



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/DOS/43/1044/2015-16

Date of Grievance: 01/04/2015

Date of order : 29/04/2015

Total days : 29 days.

IN THE MATTER OF GRIEVANCE NO. K/DOS/43/1044 OF 2015-16 IN RESPECT OF NRC LIMITED, VILLAGE MOHONE, TAL. KALYAN, DISTRICT-THANE PIN- 421 102 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING THREAT OF DISCONNECTION.

NRC Limited,

Village Mohone, Tal. Kalyan,

District-Thane.

Consumer No. 020169009628 HT

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

Executive Engineer, MSEDCL,

Kalyan Circle-1, Kalyan

.... (Hereinafter referred as Licensee)

Appearance : For Consumer-

Shri Killedar -General Manager

Shri Tulsidas Manager-

For Licensee:

Shri Pardesi - Suptd. Engineer

Shri Lahamge-Nodal Officers & Exe. Engineer,

Shri Barambhe-Dy. Exec. Engineer

Shri Kale-Dy. Executive Engineer.

Shri Sakpal-Accountant.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

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 & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014'.

2] This grievance is brought before us by consumer on 1/4/2015, contending that consumer received bill for February 2015. It's due date of payment was 26/3/2015 and quantum of current bill shown as Rs.24,96,990/- and Licencee issued notice dated 31/3/2015 u/s. 56(1) of Electricity Act, clarifying that said current bill be paid within 15 days otherwise supply will be disconnected. Perceiving the urgency on the ground of disconnection, it was decided to take up the matter for emergent hearing.

The copy of grievance application and its accompaniments sent to Nodal Officer vide this office letter No. EE/CGRF/Kalyan 069 dated 6/4/2015, matter was fixed on 10/4/2015.

On 10/4/2015, both sides attended for this matter and other three grievance applications i.e. 1039, 1040 and 1041. On behalf of Licencee submission was made that papers pertaining to this grievance not reached in their hands. Considering it, interim order was passed, staying the effect of notice dated 31/3/2015 till 20/4/2015. Officers of Licencee were given time to file reply on 20/4/2015.

On 20/4/2015, Officers of Licencee filed reply. Both sides attended and argued. Considering the arguments advanced, matter was to be decided on its merits. Hence, it was adjourned for orders to 27/4/2015. However, interim order passed on 20/4/2015 continued till 27/4/2015.

On 27/4/2015, both sides attended but, one of our member was not available, hence order could not be passed. Matter adjourned to this date i.e. 29/4/2015 and till then interim order dated 20/4/2015 continued.

3] As both sides had advanced arguments on 20/4/2015, matter needs to be decided on its merits. Before entering in to the disputed question the basic facts involved in it, are required to be noted:

a] Consumer approached on the basis of notice u/s. 56(1) issued by Licencee on 31/3/2015 for recovery of current bill of February 2015 for Rs.24,96,990/-.

b] Consumer contended that already this Forum has decided its grievance No.K/E/732/867 of 2013-14 on 29/10/2013 and as per the order of this Forum, Licencee is to give refund and said refund is not considered towards the current bill demanded.

c] Consumer further contended that this Forum decided its grievance No.1026 and 1027 on 16/2/2015 and refund is directed in those matters. It is contended that said refund respectively is to the extent of Rs.30,34,966/- and Rs.3,61,077/-. It is claimed that as per the order of this Forum, said amount was required to be adjusted in the ensuing bills which is not done. It is contended that if the order of this Forum could have been complied, then for the current month there could not have been any amount payable and consequently, there would not have been any reason to issue notice dated 31/3/2015. Accordingly, it is contended that said action is not legal and proper.

d] Licencee came up with a contention that in respect of the ground referred above in Para-b, matter is pending before Hon'ble High Court in Writ Petition No. 671/2014 and an amount of Rs.1,68,45,761/- is already deposited by Licencee in the High Court as directed by the High Court. It is further contended that Hon'ble High Court in the said matter passed order on 18/2/2015, allowing consumer to pay the balance dues of Rs.75,00,000/- by way of three monthly installments of Rs.25,00,000/- each and that consumer to pay the current bills towards the power supply, when the Same are due and payable. It is contended that as per this order consumer is

bound to pay the current bills. Accordingly, it is claimed that current bills are to be paid by consumer. Hence notice issued is correct, there is no reason to interfere.

Further it is contended that when aforesaid matter is pending in the Hon'ble High Court, any claim or contention if consumer is to raise, it is to be before the Hon'ble High Court and hence dues therein in no way can be considered for the disputed notice dated 31/3/2015.

e] In respect of orders of this Forum, referred in above Para-c, Officers of Licencee contended that order in grievance No.1027 is being complied and effect is being given in the bill of March 2015. However, in respect of order of this Forum in grievance No. 1026, it is contended that already matter is taken to the Hon'ble High Court vide Writ Petition Stamp No.11380. It is contended that as this matter is before the Hon'ble High Court, this Forum cannot pass any order.

f] Officers of Licencee even contended that towards non compliance of orders of Forum, Forum cannot pass any order and such orders are to be passed u/s. 146 of Electricity Act and this Forum cannot entertain such grievance as per Regulation 8.7 of CGRF and EO Regulation, 2006.

4] Sum and substance of contentions of both the sides, are, noted above. Now it is necessary to consider whether this Forum can consider the non compliance or order passed in previous grievances and by way of its implementation any order can be passed by the Forum. No doubt, Consumer's Representative submitted that when orders are passed by the CGRF those are to be implemented and Regulation 8.7 empowers this Forum to deal it. It is submitted that effect of non compliance and how to deal with it, is, a different aspect. In this regard even Officers of Licencee in their reply dated 20/4/2015 in the concluding last para, made a reference to the order of MERC in Case No.23/2006 dated 11/6/2006. At this juncture, it is necessary to consider the implication of the said order of MERC. In this regard those observations are relevant, those are as under: in Para Nos. 6 and 9.

“6----Considering the submissions of complainant and counter reply by MSEDCL made on affidavit the commission is of the view that the appropriate course of action under Law would be for the complainants to move the concerned CGRF which passed the orders, on a new motion in the same proceeding (which culminated into the respective orders) are initiate proceeding afresh under the CGRF & E.O. for proper implementation of the orders passed by the CGRFs or for issue of clarificatory orders by the concerned CGRF.---

9 -- In view of the above the commission does not deem it fit to examine the specific cases of complainants and factual aspect there-under since the jurisdiction to do so vests with the concerned CGRF or Electricity Ombudsman as the case may be. The complainant may pursue their grievance and worked out the remedies with the concerned CGRF including issues with respect to the binding nature of orders passed by CGRF as provided in the CGRF and E.O. Regulations. There is no difficulty on the concerned CGRF to entertain the present complaints in exercise of powers vested in them u/s. 8.7 of the CGRF and EO. **In fact, the said Regulation empowers the concerned CGRF to take suitable action, not being inconsistent with E.A. 2003 or Rules and Regulations made there-under----**“

(Emphasis supplied)

Accordingly, we find in the light of aforesaid observation of Hon'ble MERC, this Forum can consider the application of consumer towards non compliance and issue directions.

5] On bare reading of aforesaid observation of Hon'ble MERC , it is clear that even **CGRF can take suitable action**, but such action should not be inconsistent with the provisions of Electricity Act. It is a fact that whenever Forum passes an order, directing the Licencee to give effect to the refund in ensuing months, then definitely Forum can ask the Licencee to stick up to it and other available mode by way of an action can direct the Licencee to act properly in a spirit required towards compliance. When orders are passed by CGRF and are self implementing, then there is no option

left out to ignore those orders, except there is any stay to the order passed by CGRF. In case, if orders of CGRF are not complied and any coercive action is proposed, ignoring the spirit of a liability raised, due to the order of CGRF, then definitely Forum can take action and give further directions as per Clause 8.7 read with 8.2 (a) and (e) of MERC Regulations, (CGRF and E.O.). In this matter, same is the position. No doubt, Officers of Licencee tried to make out a ground that order passed by this Forum and serving of those orders, left no time to challenge before the Higher Forum, even, office procedure takes time, and hence immediately, there cannot be any proceeding before Hon'ble High Court. But, matter is moved in the High Court, which is yet to be admitted. Accordingly, it is contended that this Forum cannot pass any orders when matter is in High Court. We find though reference is made to the Writ petition filed in the High Court. Showing stamp number, there is no any stay order. Even it is not admitted in the Hon'ble High Court. If executable orders are taken to Higher Forums, even to the Hon'ble High Court, then merely proceeding is taken to Hon'ble High Court, will not, make executable orders nonest or non executable. In other words, till such orders are stayed, those are effective and those cannot be ignored. All these discussions pertain to the Writ Petition filed by Licencee to which stamp number is given as 11380 challenging the order passed by this Forum in Grievance No.1026 dated 16/2/2015 and in the said matter refund involved is of Rs.30,34,966/-. This figure itself is more than the quantum of current bill for the month of February 2015, towards which by way of coercive action, notice u/s. 56(1) of Electricity Act is issued.

No doubt, Officers of Licencee had tried to take help of order of Hon'ble High Court dated 18/2/2015, in Writ Petition No.671/2014, wherein consumer given liberty to pay the arrears, but directed to pay the current bills. It is a fact that on 16/2/2015, this Forum passed an order in Grievance No.1026 and 1027 and in the

ensuing bills refund amount as stated in the said order was to be adjusted. In fact current bill was to be issued, not ignoring the orders of this Forum, passed in Grievances No.1026 and 1027. Those are not considered. There may be a situation, Licencee finding insufficient time for approaching Higher Ups and High Court to challenge the orders. But ignoring the effect of order, there cannot be any action, which is in the nature of coercive. When consumer is having in his hand enforceable order of a particular quantum and Licencee is having a claim of particular amount, then Licencee, if, not able to comply the order of CGRF then required to restrain itself from taking any coercive action, unless or till the order of CGRF is appropriately challenged and stay is obtained.

Even now admittedly towards the orders of CGRF in grievance No. 1027. Officers of Licencee admits that they are complying it and compliance will be reflected in the bill of March 2015. At least, this position could have been considered, while issuing notice dated 31/3/2015 and to the extent of that amount, coercive action could have been avoided.

Accordingly, we find amount available in the hands of Licencee to be refunded to the consumer as per the order of this Forum in Grievances No.1026 and 1027, more than the quantum of current bill of February 2015 and hence, the notice dated 31/3/2015 is not at all justifiable, applying any test i.e. legal or equitable. Hence, said notice dated 31/3/2015 is required to be declared as not legal, not proper and it cannot be enforced.

We make it clear. We avoided to make a reference to the order passed by this Forum in Grievance No.867 dated 29/10/2013 and quantum of refund involved therein. We further make it clear that this aspect on its merit will be dealt in Grievance No. 1039 which is filed by consumer, seeking compliance of order of this Forum. considering the matter pending in Hon'ble High Court in Writ Petition No.671/2014. No doubt, even towards non compliance of order of this Forum in Grievance Nos.

1026 and 1027, consumer had moved grievance No.1040 and 1041 which are being dealt separately on merit.

Hence the order.

ORDER

The grievance application of consumer is hereby allowed.

Notice of Licencee dated 31/3/2015, found not legal and proper as Licencee not complied the orders of this Forum passed in Grievance Nos. 1026 and 1027 and raised liability in the current bill of February 2015. Licencee not to act on it or enforce it.

Dated: 29/04/2015.

I agree

I agree

(Mrs.S.A.Jamdar)
Member
CGRF,Kalyan

(Chandrashekhar 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 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”
- c) 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.

