



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph: – 2210707 & 2328283 Ext: - 122

IN THE MATTER OF GRIEVANCE NO. K/E/182/206 OF 2009-2010 OF
M/S. SUPERFINE COLOURS, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Superfine Colours P. Ltd.
Gala No. 4, Sheetal
Industrial Complex No. 1,
Waliv Road, Gokhiware,
Vasai Road (East), Dist : Thane



Here-in -after
referred
as Consumer

Versus

Maharashtra State Electricity Dist.
Company Limited through its
Dy. Executive Engineer
Vasai (East) Sub-Division , Vasai



(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under regulation of "Maharashtra Electricity Regulatory Commission (Consumer

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

- 2). The consumer is a L.T. – V above 20 KW consumer of the licensee connected to their 415-volt network. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on dated 20/02/2009 for Excessive Energy Bill. The details are as follows:

Name of the consumer :- M/s. Superfine Colour

Address: - As above

Consumer No : - 001590486716

Reason of dispute: Excessive Energy Bill.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/146 dated 20/02/09 to Nodal Officer of licensee. The licensee filed reply vide letter No. DYEE/VS(E)/B/2524, dated 31/03/2009 received on 31/03/09 at the time of hearing.
- 4). The Members of the Forum heard both the parties on 31/03/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, consumer's representative Shri M.K.Rathod, Jr.Engineer, Shri S.B. .Hatkar, Asstt.Acctt. representatives of the licensee attended hearing.
- 5) The consumer approached to IGRC on 16/12/2008 but the licensee did not inform the consumer about any solution to his grievances & therefore the consumer registered his grievance with this forum on 20/02/2009.

6). As to grievance numbers (a) to (e) : Illegal MD based tariff.:

The Consumer's Representative (CR) submits that the licensee has charged MD based tariff to the consumer without 100% metering and its such action is illegal. He relies on zerox copy of operative order dtd.20.6.08 of MERC in case No.72 of 2007, MSEDCL circular No.81 dt.7.7.08 in support of his such contention. He further submit that as per order dated 12.9.08 of MERC in case 44 of 2008, the licensee can not impose MD based fixed charges, PF penalty and demand penalty/incentive without MD based tariff being made applicable to the concerned consumer but in the instant case, the licensee has applied the above charges or penalties without MD based tariff being applicable to it and hence such action of licensee is illegal. He further submit that thus the licensee has violated the Act, rules and orders of MERC and hence is liable for action under section 142 and 146 of the Electricity Act 2003. He further submits that therefore the licensee be directed to refund the amounts of such illegally recovered charges together with interest at the rate which it applies to the defaulting consumer.

-As against above contention, the Licensee's Representative (LR) submits that the licensee has applied MD based tariff from Aug.08 on completion of 100% TOD metering and as per directives given in Clause 10.5 of Com. Circular No.81 dt.7.7.08. He therefore submits that whatever charges based on MD based tariff, are recovered by the licensee from the consumer are correct and legal and therefore the question of refunding the same to the consumer does not arise.

7) As to grievance (f) :The C.R. further submits that the licensee has recovered M.D. fixed charges of Rs. 6,200/-, P.F. penalty of Rs. 10,399=28

& Demand Penalty of Rs. 2,850/- during the period from July 08 to Nov. 08 in excess & therefore, the licensee be directed to refund the same to the consumer. As against this the LR submitted that the bills issued in Aug. 08 & Nov. 08 are correct & therefore, the question of any refund does not arise.

- 8) As to grievance (g) : The CR further submits that the end user customer has terminated the production agreement with the consumer & therefore, the consumer has stopped using machines since 15/09/08. A letter to that effect is submitted by consumer to the licensee on 15/09/08 & accordingly the Jr. Engineer has made verification on 23/09/08. Zero consumption with normal parameters are shown during the said period but in the last month before consumer's grievance before Executive Engineer, the MD shows 61 KVA which is wrong. Therefore, the licensee should test the meter with accucheck & rectify the matter. In reply to this, the LR submitted that the meter will be accuchecked as per the request of consumer.
- 9) As to grievance (h) : The CR further submits that the licensee has recovered amount of Rs. 1,553=84 as bill adjustment during the billing period Aug. 07. The licensee should give details about such amount & if charging of the same is not justified, the licensee be directed to refund the same amount with interest at the rate which licensee applies to the defaulting consumer. The LR submits that the said amount shown as bill adjustment in the bill for the month of Sept. 07 is of TOSE at the rate of 4 NP per unit from Mar. 06 to Sept. 06.
- 10) As to grievance (i) & (j) : The CR further submits that the licensee so far collected Security Deposit (SD) of Rs. 19,500/- plus Rs. 13,650/- at the time of giving connection on 29/03/98, additional SD of Rs. 25,500/- subsequently. However, the bills upto May 08 were showing SD amount as

Zero. Therefore, the licensee be directed to calculate interest which according to the consumer comes to Rs. 19,462/- , give it's credit to the consumer, & refund the excess SD of Rs. 33,150/-. The LR submits that the connection was given on 29/03/98 & the SD of Rs. 19,500/- & Rs. 13,650/- paid at the time of taking connection are not displayed in the bills. The interest will be paid as per rules. Considering the average bill, excess SD amount will be refunded on production of original receipts by the consumer.

- 11) As to grievance (k) : The CR further submits that the licensee has to refund the difference of MD based charges & HP based charges amounting to Rs. 11,584=13 of the period from Oct. 06 to Feb. 07 & therefore, the licensee be directed to refund the said amount. The LR submits that the licensee has refunded the said difference in Jan. 07 & May 07.
- 12) Grievance regarding Load Demand Penalty : The CR submits that the licensee has to refund excess load demand penalty as per MSEDCL's Circular No. 4039, dt. 05/02/09. Therefore, licensee be directed to refund such amount of Rs. 4,850/- charged during the period Aug. 08 to Jan. 09. The LR submitted that he would file reply to the rejoinder containing this grievance but the licensee did not file any such reply till this date.
- 13) Refund of alleged excess MD fixed charges of Rs. 5,400/- : The CR submits that the licensee has recovered excess MD fixed charges of Rs. 4,000/- instead of Rs. 2,200/- in the month of Sept. 08, Rs. 4,000/- instead of Rs. 2,200/- during the months Nov. 08 to Jan. 09. Therefore, the licensee be directed to refund the said excess amount. The LR submitted that he would file reply to the rejoinder containing this grievance but the licensee did not file any such reply till this date.

- 14) Refund of excess ASC recovered from Oct. 07 to May 08 : The CR submits that the ASC for the year 2005 as per CPL shows 7231 units per month but the licensee has taken it as 6829. Therefore, ASC on excess 2864 units, amounting to Rs. 3,859=04 together with interest be directed to be refunded by the licensee to the consumer.
- 15) The consumer mentioned his grievances in detail in it's letter dt. 15/12/08 submitted to the Executive Engineer, Vasai (E) & attach it's copy with it's grievance in prescribed proforma made to this Forum, & the licensee also gave reply to each of the said grievance mentioned in the letter dt. 15/12/08, one after another, in it's reply dt. 31/03/09, & the consumer also mentioned it's additional grievances in detail in it's rejoinder dt. 31/03/09, & therefore, such grievances mentioned in the above referred letter & rejoinder shall be considered one after another as under :
- 16) As to grievance numbers (a) to (f) : *Illegal MD based tariff.*
(i)(View of Mrs. V. V. Kelkar, Member) As per licensee's reply on the subject referring circular No.81, clause No.10.5, they stated that the "the MD based tariff is applied to consumer from Aug.08." Clause No.10.5 is as follows:
"MSEDCL is thus allowed to charge MD based tariff immediately on completion of 100% metering. All Zonal Chief Engineers to immediately inform the IT centre under their jurisdiction about such completion and may also send certificate immediately to that effect to Chief Engineer (Dist).
The clause clearly states that after completion of the 100% metering the Zonal Chief Engineers are required to immediately inform IT centres under their jurisdiction about such completion for the change in charges of MD based tariff.

The licensee did not submit any letter / reply regarding above subject till to-day. Under the above circumstances I come to the conclusion that as the licensee is not able to substantiate this statement of 100% metering completion of their area, I also have a meter replacement report submitted by the licensee in another similar case No.K/E/177/201 M/s. Maharashtra Pencil Factory, which indicates that the Electro Mechanical meter was replaced by static meter (Secure make) on 05/02/09. The date of replacement of meter is much later as compared to the period of grievance, in the present case. This confirms that the licensee has not installed the meter 100% (As per circular dated 5.2.09). Therefore the work is not yet completed and hence they can not charge MD tariff to the consumer from 05.07.08 to 05.08.08. The excess amount charged under this tariff from the consumer should be adjusted in the bills, with interest @ RBI Bank rate at rate prevailing at the date of decision of the forum.

(i) (a) As far as the grievance of consumer to the effect that the Licensee has recovered electric charges as per M. D. based tariff for the month of August 08 illegally is concerned Shri Shivdas, Member Secretary, differed from the above view taken by Sau. V. V. Kelkar, Member and therefore, the view taken and the reasons given by him for such view are separated recorded as under.

(i) (b) Para 47 of the Operative Order dt. 20/06/2008 of MERC in Case No. 72/2007, on the basis of which the licensee/MSEDCL issued Commercial Circular No. 81, dt. 07/07/08, reads as under
“47. In line with Commission’s ruling in the MYT order, since MSEDCL is yet to achieve 100% MD metering for LTV industrial consumers above 20 KW (around 97% completion has indicated by MSEDCL till date), the MD

tariffs for LTV industrial consumers will not be made effective. Till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs, though the revenue has been assessed based on MD based tariffs”.

It is clear from the above order that while passing the said order or giving the said directions, MERC relied on the report about completion of 97% given by MSEDCL/licensee, without insisting for proof about it. It is clear from Clause No. 10.5 in commercial circular No. 81, dt. 07/07/2008 issued by the MSEDCL/licensee, reproduced in above para 18 (i) that in view of the above referred order in para 47 of order dt. 20/06/2008 of MERC in case No. 72/2007, the MSEDCL/licensee issued directives to all Zonal Engineers to immediately inform IT centres under their jurisdiction about such completion and further directed that they may also send a certificate immediately to that effect to Chief Engineer (Dist). The MSEDCL/licensee through Dy. Executive Engineer, MSEDCL Vasai Road (E) S/Dn. vide say cum letter dt. 9/2/2009, claims that on completion of 100% TOD metering and as per the directives given in circular No. 81, clause No. 10.5, the MD based tariff is applied to the consumer from August 2008. Moreover, the licensee in it's circular No. PR-3/Tariff, dt. 05/02/2009 clearly stated that the MSEDCL has completed the 100% work of installation of TOD meters to LTV industries having load more than 20 KW. MSEDCL is a public institute and therefore, the same or it's officers have no personal interest to falsely say that 100% TOD metering was completed and therefore MD based tariff is applied to the concerned consumers i.e. LTV Industries above 20 KW consumers. Under such circumstances, in my opinion, it would not be proper to insist for filing of documents about 100%

completion of TOD metering. Therefore I accept the contention of MSEDCL that 100% TOD metering was completed by the end of July 2008.

(i) (c) It is clear from the provisions of 3.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & other conditions of Supply) Regulations, 2005 that MSEDCL/licensee can recover charges for the electricity supplied as per the tariffs fixed by the Commissioner (MERC) from time to time. It is clear from the order dated 20/06/2008, passed by MERC in case No. 72 of 2007 that the Commission (MERC) fixed tariffs for LT-V industries above 20 KW consumers on HP basis as well as on MD TOD basis with a direction that the TOD tariff shall be applicable after installation of MD meters. It is true that as per para 47 in the said order, the Commission (MERC) at that time allowed the licensee to charge as per earlier HP based tariffs but it was because at that time the licensee reported that the work of MD metering was completed to the extent of 97% only. It is further made clear in the said para 47 of the said order that till the MD meters are installed, MSEDCL will be allowed to charge only the earlier HP based tariffs. Moreover, the fact that the Commission (MERC) in the said order also fixed & finalized the MD tariff or TOD tariff clearly show that the licensee was permitted to charge electricity charges as per the MD metering or TOD metering immediately after completion of 100% work of installation of MD meters, as clearly stated in the Commercial circular No. 81, dt. 07/07/2008 by the licensee. In view of this, and since in my opinion the licensee has already completed 100% installation of MD meters as discussed above, in my opinion the licensee has correctly charged the electricity charges to the consumer as per MD tariff and therefore, such charging cannot be said to be illegal as alleged by the

Consumer. Moreover in my opinion, the consumer should have approached the Commission (MERC) for his such grievance instead of this forum, as the Commission (MERC) is the Competent Authority to decide as to whether the licensee has applied the tariff correctly. For all above reasons, the consumer is not entitled for refund of or adjustment of any amount on such count. Hence I hold accordingly.

- 16) i) Clause 8.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum) & Electricity Ombudsman) Regulations 2006, reads as under :

"On completion of proceedings conducted under Regulation 6, except where the forum consist of a single member, the forum shall take a decision by majority of votes of the members of the forum & in the even of equality of voles, the Chairperson shall have the second & casting vote."

It is clear from the above clause 8.1 of the Regulations 2006 that the Chairperson has been given a second or casting vote, in case of equality of votes, & it clearly means such equality of votes is meant to be equality of the votes of other two members.

(i)(a) In the instant case, there has been difference of opinion or view amongst two members, & therefore, Shri M. N. Patale, as a chairperson will have to give the second or casting vote & the view out of the different views taken by two members, seconded by Shri M. N. Patale Chairperson will become the view of the majority & hence such view will be the decision of the forum.

(i)(b) Shri M.N. Patale, after giving due consideration to the different views expressed by two members as above, approves or supports the view taken by Shri R. V. Shivdas to the effect that considering the tariff

order issued by the Commission (MERC) & circular No. 81 issued by the licensee, read with the circular dated 05/02/2009 referred & other facts discussed by him it is clear that the licensee has completed 100% installations of meters & therefore correctly recovered the electric charges as per MD tariff or TOD tariff from the consumer & therefore the consumer is not entitled for any refund or adjustment of any amount on such ground. Hence such grievances of the consumer are rejected.

- 17) As to grievance (g) : As discussed above, the licensee has agreed to test the meter with accucheck. Therefore, the licensee is directed to accucheck the meter with consumer & rectify the matter, within a period of 30 days from the date of this decision.
- 18) As to grievance (h) : The licensee in it's reply clarified that the amount of bill adjustment of Rs. 1,353=84 shown in a bill for a billing period Aug. 07 is that of TOSE at the rate of 4 NP per unit from Mar.06 to Sept. 06. Thus the grievance of consumer about it stands resolved & hence it is not necessary to give any further directions to the licensee.
- 19) As to grievance (i) & (j) : The licensee admits the recovery of SD amount of Rs. 33,150/- (Rs. 19,500 plus Rs. 13,650) & further agreed to pay interest as per rules & to refund the excess SD amount. It has however, not said anything about the contention of consumer that it has paid additional SD of Rs. 25,500/- subsequently. Therefore, the licensee is directed to find out the SD amounts deposited by the consumer from time to time from it's record, receipts or other record from the consumer, calculate the interest at the prevalent rates from time to time, give it's credit to the consumer, calculate the appropriate SD amount & refund the excess SD amount by

giving it's credit to the consumer, & also display the correct amount of SD, in the ensuing bill after a period of 30 days from the date of this decision.

- 20) As to grievance (k) - The contention of licensee that the difference of MD based charges and HP based charges of the period from Oct.06 to Mar 07 has been paid in Jan.07 and May 07 appears to be incorrect since such difference was directed to be paid by MERC in May 07. Therefore, the licensee is directed to verify from its record as to whether any such amount has been refunded to the consumer as such difference, total amount of such difference to which the consumer is entitle as per directions given by MERC, and refund excess amount, if any, together with interest @ bank rate of RBI from the date of recovery till the date of payment/credit, by giving its credit to the consumer in the ensuing bills, after a period of 60 days from the date of decision in this case.
- 21) As to Grievance regarding Load Demand Penalty : In view of the MSEDCL's circular No. 4039, dt. 5th Feb. 09, the licensee to refund the demand penalty charges recovered from the consumer till 05/02/09 together with interest at the Bank rate of RBI at the relevant time from the date of recovery till payment/credit, by giving it's credit to the consumer in the ensuing bill after 30 days from the date of decision in this case.
- 22) As to the excess recovery on account of wrong para meters reading in the MD meter : It is clear from copy of letter dated 18/09/08 (Ann. 6-a) that the consumer has informed the Assistant Engineer about shifting of it's machines to other place & consequently less use of electricity for the purposes of lights & fans only. It is also clear from the copy of report (Ann.6-b) that as per the letter (Ann.6-a), the Jr. Engineer checked the consumer's meter on 23/09/08 & gave the said report . The CPL shows

drastic reduction in the consumption of the consumer from Nov. 08 onwards to 1805 units, 935 units (Dec. 2008), 1093 units (Jan. 2009), 1567 units (Feb. 09) & 1140 units (Mar.09), as against the earlier consumption of about 7,703 to 11,262 units during the period Dec. 07 to Sept. 08. Considering such less consumption, showing of 60 to 61 KVA after Sept. 08 appears to be improper. Therefore, there is some substance in the grievance of the consumer that excess MD fixed charges has been charged to the consumer from Sept. 08 to Jan. 09. Therefore, the licensee is directed to retrieve the MRI report of this consumer for the period Sept. 08 to Jan. 09 & verify the MD from the report & recalculate the fixed charges of the said period, & refund in case there has been excess recovery by giving it's credit to the consumer within a period of 60 days from the date of decision in this case.

- 23) As to the alleged excess recovery of ASC during the period Oct. 07 to May 08 : The consumer claims that as per the CPL, the bench mark consumption i.e. average monthly consumption of the period from Jan. 05 to Dec. 05 comes to 7231 units, whereas the licensee has recovered the ASC during the period Oct. 07 to May 08 taking Bench Mark consumption (BC) as 6829 units & thus excessive ASC has been recovered from the consumer to the extent of Rs. 3,859=04 & therefore, the licensee be directed to refund the same together with interest which is charged to the defaulting consumers. The copies of the bills for the billing periods, 05/04/08 to 05/05/08, 05/05/08 to 05/06/08 & 05/06/08 to 05/07/08 on record show that the B.C. mentioned in it is 6829 units & therefore, the consumer's contention that the licensee has charged ASC to it taking 6829 units as B.C. appears to be correct. If the consumption shown in the bills for the months Jan. 05 to Dec. 05 as given in the CPL are considered, average

consumption comes to about 6829 units & therefore, prima facie it appears that the licensee has considered the consumption shown in the said bills of the months Jan. 05 to Dec. 05 to calculate the B.C. It is clear from the copies of bills issued by the licensee to the consumer on the record that in a bill for a particular month, the consumption from 4th or 5th date of earlier month till the 4th or 5th of the said month is shown as total consumption & it's charges are charged by the said bill. Thus the bill issued for the month of Jan. 05 was infact for the consumption in the earlier month of Dec. 04. Clause 4 in chapter 8 of the Tariff Order dated 20th Oct. 06, which is relevant, reads as under :

“Chapter 8 : Determination of additional supply charge

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.....

4. Implementation of additional supply charge

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“The Commission is of the opinion that consumers should be incentivized to respond additional supply charge. Therefore, the Commissioned directs the MSEDCL to assess the consumption of consumer as against the **monthly average of previous years consumption (Jan. 05 to Dec. 05)** while billing the consumer for additional supply charge.....

Relevant portion of the clarificatory order dated Feb. 21, 2006, which is also relevant, reads as under :

“ 2.....

.....

(a).....

(b)The period of reference consumption for comparison of consumption has been modified from the three month billing period from Oct. 05 to Dec. 05 to the 12 month billing period from Jan. 05 to Dec. 05.”

- 24) It is clear from the above clauses of the Tariff Order & Clarificatory Order that the consumption of the period from Jan. 05 to Dec. 05 is to be considered for calculating the BC & since the consumption of Jan. 05 could be charged in the bill for the month of Feb. 05, the correct procedure of calculating such consumption from Jan. 05 to Dec. 05 could be to consider the total consumption shown in the bills for the month Feb. 05 to Jan. 06. Moreover, the Hon. Electricity Ombudsman in order dt. 30/09/08 in representation No. 57 of 08 after considering the above referred clauses, took same view by observing as under :

“16 Prior to 1st May 07, the earlier Tariff Order with the clarificatory order dt. 13th Jan. 06 & 21st Feb. 06 could apply. **Accordingly, the appellant’s BC prior to that date could have to be fixed on the basis of average consumption between Jan. & Dec. 05,** which stands at 01,21,846 units.

Therefore, in the instant case, obviously the BC calculated by the licensee at 6829 units considering the consumption shown in the bills for the months Jan. 05 to Dec. 05 would be incorrect as the said bills are showing consumption of the period from Dec. 04 to Nov. 05 & consequently the ASC charged on the basis of the said BC would be incorrect. Moreover, if the consumption shown in the bills for the months Feb. 05 to Jan. 06 as given in the CPL are considered, the average consumption of the said year i.e. the BC comes to about 7231 units as alleged by the consumer. Thus there is a substance in the grievance of the consumer in this behalf. Therefore, the licensee is directed to

recalculate the correct BC considering the consumption of the billing period from Jan. 05 to Dec. 05 as given in the bills for the months Feb. 05 to Jan. 06 & then considering the same, recalculate the proper ASC to be charged to the consumer for the period from Oct. 07 to May 08, & refund the excess amount recovered if any, by giving it's credit to the consumer in the ensuing bill after a period of 30 days from the date of this decision.

- 25) There has been number of holidays & consequently less working days during this month. There has been also sudden increase in registration of grievances by the consumers before this Forum since last two months, as a result of which this Forum is forced to hear arguments in two cases on every day & also to decide such cases at the same rate. Therefore there has been Eight days delay in deciding this case.
- 26) After hearing both the parties, studying all available documents submitted by licensee as well as consumer & considering the majority view on the point of charging as per M. D. Based tariff, and unanimous decision on other points as above, the forum pass the following order.

ORDER

- 1) Prayer of consumer for the refund of the amount of electric charges recovered by licensee as per MD based tariff or TOD based tariff is rejected.
- 2) Licensee should follow the directions given in above para numbers 17, 19, 20, 21, 22, & 24.
- 3) Compliance should be reported to the forum within 90 days from the date of this decision.

- 4) Consumer can file representation against this decision to the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”*

Representation can be filed within 60 days from the date of this order.

- 5) Consumer can approach Maharashtra Electricity Regulatory Commission on the following address :

*“Maharashtra Electricity Regulatory Commission,
13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*

for compliance in case of non-compliance, part compliance or delay in compliance of this decision passed under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003”, under Section 142 of the Electricity Act 2003.

Date : 27/04/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan