



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

No. K/E/794/953/2014-15

Date of Grievance : 28/04/2014

Date of Order : 30/07/2014

Total days : 93

**IN THE MATTER OF GRIEVANCE NO. K/E/794/953 OF 2014-15, IN RESPECT OF MRS. SHRINBEN AMIRALI LALANI, GALA NO.6, GAT E NO.3 SERVICE CENTRE, MALGI PADA, TAL. VASAI, DISTRICT THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING EXCESSIVISE BILL, DEFECTIVISE METER AND SEEKING COMPENSATION.**

Mrs Shrinben Amirali Lalani,

Gala No.6, Gate No.3,

Service Centre, Malgi Pada,

Tal. Vasai, District-Thane.

.... (Hereinafter referred as Consumer)

Consumer No. 002300762932-LT-V Industrial))

Versus

Maharashtra State Electricity Distribution

Company Limited though its

Dy.Executive Engineer, MSEDCL,

Vasai Road (E), Sub/Divn.

.... (Hereinafter referred as Licensee)

Appearance : For Consumer –Shri Harshad Seth-Consumer’s representative.

For Licensee -Shri Satish UMBERJE- Dy.Exe. 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

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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 28/4/2014, contending that the bill provided up to 2.10.2013 was correct, but thereafter till to the date of grievance, previous consumption is shown as 241910 units and same is shown as current consumption, but bills are issued showing consumption of 6000 units for November, December, 2013 and January 2014, and for the month of February 2014, same is the position, but consumption of units is shown as 12,500 units and issued bill for Rs.92,500/-. It is contended that said meter, was, defective, actual reading not taken and hence, as per Standard of Performance (SOP) compensation is sought. Meter is also sought to be replaced. Consumer on that count approached the Dy. Executive Engineer as well as IGRC by complaint dated 28/2/2014, presented on 1/3/2014. But as no relief was granted, either by Licencee or IGRC by passing appropriate order, hence, she approached this Forum on 28/4/2014.

3] On receiving this grievance, it's copy along with accompaniments sent to the Licencee vide this Office Letter No. EE/CGRF/Kalyan /0172 dated 30/4/2014. In response to it, Officers of Licencee appeared and filed reply dated 26/5/2014, on 27/5/2014. Consumer too filed rejoinder on that date. During the pendency of matter prior to reply, on 16/5/2013, said meter was replaced and at the time of replacement, it was noted that there was no display in the meter, which was of L & T company. In

respect of new meter, reading is stated as 010 KWH. Said replacement report dated 16/5/2014 is placed on record, which is not bearing signature of consumer's

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representative. Further, said old meter was sent to the manufacturing company, for testing. Said company tested it on 23/6/2010, and noted that in the said meter, data updation stopped from 5/10/2013 05.39 hours. Accordingly, in this light, Licencee contended, in reply dated 1/7/2014, that during the disputed period from 5/10/2010, till meter replaced, data updation was stopped but factory of consumer was running and hence, consumer is charged on average basis during the said disputed period and even up to April 2014.

5] In the light of aforesaid factual aspects, following details are to be just borne in mind:

a] Consumer is having Industrial supply from 17/5/2010 charged as per tariff LT-V and there is no dispute, up to the bill issued for the period from 2/9/2013 to 2/10/2013. In the said bill current reading was shown as 241910 units and said bill is paid off.

b] Towards the said connection, for further four bills i.e. of November, December 2013, January and February 2014 previous reading and current reading is shown as 241910 units. However, consumer is billed for said period, showing 6000 units for each months i.e. November, December 2013 and January 2014, but for February 2014 consumed units are shown as 12,500 and billed for Rs.92,500/-.

c] On receiving the bill of February 2014 consumer approached Dy.Executive Engineer of Licencee and IGRC on 28/2/2014 with a grievance of defective meter and charging consumer at higher side. Grievance of consumer was not decided in time. Hence consumer approached this Forum.

d] During pendency of this matter, Licencee replaced the old meter on 16/5/2014 and replacement report speaks that no display was found in the meter. Accordingly, it is found to be a defective meter. Consumer's contention about defective meter is fortified, that too, when consumer approached Licencee with the grievance, which was not dealt in time, but, it is noted, when matter is brought before this Forum.

e] Though, Licencee pleaded that display was not seen in the meter, factory of consumer was functioning and hence, consumer is charged on average basis for that disputed period. Though, this statement is made, but exactly it is not demonstrated, by placing on record, calculation arrived at, on the basis of average consumption. One

more development is brought on record, showing said meter was sent to the Manufacturing company and Manufacturing company during testing on 23/6/2014, reported that data updation in the meter, stopped from 5/10/2013. It shows that it is a case of stopped meter.

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5] In view of the above factual aspect, one thing is clear that it is a case of stopped meter and said aspect of stopping occurred from 5/10/2013 which is disclosed when the company tested it on 23/6/2010 and it was sent for testing by Licencee during the pendency of the matter before this Forum. Consumer was billed from 2/9/2013 to 2/10/2013, towards which, there was no dispute. Said bill is paid off, up to the reading of 241910 units. Now, further period is, in dispute.

Aspect of stopped meter is dealt in the Supply Code and Clause 15.4 is the provision dealing with defective meter. It contains only one clause but, there are two provisos. Main clause i.e. 15.4.1 reads as under:-

**15.4.1:** Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill.:

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.

The first proviso in the aforesaid clause pertains to the defect in the said meter, which resulted due to the act/overt act of consumer, such as unauthorised use of electricity or theft of the electricity. Said proviso totally revolves around the liability for breach of legal duty as per Section 126 and 135 of Electricity Act,2003. In that case, consumer is to be dealt by imposing penalty and punishment as stated in those sections. This first proviso is, merely reproducing the effect of those two sections in

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the act. In other words it deals with the accountability of consumer to act and liability created as per Law, breach of which is, made penal i.e. not to unauthorizedly use power, not to commit theft of power.

On close reading of Clause 15.4.1 and second proviso to it, one fact is clear that almost all circumstances of defective meter, are, dealt in the main clause and in the second proviso aspect of stopped meter is carved out and the mode in which quantification of charges to be worked out, is, stated. This clause deals with the avoidance or failure to discharge of legal duties by Licencee. It is supposed to maintain the service line and the meter in appropriate condition. If there is failure to maintain it, which, it is bound duty bound, then it cannot recover the charges for total period during which such defect/stoppage which is noted, but it is made limited to three months only. Three months period on average basis is provided as reasonable and the Licencee is supposed to maintain the meter correctly, noting the defects if any within three months in the light of provisions of Supply Code and SOP as it is supposed to keep the meter flawless. But liability if any is, of a period more than three months, said additional liability cannot be recovered. This is a legal mandate which Licencee is to face for it's failure to discharge the duty of keeping the apparatus i.e. meter in proper condition. Hence, for it's fault, not to maintain the meter in a proper condition, for more than three months, then the liability of consumer is, only for three months and in case of stopped meter, it is to be only to the extent of average of 12

months worked out considering last twelve months, leaving three months prior to the date of dispute.

6] The above discussion pertaining to consumer and Licencee are dealt for their failure to discharge their respective enforceable duties.

It is necessary to consider the scheme of this particular Clause 15.4, which deals with defective meter and relief to be given to the consumer when additional liability is raised. Aspect of defect, if arises due to overt act of consumer, he is dealt as per section 126 and 135 which will penalize him for paying more amount by way of penalization and u/s. 135 even punishment is there. These two aspects are

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not within the jurisdiction of the Forum. Those are totally to be dealt by the Assessing Authority, Appellate Authority and by Spl. Court as per the said provisions.

It is a fact that there are various aspects which may lead to the defect in the meter. Question comes up under the Electricity Act or Regulations whether consumer is made responsible to keep watch on such defects or directed to complain to the Licencee. In other words, is, the consumer accountable to it. We find scheme of Supply Code or SOP is with the intent to ensure that consumer is not taken to task or dealt in a harassive manner, for no fault of his, by the Licencee, due to inaction or negligence on the part of Licencee or defect developed due to other technical aspects, in the meter. As per SOP responsibility is on the Licencee to maintain the regular supply of electricity and to keep the meter in proper condition. If, there is any flaw in it, then SOP provides reliefs to the consumer against Licencee by way of compensation and Supply Code provides other effective mode. Conversely in case of consumer, if defect is caused by consumer to the meter or in the meter then he is dealt by penalty and punishment. Said penalty and punishment is a course which is to be set in motion by Licencee, by passing appropriate orders u/s. 126 or resorting to action u/s. 135. In other words, consumer at times, may not be able to know the defect in the meter or may not be able to trace it. It is a fact that there is a machinery available with

Licencee to ensure that meter is kept up to date, it's working is monitored and checked and defects are removed by timely maintenance. It is also a fact that occasionally Flying Squad created by Licencee, visits the installations of consumers and notes the defects in the meter and if, defect is, due to overt act of consumer's actions are directed u/s. 126,135 of Electricity Act and even in appropriate cases Flying Squad directs for rectifying the defect and assessing the consumer correctly without causing any loss or hardship to the consumer. In other words, for such defective period, Licencee has developed a system of ensuring that equitably consumer is charged and this aspect is known as B-80 system. In that system, the period covered due to defect in the meter, is, taken into account, then considering the healthy consumption of previous period, average is worked out and on the basis of

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said average recovery is proposed or refund is suggested. Accordingly, Licencee is, following this mode, going back, up to the date of inception of defect, proposes recovery for said period say for example three years. In that case if consumer approaches the Licencee making out a case that he is not responsible for said defect and he cannot be burdend for three years bill, it is to be restricted for three months quantum as per Regulation 15.4.1. Then further question is, whether he is to be held liable to pay only for three month, prior to the date of Licencee noticed said defect? or whether the three months period referred above in Clause 15.4.1 and second proviso to it, to be read, from the precise date when defect actually arose which was noticed subsequently. Consumer may not be knowing precisely when defect arose, it will be known only when meter is tested. Accordingly, it is necessary to consider, the appropriate interpretation of Clause 15.4.1 read with second proviso to it.

6] On close scrutiny of legal scheme provided in Supply Code, it is clear that it is introduced as a Regulation to ensure that Licencee is taking care of it's responsibility. Hence, Clause 15.4.1 is, one such provision which provides relief to the consumer that in case of any liability raised, due to stopping of meter or defect in the meter, not to be made responsible to shoulder additional liability for more than

three months. In other words, consumer cannot be asked to bear liability for more than three months due to the defect in the meter, may be even of stopped meter. Bearing it in mind, we find that said provision only speaks about complaints of consumer wherein Licencee is seeking recovery of liability for a period of more than three months, on the ground of defective meter and consumer is then coming with grievance .

It is clear that there is no specific provision to deal with the complaint of consumer, pointing out defect and due to his action of pointing out the defect, Licencee acts and during said action taken by Licencee, it is disclosed that said stopping of meter or defective was for three years or more. In that case, on the basis of such complaint by the consumer, to the Licencee, Licencee proceeds after some time, replaces the meter and tests the old replaced meter, notices that there is defect in the meter that, it is stopped or there are other defects not due to any act/overt act of

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consumer. Then question comes up if any fact is disclosed, showing defect for three years and if, consumer is billed for less units during that period can he be made to pay the difference of total period of additional worked out on the basis of result of meter testing shown in the report. To direct, recovery for total period, will be totally, against the spirit of the above provision which creates a duty or liability on Licencee to maintain the meter and service line flawless/without any defect, with timely maintenance and for their default if, defect is noticed on the complaint by consumer, he cannot be forced to pay for the total period and in that case also his liability is to be restricted only for three months.

On the basis of above analysis this matter is to be decided. In this matter Licencee claimed that in the computer system itself average is worked out and accordingly for the disputed period bills are issued. We find, precise calculations were not placed before the Forum and hence Officer of Licencee asked to place before the



Forum the previous record pertaining to consumption, right from May 2012. Accordingly, said details from May 2012 to October 2013 are placed on record vide letter dated 21/7/2014. These particular details are made known to the consumer's representative on 25/7/2014. We directed to the Officers of Licencee and CR to work out and place before us on the basis of said details 12 months average, prior to the period i.e. June 2013 back up to July 2012. Both of them worked out the average of said 12 months which came to 6,182 units. This period was chosen as three months prior to the dispute, are, to be ignored. Disputed aspect of stopped meter is from 6/10/2013. Hence August to October 2013 are not taken into account. If, once this average figure of consumption brought before us, then question needs to be dealt for how many months this average is to be considered.

As per Clause 15.4.1 second Proviso of Regulation as discussed above, the liability is to be made limited for three months. In this matter, meter is taken out that too on the grievance of the consumer which reached to this Forum on 28/4/2014. Further during pendency of this grievance on 16/5/2014 old meter was replaced, sent

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for testing and '**stopping of meter**' confirmed by the manufacturing company on 23/6/2014 and reported that said stoppage meter is from 6/10/2013. Hence, billing period for previous three months i.e. three months prior to 6/10/2013 is to be ignored and previous 12 months is to be considered for working out average consumption. Accordingly, average is calculated.

Now liability is to be made limited for three months, if any recovery is to be done. Accordingly, 'billing contemplated' as per 15.4.1 of Regulation in this matter was from 6/10/2013 to 16/5/2014. If three months period is to be considered, then it should be from 16/5/2014 as the Licencee found it fit to remove the meter on that date and confirmed that it is stopped recording right from 6/10/2013 onwards. Accordingly, billing from 6/10/2013 to 16/5/2014 is, contemplated. But liability is, to be made limited, in case any recovery is to be done, it will be only for previous three months,

prior to 16/5/2014 i.e. up to 16/2/2014. Hence, for the period prior to 16/2/2014, there cannot be any recovery of liability from consumer. But only for the period from 16/2/2014 to 16/5/2014, three months period, is, to be considered and if in those months, consumption shown by Licencee in it's record is, for more then 6,182 units it's liability is, to be made limited to 6,182 units. We are able to see from record, that Licencee has shown consumption of consumer from 2/2/2014 to 2/3/2014 as 7,625 units which is more than average units worked out i.e. 6,182 units. Hence, liability for the said period i.e. from 16/2/2014 ratably is, to be made limited to 6,182 average units (ratably for 30 days) and excess recovery done during that period is, to be ratably refunded to the consumer. Even such process is to be followed for further months up to 16/5/2014, during which consumption is shown by Licencee for more than 7,500 units.

Secondly, consumption of consumer, prior to three months i.e. prior to 16/2/2014 is, shown. At point of times, it is more than average of 6,182 units and for few months it is more than 6,182 units. Hence, whenever consumption is, shown less then average of 6182 units, then there is no question of recovery from consumer, for additional 182 units. But, when consumption is shown more than 6,182 units and

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amount is recovered that recovery is to be made limited for 6,182 units and the excess recovery done for more units is to be refunded to the consumer.

7] In the light of aforesaid discussion, grievance of consumer is to be allowed.

8] This matter could not be decided within the prescribed period of 60 days as the Officers of Licencee proceeded to cure the defect by taking out meter during pendency of this grievance and required information submitted on 21/7/2014 by making final arguments on 25/7/2014.

Hence the order.

## ORDER

Grievance of consumer is hereby allowed.

Licencee is directed to revise the bills of consumer from 6/10/2013 to 16/5/2014, ensuring that no any liability for more than 6,182 units per month is recovered in case already recovery is done, showing consumption more than 6,182 units. Any recovery done charging more than 6,182 units for the aforesaid period, it be refunded to the consumer. If any bills are issued, for units less than 6,182 units during the aforesaid period there cannot be any recovery for the balance units. In case of any refund, it be provided till to the date of crediting in the account of consumer, with interest as per RBI Bank Rate from the date when it is deposited. Said revised bills be prepared, showing necessary credit to the consumer within 45 days from the date of this order and it's compliance be reported within 15 days thereafter.

Dated: 30/7/2014

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

- 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.