



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

No. K/DOS/030/969 of 2014-15

Date of Grievance : 22/07/2014

Date of Order : 14/11/2014

Total days : 115

IN THE MATTER OF GRIEVANCE NO. K/DOS/030/969 OF 2014-15 IN RESPECT OF MR.MANMEETSINGH NANRA , GALA NOS. 6 & 7 RAJMILAN IND. ESTATE, CHINCHPADA, VASAI (E) DIST THANE-401 208, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING RESTORATION OF SUPPLY AFTER ACQUITTAL FROM OFFENCE U/S. 135.

Mr.Manmeetsingh Nanra

Gala No. 6 & 7, Rajmilan Ind. Estate,
Chinchpada, Vasai (E),
Dist.Thane-401 208

(Consumer No.001590787406) (Hereinafter referred to Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Dy. Exe.Engineer, Vasai circle,

MSEDCL, Vasai Sub/Divn (E). (Hereinafter referred to as Licensee)

Appearance-For Consumer-Mr.Harshad Sheth & Prashant Phanse- Consumer's
Representatives.

For Licensee - Mr. Satish Uंबरजे- Addl. 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 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, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Consumer’s premises wherein supply given is allotted consumer No.001590787406. It is a industrial supply. The said installation was inspected by the Officers of Licencee on 14/2/2012 and noted that there is theft, hence on 16/2/2012 FIR filed and Crime No.846/2012 registered u/s. 135 of Electricity Act. Thereafter charge-sheet is filed on 22/5/2012. Though in the FIR consumer and Mr. Prashant Phanse are shown as accused, but charge-sheet is filed only against Mr. Phanse. Accordingly, on the basis that consumer allotted premises on rental basis to Mr. Phanse. Consumer is not added in the charge sheet. Said case is tried bearing Sessions Case No.1/2012 by Sessions Judge, Vasai. Said Sessions Case decided on 15/1/2014 wherein Mr. Phanse is acquitted.

3] After acquittal consumer approached Licencee for restoration of supply vide letter dated 4/2/2014. Such letters are issued till 15/7/2014. Even he approached IGRC on 1/7/2014 and IGRC decided the matter on 18/7/2014, observing, it had no jurisdiction.

4] Consumer aggrieved by the order of IGRC, approached this Forum on 22/7/2014.Said grievance application along with accompaniments

sent to the Nodal Officer by this Forum vide letter No. EE/CGRF/Kalyan 0265 dated 22/7/2014.

In response to it, Officers of Licencee appeared, filed reply on 19/8/2014 and further added details on 19/8/2014, 27/8/2014 and 26/9/2014. On the other hand on behalf of consumer additional details are added on 19/8/2014 and 9/10/2014.

5] We heard both sides at length and at times. Both sides placed on record notes of arguments dated 30/9/2014 by consumer and on 8/10/2014 by Licencee. It is a fact that Mr. Prashant Promod Phanse is allowed by consumer Nanra to carry on the activity as per the agreement in the premises owned by him. Accordingly said Phanse continued in the premises using the supply, which was standing in the name of consumer Nanra. Mr. Phanse faced the allegations of theft and as noted above he is tried and acquitted. Mr. Nanra shown as accused in FIR but was not ultimately sent for trial. Charge sheet is filed only against Phanse.

6] Though FIR was filed, Licencee issued supplementary bill in the name of consumer towards said aspect of theft for Rs.7,12,740/- and as that amount was not paid, supply was disconnected. It is a fact that amount as per supplementary bill is not paid. Even there was no payment towards compounding of offence. In other words due to the registration of crime there was disconnection of supply that too on the basis of non payment of assessed bill.

7] Consumer approached the Licencee after Mr. Phanse was acquitted. It is now contended that he himself i.e. consumer, was not added as accused, no trial is conducted against him. He was not tried, but he suffered due to the supply disconnected, on the allegations that Mr. Phanse committed offence u/s. 135 of Electricity Act. It is further contended that now in the said matter Mr. Phanse acquitted, there was no proof of theft, hence it was necessary on the part of Licencee to restore the supply forthwith. He claimed that from 4/2/2014

he himself approached Licencee for restoration of supply but was not responded. He approached IGRC and IGRC dismissed the application recording a finding that it had no jurisdiction. It is a fact that consumer is being represented by representative Mr. Harshad Seth and one more representative is there namely Prashant Promod Phanse, who was the accused in theft case u/s. 135 of Electricity Act. It is the contention of the consumer's representative that as consumer Nanra is in no way concerned to the offence or held responsible for the offence, his supply was required to be restored, at least after the order of acquittal of Mr. Phanse. In this light, he has demanded compensation as per SOP.

8] It seems to be a fact that before filing of this grievance with the Forum on 22/7/2014, matter is taken to Hon'ble High Court by Licencee. Copies of petition filed in the Hon'ble High Court are placed on record. It reflected that appeal along with petition for leave to file an appeal presented before the Hon'ble High Court on or about 18/7/2014. Advocate for Licencee addressed letter dated 7/8/2014 to Mr. Phanse, informing him the date of hearing in the criminal petition leave to file appeal before Hon'ble High Court. These facts are not in dispute. In the light of this pendency of matter in the Hon'ble High Court, on 26/8/2014 Forum noticed that matter before Hon'ble High Court was scheduled to be heard on 1/9/2014. However, said matter did not reach on that day and adjourned on 11th November 2014. Accordingly, it is clarified by both sides that till 10th November 2014 there is no progress in the matter before the Hon'ble High Court.

9] From the aforesaid details, it is clear that in consumer's premises supply was available therein in the name of consumer, utilized by Mr. Phanse and during that period Phanse is involved in a theft case u/s. 135 of Electricity Act and after trial he is acquitted. Against the acquittal, Licencee had approached Hon'ble High Court. Precisely said appeal is filed just prior to the

date on which consumer has approached this Forum. But at the time when matter was taken up for discussion, pendency of such proceeding before the Hon'ble High Court, is, brought to our notice. No doubt, leave to file appeal is yet to be granted by the Hon'ble High Court.

Accordingly, one thing is clear herein Licencee has approached Hon'ble High Court with an appeal against the acquittal. Consumer during the course of hearing relied on three orders passed by **CGRF Bhandup case No.440 decided on 31/5/2012- Milaf Ali Sadia Qureshi & A Khudus H. Khan, case No. 485 decided on 21/3/2013 Hitesh M. Dani and Case No.497 decided on 3/7/2013 M/s. Vishwas Enterprises** and in all these three matters present Licencee was opponent. These cases are pertaining to theft u/s. 135 of Electricity Act wherein accused were acquitted and prayer was made for refund of amount deposited towards alleged theft, that too when Spl. Court not specifically dealt the aspect of civil liability. In these three cases there was no any appeal filed by Licencee in the Hon'ble High Court. However, in this matter there is appeal filed against the order. It is now contended taking the help of these authorities even in this matter also no any civil liability is surviving as matter ended in acquittal. Accordingly, it is claimed that it is necessary to restore the supply.

In this regard, on behalf of Licencee heavy reliance is placed on the order of Hon'ble Kolkata High Court in **Writ Petition No. 5062 (w)/dated 14/3/20082007 Sri Nirmal Chandra Roy V/s. State of West Bengal & Ors.** Relying on this Judgment, it is contended that acquittal in criminal trial is independent one and only because there is acquittal, it cannot compel the Licensing Authority to restore the supply. It is observed that there may be various reasons for acquittal and parameters to be applied for acquittal or conviction are quite different then determining civil liability. Accordingly, it is contended that because of acquittal, no right available for seeking

restoration. It is necessary to note that in the said matter Hon'ble Lordships, while deciding the matter, not followed the previous view. Secondly, it is seen that under West Bengal Act there is provision of appeal against the civil liability worked out by the Licencee and even before such disconnection of supply, notice was to be given and in that matter notice was given but not replied by consumer. Further reliance is placed on the order of **Maharashtra State Consumer Disputes Redressal Commission in Appeal No.A/08/762, Executive Engineer MSEDCL V/s. Avinash Nilkanth Hirekar dated 5/9/2013**. In Para No.11 of the said order State Commission observed that only because there is acquittal u/s. 135 of Electricity Act, it is not a ground for exercising the jurisdiction by Forum as there is a special remedy u/s. 154 (5) of the Electricity Act. In other words, it is contended that towards any aspect pertaining to civil liability u/s.135 of Electricity Act, Special Court is to pass an order. At this stage we find Spl. Court is having powers even to review its order. Said powers is stated in Section 157 of Electricity Act. Accordingly, it is contended on behalf of Licencee that though Mr. Phanse is acquitted, there is no any order towards civil liability which is assessed by Licencee's authority against consumer and unless said amount is paid, there cannot be any restoration. Further Officers of Licencee relied on the order passed by Hon'ble Ombudsman Mumbai in **Representation No. 26/2014 M/s. Reliance Jewellery Watches Pvt. Ltd V/s. B.E.S.T. Undertaking**. On close reading of the said order, it is seen that in that matter criminal case U/s. 135 of Electricity Act was yet to be decided and hence we find observations therein are not applicable to the present matter it cannot be considered.

At this stage, we find the above referred orders of Bhandup CGRF relied on by consumer are on the point of theft matters decided i.e.ended in acquittal and though there was no order of Spl. Court, about deciding civil liability, amount deposited by the concerned on the said allegation of theft

ordered to be refunded. Admittedly, in those matters Licencee has not filed any appeal. But in this matter appeal is filed by Licencee and no amount is deposited towards the aspect of theft. Further, the liability is shown on consumer by serving assessed bill and not on Phanse. Even it is a fact that Spl. Court while acquitting Phanse not whispered about deciding civil liability. As noted above, consumer was not the accused facing trial before the Spl. Court. These factual aspects are showing the difference in the facts as compared to the orders of CGRF Bhandup. In addition we are clear that even against the orders passed by this Forum in Grievance No. 967 dated 21/7/2014 matter was taken to Hon'ble Ombudsman and Hon'ble Ombudsman in said Representation No.65/2014 upheld the order of this Forum towards refund of amount deposited by the consumer towards incident of case u/s. 135 of Electricity Act and prayer for awarding interest on the said amount deposited from the date of order rejected. Similar is the result in representation No.51/2014 decided on 12/8/2014 arising out of the order of this Forum in Grievance No.947. In these matters reliance was placed by this Forum on the orders of Hon'ble Ombudsman Nagpur, in Representation No.59/2013 dated 24/7/2014. The view of Hon'ble Ombudsman Nagpur is noted and followed by Hon'ble Ombudsman Mumbai in Representation No.51/2014 and 65/2014. These are relevant as view is taken by Hon'ble Ombudsman Nagpur that when theft case ends in acquittal base for assessment done will not survive and hence assessment done need not be allowed to continue and amount paid is to be refunded. Hence, this is peculiar aspect worth keeping in mind.

10] After noting rival claims of the parties, it is necessary to note that as per Scheme of Electricity Act u/s. 126 if any action is taken there will be provisional assessment order and final assessment order. Further those are amenable for appeal u/s. 127. However, as per section 135 of Electricity Act if

there is crime registered and taken for trial, trial is to be conducted by Spl. Court. In the process of dealing u/s. 135 assessment is done and if any reconnection is sought then assessed amount is required to be deposited. Spl. Court if comes to a conclusion during trial u/s. 135 of Electricity Act that accused is to be convicted then civil liability is considered if liability found more than what is decided by Licencee then such more liability is to be recovered as if a decree. If amount deposited is more than it is required to be refunded to the accused or consumer with interest as per the prime lending rate of RBI. **Question in this matter is about exercising the powers by Spl. Court when there is no conviction and amount assessed is not deposited by the consumer.** It further needs to be considered whether person like present consumer if not faced the trial can there be any order by Spl. Court against him towards civil liability. Further, it is necessary to consider if there is no any whisper about the civil liability, is the present consumer, entitled to seek relief from Spl. Court by resorting to section 157 of electricity Act. These questions are required to be borne in mind, but now we are clear that in this matter appeal is taken to Hon'ble High Court and order of Hon'ble High Court will cover all aspects u/s. 135 of Electricity Act even including civil liability. As such civil liability and acquittal of Phanse are found interconnected, at this stage it is not possible to express any view on merit pertaining to this matter. Suffice it to say aspect involved is still open. Till this aspect of Sec. 135 is dealt by Hon'ble High Court there cannot be any observation from this Forum. Hence this matter is to be disposed off giving liberty to the consumer to approach this Forum if found tenable after conclusion of matter u/s. 135 of Electricity Act pending before Hon'ble High Court.

11] This matter could not be decided within the prescribed time as it's hearing continued till 8/10/2014 and matter involved some important legal aspect which was to be minutely scanned.

Hence the order.

ORDER

Grievance application stands disposed off.

Liberty is given to the consumer if found fit about tenability of grievance to approach this Forum after proceeding u/s. 135 of Electricity Act are finally concluded.

Dated: 14/11/2014.

I agree

I agree

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

(Chandrashekar 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.

