



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/189/213 OF 2009-2010 OF
M/S. RISHABH INDUSTRIES, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. Rishabh Industries
Gala No.10, Bldg. No.8,
Agrawal Udyog Nagar
Waliv, Vasai (East),
Tal : Vasai, Dist : Thane 401 208



(Here-in-after
referred
as Consumer)

Versus

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



(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 26/02/2009 for Excessive Energy Bill. The details are as follows: -
Name of the consumer :- M/s. Rishabh Industries
Address: - As given in the title
Consumer No : - 001840504553
Reason of dispute: Excessive Energy Bill.
- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/177 dated 26/02/2009 to Nodal Officer of licensee. The licensee replied vide letter No. DYEE/VSIT/2205, dated 18/03/2009.
- 4) The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL., Vasai Division, Vasai East on 20/12/08. 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 26/02/2009.
- 5). The Members of the Forum heard both the parties on 18/03/2009 @ 15.00 Hrs. in the meeting hall of the Forum’s office. Shri Harshad

Sheth & Shri Vinit Sheth, representatives of the consumer & Shri S. B. Hatkar, Asstt. Acctt., and Shri D.A.Apandkar, LDC, representatives of the licensee attended hearing.

- 6). The consumer has raised the following grievances in its letter dated 20/12/08 sent to the concerned Executive Engineer of which copy the consumer has attached with the grievance made before this forum, and in the rejoinder dated 20.3.09, and considering the reply dtd. 19.3.09 with CPL filed by the licensee, and submissions made by the parties, record produced by the parties, the finding on each of such grievance is given against it, for the following reasons.
- 7). **As to grievance No.(a) to (f) - Refund of excess amount recovered by applying MD based tariff, PF penalty 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 (g) - Regarding bill adjustment amounts:

The consumer claims that the licensee has added the debit bill adjustment charges of various amounts such as Rs.2209.57, Rs.106.00, Rs.2117.36, and Rs.2431.36 in the bills for the billing periods March 07, July 07, Aug.07, Sept.07 respectively. The licensee should justify such adjustments and refund if the same are not justified. The licensee has claimed that the above mentioned debit adjustments are of current bill adjustment, tariff adjustment, TOSE @ of 4 np p/u from Sept.05 to Feb.06 and TOSE @ of 4 NP p/u from Mar 06 to

Sept.06 respectively. Thus the license has given justification regarding last two amounts but not given such details regarding first and second amounts. Therefore the licensee should give such details regarding Rs.106.00 of tariff adjustment in the bill for the month of July 07 and current bill adjustment of Rs.2208.57 in the bill for the month of Mar 07, in writing to the consumer within a period of one month, failing which or in case there is no proper justification for such amounts, the licensee should refund the said amount together with interest at the Bank rate of RBI, by giving credit of such amount to the consumer in the ensuing bill after the above referred period of 30 days.

- 15). As to grievance (h) – regarding Security Deposit” The consumer claims that the consumer has paid SD at the time of taking new connection in Aug 95, i.e. Rs.33,150/- but the bills upto May 08 were showing SD as nil. The consumer has paid Rs.53,100/- (Rs. 25,000 + 28,100) as Security Deposit in June 08 and the same is displayed on the bill. The licensee should check the total amount of SD and should refund the excess S.D. of Rs. 20,500/- paid in 1995 to the consumer. As against this, the licensee claims that the connection has been given to the consumer in Oct.95. The SD paid at the time of connection not displayed on bill. Further as per rejoinder 20.3.09, the consumer claims refund of interest of Rs. 21,668/- on the SD of Rs. 20,500/-. The LR submits that its office is searching its record to find out the exact amount of SD. In the meantime, the consumer may submit the zerox copy of SD receipt for quick disposal of the case. Considering the above contentions of the parties, 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.

- 16). As to grievance (i) – refund of MD based fix charges from Oct.06 to Mar 07: The consumer has claimed refund of an amount of Rs.11,584.13 on this count as the charges of relevant period were reverted back to the HP based tariff from MD based fix charges, due to non completion of installation of MD meters in entire Maharashtra. The licensee claims that it has refunded the amount of such difference i.e. an amount of Rs. 8065=32, in the month of May 07. However, the licensee has not given details as to how it has concluded to such amount, & 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 calculated such amount & the way by which it has paid the amount of Rs. 8,065=32, & 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.
- 17). Refund of capacitor penalty:- The consumer in its rejoinder dtd. 20.3.09 claimed refund of Rs.27,858/- towards capacitor penalty charged during the period May 03 and June 03 as per MERC's order dated 14.7.05 in case No.2 and the order of Ombudsman in representation 39 of 2006. The LR at the time of hearing undertook to file the reply to the said rejoinder but not filed the same till this date. Therefore the licensee is

directed to inform the consumer about the total amount charged as capacitor penalty during the period from May 03 to Jun 03 & refund if any given on such count in writing, within 60 days, and if not already given such refund or excess amount, if any, refund the same, as per MERC's order dated 14.7.05 in case No.2 and the order of Ombudsman in representation 39 of 2006. by giving its credit to the consumer in ensuing bill after a period of 60 days.

- 18). As to grievance (j) - Refund of ASC : The consumer claims that benchmark consumption (BC) for consumer was 15293 units and therefore its 91% comes to 13917 units. Further consumer claims that the MSEDCL has considered various benchmark consumptions in the month of Oct.06 and Oct.06 to May 07. So consumer demanded refund of the amount of Rs.37,474.51, recovered in excess due to the charging of ASC. The licensee has not replied regarding various benchmark consumptions taken for calculation of ASC. Therefore the licensee is directed to verify the BC for the consumer and give explanation in writing to the consumer regarding charging of ASC in the bill for the month of Oct.06 and Oct.07 to May 08, and refund amount which is found to have been recovered in excess by giving it's credit to the consumer, in the ensuing bill after completion of 30 days from the date of this decision.
- 19). There has been No. of holidays and consequently less working days during this month. There has also been sudden increase in registration of grievances by the consumers before this forum since last two 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 delay in deciding this case.

- 20) 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.14 to 18.
- 3) Compliance should be reported to the forum within 90 days from the date of decision.
- 4) 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, 003, 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 : 29/04/09

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan