



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 : 08/10/2013
Date of Order : 07/12/2013
Period Taken : 60 days

COMMON FINAL ORDER IN GRIEVANCES NO. K/DOS/015/874 OF 2013-14 IN RESPECT OF SHRI SANDEEP SURESH BHATLEKAR & NO. K/DOS/016/875 OF 2013-14 IN RESPECT OF SMT. SONA SANDEEP BHATLEKAR REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT INTERIM APPLICATION DUE TO THREAT OF DISCONNECTION

Consumer: Shri Sandeep Suresh
Bhatlekar
Navnath, Post - Ganjad,
Tal-Dahanu, Dist-Thane
Consumer No.
000971000571

Consumer: Smt. Sona Sandeep
Bhatlekar
Navnath, Post - Ganjad,
Tal-Dahanu, Dist-Thane
Consumer No.
000970436937

(hereinafter referred as "Consumers")

v/s

v/s

Licensee: Maharashtra State
Electricity Distribution
Company Limited through
its Exe. Engineer, Palghar
Division

Licensee: Maharashtra State
Electricity Distribution
Company Limited through
its Exe. Engineer, Palghar
Division

(hereinafter referred as "Licensee")

Appearance :- For Consumer - Shri Sandeep Suresh Bhatlekar for Self and as Representative of Smt. Sona Sandeep Bhatlekar

For Licensee - Shri D.D. Rajhatwan, Exe. Engineer, Palghar Division, Vasai Circle

Shri G.V. Devkar, Asst. Engineer, Dahanu S/Dn. Palghar Division, Vasai Circle

Shri R.N. Kher, Dy. Manager, Dahanu S/Dn. Palghar Division, Vasai Circle

Shri G.N. Kulkarni, Asst. Accountant Dahanu S/Dn. Palghar Division, Vasai Circle

(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 Consumers are having supply to their Poultry from the Licensee. The Consumers were billed as per the tariff treating as ‘Poultry’ but from Aug. 2008, sought recovery as per ‘Commercial’ tariff. Recovery is sought at the said rate giving threat of disconnection on 7/10/2013, hence Consumers registered grievances with this Forum on 8/10/2013 for relief and seeking Order restraining Licensee towards disconnecting the supply.

3. The papers containing above grievance were sent by Forum vide letters Nos. EE/CGRF/Kalyan/0442, and; 0443; both dated 8/10/2013 to Nodal Officer of Licensee. The Licensee filed its reply and additional reply in both matters.
4. We heard Consumer, Shri Sandeep Bhatlekar for himself and as a Representative for Smt. Sona Sandeep Bhatlekar. They are respectively husband and wife. The Officers of Licensee are heard. On the basis of material on record and arguments of both sides, these two grievances are being dealt by this Common Order as the factual aspect is common for both except names, Consumer Nos. and due amount.
5. This matter was initially scheduled to be heard on 9/10/2013 as there was imminent threat of disconnection and message was given to the Licensee along with letter through the Consumer. On 9/10/2013 both sides attended and matter was adjourned as there was a prayer from the Licensee side, till 29/10/2013. Thereafter on 29/10/2013, the matter adjourned to 26/11/2013 and thereafter matter was adjourned to 3/12/2013.

During discussion it was disclosed, that the Consumers and Licensee were peculiar in their stand and in their modus. Neither the Consumers nor the Licensee disclosed the total facts. This Forum when tried to discuss the aspect, it was disclosed that though grievances of these consumers decided previously, thereafter, there was some arrangement amongst these parties, they have agreed for an undertaking and undertakings were given. The aspect of undertakings is a main grievance in the minds of the Consumers but it was not specifically placed on record. The Officers of Licensee were having their own independent stand contending that even subsequently when some more undertakings sought from Consumers in the light of letter of the

Chief Engineer (Commercial) but they have refused to any such undertakings on stamp of Rs. 200/-. As those were not in grievances' file and replies submitted, hence we directed as per provisions of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006 to both sides to place almost all details. Ultimately, both sides are fair enough to place those details before us.

6. It is necessary to mention at the outset that these two Consumers respectively are husband and wife, had already approached this Forum and their grievance nos. K/E/547/645 of 2011-2012 in respect of Smt. Sona S. Bhatlekar & K/E/548/646 of 2011-2012 in respect of Shri Sandeep S. Bhatlekar, were dealt by this Forum by passing Order on 29/11/2011. Those grievances are ultimately disposed off stating that Forum has no jurisdiction and said finding is arrived at on the basis that some matters of other parties against the Licensee, pertaining to similar disputed aspect, were pending in the High Court and the High Court granted interim relief. Though these Consumers were not party to the proceedings before the High Court, this Forum proceeded to assume that their matters are pending in High Court and hence this Forum cannot consider it. Accordingly it was observed that this Forum has no jurisdiction.
7. Consumers after the orders passed by this Forum in the aforesaid matters, i.e. K/E/547/645 of 2011-2012 in respect of Smt. Sona S. Bhatlekar & K/E/548/646 of 2011-2012 in respect of Shri Sandeep S. Bhatlekar, dated, 29/11/2011 not approached any higher Forum, i.e. Hon'ble Electricity Ombudsman or the High Court. Rather, a peculiar development has taken place. This Forum passed Order on 02/01/2012 in Grievances Nos.

Grievances No.K/DOS/015/874 of 2013-14 and No. K/DOS/016/875 of 2013-14

K/E/550/648, K/E/551/649, K/E/552/650 pertaining to M/s. Premium Hatcheries & Farm Pvt. Ltd., M/s. Sumangal Hatcheries & M/s. National Poultry Farm & Hatcheries of similar dispute. In those matters it is ordered that subject matter is *sub-judice* before the Hon'ble High Court in other matters and hence the grievances are required to be stayed until further orders and further directed that bills to be issued as per old tariff until further orders. Copies of those Orders were sent to the Licensee by the Consumers and there was some interaction among these Consumers and the Officers of Licensee. As per the said interaction the Officers of Licensee sought legal opinion pertaining to these Consumers.

The Legal Adviser of Licensee provided his first opinion on 8/2/2012 but superseded it by further opinion dated 13/2/2012, he advised that that let the consumers give undertakings on bond paper of Rs.100/-, to abide by the Orders of High Court pending in Writ Petitions filed by *Balkrishna Hatcheries*, etc. as stated in the undertakings. Material portion of the said opinion reads as under:-

“..... The CGRF Kalyan, though dismissed similar grievances of Applicant, Sandeep S. Bhatlekar, vide Order dated 29/11/2011 in his Grievance No.K/E/584/646 of 2011-2012, for want of jurisdiction in view of the fact that similar question is under consideration, before the High Court, in Writ Petition No. 2358 of 2011, subsequently, vide Common Order dated 2/1/2012 in Grievance No. K/E/550/648, K/E/551/549 & K/E/552/650 filed by M/s. Premium Hatcheries and Farm Pvt Ltd., M/s. Sumangal Hatcheries and M/s. National Poultry Farm & Hatcheries, respectively, directed us, i.e. MSEDCL to issue bills as per old tariff

under further orders, relying upon the above referred interim relief granted by High Court in Writ Petition No.2358 of 2011. Admittedly, same question as to whether Hatchery is to be treated as Industrial activity, qualifying for H.T.-I tariff meant for Industrial activities or L.T.-Poultry tariff arises in all the above matters including the case of Applicant, Shri Sandeep S. Bhatlekar. Therefore, if Shri Sandeep S. Bhatlekar files Representation before the Electricity Ombudsman or files Writ Petition in the High Court against the above referred order dated 29/11/2011 in Grievance No.K/E/548/646 of 2011-2012, the Electricity Ombudsman or High Court most probably shall grant similar interim relief as in W.P. No.2358 of 2011, to him.

Considering the above facts and to avoid multiplicity of litigation and to save the MSEDCL from expenses to face such litigation, in this case, in my opinion, it would be proper to allow, Shri Sandeep S. Bhatlekar to pay the arrears and further bills as per the tariff applicable to category of L.T.-Poultry till further orders or final decisions in W.P. No.2358 of 2011, M/s. Balkrishna Hatcheries Ltd. v/s MSEDCL and Ors., W.P. No.7884 of 2010 on his executing Bond cum Undertaking on Non Judicial Stamp of Rs.100/- to the effect that he undertakes to remain, abide by final decisions of Hon'ble High Court in Writ Petition No.2358 of 2011 M/s. Balkrishna Hatcheries Ltd. v/s MSEDCL and Ors., W.P. No.7884 of 2010 and other connected Writ Petitions and that he shall pay the arrears after applying tariff of L.T.-Commercial tariff, if necessary as per the final decision of High Court in above Writ Petitions in lumpsum immediately after such final decisions in the above Referred Writ Petitions and on failure by him to do so, electric supply to his

concerned premises may be disconnected without notice. Watch be kept on”

As per the above legal opinion, letters were given to the Consumers who are husband and wife represented by Shri Sandeep S. Bhatlekar in both matters, on 16/3/2012 by the Officers of Licensee seeking undertakings enclosing the proforma of undertaking. Accordingly, Consumers gave undertakings on Rs.100/- stamp paper on 26/3/2012 but added two more clauses in it.

However, on 27/3/2012 the Officers of Licensee addressed letter to the Consumers stating that their undertakings containing two additional terms may not be acceptable to the Licensee.

It is clear that at no point of time there was any communication given by the Licensee that those undertakings are totally rejected. Two additional clauses in the undertakings given are pertaining to the Consumer's contentions that they will approach the Hon'ble Supreme Court if High Court Order is against them and till approaching the Hon'ble Supreme Court connections should not be cut off. Second additional clause is to the effect that in case High Court passes Order against the Consumers then their supply should not be cut off unless notice is given u/s 56 of Electricity Act.

8. In spite of such letters of the Licensee communicating that two additions may not be acceptable to the Licensee, on 20/4/2012, letters are given to the Exe.Engineer by Asst. Engineer communicating that considering the undertakings, amount accepted from Consumers. Accordingly, these letters are speaking the fact that undertakings, given by the Consumer, are acted

upon. This conclusion is arrived at on the basis that there is no any clear intimation that undertakings are not accepted. Accepting amount and communicating it to higher ups speaks that undertakings are accepted and acted upon.

9. It is seen that thereafter the Chief Engineer (Commercial) of the Licensee addressed letter to the Superintending Engineer dated 17/10/2012 in respect of mode of recovery of the dues wherein poultry / hatchery business is going on may be of H.T. connection, or L.T. connection, covering the period from 30/4/2012 to 31/7/2012. Therein it is communicated that for those three months, amount be recovered as per Industrial tariff rather than Commercial tariff.
10. In spite of the fact that undertakings dated 26/3/2012 were given as opined by the Legal Adviser, the Consumer, Shri Sandeep S. Bhatlekar received message of disconnection if they fail to pay the dues. Though payments were done treating as 'poultry' till April 2013, however, thereafter there was an insistence for paying the arrears as per 'Commercial' tariff or to face disconnection. Letters to that effect are issued on 7/10/2013 to the Consumers by the Officers of Licensee wherein total amount demanded to the tune of Rs.91,22,752.69 and Rs.77,70,489.32 respectively from the Consumers and payments were sought on or before 22/10/2013, in default to face disconnection. Consumers on this count rushed to this Forum on 8/10/2013.
11. Though above chronological details are there, but there is one more date, i.e. 27/11/2013, which is a day after hearing held in these matters on 26/11/2013. On 27/11/2013, letters are addressed by the Officers of Licensee to the Consumers as per the letter of Chief Engineer (Commercial) dated

17/10/2013 to the Consumers seeking undertakings in the proforma enclosed, so that things will be regularized. Such undertakings not given by the Consumers and they have their own reservations about it.

12. Considering the aforesaid factual aspects, it is seen that though this Forum at one stage, the previous grievances of Consumers were dismissed for want of jurisdiction, as disputed aspect was *sub judice* in the Hon'ble High Court, but these parties thereafter entered into correspondence with the Licensee, as per the legal opinion obtained by the Officers of Licensee, undertakings dated 26/3/2012 submitted and those undertakings are not superseded or avoided by any party, with prior intimation. Though about two clauses therein, the Officers of Licensee conveyed that those may not be acceptable, but other clauses are not objected. Though there is mere reservation expressed by the Officers of Licensee for those two clauses, undertakings are not totally rejected. In spite of such undertakings, Licensee intends to seek undertakings, that too, in the light of the letter of the Chief Engineer (Commercial) dated 17/10/2012. No such letters were given to the Consumers from 17/10/2012 till 27/11/2013. Admittedly during pendency of these grievances the said letter dated 27/11/2013 is issued. It is necessary to mention that on 26/11/2013 the reply is submitted on behalf of Licensee, it is totally speaking about the previous order passed by this Forum and this Forum cannot pass any Order. It is contended that as Consumers have not paid the amount in May 2013, due amount as per commercial tariff, is shown in their account, as due and in arrears. Even as per circular of the Chief Engineer (Commercial) dated 17/10/2012 for those three months, the due amount as per Industrial tariff is also shown in the account of the Consumers and demanded vide letters dated 7/10/2013. Now short question comes up

whether grievances of the Consumers, any Order from this end can be passed.

13. It is a fact that previous orders passed in their grievances not challenged in the higher Forum, but parties chosen to go for another mode. Another mode itself is not being followed by the Licensee as agreed and this is a cause of action which led the Consumers to approach this Forum. Matters were required to be proceeded but Licensee was already a party before the Hon'ble High Court in Writ Petitions filed by other parties, in similar matters and interim stay was granted therein and operating against Licensee. Not only that, considering those aspects, the Licensee gave relief to these Consumers relying on the opinion of the Legal Adviser, obtaining undertakings from the Consumers, hence this is an independent aspect which requires consideration.

Secondly, question comes up, when valid undertakings were available and both sides had agreed to keep the aspects of dispute, pending till matters *sub judice* in High Court in Writ Petitions filed by other parties decided, can there be any action? Those Writ Petitions are noted even by Hon'ble MERC when the Association of such Consumers had approached. Said order is in MERC in Case No.22 of 2012 decided on 20/12/2012 wherein the Hon'ble MERC also opined that as aspect is *sub judice* and pending before Hon'ble High Court no any view can be expressed.

14. Accordingly it is seen that on the disputed point some matters are kept in abeyance by this Forums in the above cited grievances, i.e. Nos. 648, 649 & 650, and hence now it is to be considered whether any relief can be given to these Consumers. It is clear that from August 2008 till 30/4/2012 the Consumers have deposited amount as per the classification of poultry. The

dispute is whether they are to be asked to pay as per poultry or Commercial tariff. During pendency of the dispute, the Licensee by obtaining undertakings from Consumers, they are continued, recovered charges from them as per 'poultry' tariff but now it is the contention of the Officers of Licensee that for the period from 30/4/2012 to 31/7/2012 the Consumers are required to pay as per 'Industrial' tariff and hence they are required to pay for those three months the difference in between 'poultry' tariff and 'Industrial' tariff. It is contended that such payment is required as per the directions of the Chief Engineer (Commercial) vide letter dated 17/10/2013. The Officers of Licensee are even insisting that the Consumers are required to submit a bond on Rs.200/- stamp as per the directions of the Chief Engineer (Commercial).

15. In this regard the question comes up whether the Consumers are required to pay the said sum and give undertakings on bond of Rs.200/-. Consequently, question now comes up whether in spite of previous undertakings taken, that too, on the advice of the Legal Adviser of the Licensee, and such undertakings are still subsisting, anything more can be added or any other undertakings can be sought and difference amount can be demanded?

We find those previous undertakings are till decision of pending dispute in Writ Petitions before the Hon'ble High Court and both sides are to abide by orders of Hon'ble High Court. Matters before Hon'ble High Court not yet decided but from Licensee side, now, new terms are being added. Admittedly, undertakings obtained on 26/3/2012 are prior to letter of the Chief Engineer (Commercial), dated 17/10/2013, hence the additional undertaking cannot be insisted. Insistence to pay the disputed amount and intended action of disconnection in default of payment as per the letters

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dated 7/10/2013 are not correct and legal. Hence position existing as on the date of undertakings, i.e. 26/10/2011 needs to be maintained by both sides. Hence the grievances of the Consumers are to be allowed in this line.

Hence the Order

O-R-D-E-R

- a) The grievances of the Consumers, i.e. Grievances No.K/DOS/015/874 of 2013-14 and No. K/DOS/016/875 of 2013-14 are hereby allowed.
- b) The notices of demand issued to the Consumer dated 7/10/2013 cannot be enforced.
- c) The Licensee to maintain the position of the Consumers' dues and supply as they were existing on 26/10/2011 till in High Court, Writ Petitions are decided.
- d) Copies of this Order be kept in both matters.

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.

Filename: 874 n 875 Common Order of Sandeep & Sona
Bhatlekar
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