



**Consumer Grievance Redressal Forum, Kalyan Zone**  
**Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301**  
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Date of Grievance : 23/10/2012  
Date of Order : 03/01/2013  
Period Taken : 70 days

**IN THE MATTER OF GRIEVANCE NO. K/E/649/768 OF 2012-2013 OF**  
**M/S. CALYX CHEMICALS & PHARMACEUTICALS LTD., DOMBIVALI**  
**(EAST) REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL**  
**FORUM KALYAN ZONE, KALYAN ABOUT EXCESSIVE ENERGY BILL**

M/s. Calyx Chemicals &  
Pharmaceuticals Ltd.,  
W – 217, M.I.D.C. Phase – II,  
Dombivali (East) : 421 204

(Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Assistant Engineer,  
Kalyan East Sub-Division No. III

(Here-in-after  
referred  
as licensee)

(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 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 a L.T. consumer of the licensee. The Consumer is billed as per Industrial tariff. Consumer registered grievance with the Forum on 23/10/2012, for Excessive Energy Bill.  
The details are as follows :  
Name of the consumer :- M/s. Calyx Chemicals & Pharmaceuticals Ltd.  
Address: - As given in the title  
Consumer No : - 021500011456  
Reason of dispute : Excessive Energy Bill
- 3) The set of papers containing above grievance was sent by Forum vide letter No EE/CGRF/Kalyan/0734 dated 23/10/2012 to Nodal Officer of licensee. The licensee filed reply vide letter No. AE/KLN-E-III/Tech/12-13/4564, dated 21/11/12 through their Assistant Engineer, Kalyan East Sub-Division No. III.
- 4) We heard both sides from time to time. Company Secretary and Law Officer of consumer accompanied by their Manager attended and matter and made submissions. On behalf of Licensee Shri Patil Nodal Officer, Shri S. M. Bharambe, Asstt. Engr., Shri K. M. Jadhav attended On the basis of submissions made by both sides following factual aspects are disclosed.

Meter of consumer was inspected on 29/05/2012 by the officers of Licensee and at that time it was noticed that from August 2007 to May 2012 bill was issued applying Multiplying Factor (M.F.) – 1 but it ought to have been applied M.F. – 2. Accordingly on the basis of said inspection on 01/06/2012 bill alongwith letter was issued for Rs. 7,49,748=73. It was further contended that amount is charged from August 2007 as meter was changed in August 2007.

Consumer on receiving the aforesaid letter and bill approached said Assistant Engineer on 11/06/2012 as consumer was asked to pay the amount within 15 days of the bill. Assistant Engineer replied to the said letter on 06/07/2012 asking the consumer to approach IGRC for grievance if any. Accordingly consumer approached IGRC on 13/07/2012, IGRC dealt the matter and passed an order on 24/08/2012 rejecting the application, upholding the action of Licensee. Being aggrieved by it consumer approached this Forum on 23/10/2012.

On behalf of Licensee reply filed on 21/11/2012, additional reply on 12/12/2012. Licensee placed on record additional submissions on 12/12/2012 enclosing with it the photograph of meter reading and C.Ts.

Accordingly during the submissions consumer has raised the dispute contending that under Section 56 (2) of Electricity Act there cannot be any demand for more than two years. Further it is contended that officers of Licensee were at fault, they have not taken care while applying proper M.F. and now abruptly there cannot be any higher demand for five years. Consumer in the application referred two orders passed by CGRF Nagpur (Urban) bearing No. 2 of 2012, CGRF Nagpur (Rural) bearing No. 250 of 2010, referred order of Hon. Ombudsman Chennai in representation No. 57

of 2011 and of Aasam in representation No. 3 of 2010. As per the contentions of consumer all these orders are speaking about recovery for two years only permitted. No doubt in reply Licensee came up with the case that our Hon High Court (Division Bench) passed an order in Writ Petition No. 7015 of 2008 M/s. Rototex Polyester V/s. Administrator , Administration of Dadra and Nagar Haveli (U.T.) Electricity Department & others dt. 20/08/2009 wherein the recovery of total dues are permitted if there is an error in noting M.F. When these rival contentions were raised before us we made it clear to both sides the legal position that there are two judgments of our Hon. High Court that too of Division Bench taken contradictory views and that those views at times are followed by Single Bench but in one of the Single Bench judgment of Hon. High Court while admitting and considering interim relief requested the Chief Justice that matter be placed before Larger Bench in view of the two conflicting views, said order is passed in Writ Petition No. 1064 of 2011 dt. 24/01/2012 wherein present Licensee is the Petitioner and officer of BSNL is the Respondent.

Consumer after considering the legal position came up with the contentions that aforesaid order passed in Writ Petition No. 10764 of 2011 is yet to be finalized by Larger Bench and hence this matter be postponed. However, it is submitted that in case if it is not possible consumer is ready to deposit two years arrears which Licensee is to accept unconditionally.

In reply Licensee maintained it's stand contending that M.F. was not mentioned appropriately and this human error crept in, resulting in the demand of less amount of bill. Accordingly it is contended that in the light of aforesaid Division Bench judgment of 'Rototex' (supra) the bill issued by

Licensee is correct and there is no any merit in the contention of the consumer.

We at this stage find that factual aspects are clear, Licensee is coming with the case that meter was changed in August 2007 and hence now dues are claimed from August 2007 onwards till to the date of inspection. Aspect of meter changed in August 2007 is not denied and hence we find this aspect is to be noted.

Secondly, it is not in dispute that in the present action of consumer M.F. – 2 is applicable and M. F. – 1 is not applicable.

It is a fact that though M. F. – 2 was not applied and bills are issued as per M. F. – 1 which were paid by consumer. Accordingly one thing is clear that consumption of consumer is there but recovery is only on the calculation of M. F. – 1 and not M. F. – 2. This aspect Licensee claims as human error but consumer claims it is the act of officers of Licensee for which consumer cannot be punished. This aspect is already dealt by our Hon. High Court and the reliance placed by Licensee on the judgment of 'Rototex' (supra) and even the reliance placed by consumer on the order in Writ Petition No.,. 10764 of 2011 are clear. It is a fact that in the Writ Petition 10764 of 2011 all judgments of Hon. High Court considered inclusive of 'Rototex'. We tried to have information from both sides whether in fact as per the order in said Writ Petition whether Larger Bench is formed by Hon. Chief Justice and whether there is any progress in it. However, that position is not made clear to us. In result we are required to consider the legal position. Said legal position pertains to two Division Bench Judgments of our Hon. High Court in force as on this date, there is no any stay as such to any of the Division Bench judgment by any higher court or

any Larger Bench. Hence we are required to consider which of the precedent is to be accepted. In this regard legal position is just required to be noted, unless any judgment is set aside, it is having binding force. Accordingly two judgments of Division Bench are available and those are AIR 2007 Bombay 52 Mr. Awadesh Pandye V/s. Tata Power Co. Ltd.. and AIR 2009 Bombay 148 M/s. Rototex Polyester V/s. Administrator , Administration of Dadra and Nagar Haveli (U.T.) Electricity Department. It is seen from the judgment of 'Rototex' reference is made to the previous judgment of our Hon. High Court i.e. AIR 1978 Bombay 369 Bharat Barrels V/s. Municipal Corporation of Greater Bombay (Division Bench), further referred to Single Bench judgment i.e. AIR 2000 Bombay 264 U. A. Thadani V/s. B.E.S.T. Undertaking upholding the views in these two judgments Hon. High Court in 'Rototex' further upheld view taken by our Hon. High Court in AIR 2007 Bombay 73 dt. 18/01/2007 Bombay Municipal Corporation V/s. Yatish Sharma (Single Bench). However, it is a fact that while deciding the 'Rototex' there is no reference to the judgment of AIR 2007 Bombay 52 Mr. Awadesh Pandye V/s. Tata Power Co. Ltd. Even it is a fact that the judgment of Awadesh Pandye i.e. AIR 2007 Bombay 52 is not reflecting the previous judgments of our Hon. High Court i.e. U. A. Thadani AIR 2000 Bombay 264 or AIR 1978 Bombay 369 Bharat Barrels case. Accordingly 'Rototex' and 'Awadesh Pandye' are the two judgments on this particular point. As noted this matter is required to dealt and in this light we find both Division Bench judgments are available but question will be which of the judgment is to be now followed.

Legal position in respect of precedents needs to be borne, in mind. As noted above Division Bench Judgments of 'Awadesh Pande' and

'Rototex' are now available. Those two are Judgments of Division Bench but this is perceived as a conflict by Hon. Single Judge that too while admitting the Writ Petition and granting Interim Relief. Hon. Single Judge not accepted the view of 'Rototex' and requested the Hon. Chief Justice for forming Larger Bench. Till matter is referred actually by Hon. Chief Justice to the Larger Bench and till Larger Bench decides the matter, existing position of two Division Bench Judgments subsists. Accordingly 'Rototex' is a recent Judgment whereas 'Awadesh Pande' is earlier. In 'Awadesh Pande' case previous view of Hon. High Court in 'Bharat Barrel' case (Division Bench) and 'U.A. Thadani' case (Single Bench) is not brought to the notice and not referred therein but these two Judgments are referred by the Divisional Bench in 'Rototex'. No doubt those two cases were under the previous Act i.e. Electricity Act 1910, however in 'Rototex' about old act and new act i.e. Electricity Act 2003 their Lordships observed as under in Para 09 :

“The principle which can be deduced from the above Judgments is that in case consumer is under billed on account of calculation mistakes such as the present case, where M.F. changed from 500 to 1000, but due to oversight, the department issue bills with 500 as M.F. instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26 (6) of the Indian Electricity Act 1910 is not parimateria with Section 56 (2) of the Electricity Act 2003. In our opinion the present case could be governed by the above principle hence the challenged raised by Petitioner must fail.....”

These observations are self speaking in respect of the principle underlying in the previous Act and it is applicable even to the present Act.

The aforesaid legal position if considered, then question comes up if these are two Judgments of Division Bench, then which will be accepted. In this regard we are guided by our own Hon. High Court wherein such position is dealt in 1995 (2) Bombay C. R. 640 Kamaleshkumar Patel V/s. Union of India (Full Bench) wherein their Lordship dealt the binding force of conflicting decision of equal strength and laid down that appropriately matter needs to be dealt applying a test of decision which appears to have better authority of reason and latest in time. Precise portion from said Judgment wherein their Lordship re-produced the observations from the Judgment AIR 1988 Calcutta -1 (Para 14) are as under.

“We are inclined to think that a five-Judge Bench of the Supreme Court in (Atma Ram v. State of Punjab) 20, A.I.R. 1959 S.C. 519, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength, perhaps the better course would have been to constitute a larger Bench, it has, however, been observed that for otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task “of preferring one view to another”.

We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision



and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in Atma Ram, A.I.R. 1959 S.C. 510 (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction.”

The law as enunciated in that Special Bench decision, as quoted hereinabove, has our unqualified concurrence.”

Accordingly this is a pointer for consideration.

In this regard during hearing we made it clear to the consumer representative and representative of Licensee that we have come across the Judgment of Hon. Supreme Court AIR 2008 SC 2796 Kusuman Hotels (P) Ltd. V/s. Kerala State Electricity Board wherein Hon. Appex Court in para No. 12 noted arguments advanced by the Counsel during hearing which are as under :

Para 12 : .....

(iii) ‘In view of the provision in Sub-Section (2) of Section 56 of the Electricity Act 2003, no bill can be raised after a period of two years’

This particular submission is further replied by the Lordship in Para No. 13 which reads as under :

‘We however, are not in a position to accept the contention that bills cannot be issued having regard to Sub-Section (2) of Section 56 of the

Electricity Act “. Accordingly it is seen that Sec. 56 (2) was before the Hon. Apex Court , this is one of the guide line available to us as on this date.

In view of the above discussion, legal position is clear as per the view of Hon. Apex Court, and even Judgment of our Hon. High Court, Judgment in Rototex fulfills both criteria required for accepting it in absence of any other Judgment of a Larger Bench. Accordingly we are required to accept the said view of the Hon. High Court expressed in Rototex and the bill in dispute is to be upheld.

Accordingly this grievance is to be rejected. The claim of consumer disputing the bill found not correct. Legal position under Section 56 (2) of Electricity Act is considered accepting the Division Bench Judgment of ‘Rototex’ read with the Judgment of our Hon. High Court on the point of precedents and even on the basis Judgment of Hon. Supreme Court referred above which considered Section 56 (2) of Electricity Act.

Matter could not be decided in time as one of member who heard it with us not available on the date fixed.

Hence we pass the following order :

### **ORDER**

- 1) Grievance application No. K/E/649/768 of consumer is hereby dismissed.
- 2) The Consumer if not satisfied, can file representation against this decision with the Hon. Electricity 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”.*

- 3) 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”*

Date : 03/01/2013

I Agree

I Agree

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

(R.V.Shivdas)  
Member Secretary  
CGRF Kalyan

(Sadashiv S. Deshmukh)  
Chairperson  
CGRF Kalyan