



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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Date of Grievance : 07/05/2013
Date of Order : 29/07/2013
Period Taken : 83 days

IN THE MATTER OF GRIEVANCE NO. K/E/713/843 OF 2013-14 OF M/S.BALBIR ALLOYS PVT. LTD. OF ADDL.MIDC, MURBAD, DIST-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT ABOUT REFUND OF 2% ADDITIONAL VOLTAGE SURCHARGE RECOVERED

M/s. Balbir Alloys Pvt. Ltd.,
Plot No.K-10, Addl. MIDC,
Murbad, Dist-Thane
Consumer No. 018019020297

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Sueprinting Engineer,
Kalyan Circle – II, Kalyan.

(Here-in-after
referred
as Licensee)

Appearance : - C.R. Nodal Officer - Director, Shri Saurabh Jain
- Shri Giradkar

(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. The Consumer is having H.T. Industrial supply from the Licensee. The Consumer is billed as per said tariff. Consumer registered grievance with the Forum on 7/5/2013 for refund of 2% surcharge recovered.
3. The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/272 dated 7/5/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 28/5/2013, however parawise reply is not given. We heard Consumer's Representative.
4. Consumer by this Application sought a relief towards the recovery of 2% additional surcharge recovered for the period from July 2009 to January 2010 and from January 2010 to May 2011. Both sides on this aspect made their respective submissions in tune with their stand taken in the Application as well as in the reply. From the arguments advanced and contentions raised, following admitted factual aspects are disclosed:-

a) Consumer is having H.T. connection bearing Consumer no. 018019020267 having C.D. of 6900 KVA with C.L. of 10,350 KW. Consumer is connected on 22 KV voltage level through Express Feeder. Consumer ought to have been given supply on 33 kV level but in absence of 33 V level, Consumer is connected on 22 kV level which is below the prescribed voltage level.

b) For the first time, while considering the request of Licensee in case no.71 of 2009 Hon'ble MERC passed an order on 5/3/2010 allowing it to recover 2% Additional voltage surcharge. Said order itself is peculiar in its nature, it is allowed, on the Consumer getting supply from non express feeder and it is not allowed on express feeder. It is a

fact that Consumer herein sought connection on express feeder and in Jan.'10, he is connected to express feeder and as required, he was provided meters at both the ends, i.e. source of supply (EVH level) & consumer end, i.e. premises.

- c) Consumer claimed that in fact, for the first time, the Hon'ble MERC passed the order in case no.71/2009 on 5/3/2010 allowing the Licensee to recover 2% additional surcharge from that date itself. Said order is not applicable retrospectively. On this basis, it is submitted that any recovery done towards such surcharge prior to 5/3/2010 is not at all correct; there was no any order as such for levying and recovering surcharge; on this count, the Consumer claimed that already such surcharge charged from July '09 to Jan. '10 it is paid by Consumer which is required to be refunded.
- d) Consumer further contended, in Jan '10 it is connected to a express feeder and as required it provided two meters; one at the Sub Station and one in the premises of Consumer. It is submitted in fact as per the order of Hon'ble MERC responsibility of fixing these two identical meters is on the Licensee but, it is already done by the Consumer even prior to the order of Hon'ble MERC and that Consumer is charged considering the reading which is on higher side. Accordingly it is contended that when Consumer is having a connection on express feeder from Jan '10 hence recovery of 2% additional surcharge from that date is not at all applicable. Said recovery done by the Licensee @ 2% surcharge from Jan. '10 to May '11 is not at all legal and proper and it needs to be refunded.
- e) Licensee in the reply made it clear that identical metering in the premises of Consumer commissioned on 15/5/2011 and fed to I.T.

system on 16/6/2011, hence no 2% additional surcharge is levied from June '11 bill accordingly dispute is restricted to a period prior to June '11; precisely it covers period from July '09 to June '11.

5. During the course of arguments, the Director of the Consumer relied on the orders of the Hon'ble MERC and subsequent developments thereto which occurred as Petition filed by other Consumer and said order challenged by the Licensee before the Appellate Forum which is already rejected. Those details are as under:

- a) The aspect of permitting levy of surcharge and its recovery for the first time sought by the Licensee approaching the MERC filing case no.71 of 2009; it was presented on 13/11/2009; therein 15% additional surcharge was prayed for in prayer no.(1) of the Petition. Prayer no.(4) was seeking interim relief of levy of 2% additional voltage surcharge till approval of 15% voltage surcharge sought. The said Petition was dealt by the Hon'ble MERC and it granted interim relief allowing 2% additional surcharge only for those Consumers connected on Non Express Feeder and said order is passed on 5/3/2010.
- b) After the aforesaid order in case no. 71 of 2009 dated 5/3/2010, the Hon'ble Commission while dealing Licensee's matter for APR-2009-2010 and tariff for 2010-2011 in case no.111 of 2009, which is decided on 12/9/2010, referred to the order passed on 5/3/2010 and made it clear by way of clarification that 2% additional surcharge is not applicable to Consumers connected on Express Feeder. But in case of supply available on Express Feeder, the tariff should be charged on the basis of consumption recorded by meters installed at the source of Supply (EVH level) or at the Consumer's end (premises), whichever is higher without any levy of voltage surcharge.

- c) As noted above order in case no. 71 of 2009 was further clarified vide case no. 111 of 2009. Thereafter it is further clarified in case no. 52 of 2010 filed by M/s. R.L.Steel & Energy Ltd. v/s MSEDCL, The said case no. 52 of 2010 is decided on 9/11/2010. In the said clarificatory order, the Hon'ble MERC dealt the dispute even raised for circular issued by Chief. Engineer, i.e. Circular No.112 dated 15/4/2010 and ultimately clarified the order, stating that the voltage surcharge shall apply, from the date of order passed by the Commission, i.e. from 5/3/2010 till such time as the Commission issues further order. It is clarified that the first order dated 5/3/2010 is not retrospective. Accordingly it clearly lays down that the order dated 5/3/2010 is an interim order, permits the Licensee to recover 2% surcharge only on the supply available from Non Express Feeder. In other words, it is not applicable to supply available from Express Feeder.
- d) The petition filed by M/s. R.L. Steel & Energy Ltd., i.e. case no.51 of 2010 though decided position was made clear, the Consumer was not able to get the refund of the amount recovered towards 2% surcharge. It approached the Hon'ble MERC by filing case no. 31 of 2011 seeking action against MSEDCL towards non compliance of Commission's directions regarding levy of voltage surcharge, passed on 9/11/2010. Said matter is decided on 2/6/2011 and in the said order the Hon'ble Commission, reiterated the clarification already given and directed the Licensee to refund to the said Company about amount recovered on the basis of 2% voltage surcharge, as directed; and further liberty is given if there is non compliance, the said company can file appropriate application seeking penal action against the Licensee.

- e) After passing the order in case no.31 of 2011, dealt above, the Licensee filed case no. 95 of 2011 seeking stay to the order passed in case no. 31 of 2011 dated 2/6/2011. The said stay application is rejected on 23/8/2011 by the Hon'ble Commission.
- f) As the stay application sought vide case no. 95 of 2011 was rejected on 23/8/2011, the Licensee approached the Appellate Tribunal for Electricity vide Appeal No.109/2011 and the said appeal is dealt by the Appellate Tribunal on 31/8/2011. Ultimately the Appellate Tribunal passed the order, that the said Appeal filed is not maintainable and further observed that implementation of the order in case no. 31 of 2011 dated 9/11/2010 passed by the Hon'ble MERC cannot be challenged.

Accordingly the aforesaid chronology clearly speaks, about the manner in which, interim order is passed by the Hon'ble MERC, towards levy and recovery of 2% surcharge only on the supply available from Non Express Feeder from 5/3/2010, and supply on Express Feeder Consumer is to be charged as per tariff on the basis of highest reading available amongst the meter at the Sub Station level or at the Consumer's level. It is also a fact that almost all claims of the Licensee challenging the disputed aspect, till 23/8/2011 is dealt. No doubt, the initial order passed in case no.71 of 2009 dated 5/3/2010 is of an interim nature and already while passing the order in aforesaid case no.31 of 2011 in para no. 6 the Hon'ble Commission observed as under:-

“... During the hearing, the Commission observed that the order dated 5/3/2010 I case no. 71 of 2009 regarding the levy of voltage surcharge grant only interim relief. But no final order has been passed, accordingly, the commission also directed MSEDCL to expedite its technical studies to determine the actual levy of voltage surcharge...”

The aforesaid sequence is once again serially recorded by the Appellate Authority in Appeal No.109 of 2011 referred above in paragraphs nos. 17 to 20.

6. In view of the above discussion and order passed by Hon'ble MERC position is clear that there was no any provision for applying and recovery of 2% surcharge prior to 5/3/2010. Secondly there is no provision for charging 2% surcharge when Consumer is having supply through a express feeder. In this matter from Jan. '10 Consumer is having supply from Express Feeder. From 5/3/2010 only, surcharge allowed and hence any surcharge applied prior to it is not supported with any order of Hon'ble MERC or legal provision. Hence claim of Consumer for refund of 2% surcharge which Licensee applied from July '09 to Jan. '10 is to be refunded and from Jan.'10 to June '11 required to be refunded as Consumer had supply from dedicated feeder. The letter of Chief Engineer (Commercial) dated 5/2/2011 referred by Licensee in reply is not in tune with the order of the Hon'ble MERC. The circular no. 102 of Licensee is already dealt in the order by MERC hence it needs no any further consideration. The mode followed by Licensee is not correct in the light of orders of MERC towards applying surcharge and recovering it from Consumer from July '09 to June '11 and said amount is required to be refunded. Such refund is already allowed by MERC in above referred case of R.L. Steel which is binding on our Forum.
7. No doubt, on behalf of Licensee, time was taken to inspect and find out whether two meters installed by Consumer; one at the Sub Station and one at the premises of Consumer, were matching with each other. Such inspection is done on 11/7/2013. During said inspection, it is concluded that meters are not mismatching or there is any fault; the difference is marginal

and within permissible limit. Said report is placed on record vide letter dated 16/7/2013 copy of which was provided to the Consumer. Along with this letter report of testing is submitted and on the covering letter of testing report, observations are as under:-

‘During the visit, the HT TOD meters (billing meter make HPL, Sr.No.220028) and (Check meter make L&T, Sr. No.07355349) were tested for their accuracy on site, at the Consumer’s available load in presence of the Consumer’s Representative. For main meter error is found (-) 0.243% and for check meter error is (-) 0.198%, i.e. meter errors are generally found within permissible limit.’

In the further paragraphs it is opined as under:

‘The existing check metering equipment is consisting combined 3 CT/ 3 VT combined unit with L&T static HT TOD meter. For more accuracy, it is proposed that the HT metering Cubicle shall be provided in place of combined CT VT unit with identical make HT TOD meter at both ends.

In this regard the Consumer submitted a letter stating that the Consumer had no objection for erecting HT Cubicle at the Sub Station end by MSEDCL and pointed out that it is the responsibility of the Licensee to fix the meters at both the ends.

Accordingly we find stand of Consumer is clear and grievance of Consumer needs to be allowed passing order for refund of amount recovered towards the 2% additional surcharge of untis consumed.’

8. On behalf of Consumer the calculation of refund amount is prepared and statement to that effect is placed on record, wherein the refund is worked out to the tune of Rs.1,04,60,214.61 ps. Copy of working is provided to the

Officers of Licensee. Accordingly though the working is given by Consumer Licensee is to verify it and to work out correctly and pay.

9. As per the inspection report brought before us, it is clear that Licensee is to take steps for installing identical meters and metering equipment at both the ends.
10. This matter could not be decided in time as Licensee was to test the meters to find out whether both are matching with each other. Said exercise they have undertaken on 11/7/2013 and report is submitted before the Forum on 16/7/2013.

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 for the reasons that :

Though only single Consumer is connected on Express (Dedicated) Feeder, he is availing supply lower than prescribed Voltage limit. Hence in this case, no any such refund shall be allowed till final order of Hon'ble MERC on this issue.

(Chandrashekhar U. Patil)
Member Secretary
CGRF Kalyan

Hence the order by majority

O-R-D-E-R

- a) The grievance of the Consumer is hereby upheld.
- b) The Licensee to refund to the Consumer the amount charged and recovered during the period from July '09 to June '11 towards 2% voltage surcharge from the Consumer. The said amount be refunded verifying the statement submitted by the Consumer. The said amount be refunded with interest as per Bank Rate from the date of demand, i.e. the date of application to the Chief Engineer, i.e. from 5/4/2011.
- c) The said working be done and amount be refunded within 45 days from the date of receipt of this order and compliance be reported within 60 days of receipt of this order.

Date : 29/07/2013

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”