



Consumer Grievance Redressal Forum, Kalyan Zone
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No. K/E/1248/1472 of 2017-18

Date of registration : 23/08/2017

Date of order : 21/02/2018

Total days : 182

IN THE MATTER OF GRIEVANCE NO. K/E/1248/1472 OF 2017-18 OF AGARWAL FASTENERS P.LTD., PLOT NO.11, GUT NO.256, VILLEGE-CHAHADE, TAL-PALGHAR, DIST.PALGHAR, PIN CODE- 401 404 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING BILLING DISPUTE.

M/s Agarwal Fasteners P.Ltd.,
Plot No.11, Gut no.256,
Village-CHAHADE, Tal-Palghar,
Dist.Palghar, Pin Code- 401 404
(Consumer no. 003659038000)

... (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited,
Through it's Nodal Officer,
Palghar Circle, Palghar

... (Hereinafter referred as Licensee)

Appearance : For Licensee - Shri.Y.J.Jarag, EE, Palghar Circle.

For Consumer - Shri. Harshad Sheth (C.R.)

[Coram- Shri A.M.Garde- Chairperson, Shri A.P. Deshmukh-Member Secretary]

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 Redressed 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.

[Electricity Supply Code and other conditions of supply Regulations 2005] 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.

2) Consumer herein is M/s Agarwal Fasteners P.Ltd. having Consumer no. 003659038000 (BU-541). Grievance is that HT continuous tariff was illegally applied to Consumer for some months during the period from Sept-2011 to Oct-2016 despite interruptions. (In detailed complaint period mentioned is Aug-2012 to Oct-2016) Complainant therefor claims refund of the difference between continuous and non – continuous tariff for the said months along with interest and electricity duty.

3) On receiving the said grievance, its copy along with accompaniments were sent to the Nodal Officer, Palghar Circle vide this forum's letter no. EE/CGRF/Kalyan/433 dt.24/08/2017. In response to it, the officers of Licensee appeared and filed reply on 05/10/2017 and from time to time added explanations/points. Similarly, Consumer too submitted rejoinders.

4) Mr.Sheth the C.R. submitted that the ratio of Kalika case applies in the present case. Infact there is no quarrel about this proposition. He also produces another case viz M/s Century Rayon case (case no.86 of 2015) which in terms clarifies that ratio of Kalika case is of general applicability. No such clarification is also required. There can not be different parameter for others.

5) Distribution Licensee in reply contends that the claim of the complainant company is time barred and beyond limitation. Clause 6.6 of Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations, 2006, provides that forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, in view of the above mentioned clause claim of the consumer company is not maintainable, at least to the extent of period prior to 2 years of filing of the complaint. Consumer has filed complaint to IGRC on dated 14.06.2017 where in refund of excess amount paid towards Continuous Tariff for period Sept. 2012 to Oct. 2016 is claimed. Cause of action to file complaint had arisen in Sept. 2012, for which no complaint was filed. In this view of the matter, the grievance of the consumer in respect of interruption beyond two years and granting relief beyond two years is

not in consonance with Regulation 6.6 of CGRF and EO Regulation 2006. The MSEDCL states that, Complainant has agitated claims which he had not pursued for four years. Complainant was not vigilant but is content to be dormant and choose to sit on the fence till somebody else's case came to be decided. The complainant has not given any reasonable justification on the point of delay. The copy of order Electricity Ombudsman in Rep. No.153 of 2016 and Rep.No.57 of 2017 having similar law points is annexed and marked as **EXHIBIT 'A'**.

6) MSEDCL states that, the Complainant has opted for supply to electricity through an Express feeder and had applied to the petitioner i.e. Maharashtra State Electricity Distribution Company Limited (herein after referred as MSEDCL for sake of brevity). The petitioner has sanctioned CD of 850 KVA on H.T. continuous power supply under 33 KV level feeder emanating from 132/33 KV Palghar Sub Station. The power supply to the consumer was released on 30/09/2011. As per sanction letter condition no. 15 POWER RESTRICTION government load restriction orders as prescribed and amended from time to time shall be applicable.

7) The MSEDCL states that, Maharashtra electricity regulatory Commission (herein after referred as MERC) has distinguished the tariff category of the industrial consumers requiring continuous and uninterrupted power supply into continuous supply category. Similarly, the tariff of those consumers, who do not require continuous supply, has been determined under Non continuous category. Accordingly Complainant consumer has opted for HT-1 Continuous supply category from MSEDCL. Accordingly, MSEDCL has been billing tariff for Express Feeder continuous supply category to the consumer company.

8) The MSEDCL states and submits that; consumer has alleged interruptions and load shedding and has made several complaints to the MSEDCL. The Consumer has alleged that since Sep'12 to Oct'16, Complainant Company has faced interruptions and load shedding and therefore, tariff charged to it for continuous uninterrupted supply is illegal and is liable for non-continuous tariff and also claimed compensation for loss due to interruption but on contrary the complainant submitted written complaint 1st time on dated 14/06/2017 to IGRC. The MSEDCL states that, complaint made by consumer in respect of refund of tariff on continuous supply is time barred and beyond limitation as per MERC SOP 2005:-12. No claim for compensation shall be entertained if the case is filed later than period of 60 days for the date of rectification of deficiency. MERC (Standards of Performance of Distribution

Licensees) Regulations 2005 & 2014 prescribe level of compensation payable to consumer for failure to meet standards of performance. For restoration of supply on 33 KV overhead lines, time specified for rural area is 24 hours & if Supplier fails in its obligation compensation of Rs 50 per hour or part there of delay is prescribed. Interruption Reports for entire period Sept. 2012 to Oct.2016 would reveal that there is not a single incidence of failure to meet Standards of Performance. The consumer has never complaint to the MSEDCL. Therefore, claim of the complainant is not sustainable on the point of limitation.

9) The MSEDCL further states that, Complainant company has approached Internal Grievance Redressal Forum (hereinafter referred as IRGC) and filed complaint on 14/06/2017 claiming refund of tariff of non-continuous category should be applied to him for the period of Aug '12 to Oct'16 . The MSEDCL has contested the matter. The IRGC has conducted the hearing in the matter and passed order on dated 04/09/2017.

10) The MSEDCL further states that, there is no load shedding on 33 KV feeder from which Complainant Company is availing supply. Load shedding is carried out on rest of feeders without disturbing grid stability. However, when there is imbalance on grid due to low frequency or low generation it becomes essential to implement emergency load relief even on 33 KV Express Feeders. It is undertaken as last resort to tackle the emergency/critical situation and it is initiated by Load Dispatch Centre, since is ELR is undertaken upon emergency messages given by load dispatch Centre. Thus ELR is different and in addition to load shedding. In fact while managing the load, hours of plan load shedding are increased to reduce possible ELR/distress load shedding. To put it differently continuous supply to the consumer/complainant Company is given at the cost of general consumer who eventually faces load shedding and there load shedding hours are increased so as to reduce ELR.

11) The MSEDCL states that, 33 KV express feeders are never subjected to planned load shedding. Only instances of ELR may be noticed. In view of regulation 11 of SOP Regulations, these interruptions on account of ELR are not beyond control of MSEDCL nor can they be attributed to negligence or deficiency on part of MSEDCL. This vital aspect is needed to be considered by CGRF, that ELR are not to be considered as load shedding.

12) We have heard both sides and have persued judgments cited on either side. Consumer strongly relied on the MERC order in Kalika case (Case no.88 of

2012) It appears clear from the said judgment that Hon'ble MERC has by virtue of power conferred under Section 62 (1) of I.E. Act 2003 considered the interruption in the supply of 16 Consumers/Petitioners and held inter alia that the supply provided during the reported period therein did not conform to expected norm of continuous supply, as such the Distribution Licensee there in should not have charged tariff applicable to continuous Industry . The Hon'ble MERC went on to grant refund of the difference of tariff.

13) The germane issue raised in this case however is of limitation. In Kalika case the question of delay was discussed and was found in favour of Consumer therein. In Century Rayon case, the question of limitation was kept open. Hon'ble MERC nowhere ruled that the ruling given in Kalika case should apply to all such instances not with standing the bar of limitation thereby making an exception to the normal applicable principle and rule of limitation.

14) 6.6 of MERC (CGRF & Ombudsman) Regulations 2006 bars CGRF to admit any grievance except those filed within two years from the date on which cause of action arose. Limitation period starts running from the date when the cause of action arose. Mr.Sheth the CR argued that the judgment in Century Rayon case came on 15/02/2017 in which Hon'ble MERC stated that Kalika judgment is of generic nature. As such his grievance, being within 2 years from Century Rayon judgment is within limitation. The argument advanced is not only without legal basis but fallacious in view of the clear provision of Regulation 6.6 and the discussion made above with regard to Kalika case and Century Rayon case.

15) In the above view of the matter it is to be seen whether the claims of the Consumer herein or any part thereof is within limitation. As far as the Consumer grievance is concerned he has filed the grievance on date 23/08/2017, as such only the period of 23/08/2015 to Oct-2016 to be considered for further analysis.

16) Now the another issue is whether the applicant got continuous supply or not? For this issue we referred the similar case in which Hon. MERC has given decision in the same matter. Some of the paragraphs in case of 88 of 2012 is reproduced here :

31. The commission observed that there is no specific provision in regard to the frequency of occurrences, either in the SOP Regulation or in the definition of applicability of Tariff, which will qualify as unacceptable for a continuous category of Consumer. Obviously, the intent and purpose of the SOP Regulations and the design of the Tariff under the

“Continuous Category” of supply was to provide the Consumer with a “Continuous Supply” in the literal meaning of the expression. Therefore, it cannot be ruled out that MSEDCL failed to provide the required quality of supply for which it has charged the Petitioners.

- 32. *On examination of the data presented by MSEDCL more objectively, Commission built three scenarios applying three levels of filters allowing varied frequency of interruption under the categories by MSEDCL. Applying these filters the Commission examined the frequency of interruptions which exceeded the applied filters. These three are levels of filters are presented in the table below.***

<i>Nature of interruption as classified by MSEDCL</i>	<i>No. of interruptions in a month</i>		
	<i>Scenario 1</i>	<i>Scenario 2</i>	<i>Scenario 3</i>
<i>Outages</i>	<i>2</i>	<i>2</i>	<i>3</i>
<i>Load shedding</i>	<i>2</i>	<i>2</i>	<i>2</i>
<i>Tripping</i>	<i>2</i>	<i>4</i>	<i>5</i>

- 34. *There, it can be easily seen that under each of the scenarios, the Petitioners have suffered high level of interruptions in the electricity by MSEDCL. The filters applied in Scenario 3 are much liberal compared to Scenario 1. Even under such Scenario it is obvious that the Petitioners actually suffered from frequent unplanned interruptions, Which surely have led to difficulty in operations leading to losses as their production is under continuous process industries. As all the petitioners are steel and alloys companies, it is very important to have continuous power supply for manufacturing in their factories.***

From the above analysis Hon’ble MERC concluded that there was non-continuous supply provided to the 16 number Consumers As we see that Hon’ble MERC have gone to in depth analysis of the tripping & concluded that there was non-continuous supply.

Similarly looking at the interruption report submitted by Licensee in present case we are of the opinion that MSEDCL should analyse the interruptions of the H.T. Consumer M/s Agarwal Fasteners P.Ltd. for period 23/08/2015 to Oct-2016 as given in M/s Kalika Steel case & refund the tariff difference amount of continuous to non-continuous tariff for those months in which MSEDCL failed to provide continuous power supply.

17) There is one more point considered in MERC case no.105 of 2013 of review petition of M/s Kalika Steel. MSEDCL is directed therein to verify the 'DIC Certificate' issued by the directorate of industries, Government of Maharashtra & no refund to be given to Consumer who failed to produce such certificate. Similarly we are of the opinion that in present case MSEDCL should verify the 'DIC Certificate' as continuous process Industry issued by directorate of Industries, Government of Maharashtra during those billing months under consideration before processing the refund claim.

18) It has been observed by Honorable MERC in case number 105 of 2013 (Review of Kalika case), an early filing of this grievance would have been less of interest and less burden on MSEDCL. The forum is inclined to take the view that refund to be given without interest.

19) The delay is due to Licensee submitted the interruption data late. Also due to complicated issue involved in the case.

Hence the order.

ORDER

- 1) The Grievance application of consumer is partly allowed.
- 2) The Licensee is directed to refund the tariff difference from continuous HT-1-C to Non-continuous HT-1-N from 23/08/2015 to Oct-2016 in those months where when Licensee failed to provide continuous supply applying the principle given in M/s kalika case (MERC case no.88 of 2012), after verification of 'DIC Certificate' for that period. Claim of the Consumer for the period Sept-2011 to Aug-2015 is rejected.
- 3) Licensee is directed to refund electricity duty collected on refundable amount.
- 4) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 21/02/2018

(A.P.Deshmukh)
MemberSecretary
CGRF, Kalyan.

(A.M.Garde)
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.*

