



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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NO. K/E/1543/1818 of 2018-19

Date of registration : 13/02/2019

Date of order : 13/03/2019

Total days : 28

IN THE MATTER OF GRIEVANCE NO. K/E/1543/1818 OF 2018-19 OF M/S RESPONSIVE INDUSTRIES LTD., GAT NO.120, VILLAGE – BETEGOAN, TAL-PALGHAR, DIST.PALGHAR, MAHARASHTRA, INDIA, PIN CODE - 401 501. REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT BILLING DISPUTE.

M/S Responsive Industries Ltd.,
Gat no.120, Village – Betegoan,
Tal-Palghar, Dist.Palghar,
Maharashtra, India, Pin Code - 401 501
(Consumer No. 003659022370) . . . (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.Y.J.Jarag, EE, Palghar Circle
2) Shri.R.B.Waman, ALO, Palghar Circle

For Consumer - Shri.A.N.Patil (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 Responsive Industries Ltd., Consumer No. 003659022370. Grievance in brief is that being a continuous category consumer, on 28/11/2013 applied to Superintending Engineer, MSEDCL, Vasai circle for change of category to Non-continuous.

3) Consumer further submits that as per Regulation 9.2 of SOP Regulations any change of name or tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle after the date of receipt of application. There are several other contention raised which may not be necessary for the issues before us though, a reference of the same may be given wherever necessary.

4) Distribution Licensee in reply contends that in view of Regulation 6.7 (c) and (d) of MERC (CGRF and Ombudsman) Regulations 2006 this Forum cannot entertain the present grievance.

5) Distribution Licensee further contends that the present grievance is related to the subject matter of MERC case no. 94 of 2015, which has been finally heard and decided on 19/08/2016 and that in compliance of order of MERC passed in case no.12 of 2017 on 03/01/2018 M/s Karnataka Engineering Pvt. Ltd. submitted a detailed report dt. 21/03/2018 informing MERC that interest was not paid on tariff difference as it was not directed by the commission in its order dt. 19/08/2016. Distribution Licensee contends that if the consumer is aggrieved by the order of the MERC he must move the MERC or APTEL for clarification of direction and not to this forum. This forum does not have jurisdiction to entertain the grievance under Regulation 6.7 (c) and (d) referred above.

6) It is further the contention that claim of the consumer is barred by limitation under Regulation 6.6 of MERC (CGRF and Ombudsman) Regulation 2006. Distribution Licensee submits that consumer has been claiming interest in respect of the period from Dec-2013 to Oct-2016 vide this grievance application filed on 13/02/2019 clearly after two years. MERC case no. 94 of 2015 was also decided on 19/08/2016 as such even from that date the present grievance is barred by limitation. Distribution Licensee relies on judgments in the case of M/s Shilpa Steels Pvt. Ltd. and also W.P. No. 6859/- of 2017 in the case of MSEDCL Vs. Jawahar Soot Girni Ltd. (Bombay High Court Aurangabad Bench).

7) **Distribution Licensee further states that**

i) That MERC by Tariff Order dated 20/06/2008 in case no. 72/2007 in the consumer category of HT-I Industry, three Tariff Categories were introduced for the first time viz. (i) Continuous Industry (on Express Feeder), (ii) Non-Continuous Industry not on Continuous Feeder and (iii) Seasonal Industry. By Clarificatory Order dated 12/09/2008 in case No.

44/2008, MERC clarified that the consumer getting supply on Express Feeder may exercise his option within one month after issue of the Tariff Order for the relevant tariff period.

- ii) That, Electricity Ombudsman, Mumbai in its order dated 2nd December, 2014 passed by the Electricity Ombudsman, Mumbai in group of Representation Nos. 66 to 100 of 2014. In those representations considering the provision of Regulations 9.2 of the SOP Regulations, the Respondent MSEDCL was directed to change the tariff category from continuous to non-continuous within two months from the date of their applications. The said order dated 2nd December, 2014 was challenged by the MSEDCL by filing writ petitions before the High Court of Bombay. However, the said writ petitions being Nos. 4887 of 2015 along with 4893 of 2015 and 4967 of 2015 have been disposed of by the High court of Bombay on 7th September 2015 by passing the order as below :-
- a) In all these petitions, learned counsel for petitioner states that same issue which is involved in these petition is pending before the MERC, involving the petitioner as well as several other consumers, including the Respondents herein.
 - b) If aforesaid is the position, then there is no reason to entertain the writ petitions at this stage. However, in case the MERC decides the issue against the petitioner, then the petitioner will have liberty to institute fresh petitions which will be considered in accordance with law on their own merits.
 - c) This is, of course, subject to exhaustion of alternate statutory remedy, as may be available under section 11 of the Electricity Act. 2003.
 - d) In any case, all contentions of all parties in this regard are kept open.
 - e) With the aforesaid observations, these petitions are disposed of.
- iii) That, review petition no.94 of 2015 filed by the MSEDCL before the commission seeking review of the order dated 26th June 2015 in case no 121 2014 the MSEDCL has interalia stated in its affidavit dated 16th October 2015 as under :
- a) The review petition as presently filed has therefore been moved before this Hon'ble commission relying on the Regulation 9.2 of the SOP Regulations which is subordinates/delegated legislation and submitted that a perusal of order dated 12th September 2008 would reveal that the direction contained therein clearly infringes Regulation 9.2
 - b) The Hon'ble Electricity Ombudsman in various representations has held this view of the right of the consumers to change the tariff category and directed MSEDCL to refund the amount. The Hon'ble High Court of Bombay has also taken view of the Regulations prevailing .
 - c) That the subordinate/delegated legislation can prevail over any directions contained in the order dated 12th September, 2008 in case no.44 of 2008 and therefore the said directions may be directed as void ab initio. The commission as a regulator would

then issue consequential directions in respect of the pending matter which could avoid multiplicity of litigation.

- d) *In respect of pending applications, it is reiterated that MSEDCL would follow the dispensation of this Hon'ble commission in this regard. The Audit objection was the reason why the Review Petitioner, MSEDCL stopped the approved of the change in tariff category.*
- iv) *That the Hon'ble commission has passed order dtd.19/08/2016 in case no.94 of 2015 and clarified that Regulation 9.2 will prevail over the clarificatory direction dtd.12/09/2008 of MERC in case no.44 of 2008. The commission directed MSEDCL to decide all such pending application and report impact of refund to commission. The commission in said order did not directed for refund with interest and as such question of refund with does not arise as it was not in order of commission.*
- v) *That, the MSEDCL in order to compliance of directives of Hon'ble commission issued circular on dtd. 10/07/2017 and refunded the tariff difference of Rs.4,39,26,899.58 for period of December 2013 to October 2016 in billing month of Sept-2017. (Copy of Circular dtd.10/07/2017 is enclosed herewith and marked as **Annex.No.E**)*
- vi) *The MSEDCL in case no.12 of 2017 , by letter dtd.21/03/2018 has already submitted the commission the compliance report in view of order dtd.26th July, 2015 in case no. 121 of 2014 with regard to refund of change in tariff category from continuous to non-continuous and pointed commission of non-payment of interest on refund amount as there is no such direction in order. It also intimated the MSEDCL will abide by direction of commission. The Approximate amount of interest if directed by commission also pointed out to commission by there is no direction of commission in this respect.*
- 8) We have heard both sides. As we see there was lot of confusion created as to application to be given within one month of the tariff order for availing the benefit of becoming non-continuous category. Application submitted after one month were not being considered. In fact some application were considered even though they were submitted after one month. All this confusion occasioned during the transition from the phase of load shedding to normal supply. Also in case no 94 the position was clarified that Regulation 9.2 will prevail over any condition stated in any tariff order contrary there to. That being so every consumer was entitled to get his category changed is second cycle after receipt his application.
- 9) In the present matter consumer had given application on 28/11/2013 nothing was done on his application. In Sept-2017 Distribution Licensee paid the difference is tariff for the period from Dec-2013 to Dec-2016. So that is the date when the Distribution Licensee first acted on the application given by the consumer but that too Distribution Licensee acted partially thereby with

holding the interest on the said amount of difference. We are unable to understand how then the present of grievance filed on 13/02/2019 is barred by limitation.

10) Further as we find merely because there is no mention about the interest is the order in 94 of 2015 it can not be argued that consumer is not entitled to interest once the commission has opined that 9.2 will prevail over other direction or condition stated in tariff order. It cannot therefor be said that this forum cannot entertain the present grievance under Regulation 6.7 (c) & (d) of MERC (CGRF & Ombudsman) Regulation 2006.

11) In the above view of the matter consumer is entitled to interest on the tariff difference amount. Hence the order.

Hence the Order

ORDER

- 1) The Grievance application of consumer is allowed.
- 2) Distribution Licensee to pay interest on the difference of tariff between continuous and non-continuous tariff for the period from Dec-2013 to Dec-2016 at the RBI rate from of respective due date till realization by consumer.
- 3) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 13/03/2019

(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.