



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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NO. K/E/1554/1831 OF 2018-19

Date of registration : 06/03/2019

Date of order : 02/05/2019

Total days : 57

IN THE MATTER OF GRIEVANCE NO. K/E/1554/1831 OF 2018-19 OF M/S EXCEL CLEANERS, NO.CTS-38, HISSA NO.1/2, BADLAPUR, ROAD, KOLE VILLAGE, DOMBIVALI (E) PIN CODE-421 203 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT TARIFF DIFFERENCE.

M/s Excel Cleaners,
No.CTS-38, Hissa No.1/2,
Badlapur, Road, KOLE Village,
Dombivali (E) Pin Code-421 203
(Consumer No. 020019022740) . . . (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited
Through it's Nodal Officer/Addl.EE.
Kalyan Circle-I, Kalyan . . . (Hereinafter referred as Licensee)

Appearance : For Licensee - 1) Shri.S.R.Dadpe, DyEE, Kalyan (E) S/dn.-III
2) Shri.Vijay Bhoir, UDC, Kalyan (E) S/dn.-III

For Consumer - Shri.G.S.Iyer (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 M/s Excel Cleaners having Consumer No. 020019022740 LT Commercial. Grievance is as under :

Details of grievance is as under :

We are MSEDCL consumer bearing consumer no.020019022740 (presently billed as LT-II C) LT consumer of KALYAN EAST III Sub Division Code-577, Kalyan East Division Code-399.

Our unit/Establishment located at the above mentioned address is engaged in garment cleaning laundry work. The power supply of 90 HP to this unit was obtained by following due legal process from MSEDCL on 19/04/2007 sanctioned vide letter no.SE/KCK-I/Tech/ORC/LS-LT/2006/18 dt.20/01/2007 and EE/KLN (East) Divn/Tech/LS-LT/395 dt.08/02/2007. Enclosed copy of above mentioned sanction letters as Exhibit No.1 (8 pages). A copy of the demand Note/firm quotation issued to consumer and receipts of amount paid is enclosed as Exhibit No.2 (5 pages). A copy of the application for power supply to the units is enclosed herewith as exhibit no.3 (2 pages). After the release of the connection the consumer was being billed by MSEDCL under Industrial Tariff in LT-V category continuously till March-2015 and all the bills are regularly paid by the consumer. Enclosed copy of some bills as Exhibit No.4.

Inspection of the consumer unit premises was done by flying squad, Kalyan on dt.05/03/2015 and a copy of the spot inspection report DD/MR/Sr.No./A-13912 and testing division report is enclosed as Exhibit No.5 (5 pages). On the report of the Addl. Ex. Engineer flying squad, Kalyan, a provisional recovery bill for Rs.9149630/- was issued to consumer and claimed from consumer vide letter no.Dy.EE/KLN(E) S/Dn-III/Tech/14-15/1128 dt.15/04/2015 for period April-2007 to March-2015 by Dy. Executive Engineer, MSEDCL, Kalyan (E) S/dn.-III as retrospective recovery due to tariff difference amount (Industrial to Commercial), due from us enclosed copy of the letter and recovery bill as Exhibit no.6 (2 pages).

Consumer shocked by this sudden raise of huge bill, approached the MSEDCL S/dn. officers who instead of guiding us, stated that the bill is correct and if not paid, the power supply would be disconnected. Hence fearing huge loss and inconvenience that may be caused because of the disconnection of power supply, the applicant consumer moved the Hon. Civil Court, Kalyan with application dt.24/04/2015 in case No.242/2015 for restraining the Licensee from disconnection of power supply of applicant consumer and implementation of recovery process of the illegal claim amount. The Hon.Court by its order dt.28/04/2015, has ordered status quo till final order orders in case no. 242/2015. Enclosed copy of plaint and order of court as exhibit no.7 (6 pages). Though the supply of the consumer was not and is not disconnected, the delay in adjudication of the matter in court led the consumer to approach the IGRC, Kalyan for the redressal of the dispute. On the application submitted to IGRC, Kalyan on 21/11/2018, the matter was heard on 10/01/2019 and 17/01/2019 and IGRC rejected the application of the consumer on the ground that the matter

is before the Hon Civil Court, Kalyan on the same issue. Copy of IGRC order is enclosed herewith as exhibit no.8 (2 pages).

The applicant consumer then moved the Hon. Civil Court for withdrawal of the plaint (suit) RCS no.242/15 with liberty to file a fresh application before appropriate forum in respect of the same matter. The Hon.Court has allowed the application of the consumer to withdraw the suit with cost of Rs.1000/- with liberty to the plaintiff to file a fresh suit in respect of the same subject matter. Copy of order is enclosed herewith as Exhibit no.9 (8 pages).

The consumer has therefore approached the CGRF Kalyan by way of appeal for redressal of the grievance.

Consumer has been paying the bills issued to him by MSEDCL regularly, right from the date of connection. There has been no any change of business activity/purpose of power use (garment cleaning laundry) till this date by the consumer. Being 90 HP load CT meter consumer MSEDCL authorities visit every month and inspect the installation premises and have verified and are aware of the purpose of use of power supply; moreover the application for power supply and sanction is for the purpose of garment cleaning (please see Exhibit No (1&3)) and well within the knowledge of MSEDCL authorities. Hence the retrospective recovery claim of Rs,.91,49,630/- from April-2007 to March-2015 on the alleged ground of Recovery proposed due to tariff difference by reclassification, is illegal and arbitrary.

3) Distribution Licensee in reply contends that the above said consumer is under billing unit '4577' from the date of supply 19/04/2007 On routine checking in the month on 18 March 2015 the Flying Squad, Kalyan observed that the consumer was billed under wrong tariff viz. Industrial instead of commercial. The actual use was for commercial purpose. As per Flying Squad report Distribution Licensee office issued to the consumer a provisional bill of '2073576' units from Apr-2007 to March-2015 under tariff difference between Industrial and commercial with recovery of 91,49,630/- the office requested the consumer to pay the bill.

4) Distribution Licensee further states that consumer approached Kalyan Civil Court against MSEDCL in Civil Suit no 242/2015 and parties were ordered to maintain status quo Distribution Licensee therefore prays that consumer may be ordered to pay the bill and co-operate with MSEDCL.

5) We have heard both sides. As we find from the record the consumer made an application in form 'A' for sanction of Electric Supply for his unit Excel Cleaners. The purpose of use as shown in the application is Garment cleaners. Pursuant thereto estimate was issued by MSEDCL and after due processing, supply was sanctioned to the consumer. After the supply was released in the year 2007 and since then consumer was being billed under Industrial category.

6) It is further seen that consumer was being accordingly billed under Industrial category all along till 2015. Suddenly on 5 March 2015 the Flying Squad visits the consumer's units and finds

that the consumer was being wrongly billed under Industrial category, though Garment cleaning fell in commercial category.

7) Hence on the basis of the Flying Squad report the category of consumer was changed to commercial. Up to this one can understand. But the Distribution Licensee has raised bill for tariff difference right from the date of supply for no fault of consumer. There is no suppression of the activity or purpose of user from MSEDCL on the part of the consumer at all. Consumer Representative Mr. Iyer also submitted that consumer's billing of his customers depends upon the electricity bills as received. Accordingly he has billed his customers. The submission appears sound because now if retrospective recovery is made from him he will be put to irreparable loss as he cannot recover it retrospectively from his customers. That being so it would not be proper to make recovery of retrospective tariff difference from consumer.

8) It can be seen further that even there are several judgments on the point in support of the above proposition including that of APTEL that in such a case of retrospective recovery of tariff difference cannot be permitted. The case law on the point is as below.

- i) M/S Vianney Enterprises Vs. Kerala ERC. (APTEL) Appeal no.131 of 2013.
- ii) Case no. 124, 125, 126 and 94 decided on 23 Dec-2014 and 25 Jan-2016 (Ombudsman Mumbai)
- iii) CGRF Nasik, Pune etc.

9) There is a point raised by Distribution Licensee that a Civil suit has been filed by consumer in Kalyan Court on the same issue. However the same has been withdrawn by the consumer with permission to file grievance before appropriate forum.

10) In conclusion therefore the impugned retrospective recovery of tariff difference is bad in law and is liable to be quashed.

Hence the Order

ORDER

- 1) The Grievance application of consumer is allowed.
- 2) The impugned bill for retrospective recovery of tariff difference is hereby quashed.

- 3) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 02/05/2019

(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.