



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 03/09/2014
Date of Order : 06/05/2015
Period Taken : 245 days

IN THE MATTER OF GRIEVANCE NO.K/E/820/996 OF 2014-15 IN RESPECT OF M/s. Karyawahi Conveyor Co. PVT. LTD. PLOT NO.23, ATGAON, MUMBAI –NASIK HIGHWAY, ATGAON, TAL-SHAHAPUR, DIST-THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT REFUND OF AMOUNT RECOVERED BY APPLYING WRONG TARIFF FROM 2008.

M/s. Karyawahi Conveyor Pvt. Ltd.,
Plot No.2, Atgaon Industrial Complex
Mumbai-Nasik High way, Atgaon,
Tal. Shahapur, District-Thane. (Hereinafter referred to consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Suptd. Engineer Kalyan Circle-II,
Kalyan (Hereinafter referred to Licencee)

Appearance :- For Consumer - Shri Chandan Bauva- Consumer's Director
For Licensee - Mr.N.B.Khan Executive Engg. & Nodal Officer
Shri Kasal- Dy. Executive Engineer.

(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] Present consumer is having HT supply from 5/9/1998, bearing consumer No. HT-015599020192. Consumer approached Licencee for refund of amount recovered by Licencee applying tariff as HT-IC as against tariff applicable HT-1N.

3] In this matter, copy of grievance application and the papers enclosed, were, sent by this forum vide letter No. EE/CGRF/Kalyan /0332 dated 04/09/2014 to the Nodal Officer of Licensee.

4] In response, the Officer of the licensee attended and filed reply on 18/9/2014 and additional reply 13/10/2014.

5] We heard both sides. During hearing, consumer's Director Shri Chandan Bhauva made submissions and for Licensee Nodal Officer Shri Khan argued. We have gone through the grievance application and reply filed by the Officer of licensee.

It is contended by consumer that right from beginning supply was available to the consumer and as per the prevailing tariff, consumer was charged as per industrial tariff. In this matter admittedly consumer is having supply to its industry from 5/9/1998. Consumer is assessed issuing bills and those bills are already paid as demanded.

Consumer approached this Forum making out two grounds. One, consumer claimed that after June 2008 Licencee charged it applying tariff HT-IC (HT continuous) which is now challenged, contending that in fact consumer ought to have been shown as HT IN (HT non continuous) and charged accordingly.

Secondly, it is contended that though consumer prayed for change of tariff category from HT-IC to HT-IN on 30/4/2014, it is not considered and complied.

6] Licencee in defence came up with three contentions. One bar of limitation. Second, as consumer is claiming similarities of fact involving Vijay Industries Case and said case is pending in Hon'ble High Court, hence, this matter be kept back till Vijay Industries's matter is decided by Hon'ble High Court. Further it is contended that consumer is having continuous supply. It has utilized continuous supply, not exercised option as directed by the MERC in time. Hence, the tariff applied is correct. Thirdly, it is contended that though consumer sought change in the category on 30.4.2014. It is not within the limitation prescribed by MERC i.e. within one month from the tariff order in case No. 19/2012 dated 16/8/2012.

For deciding these three aspects agitated by Licencee and two grounds raised by consumer, aspect of limitation is to be taken first.

I] **Objection of Limitation.**

7] As consumer is seeking refund of amount from June 2008. Licencee raised the objection for this relief and contended that this grievance is not filed within two years of the cause of action, hence, this forum cannot deal the matter when cause of action is prior to two years.

In this regard, it is seen that consumer had approached this Forum, within two years after approaching Suptd. Engineer on 18/10/2013 who ought to have dealt it or sent it to IGRC. As per the requirement the complaint so received other than the IGRC are to be sent by such Authorities to IGRC and IGRC is to decide it. In this matter SE has not forwarded consumer's complaint to IGRC. Now we are to treat the action of consumer approaching SE is equal to that of, approaching IGRC. Hence, hereinafter reference is made to IGRC which is to be appropriately read as complaint to SE who ought to have sent it to IGRC. As per the regulations this Forum can admit such grievances if brought before the Forum within two years of order passed by

IGRC or after 60 days from the date of approaching IGRC. Regulation Clause No.6.6 speaks about it. It is just necessary to mention that consumer can approach this Forum

within two years of cause of action, it may be even without approaching IGRC or within two years of the order of IGRC. There is a provision for approaching the Forum directly and in that case cause of action is to be considered, if it is within two years. But, if matter is coming after the decision of IGRC or when there is no order of IGRC within 60 days than it should be within two years of the date of order of IGRC or after 60 days of matter filed before IGRC. On this point legal position is totally clarified by our Hon'ble High Court in the case **M/s. Hindustan Petroleum V/s. Mah. State Electricity Distribution Co. Ltd. in Writ Petition No.9455/2011 decided on 19/1/2012**. In Para 13 Hon'ble Lordships made this position clear. Hence we find no force in this argument. Even recently on the aspect of limitation Hon'ble Ombudsman in Review Representation No.2/2015 decided on 20/4/2015 reiterated the said legal position, in the light of aforesaid Judgment of Hon'ble High Court.

II-A] Preliminary Objection about Vijay Industries matter pending in High Court.

II-B] Consumer's entitlement of relief on parity with the case of Vijay Industries and M/s. Mili Steel Pvt. Ltd. etc.

II-A] Consumer in the first letter dated 18/3/2014 addressed to Chief Engineer of Licencee contended that since June 2008 onwards, it is charged as per HT-IC tariff and others in the same complex being charged as HT-IN tariff. Hence sought refund of amount recovered by Licencee applying HT-IC tariff. Consumer's Director during hearing came with contention that present matter is similar to the grievance decided by this Forum in Grievance No. 883 Vijay industries and reliefs sought on the same analogy. Licencee conceded that present matter is similar to the matter decided on 23/1/2014 by this Forum pertaining to Vijay Industries in Grievance No. K/E/739/883 but said order is challenged by filing writ petition No.10876/2014 on 16/4/2014 and is pending for hearing. On this ground Officers submitted that said

matter is to be heard in Hon'ble High Court, hence this matter be heard thereafter. We sought recent update of said matter pending in High Court and it is submitted that said

matter is for pre admission on 30th June 2015. Accordingly, it is clear that matter is yet to be admitted and there is no stay.

Already this Forum made it clear that matter of Vijay Industries finally not yet decided by Hon'ble High Court and order of this Forum is not stayed or set aside. This Forum waited till date but cannot adjourn this matter for indefinite period, there cannot be any postponement on this ground as this consumer is not a party before the Hon'ble High Court.

It is also a fact that not only Vijay Industries but in group of matters, from said Atgaon Industrial area, orders are passed by this Forum in Grievances No.653, 776 to 780. Some of those orders are already complied and all orders are not challenged. When individual matters are brought before this Forum, there cannot be any restraint to proceed with the matter pending before the Forum, only because some other matter of some other party, is, pending in High Court. It would have been a different thing, if any stay was obtained from Hon'ble High Court, for hearing further matters, involving similar aspect, but there is no such stay. Hence, we are required to decide the matter on the available material.

**IIB] Consumer's entitlement of relief on parity with the case
Of Vijay Industries and M/s. Mili Steel Pvt. Ltd. etc.**

Consumer in this case sought relief, contending that refund be allowed from June 2008 onwards, towards amount recovered by Licencee showing supply to it as HT-IC and in fact tariff applicable to it is HT-IN. But no any material is placed on record, exactly on 1/6/2008, what was the nature of consumer's supply. Consumer was required to clarify whether on that day, continuous supply was available or not. It has not clarified the said position though this Forum vide letter dated 26/11/2014 directed it to clarify. However, Licencee vide reply dated 8/12/2014 placed on record

the similarity of case of consume and that of Vijay Industries, but maintained that both were getting supply continuously and were charged as HT-IC. Further, it is contended that on the same ground, the case against the Vijay Industries is pending in the

Hon'ble High Court, hence this case be dealt after the order of Hon'ble High Court, Suffice it is to say, Licencee had maintained its stand that present consumer was getting continuous supply and hence, it is charged as per HT-IC. This position is not controverted or explained by the consumer. In this matter CPL is called and from 2006, CPL shows supply is available to the consumer continuously and it is billed as HT-IC. Hence for want of specific contention from consumer about continuous supply not available to it, it is not possible to infer and supplement that supply was not available to the consumer continuously. This is a factual aspect within the knowledge of consumer, which is not specifically stated. Accordingly, consumer's case cannot be equated with the case of Vijay Industries and relief can be granted.

Interestingly, consumer at the fag end, addressing letter to this Forum on 9/3/2015, communicated that on the available material, grievance be decided and its case is similar to that of M/s. Mili Steel Pvt. Ltd. and others. Those cases M/s. Mili Steel Pvt. Ltd & others covered in grievance No.776 to 780 decided on 12/42013 were on the ground that consumer's were having supply non- continuous. They were getting bills as per tariff category HT-IN, but there was a letter of Suptd. Engineer dated 31/5/2012 that they will be billed as HT-IC and instructing the concerned Officers not to operate the GOD (Gang Operative Device) thereby the supply becomes continuous. In the said matters, it was concluded that they were having connection as HT-IN, hence by non operating the GOD , their status cannot be converted by Licencee to HT-IC and hence relief was granted to them. But herein present consumer is having supply, as seen from CPL it is continuous supply and consumer paid the bills. If once it is disclosed that in the record and in the bills it is continuous supply, then it is not possible to equate this case with that of M/s. Mili

Steel Pvt. Ltd. in absence of specific plea that it had no continuous supply Accordingly, we find consumer is not clear about it's own status, it is not fair enough to place on record it's true nature of supply and hence we are not able to infer, the

case of consumer is similar with any of the aforesaid cases. Rather it will be bad precedent to brand this case, as similar to other cases, unless details are brought on record showing similarity and hence we find the previous orders passed by this Forum cannot be made applicable to the present case

III] Prayer of consumer vide application dated 30/4/2014 to the Licencee for changing it's category from HT-IC to HT-IN.

8] It is contended that consumer had already approached the Licencee vide letter dated 30/4/2014 for change of category from HT-IC to HT-IN and it is being pursued with Chief Engineer (Commercial) and is in the process.

Licencee came up with peculiar plea that as per tariff order in 19/2012 dated 16/8/2012, consumer has not approached within a month and hence it cannot be considered. However, in reply it is also made clear by Licencee that group of these consumers who sought change from HT-1C to HT-1N is recommended by Suptd. Engineer which is still lying with the Higher Authority i.e. Chief Engineer (Commercial). It is also clarified, that as and when the said aspect is dealt by Higher Authority, effect will be given to it.

9] Now it is clear that in the recent orders passed by Hon'ble Ombudsman in Representation Nos. 66 of 2014 to 11 of 2014 dated 2/12/2014, M/s. Ganesh Foundry Pvt. Ltd. and others, seeking change of category is required not only in one month from the date of tariff order but even as per 9.2 of the SOP Regulation, it can be independently sought and it is to be complied within the prescribed time, otherwise it will attract necessary compensation. Said order is further followed in Representation No.112 of 214 M/s. Precision Concept Ltd. decided on 16/12/2014. Accordingly, we find no force in the contention that matter is pending with higher ups and it can be dealt on receiving the directions. Considering the above SOP Regulation, we find

giving effect to the prayer for change is automatic after prescribed time and we find there is no other option to stall it. Hence consumer is entitled to have a change in the

category from HT-IC to HT-IN from the second billing after the date of application Hence this prayer is to be allowed.

10] This grievance could not be decided within prescribed time as consumer's Director could not attend and could not provide required information in time. Lastly, Forum secured from Licencee CPL of the matter and the progress of matter in High Court on 29/4/2015.

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

Hence the order.

ORDER

Grievance of consumer is partly allowed.

Grievance of consumer towards refund from June 2008 as prayed is not allowed.

Grievance of consumer about change category from HT-IC to HT-IN sought on 30/4/2014 is hereby allowed. Licencee directed to give effect for such change from the second billing after the said application i.e. from June 2014. Amount recovered from consumer from June 2014 applying HT-IC tariff be refunded deducting from it the amount applying HT-IN tariff. Said amount of refund be worked out within 45 days from the date of this order and be adjusted in the bill of July 2015.

Licencee to submit compliance of the above within 60 days from the date of the order.

Dated: 06/05/2015.

I agree

(Mrs.S.A.Jamdar)

I agree

(Chandrashekhar U.Patil)

(Sadashiv S.Deshmukh)

**Member
CGRF, Kalyan**

**Member Secretary
CGRF, Kalyan**

**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.

