



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. **K/E/797/956/2014-15**

Date of Grievance : 06/05/2014

Date of Order : 10/072014

Total days : 64

IN THE MATTER OF GRIEVANCE NO. K/E/797/956 OF 2014-15 IN RESPECT OF M/S.BALBIR ALLOYS PVT. LTD. PLOT NO.K-10, ADDL. MIDC, MURBAD, DISTR.THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND EXCESS AMOUNT OF TARIFF CHARGED.

M/s. Balbir Alloyz Pvt. Ltd.

Plot No.K-10, Addl.

MIDC, Murbad,

District-Thane.

.... (Hereafter referred as Consumer)

Consumer No.018019020297-HT)

Versus

Maharashtra State Electricity Distribution

Company Limited though its

MSEDCL,Kalyan Circle-II

.... (Hereinafter referred as Licencee)

Appearance : For Consumer – Shri Saurabh Jain-Consumer's representative.

For Licensee - Shri Panpatil –I/c. Nodal Officer- and Exe.

Engineer.

Shri Kasal-Asst. Engineer.

(Per Shri Sadashiv S.Deshmukh, Chairperson)

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. 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 (Electricity Supply Code and other conditions of supply) Regulations 2005'.

2] Consumer brought this grievance before Forum on 6/5/2014, contending that from January 2010 to September 2010, Licencee charged tariff as per HT-I-C which is not correct. Hence sought refund of Rs. 1,83,48,715/-. Further, it is contended that though supply is said to be continuous, it was not provided continuous during that period, hence tariff applied needs to be set aside.

3] On receiving this grievance it's copy along with accompaniments sent to the Nodal Officer of Licencee vide this Office Letter No. EE/CGRF/Kalyan /185 dated 6/5/2014. In response to it, Officers of Licencee appeared and filed first reply on 20/5/2014, raising objection on the ground of limitation, thereafter filed second reply on 30/5/2014 and third on 24/6/2014. Simultaneously, consumer filed additional contentions on 24/6/2014 and after conclusion of arguments on 26/6/2014.

4] In the light of aforesaid contentions and reply, we heard both sides. On it's basis, this matter needs to be decided under three heads, i.e. 1] Limitation, 2] Refund of amount charged as HT-I-C during the period from January 2010 to September 2010 and 3] Giving relief on the ground that supply to the consumer from January 2010 to September 2010 was not 'continuous'.

I] **LIMITATION**

5] Licencee raised objection in its reply dated 20/5/2014 to this grievance, contending that grievance is time barred, it cannot be entertained and dealt by this Forum. It is contended that consumer is seeking refund from January 2010 to September 2010 and this grievance filed is, more than two years gap hence this Forum cannot deal the matter. It is contended that vide letter dated 27/1/2014, making grievance, consumer submitted it to the Licencee on 28/1/2014 and thereafter, reminder is issued on 10/3/2014 which are after two years of cause of action i.e. after September 2010.

6] In respect of bar of limitation consumer's representative submitted that grievance is not barred, consumer has initially approached Chief Engineer by Writing letter on 28/1/2014 which is not replied/complied, which is not dealt within two months. It ought to have been dealt or it ought to have been forwarded to IGRC for decision and IGRC was to decide it within two months. Accordingly, it is contended that that there is no bar of limitation prescribed for approaching Licencee and IGRC. Hence, matter is not brought to CGRF directly, but after approaching Licencee/IGRC and waiting for 60 days . In case of approaching CGRF directly, it should have been within two years from the date of cause of action which is not the fact in this matter.

7] Officers of Licencee, in support of their contentions, attempted to rely on the order passed by this Forum in grievance No. 730 M/s. Khemi Dying v/s. MSEDCL, decided on 30/8/2012. However, it is clear from the said order that consumer therein had approached the Officers of Licencee on 26/4/2010 thereafter approached the Forum on 7/6/2012 and dispute was pertaining to the bill dated 19/4/2010. This Forum concluded that after approaching the Licencee grievance is not brought before this Forum within two years from the said **date of cause of action** i.e. **from the date of approaching Licencee.** Accordingly, said grievance was dismissed as it was beyond the period of limitation.

8] In this matter, facts are otherwise, consumer for the first time, approached Licencee, on 28/1/2014, with all these grievances. Licencee not dealt it, not forwarded

it to IGRC. **As per MERC Regulation, grievance to Officer of Licencee is also to be treated as grievance to IGRC. Hence, cause of action commenced in this matter by filing application before the Officers of Licencee and as it was not decided within 60 days, consumer is having liberty to approach this Forum, within two years from the cause of action. Cause of action in this matter, as contended by consumer is after 60 days from 28/1/2014.** Probably said date of cause of action will be 31/3/2014. Hence, grievance brought before us on 6/5/2014 is well within the period of limitation. This conclusion is arrived at on plain reading of provisions of MERC Regulation. This particular view is clearly laid down by our Hon'ble High Court in **Writ Petition No.9455/2011 M/s. Hindustan Petroleum Corporation v/s. MSEDCL Judgment dated 19/1/2012**. In this light, we find there is no any force in the objection raised by Licencee on the ground of bar of limitation. Grievance to the extent of **Refund of amount charged as HT-I-C during the period from January 2010 to September 2010** is well within the period of limitation which this Forum is required to decide.

8] Aspect of limitation towards alternative prayer will be dealt in the further discussion appropriately.

II]] **Refund of amount charged as HT-I-C during the period from January 2010 to September 2010**

9] Before touching of the merit of this matter, it is just necessary to note some factual aspects which are not in dispute:

a] Consumer is having supply to it's industry from 19/3/1999.

b] Consumer from time to time sought additional load and was sanctioned. Till January 2010 consumer was charged as per 'non-continuous category' tariff

c] Consumer applied on 6/5/2008, seeking enhancement of load from 3500 KVA to 9900 KVA which was sanctioned on 23/6/2009. Administrative approval accorded to it on 6/7/2009.

d] On sanction and approval of additional load, agreement is executed on 12/1/2010 by the authorized person of consumer i.e. Director Rakesh Sharma and even filed his affidavit dated 11/1/2010. In the said agreement there is mention that consumer is to be charged tariff HT-I-C.

e] As per the sanction additional load was released on 15/1/2010.

f] Consumer for the additional load released from January 2010 to September 2010, charged applying tariff HT-I-C. Consumer paid those bills upto August 2010 without any protest, but in September 2010 deposited the bill under protest, alleging that in the said month supply was not continuous but total load shedding was observed. In the said letters there is no ground that in fact switching over the HT-I-C from HT-I-N from January 2010 is not legal and correct.

g] Consumer applied to Licencee on 21st September 2010 for switching over to tariff HT-I-N from HT-I-C which is allowed by Licencee and from October 2010 as per the option of consumer, consumer is billed, applying tariff HT-I-N.

h] Consumer from October 2010 is, paying the bills as per HT-I-N. For the first time consumer raised dispute, approaching the Superintending Engineer of Licencee on 28/1/2014 and issued reminder on 10/3/2014, on the ground that changing tariff category from continuous to non-continuous in January 2010, at the time of granting additional load is, illegal.

10] Aforesaid factual aspects are clear. Consumer sought additional load on 6/5/2008, which is sanctioned. All compliances towards it are done and supply is also released on 15/1/2010. Till this additional supply is, released, consumer was charged tariff as per 'non-continuous supply'. But after sanction of additional load, tariff applied is, HT-I-C (continuous). Consumer's representative contended that there was no prayer when additional load was sought, for changing tariff category as HT-I-C. Hence, it is contended that if, at all any change in tariff category was to be done, consumer ought to have been asked option which is not done. It is contended that said change in tariff is not correct.

In this regard, Officers of Licencee made submissions that consumer had opted for continuous supply, hence said fact is reflected in the agreement. We find, in agreement there is clear mentioned about consumer agreeing to pay the tariff as per HT-I-C. In Licencee's reply filed in this matter dated 24/6/2014, Para No.7, it is stated as under:

Para -7: 'During agreement on 12/1/2010, it was verbal submission of Director of Company for seeking continuous tariff before Chief Engineer, Kalyan Zone, Kalyan and the same is mentioned in agreement as tariff applicable i.e.

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In response to said reply, consumer stated in written submission dated 26/6/2010 which is placed after arguments are concluded and matter reserved for order that contentions of Licencee are in correct without any factual or legal basis and it is an attempt to mislead the Hon'ble Forum.

11] On close reading of these rival contentions, one thing is clear that there is a written material signed by responsible Director of consumer, agreeing to accept and pay tariff i.e. HT-I-C. Said agreement is executed on 12/1/2010. At no point of time, said term of tariff applicable noted in agreement is, disputed by the consumer till consumer filed complaint on 28/1/2014 with Superintending Engineer of Licencee.

Secondly, it is a fact that tariff as per HT-I-C is paid, without any protest from January 2010 to September 2010. Even it is paid for September 2010, but dispute of this nature, is, not raised. Rather dispute raised in September 2010 vide letter dated 21/9/2010, is, peculiar in itself. It reflects that supply as per HT-I-C is not disputed, but as supply was not available 'continuous', there was load shedding for the month of September 2010, hence charging consumer for the said month, applying HT-I-C is disputed.

It is also a fact that for that month of September 2010 dispute is raised but, dispute for prior months i.e. January 2010 to August 2010, on that ground not raised. This clearly indicates that consumer is knowing the fact that it has opted for tariff HT-I-C which is availed and when continuous supply for September 2010 was not available, dispute for that month was raised in that month.

Accordingly, on this basis we find, when additional load was sanctioned and an agreement was to be executed, the Director of consumer verbally agreed for tariff category HT-IC and accordingly, it reflected in agreement. These factual aspects are crystal clear.

12] The total grievance brought before us is based on the orders of Hon'ble MERC passed on 31/5/2008, 20/6/2008 towards deciding Tariff Order in case

No.72/2007 and further clarificatory order to it, decided by MERC in Case No. 44/2008 on 12/9/2008. In these orders, Hon'ble MERC dealt the introduction of tariff category HT-I-C and HT-I-N. It is laid down that if there is any supply available on express feeder, to the consumer and he asked for continuous supply then, tariff category is to be made applicable as HT-I-C and for others it will continue as HT-I-N. The dates of MERC orders are important, as the tariff order was to be effective from 1/6/2008. Clarificatory order is of 12/9/2008. In this matter, though, consumer sought additional load on 6/5/2008, it is sanctioned on 23/6/2009. Accordingly, date of sanction is, after passing of those aforesaid orders. In those orders, it was clarified that from existing consumers, option is to be taken and as per option, they are to be charged. Such option was to be given within a prescribed time. This particular aspect is not applicable to the present consumer, as load sanctioned is, after the passing of those orders. In those orders, one more relief is given, allowing the consumer to exercise the option from 'continuous' to 'non continuous' only once in the year that too within one month from the passing of order of tariff. At this stage, it is important to note that in this matter consumer had opted for non-continuous supply, approaching the Licencee on 21/9/2010 and effect is given to it. Accordingly, though, consumer tried to contend that in January 2010, Licencee ought to have sought an option in writing and then could have considered applying HT-I-C, but such option is not given, we find, this argument is not acceptable, as it is the consumer who opted for HT-I-C which found place in the agreement executed, not only that, said act is ratified by further honouring the bills and paying those bills raised by Licencee, without raising any dispute. Dispute is raised about the agreement executed, but we find no force in it and said aspect is dealt in the further discussion in Para No.16. Accordingly, we find no force in the contention that consumer had not opted for HT-I-C tariff and such tariff applied is illegal and that consumer is entitled to refund of said amount on this ground.

III] **Giving relief on the ground that supply to the consumer from January 2010 to September 2010 was not 'continuous'.**

13] Consumer in complaint to the Licencee dated 27/1/2014, in Para No.5 added a ground that though, consumer is being charged as per HT-I-C, but supply

during the period from January 2010 to September 2010, in fact was not continuous. During the said period, there was large number of trippings and shutdown. On this ground, refund is sought ,contending that for the said period tariff was tobe applied as HT-I-N. Licencee replied it and denied the contention. During the course of hearing consumer's representative relied on the information collected from Licencee about the supply given during the disputed period and type of break downs. Totally nine such sheets are shown for those months.

14] While dealing this particular aspect, it is borne in mind that this is a alternative contention raised by consumer, seeking relief of refund of amount for the period from January 2010 to September 2010. First part of objection is already dealt above, it was on the ground that tariff category HT-I-C ought not to have been applied and it was without option of consumer. Accordingly, now consumer is coming alternative argument that supply given was not continuous, hence tariff of continuous supply cannot be made applicable. We have already noted above, that consumer without any objection paid the bills raised applying HT-I-C from January 2010 to August 2010 and raised the dispute before the Officer of Licencee for the month of September 2010, contending that for that whole month there was load shedding and hence applicability of tariff HT-I-C is not proper. Said aspect though raised in September 2010, consumer had not approached this Forum within two years of said cause of action. Hence, on the face of it, claim for September 2010 stands time barred.

Secondly, it needs to be borne in mind that in September 2010 consumer has singularly raised objection for said month but not whispered about any such dispute from January 2010 to August 2010. Hence question comes up, whether there was no any such incident during those months or consumer opted not to agitate that grievance for that period and made it limited only for September 2010. Consumer is not coming with any clarification about it but, we are required to read the factual aspects as those are reflected before us. It is a fact that when dispute is raised for September 2010 and it has become time barred, then it is to be held that consumer had no grievance of a prior period and that grievance on that ground, not made it along

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with September 2010, and even not reserved the right to challenge the previous period. In this light, that too had become time barred. This finding, we are arriving at, on the basis of material which we found on the record, in the form of letter of consumer dated 21/9/2010 raising objection with the Licencee towards the bill of September 2010.

15] Though, we have concluded above that aspect is barred by limitation, for the sake of arguments, if it is considered that said claim is not barred, then the arguments advanced on behalf of consumer and Licencee, just needs to be looked in to. Consumer's contentions are already noted above, Licencee came with the contention that supply with given to the consumer under special circumstances, making aware the consumer, the ground level situation. In sanction order dated 23/6/2009, Clause No. A is clear in itself, it reads as under:-

A] 'As per your request, the competent authority has accorded approval of additional load of 5500 KVA contract demand (Totaling 9900 KVA), on 22 KV level (network) due to ROW problem to avail the power supply on EVH level as mentioned by Chief Engineer (KLNZ), MSDCEL Kalyan'

Further Clause K is also of importance, it reads as under:

'K] : Since the additional load of 5500 KVA contract demand i.e. total load 9900 KVA is sanctioned on 22 KV level as per your request, the quality of power of supply on 22KV level may not be as reliable as EHV level supply and may cause voltage dip/interruptions for which company (MSDECL) will neither be responsible/nor pay any compensation for the same'

Further Clause O is of relevance, it reads as under:

'O] since additional load is being proposed to be released On 22KV level, you shall neither make complaint of whatsoever nature regarding low voltage etc. nor claim any compensation for the same in future and you shall submit in unconditional undertaking on stamp paper of Rs.200/- to that effect.

You will have to give an undertaking/affidavit on Rs. 200/- stamp paper, the above clause before release of power supply'

Accordingly, consumer acted on the sanctioned order and executed affidavit dated 11/1/2010. Copy of it is placed on record by Licencee. On plan reading of these details, aspect is made more clear. It speaks about the circumstances, under which additional supply is released, the necessary ground level situation made known to the consumer to which it agreed and executed undertaking. Officers of Licencee contended, in the light of this undertaking, the grievance now raised cannot be considered and no relief can be granted.

16] During the course of arguments, an unsuccessful attempt is done by the CR to contend that how such affidavit can be made binding. Even he has challenged the agreement executed. We find, though documents are to be executed, those may contain some details, which are required to be entered, some details may be just surplus which are relevant and some may be unnecessary or and may be contradictory. Except the contradictory portion other portion needs to be considered, it cannot be ignored. After all, both sides in the process of seeking additional supply and releasing it gone through various stages and those are with the consent. If, something is not in tune with format of agreement the total agreement cannot be said to be illegal. Same is position pertaining to affidavit. In this light, we find, there is nothing to treat either the agreement or the affidavit illegal or not having any binding force. We find, when parties created a situation, proceeded with it and if one is, trying to take undue advantage of it, it cannot be allowed. Accordingly, we find that the agreement, the affidavit are very well crucial and affidavit disentitles the consumer to seek any such relief on the ground now mentioned. Hence no relief can be granted towards it.

17] Last but not least, consumer has sought above alternate relief, alleging that supply was not continuous is based on the order passed by Hon'ble MERC in case No. 88/2012, decided on 16/7/2013, M/s. Kalika Steel V/s. Mah. State Electricity Distribution Co. Ltd. In the said Judgment Hon'ble MERC discussed and laid down, that though supply is continuous, if there is shut down etc. which needs to be considered. But we find, in this matter due to the affidavit of consumer, given as per sanction order, there is no scope to consider the grievance of consumer.

18] This matter could not be decided in time as Licencee filed reply belatedly on 24/6/2014 and thereafter, consumer submitted rejoinder on the same date, but added additional submissions on 26/6/2014.

19] In view of the above, grievance application of consumer is to be dismissed.

Hence the order

ORDER

Grievance application of consumer is hereby dismissed.

Dated:10/7/2014

I agree

I agree

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

(Chandrashekhkar U.Patil)
Member Secretary
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

c) 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”

d) 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.

