



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

Date of Grievance : 24/09/2013
Date of Order : 29/10/2013
Period Taken : 35 days

IN THE MATTER OF GRIEVANCE NO. K/E/732/867 OF 2013-14 OF NRC LTD. OF MOHONE, KALYAN (E) REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL

M/s. NRC Limited,
Village Mohone,
Tal-Kalyan, Dist-Thane
Pin - 421 102
Consumer No. HT 02169009628

(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)

Appearance : - For Licensee -

Shri Lahamge, Exe. Engineer
Shri A.M. Kale, Dy. Exe.Engineer
Shri Bharambe, Asst. Engineer

For Consumer -

Consumer's Representative, Shri B.R. Mantri
Shri J.H. Killedar, General Manager
Shri V.K. Kasliwal, Dy. General Manager

(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

Grievance No. K/E/732/867 of 2013-14

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 24/9/2013 for refund of Excess charged towards 2% Additional Charges.
3. The papers containing above grievance were sent by Forum vide letter No. EE/CGRF/Kalyan/0423 dated 24/9/2013 to Nodal Officer of Licensee. The Licensee filed its reply on 22/10/2013.
4. We heard Consumer's Representative and the Officers of Licensee. We have gone through the enclosures placed along with the grievance and reply.
5. Matter is too short and simple. It is a fact that present Consumer is having a supply on Dedicated Express Feeder.
6. It is a fact that additional load was sought by the Consumer in the year 2006 by filing application on 5/8/2006. Additional load was sanctioned on 29/8/2006 and released in Oct. 2006. As per the sanction letter Consumer submitted undertaking dated 11/9/2006 agreeing to pay for additional 2% extra units on the energy units consumed.
7. In this matter, the Consumer approached the Officers of Licensee by writing letter on 18/3/2013 for refund of additional charge recovered from October 2006 which is not legal. Said letter is replied on behalf of Licensee on 20/4/2013. Thereafter the Consumer addressed one more letter dated 29/4/2013 correcting the contents of initial letter. Said letter is replied, on behalf of Licensee on 20/5/2013, maintaining the reply already given on 20/4/2013. Meanwhile, one more letter was addressed by the Consumer to Chief Engineer on 6/5/2013.

Further the Consumer approached IGRC on 25/7/2013. IGRC decided the matter on 17/9/2013 rejecting the claim of the Consumer. It led to the Consumer approaching this Forum on 24/9/2013.

8. There is no dispute about the fact that Consumer is having Industrial connection for a long tenure. In the year 2006, the Consumer sought additional load which was sanctioned and as per the terms of sanction order, dated 29/8/2006, the Consumer was to give an undertaking on the stamp paper of Rs.200/- agreeing to the terms in the sanction letter including payment of additional 2% extra units on the energy units consumed and accordingly, such undertaking is submitted by the Consumer on 11/9/2006.
9. In tune with the aforesaid sanction order and undertaking given, supply was given and Consumer was charged additional 2% extra units on the energy units consumed which is paid by the Consumer from time to time. However, the said condition imposed in the sanction letter was specific but now it is claimed by the Consumer that on the date of said sanction or on the date of undertaking there was no any provision in the rules or in the orders of MERC for charging additional surcharge. This is precisely the dispute now whereby Consumer claimed that said additional charges recovered be refunded.
10. On query from this side to the Officers of Licensee, whether there was any order of MERC for imposing such additional charges on the date of sanction of additional load or obtaining the undertaking, in reply it is clarified that right from the year 2005, the Licensee moved petitions before the Hon'ble MERC for such relief of additional charges, however, for the first time order came to be passed in Case No.71/2009 dated 5/3/2010, that was an interim order allowing Licensee to collect 2% additional surcharge though demand was for 15% but it was not applicable to the Consumers on Dedicated Express Feeders.

11. It is contended on behalf of Consumer that though undertaking is obtained on 11/9/2006 in pursuance of sanction order, the recovery and demand towards additional charges not allowed by the MERC till Order dated 5/3/2010 in Case No.71/2009. Accordingly, it is submitted that recovery of surcharge at the said rate from October 2006 till 5/3/2010 is not at all legal and permissible.
12. Now both sides made it clear and it is clarified that as per the order of MERC from time to time, responsibility of fixing meters of same accuracy at both sides in case of Express Feeder is with the Licensee and Consumer on this point cannot be held responsible. No doubt, on behalf of Licensee, difficulties experienced and faced are stated as under in reply:-

“The possibility of installation of meter at the source of supply was examined by this Office. Due to following constraints, this Office communicated to the Competent Authority, that it was not advisable to install metering at source supply, vide letter no. 3040 dated 29/7/2006 (Annexure No.02).

(i) The custodian of metering equipment will be third party, i.e. M/s. Tata Electrical Company (who in that case is neither the Consumer nor the Licensee).

(ii) It will be very difficult for the Consumer to maintain daily meter reading in G-7 Card which is essential for timely detection of any abnormality in the metering.

(iii) Abnormalities / Discrepancies developed in the metering equipments way go unnoticed.

(iv) Further it will be difficult to fix up the responsibility for any tampering that may occur in the mater equipment.

Grievance No. K/E/732/867 of 2013-14

Due to above technical constraints, meter at S/Stn. end was not installed.”

We find that there is no dispute that as per the order of MERC, responsibility is cast on the Licensee for installing meters at both ends. It is also clear that if above difficulty would not have been there, definitely, the Licensee would have installed such meters in compliance to the Order of MERC. However, we find that no any excuse can be heard if meters of same accuracies are not placed by the Licensee at both ends. Accordingly, the cause stated by the Licensee is not available for our comments and it will not affect the result.

13. We find 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 and order of MERC no.111/2009 dated 12/9/2010. Both these orders were further dealt in MERC case no.52/2010 decided on 9/11/2010 and in MERC Case No.31/2011 dated 2/6/2011. Said 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.
14. Accordingly allowing additional 2% extra units on the energy units consumed is an interim order which is still existing and it is pending for finalization as and when new SOP is finalized
15. 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 will be borne by the Consumer. This aspect is heavily relied on by the officers of the Licensee, No doubt, such clause is in the sanction order and Undertaking supports it which is of 11/9/2006, but question comes up whether there was any provision available for levying such surcharge as per MERC Order / as per SOP? Answer is in negative. Order of MERC towards surcharge is admittedly effective from 05/03/2010. Prior to it there was no any such provisions of

Grievance No. K/E/732/867 of 2013-14
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 Undertaking 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 Order / SOP hence that stand in no way is found correct.

16. As stated above, there was no authority as contended by the Consumer for levying the additional charges and those additional charges are not supported with the order of MERC hence required to be refunded.
17. It is submitted on behalf of Consumer that 2% additional surcharge cannot be recovered in any case if there is no any provision or any order of the MERC and hence charges recovered till 5/3/2010 is not legal and proper on the basis that there is no legal provision. Even subsequent recovery of 2% additional surcharge from 5/3/2010 is not permissible as it is not applicable to the Consumer who is having supply from Dedicated Express Feeder. Hence we find these contentions are to be accepted and relief is to be granted.
18. Accordingly refund is sought of such additional charges paid along with interest. On behalf of Licensee attempt is done to contend that in two instances meters are installed at both ends, but difference is seen which demonstrates the loss caused and accordingly it is contended that recovery from the present

Grievance No. K/E/732/867 of 2013-14
Consumer is justified on that count. We find no merit in it. The claim of the
Consumer is to be allowed.

Hence the Order

O-R-D-E-R

- a) The grievance of the Consumer is hereby allowed.
- b) Amount recovered by the Licensee towards additional 2% extra units on the energy units consumed be refunded to Consumer for the period up to 5/3/2010. Further amount recovered on that count also be refunded to Consumer, as Consumer is having supply on Express Feeder to which additional 2% extra units on the energy units consumed, is not applicable.
- c) Amount be refunded as directed above with interest as per R.B.I. Bank Rate from the date of demand by the Consumer i.e. from 18/3/2013 on sum of that amount due till that date and amount deposited thereafter, if any, be returned with interest from the date of deposit.
- d) Licensee to refund any amount due to this change towards delayed payment charges, and others, if any, collected from the Consumer.
- e) Compliance of this order be done within 45 days on receiving the Order and it be reported within 60 days from the date of receiving this Order.

Date : 29/10/2013

I Agree

I Agree

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

(Chandrashekhar 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 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”

- c) 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.