



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
Ph- 2210707, Fax – 2210707, E-mail : cgrfkalyan@mahadiscom.in

Date of Grievance : 25/04/2012
Date of Order : 05/07/2012
Period taken : 70 days

IN THE MATTER OF GRIEVANCE NO. K/E/594/702 OF 2012-2013 OF
DR. SHRI DUSHYANT MADHAV BHADLIKAR, DOMBIVALI (EAST)
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL .

Dr. Shri Dushyant Madhav Bhadlikar
102, Kasturi Co. Op. Hsg. Society
Tilak Road, Dombivali (East)

Versus

(Here-in-after
referred
as Consumer)

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Dombivali East Sub-Division No. II

(Here-in-after
referred
as licensee)

- 1) This 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. The 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. consumer of the licensee. The Consumer is billed as per residential tariff. Consumer registered grievance with the Forum on 25/04/2012 for Excessive Energy Bill which is worked out applying Non Residential / Commercial Tariff.

The details are as follows :

Name of the consumer :- Dr. Shri Dushyant Madhav Bhadlikar

Address: - As given in the title

Consumer No : - 020011652230

Reason of dispute : Excessive Energy Bill

- 3) The set of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/0278 dated 25/04/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No. EE/IGRC/KCK-I/2569, dated 21/06/2012.
- 4) We the Members of the Forum heard both sides in the meeting hall of the Forum's office. Consumer Dr. Shri Bhadlikar is present in person & on behalf of Licensee Shri Wailthare Dy. Ex. Engr. alongwith Shri R. R. Jamdar, L. D. Clerk are present.
- 5) From the statements made by both sides following aspects are disclosed. Consumer is a medical practitioner is running his dispensary and residing in the premises wherein electricity supply is given and accordingly he is a consumer of the Licensee.

It is seen that on 29/11/2011 Divisional Squad of Licensee visited the consumer's premises wherein meter is installed and reported that

consumer is using the premises for dispensary and it is a changed from residential to commercial. On this basis report dt. 30/11/2011 was submitted to the Dy. Executive Engineer of the Sub-Division, the Xerox copy of which is on record. We tried to read it but it is not clear. However with the help of carbon copy available with consumer we could read it wherein it is just mentioned that meter is for residential purpose, however premises is used for dispensary. Accordingly on 16/12/2011 bill is issued for Rs. 8,795/- seeking the said amount as a difference of the tariff from residential to commercial. Said bill is issued mentioning Section 126 of Electricity Act 2003 alongwith notice dated 12/12/2011 whereby consumer was suggested to go for a commercial meter.

Consumer replied the said notice on 20/12/2011 and maintained that he is residing in the premises and also running a dispensary hence the claim of Licensee for the amount of Rs. 8,795/- considering it as commercial use is not correct.

However, the said aspect is not dealt hearing him but department proceeded ahead with their own noting preparing a Office Note on 11/02/2012 and Dy. Executive Engineer Dombivali East Sub-Division-II once again visited the premises and reported it. Copy of that Office Note and letter of Dy. Executive Engineer is with the representative of Licensee and as directed by us it is placed on our record. In the aforesaid letter of Dy. Executive Engineer dt. 25/01/2012 he has mentioned as under :

“Undersigned has also visited the spot and verified that consumer has used hall for consulting and remaining bed room and kitchen is used as usual residential use.”

With this observation further direction was sought from Executive Engineer of Division, said Executive Engineer replied and communicated that “In-

charge of billing unit is competent authority to take decision as regards category of consumer for deciding tariff.

Accordingly in the note dated 11/02/2012 placed by the office, order is passed by Dy. Executive Engineer Dombivali East Sub-Division – II quoting his own verification of consumer's premises and noted that "Part of the flat i.e. hall used for consulting but kitchen and bed room used for residential purpose is doubtful, it is proposed to change the tariff from residential to commercial henceforth". Accordingly further consumer is directed to pay the amount of Rs. 8,795/-.

It is seen that Licensee claims that action is taken under Section 126 of Electricity Act 2003. Consumer received a notice dated 17/12/2011 replied on 20/12/2011 and in fact there is no any decision as such on hearing him as required under Section 126 of Electricity Act 2003. Even there is no specific order passed for issuing provisional bill by assessing authority under Section 126 of Electricity Act 2003. No doubt second visit is done by Dy. Executive Engineer but there is no any reference as such about giving any opportunity to the consumer of hearing and deciding the aspect of final assessment. It is a fact inspite of said Dy. Executive Engineer personally visited, noticed that only hall is used for consulting, other part is for residential but in the note said aspect is shown as 'doubtful". When report is in positive, doubtful aspect itself speaks how the aspect is dealt in a different mode. Accordingly at this stage we find provisional assessment though said to be done, there is no order. There is no final order of assessment as per Section 126 of Electricity Act 2003. If there is a final order then only under Section 127 appeal can be filed but the action taken itself is found without any base as the aspect of residence

and consulting is done in the said premises wherein residential connection is given.

After stating these aspects consumer has drawn our attention to the classification of applicability of tariff as per order of MERC in case No. 111 of 2009, dt. 12th September 2010 wherein case of LT- I : LT – Residential aspect is stated for (a, g) and reference is made for two such aspects & note (b) i.e.

“(a)Private residential premises.....

(g)Residential premises used by professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. in furtherance of their professional activity in their residences but shall not include Nursing Home and any Surgical Wards or Hospitals.

Note (b) : Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. occupying the premises exclusively for conducting his profession shall not be liable for this tariff.”

Consumer further referred to the judgment of our Bombay High Court in Writ Petition No. 6891 of 2010 d. 4th August 2011 Rajendra G. Shah V/s. MSEDCL. In the said judgment the Hon. Lordships dealt the aspect of applicability of tariff to a residential premises wherein Lawyer resides and also deals his clients. Their Lordship at length dealt with the MERC order dt. 10th Sept. 2010 which is re-produced above and in the said judgment it is observed by the Hon. High Court in Para No. 13 as under :

“The note says that residential premises used by Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc., in furtherance of their professional activity in their residence, shall be charged as residential tariff. In my view key words in Clause (g) of the note are :

“In furtherance of their professional activity in their residences”. These words show Professionals like Lawyers, Doctors, Professional Engineers, Chartered Accountants etc. who carry on their professional activities in their residence i.e. the very premises in which they reside would be charged a tariff meant for “Residential use”. The note does not authorize the respondent to determine what is the dominant user of the premises. The lawyers, doctors, professional engineers and chartered accountants who are using the premises for their own residence and are using the very premises or part of the premises for their professional activities, would be charged “Residential tariff”

Accordingly the consumer submitted that he is a Medical Practitioner using the premises for consultation as well as residence, it is not used exclusively for his medical profession, he is residing there, he has produced before the officers of Licensee his Ration Card, affidavit and other details.

In view of the aforesaid analysis we find the so called report of Divisional Squad is not speaking exactly whether total premises is used for the dispensary i.e. for Non residential use. However, the Dy. Executive Engineer who visited the said premises stated that hall is used for consulting and bed room and kitchen is used for residential purpose and hence in the light of aforesaid observations of Hon. High Court and the analysis concluded above we find the action taken by the Licensee quoting Section 126 itself is not correct. None of the provisions of Section 126 followed, provisional assessment is without passing any effective order, no final order is passed, simply quoting Section 126 is not sufficient and only relying on said observation of Licensee, it cannot be said that this Forum has no jurisdiction.

No doubt consumer has approached IGRC on 29/02/2012, order is passed by IGRC on 20/03/2012 wherein it is observed that there is no jurisdiction as Section 126 is applied and hence he approached this Forum on 24/04/2012. We find action of Licensee serving provisional bill of Rs. 8,795/- and further acts in present case are not legal and proper. The order of IGRC is also not legal and proper. Those actions of Licensee are set aside. Order of IGRC is set aside and grievance of consumer is upheld.

Matter was heard by Forum consisting Chairman Shri Chaudhary on 21/05/2012 but was not decided, however on taking charge on 01/06/2012 by present Chairman, it is taken up again heard and decided, hence could not be decided in 60 days.

ORDER

- 1) Grievance of consumer is hereby upheld and action taken by the officers of Licensee issuing bill on 16/12/2011 for Rs. 8,795/- which is repeated on 23/02/2012 and further acts towards it are hereby set aside. Order of IGRC dated 29/02/2012 is also set aside.
- 2) Consumer has deposited the amount of Rs. 8,795/- under protest on 26/04/2012 though he has objected it on 20/12/2011 and even approached IGRC. Said amount is deposited after approaching this Forum and hence he is entitled to refund the said sum of Rs. 8,795/-.
- 3) Further action if any taken classifying the consumer's tariff as commercial is set aside. Officers of Licensee to appropriately classify him as residential and correct the bills accordingly and if any amount is recovered over and above the aforesaid amount treating the connection as commercial, it be refunded.

- 4) Said amount of refund on both the above counts be refunded to the consumer by issuing cheque within 30 days and its compliance be reported within 45 days from the date of receipt of this order.
- 5) Said amount of Rs. 8,795/- be refunded with interest at the prevailing R.B.I. Bank Rate from 26/04/2012 and even the subsequent amount paid per month as per commercial tariff for further months be also returned by cheque with interest at the prevailing R.B.I. Bank Rate from the date of payment bill cheques are issued. Accordingly payment is to be done with interest upto the date of issuance of cheque.
- 6) The Consumer if not satisfied can file representation against this decision with the Hon. Electricity 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”.

- 7) Consumer, as per section 142 of the Electricity Act, 003, 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”

Date : 05/07/2012

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

(R.V. Shivdas)
Member Secretary
CGRF Kalyan

(Sadashiv S. Deshmukh)
Chairperson
CGRF Kalyan