



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/224/248 OF 2009-2010 OF
M/S. R.M. ENTERPRISES, VASAI REGISTERED WITH CONSUMER
GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT
EXCESSIVE BILLING.

M/s. R.M. Enterprises
Gala No. 04 Kalpataru Ind. Estate
Waliv, Tal : Vasai (East)
Dist. Thane

(Here-in-after
referred
as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Executive Engineer
Vasai Road (East) Sub-Dn.
Vasai, Dist. Thane.

(Here-in-after
referred
as licensee)

- 1). Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances

of consumers. This 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 a L.T.-V above 20 KW consumer of the licensee with C.D. 54 KVA. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 31/03/2009 for Excessive Energy Bills.

The details are as follows: -

Name of the consumer :- M/s. R.M.Enterprises

Address: - As given in the title

Consumer No : - 001840603632

Reason of dispute: Excessive Energy Bills.

- 3). The batch of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/310 dated 31/03/2009 to Nodal Officer of licensee. The licensee filed reply vide letter No. DYEE/VSI/(E)/B/3510, dated 02/05/2009 in the form of letter addressed to the consumer with a copy to this Forum.
- 4). The consumer has raised these grievances before the Executive Engineer (O&M) Division, MSEDCL, Vasai Division, on 15/01/2009. The said Internal Redressal Cell did not give any hearing to the consumer & also did not send any reply resolving the said grievances to the consumer. Therefore, the consumer has registered the present grievance before this forum on 31/03/2009.
- 5). The Forum heard both the parties on 02/05/2009 @ 15.00 Hrs. in the meeting hall of the Forum's office. Shri Harshad Sheth, representative of the consumer & Shri Shidore, AE and Shri S.B.Hatkar, Asstt.Acctt., representative of the licensee, attended hearing. Minutes of the hearing

including the submissions made by the parties are recorded and the same are kept in the record. Submissions made by each party in respect of each grievance shall be referred while deciding each of the grievances to avoid repetition.

- 6). The following grievances raised by the consumer in its letter dated 05/01/09 sent to the concerned Executive Engineer of which copy the consumer has attached with the grievance made before this forum, arise for consideration, and considering the reply dtd. 02/05/09 filed by the licensee, record produced by the parties, and submissions made by the parties, the finding or resolution on each of such grievance is given against it, for the given reasons.
- 7). As grievance No. 1 - Refund of excess amount recovered by applying MD based tariff, PF penalty etc. : The Consumer Representative (CR) submits that the licensee has charged MD based tariff to the consumer without 100% metering and its such action is illegal. He relies on zero copy of operative order dtd.20.6.08 of MERC in case No.72 of 2007, MSEDCL circular No.81 dt.7.7.08 in support of his contention. He further submit that as per order dated 12.9.08 of MERC in case 44 of 2008, the licensee can not impose MD based fixed charges, PF penalty and demand penalty/incentive without MD based tariff being made applicable to the concerned consumer but in the instant case, the licensee has applied the above charges or penalties without MD based tariff being applicable to it and hence such action of licensee is illegal. He further submit that thus the licensee has violated the Act, rules and orders of MERC and hence is liable for action under section 142 and 146 of the Electricity Act 2003. He further submits that therefore the licensee be directed to refund the amounts of

such illegally recovered charges together with interest at the rate which it applies to the defaulting consumer. The CR submits that the consumer claims refund of an amount of Rs.1250/- towards the difference in between the fixed charges as per MD based tariff and HP based tariff and refund of PF penalty of Rs.5389.38 on this count.

---As against above contention, the LR submits that the licensee has applied MD based tariff from Aug.08 on completion of 100% TOD metering and as per directives given in Clause 10.5 of Com. Circular No.81 dt.7.7.08. He therefore submits that whatever charges based on MD based tariff, are recovered by the licensee from the consumer are correct and legal and therefore the question of refunding the same to the consumer does not arise.

- 8). While deciding the question regarding the applicability of MD based tariff to the LT above 20 KW industrial units, the Hon. Electricity Ombudsman vide order dated 6.5.09 in representation No.33 of 2009, M/s.Crystal Industries V/S MSEDCL, relying on the MSEDCL's circulars dtd. 05.02.09 held that the MSEDCL has suo moto decided to start MD based tariff for LT V consumers from April 09 inspite of 100% installations of MD meters completed in Aug.08 and therefore the MSEDCL is liable to refund the excess fixed charges and PF penalty recovered from such consumer. Therefore following the above referred decision, the licensee is directed to refund the amount of MD charges collected over and above the fixed charges recoverable as per HP based tariff and the PF penalty recovered from the consumer in the period prior to April 09, together with interest at the Bank rate of RBI within 30 days from the date of this decision.

- 9). As to grievance No. 2 - Regarding bill adjustment : The consumer claims that the licensee has added the debit bill adjustment charges of various amounts such as Rs.106/-, Rs. 1960.52, and Rs.1843.84, i.e. total Rs. 3910.36 in the bills for billing periods July.07, Aug. 07 and Sept.07 respectively. The licensee should justify such adjustments and refund if the same are not justified. The licensee claims that the detail clarification in respect of the above referred first amount of Rs.106/- is sought from higher authority and on receipt of information, the consumer shall be informed accordingly, and above referred second amount of Rs.1960.52 and third amount Rs.1843.84 are of the TOSE @ 4 NP P/4 for the periods Sept.05 to Feb.06 and from March 06 to Set.06 respectively. The CR has relied upon the order dated 24th May 2005 passed by MERC in case No. 28 of 2004 in support of his contention that the licensee has earlier refunded the TOSE charged for the above referred periods as per the above referred order, but has again charged the same as above without any further order of MERC about it. The licensee has not filed any such order of MERC passed after the above order which enabled it to recharge the TOSE. Therefore the licensee is directed to give the proper reasons and justification for the above referred three amounts of adjustments in writing to the consumer within 30 days from the date of decision in this case and refund the excess amount if any, recovered as above together with interest at the bank rate of RBI, by giving it's credit to the consumer in the ensuing bill after 30 days.
- 10). As to grievance (3) – Refund of Excess SD & interest on SD : The consumer claims that it has paid Earnest Deposit (ED) of Rs. 19500/- and Rs.13,650/- i.e. total Rs.33,150/- at the time of taking new connection on

13/06/97 with load of 65 HP. However, the said amounts of SD were not displayed in the bill. The consumer has also paid addl. SD of Rs.30820/- in June 08 as per the demand made by the licensee. The said amount is displayed in the bill. Therefore, the consumer had requested for refund of excess SD of Rs. 33,150/- paid in 1997- and credit for interest of Rs.20346/- as per the statement (Annexure 6a). As against this, the licensee claims that the connection has been given on 13/6/1997. The Security Deposit of Rs.19500/- and ED of Rs.13,650/- i.e. total Rs.33,150/- were paid at the time of taking connection. Its office is searching record for exact amount of SD and in the meantime the consumer may submit the SD receipts for quick disposal of the case. Considering the average bills, keeping the balance deposit, action will be taken for refund of SD. The interest will be paid as per rules. In view of the above contentions of the parties, the licensee is directed to verify the correct amounts of SD from time to time from its record and the record with consumer, display the correct amounts of SD in the bills, calculate the proper SD at this stage & refund the excess amount of SD and the interest at Bank rate of RBI on such amounts of SD at the prevailing rate, by giving it's credit to the consumer, in the ensuing bill after a period 30 days.

- 11). As to grievance No. 4 - regarding refund of difference of MD based charged and HP based charges from Oct.06 to Mar 07 : The consumer has claimed refund of an amount of Rs. 11,584.13 on this count as the charges of the relevant period were reverted back to the HP based tariff from MD based fix charges, due to non completion of installation of MD meters in entire Maharashtra. The licensee claims that it has refunded an amount of Rs.8065.32 in the month of May 07 and some amount in other

month which will be intimated after confirmation from the higher authority. The licensee has also not made clear as to in which other month it has given credit of any other amount on this count to the consumer. Therefore, the licensee is directed to verify the total amount of such difference to which the consumer is entitled and the amount which is already refunded to the consumer on this count and inform about it in writing to the consumer within 30 days and refund excess amount if any, together with interest at the Bank rate of RBI, to the consumer by giving it's credit to the consumer in the ensuing bill after 30 days from the date of decision in this case.

- 12). Grievance No. 5 - Regarding refund of excess ASC recovered in Oct.06 billed in Nov. 06 : The consumer claims that for the month of Oct. 06, the ASC was to be charged to the 9% of consumption. It's BC was 13978 units as shown in the bill for Dec.06. Therefore, it could be charged for cheap power to the extent of 12720 units in the said month. It's consumption for the said month was 4987 units. Therefore, no ASC could be charged for Oct. 06 in the bill for Nov. 06. However, the licensee has charged ASC for 598 units and therefore the consumer is entitled for the refund of the amount of $\text{Rs.}598 \times 1.15 = \text{Rs.}687.70$. As against this the licensee claims that as per tariff order 2006-07 case No. 54 of 2005, ASC charges were 12%, the consumption for the month of Nov. 06 was 4987 units and 12% of it, comes to 4388 units. Hence ASC charges charged in the said month are correct and there is no question of refund.
- 13) The consumer in its next grievance claimed that the licensee has wrongly reduced its BC to 8645 units in the month of Oct.07. It is a matter of fact that normally the BC remains the same as usually it is a monthly consumption during the period Jan. 05 to Dec. 05. The licensee has not

explained as to how the BC of consumer has changed. It is also noted by Forum that it is clear from the chart on page No. 158 of the MERC's order dt. 20th Oct. 06 in case No. 54 of 2005, that 9% of the consumption was to be charged as additional supply charges in the other regions in respect of LT-V general motive power category industry in case the consumption was more than BC and it is clear from the example given on page No. 159 of the above referred order that if the concerned unit reduces its consumption by 4% of the BC, then ASC could be charged on the 5% of the total consumption. Therefore, the contention of licensee that 12% of the consumption was to be charged as ASC is incorrect and hence is rejected. Therefore licensee is directed to verify the BC for the consumer in the month of Oct. 06 (billing month Nov. 06) and recalculate the ASC as per the MERC's order dt. 20/10/06 in case No. 54 of 2005 and keeping in mind the above example of calculate of ASC, and refund the unnecessarily charged or excess charged ASC if any, together with interest at the Bank rate of RBI to the consumer by giving its credit to the consumer in the ensuing bill after 30 days from the date of this decision in this case.

- 14) Grievance No. 6 – Regarding ASC charges charged in Oct. 07 : The consumer claims that the licensee has illegally reduced its BC from 13978 to 9645 in the month of Oct.07 and charged ASC for the said month by considering such reduced BC of 9645 units and therefore, it is entitle for refund of such excess ASC charged to it i.e. Rs.152.32 together with interest. The licensee claims that the ASC charged in Oct.07 is as per I.T programme and therefore, there is no question of any refund on this count. The copy of the bill for the month of Oct.07 (Annexure 8) show that previous year's average is given as 8643 in it, and therefore the possibility

of licensee calculating the ASC taking the same as BC can not be ruled out. Therefore, considering the fact that the licensee has changed the BC in the bill for Oct.07 and there is no explanation on the side of licensee for such change, the licensee is directed to verify the BC for the above month Oct.07 and recalculate the ASC chargeable to the consumer in the said month as per directions of MERC dated 27/04/2007 in case No. 65 of 2006, within a period of 30 days from the date of decision in this case and refund any excess amount recovered on this count if any, together with interest at the Bank rate of RBI to the consumer by giving it's credit to the consumer in the ensuing bill after 30 days from the date of decision in this case.

- 15) As to grievance No. 7 - Regarding disconnection of single phase commercial 0.2 KW supply with consumer No. 001840603659 : The consumer claims that it has demanded disconnection of the said single phase commercial supply vide letter dated 17/01/09 sent to Dy. E.E. Vasai (East), since according to it in view of the clause 19.1 of MERC (ESC & OCS) Regulation 2005 implemented from 20th Jan. 2005, all irrational circulars & orders of MSEDCL are invalid, & tariff booklet definition & MERC operative order says that supply at low voltage except use of agricultural pump is allowed under LT-V & therefore, it does not need separate single phase commercial supply. It has also mentioned the same reason in support of his request/demand for disconnection in it's letter dated 17/01/09 about it to the Dy. Executive Engineer. The licensee claims that disconnection of single phase supply action will be taken for P. D.

Clause 19.1 of above referred Regulations 2005, on which the consumer relies, reads as under :

“19.1 : Any terms or conditions of the Distribution Licensee, whether contained in the terms & conditions of supply & / or in any circular, order, notification or any other document or communication, which are inconsistent with these regulations shall be deemed to be invalid from the date on which these regulations come into force.”

The consumer has not made clear in his grievance as to exactly what type of activities it is carrying on in the premises for which it has earlier taken the said supply for commercial purpose. The CR also could not show any recent circular or order by which at present the supply given for Industrial purposes can also be used for commercial purpose also. Therefore, earlier restrictions if any, about it, cannot be said to be invalid on the basis of above referred Clause 19.1. However, it is a matter of common understanding that, a person cannot be forced to continue to have particular type of supply against it's wishes. Therefore, the licensee is directed to disconnect the said supply with consumer No. 001840603659 to the consumer at the risk of consumer within 30 days from the date of decision in this case, & there after transfer the SD amount together with interest till the date of such PD & all other credits including the amount of RLC as per MERC operative order 77 of 2007 if any, of the consumer in the said connection, to it's other industrial connection with consumer No. 001840603632 within a period of 30 days from the date of decision in this case.

- 16). In view of the findings on the grievances of the consumer as above, the forum unanimously passes the following order.

O-R-D-E-R

- 1) The grievance application is allowed.
- 2) The licensee to comply the directions given in above para Nos. 08 to 11, and 13 to 15.
- 3) The Compliance should be reported to the forum within 90 days from the date of decision.
- 4) The 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.

- 5). Consumer, as per section 142 of the Electricity Act, 003, 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 : 29/05/2009

(Sau V. V. Kelkar)
Member
CGRF Kalyan

(R.V.Shivdas)
Member Secretary
CGRF Kalyan

(M.N.Patale)
Chairman
CGRF Kalyan