



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/1420/1669 of 2017-18

Date of registration : 20/06/2018

Date of order : 04/07/2018

Total days : 14

IN THE MATTER OF GRIEVANCE NO. K/E/1420/1669 of 2017-18 OF M/S Bombay Rayon Fashions Ltd., PLOT NO.G-95, MIDC – TARAPUR BOISER, TALUKA – PALGHAR, DIST. PALGHAR, PIN CODE-401 506 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT DDF & NON DDF.

M/S Bombay Rayon Fashions Ltd.,
PLOT NO.G-95, MIDC – TARAPUR BOISER,
TALUKA – PALGHAR, DIST. PALGHAR,
PIN CODE-401 506

(Consumer No. 003019036190) . . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited

Through it's Nodal Officer/Addl.EE.

Palghar Circle, Palghar, . . . (Hereinafter referred as Licensee)

Appearance : For Licensee - 1) Shri.D.R.Patil, SE, Palghar Circle
2) Shri.R.B.Waman, Law Officer, Palghar Circle

For Consumer - Shri.Pratap Hogade (C.R.)

[Coram- Shri A.M.Garde-Chairperson, Shri A.P. Deshmukh-Member Secretary
Mrs. S.A.Jamdar- Member (CPO)].

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 Redressed 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. [Electricity Supply Code and other conditions of supply Regulations 2005]. 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 & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2) Consumer herein is one M/s Bombay Rayon Fashions, Palghar Circle having consumer no. 003019036190. Grievance in brief is that, Consumer had applied for HT Industrial connection for Contract Demand of 4950 KVA on 30/07/2009. Then Superintending Engineer, MSEDCL, Vasai Circle approved the application and issued power sanction letter bearing no.SE/VC/Tech/PLG/Con./4339 dt.18/06/2010. Superintending Engineer, MSEDCL, Vasai Circle there upon issued an estimate under DDF vide its letter no.SE/VC/Tech/4339 dt.18/06/2010 with estimate amount of Rs.81,30,940/-. Consumer paid 1.3% supervision charges in the amount of Rs.83325/- to MSEDCL on 30/06/2010. Consumer completed infrastructure work as per estimate in October 2010. There upon Superintending Engineer, MSEDCL, Vasai Circle issued load release letter ON 22/10/1010 and the load was released. The date of connection is 29/10/2010.

3) Consumer applied to Superintending Engineer, MSEDCL, Palghar Circle for refund of estimate amount of Rs. 81,30,940/- along with interest thereon vide their letter dt.17/11/2017. As there was no response consumer moved IGRC cell Palghar which in turn rejected their application. Consumer further contends that work done was non DDF, being mere extension of existing HT 33 KV feeder already having on it other consumers. As per MERC order dt.16/02/2008 mere extension or tapping of the existing line (LT or HT) cannot be treated as DDF.

4) Consumer relies on MERC order dt.17/05/2017 in particular para 4 (end), para 5 (end) and para 9 (end). MERC has stated therein, that MSEDCL must refund to all Consumers all over charged amount that have been collected towards ORC or such other head-based charges, including cost of meter, at variance from the order dated September 8, 2006. The commission directed MSEDCL to refund to Dewang Sanstha and to all such Consumers, all amounts collected towards ORC, CRA and cost of meter together with interest. Commission directs that MSEDCL shall not collect any money under any charge item which is not defined under the supply code and/or the order dated Sept.8, 2006. Consumer shall not be burdened with infrastructure costs which is the liability of MSEDCL. MSDCL may seek its recovery as an Annual Revenue Requirement.

5) **Distribution Licensee in reply** contends that MSEDCL submits that, the consumer in Grievance totally misconceived fact and law points and misinterpreted the MERC order in Case No. 86 of 2006 & Case No.56 of 2007. MSEDCL submits that, the issue of ORC, SLC etc as dealt my MERC in Case No. 86 of 2006 & Case No.56 of 2007 & issue of limitation under 6.6 of MERC (CGRF & Electricity Ombudsman) Regulation, 2006 are totally different. The MERC in case No. 82 of 2006 & 56 of 2007 is dealing with issue of refund of ORC, SLC etc. recovered during the period from 08th Sept, 2006 to 30th April, 2007. The matter before Hon'ble Supreme Court vide Civil Appeal No. 4305 of 2007 and stay order to refund

is in respect of recovery of those charges during above period only. That, the complainant in present case need not necessary to wait till the decision dtd.10.11.2016 of Supreme Court in Civil Appeal No.4305 of 2007.

6) The claim of the complainant company is time barred and beyond limitation. Clause 6.6 of Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations, 2006, provides that forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, in view of the above mentioned clause claim of the consumer company is not maintainable. Consumer has filed complaint in respect of estimate letter for Plot No.C-7 dtd.16.08.2009 & for Plot No.G-95 dtd.18.06.2010. If consumer was not agreed with the estimate, he should have raised grievance etc but on contrary consumer in response to estimate for Plot No.C-7 dtd.16.09.2009 & for Plot No.G-95 dtd.18.06.2010 paid the estimated cost which inclusive of Fixed Charges, SD, 1.3 Supervision Charges etc., and even single protest letter/complaint was not filed with MSEDCL till the dtd.16.11.2017. The Cause of action to file complaint was aroused in Aug 2009 for Plot No.C-7 & for Plot No.G-95 dtd. Jun 2010, for which no complaint was filed. In this view of the matter, the grievance of the consumer in respect of estimate for Plot No.C-7 dtd.16.08.2009 & for Plot No.G-95 dtd.18.06.2010 beyond two years and granting relief beyond two years is not in consonance with Regulation 6.6 of CGRF and Electricity Ombudsman Regulation 2006. The MSEDCL states that, Complainant has agitated claims which he had not pursued for 7 Yrs. Complainant was not vigilant but is content to be dormant and choose to sit on the fence till somebody else's case came to be decided.

7) It is stated that, in the case of M/s Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no. 9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was infringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & Ombudsman) Regulation 2006. Which may be reproduced for advantage as below.

“6.6 The forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.” Nowhere the provision even whispers about IGRC and it's decision. No doubt there in a provision in the MERC Regulation to move to the IGRC which is an internal grievance mechanism of the MSEDCL

itself. There is no limitation period prescribed for moving IGRC. It is however expected that a Consumer moves IGRC immediately or at the earliest. The Hon'ble Bombay High Court in the case of M/s Salodkar (W.P. 1650 of 2012) has dealt with the above question. The case of M/s Hindustan Petroleum (W.P. 9455 of 2011) was also cited and referred. It was held that period of limitation of two years has to start from the date when cause of action arose and not after the IGRC decision. Consumer has to move IGRC immediately or within a reasonable time. It is for IGRC to give it's decision within two months. Consumer may wait for two months for the IGRC decision but has to file grievance before the forum within two years from the date of cause of action. The decision of the Bombay High Court in the case of M/s. Shilpa Steel (W.P. 3997 of 2016) which toes the line of M/s Hindustan Petroleum case. It is to be noted however that Shri. Salodkar's case was apparently not cited before the Bench in M/s. Shilpa steel case. Only the case of M/s. Hindustan Petroleum was cited. It was submitted that as held in the case of D. V. Laxmanrao Vs. State of Karnataka when there are two conflicting judgments of similar bench on same issue, the latter one will prevail. (Full text of the judgment not given). Herein however in the case of M/s. shilpa steel which the Consumer seeks to refer and rely, the decision of M/s. Salodkar's case was apparently not cited as such the principle laid down in D. V. Laxmanrao's case will not apply there. There is also an order of the electrical ombudsman Mumbai in case no. 125 of 2016 in which a similar claim of the consumer on identical law point there in was rejected However case no. 125 of 2016 is on law points identical to the present case in which the consumers claim was denied being beyond the period of two years in view of Regulation 6.6. This judgment of the Hon'ble Ombudsman in case no. 125 of 2016 concurs with the judgment of the Bombay High Court in M/s. Salodkar's case. Hence in view the principle laid down in M/s Salodkar' case & the Ombudsman in case no. 125 of 2016 will bind this forum with greater force.

Reply on merit:-

8) It is submitted that, the Complainant is the consumer of MSEDCL having date of supply on dtd. 30.10.2009 for load of 3300 KVA for Plot No.C-7 & on dtd. 29.10.2010 for load of 4950 KVA for Plot No.G-95. The both consumer are applied for new supply under DDF scheme and submitted DDF consent on dtd.26.02.2010. The estimate was prepared & sanctioned on dtd. 06.08.2009 for dedicated supply line and installation of 4000 KVA transformer in Plot No. C-7 and in Plot no.G-95 estimate was sanctioned on dtd. 18.06.2010 for dedicated supply line and installation of 6000 KVA transformer by consumer through own cost. The estimate was agreed by the consumer, consumer in response deposited the estimate amount of Rs. 66,30,010.00/- for Plot No. C-7 & Rs.103,83,130/- for Plot No.G-95 (Fixed Charges, SD, 1.3 Supervision Charges etc.). The

amount of Rs. 27,11,440/- for Plot No. C-7 & Rs. 81,30,940/- for Plot No. G-95 was not deposited with MSEDCL in respect of works to be carried out under DDF.

9) The consumer carried out the estimated work through licensed electrical contractor and after submission of Work & Completion Report etc the additional supply was released. The said extended supply line and Transformer was dedicated to the consumer and it his DDF supply.

10) That, as per MERC Supply Code,2005

3.3 Recovery of expenses for giving supply

3.3.1 The Distribution Licensee shall recover the expenses referred to in Regulation 3.2(a) above, in accordance with the principles contained in this Regulation 3.3 and based on the rates contained in the schedule of charges approved by the Commission under Regulation 18: Provided that the Distribution Licensee may, with the approval of the Commission, in case of any category of consumers, recover such expenses on the basis of an average or normative rate for providing the electric line or electrical plant for the purpose of giving supply.

3.3.2 Where the provision of supply to an applicant entails works of laying of service line from the distributing main to the applicant's premises, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18:

Provided that the Distribution Licensee shall be entitled to use such service-line to supply electricity to any other person, notwithstanding that all expenses reasonably incurred have been recovered in accordance with this Regulation 3.3.2, except if such supply is detrimental to the supply to the consumer already connected therewith.

3.3.3 Where the provision of supply to an applicant entails works of installation of Dedicated distribution facilities, the Distribution Licensee shall be authorized to recover all expenses reasonably incurred on such works from the applicant, based on the schedule of charges approved by the Commission under Regulation 18.

3.3.4 Where the provision of supply to an applicant entails works, not being works referred to in Regulation 3.3.2 or Regulation 3.3.3 above, for augmentation of the distribution system, the Distribution Licensee shall be authorized to recover from the applicant such proportion of the expenses reasonably incurred on such works as the load applied for bears to the incremental capacity that will be created by augmentation of the distribution system:

Provided that where the load applied for does not exceed 25 per cent of the capacity that will be created by augmentation of the distribution system, the Distribution Licensee shall not be entitled to recover any expenses under this Regulation 3.3.4:

Provided further that any dispute with regard to the need for and extent of augmentation of the distribution system under this Regulation 3.3.4 shall be determined in accordance with the procedure set out in the Consumer Grievance Redressal Regulations.

In view of the provision the complainant has applied for the supply under ddf scheme and submitted consent of ddf on dtd.26.02.2010 and hence the complainant was not entitled the refund of expenses incurred for carry out work as per estimate. In this respect we referred and relied on the order dtd.27.03.2018 in Rep.No.121 of 2017 of E.O, Mumbai.

11) That, MERC has approved schedule of Charges for MSEDCL with effective from 08.09.2006 and MSEDCL has accordingly issued the Circular No.43 dtd. 27.09.2006. The case has been filed by Rajaya Veej Grahak Sanghatana vide No. 82 of 2006 for refund of ORC, SLC collected after the schedule of Charges approved by MERC with effect from 08.09.2006. The MERC by its order dtd. 17.05.2007, directed to refund the ORC, SLC recovered from all consumers for period of 08.09.2006 to 30.04.2007. The said issue was thereafter raised in MERC case No. 56 of 2007. The issue before Hon'ble Supreme Court in Civil Appeal No. 4305 is in respect of order of refund of ORC, SLC etc of MERC is under challenged. The fact of present case is totally different and not concern with these cases. The MERC in various cases such as Case No. 93 of 2008 and Case No. 105 of 2014, clear the above issue and directed consumer to approach CGRF for violation if any of schedule of charges by MSEDCL.

12) That, after the dismissal of Civil Appeal in Supreme Court, the MSEDCL has issued various circular in Compliance of the order of Hon'ble MERC in case No. 82 of 2006. The case of complainant was neither covered in said period i.e. 20.01.2005 to 20.05.2008 nor has complainant produced the receipt of deposit under head of ORC/SLC etc of above period. Further, as per 3.3.3 & 3.3.4 of Supply Code, the complainant was liable for expenses for DDF. Hence complainant was not liable for any refund at all.

13) We have heard both sides. The crux of the matter is very short. Consumer contract demand of 4950 KVA applied for new HT connection for which was sanctioned by Distribution Licensee on 18/06/2010 under DDF. Consumer carried out the work as per the estimate then, but now wants to say that his application did not lie under DDF as such he is entitled to refund of the amount spent for infrastructure work. The contention of the

consumer is quite in consonance with the schedule of charges those came in to existence in the year 2006. Mr. Hogade appearing for the consumer submitted and rightly that Distribution Licensee could not recover anything that was not in consonance with the provisions made in schedule of charges. It is true that MERC Regulations do not permit MSEDCL from recovering any charges over and above those provided in schedule of charges, equally the same MERC vide 6.6 of MERC (CGRF & Ombudsman) Regulation prohibits CGRF from entertaining any grievance of the Consumer beyond two years of the date of cause of action. MSEDCL in this case as back as on 18/06/2010 issued the sanction and estimate under DDF, then if Consumer complains that he was not given DDF or that he had not demanded DDF the cause of action arose in June-2010 itself. That being so the present grievance is barred by limitation under 6.6 of MERC (CGRF) Regulation 2006. This is exactly what is the defence of MSEDCL.

14) As against this Mr.Hogade for Consumer tries to say that this issue was before the Hon'ble Supreme Court is civil appeal no. 4305/2007 filed by MSEDCL itself. Hon'ble Supreme Court has issued final order on 10/11/2016 and on that date stay on refund was vacated. Thereafter MSEDCL Head Office issued circular for refund on dt.12/10/2017 and thereafter on 07/11/2017 & 29/12/2017. Consumer applied for refund to Superintending Engineer Palghar on 07/11/2017. Hence there is no issue of limitation. Unfortunately the drafting of limitation point in complaint is very vague, if not deliberately kept so. It cannot be contended that there is no issue of limitation, It was incumbent upon the Consumer/Consumer Representative to contend specifically as to according to him when the cause of action arose. He is not specific that cause of action arose on the date of decision of Supreme Court. It is this diffidence in contention itself that clinches the issue in as much as no date of commencement of cause of action is pleaded. The actual date of cause of action as we have seen is 18/06/2010.

15) Even otherwise let us discuss about the appeal then pending in the Supreme Court, its decision and subsequent fallout of Circulars issued by MSEDCL. We have studied the circular along with Supreme Court judgment. The circular pertains to the period from 20 Jan 2005 to 30 Apr-2007. All these litigations relate to the confusion created because of ill legalities continued by the MSEDCL officers in recovering infrastructure and metering charges from the consumers inspite of the same having been stopped due to commencement of new Indian Electricity Act-2003. Provisions of IE Act prohibited recovery of any infrastructure charges and meter cost. In spite of this officers of MSEDCL continued to recover the same. There were several circulars issued and then in the year 2006 full-fledged schedule of charges was issued. The above referred litigation pertained to such charges recovered during the transition period which went up to supreme Court. We are at a loss how those proceedings prevented present consumer from moving CGRF within 2 years from that date

of sanction and estimate under DDF. Refund was stayed for those specific Consumer for that specific period and it is to be noted that such a stay never prohibits any filing of grievance and for the question of limitation the factor to be considered is filing. Thus taking the best case, though incorrect, that the stay also applied to present consumer it could never be for filing the grievance.

16) There in some case law shown which we have gone through :

In the case of M/s Hindustan Petroleum Corp. Ltd. Vs. MSEDCL (W.P.no. 9455 of 2011) it has been held by the Hon'ble Bombay High Court, that the period of limitation of 2 years as given in 6.6 of MERC (CGRF & Ombudsman) Regulation 2006 starts running from the date of decision of the IGRC. This judgment of the Hon'ble High Court would entitle a Consumer to file a grievance before the IGRC any time whatever be the date when his right under the law was infringed. He would move the IGRC even after 10 years, 20 years and then after IGRC's decision he would file grievance before the Forum within two years there from. In the above background of the decision one has to see the provision of 6.6 of MERC (CGRF & Ombudsman) Regulation 2006. Which may be reproduced for advantage as below.

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17) Before we conclude, there is one circular sent by Mr. Hogade for our perusal very lately. We have read the same. It was not the case in the petition that as per this circular consumer was asked to complete the work and claim the cost from MSEDCL. Even otherwise, if consumer wants to base his claim on this circular the cause of action arose soon after completion of the work if the expenses were not refunded to him as stated therein in the circular.

18) In the above view of the matter the grievance is barred by limitation under 6.6 of MERC (CGRF & Ombudsman) Regulation 2006.

Hence the Order

ORDER

Grievance is dismissed.

Date: 04/07/2018

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

(A.P.Deshmukh)
MemberSecretary
CGRF, Kalyan.

(A.M.Garde)
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.

