



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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GRIEVANCE NO.K/E/836/1021/2014-15 Date of Grievance : 24/12/2014
Date of Order : 19/05/2015
Period Taken : 146 days

IN THE MATTER OF GRIEVANCE NO.K/E/836/1021/2014-15 SUBESTIAN PHILIP D' SOUZA, GALA NO.8, SIDDHI SAGAR, CHINCHPADA,VASAI (E), DIST. PALGHAR, PIN CODE 401 208, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING KALYAN ZONE, KALYAN ABOUT BILLING DISPUTE.

Sabestian Philip D'Souza,
Gala No.8, Siddhi Sagar,
Chinchpada, Gokhiware,
Vasai (E),
Dist. Palghar
Pin Code 401 208.

..... (Hereinafter referred to consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Addl. Executive Engineer,
Sub Divn., Vasai Circle

..... (Hereinafter referred to Licencee)

Appearance :- For Consumer - Shri Harshad Seth- Consumer's Representative.
For Licensee -Shri Birje –Addl.Exe.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] Consumer filed this grievance on 24/12/2014, seeking refund amount towards excess fixed charges levied from December 2003 to September 2006. Further sought refund of SD/ASD for Rs.27,419/-. As Licencee not responded to the letters of consumer dated 15/5/2014 and 21/10/2014, this grievance is filed.

3] In this matter, copy of grievance application along with the papers enclosed, were, sent by this Forum vide letter No. EE/CGRF/Kalyan /0450 dated 24/12/2014 to the Nodal Officer of Licensee.

4] In response to it, the Officer of the licensee filed reply dated 17/1/2015 on 19/1/2015. Consumer filed rejoinder on 3/2/2015. As Licencee not clarified about fixed charges/excess fixed charges recovered and details thereof, hence we called those details which are submitted on 11/5/2015. Excess demand is quantified by the Licencee to the tune of Rs.95,040/- as against claim of consumer to the extent of Rs.1,32,166/- which includes penalty collected to the extent of Rs.15,000+10,000+ 14,686/- for the month of March 2004, September 2004 and January 2005 respectively. Difference is worked out by the consumer, showing excess charge to the tune of Rs.3,270/- and Licencee quantified it to the extent of Rs.2,880. CR filed fresh chart calculating the excess fixed charges @ Rs.2,880/- per month. In addition consumer has

calculated interest on it, as per order of MERC dated 14/7/2005, in case No. 2 of 2003 at different rates and interest calculated @ 18% is of Rs. 2,6,156.25 Ps. Said figure is also revised by the consumer with fresh chart dated 14/5/2015.

5] We heard both sides at length. Mainly matter is for refund of excess fixed charges, levied and recovered. While citing the claim, consumer produced chart bearing title "Calculation chart as per Ombudsman decision showing demand and capacitor penalty collected as per MERC case No.2 dated 14/7/2005. In respect of other claim i.e. refund SD/ASD, it is not insisted and withdrawn. Even it is made clear that penalty charged is already refunded and it is not being claimed. Accordingly claim is made limited to excess fixed charges levied in view of tariff order of MERC passed in case No.2/2003 dated 14/7/2015.

During course of hearing, on behalf of Licencee arguments were advanced about bar of limitation in the light of Regulation 6.6, 6.7 and 6.9 of MERC (CGRF & EO Regulations). Further reference is made to the provisions of Limitation Act and its scheduled. Hence we find this aspect of limitation needs to be addressed first.

It is a fact that present claim covers period from December 2003 to September 2006 and consumer made grievance to this Forum on 24/12/2014 and prior to it approached to Deputy Executive Engineer of Licencee i.e. Vasai Sub- Division on 15/5/2014. Even letter is addressed by consumer to Addl. Executive Engineer on 21/10/2014, prior to approaching this Forum. Accordingly, matter came to us not directly but after approaching Licencee. Licencee ought to have dealt it or sent it to IGRC or could have directed consumer to IGRC which is not done. Hence, consumer approaching Licencee is to be treated as approaching to IGRC.

6] Though about limitation, on behalf of Licencee reference is made to the clauses of MERC, (CGRF & EO) Regulation i.e. 6.6. 6.7 and 6.9. Consumer's representative submitted that said aspect is already decided by Hon'ble Ombudsman in Representation No. 65 of 2006. Precisely he referred to Para No.23 of the order, wherein Hon'ble Ombudsman dealt that aspect. Said paragraph No. 23 reads as under:

“Let us look at the issue from another angle. What would have been the fate of the refund which the Appellant is lawfully entitled, had he not approached the Cell or the Forum at all? This has to be answered in affirmative in view of the provisions of the tariff order and the Commission's order. Nothing can disentitle the consumer of his claim for refund with the interest, including the Appellant's action of approaching the Cell or the Forum for redress. **It would be not only unfair but also ridiculous**, as all other consumers who do not approach the Forum for redress, are still entitled for refund. Moreover, the action of the Respondent in not refunding the excess amount may amount to non compliance of directions of the Appropriate Commission under section 142 of the Electricity Act, 2003 and with the consequences stipulated therein. Further, application of Regulation 6.6 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, holding the cause of occurrence of grievance as 1st December 2003, would adversely affect implementation of the tariff order as well as the Commission's order, apart from the fact that such an interpretation would neither be logical nor in the interest of the consumer. To sum up, the Appellant is entitled to get refund of excess amounts recovered with interest with effect from 1st December 2003. The Forum's order to this extent is therefore liable to be and is hereby modified.”

Accordingly, we find the present aspect pertaining to tariff order of MERC 2/2003 towards refund of excess fixed charges is dealt, hence, there is no any force in the objection of limitation.

7] Though, reference is made to rely on the provision of Limitation Act, we find said provisions are not applicable to this matter. Said Act applicable to suits and applications to be dealt in Court.

In the Regulations, there is provision of bringing matters before the Consumer Forum within two years from the date of cause of action. In addition to what is dealt by Hon'ble Ombudsman as noted above, we are clear that if consumer has approached the Officers of Licencee for relief, such Officers if not able to decide the matter, direct the consumer to IGRC and said aspect is treated, as if consumer has approached IGRC. Accordingly we find there is no time limit prescribed for approaching Licencee/ IGRC and hence, if, any matter is brought to the Forum after approaching Licencee/IGRC, then it cannot be refused on the ground of bar of limitation, considering the period of demand. We are required to consider the non action of Licencee, as cause of action when consumer approached on 15/5/2014. This spirit is laid down by our High Court in the case of **M/s. Hindustan Petroleum V/s. Mah. State Electricity Distribution Co. Ltd. in Writ Petition No.9455/2011 decided on 19/1/2012.** Accordingly, we find Limitation or provision of Limitation Act, as quoted by the Licencee are not applicable. We cannot restrain ourselves from mentioning that inspite of order of Hon'ble Ombudsman referred above, though, it is within the knowledge of Licencee, this peculiar unnecessary stand is taken. Hence, we find no force in the aspect of challenging claim on the ground of limitation.

Refund of excess fixed charges recovered.

8] Main claim of consumer is on the basis of order of MERC passed in case No.2 /2003 date 14/7/2005. In the said order, at length it is laid down by MERC, as to how the aspect pertaining to calculating the charges, on the basis of connected load dispensed with. Precisely those observations are on page No. 8 of order wherein it is mentioned that concept of connected load is abolished and concept is developed, on the basis of sanctioned load only. On

this position, direction given vide Para 3 (a)to (f) . Clause (f) is of utmost importance, it reads as under:-

---“MSEB shall refund any amount collected on account of invocation of connected load / power factor penalty, not in line with this dispensation to the concerned consumer along with interest at the rate of applied by MSEB to their consumers from the date of collection till to the date of refund but not later than three months from this order.”

It is a fact that Licencee ought to have complied the refund, if any arising, on the basis of above order within three months. Consumer's representative contended that it is not complied till this date. Towards complying the tariff order, there is no bar of limitation as laid down by Hon'ble Ombudsman in Representation No.65 or 2006 dated 2/11/2006. Accordingly, it is clear that as per the said order of MERC i.e. 2 of 2003, dated 14/7/2005, if any excess fixed charges are levied those are required to be refunded. Rightly, consumer has pointed out that even this Forum has allowed the said refund in Grievance No. 922 M/s. Agrawal Fasteners V/s. MSEDCL decided on 13/5/2014 and 921 M/s. Andier Fasteners V/s/ MSEDCL, decided on 13/5/2014 and we noted that even those orders are already complied by Licencee.

9] We noted that consumer given chart showing the quantum of refund towards excess fixed charges and interest thereon. Said calculation come to Rs.3,47,243/- which includes interest thereon. However the net amount of refund towards excess fixed charges is of Rs.1,32,166/-. As against it, Licencee submitted the figures of excess fixed charges recovered, it comes to Rs.95,040/-

10] CR submitted fresh calculation sheet on 14/5/2015 and worked the net refund sought towards excess fixed charges is of Rs.1,37,606/-. Hence difference in the claim of consumer and figures of Licencee comes to Rs.1,37,606 –Rs. 95040= Rs.42,566/-. About this quantum, we tried to find out the position. It is pointed out by the Officers of Licencee and even by CR that in the CPL figures are shown towards arrears and debited, for the month of March 2004 (Rs.15000/-), September 2004 (Rs.10,000/-) and January 2005 (Rs.14,686/-) The total of these three months comes to Rs.39,686/- . These figures though reflected in CPL , it is not clearly brought on record by either side that it pertains to excess fixed charges recovered,. Hence no clue is available for this Forum to treat it as excess fixed charges. Hence said quantum is to be deducted along with interest figures thereon. Further, it is seen, that consumer has calculated the said arrears of excess fixed charges including for the month of December 2003, but Licencee has not considered it. CR submitted that he is abandoning the said claim of December 2003 and hence thereby that quantum of Rs.2880/- for the said month is to be deducted along with interest. So if, these two aspects are considered, then the above three items are debited, figure tallies with the calculation of Licencee. Hence towards excess fixed charges recovered, an amount of Rs.95,040/- is to be awarded and consumer has calculated interest on the said sum @ 12% for three months, 15% for further three months and 18% for the rest of the period and it is up to April 2015 and said figure from the said chart submitted on 14/5/2015 as per order of MERC. We confirmed the rate of interest which MERC allowed to charge on the consumers towards recovery, as shown in the tariff order of MERC in case No.19/2012 dated 16/8/2012. Accordingly, the calculation of interest worked out by consumer is to be accepted just deducting the amount for January 2005 i.e. Rs.14,686/- September 2004 (Rs.10,000/-), March 2003 (Rs.15,000/-) and

December 2003 (Rs.2880/-). Consequently, interest shown against these figures. Accordingly, grievance is to be allowed.

11] Accordingly, we find that in this matter excess fixed charges are recovered and those are to be refunded with interest as per MERC order.

12] This matter could not be decided in time as details were incomplete from Licencee's side which were called and Licencee submitted details on 11/5/2015, then those were confronted to consumer and then this matter is being decided.

Hence the order.

ORDER

Grievance of consumer is hereby allowed.

Licencee is directed to refund excess fixed charges quantified to the tune of Rs.95,040/- along with interest calculated and quantified for Rs.1,67,508/- up to April 2015. Said amount be refunded to the consumer if required by verifying the correctness of interest stated above, within 45 days from the date of this order and interest be given on Rs.95,040/- further from May 2015 till to the date of refund @ 18% per annum, considering the order of MERC in 2/2003 referred above. Licencee to submit the compliance report thereafter within 15 days.

Dated: 19/05/2015.

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.