



Consumer Grievance Redressal Forum, Kalyan Zone
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No. K/Other/05/1013 /2014-15

Date of Grievance :17/11/2014

Date of order : 18/05/2015

Total days : **182**

IN THE MATTER OF THE GRIEVANCE NO.K /Other/05/1013 2014-15 IN RESPECT OF M/s. RAJ ENGINEERING CO. PLOT NO.4-1 ADDITIONAL MIDC. MURBAD, DIST. THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF INTAEREST AND METERING COST.

M/s. Raj Engineering Co.,

Plot No.4-1 Additional,

MIDC, Tal. Murbad,

Dist-Thane

.... (Hereafter referred as Consumer)

(Consumer No.HT-018019051610)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

MSEDCL, Kalyan Circle-II

.... (Hereinafter referred as Licencee)

Appearance : For Consumer –Shri Rajendrasingh Saini –Director of Consumer Consumer's representatives.

For Licensee - Shri G.K.Panpatil– Executive Engineer & I/c.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] Consumer approached this Forum on 17/11/2014, contending that Licencee while giving sanction for HT connection on 20/2/2008, approved the estimate to the extent of Rs.3,37,830/- which is inclusive of metering equipments which in fact was to be provided by Licencee and two HT poles conductors to be provided towards DDF. Now it is claimed that in fact said line did not remain DDF but supply is extended by the Licencee through the said line to other three consumers including Jeevan Products etc., that too without consent of consumer and it did not remain DDF. Accordingly amounts spent for laying down the said infrastructure of two poles etc. is also now sought by way of refund by consumer.

3] Copy of grievance application along with it’s accompaniments , sent to the Nodal Officer vide this Officer Letter No. EE/CGRF/Kalyan 0411,dated 17/11/2014.

Licencee in response to the aforesaid letter, appeared and filed reply on 17/12/2014, denying any refund , contending that consumer has opted to purchase the metering equipment and that it was interested in having supply creating it’s own infrastructure. There was consent of consumer for extending

supply to other consumers through said line. Licencee added details towards WCR (work completion report). Those are produced on 7/1/2015. Further on 13/2/2015 Licencee placed on record, the additional contention towards bar of limitation, as amount is spent in the year 2008 to 2009, already more than two years elapsed. Hence claimed that no any dispute can be brought to this Forum after two years. In support of the bar of limitation, Licencee relied on the order of Hon'ble Ombudsman in Representation No. 120 of 2015. Thereafter on 23/2/2015 Licencee placed the facts on record, contending that there was communication by the Officers about consent given by consumer to extend the line to others. Thereafter there is communication, asking the Higher Authority to provide the help of Engineer who was working at that time, towards this aspect namely Shri Bharambe –Dy. Executive Engineer. Accordingly, during the hearing at the fag-end on 27/4/2015 Mr. Bharambe did appear before us and even from consumer's side letter is placed on record dated 27/4/2015 wherein categorically it is stated that no consent was given, for giving supply to others through it's infrastructure.

4] We heard both sides at length. On the basis of arguments advanced and material placed on record, three questions are arising for our consideration.

- 1] Whether claim of consumer is time barred,
- 2] Whether consumer is entitled to refund of metering equipments and Testing charges,
- 3] whether consumer is entitled to refund of amounts spent for Creating infrastructure bearing charges 2 HT poles and conductor in DDF.

1] Whether claim of consumer is time barred,

5] In this matter, Licencee came up with plea that as per the provision of MERC (CGRF & EO) Regulation 6.6, this Forum cannot entertain and try any grievance which is filed after two years of cause of action. It is contended that

sanction was given to the consumer on 20/2/2008, work was completed and letter to that effect issued on 7/9/2009, release order is issued on 13/11/2009 and hence grievance filed with IGRC on 9/6/2014 and before CGRF on 17/11/2014 barred by limitation.

6] Aforesaid aspect of limitation is further clarified and heavily relied by the Officers on the order of Ombudsman in Representation No.120 of 2015 i.e. NRC Ltd. V/s. MSEDCL decided on 6/2/2015. No doubt, on going through the order of Hon'ble Ombudsman said position is seen, but it is a fact subsequently said order is reviewed in review Representation No.2 of 2015 by Hon'ble Ombudsman vide order dated 20/4/2015. Hon'ble Ombudsman relying on the Judgment of our High Court i.e. **M/s. Hindustan Petroleum V/s. Mah. State Electricity Distribution Co. Ltd. in Writ Petition No.9455/2011 decided on 19/1/2012** laid down that cause of action for approaching CGRF is after order of IGRC. Accordingly, we find, said aspect of limitation is now settled. As noted above, consumer has approached IGRC on 9/6/2014 and order passed by IGRC on 31/10/2014. But consumer was not aware of that order, it challenged the action of Licencee, approaching this Forum on 17/11/2014. Under such circumstances, we find, there is no force in the contention that present grievance is barred by limitation.

2] Whether consumer is entitled to refund of metering equipments and Testing charges,

7] It is a fact that new connection was sought by consumer. It was HT supply that too from 22kv line. Accordingly, it's request was considered by Licencee and on 20/2/2008, sanction was accorded. While according sanction, it is mentioned that consumer was to procure items of metering equipment. It was to bear those charges at it's own. On the total estimated cost shown in the estimate referred in the sanction order, consumer was to pay supervision charges Rs.4,335/- to Licencee. In other words, to the extent metering equipments, it is seen that consumer was asked to spend for it, and Licencee

estimated charges of it and on the said estimated cost consumer was asked to pay supervision charges at the rate of 1.3% to the Licencee. Actually as per the sanction order consumer acted, provided metering equipment and paid to the Licencee supervision charges Rs.4,335.43 Ps.

8] Consumer in this matter came with a peculiar contention and in his grievance he claimed as under:

----‘We were not asked for the options but we were forced to purchase the cubical. Neither we have opted to purchase the cubical ---‘

Accordingly consumer came up with a contention that without seeking option sanction order was issued, asking the consumer to provide metering equipment.

Consumer basically contended that ‘Meter’ more particularly for HT connection, it includes HT cubical with CT and metering instrument, these are one unit and it is in tune with the definition of as ‘Meter’. It is claimed that said ‘Meter’ is in fact required to be provided by Licencee and that too without charging any amount. It is submitted that subsequently if there is any case of meter lost or burnt, then consumer cannot seek ‘Meter’ free of cost from Licencee but he is to purchase it, may be from the Licencee and to pay as per charges prescribed by the MERC vide order in case No.70/2005. Cost prescribed in the said order in Annexure-III is of Rs.5,227/-towards H.T.TOD meter and for H.T. Metering Cubical including CT & PT of 22 kv it is of Rs.1,08,731/- and as modified from time to time. Even consumer may purchase it from other sources. **In other words, it is contended that for new connection ‘Meter’ is to be provided by Licencee and it cannot charge any amounts towards it.**

On behalf of Licencee, Officers claimed that sanction order is issued on 20/2/2008, supply was also released vide letter dated 13/11/2009, consumer after the connection of supply, now belatedly approached seeking refund. At the time of complying sanction order, consumer has not objected. It

had agreed and opted for it prior to sanction order. Hence it cannot avoid the liability and there cannot be refund.

In this regard, consumer contended that no any such option was sought and given. Accordingly, it is seen that Licencee is coming with a case of oral consent and consumer is denying it. Sanction order is based on the wrong notion of DDF, hence the clause of option itself is not valid.

This aspect of optional consent is dealt by the Hon'ble Ombudsman in Representation Nol. 46/2008 which is being dealt in the further discussion. At this stage, we find, mere alleging consent, in the light of consumer's denial, it has no merit.

In this regard, provision contained in section 47 and 55 of Electricity Act are material, on this point. Considering those two sections, MERC Supply Code 2005 is brought in to force and it's clause No.14 deals with 'Meters' 'supply & Cost of meter' 'Lost/Burnt' meters and total procedure is laid down, how 'Meter' is to be secured and installed. In Clause 14.2.4, there is provision which speaks about providing meter. It reads as under:

'14.2.4: Except in the case of burnt meter or a lost meter, Distribution Licencee shall not be authorized to recover price of meter more than once during the continuous of supply to the consumer'.

In other words, it is clear that **during subsisting supply only once price of meter can be recovered**. This aspect of providing meter is further specifically dealt by the Hon'ble MERC while deciding case No.70/2005 dated 8/9/2006. Hon'ble MERC taken up the matter for decision in the light of letters of Licencee dated 2/4/2005 and 15/6/2005. In the said order in II Section under heading of item 'Cost of meter and meter box' Clause 5.4 is ruling given by Commission it reads as under:

'5.4 :The commission directs MSEDCL not to recover any cost towards meter and meter box except where the consumer opts to purchase the meter from MSEDCL and in case of lost and burnt meter (Regulation 14.1 and 14.2 of

Supply Code). The charges applicable in case the consumer elects to purchase the meter from MSEDCL & in case of lost and burnt meter are indicated in Annexure –3’.

In Annexure –3 referred above of the said order, details are stated and charges for HT metering cubical including CT & PT for 22 kv line ,shown as Rs. 1, 08,731/-.’

In the said case proposal given by MSEDCL to MERC about such cost, is dealt. **As per this order of MERC, there is a change in respect of charging meter cost. Accordingly whenever there is any new connection sought, then meter cost is to be borne by Licencee,** it has to provide from it’s own stock. Accordingly, whenever any new supply is sought then as per this order of Hon’ble MERC, meter is to be provided by Licencee. Situation arises at times that Licencee is not having stock of meter and cubical and hence consumer may procure it. Question then comes up whether Licencee can seek consent of consumer to procure it and then to reimburse. It follows that if it is not able to provide, it is to ensure that cost of meter is provided to the consumer.

On the point of reimbursement of such metering cost we have gone through the orders of MERC passed on 17/5/2007 in case No. 82/2006, review order of it dated 3/3/2008 in case No. 74/2007, MERC case No.93/2008, 109/2010, 79/2012 respectively decided on 1/9/2010, 30/3/2011, and 7/8/2013. We have gone through the order of Hon’ble Ombudsman in Representations No. 152/2010 and 74/2010, respectively decided on 30/3/2011, 23/7/2010. In these matters, there is clear direction of the Hon’ble MERC and Ombudsman for refund of metering cost recovered, after the order passed by MERC in case No.70/2005 and not to recover amount towards metering cost for new connection sought. Even there is a circular of Licencee dated 3/9/2007 bearing No.34307 wherein specifically following direction is given by the Chief Engineer (Distribution).

'It is once again directed not to recover the meter cost on any pretext.'

The spirit of this circular followed in subsequent directions issued by Licencee, clearly establishes that in no case meter cost, can be thrust on consumer when new connection is sought.

Though as noted above, Hon'ble MERC and Hon'ble Ombudsman given direction considering the legal position, we noticed apt observations are there in the orders of Hon'ble Ombudsman in Representation No.46/2008 in Paragraphs No.24,25 and 29 and in MERC Case No. 148/2011 in the last part of para No.7. These observations we brought to the notice of both sides during the hearing. For ready reference, those paragraphs are reproduced as under.

Representation No. 46/2008 decided on 27/8/2008. Para No.

'24': It is the Respondent's order dated 7/10/2006 that led to Appellant's letter dated 15/10/2006 informing the Respondent that it would be purchasing the cubical and hence the charges are not payable. The Forum while examining the issue has accepted the Respondent's contention that the appellant had indeed consented to purchase the cubical and therefore the cost of such purchase cannot be refunded to the appellant. On the other hand, the appellant contends that Respondent never sought it's consent to purchase the cubical and never offered to provide it free of cost as required under the 'schedule of charges'. Instead Respondent vide it's sanction order dated 7/10/2006 directed the Appellant to procure the metering cubical which is contrary to the 'schedule charges' approved by Commission. Had the Respondent advised the Appellant that as per the schedule charges, metering cubical would be provided by the Respondent at it's cost, there was no question of voluntarily agreeing to buy the cubical from market. The Respondent was duty bound to correctly advise the Appellant in consonance with provisions of Law and more particularly according to the schedule of charges approved by the Commission. Therefore, Appellant's letter dated 15th October, 2006 which came as a sequel of

Respondent's direction in the load sanction order, cannot be treated as his consent to buy the cubical from the market.

'25': Close perusal of Annexure-3 and more specifically the quote in the bracket above serial No.6, leaves no doubt in concluding that cost of metering cabinet as well as cost of HT metering cubical with C.T. & P.T. (mentioned at Sr.No.7) apply only in case where consumer opts to purchase the same from Maharashtra State Electricity Distribution Co. Ltd. In all other cases, the Maharashtra state Electricity Distribution Co. Ltd. is duty bound to provide the cubical with C.T.T & P.T. unit at it's own cost. No other conclusion emerges from other position. Respondent's officials argued about the lack of clear mention in Annexure -3, requiring the Distribution Licencee to provide metering cubical at it's own cost. Having understood clearly that the meter includes not only bare kWh / kVA meter or TOD meter but also include cubical including C.T. & P.T. unit, this position being undisputed under the Law (The Act and Regulations), it is hollow and in vain to argue that there is lack of clarity in the Annexure-3 of the 'schedule of charges' in this behalf. The cost approved and provided for the metering cubical applied only in case the consumer opts to purchase the cubical from MSEDCL alone and in no other case. Respondent's argument does not have any merit whatsoever and deserves to be brushed aside out right. ----

'29': Nevertheless, whatever may be the cost approved by the commission for HT metering cubical, the same does not apply to the Appellant in the present case, as he has not volunteered for consented to buy the cubical. Records show that it was at the instance of Respondent, more specifically the direction issued under the load sanction order of 7th October 2006, that the Appellant wrote a letter on 15th October, 2006 agreeing to buy the cubical. It had also pointed out to the Respondent that charges communicated by the Respondent in its load sanction order dated 7th October 2006 were not confirming with the 'schedule of charges' approved by the commission. Thus it cannot be treated as consent from the Appellant. In effect, by Load Sanction Order of 7th October 2006, the Respondent sought

to enforce something which was legally invalid in the sense that it was made in a manner which was not conforming with

the provision prescribed by the statute ('schedule of charges.') *In the result, assuming but without holding that the appellant had consented to buy the cubical, obtaining such consent, not conformity with the law, would be impermissible to be enforced. Secondly, the Respondent was duty bound to communicate to the Appellant that it would provide the metering cubical with C.T. & P.T., at its own cost as provided in the schedule of charges approved by the commission, and to clearly advise the Appellant to decide whether he still wants to buy the same from MSEDCL or from open market. Had the Appellant then volunteered to buy it from MSEDCL, then Respondent was required to charge and recovered Rs.67,958/- towards costs of metering cubical including 11kV C.T. & P.T. Alternatively, had the Appellant opted to buy it from the market, then there is no question of any cost to be communicated since it would have been Appellant's option and price he pays in the market.----*
(Emphasis supplied)

MERC Case No.148/2011-decided on 5/1/2012, Last Part of Para 7 (b)----

*'Commercial circular No.43, dated 27/9/2006 specifically mentions that MSEDCL shall not recover any cost towards meter and meter box except where the consumer opts to purchase meter from MSEDCL or in case of lost and burnt meter. However, in some cases meter and cubical cost might have been recovered unintentionally during the intervening period. Circular No.34307 dated 3/9/2007 has specifically been circulated to refund the cost of meter in such case and it has been directed therein not to recover meter cost on any pretext. **However, in some cases stock of meters and meter cubicles is not readily available in the store and the consumer is in hurry to get the connection. In such cases, he/she is allowed to purchase meter/cubical from outside, the cost of which is refunded afterwards as per local arrangements.** -----'* *(Emphasis provided).*

Aforesaid observations of Hon'ble Ombudsman and MERC are totally applicable to present case on facts and on legal position.

Considering the above observations and order of Hon'ble MERC it is clear that for new connection sought, after the order of MERC in case No.70/2005 dated 8/9/2006, meter cost is to be borne by Licencee.

Accordingly, in respect of HT connection metering equipment in the case of new supply is to be provided by Licencee without seeking any price from consumer. Now it is contended in this matter that Licencee was bound to provide metering equipment but directed consumer to provide metering cubical which he provided and hence its price is to be refunded.

9] It is seen from the papers on record that in this matter, sanction order 20/2/2008. Even letter of estimate provided to the consumer and towards 22kv metering equipment charges are shown of Rs. 1,08,731/-. However, it is necessary to note that in the order of MERC 70/2005 dated 8/9/2006 price for said metering equipment is also quoted as Rs.1,08,731/-.

Admittedly, cubical is purchased by consumer. Licencee produced on record WCR and along with it copy of bill showing that for said equipment consumer paid Rs.1,54,467/- which is inclusive of excise duty, education cess and VAT but its actual price shown in the bill is of Rs.1,20,000/-. Now consumer is seeking refund of total amount of this bill.

One thing is clear that consumer has purchased it and paid for it, it is used, and though its estimation is given by Licencee for Rs.1,08,731/-, actual price paid by consumer is Rs.1,20,000/-. No doubt, those charges are prescribed for seeking that amount, in case consumer purchased meter from the Licencee. It is a fact that said estimate is given by Licencee to the consumer, asking him to spend it and to pay 1.3% supervision charges on it. As noted above, asking the consumer to purchase the metering cubical is not expected and it was the duty of Licencee to provide it at its cost. In the order of MERC, case No. 70/2005 dated 8/9/2006, towards cost of 'Meter', there is no mention for charging service charges. It demonstrates that meter cost and service charges on it are not to be borne by consumer when new connection is

sought. Hence any such direction to the consumer is to be read, as if metering equipment was not in stock of Licencee and consumer was asked to provide it. Consent is not in writing. No such consent or option is obtained by making it known to the consumer that it is required to be provided by Licencee at its own cost and if consumer is intending to have its own metering equipment it can exercise option and purchase its own. No any such exercise is undertaken by Licencee. We find as per the order of MERC, metering equipment is to be provided by Licencee and it is to make it clear to the consumer about such equipment being provided without any charges and to give option to the consumer to have its own if it is not intending to have the metering equipment being provided by the Licencee. But such process is not followed and Licencee is trying to draw inference that consumer has exercised the option. When as noted above, consumer stated that no option was asked, no option was given but it was forced to provide, speaks itself and hence it is not possible to accept the theory of inference agitated by Licencee contending that consumer has opted and hence not disputed till to the date of grievance. We find as per the order of MERC, things were required to be complied and if it is not complied, then in no way it can be agitated that option was there. Option should be express and that too making known to the parties that metering equipment is being provided by Licencee without any charges.

Under such circumstances its cost is to be reimbursed in view of the orders of Hon'ble Ombudsman and MERC, reproduced above in Representation No.46/2008 and case No. 148/2011 respectively.

We find though consumer spent Rs.1,54,487/- inclusive of other taxes etc. but price of said metering cubical is Rs.1,20,000/-, but MERC prescribed the said cost as Rs.1,08,731/-. Hence consumer is to be provided cost only to the extent of Rs.1,08,731/-, though he paid actual price of Rs.1,20,000/-in the total bill is of Rs.1,54,487/-. In addition, at the rate of 1.3% service charges on the estimated cost of Rs.1,08,731/- amount is recovered by the Licencee and it is also to be refunded proportionately.

Admittedly, consumer has paid to the Licencee Rs.2000/- towards meter testing fee and it was the responsibility of Licencee to provide the meter and to bear its testing fee and said amount of Rs.2000/- is also to be refunded. Consumer pleaded that an amount of Rs.15,600/- paid to Electric Inspector towards inspection charges, but we find amount of Rs.2000/- out of it, is towards testing of CT. As CT was to be provided by Licencee and this testing fee is to be refunded. Though consumer only made contention of amount paid to the Electric Inspector but no any receipt is produced. Even quantum of such payment is not denied by the Licencee. It is clear that unless there is a certificate by Electric Inspector, Licencee will not release the supply. But in this matter supply was released. Even we had occasion to deal this aspect of refund in Jeevan Products , in Case No. 963 decided on 31/10/2014. Hence refund is to be granted as noted above.

3] **Whether consumer is entitled to refund of amounts spent for creating infrastructure bearing charges 2 HT poles and conductor in DDF**

10] This aspect contains two parts. First part pertains to work carried out by consumer as per the sanction order , wherein consumer was to provide infrastructure, putting up 2 HT poles and providing conductor etc. Said aspect is shown as DDF. Further it is a fact that consumer was alone utilizing it but subsequently, Licencee added consumers i.e. M/s. Jeevan Products and two others, on the same line. Consumer contended that in fact due to supply given to other consumers, said line did not remain as DDF. Consumer contended that without its consent supply extended to three others and this act of Licencee, without any intimation or permission of consumer is not proper and hence consumer is entitled to refund of amount spent for such infrastructure.

11] Consumer precisely in his grievance application on this aspect stated as under:

-----‘Also we were asked to erect 2 span HT line involving to HT pole and 0.36 KM conductor in DDF vide Estimate Sanction No. SK/KC/-II/Tech/DDF/207/208/57 dated 20/02/2008.

----- 5, We were told that this line will remain dedicated for our company. But to our surprise and against our objections our line is extended and further supply to M/s. Jeevan Products and 2 more, connections is given from our line.

----- 6, This is clear violation of MERC order and said line no longer remained DDF. We are facing number of interruptions to our feeder. We are duped and given supply on common feeder having more than 15 consumers.’--

Licencee in its reply dated 23/2/2015 basically contended that said extension is given with the consent of the consumer. This statement is made on the basis of letter of Executive Engineer, dated 21/2/2015 which is enclosed with the aforesaid reply. However, when this Forum tried to seek the direct document or report of concerned Engineer to whom consumer gave or expressed the consent. No any such written explanation of such Engineer is placed before us. But Superintending Engineer K.C.II addressed letter to Superintending KC-I on 11/3/2015 and on 10/4/2015 seeking attendance of Dy. Executive Engineer Mr. Sunil Bharambe, who was working with Murbad Sub Divn. under which the present connection of consumer is given. Accordingly on 27/4/2015, Mr. Bharambe attended in the Forum. Consumer’s Director too attended and placed on record his written version on that day, making it clear that he had not given any consent for allowing extension to others from it’s infrastructure. Mr. Sunil Bharambe clarified that in fact no any consent was obtained or given by the consumer and that extension is given to other consumers through the said line. Shri Bharambe made it clear that even the said line or infrastructure created is not falling under the DDF.

12] The aforesaid details are clearly speaking that infrastructure which consumer was required to prepare was not fulfilling any criteria of DDF, in the light of aforesaid order of MERC. The estimate given, is, also not

as required. Though for the sake of argument, if, it is considered as DDF, from the said line, supply is extended to other consumers without taking consent or permission of the present consumer, thereby this so called status of DDF, did not continue. Under such circumstances, claim of consumer for refund of amount spent for creating infrastructure is of utmost importance.

The concept of DDF after Electricity Act 2003 came in force is dealt by Hon'ble MERC in Case No.56 of 2007 decided on 16/2/2008 . Hon'ble MERC in the said order in Para No. 7,8,9,11 and 12 clarified the position about DDF and considering the said observations, we find the present sanction order dated 20/2/2008 pertaining to consumer, as DDF will not stand to the said test. It is necessary to mention that order of MERC is of 16/2/2008 and sanction order involved in this matter is of 20/2/2008 i.e. after the order of MERC. It is also a fact that there is no any further modification, clarification or amendment to the sanction order in the light of aforesaid order of MERC. Hence legally, said sanction order or it's consent cannot be read against consumer which are contrary to the orders of MERC. In result, the so called clause of option referred also goes away.

Assuming for the sake of arguments, that it falls under DDF, but as per the notion and rules of DDF, at the end, consumer may while seeking disconnection or discontinuation of DDF, it can take out the said infrastructure or Licencee may take over the said infrastructure reimbursing to the consumer the cost as per rules, considering depreciation etc. However, in this case, it is not an action of consumer seeking discontinuation of supply or abandoning of DDF facility. It is a Licencee who acted on it's own without taking consent of consumer and extended supply to three others, which brought to an end the consumer's status, towards said infrastructure as DDF. This overtact given rise to the present claim. We find unilaterally Licencee assumed the ownership to the said infrastructure and hence we find it is inevitable that consumer is to be provided refund of amount spent for said infrastructure which covers the total expenditure of consumer towards said infrastructure.

13] The estimate given and sanction accorded on 20/2/2008 is covering three aspects , 1] metering equipment, including meter and cubical, 2] service connection items and expenditure, 3] Amount spent towards providing infrastructure. Hence, the said estimate is to be subdivided in three parts and then refund is to be quantified. It is easy to segregate amount spent for meter and metering cubical, amount paid for testing of it. It is somehow a difficult job to work out the items covering service connection. As per the order of MERC 70/2005 while laying down service connection charges, option is available either Licencee to provide it and recover the charges as laid down by MERC or consumer to spend for it and pay normative charges @ 1.3%. Accordingly, we find the amount towards service connection spent by consumer is not avoidable. We may treat it that consumer has spent it hence it is not required to pay any amount to the Licencee towards SCC and payment at the rate of 1.3 % is to be considered towards normative charges. Amounts spent towards providing infrastructure including putting up two poles, conductors is a question towards putting up HT line at the consumer's cost.

14] We tried to find out which are the items from estimates sanctioned on 20/2/2008 towards the metering equipment, service connection and HT line. It is a fact that this estimate as stated above is sanctioned on 20/2/2008. However, Hon'ble MERC passed order in case No. 70 of 2005 on 1/9/2006, wherein directions given how to charge consumer towards service line and towards service connection. From the said order, it is clear that for HT supply up to 500 KVA scheduled rates for service connection charges for underground connection is approved MERC for Rs.1,75,000/-. It is necessary to mention that in case Licencee undertakes the said work , then this can be the maximum amount, which Licencee can recover from consumer. Conversely, if consumer undertakes to spend for it, then he is not required to pay Rs.1,75,000/-, but he is required to pay normative charges on the said sum @ 1.30%. Accordingly, towards service connection charges, burden is of Rs.1,75,000/-. The estimate provided in this matter is not in tune with the

order of Hon'ble MERC i.e. 70/2005. It is not clearly demonstrating what were the items included and what was the bifurcation of Rs.1,75,000/- which was the cost of service connection. In other words, estimate provided in this matter is not in tune with the order of MERC, it is on presumption of DDF analogy and it is clear, it is not the case of DDF.

We tried to ascertain from the officers of Licencee the items of service connection charges. They made reference to tariff order No.19/2012 passed on 16/8/2012 by MERC. In the said order on Page No.238 to 240, details are provided pointing out as many as 26 items covered and shown the quantity required, rate for the items etc. Though, reference is made to this material, it is not made clear, what was the position prior to these details shown by MERC in Tariff order i.e. after the order of 70/2005. At the most, the portion from tariff order 19/2012 can be considered as a reference but we noted referring to said details, comparing to the estimate sanction on 20/2/2008. But we noted that item such as conductors, metering cubical are not coming under the requirements of service connection. Even we noted that for seven items quantum is comparatively more than what is provided in the details approved by Hon'ble MERC. Accordingly, the estimate given, is, not speaking about well accepted norms of estimate. In other words, it is under the wrong belief of estimate issued under DDF and precisely this is the main cause for quarrel. It contains all mixed items.

Officers of Licencee contended that item no.2 and 18 from estimate are pertaining to meter equipment and rest of the items are pertaining to service connection. It is contended that in the said estimate none of the items are towards HT line.

We minutely scanned the said estimate and we noted that towards metering equipment item nos. 2 and 18 are proper and for HT line item No.1, 3 to 12, 14 to 16 are required and towards service connection item nos. 13,17,19, 20 and 21 are concerned.

Though, we on guesswork tried to arrive at the conclusion, but question come up how to work out the amount spent for HT line by the consumer. We noted though estimate is given and WCR is prepared. WCR is not speaking about all expenses incurred actually. But conveniently for 2-3 items, amount spent less then estimate is stated. However, total actual expenses done not shown. We find it not possible to work out from the said estimate precisely , how much is for service connection. However, we find taking into consideration, the order of MERC i.e. 70/2005, dated 8/9/2006 towards service connection charges, MERC approved Rs.1,75,000/- in case HT supply is up to 500 KVA. Present matter is falling under this category. Hence said quantum approved vide MERC Case No. 70/2005, decided on 8/4/2006 is of a prior to date of sanction given i.e. 20/2/2008. Hence, in any case, expenses of Rs.1,75,000/- towards service connection is unavoidable and as said work is undertaken by consumer, 1.3% normative charges to be paid is also relevant and it is to be borne by consumer.

Considering the consumer's liability to bear service connection charges of Rs.1,75,000/-, we find it appropriate to consider it's deductions from estimate sanctioned by Licencee on 20/2/2008. We even find, prior to said deduction in the said estimate, expenses towards metering cubical are quantified which are to the extent of Rs.1,08,731/- which is not the item coming under service connection charges, hence it needs to be deducted first. Said calculations comes as under:-

Total of estimate	Rs.3,37,830/-
Amounts towards metering cubical	(-) Rs.1,08,731/-

	= Rs.2,29,099/-
Total amount permissible towards service connection	(-) Rs.175,000/-

Total	= Rs. 54,099/-
	=====

Said Rs.54,099/- is excess figure i.e. more than the service charges. In addition to this excess expenditure, consumer was required to bear

expenditure towards erecting HT line involving 2 HT poles. Expenditure of said 2 HT poles is not separately made known in any papers by Licencee. In estimates at Sr. No.1, 2 poles are shown but those are covered in the service connection. Consumer specifically came up with the contention that he was required to erect HT line involving 2 HT poles. Such 2 HT poles put up by consumer not disputed. Such HT line erected as DDF is not in dispute. It's expenditure is not specifically denied and hence, we can legitimately presume that said two HT poles would have involved the expenditure of Rs.32,290/- which is equal to the estimate for 2 poles required for service connection. In addition we find in the estimate an amount of Rs.19,350/- is shown towards purchasing the conductor and conductor is not the part of service connection. But this quantum is already covered in the excess amount spent i.e. Rs.54,099/- . It is to be just deducted from said sum and to be shown as payable to the consumer independently. Hence excess payable will be Rs.34,749/-. Accordingly, we find consumer is to be provided with the cost of 2 HT poles which we worked out to the tune of Rs.33,290/-. Accordingly, this is also to be paid to the consumer. In other words, amount payable to the consumer are as under.

Excess amount as worked out above,	Rs. 34,749/-
Expenses done towards conductor	Rs. 19,350/-
Expenses done towards 2 HT poles	Rs. 33,290/-

Total	Rs. 87,389/-

deducting 30% depreciation on the total	[-]	Rs. 26,214/-

Total		Rs. 61,175/-
		=====

Licencee allowed HT line of consumer to be extended to others, without consumer's consent and to his prejudice whereby he suffered interruption. Accordingly, we are able to perceive that consumer at least from

2009 to 2012 utilized the said HT line exclusively, but thereafter said status is denied. For said utilization for three years, we found it proper to consider per year 10% depreciation which taken in the above calculation. This aspect, we are, considering equitably. Hence, consumer is entitled to above amount towards HT line infrastructure expenses.

In the light of aforesaid discussion, consumer is entitled to refund of HT line expenses and in addition as concluded above, consumer is entitled to refund of Rs.1,08,731/- towards refund of metering equipment. Even an amount of Rs.2,000/- towards amount received by Licencee towards meter testing and an amount of Rs.2000/- out of Rs.15,600/- paid to Electric Inspector towards testing of CT/PT.

Though aforesaid amount towards HT line connection is being refunded along with charges of metering equipment already Licencee charged 1.3% normative charges on it and proportionate amount to that extent recovered as normative charges is also to be refunded but in the excess amount shown above said amount of normative charges to be refunded is included. Hence, there is no necessity of again specifying refund of proportionate normative charges

Hence, grievance is to be allowed.

This matter could not be decided within prescribed time, as both sides were to verify the legal position in the light of MERC orders and they concluded their arguments on 27/4/2015.

Hence the order.

I agree

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

(Sadashiv S. Deshmukh)
Chairperson, CGRF Kalyan

Note by Member Secretary (Chandrashekhar U. Patil) :

I have gone through the above reasoning. I respectfully agree with it except for the contents regarding refund of cost of metering cubical for the reason that

a] In the sanction letter SE/O & M /KC-II/T/00748 dated 26/2/2008, it is mentioned at Sr. No.8 that “As the party has been opted to procure the metering cubical and HT TOD meter, it is therefore” This clearly shows that consumer at that time, i.e. during 2008 has chosen his right through his licensed Electrical Contractor and opted for his own meter. Necessary endorsement to that effect was also mentioned accordingly in that sanction letter for the Executive Engineer, Testing Divn., Kalyan to test the metering cubical and HTTOD meter opted by consumer.

b] No doubt, consumer has also entered in to the agreement while availing connection abiding by terms and conditions mentioned in the above sanction order.

c] The case No. 70/2005 of Hon’ble MERC clarifies the rule under Clause 5.4 with the ruling as‘5.4 :*The commission directs MSEDCL not to recover any cost towards meter and meter box except where the consumer opts to purchase the meter from MSEDCL and in case*’.

In this case, the consumer has opted for his own meter and due consideration should be given to this aspect.

d] MSEDCL’s Commercial Circular No.43 dated 27/9/2006 enlightens the issue as -. ‘However, in some cases stock of meters and meter cubicles is not readily available in the store and the consumer is in hurry to get the connection. In such cases, he/she is allowed to purchase meter/cubical from outside, the cost of which is refunded afterwards as per local arrangements. –

However, opting meter by consumer during the period of February 2008, it is very difficult now to predict after seven years whether he was in hurry to get the connection and hence opted for his own meter at that Time. All his movements at that time during 2008 were governed by his Licensed Electrical Contractor.

Hence on all above scenario, it will not be justified to allow the consumer’s very first pray, i.e. after 07 years for applying refund of metering cubical and HT TOD meter.

Hence this part of consumer's application regarding refund of cost of metering cubical should not be allowed and should be rejected.

(Chandrashekhar U. Patil)
Member Secretary
CGRF Kalyan

ORDER

a) of receipt of this Order.

Date : 19/05/2015

ORDER BY MAJORITY

Consumer's grievance is hereby allowed.

Licencee is directed to refund to the consumer an amount of Rs.1,08,731/- towards metering equipment, Rs.61,175/- towards erecting HT line in DDF. Licencee to refund an amount of Rs.2000/- towards amount recovered from consumer for meter testing and Rs.2000/- spent by consumer paying it to Electric Inspector for testing of CT/PT. Aforesaid amounts be refunded to the consumer with interest as per Bank rate from the date of demand i.e. from 09/6/2014.

Aforesaid amount is adjusted in the ensuing bills of consumer. Its compliance be reported within 45 days from the date of order.

