

CONSUMER GRIEVANCES REDRESSAL FORUM; NAGPUR (RURAL)

COMPLAINT NO. 367/2012

M/s Deegee Orchards Pvt. Ltd.,
At & Post Vela,
Taluka Hinganghat,
District Wardha.

.. Complainant

.,VS..

1. Superintending Engineer,
MSEDCL, O & M Circle,
Wardha.

2. Executive Engineer/Nodal Officer,
I. G. R. C., Circle Office,
MSEDCL, Wardha. .

Respondents

Applicant's Representative Shri Deepankar Roy, Manager

Respondents Representative : 1) Shri Borikar, S.E., O&M Circle, Wardha.

CORAM:

Shri T. M. Mantri, Chairman.
Shri M. G. Deodhar, Member.
Ms. S. B. Chiwande, Member-Secretary.

ORDER

(Per Chairman Dtd. 7th , May2012)

1 The complainant has approached the Forum in respect of his grievance about refund of Rs. 7,02,427.35 only. So also claimed interest @ 18% from the date 29.10.2009 thereon and also alleging that the correct assessment be made as per recommendation and inspection report submitted by E.E., O&M Dn., Hinganghat. The complainant also prayed for removal of Commercial meter alleging that no commercial activities are carried out at the Factory and entire billing has to be made at the rate of Industrial Tariff. In substance the complainants case is that it is taken service connection on 33KV Express Feeder since 2001 by incurring all the expenses. Reference has been made to bill dtd. 23/10/2009 (for Sept./Oct.) for an amount of Rs. 18,59,860/- wherein an amount of Rs. 8,58,883.90 is shown as recovery of commercial and residential consumption for last 3 years (Sept.2006 to August,2009) . It is alleged that the said recovery are arbitrarily inflicted without notice, opportunity of hearing and say by principle of Natural Justice has been violated. As there was threat of disconnection the

complainant had no choice but to pay said amount of 18 lakhs fifty-nine thousands & odd on 29.10.2009 by lodging protest and requesting to explain alleged recovery of Rs. 8 lakh fifty eight thousands & odd. However the Respondent Licensee did not give any reply. Reference has been made to letter dtd. 28/05/2010 in that respect and alleged that after long lapse of time of protest by the complainant replied by letter dtd. 02/07/2010 stating that the difference of amount of Rs. 7,52,080-06 has been charged on basis of per day average consumption of Residential & Commercial as per Govt. Audit Report whereas Rs. 1,06,803-84 is towards tariff revision adjustment of Aug.,2009. According to the complainant the Superintending Engineer, O&M Circle, Wardha has committed un-excusable mathematical error in arriving at 244.6 units per day consumption of commercial meter. Whereas correct assessment for the said period of average daily consumption is @ 27.3 units. In the like manner the assessment in respect of residential consumption is also erroneous @ 217.8 units per day which in fact should have been taken as 114.63 units per day. It is alleged that the complainant has pointed out mistakes committed in arriving at an average daily consumption by letters dtd. 3/7/2010, 24/9/2010, 21/12/2010, 15/01/2011 & 11/3/2011. Reference has been also made to letters dtd. 26/7/2010 by S.E.,Wardha to EE/Hinganghat for verifying the complaint of the complainant and to submit Spot Inspection Report. The said E.E./A.E. have submitted their Spot Inspection Report dtd.27/8/2010 certifying the average daily consumption on commercial meter comes to 27.3 units only and have done reassessment accordingly. In the like manner the said Officer had also recommended revision in assessment on residential consumption @ 114.63 units per day by reference made to letter dtd. 18/6/2011 of EE/Hinganghat and request was made to SE/Wardha for making re-assessment and revision of excess amount vide Letter dtd. 30/06/2011. In spite thereof nothing has been done. the complainant has then given details of the excess amount recovered so also made reference to the various letters correspondence submitted in that respect. According to the complainant even in case of unauthorized use of electricity then also assessment could be done maximum period of 12 months only and even it is not the case Respondent Licensee of unauthorized use of electricity by the complainant various statutory provisions have been violated requiring the complainant to approach the Forum for refund of the amount as claimed with the other relief's. It has been the case of the complainant that neither notice/intimation was given prior to fixation of the commercial meter and charging for 3 years. No commercial activities are undertaken at the factory premises but they are carried out at corporate office at Mumbai, Amravati or at Hinganghat Town. Purely Industrial activities are carried out at Factory Premises. According to the complainant the SE/Wardha has committed grave error. Reference has been made to

order of Hon'ble MERC in case 116/2008, as well as that in case 111/2009 and alleged that the entire action much less assessment carried out for 3 years needs to be withdrawn. The Respondent Licensee is avoiding to refund Rs. 7 lakhs and odd, compelling the complainant to approach this Forum for Redressal of his grievance.

2 Notice as per rules was issued to the concerned office of the Respondent Licensee who in turn filed parawise reply stating that the commercial (office) meter was installed on 24/8/2009 as reported by EE/Hinganghat, date of connection is stated as 20/08/2009 and by taking the current reading on 19/9/2009 as 7338 KWH, assessment per day is 244.6 units as reported by EE/Hinganghat. Accordingly calculation was made for assessment of 3 years (Sept.06 to Aug.,2009) amounting to Rs. 5,91,656.30 as per guidelines of Govt.Auditor given in Para-II-B. In the like manner the residential consumption per day has been reported as 217.8 per day on which basis the assessment for 3 years of the consumption period has been calculated for Rs. 1,60,423.76. Accordingly in the bill of Oct.,2009 the said amount has been charged. Reference has been made to revision of HT tariff w.e.f. 1/8/2009 resulting in the difference in amount of Rs. 1,06,083.84 in the bill of Oct.,2009 and according to the Respondent Licensee the bill and recovery for Rs. 8,58,883.90 as per of Oct.,09 is correct. The letter dtd. 29.10.2009 of the consumer was not received however it has paid the bill amount of 18 lakhs and odd on 29.10.2009 so also paid bill of Rs. 18,40,100/- on 28.05.2010 under protest as per letter dtd. 28/5/2010. The Respondent Licensee has given suitable reply dt 2/7/2010. It is stated that the assessment made by office of the Respondent Licensee is correct. There is no mathematical error in calculation as alleged, no question arise to revise the assessment. Both the sub-meters were installed on 20/08/2009 as the same have been issued to JE/Alipur on 1/8/2009 as per gate pass of 1/8/2009. As per guidelines given by the Govt. Audit Report of 2004 to 2009 the assessment has been made and lastly stated that there is no merit in the complaint, therefore, it needs to be rejected.

3 The matter was then posted for hearing rejoinder and additional reply came to be filed thereafter, so also the written notes of argument. Documents have been also produced on record. In view of rival submission and available material on record this Forum is passing order.

4 Rejoinder and Counter reply came to be filed on behalf of parties so also written notes of argument and copies of certain documents. Gone through the available material on record and after giving anxious thought to the rival submissions made on the above of the parties it

seems that main controversy is about charging of energy bill for the period of 3 years on the basis of average per day consumption. Admittedly the complainant is running its factory at the premises since 2001. According to the Respondent Licensee on the basis of Audit Report more particularly Part-II-B loss of revenue due to non installation of sub-meters was considered. As per Respondent Licensee the sub-meters have been installed at the premises of the complainant and thereafter on the basis of per day energy consumption the amount for period of 3 years Sept.06 to Aug.09 has been included in the bill on assessment to the complainant and the said action is just and proper. On going through the said report it has been submitted by the Ld. Representative for the complainant that there is no name of complainant in the part referred to and relied upon on behalf of the Respondent Licensee. Name of 5 consumers M/s Gimatex Ind.Pvt.Ltd. I,II and M/s PEE-VEE Textiles Pvt. Ltd. Jamb-I,II,III. On the basis of the inspection and report with regard to these consumers the amount to be recovered from them towards loss to the Company has been arrived at. The basis for issuing bill to the complainant is the same according to the Respondent Licensee.

5 Here in the present case the dispute pertains to date of installation and commencement of sub-meters, method of calculating per day average consumption, use of premises for Industrial Purpose and not for Commercial Purpose, as well as basis for claiming alleged arrears for period of 3 years (Sept.,06 to Aug.,09). It is pertinent to note that the bill for Oct.,2009 wherein the amount of Rs. 8,58,000 and odd has been included towards alleged arrears was came to be deposited from the side of the complainant on the ground that there was threat of disconnection but it has been pointed out that letter dtd. 29.10.2009 was issued raising protest and seeking clarification. The copy of the said letter is on record. So also in other correspondence made on behalf of the complainant there is reference of thereto. The record clearly shows that there was nothing from both the sides for some period. Again at the time of bill of May,2010 the grievance was also raised from the side of the complainant stating payment of bill under protest vide letter dtd. 28/5/2010 therein. Here it needs to mention that for the first time the Respondent Licensee has made correspondence in writing vide letter dtd. 2/7/2010. It is pertinent to note that in the said letter it has been stated " there are two Nos. of sub-meters were installed in the month of June,2009 to your HT-SC No.51001-9005120 at Vela" . Further recitals of the said reply reflects on the basis of per day average consumption difference of Rs. 7,52,080-06 as per Govt. Audit Report and Rs. 1,06,803.84 on account of tariff revision adjustment has been included. So it is clear from the

record that for the first time by this letter concerned office of the Respondent Licensee has given details of the alleged arrears of Rs. 8,58,000 & odd mentioned in the above referred bill.

6 The record clearly shows that continuous efforts have been made from the side of the complainant in respect of its objection about such billing and more particularly it has been pointed out from the copies of documents on record that the concerned officers who are actually dealing with the meter reading have not only given letters to the SE/Wardha and other officers in respect of rectification of assessment of the charging of bill to the complainant with concerned documents. For ready reference letter dtd. 7/4/2011 of EE/Hinganghat alongwith letter of AE/Hinganghat with relevant documents have been referred to during course of argument. The recitals of the letter clearly shows that it has been specifically mentioned therein that "3-Ø Commercial Meter is installed for separation of commercial load from Industrial load on dtd 24/7/2009". So also it is clearly mentioned that the recorded reading on 24/7/2009 is 0000 KWH. Further recitals of this letter clearly shows that the earlier assessment of 244.6 units per day is wrong and the correct assessment is 129 units per day. Lastly in the said letter it has been stated that correct figure of per day consumption i.e. 129 units per day be considered. It has been also mentioned in the said letter that this readings are already forwarded in sub-meter reading sheet MR-10 form. The hand written sheet with different dates and meter reading is also enclosed with it wherein there is endorsement "Doc of Comm. Meter 24/7/2009". The difference of meter readings including that of 7338 KWH of 19/9/2009 is also mentioned. Similar type of letter dtd. 27/8/2010 by the said party is filed on record. Even in the letter dtd. 18/6/2011 the subject is "rectification of assessment in the matter of" complainant alongwith the hand written letter of A.E. duly signed by E.E. of Hinganghat, therein also similar type of recitals are mentioned about installation of residential meters on "Dated 24/7/2009". So also it is mentioned that recorded reading on dtd. 24/7/2009 is 0000 KWH whereas recorded reading of other dates given stating that the average per day consumption is of 115 units instead of 217.8 units. Alongwith said letter similar type of hand written statement is filed that different dates and meter readings. On the said statement also it has been stated "Doc of comm meter 24/7/2009". In this letter also it has been mentioned that reading noted on different dates are already submitted in sub-meter reading sheet MR-10 submitted from time to time. This document more particularly MR-10 forms must be in the possession & custody of the

Respondent Licensee but the same are not produced on record. The only reliance tried to be placed from the side of Respondent Licensee is on the gate pass dtd.1/8/2009 and it has been submitted that when the meters were issued under this gate pass on 1/8/2009 how the same could have been installed earlier, much less on 24/7/2009. According to defence of the Respondent Licensee the meters installed on 24/8/2009 and thereafter per day average consumption is rightly calculated by taking noted consideration and 24/8/2009 as the date of installation of sub-meters. According to the Ld.Representative of the Respondent Licensee the bill in question is rightly issued considering per day average consumption as mentioned in reply.

7 As against this it has been pointed out from the side of the complainant that there is variance inconsistency in the stand of the Respondent Licensee in respect of this controversy and in different documents different dates are mentioned about installation of the meters. On going through the record there seems to be substance in the submission made on behalf of the complainant in that respect. In the letter dtd. 2/7/2010 it has been stated that " meters are installed in the month of June,2009" , whereas in the letter dtd. 6/4/11, 7/4/11, 27/8/10, 15/5/11, 11/8/10, 13/5/2011, 18/6/2012 the date of installation of meter is given as " 24/7/2009" . As already observed above even in the hand written statement of noting of dates and meter reading, date of connection of commercial meter and residential meter are mentioned as " 24-7-2009" . It is pertinent to note that the concerned officers who are directly dealing with the subject of meter reading have specifically mentioned about installation of these sub-meters. on 24/7/2009. So also mentioned the various dates and meter readings. So also have submitted meter readings in MR-10 form clearly mentioned the date of installation of sub-meters on 24/7/2009. Even in reply to the correspondence given from the Respondent Licensee in that respect. If according to the Respondent Licensee these officers have given incorrect information, then it ought to have been brought on record as to what steps it has taken against them for giving such incorrect information. On the contrary record clearly reveals that in the various correspondence even other officers of the Respondent Licensee have categorically referred the dates of installation of meters as 24/7/2009. More particularly the E.E. & A.E. of Hinganghat have specifically made correspondence for rectification of assessment in the matter of complainant stating that how the average per day consumption of units was not correct on which base the bills have been

issued to the complainant. Even during course of arguments when this was pointed out that concerned officers of the Respondent Licensee are seeking rectification in the assessment of the complainants bill, then there was no satisfactory reply from the side of the Respondent Licensee. It has been only stated that S.E. has powers in such matters. But even it was not submitted that any action has been taken against the concerned officers or even their explanations was called for giving such information while seeking rectification of assessment.

8 Mere reliance of the gate pass has tried to be raised will not be of much importance specially when No.of other documents on record including that of Respondent Licensee clearly show that the date of installation of meter is 24/7/2009. It is pertinent to note that the first communication in writing from the Respondent Licensee side about controversy is letter dtd. 2/7/2012 wherein it has been mentioned that two sub-meters were installed in the " month of June,2009" . So apparently it seems that there is inconsistency in the stand of Respondent licensee with regard to the date of installation of the sub-meters and the same has not at all been clarified so considering the available material on record more particularly that all the correspondence of officers of the Respondent Licensee (AE & EE) . One has to conclude that the date of installation of sub-meters on 24/7/2009 appears to be more probable. In view there of as well as letter correspondence made by the responsible officers of the Respondent Licensee for rectification of the assessment, it is clear that the earlier calculation of the bill on the basis of alleged energy per day consumption of units does not appear to be correct. It ought to have been on the basis per day average consumption as mentioned in the letters of rectification of assessment made by responsible officers of the Respondent Licensee. This also gets support as these readings were already submitted in MR-10 form as mentioned in these letters. These vital documents are not produced before this Forum. Therefore, adverse inference needs to be drawn against the Respondent Licensee, as per legal position. The assessment made by the Respondent Licensee on the basis of alleged average per day consumption units is therefore can not be said to be proper and correct. In any case there is no supporting material brought on record from the side of the Respondent Licensee. In view thereof there appears to be substance in the grievance of the complainant in that respect.

9 It has been submitted on behalf of the complainant that no commercial activities are carried out at the premises and its commercial activities are carried out are from Corporate Offices at Mumbai, Amravati & Hinganghat Town itself. Further during course of argument

and on the basis of available material on record it seems that some official activities relating to the commerce are carried out. As per the Audit Report sub-meters are required to be installed for carrying such activities so as to save the loss that has been correctly done by the Respondent Licensee. In the like manner it is an admitted position that there are quarters, residence of officers, staffs in the premises. During course of argument it has been submitted on behalf of the Respondent Licensee that there are about 60 quarters being used for the residence purpose. This has not been disputed from the side of the complainant but Ld. Representative has tried to submit that earlier No. of quarters were much less and recently it has been increased. However nothing has been brought in that respect on record, so it is clear that there is user for residence purpose also. Installation of sub-meters for residence can not be said to be improper.

10 As far as revision in tariff from Aug., 2009 by MERC the same has not been disputed so the amount of Rs. 1,06,000 & odd is towards the revision of tariff in the bill. This revision of tariff appears to be correct and the complainant has not made any submission contrary to this during course of argument.

11 It has been argued on behalf of complainant that there is no basis for charging for 3 years from the side of Respondent Licensee. It has been submitted from the side of the Respondent that as per Audit Report referred to above such charges have been levied. In the written notes of arguments filed on behalf of the complainant in para No. 11 page 4 the complainant itself has referred to the amount of recovery for commercial consumption and residential consumption at Rs. 66035-55 and Rs. 90421-00 for residential consumption totaling to Rs. 1,56,456-56. So even according to the complainant the recovery for that period i.e. 3 years can be made as clearly mentioned in the said para. As already observed above in referred bill the amount of figure on account of revision in tariff by MERC is also included. Considering the over all material on record coupled with the submissions this Forum is of view that the Respondent Licensee needs to rectify the assessment made and to issue correct bill after considering the assessment by its officers E.E. & A.E. as referred to above then by including the amount of per day energy consumption for the period of 3 years and then to refund the excess amount recovered from the complainant. The complainant is also claimed interest. After hearing parties on this aspect the Forum thus to pass appropriate directions in that respect also, therefore, proceed to pass following order.

: Order :

1. Complainant No.367/2012 is hereby partly allowed.
2. Respondent Licensee is directed to rectify the assessment of energy bill of the complainant as per recommendation & inspection report of Executive Engineer, O&M Dn. Hinganghat & Asstt. Engineer, Hinganghat in terms of above order and to refund the balance amount within period of one month else it will be liable to pay interest at the rate which it charges from its consumers, till making the payment. .
3. Compliance report to be made within three months from the date of receipt of this order.
4. In the Circumstances parties to bear their own costs.

Sd/-

MEMBER

Sd/-

MEMBER SECRETARY

Sd/-

CHAIRMAN**CONSUMER GRIEVANCES REDRESSAL FORUM; NAGPUR (RURAL)****(Order Per Chairman Dtd.: 7th May, 2012)**

CONSUMER GRIEVANCE REDRESSAL FORUM
NAGPUR ZONE (RURAL) M. S. E. D. C. L.
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
NAGPUR – 440 013

Shri T.M.Mantri
Chairman
(Mb)9673215771

(O) 0712- 2022198

Shri M.G.Deodhar,
Member
(M)9422805325

NO. CGRF/NZ/R/

Date :

**Certified copy of order dtd 7th May,2012 in Case No. 367/2012 is enclosed
herewith.**

Member-Secy/ Exe.Engineer,
C.G.R.F.(NZ-R)MSEDCL
N A G P U R

To.

M/s Deegee Orchards Pvt. Ltd., At Post Vela, Tq. Hinganghat, Dist.Wardha.

Copy S.W.Rs.to :-

1. The Chief Engineer,Nagpur Zone (Rural)MSEDCL, Vidyut Bhavan,Katol Road, Nagpur.

Copy F.W.Cs.to:

1. The Executive Engineer/Nodal Officer., O&M Circle Office, MSEDCL.Wardha
2. The Executive Engineer,C.C.O&M Dn., MSEDCL, Hinganghat.,
for information and necessary action.

Address of **the Electricity Ombudsman** is given as below.

Office of - **The Electricity Ombudsman,**
12, Srikrupa, Vijay Nagar,
Chhaoni, Nagpur-440 013
Ph.No.0712-2022198.

