



Consumer Grievance Redressal Forum, Kalyan Zone
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No. **K/E/737/879 of 2013-14**

Date of Grievance :21/10/2013
Date of Order :28/04/2014
Total Days :190 days

IN THE MATTER OF GRIEVANCE NO. K/E/737/879 OF 2013-14 IN RESPECT OF M/S.LAXMI PUNCHING & BOX MANUFACTURING OF WALIV, VASAI [EAST], THANE - 401 208. REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING8 EXCESSIVE ENERGY BILL

M/s. Laxmi Punching & Box Manufacturing

Waliv, Vasai (East), Thane-401 208 (Hereafter referred as Consumer/applicant)
(Consumer No.001840487551)

Versus

Maharashtra State Electricity Distribution
Company Limited through its

Nodal Officer, Vasai Circle, Vasai, (Hereinafter referred as Licensee)

Appearance : For Consumer - Mr.Harshad Seth- consumer In person
For Licensee - Shri Umberje-Dy. Executive Engineer
Shri Vaze-Asst. Accountant

(Per Mrs.S.A.Jamdar-Member)

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003.(36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance 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 (Electricity Supply Code and other conditions of supply) Regulations 2005'. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005.' Hereinafter referred 'SOP' for the sake of convenience.

2. M/s. Laxmi Punching & Box Manufacturing (consumer No.001840487551) is having a three phase supply of LT-VB tariff category.

3] The facts of the grievance are as follows:

a] The consumer has complained about wrong billing vide letter dated 2/8/2013 duly acknowledged by Licencee on 5/8/2013. In the said letter the consumer has mentioned that :-

The vigilance staff of Palghar inspected/visited the premises of consumer on 6/9/2012 and observed that meter bearing No. 001950368 was found slow by - 30.43%. Therefore, the recovery for 54043 under billed units for the period from June 2010 to August 2012 u/s. 126 of Electricity Act was worked out by the Licencee and a supplementary for Rs. 2,84,810/- dated 20/5/2013 was issued to the consumer.

b] According to the consumer the supplementary bill which was issued by the Licencee was without any details.

c] The consumer further contends that Licencee also failed to provide the period in which each CT failed at the relevant time.

d] Consumer also states that the Licencee has not performed the load test. Even the parallel meter was not installed to confirm the load test and that Licencee has not given the test report to the consumer.

4] Consumer disputed about it submitting letter on 2/8/2013 to Dy.Exe.Engineer and complained with the IGRC on the very day. Consumer asked Licencee to set aside the supplementary bill and requested for testing of the meter by the Licencee in NABL.

5] The consumer states that it paid the entire amount of the supplementary bill on 20/6/2013 to avoid disconnection of electric supply as there was threats.

6] The consumer regretted that Licencee had not responded to his request and not provided the final report till date. Even IGRC not decided the matter.

7] The consumer informed that his old meter number 01950368 was replaced by new meter No. MES 07751 by Flying Squad . However, it was an old used meter having initial reading as 293415 and MF as 2. This meter recorded wrong and fictitious bill in October 2012 and November 2012. On complaint this meter was again replaced by new meter in November 2012 and that with the new meter the monthly average consumption was regularized. Based on this consumer requested the Licencee to charge as per 1100 units per month for the disputed period and to refund excess amount of Rs.81,000/- along with interest.

Consumer also requested the Forum as under:-

- a] The bill issued on 20/5/2013 be set aside.
- b] At the most Licencee be directed to calculate the period for assessment two years prior to the date of issuance of the bill.
- c] Licencee be directed to issue the bill after getting the report from NABL approved lab and refund may be given with interest,
- d] Charge under 126 be set aside,
- e] Licencee be directed to refund the excess amount deposited by the consumer against the bills for October and November 2012.

8] On receiving this grievance dated 21/10/2013, letter No. EE/CGRF/Kalyan/0456 dated 22/10/2013 was issued to the Licencee to appear and file the reply before the Forum. Licencee appeared and filed reply on 2/1/2014 and 7/2/2014. The relevant points reiterated by the representative of Licencee are as under:-

a] that the premises of consumer was visited by Flying Squad and meter was accua checked by the Flying Squad Palghar on 6/9/2012 and it was found that the meter no.01950368 was slow by – 30.43%. Said meter was again tested in the Licencee’s Laboratory at Vasai on 18/9/2012 and said laboratory submitted a report stating that meter was slow by 67%. Further the said meter was sent to the company which manufactured it and said company tested it and submitted report on 17/10/2012, noting that one CT is erroneous other two CTs are shown error more than that permissible limit and hence all CTs are rejected. Hence the recovery of Rs. 2,84,810/-was worked out as per normal tariff by the Engineer Flying Squad Palghar on 17/10/2012 treating meter is slow by 67%.

b] The Licencee further submitted that though the actual period for recovery was of 6 years and 8 months as per MRI data taken out on 1/1/2014 and the recovery worked out limited for June 2010 to August 2012 is correct.

c] According to the Licencee though t he period of recovery is mentioned as June 2010 to August 2012 in the inspection report, the recovery is worked out for two years only by the flying squad and it is correct.

d] Further the Licencee has submitted that consumer in it’s initial letter dated 2/08/2013 has made a statement that the recovery should be limited to 24 months only and accordingly the above recovery is worked out for 24 months only and as such there is no question of any revision in the amount of recovery. Though consumer stated that as action was initiated as per Section 56(2) E.C.Act it was ready to pay amount of two years prior to the issuance of bill i.e. 24 months prior to the date of bill and this contention was not acceptable to the Licencee and it sticked up to the demand of flying squad covering the period from June 2010 to August 2012.

e] Towards the grievance of consumer, for wrong and fictitious and unrelated bills for the months of October and November 2012, Licencee initially replied that the bill for the month of October 2012 is as per reading. Reading of

meter is taken through MRI machine and bills are issued through the system as per prevailing tariff. So there is no need to make any correction in it.

f] But subsequently vide reply dated 7/2/14 submitted on 10/2/2014 the Licensee further stated that after examination of the test report there seems some abnormality in the bill of November 2012 and therefore a revised bill for Rs.34,664.78 issued to the consumer, giving a relief of Rs.63,860.27 in the bill of November 2012. This aspect is conceded by the consumer's representative, hence this portion of grievance stood redressed.

9] We find, not satisfied with the meter testing conducted by the Licensee in their lab on 18/9/2012, the consumer insisted for testing of meter at any Lab approved by NABL. Accordingly, the directions to that effect were given by the Forum on 10/2/2014.

10] Thereafter, consumer made an application on 4/3/2014 and 12/4/2014 stating that Flying Squad Palghar has confirmed that the meter is faulty. Even Laboratory test conducted in Licensee's Laboratory and test conducted by manufacturing company, fault in meter is demonstrated. In this light consumer submitted before the Forum that as meter is found defective in these tests, is not insisting for NABL test and withdrawing the plea for such test.

On 12/3/2014 further consumer has stated in writing that it is withdrawing prayer for testing from NABL. Accordingly, CR submitted that let order be passed by this Forum on the basis of said faulty aspect of the meter.

11] We noted that meter accua checked by Flying Squad and report shows that meter was slow by -30.43%, however, when it was tested in the Licensee's Lab. at Vasai, on 18/9/2013, the testing report shows that the meter was slow by 67%. There is vast variance between the accua check report and Lab testing report. Manufacturing company during the testing on 17/10/2012 concluded that all CTs are rejected. We

are to accept the lab report of Licencee to determine the percentage of slowness of meter which is more reliable than accua check. We are to accept it in the light of the fact that consumer has backed out his prayer for NABL test.

12] Taking in to account the above facts, Forum was to decide the issue based on the provisions of Regulations. Hence Forum was confronted with the position that when the meter is found running either fast or slow it will be a defective meter, as per the Regulation provided under MERC (Electricity Supply Code for reading of clause 154 of Supply Code, which reads as under:-

15.4 _Billing in the Event of Defective Meters.

15.4.1- Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill:

13] In case of defective meter for adjusting the bill of consumer maximum period of three months has been prescribed by the Regulation 15.4.1 in the case of defective meter. Legal position is clear in this respect from this Regulation . It is necessary to consider that Electricity Act 2003 is a Special Provision and Section 175 speaks that provisions of the said Act are in addition to and not in derogation of any other Laws. At this stage, it is just and proper to note Section 56 which speaks about an independent mode of coercive recovery of the dues only to the extent of two years, thereby, it is clear that basic right of Licencee to recover legal dues is not denied, it is kept intact but, for recovery of two years dues coercive action can be taken. It is necessary to note that under the Electricity Act certain duties are cast on the Licencee more particularly u/s. 42. As per 42(5) constitution of CGRF, Ombudsman provided. As per Sec. 180 State Commission is required to frame Regulations, Supply Code and Standard Of Performance. In Supply code there is a provision pertaining to meter testing, meter maintenance by the

Licencee. Clause 14.4 is clear on that aspect. However, in the said clause. As per Clause 15.4 of Supply Code, there is a provision for billing in the event of defective meter. Whenever any such aspect of defective meter is noticed by the company, that too without any fault of consumer then, recovery is provided maximum for three month. However, by adding Proviso to it, if any overt act of consumer is noticed and defect in the meter resulted then as per section 126 and 135 of Electricity Act, separate procedure is laid down for assessing the consumer. In that case, two years liability is considered. Said provision is independent to be read with Section 126, 135 and Sec. 151, 153,156 and 157, so also Section 127 and 145 of Electricity Act. It is clear that under the Supply Code or SOP these are the provisions giving relief to the consumer and under the MERC Regulation, it is the consumer, who can approach IGRF, CGRF and Ombudsman .Against the order of CGRF and Ombudsmen there is no provision of any appeal by the Licencee. In other words, these provisions are empowering only consumers to seek Redressal for their grievances. Naturally question comes up if, there is a flaw on the part of Licencee and for a petty long period if defective meter is continued without any fault of consumer and if, more amount is recovered, than required, in that case such excess amount recovered cannot be retained by Licencee, but consumer can seek refund of such excess paid if permissible under the Regulation. In that case it cannot be made limited to three months. Usually Licencee noticing such flaw resorting to B-80 Form and giving credit to the extra amount paid irrespective of the period taken.

In the light of above, it is clear that in this matter it is the flying squad thought it proper to inspect supply of consumer and noticed that meter is running slow . Further noticed that there is an aspect of Section 126 though, in the letter dated 20/5/2013, Licencee asked the consumer to pay an amount of Rs.2,84,810/- on the basis of meter running slow and section 126. But, it is clear that nowhere any provisional assessment order passed and served on consumer. Even t here is

no final assessment order. In absence of it, we find said demand, labeling it u/s. 126 on the face of it found not tenable. Accordingly, on this ground itself the demand is to be quashed.

14] Though Section 126 is not applicable, question comes up whether on the basis of slow functioning of meter, consumer can be made to pay for the supply which he has used and what can be the tenure of liability. It is a fact as pointed out by the Licencee during the course of hearing of this matter. As per MRI report, period of slow working of meter is, for six years and eight months. Said MRI is retrieved on 1/1/2014 during pendency of this matter. On this basis it is tried to be highlighted by the Officers of Licencee, that by seeking limited liability for 24 months, benefit is given to the consumer and he cannot be let free for using supply without payment. We find the acts of Licencee are regulated by Regulations, Supply Code, SOP and orders of MERC. Being alived to the situation already MERC framed Regulations and in Supply Code as per Clause 15.4.1 care is taken to deal with defective meter wherein consumer has no role to play and in that respect liability is made limited to three months. As against it, in-tune with Section 126 and 135 of Electricity Act, if defect as cropped up due to overt act of the consumer, he is to pay for a fixed period prior to that defect disclosed. So to say, it is a penal action. Accordingly, when Regulation like that of Supply Code,regulated the defective meter and it's liability there is no scope to travel beyond it and to consider that consumer will be let free without any payment though utilized the supply more for a period exceeding three months. Accordingly, we find, we are required to go with the Regulation instead of the sacred feelings of Loss and benefit and hence we find when there is any defect in the meter light thereof running slow the result is, for recovery of amount from the consumer it is made limited for three months maximum and hence, we find Licencee cannot recover any-thing more than three months prior to the visit of the Flying Squad on

6/9/2012 the date on which the meter was running slow . Accordingly, liability for three months prior to 6/9/2012. It will be from 6/6/2012 to 6/9/2012.

We have discussed above the period of liability is of three months. But questions comes up the said liability will be on which percentage of slow meter running. We have already concluded that as per the test conducted in the laboratory of Licencee, meter found running slow by 67% and hence, liability will be of that percentage for the last three months.

It is just necessary to mention that Licencee tired to high light the admission of consumer to pay dues of_ 24 months. But, we find, said admission is not in the sense which the Licencee is interpreting. Immediately on receiving Licencee's letter dated 20/5/2013, along with supplementary bill, consumer addressed letter to the Licencee on 2/8/2013, submitted on 5/8/2013 and on the very day approached IGRC with same grievance. Therein, consumer in clear words challenged the said liability demanded observing as under in Para-5:

We reject your assessment bill and would like to say that as per EA 2003 possible assessment may be 1,33,859/-, if test reports have indicated all the parameters essentially required to work out the liability due to failure of CT's for faced connection which was known to FS unit but we regret to say that spot inspection report and test report not given to us.

We find, in no way this particular clause sounds any admission as such but in the said clause and others various objections are taken. No doubt, matter was kept lingering on the plea that if at all Licencee is agreeing to the proposal of consumer to restrict the claim for two years prior to the date of issuance of bills, this proceeding itself will be amicably closed. But Licencee not agree to it and contended that there is no question of revision as consumer has given an admission. Accordingly, we find, this particular aspect agitated by Licencee is without any basis. Rather we find, things are mixed up adding Sec. 126 towards demanding the dues without any Provisional or final assessment order. Officers of

Licencee just ignored the fact that the reason for meter running slow and whether it will be the defective meter or not. This aspect, if could have been considered, then definitely, Licencee ought to apply 15.4.1 of Supply Code. This aspect during discussion before this Forum cropped up and we gave long rope to both sides to make submissions on it and we found without any interference of consumer, if there is an aspect of meter running slow then, it is defect in the meter and hence it attracts clause 15.4.1 of Supply Code. Accordingly, we have concluded the matter and now liability only to the extent of three prior to the date of inspection of Flying Squad i.e. 6/9/2012.

15] So-far-as the second part of grievance is concerned, Licencee has already granted a relief and revised the bill of the consumer to the tune of Rs.63,860.28 and the consumer's representative conceded to it, stating that grievance to that extent is not surviving it is redressed has also not raised any dispute regarding this aspect.

16] This matter could not be decided during the prescribed period as all the while Licencee was to placed before this Forum the information of MRI report. About the meter to be tested in NABL. Even Licencee to inordinate time to make submission about the amicable disposal of the matter.

17] In result this grievance application is to be allowed.

I agree

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

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

Per Shri C.U.Patil- Member Secretary:-

I have gone through the above reasoning. I respectfully agreed with it except for the contents in Para Nos.10 to 13 for the reasons that-----

a] MERC Regulation 15.4 is headed with subject as “ Billing in the event of Defective Meters. It focus on the billing and further clause 15.4.1 elaborates for regulating the billing in such events by applying 12 months metered consumption for computing average units to be applied during such period of defect/stoppage of the meter. It is also expected by this Regulation that irregularity in the meter get rectified within three months.

But, if such irregularity gets rectified beyond three months, then regulation should not be interpreted that consumer should be exempted from the charges of electricity which has been actually used by him during such total period of stoppage or faultiness of the meter. Otherwise, it will cause wrong precedent resulting in loss of revenue.

b] Consumer in his application , informed ‘A’ dated 14/05/2013 has also requested that he should be till assessed for 24 months only.

Hence, consumer grievance should be partly allowed on the practical grounds of his actual utilization of electrical energy and considering the period of such utilization for assessment.

(Chandrashekhar U.Patil)
Member Secretary
CGRF, Kalyan

ORDER BY MAJORITY

1] In view of the above facts, the installed meter No.01950368 has been found to be running slow by 67%.

2] Licensee is directed to work out the liability of consumer taking into account the 67% of slowness of meter for the period from 6/6/2012 to 5/9/2012. .

3] Licensee is directed to refund the amount which is found excess from the amount deposited by the consumer on 20/6/2012 along with interest as per RIB Bank Rate within 45 days from the date of receipt of this order.

4] In respect of wrong and fictitious and unrelated bills for the months of October and November 2012, grievance is redressed by the Licencee during the pendency of this matter and agreed to limit the said claim for Rs. 34,643.78 as against Rs.98,925.05. Hence, no any direction is required to be given towards it and allowing the Licencee to comply as agreed.

Date : 28/04/2014

I agree

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

(Sadashiv S.Deshmukh)
Chairperson
CGRF, Kalyan

Note

a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.

b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

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

c] It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

