



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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No. K/E/808/967 of 2014-15

Date of Grievance : 30/06/2014  
Date of Order: 21/07/2014  
Total Days : 21 days

**IN THE MATTER OF GRIEVANCE NO. K/E/808/967 OF 2014/15 IN RESPECT OF SHRI ASHOK L. SOHANDA, C/P. PRAKASH VASWANI BUILDERS, ROOM NO.6, SATYAM APT. PLOT NO. 752, ULHASNAGAR 421 002, DIST-THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN, REGARDING REFUND OF ELECTRICITY CHARAGES WITH INTERST PAID AGAINST THEFT.**

Ashok L. Sohanda,  
c/o. Prakash Vaswani Builders,  
Room No.6, Satyam Apart.,  
Plot No.752,  
Ulhasnagar No.421 002.;  
Dist. Thane  
( Consumer No.021510636985)

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited though its  
Dy. Executive Engineer, MSEDCL,  
Ulhasnagar Sub-Divn.-II,

.... (Hereinafter referred as Licensee)

Appearance : For Consumer –Shri Rajput –Consumer’s representative.  
For Licensee - Shri Khan –Nodal Officer  
Shri Mahajan –Asst.Accountant.

(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] This grievance is brought by consumer on 30/6/2014, contending that he is dealt in Reg. Criminal Case No. 427/2002, for the offence of committing theft of electricity u/s. 39 and 44 of Electricity Act, 1910 by Criminal Court i.e. JMFC, Ulhasnagar on 13/2/2012 which acquitted him. It is contended that towards the said theft case, consumer has deposited the amount of Rs.55,550/- totally. Consumer claimed, as criminal case ended in acquittal that too due to the failure of Licencee to establish the guilt he is entitled to refund of said amount. Consumer after the order of acquittal, approached Officer of Licencee on 20/6/2013, demanding said amount. Even he has approached Chief Engineer (Commercial) Head Office and Managing Director of Licencee on 15/1/2014. Thereafter he approached IGRC on 4/4/2014, but no relief granted. Hence this grievance is brought before the Forum.

3] In this light, on receiving grievance application, it's copy was sent to the Nodal Officer vide this Office letter No. EE/CGRF/Kalyan/0240 dated 30/6/2014 along with it's accompaniments. In response to it, Officers of Licencee attended and filed reply dated 14/7/2014 on 15/7/2014. It is contended that this grievance is not

tenable before this Forum. It is also claimed that though consumer is acquitted in Criminal Case by J.M.F.C., Ulhasnagar, Civil liability is not decided there and even there is no order for refund of said amount deposited. Accordingly, it is claimed that acquittal of accused/consumer, is, by giving benefit of doubt, hence there is no question of refund of any amount.

4] Considering the rival contentions of both sides, following are the factual aspects, just to be borne in mind:-

a] Consumer is having supply to its commercial establishment.

b] On 17/4/2002, theft case was noted by Officers of Licencee, pertaining to supply of consumer. Accordingly he filed FIR in Police Station, bearing C.R.No.II-57/2002, under Section 39 and 44 of Electricity Act, 1910. Said matter reached Criminal Court, Ulhasnagar and it is registered as Reg. Criminal Case No. 427/2002 on 30/4/2002.

c] It is a fact that towards the said criminal case, consumer has deposited amount of Rs.55,550/- and payment towards it is done under three different receipts of Rs.1000/- Rs.,54,000/- and Rs.150/-. There is no dispute about this total amount deposited. The said criminal case is tried by Hon'ble Judicial Magistrate, 1<sup>st</sup> Class, Ulhasnagar and recorded acquittal of consumer/accused on 13/2/2012.

5] After acquittal, consumer approached the Officer of Licencee on 20/6/2013. Thereafter said Officer has sought guidance from his Executive Engineer by writing letter dated 20/3/2014. In between there is correspondence and ultimately Chief Engineer (Commercial) intimated to the Officers of Licencee on 19/8/2013 that there is no mention in the order of J.M.F.C.Court for refund of said amount and hence there cannot be any such refund and it be intimated to the consumer.

6] It is a fact that consumer found it fit to give vent to his feelings about grievance, addressing it to Chief Justice of Bom. High Court, Chief Secretary, Government of Maharashtra, Managing Director of Licencee and other concerned. He had approached IGRC on 4/4/2014, but there was no any order as such on the grievance. Accordingly, consumer approached this Forum on 30/6/2014.

7] The Licencee in reply dated 14/7/2014 and 15/7/2014 came up with a contention that this grievance is not tenable in view of Clause 6.7(d) and 6.8 (b) of MERC (CGRF & Ombudsman) Regulation, 2006. Secondly, it is contended that in the order of JMFC there is no any direction for refund of amount deposited by consumer. Hence, this grievance be rejected.

8] On the basis of these aforesaid contentions, it is clear that this grievance is lodged due to the acquittal of consumer in J.M.F.C. Court. The said case was, lodged by Licencee and it ended in acquittal. However, the amount was, deposited due to the allegation of theft to the tune of Rs.55,550/-, is, now sought to be refunded with interest, by consumer. Before dealing the aspect of merit, it is necessary to address first objection raised by Licencee as to whether this grievance is tenable as per Clause 6.7 (d) and 6.8 (b) of MERC (CGRF & Ombudsman) Regulation 2006.

9] The objection taken about the tenability of grievance referring to Clause 6.7(d) and 6.8(d) as stated above, is peculiar in it's nature. On close reading of those two provisions, it is clear that Clause 6.7 (d) pertains to the grievance, if it is pending before any Court, Tribunal or Arbitrator or any other Authority or a decree of Award of final order is already passed by those Authorities. It is tried to be explained that already JMFC decided the matter , there is no order by said JMFC for refunding the amount to accused. Hence, as order is final, no relief can be sought. We find, at this stage, even it is necessary to refer to Clause 6.8 (b) of Regulation, it refers to the bar of jurisdiction of the Forum, for considering the grievance pertaining to offences and penalties u/s. 135 to 139 of Electricity Act. Though these two grounds are raised, second ground will not be applicable as this Tribunal is not dealing any matter going on u/s. 135 to 139 of Electricity Act 2003. However, crime was registered under the Act 1910, and it is decided. As per the old Act i.e. Electricity Act 1910, Criminal Court was not supposed to deal with Civil Liability or to speak about it. It was to deal only the committal of crime. Whereas, in the new Act i.e. Electricity Act 2003, Spl.

Court is appointed for dealing cases u/s. 135 and Court is empower to deal with civil liability. Hence, it is not possible to read and uphold contention of Licencee that order is passed by Criminal Court, hence this Forum cannot deal the matter under Clause 6.7(d). Secondly, we find already theft case is decided under the old provision. Hence, Clause 6.8(b) will not be applicable. Accordingly, this technical objection raised is not tenable.

10] After considering the technical objection, we are required to consider whether consumer is not entitled to refund of said amount as it is a civil liability, order of Criminal Court is, acquittal on technical ground i.e. by giving benefit of doubt. Though, these two grounds, are, attractive by way of argument, those are suffering with inherent defect. During the course of arguments, we brought to the notice of Officers of Licencee, the order passed by this Forum in Grievance No. K/E/788/947 of 2013-14 decided on 11/4/2014, wherein after the order of acquittal of accused, accused claimed the amount deposited which Licencee had paid, but refused to pay interest on it. Consumer had approached this Forum and relying on the order of Hon'ble Ombudsman Nagpur in Representation No.59/2013 dated 24/7/2014, M/s. M.M.Brothers Grah Udyog V/s. The Superintending Engineer MESDCL, Nagpur, relief is given by this Forum about interest on the deposited amount from the date of demand and there was no question of dealing the refund of deposit as it was already refunded by Licencee. Facts before the Hon'ble Ombudsman were of similar nature as seen in this matter. In that case, Licencee had refused to pay amount deposited therein. However, in Para 15 of Order of Hon'ble Ombudsman considered the position and observed that when there is acquittal, it is a conclusion that there is no theft and there is no question of any Civil liability. It is further held that if there is no civil liability and once consumer is acquitted from the charge of theft, he is not liable to pay assessed amount. Further, it is observed that consumer is entitled to said refund

and ultimately directed refund of amount with interest as per prevailing Bank Rate. This particular aspect, Officers of Licencee could not reply satisfactorily.

Hence, on the basis of above, we find, in this matter, consumer has approached Licencee for refund of the amount on 20/6/2013. This demand of consumer is, legal and proper on the date of demand of said amount deposited, Licencee was to act and to repay but, it is not repaid or refunded in spite of demand. Hence, said amount deposited is to be refunded by Licencee with interest as per Reserve Banks' BANK RATE from 20/6/2013 i.e. date of demand. Hence, we find that consumer is entitled to interest on the amount of Rs.55,550/- from the date of demand till to the date of payment as per Bank Rate. On this count, this grievance is to be allowed. Hence the order.

**ORDER**

Grievance of consumer is hereby allowed.

Consumer is entitled to get the refund of deposit of Rs.55,550/- with interest on it as per prevailing RBI rate from 20/6/2013 till to the date of refund.

The Licencee is directed to refund /pay the above said amount with interest to the consumer within 30 days from the date of receipt of this order and report compliance within further 15 days.

Kalyan

Dated: 21/07/2014.

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.

