



**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.07/2017

Date of Grievance : 16.01.2017

Date of Order : 03.03.2017

In the matter of recovery of arrears in the event of defective meter.

Kailash Parbat Hotel (I) Ltd.,
Plot No.4, Walvan Lonavala,
Tal.Maval, Dist.Pune
Pin - 410401.

Complainant

(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Pune Rural Circle,
Pune - 411011.

Respondent

(Herein after referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Mrs. B.S.Savant
Mr. S.S.Pathak

Appearance

For Consumer

Mr.Ajit D.Mahadar (Representative)
Mr. (Representative)

For Respondent

Mr.Dilip Bhole,EE,PRC.

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.
- 2) Being aggrieved and dissatisfied by the order dated 06.01.2017 passed by IGRC Pune Rural Circle, Pune, thereby rejecting the grievance, the consumer above named prefers this grievance application on the following amongst other grounds.
- 3) The papers containing the above grievance were sent by the Forum to the Superintending Engineer, M.S.E.D.C.L., Pune Rural Circle, Pune vide letter

No. EE/CGRF/PZ/Notice/07 of 2017/19 dtd.17.01.2017. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 07.02.2017.

4) We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties.

5) The facts giving rise to the grievance may be stated as under :

The HT consumer namely M/s. Kailash Parbat Hotels Pvt. Ltd. having consumer no. 181019031033 with contract demand 160 KVA & connected load 370 KW was connected on 24th July 1998 in the tariff category HT II- N. In the month of Jan.2016, R ph CT of consumer got burst. Then the Licensee visited the premises of the consumer & found that the meter recorded consumption less by 1/3% due to R phase CT showing low current. The consumer was in outdoor kiosk system having overhead CT/PT units till June-2015. Thereafter from June-2015 the said consumer was converted from overhead CT/PT kiosk unit into Indoor kiosk system in the month of Jan.2016 the Licensee checked the connection of the consumer and found that R phase CT of the said consumer got burst. MRI data was retrieved & verified. It was found that R phase CT was showing 0 (zero) current from Aug.2015. Thereafter the CT was replaced on 29.1.2016. As per testing report dated 4.2.2016 CT R ph found to be faulty. Incoming cable and termination kit found to be faulty. The Licensee made assessment from Aug.2015 to Jan.2016 for six months on the basis of MRI data for 49699 units amounting to Rs.4,14,527/-. The consumer challenged the said bill vide letters dated 12.2.2016 113/16 dt.24.10.16 & thereafter filed complaint before IGRC, PRC, Pune on 23.11.2016. The IGRC rejected the said grievance vide impugned order dated 6th Jan.2017. Therefore consumer approached to the Forum with grievance that impugned bill be set aside & if meter was found to be faulty the assessment be made only for the period of three months preceding to the date of detection of error as per Regulations, 15.4.1 of MERC Supply Code Regulation, 2005.

- 6) The consumer representative Mr.Mahadar submitted that the consumer was regularly paying electricity bills issued time to time and having a good record & reputation. The said bills have been issued under normal status from June-2015 to Dec.2015. The consumer has paid all the said bills within time. Previously consumer's meter was with outdoor kiosk system having overhead CT/PT. It was converted into Indoor CT/PT kiosk from, June 2015. At that time CT connection in kiosk was not properly done during installation which resulted into total failure of CT i.e. CT was burst in Jan.2016. The consumer is not responsible for failure of CT as it was fault on the part of Licensee. It is the responsibility of the Licensee to have periodic testing & maintenance of all consumer meters. Therefore consumer is not liable to pay additional bill assessed by the Licensee for the period Aug.2015 to Jan.2016 amounting to Rs.4,14,527/- as shown by adjustment in the bill for Jan.2016. Mr.Mahadar further submits that if CT is to be defective, consumer should be charged only for the period of three months as per Regulation, 15.4.1 of MERC supply code Regulations, 2005. He lastly submits impugned bills be set aside & CT replacement charges of Rs.25000/- be refunded to the consumer.
- 7) On the other hand Mr.Dilip Bhole, Ex. Engineer, Pune Rural Circle, Pune submitted that previously consumer was in the outdoor kiosk having overhead CT/PT units till June-2015 & thereafter was converted into indoor kiosk. In the month of Jan.2016 R ph CT of consumer meter got burst. It was verified through MRI & on retrieval of MRI data it was found that R ph CT was showing "0" (Zero) current from Aug.2015. The CT was replaced on 29.1.2016. The meter was tested & testing report shows that the CT, "R" ph was found to be faulty. The Licensee assessed missing units for the period from Aug.2015 to Jan.2016 for six months for 49699 units worth Rs.4,14,527/-. The bill for additional units is correct. He further submits that the present case is of "under billing" since the actual consumption was shown by the meter is 66% i.e. 33% recorded less. Therefore the assessment made by the Licensee is proper and correct. He further submits that the Bombay High Court in the case of "*Rototex Polyesters Vs. Administrator, Department of Dadara & Nagar Haveli (U.T.)Electricity department of Silvasa & ORS reported in 2010* (4) BCR has held that -

A consumer is under billed due to a clerical mistake of calculation; bar of limitation cannot be raised. Hence, challenge of petitioner is not tenable & Sec 56 (2) of E.A. is not a bar for recovery of due amount by Respondents".

- 8) Mr. Bhole, further submitted that the Hon'ble Electricity Ombudsman in Representation No. 29 of 2014, M/s. Bafana Auto Cars (I) Pvt. Ltd., Vs. MSEDCL was pleased to pass order dated 22.7.2014 allowing past arrears to the MSEDCL for the specified period. Similarly, in the representation no. 3 of 2013, Hills Garden Co-Op. Housing Societies .Association Ltd. Vs. MSEDCL the Hon'ble Electricity Ombudsman has held that the Licensee may recover the Electricity bill by invoking section 56(1) & 56(2) of Electricity Act, 2003 for the period of past 2 years. Therefore Mr. Bhole lastly submits that the grievance of the consumer be dismissed with cost.
- 9) Admittedly, the consumer meter having serial no. 07426476, L&T make was in the outdoor kiosk having overhead CT/PT units till June-2015 & thereafter the said unit was converted from overhead CT/PT to indoor kiosk. According to the consumer at the time of above mentioned conversion, it was not properly done which resulted into the total failure of CT i.e. CT bursted in the month of Jan.2016. The Licensee tested the said meter on 25th Jan.2016 & found that R ph CT was faulty. Incoming cable and termination kit found to be faulty vide testing report dated 4.2.2016. The Licensee retrieved MRI data & found that R ph CT was showing zero current from Aug.2015. The Licensee replaced the CT on 29.1.2016 & made assessment of less recorded units from Aug.2015 to Jan.2016 (6 months) for 49699 units for Rs.4,14,527/-. According to the Licensee the consumer has utilized the energy & therefore he is liable to pay bill of less recorded units i.e. additional units to the extent of 33.33%. The consumer was under billed due to technical reason. On the contrary it is the contention of the consumer that it is responsibility of the Licensee to have periodic testing & maintenance of all consumer meter & CT was burst in Jan.2016 due to fault on the part of Licensee as CT connection in kiosk was not done properly in June-2015 i.e. at the time of conversion from outdoor to indoor. Therefore consumer is not liable to pay additional bill. He has regularly paid all the bills issued by the Licensee.

- 10) Definition of meter is provided under Regulation No.2.1 (s) of MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014. It reads as under:

2.1 In these regulations unless the context otherwise requires.

(s) Meter' means a set of integrating instruments used to measure and/or record and store the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which includes whole current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories, communication systems used for Automatic Meter Reading (AMR) and also includes pre-payment meters.

11. Thus as per definition of the meter as referred to above meter includes whole current meter and metering equipments such as current transformer capacitor, voltage transformer or potential or voltage transformer with necessary wiring and accessories, communication systems used for Automatic Meter Reading (AMR) etc. Thus CT is a part of metering equipment. In the present case it was found that R Ph CT of metering equipment was found faulty from August -2015 to Jan 2016 and meter was slow by 33.33% consumption. Therefore Licensee made assessment of faulty period & issued additional/adjustment bill of Rs.4,14,527/-. The consumer has deposited the said bill under protest.
12. Regulation No.15.4.1 of the MERC (Electricity Supply Code and other conditions of supply) Regulations, 2005 provides for billing in the event of defective meters. It reads as under.

15.4 Billing in the Event of Defective Meters:

15.4.1 Subject to the provisions of Part-XII and Part XIV of the Act. in case of 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 14.4.1 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 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.

13. The Licensee has placed reliance to the case of "Rototex Polyester cited supra, but with due respect, in the said cited case the consumer was under billed due to a clerical mistake, but in the present case the Licensee made assessment due to failure of R ph CT. The CT is part of the metering equipment. Therefore above mentioned ratio would not be applicable to the case of defective meter which is governed under Regulation 15.4.1 of MERC supply code Regulation, 2005. Similarly, in the matter of *M/s.Bafana Auto Cars Pvt. Ltd.* cited supra, the half hourly MRI data was indicating B ph CT was working intermittently & therefore meter was not faulty. But in the present case R ph CT was showing zero current. The Licensee also placed reliance to the Case of Hills Garden Co. Op. Housing Socy. cited supra. It was observed that consumer was wrongly billed by considering multiplying factor (MF) as 1 instead of 2. Therefore facts & circumstances of the above cited cases are different from the present case. Therefore the ratio laid down in the cited cases would not be applicable to the present case.
14. It is to be noted that it is the responsibility of the Licensee to have periodic testing and maintenance of all consumer meters as per Regulation 14.4.1 of MERC supply code Regulations, 2005. The outdoor kiosk having overhead CT/PT system was converted into indoor kiosk in the month of June-2015. The consumer meter got burst in the month of Jan.2016. The Licensee checked & verified the meter in the month of Jan.2016 & retrieved MRI data. It was found that R ph CT was showing zero current from Aug.2015. Therefore it is clear that CT/PT units, R ph CT was failed only after the

conversion of outdoor kiosk into indoor kiosk. The Licensee made assessment of less recorded units for the period Aug.2015 to Jan.2016 for 49699 units for Rs.4,14,527/-. It is not the case of the Licensee that of under Section 126 or 135 of Electricity Act, 2003. Similarly provisions of section 56 (2) of Electricity Act, 2003, pertaining to recovery of past arrears within the period of two years preceeding the date of demand are not applicable in case of defective meter. But it is the case that due to faulty R Ph CT the meter recorded units less by 1/3. The CT & PT are part and parcels of the metering equipment as per definition of meter provided under MERC SOP Regulation, 2014. Therefore facts of the present case constitute the case of defective meter which is governed under Regulation of 15.4.1 of supply code Regulations, 2005. Therefore liability of the consumer is to be calculated only for three months prior to the date of replacement of CT i.e. prior to 29.1.2016. Accordingly claim of Licensee for the period Aug.-2015 to Jan-2016 (6 months) for 49699 units amounting to Rs.4,14,527 requires to be set aside and it is now required to be worked out a-fresh making it limited only for three months as per 15.4.1 of MERC supply code Regulations, 2005. In the result, grievance is liable to be allowed.

Date: 03.03.2017

I agree,

S.S.Pathak
Member
CGRF: PZ: PUNE

S.N.Shelke
Chairperson
CGRF:PZ: PUNE

Member Secretary, (B.S. Savant)

I have gone through the above reasoning and my opinion in this matter is differing as below:

Considering the above facts, and after MRI data retrieved, it is seen that R phase CT was missing/faulty in the month of Aug.2015. Therefore

the Licensee made the assessment for period Aug.-2015 to Jan.- 2016 for 49699 units for amounting to Rs.4,14,527/-

In Case of M/s. Rototex Polyester & V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvassa 7 ors., 2010 (4) BCR 456, cited supra Hon'ble High Court Bombay held that when consumer is under billed due to clerical mistake of calculation, bar of limitations cannot be raised.

Hence the propose recovery is correct amounting to Rs.4,14,527/- & it is to be recovered from the above mentioned consumers, as this is only clerical mistake of calculation. The necessary installments for payment to the consumers shall be given as per MSEDCL Rules & Regulations without interest & DPC."

B.S. Savant
Member/Secretary
CGRF:PZ: PUNE

14. Hence we proceed to pass following order.

ORDER

1. Grievance of the consumer stands allowed.
2. The additional demand raised by the Licensee, quantifying dues to the tune of Rs.4,14,527/- for 49699 units for the period from Aug.- 2015 to Jan.2016 is hereby set aside.
3. The impugned order dated 6.1.2017 passed by IGRC, PRC is hereby set aside.
4. The Licensee to issue revised bill to the consumer making it limited only for 3 months preceeding to the date of replacement of CT i.e. 29.1.2016 vide Regulation 15.4.1 of the MERC supply code Regulations, 2005.

5. The Licensee to report compliance within one month from the date of this order.

Delivered on: - 03.03.2017

S.S.Pathak
Member
CGRF:PZ:PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg., Bandra Kurla Complex,
Bandra (E), Mumbai-51