

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./551/27-2016-17/ Date: 27/10/2016
(BY R.P.A.D.)

In the matter of
Disallowed Prompt Payment Discount

Date of Submission of the case : 06/09/2016
Date of Decision : 27/10/2016

To.

- 1 M/s.Sai Accumulator Industries,
Plot No. 52 & 76,
Sangamner Co.Op Industrial Estate, Complainant
Sangamner 422608 Dist. Ahmednagar
(Con.No. 155939010380)
- 2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar, Distribution Company
- 3 Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Sangamner Division Office
Dist. Ahmednagar.

DECISION

M/s. Sai Accumulator Industries (hereafter referred as the Complainant), Sangamner is the HT industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for disallowing Prompt Payment Discount and issuing the disconnection notice in spite of the payment of the bill before due date. The Complainant has filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But as the IGRC did not provide any remedy within 2 months, the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.149 of 2016 on 06 /09/2016.

The Forum in its meeting on 14/09/2016, decided to admit this case for hearing on 27/09/2016 at 12.30 pm in the office of the forum. A notice dated 15/09/2016 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan, Nodal Officer represented the Distribution Company during the hearing. Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. MSEDCL has issued the monthly bill for the billing month of Dec.2015 as per following details:
 - ✓ Bill Date: 12/01/2016
 - ✓ Due Date: 27/01/2016 Amt. Rs.318140/-
 - ✓ If paid Up to: 18/01/2016 Amt. Rs.315280/- (Prompt payment date)
 - ✓ If paid after: 27/01/2016 Amt. Rs.324510/-

2. The complainant paid the amount of Rs. 3,15,280/- by RTGS on date 18/01/2016.
3. But without confirmation of rules and regulation, MSEDCL Astd. Law Officer has issued the Disconnection Notice dated 30/01/2016 u/s 56(1) of Electricity Act 2003 for non-payment of Rs. 2921.37.
4. The complainant immediately informed that the complainant paid the amount of Rs. 3,15,280/- on date 18/01/2016 by RTGS with consideration of prompt payment and forwarded the supporting bank details and requested to please refer H.O. guidelines, if consumer is not at fault for delay the payment.
5. MSEDCL has informed that this payment has received in their account on date 19/01/2016 and instructed to pay the notice amount otherwise supply will be disconnected without further notice.
6. The complainant paid the amount as per notice. The complainant made the complaint to helpdesk on date 19/02/2016. But MSEDCL mail dated 01/03/2016, informed that action taken is correct.
7. The MERC Tariff Order Prompt Payment Discount of one percent on the monthly bill (excluding Taxes and Duties) shall be available to the consumers if the bills are paid within a period of 7 days from the date of issue of the bill, or within 5 days of the receipt of the bill, whichever is later.
8. MSEDCL Bill date is 12/01/2016. The complainant received the bill by email on date 13/01/2016 at 12.19 pm. The hard copy of the bill was received on date 15/01/2016.
9. If bill was generated on 12/01/2016, the same can be forward by e-mail on same day. But the e-mail received on 13/01/2016. That means bill issue date is wrongly printed. Prompt payment date should be 7 days from the date of issue i.e. 19/01/2016 After receipt of bill copy: date should be 20/01/2016.
10. The complainant is making payment of electricity bills regularly and avail the Prompt Payment Discount. The complainant had made payment of Rs. 3,15,280/- through RTGS from his Bank on date 18/01/2016. The same amount was debited from the complainant's account and was transferred to the account of the MSEDCL.
11. If there is problem with bankers for fund transfer, and consumer is not at fault, MSEDCL Director Finance has issued the Circular No. 3437 dated 7.2.2012. It states that the Superintending Engineer of the respective Circle shall finalize the case at Circle Office only as per guidelines indicated in "Annexure A". It further states that only those cases may be considered wherein the consumer has made payment of bill through RTGS/NEFT prior to due date of prompt payment discount/load factor incentive and the amount is received in MSEDCL account after the prescribed date and consumer is not at fault for this delay. In case the consumer has made the payment of energy bill through RTGS/NEFT on or before normal due date of the bill and the amount is credited to MSEDCL account after due date, due to which the consumer is liable for Delayed Payment Charges, shall also be considered for withdrawal of Delayed Payment Charges.
12. Before issue of Disconnection Notice for such a small amount, duty of Astd. Law Officer is to verify the actual facts, see the consumer payment history, and he can issue simple letter or make a phone call instead of Disconnection Notice for requesting to pay the short amount with informing the reason. It is the consumer's duty to pay the same.
13. But without referring the actual facts of payments, reason for delay and Director Finance Circular, issued the Disconnection Notice.

Consumer's Demands :

Requested to give order for refund of Rs.2931.37 along with compensation of Rs.10,000/- for mental harassment and Rs.2000/- cost of application and same to be recovered from concern person who has signed the notice without referring the actual facts and Director Finance Circular, as per ruling and principle laid down in by Hon. supreme court of India in Lakhnow Development Authority Vrs M.K.Gupta reported in 1994(i)SCC page 243 .

Arguments from the Distribution Company:

The Distribution Company submitted a letter dated 26/09/2016 from the Nodal Officer Ahmednagar Circle. MSEDCL, and other relevant correspondence in this case. The Distribution Company stated that:

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Observations by the Forum:

1. A bill of Rs. 3,18,140/- dated 12/01/2016 was raised to the complainant by the Distribution Company for the month of December 2015. The Prompt Payment Discount (PPD) of Rs. 2860/- was allowed in case the payment is made before 18/01/2016 as indicated on the bill. In order to avail this discount the complainant made the payment of Rs. 3,15,280/- through NEFT/RTGS from its bank on 18/01/2016 which was debited the same day. However for the reasons not known so far, the amount was actually credited to the Distribution Company's account on 19/01/2016 indicating a delay of 1 day. Hence the system disallowed the Prompt Payment Discount (PPD). Later the Assistant Law Officer, MSEDCL, Circle Office Ahmednagar issued a notice dated 30/01/2015 for disconnection for non-payment of Rs. 2921.37. The breakup of the amount is not given in the notice.
2. The complainant requested the Distribution Company to allow the PPD as it was not at fault for the delay in transfer of money to the account of the Distribution Company. But the request is not considered and the complainant was forced to pay the amount of Rs. 2921.37.
3. It is seen that the Distribution Company has ignored the instructions contained in the Circular No. 141 dated 2.1.2012 and further Circular No. 3437 dated 7.2.2012 issued by the Director (Finance), MSEDCL, Mumbai in this regard. The relevant portion of Circular No. 141 dated 2.1.2012 reads as under:-

"After the introduction of the scheme of payment through RTGS/NEFT by HT consumers, various field officers have reported consumers grievances of delay in transfer of amount due to non availability of servers at the bankers end, lack of proper MIS from our bankers leading to non identification of consumer and linking with the amount received, manual mistakes on the part of bank staff (both from our bank as well as consumers' bank), delay in updating records at circle offices etc. This has resulted in denying the benefit of prompt payment discount/load factor incentive to the eligible consumers and in some cases charging of delayed payment charges.

In view of the above, it is hereby directed that the circle offices shall forward such cases to Chief Engineer (Commercial), H. O., Mumbai where the HT consumers have faced difficulties in RTGS/NEFT payments resulting in charging of delayed payment charges and/or denying them the benefits of prompt payment discount/load factor incentive. The proposal should be forwarded after verifying the track record of the consumer and genuineness of the consumers say/grievance. While submitting the proposal the concerned circle office shall forward a self contained note covering the following points:

1. *Background history of the consumer in making the payment on due date for last six months.*
2. *The proposal should have a specific recommendation stating the facts of the cases.*

Only those cases may be considered wherein the consumer has made payment of bill through RTGS/NEFT prior to due date of prompt payment discount/load factor incentive and the amount is received in MSEDCL account after the prescribed date and consumer is not at fault for the delay. In cases where the consumer has made the payment of energy bill through RTGS/NEFT on or before normal due date of the bill and the amount is credited to MSEDCL account after due date, due to which the consumer is liable for delayed payment charges, shall also be considered for withdrawal of delayed payment charges. ..."

Circular No. 3437 dated 7.2.2012 states that the Superintending Engineer of the respective Circle shall finalize the case at Circle Office only as per guidelines indicated in "Annexure A". It further states that only those cases may be considered wherein the consumer has made payment of bill through RTGS/NEFT prior to due date of prompt payment discount/load factor incentive and the amount is received in MSEDCL account after the prescribed date and consumer is not at fault for this delay. In case the consumer has made the payment of energy bill through RTGS/NEFT on or before normal due date of the bill and the amount is credited to MSEDCL account after due date, due to which the consumer is liable for Delayed Payment Charges, shall also be considered for withdrawal of Delayed Payment Charges.

4. In the present case, the complainant "has made payment of bill through RTGS/NEFT prior to due date of prompt payment discount". The said amount is also debited to its account on the same day as per the bank statement. There is a delay in transfer /remittance to the receiver's

bank for which the complainant can not be held responsible. As stated by the complainant he is regular in payment of bills . The case is therefore befitting for allowing the PPD in view of the MSEDCL Circular No. 141 dated 2.1.2012 read with the Circular No. 3437 dated 7.2.2012.

5. As per the para 6.50.1 of the prevailing MERC Tariff Order dated 26/06/2015 (in case 121 of 2014)

A prompt payment discount of one percent on the monthly bill (excluding Taxes and Duties) shall be provided to consumers if the bills are paid within 7 days from their date of issue, or within 5 days of their receipt, whichever is later.

In this case the bill is issued on 12/01/2016 .The 7th day after the date of issue of the bill would be 19/01/2016 .Hence the due date of the PPD printed on the bill is not in line with the above directives of the MERC. On this basis the complainant has made the payment *within 7 days from the date of issue* of the said bill . As such it is entitled for the PPD. The Forum also brings out to the notice of the Distribution Company, this error in the date of the PPD.

6. The Forum therefore directs the Distribution Company to grant the PPD and withdraw DPC and interest if any and refund the amount of Rs. 2921.37 in the ensuing bill with the interest till the date of refund , at bank rate of RBI .
7. The complainant has also raised the issue of the disconnection notice. The Forum also feels that this notice was issued by the concerned officer just mechanically without any application of mind. In this case , the bill to be paid was Rs. 3,15,180/- (after PPD) on 18/01/2016 which was actually paid by the consumer on the same day. The section 56. (1) of the Electricity Act,2003 states as "*Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity*"

Here the consumer has not "*neglected to pay the charge for electricity due from him* " It was only a case of minor amount of short payment reflected due to delay in transfer of funds , for which the consumer was not at fault. The Distribution Company had already provided guidelines to react to such a situation. The concerned officer has ignored all these facts and issued the notice which has caused harassment to the complainant. There was no need of disconnection notice as in any case the difference in the payment is carried forward and becomes recoverable in the next bill .

8. The complainant has claimed the compensation of Rs.10,000/- for mental harassment and Rs.2000/- cost of application and requested the Forum to pass order for recovering the same from the concerned person who signed the notice of disconnection based on a judgment passed by the Supreme Court in Lucknow Development Authority vs. M.K. Gupta reported in 1994.

The complainant has not submitted the copy of the judgment .But the Forum accessed the said judgement . In this judgment dated 05.11.1993, the Court dealt with the issues engulfing consumers who puts in their money to own a house, but suffers in some way or the other at the hands builders – private or government. The question posed before the Hon'ble Apex Court was to determine as to whether the statutory authorities such as Lucknow Development Authority or Delhi Development Authority or Bangalore Development Authority etc. constituted under State Acts to carry out planned development of the cities in the State are amenable to Consumer Protection Act, 1986 in the event of they being questioned for any act or omission relating to housing activity like delay in delivery of possession of the houses to the allottees, non-completion of the flat within the stipulated time, or defective and faulty construction etc. While passing on the judgement the Hon'ble court has remarked that :

".....It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries....."

The Forum is empowered to grant compensation to the consumers in case of default in services as provided under the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014. These regulations do not provide the compensation for mental harassment and the cost of filing the grievance application as demanded by the complainant. Also the action of recovering the amount of compensation/penalty from the erring person is not within the preview of the Forum as it is the internal matter of the Distribution Company governed by the employee service rules. The Forum however suggests the Distribution Company to take suitable action as per rule against the concerned officer.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should refund the amount of Rs. 2921.37 in the ensuing bill with the interest till the date of refund, at bank rate of RBI.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
3. As per regulation 22 of the above mentioned regulations, non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Hari V. Dhavare)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer, Nashik Zone, Maharashtra State Electricity Distribution Company Ltd., Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn))
- 2 Chief Engineer, Nashik Zone, Maharashtra State Electricity Distribution Company Ltd., Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd., Circle office, Ahmednagar.

