



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/183/207 OF 2009-2010 OF
M/S. VIMAL KANTI VORA, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Vimal Kanti Vora
Plot No.2, Arihant Industrial Estate
Bilal Pada, Gokhiwre,
Vasai (E), Dist.Thane 421 208

(Here-in-after
referred
as Consumer)

Versus

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

(Here-in-after
referred
as licensee)

- 1) Consumer Grievance Redressal Forum has been established under "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 conformed 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 with C. D. 54 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 21/02/2009 for Excessive Energy Bill. The details are as follows: -
Name of the consumer :- M/s. Vimal Kanti Vora
Address: - As given in the title
Consumer No : - 001590794534
Reason of dispute: Excessive Energy Bill.
- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/150 dated 21/02/2009 to Nodal Officer of licensee. The licensee filed reply vide letter No. DYEE/VSII(E)/B/2594, dated 01/04/2009 and also filed CPL of the period from Dec. 05 to Dec.06, Feb.07 to Mar 09.
- 4) The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL., Vasai Division, on 16/12/08. The said Internal Redressal Cell did not give any hearing to the consumer & also did not send any reply resolving the said grievances to the consumer. Therefore, the consumer has registered the present grievance before this forum on 21/02/2009.
- 5). The Members of the Forum heard both the parties on 01/04/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, representative of the consumer & Shri S.B. Hatkar, Asstt.Acctt., representative of the licensee attended hearing, & were heard.

- 6). The consumer has raised the following grievances in its letter dated 24/11/08 sent to the concerned Executive Engineer of which copy the consumer has attached with the grievance made before this forum, and considering the reply dtd. 01.04.09 with CPL filed by the licensee, and submissions made by the parties, record produced by the parties, the findings on each of such grievance is given against it, for the following reasons.
- 7). **As to grievance No. (a) to (d) - Refund of excess amount recovered by applying MD based tariff, PF penalty, KVA based fixed charges with TOD charges etc.** - The Consumer 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 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.

8). (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.

- 9). 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.

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.

- 10). 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.

- 11). 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.

- 12). 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.

- 13). 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.

- 14). As to grievance (e) - Regarding arrears of Rs. 5,503=90 : The consumer claims that the licensee has charged Rs. 5,503=90 as arrears in the bill for a period 05/06/08 to 05/07/08. The licensee should give it's details & if not justified, the said amount be refunded to the consumer. The licensee claims that the said amount of Rs. 5,503=90 shown as arrears in the bill for the month July 08, is that of arrears in earlier two months. The CPL for the month of June 08 shows that the net bill for the said amount was Rs. 5,464=90, & that the bill of the earlier month was paid on 20/05/08. The CPL for the month of July 08 shows that the last receipt was dated 20/05/08 & it clearly means that the consumer has not paid the bill of Rs. 5,464=90 of the month of June 08. Therefore, the arrears of Rs. 5,503=90 shown in the CPL for the month of July 08 could be the above referred amount of the bill for the month of June 08 together with interest on it. Therefore, such claim of licensee is correct. Therefore, there is no substance in this grievance made by the consumer & hence the same is rejected.

- 15) As to grievance (f) – Regarding refund of IASC :

The consumer claims refund of IASC of the period Jan. 07 to April 07 as per MERC's Order dt. 17/09/08 in case No. 45 of 2007. The licensee in

it's reply dt. 01/04/09, claimed that suitable reply will be given after confirmation from I.T. Section. It, however, did not file such reply till this date. It is clear from the above referred order of MERC that the MERC directed refund of the IASC recovered from Oct. 06 to April 07 & therefore, obviously, the consumer is entitle for such refund of IASC in case it has contributed ASC. Therefore, the licensee is directed to verify the total IASC recovered from the consumer from Jan. 07 to April 07 & whether such amount of IASC is refunded to the consumer & if so, inform about it to the consumer in writing within a period of 60 days, failing which to refund such IASC by giving it's credit to the consumer in the ensuing bill after the said period of 60 days.

16). As to grievance (g) – Regarding refund of ASC :

The consumer claims refund of ASC recovered during the period May 07 to Oct. 07 on the ground that as per the revised tariff, the licensee was supposed to charge 89% of Bench Mark consumption (BC) at the rate for cheap power & balance units at the rate of Rs. 5.36 per unit, but the licensee has charged all the units of electricity consumed during the said period at the rate of costly power i.e. Rs. 5.6 per unit. The licensee in it's reply contained that the case is under scrutiny & action will be taken accordingly. Therefore, the licensee is directed to verify as to whether the consumer has been charged properly during the period May 07 to Oct. 07 as per the tariff at that time & in case if any excess amount is recovered, refund the same by giving it's credit to the consumer in the ensuing bill after a period of 60 days.

17). As to grievance (h) – Regarding amount of bill adjustment :

The consumer claims that the licensee has charged bill adjustment of

Rs. 1506=92 & Rs. 403=56, in the bills for a period 02/08/07 to 01/09/07 & 02/07/07 to 02/08/07 resp., & that it is entitled for it's refund. The licensee claims that the above referred amounts are charged towards the TOSE at the rate of 4 NP per unit of the periods from March 06 to Sept. 06, & Sept. 05 to Feb. 06 resp. In view of such explanation given by the licensee, the claim of consumer for refund of the said amount is rejected.

18). As to grievance (i) – Regarding Security Deposit :

The consumer claims that it has deposited Security Deposit (SD) at the time of getting new connection in Aug. 05 but the bills till Aug. 07 were showing SD as NIL. The licensee should confirm the said amount of SD paid in initially. An amount of Rs. 40,800/- was being shown as SD from Sept. 07, & an amount of Rs. 42,900/- was shown as SD in the bill for the month July 08. The consumer therefore, claims interest on the amount of SD as calculated by it in Annexure 10 & that the licensee should calculate the correct amounts of SD from time to time, & it's proper display in the bills. The licensee has not replied to the above grievance, in it's reply. However, the copies of bills filed by the consumer supports it's above referred contentions regarding not displaying the correct SD amount in the said bills. Therefore, the licensee is directed to verify the correct amounts of SD from time to time from its record and the record with consumer, display the correct amounts of SD, and also give the credit of the interest at the Bank rate of RBI on such amounts of SD at the prevailing rate to the consumer, in the ensuing bill after a period 60 days.

19). As to grievance (j) – Regarding refund of difference of MD based tariff & HP based tariff from Oct. 06 to Feb. 07. :

The consumer claims that the licensee introduce MD based fixed charges from Oct. 06 but due to non completion of installation of MD meters, it was reverted back to HP based tariff. The licensee has charged the consumer Rs. 5,923=33 for Oct. 06 & Rs. 3,852=20 for next four months, instead of Rs. 1,950/- per month, during the said period & therefore, it is entitled for total refund of Rs. 11,584=13 on such count. The licensee has claimed that the MD based tariff charged from Oct. 06 to March 07 has been refunded in the month of Jan. 07 & May 07. However, the licensee has not disclosed as to how much amount it has so paid to the consumer & the consumer claims such amount of difference as Rs. 11,584=13. Therefore the licensee is directed to give detailed calculations as to how it has recovered such charges during the said period & how much it has refunded if any, to the consumer, & refund excess amount if any, to the consumer, by giving it's credit to the consumer in the ensuing bill after a period of 60 days.

20). As to grievance (k) : Regarding refund of interest of Rs. 9966/- :

The consumer claims that the licensee has wrongly charged the above referred interest in the bill for the period 3/5/06 to 3/6/06 as it has paid earlier bills in time & therefore, the licensee should be directed to refund the said amount. The licensee claims that the consumer has not paid the bill for May 06 in time & therefore, interest is charged in June 06. The CPL for the months March 06, April 06, May 06 & June 06 show the last receipts as dt. 21/02/06, 20/03/06, 20/03/06 & 20/05/06. It clearly means that the consumer has not paid the bill for the month of April 06 in time & paid the same after issuing the bill for the month of May 06 on 20/05/06, & therefore, the licensee has charged Rs. 99=66 towards

interest to the consumer in the bill for June 06. Thus the CPL justify such charging of interest by the licensee as claimed by it. Therefore, there is not substance in such grievance of the consumer & therefore, the same is rejected.

- 21). Prayer of compensation of Rs. 10,000/- : The consumer has claimed compensation of Rs. 10,000/- for misleading ASC charges collected for many months, violation of MERC Orders & Regulations. In view of the negative finding regarding claim of consumer for refund on account of MD based tariff charges etc. in view of majority view as above, the consumer is not entitled for compensation & hence his request for the same is rejected.
- 22). There has been No. of holidays and consequently less working days during the last month. There has also been sudden increase in registration of grievances by the consumers before this forum since last three months, as result of which this forum is forced to hear arguments in two cases on every day and also to decide such a cases at the same rate. Therefore, there has been some delay in deciding this case.
- 23) 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 passes the following order.

O-R-D-E-R

- 1) Prayer of consumer for the refund of electric charges recovered in excess by applying MD based tariff, PF penalty etc. by licensee, is rejected.

- 2) The licensee to comply the directions given in above para Nos. 15, 16, 18, & 19.
- 3) Prayer of consumer for compensation of Rs. 10,000/- is rejected.
- 4) Compliance should be reported to the forum within 90 days from the date of decision.
- 5) Consumer can file representation against this decision with 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, as per section 142 of the Electricity Act, 2003, can approach Maharashtra Electricity Regulatory Commission at the following address:-

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

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”

Date : 02/05/09

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan.