



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 13/12/2012
Date of Order : 12/06/2013
Period Taken : 181 days

IN THE MATTER OF GRIEVANCE NO. K / E / 671 / 790 OF 2012-2013
OF NATIONAL PEROXIDE CO. LTD. OF MOHONE, KALYAN
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN FOR REFUND OF AMOUNT CHARGED AS
SURCHARGE ON UNITS CONSUMED

National Peroxide Co Ltd.,
Village Wadavali,
NRC Road,
Mohone,
Kalyan 421 202
Consumer No.020609004763

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Exe. Engineer, Kalyan Circle-I,
Kalyan

(Here-in-after
referred
as Licensee)

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

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. Customer is a H.T. Industrial Consumer of Licensee. The Consumer is billed as per tariff of H.T. Industrial. Consumer registered Grievance with the Forum on 13/12/2012 for refund of amount charged as surcharge on units consumed,
3. The batch of papers containing above grievance was sent by Forum to Nodal Officer of Licensee. Licensee filed reply on 17/12/2013.
4. We had heard Mr. Mantri, Consumer's Representative (C/R) and Nodal Officer, Shri Patil accompanied by Engineer, Mr. Kale and others for Licensee but before passing Order, Member Secretary transferred and New Member Secretary joined hence we re-heard the matter on 11/06/2013 which the above persons attended and made submissions. We have gone through the grievance application additional contentions submitted on 31/01/2013 and submissions dated 18/03/2013 filed in reply to the Licensee's contentions dated 4/03/2013. We have gone through the reply filed by Licensee on 7/01/2013 & 4/03/2013. On the basis of arguments advanced and material placed before us following factual aspects are disclosed:-
 - a) Consumer is industrial unit having consumer no. HT 020609004763 and connection is available to the Consumer from Licensee w.e.f. 31/3/1977 through two feeder emanating from Mohone Sub Station, i.e. Feeder No.10 and Feeder No.3. Feeder No.10 is Direct Dedicated Feeder (DDF) and Feeder No.3 is Non DDF.
 - b) Consumer sought enhancement of load which is sanctioned on 21/5/2009 and it is from 3000 KVA to 3900 KVA and contract demand enhanced from 3951 KW to 6000 KW; Agreement to that effect was signed by the Consumer on 3/10/2009 as directed by the Licensee.

- c) Dispute is now brought before this Forum pertaining to the period from March 2010. It is contended that Licensee added Voltage Surcharge @ 2% additional units (hereinafter referred as “Surcharge” for the sake of brevity) and recovery is done which is not correct and it is against the orders of MERC and MERC SOP.
- d) It is submitted that Licensee approached MERC in case No.71/2009 seeking imposing of surcharge. Matter is decided on 5/3/2010 and w.e.f. that date by way of interim order 2% surcharge of units is allowed **only on the supply available from Non DDF connection**. Accordingly there is no any direction for such surcharge on DDF supply. In this light Consumer claimed that Feeder No.10 being DDF not amenable for any surcharge but Licensee clubbed both consumption and charged 2% surcharge, billing done accordingly and amount is recovered which is not legal and it be refunded.
- e) In this regard, Consumer time and again has approached the Officers of Licensee but there was no any positive results hence it approached the IGRC on 11/6/2012. IGRC dismissed the Application on 12/11/2012.
- f) Aggrieved by the said order of IGRC, Consumer approached this Forum on 13/12/2012 and on service of notice, the Licensee appeared through its Officer, reply is presented on 17/1/2013, Consumer has further presented written submissions on 31/1/2013, Licensee too made further reply on 4/3/2013 which is replied by Consumer on 18/3/2013.
- g) It is the contention of the Consumer that his supply is available from two feeders, i.e. Feeder No.10 and Feeder No.3. Feeder No.10 is DDF and Feeder No.3 is non DDF. This Non DDF supply is taken as a standby with intent to ensure that if anything happens in respect of DDF, then the situation has to be taken care of, hence that non DDF line is taken which is existing.

- h) Accordingly it is contended that status of these two supply is different. It is contended that for charging Consumer there cannot be any surcharge on the supply available through DDF mode.
- i) On behalf of Licensee it is contended that as these are the two feeders available to same Consumer one DDF, one Non DDF, and thereby the status of DDF is lost total consumption from both is to be considered as non DDF. Accordingly in this light the Licensee supported its action.
- j) After noting the disputed aspects it is clear that aspect of surcharge cropped up in the year 2010, that too as per the order of MERC in case no.71/2009 vide order dated 5/3/2010, order of MERC no.111/2009 dated 12/9/2010.. Both these said orders were further dealt in MERC case no.52/2010 dated 9/4/2010 decided on 9/4/2012 and MERC Order in Case No.31/2011 dated 2/6/2011. Order of MERC dated 02/06/2011 was challenged by Licensee before the Appellate Authority vide Appeal No.109/2011 which is also dismissed on 26/08/2011.
- k) Accordingly applying 2% surcharge is an interim order which is still existing and it is pending for finalization as and when new SOP is finalized
- l) Consumer submitted as these are the two feeders from which supply is available and for these two feeders independent meters are installed and those are bearing no.APM 69854 for Feeder No.10 and no.APM 69855 for Feeder No.3. It is contended that reading is available from these two meters independently and in addition there is a summation meter bearingno.00312 which gives separate and combined reading of both the above meters. Accordingly it is contended that reading is available from both meters separately and totally through the summation meter.
- m) In this light the Consumer submitted that reading when available through these separate meters then on the basis of reading, position can be

ascertained, how much consumption from DDF facility and from Non DDF facility. Accordingly it is contended that as per order MERC surcharge is applicable only for non DDF facility and not for the DDF facility.

- n) It is also seen from the record available that reading is taken by the Officers of the Licensee and reading from each and every meter, i.e. of Feeder No.10 and Feeder No.3 are available on record. No doubt, billing is done taking into consideration the total supply of both meters through summation meter and bill is prepared, but question herein is of a dispute pertaining to the 2% surcharge of units to be added while preparing the bill.
- o) On behalf of the Licensee, it is vehemently contended that there is no any scope for taking reading of both these feeders independently, and summation meter is only source of concluding the summation of billing. It is contended that in the summation meter provided, there are various parameters are available on the basis of which bill is provided.

There is no any dispute that considering various parameters bill is prepared looking into the analysis available in summation meter, but it is submitted on behalf of Consumer that consumption of the energy is known through two meters already available therein; and summation of those meters is a further step. Accordingly it is contended that mere summation will not make the Consumer liable for payment of surcharge on total units. It is to be limited only to the consumption taken from Non DDF supply, i.e. Feeder No.3. In this regard it is contended that Feeder No.3 is a standby and this aspect is supported from the observation in testing report available on record dated 2/4/2010 wherein it is clearly mentioned that always load will be on Feeder No.10. Said testing report is of the Officers of Licensee. Accordingly it is submitted that Feeder No.3 is just a standby. As against it on behalf of Licensee it is claimed that such view cannot be expressed and with intent to

avoid the liability of payment of DDF line this Non DDF facility is made use of and hence both are to be treated together and surcharge is to be imposed.

4. One thing is clear from the submissions made by both the sides that there is no precedent as such available about the position when the Consumer is having supply through DDF and Non DDF, how to charge; but it is clear that a supply is given to the Consumer and it is governed by the SOP and it has its own implication. These are two independent modes of supply, i.e. DDF and Non DDF and the aspect of surcharge imposed as per the order of MERC dated 05/03/2010 ; then it is to be read in its proper perspective. Admittedly it is not applicable for supply through DDF mode. The aspect why supply through two modes given is independent question to be decided as and when an action is taken for clubbing together. But on paper notionally it cannot be clubbed together, unless there is any specific provision available in the Act or in the Regulation or in the Rules. Accordingly it is clear that if once supply is made available through two channels, the Consumer is always at risk, DDF is a facility available without any disturbance, but in case of emergency, the Consumer has to manage its business then alternative arrangements is to be made, hence by way of precaution, any supply is taken from Non DDF mode, it should not be looked with any other angle finding malafides with the Consumer which officers of the Licensee tried to highlight. More particularly when it is made available without any objection by the Licensee.
5. It is the contention of the officers of the Licensee that when load was increased, at that time, the Consumer has given an undertaking that 2% surcharge is agreed to be borne. This aspect is heavily relied on by the officers of the Licensee, No doubt, such clause is in the Agreement which is placed on record, notarized affidavit is also of 03/10/2009, but question comes up whether there was any provision available for levying such surcharge as per SOP? Answer is in negative. Order of MERC towards surcharge is admittedly effective from

05/03/2013. Prior to it there was no any such provisions of surcharge. Representative of Consumer heavily relied on the order of Hon'ble Ombudsman, Mumbai dated 30/3/2010 in Representation No.28/2010, M/s. Bhagwandas Ispat Ltd. v/s Maharashtra State Electricity Distribution Co.Ltd. The Hon'ble Ombudsman in para Nos.11 and 14 elaborated the position on this aspect which reads as under:-

11. Records also show that the Respondent had submitted petition to the Commission vide its letter dated 11th November, 2009, proposing levy of voltage surcharge to consumers who have been supplied power at lower voltage than the voltage, prescribed in the Standard of Performance Regulations. There was no approval from the commission to its proposal when the grievance application was before the Forum for consideration. The Forum, in this background, held that there was nothing wrong in recovery of charges for 2% extra units because, the Appellant had so agreed. However, nothing authorizes the Respondent to levy and recover charges which are not provided for, in the tariff. Moreover, release of power at lower voltage than prescribed in the Standards of Performance Regulation is also not permissible, unless it is specifically approved by the Authority. There is nothing on record to show that approval of the Authority you obtained to do so. In view of this, it has to be concluded that the Respondent's action of releasing power at lower voltage and obtaining undertaking to pay for extra units is not in consonance with the Regulations. Consequently, recovery of any charge, which is not provided for in the tariff in the above manner, can, in no way be justified, and is not in accordance with the Regulations.

14. Close look at the above, would reveal that the Commission has now approved the respondent MSEDCL's request for levy of surcharge for supply of power to the consumers at voltages lower than that specified

in the SoP Regulations. But, it is expressly clarified that this voltage surcharge shall apply from the date of issue of the order (i.e. 5th March, 2010) till such time, as the commission issues further order. It is now evident that the Commission's permission / approval to levy of voltage surcharge has a prospective effect from 5th March, 2010. It will be thus incorrect to recovery any charges prior to the date of Commission's approval. As observed earlier, the Respondent had no authority to recovery charges for 2% extra units, until the Commission's order, as it was not provided in the tariff. Such recovery is not in keeping with the provisions of the tariff and therefore illegal.

The aforesaid observations are applicable in the present case, to the extent of, not to take any support of Agreement or affidavit given by Consumer when load was increased and conditions were imposed for paying 2% surcharge. This clause itself was not in consonance with the MERC SOP Regulation hence that stand in no way is found correct.

6. In view of the aforesaid analysis and discussions, it is clear that Consumer has come with a defence that status of Consumer's DDF supply is no more surviving as it is using supply jointly from DDF and non-DDF mode found not correct. For such inference or conclusion there should be some provisions available as it involves not only mere calculation but it affects financial side and under such circumstances always there is necessity of order from Hon'ble MERC which is not available on record. If any such stand is taken by the Licensee it will not be in tune with the legal requirement as it is not supported in the law, more particularly Electricity Act and MERC Regulation.
7. In result we find the 2% surcharge applied for the total consumption clubbing the consumption of DDF meter and Non DDF meter is found not correct. The recovery on the consumption available from meter of DDF is not amenable for any surcharge and hence recovery done taking into consideration units reflected

in the said meter is correct. Hence the Licensee is required to revise liability considering that consumption of DDF meter is not available for surcharge and surcharge is to be recovered only for the meter, i.e. Non DDF meter wherein consumption is shown to the extent of 2% towards units consumed.

8. Accordingly the Licensee is to recalculate the dues and refund the amount which is recovered extra by clubbing both the units. The amount so found excess be returned to the Consumer with interest, from the respective date of deposit in every month, on the excess amount deposited, as per Bank Rate.
9. This matter could not be decided in prescribed time as Forum was required to hear the matter thrice as Member Secretary was transferred in between before passing the Order and it involved important aspect of interpretation of the circular and legal position.

I agree

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

(Sadashiv S. Deshmukh)
Chairperson, CGRF Kalyan

Member Secretary (Chandrashekhar U. Patil) :

I have gone through the above reasoning. I respectfully disagree with it for the reasons that :

- a) There is no provision in MERC tariff order about two different tariff modes for the Consumer having DDF as well as Non DDF supply.
- b) Consumer is enjoying the facility of Non DDF supply also and it was already agreed by the Consumer during Load enhancement for not raising any dispute on the billing mechanism, which is 2% voltage surcharge considering total utilized units through Non DDF mode.

Hence bills raised by Licensee are correct and grievance application is to be dismissed.

(Chandrashekhar U. Patil)
Member Secretary
CGRF Kalyan

Hence the order by majority

O-R-D-E-R

- a) The grievance application of Consumer is hereby allowed
- b) The Licensee is directed to recalculate the Consumer's liability from March 2010 considering the reading of Non DDF meter only for the purpose of 2% surcharge on units and deleting surcharge of units on the consumption shown in DDF meter. The amount of liability so calculated per month be deducted from the payment already done by the Consumer and balance which is in excess for every month be refunded to the Consumer with interest as per the Bank Rate on the said excess amount till it is paid to the Consumer. Let amount of difference so worked out be paid to the Consumer within 45 days from the date of receipt of this order and compliance be reported within 60 days.

Date : 12/06/2013

I Agree

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

(Sadashiv S. Deshmukh)
Chairperson
CGRF Kalyan

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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"