter. The word is used **when "consumer elects to have"**, in other words, it is a option available always to the consumer. In this light, it is to be decided. whether in this matter consumer was asked to give option and it had opted for providing it's own meter.

6] Admittedly, on plain reading, of sanction order dated 03/9/2012, it is not giving an impression that option was asked and given by consumer, but it is explained by Officers of Licencee that existing position, as on that date, is, required to be borne in mind. In this light, they submitted that consumer has not objected for the sanction order, till to the date of complaint filed with the IGRC and Licencee on 1/4/2014. In the sanction order dated 3/9/2012, in Clause No.6 documents to be furnished stated and in clause No. 7 test reports to be submitted and Clause No.8 about metering to be provided, is, clearly mentioned and it is directed that it was to be done by consumer. It is contended that as per the sanction order, without any objection or resistance, consumer had complied it. Accordingly, it is contended that in case if, these aspects are complied by consumer then Licencee will not be able to charge any amount towards the said aspect by way of deposit/security/for meter or service charges towards laying down service line. It is contended that as per the provisions of Electricity Act referred above, it is an option exercised by consumer and hence this voluntary act cannot be read against the Licencee.

In reply, it is contended that Licencee not recovered any metering cost. Meter is provided by Licencee. Further it is contended that orally consumer has opted to purchase metering cubicle which was allowed as per Sec. 55 (1) of Electricity Act. It is contended that Licencee has charged 1.3% supervision charges (normative charges) of Rs.2,840/- against the estimated sanction. It is claimed that said work,

consumer has undertaken, hence Licencee has applied the said supervision charges. It is further contended that the meter cubicle and allied equipments towards which consumer is seeking relief, remains to be it's property. On this ground, it is contended that consumer is not entitled for any refund as such towards these expenses.

7] Now question needs to be replied whether it can be said that consumer has exercised option, to provide meter and allied items or it is Licencee who forced the consumer to provide. If, it is concluded that consumer has opted it, then consumer will not be entitled to have refund of it's cost. If, it is concluded by drawing inference, that consumer was forced to provide those meters, then consumer is entitled to reimbursement of the meter cost and expenses.

Along with grievance application on page no.20, there is chart showing estimate of expenditure. It covers different aspects. Consumer's representative claims it covers meter and allied works. He further claims that these expenses were to be borne by Licencee and as consumer has borne it, consumer is entitled to reimbursement. On behalf of Licencee, it is submitted that meter is provided by Licencee and the work is done under DDF. Consumer has opted for DDF and hence, consumer is not entitled to any reimbursement of it, it happens to be sole property of consumer and consumer was simply to pay 1.3% supervision charges. Accordingly, it is contended by the Licencee that total, amount cannot be directed to be refunded. They referred to refund of cost of meter and claimed that it will not arise as it is provided by the Licencee.

8] We tried to find out exactly what is the scope of DDF. Though consumer is relying on the orders of MERC towards notion of DDF, we find it, proper to refer to the definition of DDF in Supply Code Clause 2.1 (g). As per said definition meaning of DDF is 'providing some facilities' but it is specified that 'a service line' is not included in it. Accordingly service line is not covered in DDF. In this matter also Licencee claims that service line and meter are the only two aspects dealt as DDF. As perceived by us meter is installed, service wire connected to it and hence if, service line is not included in the DDF. Meter can not be said to be an item, attracting or included in DDF. It is a fact that second argument is already advanced that as per

Section 55 and Section 47 of Electricity Act, there is provision for providing supply through electric meter and electric meter is to be provided by Licencee and there is an option available to the consumer to provide its own. Licencee provided the meter hence, question of refund of its cost will not arise. But question is, whether service line was said to be component available for including in DDF. It is a fact that in this matter no service line charges are recovered by Licencee from consumer. Service line charges are borne by consumer. Consumer claims that those were to be borne by Licencee, but he was forced by Licencee to bear it. Officers of Licencee claimed that if they would have gone for providing service line, its charges could have been recovered from the consumer, however, as consumer opted and agreed to lay down its service line at its own cost, it was permitted and only 1.3% supervision charges are recovered and hence, it is claimed that consumer is not burdened with service line charges. On this count, it is submitted that, it is the consumer who opted, but consumer's representative strongly submitted that consumer has not opted.

9] We find aspect of DDF is not at all applicable though in sanction order it is mentioned, it ought not to have been used. But only because it is used, it will not make the aspect as DDF. We are clear neither meter nor service line can be covered under DDF. Hence, arguments advanced by Licencee on this count are not acceptable.

However, it is clear that in respect of service charges there is an order of Hon'ble MERC i.e. 70/2005, wherein it is clearly laid down that service line can be laid down at the cost of the party and supervision charges to the extent of 1.3% are to be paid by the consumer to the Licencee. This is an aspect which is required to be just borne in mind. Officers of Licencee contended that consumer agreed to have his own meter and to lay service line, as at its own cost agreeing to pay 1.3% supervision charges, which are actually complied except meter and not objected till complaint to Licencee. These things support the claim of Licencee that consumer has opted to go for his own meter as permissible U/s. 55 of Electricity Act. But in fact meter is provided by the Licencee. Even service line charges are borne by it, paying

supervision charges. Precedent relied on by consumer on DDF and meter charges, needs no more discussion due to the option exercised by consumer. Under such circumstances, the claim for refund of meter charges or service line charges totaling to Rs.2 ,21,020/- is not tenable. It is not necessary to comment further on the aspect of any amount spent by the consumer towards service line. If, I would have been provided by the Licencee then consumer was required to pay service line charges for it. In other words, consumer is not relieved of payment.

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