



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 28/08/2013
Date of Order : 04/03/2014
Period Taken : 189 days

IN THE MATTER OF GRIEVANCE NO. K/E/729/863 OF 2013-14 OF M/S. R.K. TEXTILE LABELS OF BHODAPADA SATIVALI ROAD, VASAI [EAST], DIST-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL

M/s. R.K. Textiles Labels

Bhoidapada Sativali Road,

Vasai (East), District-Thane.

(Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

Dy. Exe. Engineer,

Vasai Road (East) Sub. Division,

(Hereinafter referred as Licencee)

Appearance :-

For consumer : Shri Harshad Sheth, Consumer's Representative

For Licencee - Shri Satish Umbarje, Dy. Exe. Engineer

Shri Vaze, Asst. Accountant

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

1. This Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers. The regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

2. The Consumer is having Industrial supply from the Licensee. The Consumer is billed as per said tariff. Consumer registered grievance with the Forum on 28/8/2013 for Excessive Energy Bill.

Grievance No. K/E/729/863 of 2013-14

3] The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/0405 dated 02/09/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 13/9/2013, 23/9/2013, 1/11/2013, 30/11/2013, 2/1/2014, 20/1/2014, 13/2/2014. Lastly on 3/3/2014.

4] In this matter, we heard both sides at times. Consumer has also given further submissions on 7/11/2013, 3/12/2013, 21/1/2014 and 25/2/2014. On the basis of arguments advanced, contentions raised by both sides following factual aspects are disclosed:-

- a) Consumer is provided with Industrial Supply from 4/6/2008.
- b) Consumer is billed regularly and correctly up to the month of April 2009 which is already paid off. Even from May 2009 to Feb. 2013 bills were issued as per reading and those were also paid off.
- c) However, in the month of March 2013 supplementary bill was issued along with letter dated 16/4/2013 by Dy. Exe.Engineer for Rs.20,83,250/- wherein the balance dues for the period from May 2009 to 30/3/2013 included noticing that R-phase wire was loose from 8/5/2009 which was disclosed during inspection on 30/3/2013, and as per said inspection report the 33% less recorded calculation was taken in picture.
- d) On receiving the said demand, Consumer replied and it is contended that with the intent to avoid forcible disconnection he offered payment for two years, i.e. for 24 months as per section 56 (2) of Electricity Act, amounting to Rs.13,07,469/-, towards it submitted a letter dated 25/4/2013 to Dy. Exe.Engineer with cheques totally for Rs.12,95,497. Those were six cheques, (i) for Rs.5,00,000/- dated 26/4/2013, (ii) for Rs.1,50,000/- of June 2013, (iii) for Rs.1,50,000/- of July 2013, (iv) for Rs.1,50,000/- of August 2013, (v) for Rs.1,50,000/- of Sept. 2013 and (vi) for Rs.1,95,497/- of Oct. 2013. Accordingly he contended that Consumer submitted cheques for the said amount, while working out the payment, the security deposit to the tune of Rs.9,000/-, interest of Rs.2,972/- which was due to the Consumer from the Licensee is deducted and thereby total payment of Rs.12,95,497/- is paid.
- e) In spite of such payment done, seeking installments from Licensee, the Consumer noted that again total arrears are reflected in bill for the month of July 2013, hence the Consumer approached the Officers of Licensee. Consumer approached IGRC on 25/4/2013. IGRC not yet decided the matter and hence the Consumer approached this Forum filing the present grievance on 28/8/2013. In spite of this Forum waiting for progress in the IGRC, no any further progress is communicated and it is clarified that order is not yet passed by IGRC.
- f) In the light of aforesaid factual aspects, question is whether the Consumer is to be directed to pay for the period from May 2009 to 30/3/2013, though R-Phase wire was loose and actual consumed units were not reflected in the meter reading, thereby consumption recorded is less by 33%.
- g) During the course of hearing, on behalf of Licensee it is contended that the less consumption on 33% during the disputed period is reflected when MRI report was taken and as per the MRI report, this difference is from 8/5/2009, hence for the electricity used,

Grievance No. K/E/729/863 of 2013-14

demand is raised and said demand is correct which is to be paid by the Consumer. It is contended that when electricity is utilized, it needs to be accounted for, by paying the total amount demanded.

- h) On the other hand, on behalf of Consumer it is submitted that MRI is recorded but MRI details which are provided subsequently, are covering the period from May 2009 to 30/3/2013 but the Licensee had already appointed a franchisee for recording the MRI, and every month such MRI is to be taken for which the said franchisee is to be paid per month an amount of Rs.165 per consumer per meter. He contended monthly MRI report submitted to the Licensee will reflect the position appropriately. He had sought such details during pendency of this matter. On this count, on behalf of Licensee it is clarified that monthly MRI is not available and said franchisee is appointed in February 2013. Accordingly, he contended that monthly MRI as demanded by Consumer cannot be provided. This aspect is challenged by the Consumer's Representative who claims that agency is given from March 2012. Actually 33% less recording is revealed from MRI only in March 2013, less recording is noted and amount is demanded. No doubt, Consumer has sought meter testing from NABL which is also not honoured by the Licensee and there is no any progress on that point.

5] Now, on behalf of Licensee, Officers stucked up to the stand taken. C.R. submits that amount for the total period as claimed cannot be recovered and hardly it can be recovered only for two years u/s 56 of Indian Electricity Act.

6] We tried to find out whether the total claim as contended by the Licensee can be recovered. We faced factual position that this particular arrears are worked out as there was less consumption of 33% due to the loose connection of R Phase CT. Loose connection or loose R-phase is the only reason which needs consideration and whether it is justified to seek total dues from May 2009 to 30/3/2013 on that count?

7] At this stage, it is necessary to look into the grievance brought before us and prayer made. From the grievance of the Consumer, more particularly, para no.7, there are four prayers. First pertains to revision of bill as per MRI report and it should be on the basis of monthly MRI reports submitted by franchisee to MSEDCL. Further, it is to be revised on the basis of testing of meter from NABL. Next prayer is restricting the assessment of the bill for 24 months, that too, if MRI report goes contrary. Third prayer is of utmost importance, it reads as under:

“c) *if amount is paid excess, then it may be refunded with interest as per EA 2003 sec 62 (6).*”

Fourth prayer is towards not disconnecting the supply during pendency of this matter, as the Consumer is paying regular bills.

Grievance No. K/E/729/863 of 2013-14

Consumer along with the grievance relied on precedents of Hon'ble Electricity Ombudsman, Mumbai and those are enclosed with the Grievance Application. Those are (i) Representation No.27 of 2006 decided on 18/7/2006, (ii) Representation No.7 of 2009 decided on 2/3/2009, (iii) Representation No. 96 of 2012 decided on 8/1/2013, (iv) Representation No.3 of 2012 decided on 15/2/2013 and (v) Representation No.8 of 2003 decided on 6/3/2013. In those judgments, Hon'ble Electricity Ombudsman considered that bills were issued covering the period for more than two years pertaining to the MF not appropriately entered in the record and when it was detected/noticed that in this case also not appropriately reflected in the (meter) record, it was entered and dues were worked out for a period, which was of more than two years and such recovery in the aforesaid orders Hon'ble Electricity Ombudsman relying on the judgment of the Hon'ble High Court, *M/s. Avdesh S. Pande v/s Tata Power Company, AIR 2007 Bombay 52* and Other judgments of Bombay High Court decided by Single Judges, restricted only for the period of two years u/s 56(2) of Electricity Act and expressed liberty available to the Licensee to recover the rest of it by filing Suit. This aspect is challenged by the Licensee in the reply and took support of the judgments of Hon'ble Bombay High Court, wherein it is laid down that dues if demanded, covering the period of more than two years it will not be illegal, and it is to be paid as it is a human error. More particularly, they relied on the judgment *AIR 2007 Bom 73 Brihanmumbai Municipal Corporation v/s Yatish Sharma*; and on the judgment dated 20/8/2009, in *2010 (4) Bom C.R. 456 Rototax Polyester v/s Administrator*. Even it is made clear that there was another judgment of the Hon'ble Bombay High Court Division Bench, i.e. *AIR 2007 Bom. 52 M/s. Avdesh S. Pande v/s Tata Power Company*, which is relied on by the other side and even relied on by Hon'ble Electricity Ombudsman wherein view was taken that recovery is to be limited in such cases up to two years u/s 56(2) of Electricity Act. Due to these two different views, matter is sought to be referred to a larger Bench as per the Order passed by the Hon'ble High Court in *Writ Petition No.10764 of 2011 dated 17/1/2012 – MSEDCL v/s BSNL, Devgarh* wherein all previous judgments on this point noted. No doubt, Consumer has placed on record the Orders of Hon'ble Electricity Ombudsman which are based on the aforesaid judgment of Hon'ble High Court, i.e. *M/s. Avdesh S. Pande v/s Tata Power Company, Writ Petition No.221 of 2006*.

As noted above, when Consumer came up with the contention that at the most recovery can be there u/s 56(2) only for two years, Licensee contended that it cannot be limited for two years. In this regard, as noted above, we tried to find exactly under which category the present dispute and demand raised falls. The reliance is placed on the precedents noted above, by both sides, are, pertaining to error in entering MF, i.e. MF-1 or MF-2 and it is dealt in those aforesaid

precedents. We are required to deal it, and answer, is it a matter coming within the nature of MF-1, MF-2 errors. But while hearing the matter, we noted that recovery in this matter from 8/5/2009 till 30/3/2013 was due to the fact disclosed during inspection that R-phase supply was showing zero supply. Considering supply is to flow from three phases but non reflection of R-phase reading by Officer who inspected, concluded 33% of units shown less in the meter. In this regard, while in reply dated 13/9/2013 to the grievance of the Consumer, the Licensee pleaded as under in last part of the para no.4:-

*“coming to the copies of various judgments referred to, under item no.(i) to (v), on page no.7 of his grievance, these are all related to M.F.-2 recovery cases, partly restricting the recovery to preceding two years only but partly allowing D.L. to recover it by way of Civil Suit. In short, total sum is recoverable by D.L. Again it is to state that these decisions were given depending on the matter and merit of individual cases and cannot apply in instant case. **This case relates to one-third less recording.**” (emphasis provided)*

8] On close reading of aforesaid plea of the Licensee it is clear that it is not a case of any human error pertaining to entry of M.F. but it pertains to one-third less recording, that too, R-phase connection was found loose and when the screw was tightened, original position restored. In other words, prior to 8/5/2009, R-phase was working normally but thereafter, it was not working as screw was loose and when it is tightened, it started working normally. This aspect is clarified by the Licensee in para no. 2 of the reply dated 1/11/2013 as under:

“... However, we have already clarified in our ‘Say’ submitted vide letter under reference in its para 2, 3 & 4 that section 56 (2) does not come in the way of recovery proposed in the present case. It is a clear case of under dealing due to loosening of ‘R’ phase wire and hence recovery is proposed from the date of failure of ‘R’ phase as the Consumer has taken benefit of this under billing by way of production.

Perceiving the factual aspect, we had sought details. We were to find out under which category this aspect falls and limit of recovery. Will it be a human error in entering something like that of M.F.-1, M.F.-2 or is it due to some other reason and whether it will be a case of defective meter? In this light, in continuation of aforesaid material, Licensee in para no.4 contended as under:

*“4. The Consumer as also the C.R. know it well that R-phase was showing zero consumption because of loose connection of wire from C.T. to Meter terminal. As the related screw was tightened, it started showing proper current. Till date, the same meter and metering unit is in service with Consumer. In other words, at the most, we can say that it was a **failure of supporting system** and **not a failure of meter.**”*

Grievance No. K/E/729/863 of 2013-14

*In short, we mean to say that **above shortcoming had no direct effect on working mechanism of meter, i.e. any such impact which may result into getting the meter or its machinery defective or out of order.***

We noted the contention raised by the C.R. in his reply dated 7/11/2013 to the Licensee's reply dated 1/11/2013. Para no.3 is of utmost importance. It reads as under:-

"3. Meter including C.T. / P.T. and accessories are the part of meter as per definition and MSEDCL with their officers and engineers are responsible for the maintenance and other related aspects. In no way MSEDCL becomes free from their responsibility and mistake of their staff is slapped on Consumer."

9] Accordingly both the sides have placed their respective contentions on this point and we are required to consider at this stage this peculiar tie, i.e. under which class this particular aspect is to be brought in.

10] These aspects were to be dealt on it's merits but both sides kept themselves engaged in further discussion towards Redressal of Grievance. Accordingly, This matter was taken for further discussion on 25/11, 2/12, 9/12, 17/12 of 2013 and then 2/1/2014, 20/1/2014, 28/1/2014, 10/2/2014 and 24/2/2014. Till 10/2/2014, both sides added some details to their respective p plea. Though on 21/02/2014, Licencee filed the specific reply, stating that Licencee is accepting the consumer's proposal for limiting recovery only for the period of two years prior to the date of detection of less recording i.e. on 30/3/2013. Consumer too, filed his detailed reply to it dated 25/2/2014 before this Forum on 26/2/2014. Already he had provided it's copy to the other side and on 26/2/2014, i.e. on the date fixed, none attended for Licencee. However consumer's representative submitted that after taking stock of the situation and contention of Licencee as per their offer dated 21/2/2014, consumer is agreeing for the said liability to the extent of Rs.12,10,790/-. However, he claimed from the total claim of Rs.12,27,870/- demand charges already collected to the tune of Rs.17,080/- are deducted and hence figure of Rs.12,10,790/- is arrived at. He further submitted that an amount of Rs.9000/- is lying with Licencee as additional security deposit which is to be refunded with interest of Rs.2,970/- and said total refund is of Rs.11,971/-. It is contended that said refund is to be deducted from Rs.12,10,790/-, thereby total dues payable comes to Rs.11,98,819/-. However, consumer has already deposited an amount of Rs.12,95,497/- and out of it, by deducting Rs.11,98,819/- excess amount remains is of Rs.96,678/- which consumer is entitled to get it's refund and it needs to be refunded in next billing cycle. It is also prayed that initial excess amount debited in the consumer's account to the tune of Rs.20,83,250/- is to be set aside and it is to be made limited only for Rs.12,27,870/-. It is contended

Grievance No. K/E/729/863 of 2013-14

that after showing such adjustment in the next billing cycle, Licencee is to accept the regular monthly payment from the consumer. It is also submitted that all these aspects are to be done in one stroke and he is not agreeable for giving effect partially to any of his claim. It is submitted that in case such dispute arises, liberty be given to the consumer to approach the Forum at the cost and consequences of Licencee. It is further contended that if Licencee is not agreeable to all these contentions, than matter be decided on it's merits by applying Clause 15.4.1 of Supply Code and direction be given for refund of excess amount with interest as per bank rate.

11] Though none attended for Licencee on 26/2/2014, today i.e. 4/3/2014, Dy.Executive Engineer for Licencee attended and clarified in writing the position, stating that though consumer is seeking adjustment of additional security deposit of Rs.9000/-, it is not acceptable against the recovery of this bill, as security deposit is still short by Rs.93,840/- and hence said security deposit is to be adjusted, only towards the said shortfall in deposit. He submitted that interest amount of Rs.2,970/- on ASD will be adjusted against the recovery amount as suggested by consumer.

12] In view of above development now position is clear.As worked out by Licencee, at the initial stage, liability was to the tune of Rs.20,83,250/, it was for the total period , but Licencee has now made it limited only for two years and said figure comes to Rs.12,27,870/-. However, from the said amount already demand charges collected to the tune of Rs.17,080/- are deducted and thereby total balance dues shown to the tune of Rs.12,10,790/-. Now consumer is seeking only adjustment of interest amount of security deposit, which is to the tune of Rs.2,970/- and Licencee has no objection to adjust the said amount. Accordingly, if said amount is adjusted from Rs.12,10,790/-, balance comes to Rs.12,07,820/-and this particular liability remained undisputed by both sides and accepted. On these terms both sides requested to dispose off the matter.

13] This matter accordingly to be disposed off by consent of both the sides. As per the said consent, liability initially worked out to the tune of Rs.20,83,250/- by Licencee is made limited to Rs.12,27,870/- and deducting from it an amount of Rs.17,080/- demand charges, already collected, dues are quantified to the tune of Rs.12,10,790/- further amount towards interest on additional security deposit to the tune of Rs.2,970/- payable to the consumer, if deducted from it's liability balance dues remains to the tune of Rs.12,07,820/-. However, it is contended that consumer has already deposited an amount of Rs.12,95,497/- by issuing cheques as under:

Grievance No. K/E/729/863 of 2013-14

	Date of Cheque	Amount
1]	04/5/2013	Rs. 5,00,000/-
2]	27/5/2013	Rs. 1,50,000/-
3]	27/6/2013	Rs. 1,50,000/-
4]	27/7/2013	Rs. 1,50,000/-
5]	-	Rs. 1,50,000/-
6]	27/9/2013	Rs. 1,95,497/-

		Rs. 12,95,497/-
		=====

14] However, details pertaining to one cheque i.e.Sr.No.5for Rs.1.5 out of the above for which date is not written, is not forthcoming with Licencee and exact details not available at this stage with consumer. However, both sides are agreeing to verify and reconcile the position, considering the CPL of Licencee considering the bank statement of consumer. Accordingly both are agreeable to sort out that aspect mutually. It is clarified if amount of said cheque found not paid, consumer will pay it. Accordingly, now treating that this payment of Rs.12,95,497/- is there, liability of consumer as noted above is to the tune of Rs.12,07,820/- and said amount is to be deducted from so called deposited amount of Rs.12,95,497/- and balance which comes to Rs.87,677/- is to be refunded by adjusting in the ensuing bills of the consumer. As pointed out by both sides an amount of Rs.9000/- which is additional security deposit refundable, is, now agreed to divert to short fall of the security deposit and it be shown in ensuing bill. Accordingly matter is to be disposed off.

15] Matter could not be decided in time as it was required to be heard time and again till this day and latest reply was filed on 4/3/2014.

Hence the order.

ORDER

1] Grievance of consumer hereby stands disposed off as it is redressed by Licencee as per mutual consent. Accordingly, Licencee is to comply the aspect as under:

a] Licencee to restrict liability only for two years and initial claim of Rs.20,83,250/- be made limited to Rs.12,27,870/-,by deducting demand charges already collected to the tune of Rs.17,880/-. The claim be made limited to Rs.12,10,970/-. Further from the said claim an amount of Rs.2,970/-which is interest accrued on ASD be deducted and liability comes to Rs. 12,07,820/-, it be noted. Initial claim of Rs.20,83,250/- be removed from the record

Grievance No. K/E/729/863 of 2013-14

b] Consumer is entitled to refund of additional security deposit amount of Rs.9000/- which be adjusted against the short fall of deposit of the consumer and it be reflected in the ensuing bill of consumer.

c] Total payment allegedly made by consumer is to the tune of Rs.12,95,497/-, out of it an amount of Rs.1,50,000/- is required to be mutually reconciled as said amount is not seen in the record of Licencee, considering the CPL of Licencee and bank account of consumer. From said excess amount concluded lying with Licencee the dues as noted above to the tune of Rs.12,07,820/- be deducted and balance so arrived at be refunded to the consumer by adjusting it in the ensuing billing and it be reflected in the bill. At this stage, assuming subject to reconciliation as directed above, payment made as per consumer's version is of Rs.12,95,497/- and out of dues to the tune of Rs.12,07,820/- are to be deducted and thereby balance comes to Rs.87,877/-, it be considered if, it is noted during reconciliation that already an amount of Rs.1,50,000/- is paid by the consumer.

Licencee to report aforesaid compliance within 45 days of this order.

Dated: 4/3/2014.

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.

Grievance No. K/E/729/863 of 2013-14