



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/E/1375/1622 of 2017-18

Date of registration : 04/06/2018

Date of order : 18/07/2018

Total days : 45

IN THE MATTER OF GRIEVANCE NO. K/E/1375/1622 OF 2017-18 OF KONKAN SYNTHETIC FIBRES, C-61 PART (B), MIDC MAHAD, RAIGAD, PIN CODE-402 309 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT CONTINUOUS NON-CONTINUOUS.

M/s Konkan Synthetic Fibres,
C-61 Part (B), MIDC Mahad,
Raigad, Pin Code-402 309

(Consumer No. 041019016101) . . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited

Through it's Nodal Officer/Addl.EE.

Pen Circle, Pen

. . . (Hereinafter referred as Licensee)

Appearance : For Licensee - 1) Shri.R.B.Mane, Nodal Officer, Pen Circle
2) Shri.G.V.Satpute, Law Officer, Pen Circle

For Consumer - Absent

[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 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 M/s Konkan Synthetic Fibres included at Mahad, Raigad having Consumer no. 041019016101 with contract demand and sanctioned load of 5400 KVA and 14,807 kW respectively on express feeder. The supply was permanently disconnected in September 2012.
- 3) The grievance is that during the period from June 2008 to October 2012 Consumer faced interrupted power supply. Consumer places reliance on the MERC judgments in the case of M/s Kalika Steels & Alloys Pvt. Ltd. and M/s Century Rayon Ltd. Consumer also relies of judgments of CGRF, Nanded in similar cases consumer contends that order passed in Kalika Steels case is of generic nature as such it applies to them as well.
- 4) On the point of limitation consumer states that the cause of action in his case starts from 16 Feb-2017 since from 16th July 2013 to 15th Feb 2017 it was under dispute whether or not order dated 16th July 2013 is applicable to all similarly placed consumers. Consumer further states that application for refund was submitted to IGRC on 13 Jan 2018. The dispute raised by the applicant is within time. Consumer reproduces definitions of the terms "Internal grievance Redressal Cell" and "Forum" and claims that cause of action for approaching Forum arises only when, either 60 days are completed before IGRC or after the remedy is provided by the IGRC whichever is earlier. As such in the present grievance applicant had approached IGRC on 18th Jan 2018 and IGRC gave decision on 13th Apr 2018 thereafter consumer approached Forum on 01/06/2018 within two months. Consumer in support of his proposition relies on the judgment in the case of Hindustan Petroleum Vs. MSEDCL in writ petition no. 9455 of 2011 and in case of Shilpa Steel & power Ltd. Writ petition 3997 of 2016. Consumer also relies on the APTEL judgment in Appeal no.197 of 2009. Consumer also seeks to rely on the Supreme Court judgment referred therein by APTEL in which Supreme Court held that Public Undertaking cannot take reason of limitation. APTEL observed that there is no limitation provided under Electricity Act-2003. Tariff fixation is a continuous process and is to be adjusted from time to time etc.
- 5) Consumer further contends that Hon'ble commission in Kalika Steel case clarified certain provisions of tariff determined by the Hon'ble commission in exercise of powers conferred up on it under section 61 & 62 of Electricity Act 2003 and such clarification has no time limitation for implementation.
- 6) Consumer has claimed refund of tariff difference between continuous and No-continuous for period from June 2008 to September-2012 on account of interrupted supply.
- 7) MSEDCL in reply contends that the grievance is not filed in limitation hence not maintainable. Further consumer herein has not submitted any record regarding interruption such 60 hrs per month as contemplated.

8) We have heard Mr. Mane appearing for Distribution Licensee. None was present for consumer. We have gone through the record and judgment cited. In Kalika Steels case (case no.88 of 2012) the Hon'ble MERC has by virtue of section 62 (1) of IE Act 2003 considered the interruption in supply of 16 consumers/petitioners therein and held inter alia that the supply provided during the reported period therein did not conform to expected norm of continuous supply, as such the distribution Licensee therein should not have charged tariff applicable to continuous industry. Hon'ble commission therefore went on to grant refund of tariff difference.

9) In the present case the contention of Distribution Licensee is that no record is produced at all to show that there was interruption in supply. It was pointed out that consumer has to show that there was 60 Hrs. or more interruption per month. There is just a bare statement that there was interruption in supply. This is the first aspect of the matter.

10) Second point raised is of limitation. The consumer seeks tariff difference for the period from 2008 to 2012 for which he has moved the Forum on 4.6.2018, long after the period of two years as envisaged in 6.6 of MERC (CGRF & Ombudsman) Regulations 2006. In the Kalika case the question of delay did arise which was discussed and was found in favour of consumer therein. In Century Rayon case the question of limitation was kept open. In spite of this consumer herein wants to say that question of limitation does not arise here. He has stated that it has been held by MERC that Kalika ruling is of generic nature and hence the limitation starts from the date of decision of Kalika case or Century Rayon case. There appears some language problem with the consumer. He fails to understand the difference between Generic and Retrospective. MERC nowhere declares the above order to be of retrospective operation. On the contrary as we have observed in those very orders, issue of limitation was very well considered or was kept open. In fact Sec. 62 (1) of IE Act which was invoked by Hon'ble MERC was very much available to consumer herein as well in the period from 2008 to 2012 and thereafter when cause of action for consumer arose. As per regulation 6.6 of (MERC & Ombudsman) Regulation 2006, Forum is barred from taking cognizance of any grievance beyond a period of 2 years from the date when cause of action arose. Consumer does not show any other Regulation speaking about an exception to this rule to extend the time due to a pending case or a decision. The claim of consumer on the question of limitation has no legal basis.

11) In the case of Hindustan Petroleum Corporation Ltd. Vs. MSEDCL (Writ Petition no.9455 of 2011) it has been held by 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 IGRC. This judgment of the Hon'ble High Court would entitle a consumer to file a grievance before the Forum any time, whatsoever be the date of cause of action. He would even sleep over the cause of action for 10 years 20 years and then file a mere

application to IGRC and then after IGRC decision file his grievance before the forum within 2 years and therefrom. In this premise one has to see provision of 6.6 which may be reproduced 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.

- No where the provision even whispers about IGRC and it's decision. No doubt there is a provision in the Regulation to move the IGRC which is an internal grievance Redressal mechanism of Distribution Licensee, there is also no provision in the Regulation speaking about time limitation for moving IGRC. It is also provided that before approaching forum consumer has to first apply to IGRC. Thus when there is limitation period of 2 years to move the Forum, it is very difficult to assume that the consumer can file application to IGRC any time. He has to bear in mind that ultimately he has to go to forum within 2 years from the date of cause of action as per 6.6. That means he has to immediately or in reasonable time move IGRC and then after the decision of the IGRC or after two months whichever is earlier he has to move the Forum, of course within 2 years as per 6.6. In cases where consumer waits for IGRC decision which is delayed, the period can be excluded from 2 years. However accepting the proposition sought to be put forth by consumer would render the provisions of 6.6 nugatory.

12) The above very question was aptly dealt with by Hon'ble High Court in the case of M/S Sadolkar WP NO.9455 of 2011. Hindustan Petroleum case which supported the consumer's proposition was cited before the court and was discussed. The judgment in Sadolkar case is quite in consonance with Reg.6.6 as well as on sound legal principles of limitation. It has been held therein that, period of limitation of 2 years would start from date of cause action and not after IGRC decision. Consumer has to move IGRC at earliest or in reasonable time. IGRC has to decide the application within 2 months. Consumer has to wait for 2 months, but file the grievance in the Forum within 2 years from the date of cause of action itself.

13) In the above view of the entire matter at the outset there is no record produced to show that there was any interruption in supply much less 60 hrs. per month. Further, the claim is also barred by limitation under 6.6 of MERC (CGRF & Ombudsman) Regulation 2006.

14) Grievance fails.

Hence the order

ORDER**Grievance is dismissed.**

Date: 18/07/2018

(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.*