



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/219/243 OF 2009 -2010 OF
M/S. SEASONS POLYMERS PVT. LTD. (R.T. & SONS), VASAI
REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM
KALYAN ZONE, KALYAN ABOUT EXCESSIVE BILLING.

M/s. Seasons Polymer Pvt. Ltd.
(R.T. & Sons)
101-102, Manish Ind. Estate No. 3
Navghar Road, Vasai (East), Dist : Thane

} (Here-in-after
referred as
user Consumer)

Versus

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

} (Here-in-after
referred
as licensee)

The consumer has filed the present application for redressal of it's grievances under Regulation 6.4 of the MERC (CGRF & Electricity Ombudsman) Regulations 2006.

- 2) The admitted facts are that R.& T. & Sons is the original L. T. consumer with consumer No. IP – 12629 Navghar (East) (001610283761) PC - 0 with sanction load of 48 HP of the respondent / licensee since 12/08/1988, and the present applicant M/s. Seasons Polymers Pvt. Ltd. is it's user.
- 3) The user consumer claims that, all of a sudden it received a letter dt. 26/02/09 with suppl. bill for Rs. 06,93,440 from Dy. Executive Engineer, MSEDCL Vasai Road Sub/Dn. The Dy. Executive Engineer has threatened to disconnect the supply if the bill was not paid by 16th March 09. The bill does not show why the multiplying factor (MF) was taken as '1' and how it changed to '2' and who is responsible for that. It claims that the licensee is not authorized to recover such huge amount in one stroke from the consumer. Since the licensee has created doubt about MF, it is necessary to have third party inspection at the licensee's cost. It made enquiry regarding the reasons for getting the said supplementary bill but it did not get satisfactory reply from the licensee. The user consumer has lodged its grievance with the IGRC vide letter dt. 07/03/09, but since there was a danger of the licensee disconnecting the supply, it also registered the grievance before this Forum on 25/03/09. It further claims that the licensee has violated the provisions of Section 56 (1) (2) of the Electricity Act 2003 by threatening to disconnect the supply without serving 15 days notice. The licensee has also violated the provisions of Rule 57 of the Indian Electricity Rules 1956 about testing of meter and consequently issuing bill for arrears of the period of about three years without testing the meter properly. The user consumer has therefore, prayed for cancellation of recovery of the said amount of Rs. 06,93,440 as per the supplementary bill due on 16/03/09 issued by the licensee and to stay the probable action of disconnection of

electric supply by the licensee. It also prayed for permission to pay current bill charges keeping the amount of suppl. bill of Rs.6,93,440/- separate till final order is issued by the competent authority.

- 4). The user consumer at the time of hearing on 28.4.09 filed rejoinder No.1 and reiterated its contention that the suppl. bill issued by the licensee and further directions of the licensee to pay the amount of the said suppl. bill by 16.03.09 failing which the electric supply shall be disconnected are illegal and in violation of Section 56 of the Electricity Act 2003. It further claimed that after getting the letter dated 26.2.09 with suppl. bill from the Dy.Ex.Engr. Vasai (E) Sub Dn., it approach the Dy.Ex.Engr., Dy.Ex.Engr., SE, CE Kalyan and CE (Com) but none of said officer intervened. It has also approached the chairman of the IGRC and requested the Chairman to grant stay of the disconnection but the chairman did not do so. Therefore it filed grievance before this forum on 21.3.09 (which was registered on 25.3.09). It further claims that inspite of the fact that it has made all legal approaches as above, Shri Kallurkar, Jr.Engr. on the instructions of Shri Mhetre Dy.Ex.Engr. disconnected electric supply to it on 23.3.09. The said supply was resumed by the licensee on the same day, about 3 to 4 hours after disconnection, after it approached the Superintending Engineer. Thereafter the user consumer approached this forum on 25.3.09 and requested for urgent hearing or stay and this forum accordingly gave the hearing and directed the licensee not to disconnect supply to the user consumer for non payment of the disputed amount in the disputed suppl. bill, pending final decision in this revised application. The user consumer in the said rejoinder No.1 requested the forum to direct the licensee to give the details of the concerned meter, reiterated its request to have third party

opinion regarding applicability of MF-2, to quash the said suppl. bill, to make the applicability of MF-2 prospective only in case it is upheld, to grant compensation of Rs.25,000/- for causing interruption and disconnection in supply causing damage to the material and for grant of Rs.25,000/- towards the expenses of the case.

- 5) The licensee vide reply dt. 28/04/09 claims that the electric connection with load of 48 HP was given to the consumer on 12th Aug. 1988. The earlier meter of the said connection was changed and new meter bearing No. 23837 of Secure make with capacity 50/5 Amp. was fixed on 11/12/04. The said meter is having MF – 2 and it was fed to system in Jan. 05. The bills for the electric charges were accordingly issued and the user consumer paid the same. The said meter is 6 digit meter but through oversight the same was fed to system 5 digit. In the month of July 06, six digit reading was noted on the said meter and therefore, for changing the digit in six digit, MF was changed from 2 to 1 wrongly. Thus the bills were issued to the user consumer /consumer considering MF as 1, and thus the user consumer was billed 50% of the consumption only. The said connection was checked by Jr. Engineer (Quality Control) on 27/01/09 and he submitted his report. In his report, he has stated that the MF is 2. Therefore, the said MF – 2 was then fed to the system in Feb. 09 and accordingly bills for the further period have been issued. As per the above report of Jr. Engineer, the office has worked out the assessment of the said connection for the period from July 06 to Jan. 09 and it revealed that the user consumer has been earlier under-billed by Rs. 06,93,441.67. Therefore, a supplementary bill for Rs. 06,93,440 was issued to the consumer/user consumer with office letter No. 1619, dt. 26/02/09 and the

consumer was directed to pay the amount of the said bill on or before 16th March 09. However, the consumer did not pay the amount of the said bill and the user consumer sent a letter dt. 07/03/09. It is not a case of faulty meter but wrong billing due to clerical mistake. The bills issued upto June 06 were issued by taking MF-2 and the consumer or user consumer paid the said bills. It therefore claims that the consumer or user consumer is liable to pay the amount of the said supplementary bill and hence there is no substance in it's grievance. It also filed CPL and other documents on the record and the same shall be considered while considering the grievance of the consumer.

- 6) The Chairperson and Member of the Forum heard Shri Ravi Anand, Shri S. W. Deshmukh and Shri S. S. Mirje, the consumer's representatives (CR), Shri S. H. Lohar, Dy. EE & Shri S. S. Hatkar, A. A. both licensee's representatives (LR) & submissions made by them are recorded in the minutes of the hearing on 28/04/2009 & the same are placed on record of the case.
- 7) Shri Ravi Anand, the consumer representative (CR) submitted that M/s.Seasons Polymers is MSEDCL's consumer since July 06 and they are paying the electric bills regularly. All of a sudden they received a letter No. 1619 dt. 26.2.09 to pay an amount of Rs.6,93,440/- from Dy. Executive Engineer, Vasai Road Sub Division, Vasai on or before 16.3.09, otherwise threatened to disconnect the supply. The licensee informed the consumer that the consumer is charged 50% against the total consumption due to wrong charging of MF-1 instead of MF-2, for long period and difference drawn to Rs. 6,93,440/-. The bill does not show why the multiplying factor was taken as 1 and how it changed to 2 and who is responsible for that?

How licensee is authorized to recover entire amount from the consumer? The CR further submitted that the licensee has created doubt of multiplying factor and hence it is necessary to have third party inspection at licensee's cost. The consumer made enquiry about reasons for supplementary bill but did not get satisfactory reply. The consumer has lodged his case with IGRC but was afraid that MSEDCL may disconnect supply at any time after 16.3.09. Therefore the consumer approached CGRF for granting relief as per Regulation 9.3 of MERC Regulations 2006. The CR submits that after getting the above said letter the consumer approached MSEDCL officials viz.Dy.EE, Ex.Engr, S.E. , C.E. Kalyan and CE Commercial to intervene, but none of them took any action. Moreover, consumer approached Chairman IGRC personally with a request to grant stay order giving hearing, but the Chairman of IGRC did not respond. The consumer approached this forum on 21.3.09. In spite of our all legal approach, by taking the law in hand, supply was disconnected on 23.3.09 by Shri R.S.Kalurkar, JE., on the instruction of the Dy.EE, Mr.Mehetre of Vasai Sub Division. Supply was reconnected on the same day after 3 to 4 hours after the user consumer approached the S.E.

- 8) The CR further submits that the consumer again approached CGRF on 25.3.09 for granting stay order against the disconnection. The CGRF was kind enough to understand the gravity of the issue and gave stay order to disconnection of supply. The CR stated that they have number of issues in mind about correctness of bill. The meters are provided by MSEDCL as per I.E.Rules. As per Section 57 the meter CT PT etc. are to be tested before installation and periodically after installation. Therefore as per Deptl.

circular(com) No.216 dt.19.8.71, the consumer demanded following details to make available to him.

- i).Details of meter
- ii). Details of CTs
- iii). Date and testing reports of meter, CTs (before installation and Periodical installation)
- iv). Whether CT or meter was changed in between.

9. The CR further submits that since MSEDCL has created doubt by changing MF from 1 to 2, and therefore, this has to be authenticated by inspection by third party. If the third party opines that the applicability of MF-2 is correct, the assessment should be made applicable with prospective effect and not retrospective effect.

- Forum further asked the consumer to produce all electric bills issued by taking MF as 2, and all electric bills issued by taking MF as 1, from July 07 for verification The CR agreed to submit the same within 4 days.
- The consumer submits that we don't know what is MF-1, MF-2 or MF-3 and so on and about technical aspects. We blindly accept and pay all the bills which they give. Why we should suffer for no fault on our side? Consumer is not responsible for the entire mistake done by the licensee. We are fed up by dealing with the licensee. They insult the consumer like defaulter and as electricity thief. All the officers / engineers, concerned should be transferred.

10. The CR submits that the user consumer prays that (1). Present supplementary bill should be quashed. (2) If decision of MF-2 is upheld it should be made prospective. (3) In spite of our written prayer not to disconnect the supply, the supply is disconnected for 3 to 4 hours therefore

(i) Rs.25,000/- should be paid to consumer for causing interruption and in supply causing damage to material. (ii) Take action against all officers concerned for not observing provision on Section 56(i) I.E.Act 2003 and as per MSEDCL Circular No.50 dt.22.8.06 and (4) A compensation of Rs.25,000/- should be granted towards expenses of the case.

- 11) In reply to above, the licensee representative (LR) submits that the connection has been released to this consumer on 12.8.08 having load of 48 HP. The earlier meter of the said connection was replaced with a meter bearing No.23837 make Secure, capacity 50/5 Amp on 11/12/04. The said meter having MF-2. was fed to the system in Jan.05 Accordingly bills were issued to the consumer and the consumer paid the same. The said meter is 6 digit but through oversight fed to system 5 digit. In the month of July 06, the reading in the said meter raised to 6 digit. Hence for changing the said reading in 6 digits, the MF was wrongly changed from 2 to 1. Therefore, the consumer was issued bills considering MF as 1 from July 06. Therefore, the consumer was billed for 50% of the consumption only. The said connection has been checked by JE (QC) on 27.1.09 and submitted his report. In this report he has stated that MF is 2. The same is fed to system in Feb.09 and bills are issued taking MF as 2 since then.
- 12) The LR further submits that as per the report of the Jr. Engineer (QC) , as above, the licensee has worked out the assessment for the period from July 06 to Jan.09 by applying correct MF as 2 and the said assessment revealed that the user consumer was earlier under billed by Rs. 06,93,440 during the said period. Therefore, supplementary bill for such amount was issued to the consumer with covering letter vide No. Dy.EE/VSI RD(E)/E/B/1619 dt.26.2.09 requesting the consumer to pay the bill on or

before 16.3.09. The same is not paid by the consumer and the consumer submitted letter on 7.3.09. This case is not of a faulty meter, but it is involving a clerical mistake. Since the CGRF issued an order vide No.293 dt.25.3.09, not to disconnect the supply till its decision, the supply is not disconnected uptill now. The bills were issued correctly upto June 06 by taking MF as 2, and the same are paid by the consumer. The same meter is still in installation at the unit of consumer. This supplementary bill for the amount of difference in between the correct electric charges and the amounts of bills for which the consumer was earlier billed, is required to be issued due to the fact that the consumer was earlier under billed due to wrong application of MF. during the relevant period from July 06 to Jan. 09 Therefore, the licensee is entitle to recover the said amount for which the said supplementary bill is issued.

- 13). The consumer Shri Mankani submits that he is paying the electric bills regularly and he is not a defaulter. He has no time to check as to whether MF is 1 or 2. He does not know technical aspects. Suddenly if a bill for Rs.7 lakhs is issued, how he can pay such a huge amount as penalty for no fault on his side? He further submits that normally 50% of his earning pays to licensee as electricity charges. Suddenly if it rose to 100%, factory will have to be closed. He has No. of other liabilities also such as worker's payment, payment of water tax, payment of excise duty, payment of property tax, payment towards raw material etc. Therefore he submits that he is not able to pay such illegal, unjustifiable exorbitant payment. The licensee people frequently approaching him and threatens about the disconnection, treating him like a thief and insulting him in front of his factory staff. He can not tolerate such humiliation. CR submits that during

this period, due to such harassment, the consumer fell sick and was admitted in the hospital and was required to be operated upon. If any thing wrong is happens to him, who will be responsible for the same?

- 14) The CR submits that the licensee is not following MERC Regulations, SOP etc. and making their own law. CR asked what the relation between 5 digits and 6 digits is. The LR explained the same to the consumer/representatives that for example - when a reading of 5 digits i.e. 10000 is entered in the system and whereas it would be actually 6 digits i.e. 100000, there would comes a difference of 90,000 units. Since this actual consumed units, the consumer is less billed by 90,000 units. Therefore the licensee has to rise the supplementary bill and the consumer is required to pay the same bill to compensate the loss. The CR submits that this is serious mistake and the concerned licensee staff is required to punish severely.
- 15) The CR wanted to periodical inspection of the metering equipments and testing report be given to the consumer. He wanted details of testing carried out by the licensee from 1998 uptill now.
- 16) Considering various contentions and the grievances made & reliefs claimed by the applicant/user consumer, the following points arise for determination and consideration the submission made by both the parties & documents on record, the findings thereon are given against each of it, for the following reasons.

SN	Points	Findings
1)	Whether it is necessary to get the concerned Meter inspected by third party as prayed by Applicant/user consumer.	No
2)	Whether the suppl. bill for Rs. 6,93,440/- Due on 16/3/09 issued to the applicant/ consumer is barred by limitation under Section 56 (2) of the Electricity Act 2003 ?	No (Due to casting of casting vote by the Chairman)
3)	Whether the applicant/user consumer is entitle for compensation for disconnection without notice and expenses of the case ? If so, how much ?	Entitle for compensation of Rs. 1000 (One Thousand only) for disconnection without notice from the licensee.
4)	What relief ?	As per final order

Reasons

- 17). As to point No.(1).: It is submitted by CR that since the MF of the concerned meter is in dispute, the said meter be got inspected by third party to find out the said fact at the cost of licensee. The LR opposes such request of the CR on the ground that the licensee has filed various documents from which it is clear that the MF of the said meter is '2' and therefore it is not necessary to get the said meter inspected by any other person. The licensee has filed copy of meter replacement report and it is clear from the said report that the concerned meter of Secure make with Sr.No.23837 having MF-2 was fixed at the establishment of the user consumer by changing the earlier meter with Sr.No.6001003746 of ECE make with MF-1, on 11.12.04. The CPL of the month of Jan.05 shows that such meter bearing No.23837 with MF-2 is at the said establishment of the consumer

and its supports corroborate the contention of the licensee that the said meter was fixed in Dec.04 and it was connected to the system from the next month i.e. Jan.05. The CPL of earlier month i.e. Dec.04 shows that the earlier old meter bearing No.1003746 was fixed at the said establishment. CPL of the period from Jan.05 to June 06 show the same new meter bearing No.23837 with MF-2 at the said establishment and the bills were accordingly issued taking the MF as '2'. CPL of the period from July 06 to Jan.09 of which period the suppl. bill is in dispute, show that it is the same meter bearing No.23837 at the said establishment, but its MF in the said CPL is shown as '1'. CPL for Feb.09 and Mar 09 shows the same meter bearing No.23837 with MF at the said establishment. Apparently MF in the CPL of said two months has been mentioned as '2' as per the inspection report dated 27.1.09 by the Junior Engineer. Thus the meter –CT replacement report dated 11.12.2000, spot inspection report dated 27.1.09, various entries in the CPL of the period from Dec.04 till Feb.09, the total electric charges as per the bills issued for some period prior to July 06 and in the months of Feb. and Mar 09 are sufficient to hold that the concerned meter at the establishment of the consumer since Dec. 04 connected to the system in Jan.05 is the same meter bearing No.23827 with MF-2. Therefore it is not necessary to get the said meter inspected by third party to find out its MF as requested by the applicant/user consumer and therefore its such request is rejected.

- 18). As to Point No. (2) : (View of Chairperson) - It is submitted by CR that the officers of the licensee use to take meter readings & accordingly the licensee use to issue bills & the applicant/consumer has been paying such bills within time. If the licensee has issued wrong bills, the

applicant/consumer is not responsible for such mistake of licensee. He further submits that under Section 56 (2) of the Electricity Act 2003 (hereinafter referred as "Act" only), the licensee can issue the bills of the electricity consumed upto the period of two years only. Therefore, the suppl. bill due on 16.3.09 issued by the licensee for the electricity supplied during the period of about three years i.e. from July 06 to Jan.09 is barred by limitation & hence illegal.

- 19) On the other hand, the LR submits that the multiplying factor ("MF" for short) of the concerned meter fitted at the establishment of the applicant/user consumer is (2). The said meter was fixed at the establishment of the user consumer on 11.12.04 and the said meter is of Secure make with capacity 50/5 Amp. The said meter was fed to the system in Jan.05 having MF-2 . Accordingly bills were issued to the consumer and the user consumer paid the same. The said meter bearing No.23837 is six digit but through oversight it has been fed to system with 5 digit. In the month of July 06 , the reading in the said meter reached 6 digits. Therefore for changing the said digits in 6 digits, wrongly the MF has been changed from '2' to '1'. This resulted in issuance of the bills to the consumer by taking the MF of the said meter as '1' instead of '2' since July 06 and therefore the consumer has been billed for 50% of the consumer only. The said connection was inspected by the Jr. Engineer, (QC) on 27.1.09 and he noticed the said mistake and he accordingly reported the same vide his report. Therefore on his such report, the MF of the said meter was changed to correct No.'2' from '1'. While issuing the bills for the subsequent months Feb.09 onwards and correct assessment of the electric charges was made for the period July 06 to Jan.09 during which earlier bills were issued taking MF as '1', and

accordingly suppl. Bill for Rs.6,93,440/- has been issued to the consumer. He further submits that the limitation of Section 56(2) does't apply to ;the suppl. bill. He further submits that the amount of the said suppl. bill became due on the date on which the said suppl. bill about it was issued to the applicant/consumer. and therefore, the amount of the said bill cannot be said to have been barred by limitation under Section 56 (2) of the Act. (He relies on the Judgment dated 18/01/2007 of Hon. Bombay High Court in write petition No. 264 of 2006, Brihan Mumbai Municipal Corporation through it's General Manager BEST undertaking V/s. Yatish Sharma and others in support of it's such contentions).

- 20) It is already held while deciding point no.1 that the concerned meter at the establishment of applicant/user consumer is bearing No. 23837 with MF-2 since 11.12.04. It is clear from CPL for the months June 06 and July 06 that the current reading at the time of June 06 was 98440 and the same increased to 6 digits figure i.e. 103956 in July 06. Therefore the contention of licensee that while calculating the consumption of the said month, the MF has been recorded as one instead of two wrongly appears to be correct and the same is accepted. The amounts of the bills for which the bills of the period from July 06 to Jan. 09 clearly show that the said bills have been issued, almost for half of the amounts for which the monthly bills were issued during the period prior to July 06 since 11/12/2004 on which the present meter bearing No. 23837 was installed at the said establishment. The said fact supports the contention of the licensee that the consumer has been under billed to the extent of 50% from July 06 to Jan. 09 due to wrong recording of MF as one instead of two in July 06. Therefore, such contention of the licensee is accepted.

- 21) This brings us to the main point under contest as to whether the non applicant/licensee can raise (issue) such supplementary bill due on 16/03/09 for Rs. 06,93,440 of the Electricity supplied during the period from July 06 to Jan. 09 on the ground that the earlier bills issued for the said period were under valued due to wrong application of MF as One (1) instead of Two (2).
- 22) Sub Section (1) of Section 56 of the Act empowers the licensee, or as the case may be, a generating company to cut off the supply of electricity when any person neglects to pay any charges for electricity or any sum other than a charge for electricity due from him to a licensee or generating company in respect of the supply, transmission or distribution or wheeling of electricity to him. Sub Section 2 of Section 56 of the Act, on which the applicant/consumer relies in support of it's contention, provides as follows :
- “(2) Notwithstanding anything contained in any other Law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electric supplied and the licensee shall not cut off the supply of electricity”.
- 23) The answer to the above point depends upon the interpretation of the words “When such sum became first due”, used and underline in the above referred sub section 2 of Section 56 of the Act. The contention of the applicant/consumer is based on the assertion that the arrears for consumption becomes due immediately on the usage of energy & are billed on the dates prescribed according to the billing cycle, whereas according to the licensee, while the liability to pay electricity consumed is occasion by the

consumption of the electricity, the sum payable becomes due from the consumer only upon the presentation of the bill, and that unless a bill is presented by the licensee to the consumer, there is no occasion for the sum payable becoming due. If such contention of licensee is accepted, it would follow that the amount (sum) for which the supplementary bill due on 16/03/09 has been issued, became first due on the date on which the said supplementary bill was issued to the applicant/user consumer i.e. on 07/03/09 on which date the said supplementary bill was sent by the licensee to the applicant of the user consumer and therefore, the non applicant/licensee can recover the amount of the said bill from the applicant/consumer within two years from the said date.

- 24) In a case “Writ petition No. 264 of 2006 BMC through it’s GM BEST undertaking V/s. Yatish Sharma and others” decided by the Hon. Bombay High Court vide Judgment dated 18/01/2007, noted during the hearing in case No. 211/2009-2010 M/s. S. S. Industries V/s. MSEDCL, supplementary bill for the period 19/01/2000 to 27/05/2000 on the basis of average taken as 3621 units per month was raised (issued) in Aug. 2004 by revising the earlier bills issued for the said period taking average consumption as 325, 350, 330, 330, 330 and 330 units, on the ground that the average consumption charged the earlier bills were under valued, was under challenge. The Hon. High Court after referring to various provisions of the Act and Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations 2005, and the decision of Delhi High Court in H.D. Shourie’s case holding that the expression “due” in section 24 of the Electricity Act 1910 could not refer to the consumption of electricity but to a sum or amount being payable after a

valid bill has been sent to the consumer, disapproved the above contention of applicant/consumer in this case which was accepted by the Hon. Ombudsman in the said case, by observing about it as under :

“Para 11..... The Ombudsman was therefore, clearly in error in postulating that the claim was barred on the ground that the arrears for consumption became due immediately on the usage of energy. This finding is ex facie contrary to the provisions of sub section 2 of Section 56. The provisions contained into the Regulation 45 this conclusion which independently emerges on a plain & grammatical interpretation of the provisions of section 56”.

- 25) The Hon. Bombay High Court in the above referred case, ultimately accepted the contention raised by the licensee in this case and upheld the right of licensee to raise (issue) supplementary bill against the consumer in case of under valuation at the time of earlier bills even after a period of two years from the period of concerned consumption of electricity, and since in the said case the concerned meter was found defective, directed the licensee to issue fresh supplementary bill as per the provisions of Regulation 15.4.1 of 2005.
- 26) The facts in this case are similar to the facts in the above referred case before the Hon. High Court and therefore, in my opinion, the above referred ratio or principal laid down by the Hon. High Court in the said case, is applicable to this case.
- 27) The Hon. Bombay High Court has also in a case “U.A. Thandani and another V/s,. BEST Undertaking and another” (AIR 2000 Bombay 264), noted during the hearing in case No. 211/2009-2010, M/s. S. S. Industries V/s. MSEDCL, while interpreting section 26 of the Electricity Act 1910, held

that the limitation of six months prescribed by the said section would not apply for raising supplementary bill on the ground that the consumer was earlier under billed due to clerical mistake or human error as reading on meter was not multiplied by multiplying factor which was essential to arrive at actual electricity consumption.

- 28) The Hon. National Consumer Disputes Redressal Commission, New Delhi also in a case “BSES Rajdhani Power Ltd. V/s. P.C. Kapoor {2008(3)CPR 252(NC)}, noted during the hearing in case No. 211/2009-2010, M/s. S. S. Industries V/s. MSEDCL, also relying on the decision of Hon. Apex Court in a case of M/s. Swastik Industries V/s. MSEB, held that time limitation is not applicable in raising supplementary demands.
- 29) Moreover, if the interpretation of the words “when such sum became first due”, as is being canvassed by CR, is accepted, it would give opportunities to the unscrupulous consumers in getting under valued bills with the help of some of the officials of the licensee, and then avoid to pay the arrears by claiming benefit under section 56 (2) of the Act. As against this, if the interpretation of the above referred words as is being canvas by the LR is accepted, it would not cause any prejudice or illegal loss to the consumer as it would be paying the appropriate charges of the electricity which it has already consumed, and would not cause any illegal gain to the licensee as it will only be allowed to recover the actual cost of the electricity supplied, by allowing to issue such bills for arrears. It is true that allowing the licensee to raise such bill for additional charges of longer period, would cause some hardships to the consumer as it would require to pay large sum of such arrears at one stroke, but it’s remedy lies in the consumer applying for installments and the licensee granting it under clause 15.7.1 of

the MERC (Electric Supply Code etc.) Regulations 2005, and not by disallowing the licensee to recover such arrears.

- 30) As to Point No. (3) : The applicant/user consumer claims that the licensee had disconnected supply on 23/03/09 inspite of the user consumer approaching the concerned engineer, IGRC and also this Forum and that the supply was resumed about 3 to 4 hours after disconnection, after it approached Superintending Engineer. The licensee did not file reply to the rejoinder No. 1 filed by the consumer. Therefore, there is no reason to disbelieve the above allegations regarding disconnection made by the consumer. The licensee also does not claim that a notice under Section 56.1 of the Electricity Act 2003 was issued to the user consumer prior to such disconnection. Therefore, it follows that the licensee has disconnected the electric supply to the user consumer without giving notice under Section 56 (1) of the Act. The applicant/user consumer, however, did not give details as to how much damage was caused to it's material due to such interruption in electric supply and also did not file any documentary proof about it. Therefore, considering the interruption in supply of 3 to 4 hours, and relying on the decision of National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 604 of 2003, Chandrakant Kadam V/s Assistant Engineer, MSEB Aatpadi and others, it would be just and proper to grant notional compensation of Rs. 1,000 to the consumer from the licensee for such disconnection without notice under Section 56 (1) of the Act. However, the facts and circumstances of the case as discussed above, does not justify grant of expenses of Rs. 25,000 claimed by the applicant/user consumer and therefore, it's such prayer is rejected.

31) In view of the above discussion and particularly relying on the above referred decision of Hon. Bombay High Court in writ petition No. 264 of 2006 decided on 18/01/2007, I come to the conclusion that in the instant case, the licensee could legally issue supplementary bill due on 16/03/09 even for the entire period from July 2006 to Jan. 2009 as the applicant/user consumer was under-billed during the said period due to application of wrong MF earlier, after the said mistake was noticed at the time of inspection on 27/01/2009, and can legally recover the charges as per said supplementary bill and the said bill is not barred by limitation under Section 56 (2) of the Act, as contended by the applicant/user consumer. Hence the finding in negative on this point as above. It would also be just and proper to continue the stay granted by this Forum for about 15 days from the date of decision in this case to enable the applicant/user consumer to apply to the licensee to allow it to pay the amount of the supplementary bill by installments as per provisions of Clause 15.7.1 of the MERC (Electric Supply Code etc.) Regulations 2005, considering the huge amount of the said supplementary bill.

32) **View of Member :**

- (i) Supply was released to the user consumer on 12/08/1988 with 48 HP load by meter No. 1003746 and MF-1. (as per the CPL record i.e. from Jan. 1988) study of the CPL record it is noted .
- (ii) The study of the CPL record shows that the meter reading was erratic and ultimately it was declared faulty in Oct. 2002 with meter reading 195377. Billing during this period was done on assessed consumption basis.
- (iii) Even though the meter was declared faulty in Oct. 2002, the meter replacement was carried out by the licensee on 11/12/2004. Old Electro

mechanical meter Sr. No. 1003746 having final meter reading 233746 and MF = 1 was replaced by CT operated static meter make Secure type E 3 T 055 and Sr. No. 23837 and MF = 2 for Ct ratio 3 x 50/5 A with initial reading 000017.

- (iv) The licensee's Jr. Engineer (QC) inspected the consumer's premises on 27/01/09 and found that "The MF being applied for the billing calculation is (1) is wrong and correct MF should be (2) and the necessary corrections should be done on the bill."
- (v) Based on the inspection report the licensee worked out the assessment for the period July 06 to Jan. 09 for an amount of Rs. 06,93,441.67 and supplementary bill was issued by the licensee to the consumer vide their letter No. DYEE/Vasai Road (E)/E/B/1619, dt. 26/02/09 requesting to pay the bill on or before 16/03/09, they also mention in this letter that this case is not a faulty meter case, but it is a clerical mistake. Further they also mention in this letter that the bill issued upto June 06 with MF-2 have been paid by the consumer and same metering system is in existence and therefore, the consumer is requested to pay the supplementary bill.
- (vi) The supplementary bill has been due on 16/03/09 for the period July 06 to Jan. 09 (i.e. 31 months billing cycles). The consumer has also paid the current bill for the month of Feb. 09 and March 09 calculated as per the correct MF – 2.
- (vii) The necessity to raise the supplementary bill was due to the clerical mistake by licensee staff accepted by the licensee (vide their letter No. 3424, dt. 28/04/09) resulting in wrong billing.
- (viii) As per Electricity Act 2003, Clause No. 56 (2) read as follows :

“(2) Notwithstanding anything contained in any other Law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electric supplied and the licensee shall not cut off the supply of electricity”.

In study of above clause the licensee is entitle to raise supplementary bill for a period of two years from the date of issue of supplementary bill. The consumer has already paid the bills for the period July 06 to Jan. 09 and during this period licensee has not shown any arrears to be paid by the consumer for the period under dispute. Under these circumstances the supplementary bill is secondary bill raised for collecting the difference in the billing amount due to clerical error.

- (ix) The licensee should revise the supplementary bill and the revised bill should be with a correct MF and for a period in line with Section 56 (2) of Electricity Act 2003 i.e. for a period of two years only i.e. 24 months from the date of issue of supplementary bill. In this case the date of issue of supplementary bill is not clear (only due date is mentioned i.e. 16/03/09) and therefore, the licensee should check the record, date of issue of supplementary bill and revise the bill accordingly.
- 33) 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 votes, 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.

- 34). In the instant case, there has been difference of opinion or view amongst two members, i.e. Chairperson and the Member & thus there has been equality of votes amongst them. Therefore, in view of the second and casting vote given to the chairperson as per Clause 8 of MERC (CGRF & Electricity Ombudsman) Regulation 2006, the view of the chairperson becomes the view of Forum and hence in view of the view of chairperson as above, it is held that the supplementary bill due on 16/03/09 for Rs. 06,93,440 issued by the licensee to the user consumer as balance electric charges of the period from July 06 to Jan. 09 is not barred under Section 56 (2) of the Act and the licensee can recover the amount of the said bill. Hence the finding in negative on this point as above.
- 35) As to point No. 2 : It is clear from various contentions raised by the parties and documents on record that after the non applicant of the licensee issued the provisional bill dated 23/10/2008, the applicant/consumer did not pay the amount of the said bill by due date i.e. 06/11/2008, and alleges that he has complained about the said bill to the concerned engineer of the licensee. Therefore, the licensee through it's Dy. Executive Engineer, Ambernath (East) issued notice dated 07/11/2008 to the applicant/consumer calling upon it to pay outstanding amount of Rs. 07,34,340/- of the said provisional bill within 15 days from

the receipt of the said notice, failing which the electric supply to the applicant/consumer shall be disconnected. The applicant/consumer claims that it has replied the said notice but has not filed it's copy on the record. Whatever it may be, the applicant/consumer did not pay the amount of the said provisional bill within the time given by the notice dated 07/11/08. Therefore, as per S.E.'s letter dt.. 01/12/08 to the Dy. EE. , the electric supply to the applicant/consumer was disconnected on 01/12/2008.

- 36) It further appears that thereafter the applicant/consumer, through Shri V.V. Khare, Advocate, sent a letter dated 02/12/08 to the Superintending Engineer, Kalyan containing it's grievances regarding the said provision bill dt. 23/10/08 and disconnections of electric supply to it and request for reconnection and withdrawal of the said provisional bill. It further appears that on the same day i.e. on 02/12/08, the applicant/consumer got it's details of grievances prepared and ultimately annexed the same with it's grievance in prescribed proforma registered with the Forum on 25/02/09 and therefore, the relief of reconnection is made in it.
- 37) It is, however, admitted fact and clear from the record that after sending the above referred letter dt. 02/12/08 to the Superintending Engineer, the applicant/consumer on 03/12/08 made an application to the S.E. Kalyan with a request to direct the concerned Officer to reconnect the supply to the applicant/consumer and it was ready to pay Rs. 70,000/- under protest as part payment, and on such application, the electric supply was reconnected/resumed to the applicant/consumer on 05/12/08 on deposit of Rs. 74,640/- as first installment and nine post dated cheques for Rs. 74,300/- each.

- 38) Thus the electric supply is already reconnected or resumed to the applicant/consumer on 05/12/08 and therefore, it's such prayer does not now survive. Hence this points stands answered accordingly as above.
- 39) There has 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 some delay in deciding this case.
- 40) In view of the negative finding due to casting vote of Chairman on point No. 2, and other observations in the view of Chairperson on the said point, and unanimous findings on point Nos. 1 and 3 as above, the Forum passes the following order :

O-R-D-E-R

- 1) The grievance application of applicant/user consumer is partly allowed.
- 2) Prayers of applicant/user consumer for quashing of the supplementary bill for Rs. 06,93,440 and for compensation for the expenses, are rejected.
- 3) Licensee to pay notional compensation of Rs. 1000 (Rs. One Thousand only) to the applicant/user consumer for disconnection of supply without notice under Section 56(1) of the Electricity Act 2003, within 90 days.
- 4) The Stay Order issued by this Forum vide No. EE/CGRF/Kalyan/293, dated 25/03/09 **shall stand vacated by 17.30 hrs. on 10/06/2009,** by which time the applicant/user consumer may seek permission to pay the amount of supplementary bill for Rs. 06,93,440 in dispute by installments

from the licensee under Clause 15.7.1 of MERC (Electric Supply Code etc) Regulations 2005, if it feels it necessary to do so.

5) Compliance should be reported within 90 days from the date of this decision.

6) Consumer can file representation against this decision with the Ombudsman at the following address.

“Office of the Electricity Ombudsman, 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.

7) Consumer, as per section 142 of the Electricity Act, 2003, 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 : 27/05/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan