

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 25 of 2011

In the matter of
Complaint filed by Kaygaon Paper Mills Ltd., against MSEDCL, under Section 142 read with section 62 (6) of the Electricity Act, 2003, alleging non-compliance of the CGRF, Aurangabad Order dated 30th September, 2010, in the matter of refund of infrastructure costs.

Shri V. P. Raja, Chairman
Shri Vijay L. Sonavane, Member

Kaygaon Paper Mills LimitedComplainant

V/s

Maharashtra State Electricity Distribution Company LimitedOpponent
Thru' The Superintendent Engineer, O&M(R) Circle, Aurangabad

ORDER

Date: 20th October, 2011

Kaygaon Paper Mills Ltd., the Complainant, filed a Complaint, on Affidavit, before the Commission on 14th January, 2011 (deficiencies rectified on 14th February, 2011), against Maharashtra State Electricity Distribution Company Limited (“MSEDCL”), the Opponent, under Section 142 read with Section 62(6) of Electricity Act, 2003 (“EA 2003”), alleging non-compliance of the Order dated 30th September, 2010, passed by Consumer Grievance Redressal Forum (“CGRF”), Aurangabad Zone.

1. The prayers made by the Complainant, are brought out hereunder:

“

- a. *The Respondent be directed to refund the amount Rs.225591/- through energy bill as per order passed by Hon'ble CGRF Aurangabad.*

- b. *The Respondent be further directed to pay interest, by way of damages @18% p.a. on this excess amount from procurement of material date till complete refund.*
- c. *Any other just equitable reliefs be granted for the effective adjudication of the subject matter involved in this petition and for its implementation.”*

2. The facts of the matter brought out in the complaint, are as hereunder:

- i. The Complainant is a consumer of the MSEDCL, with electricity supply at 33kV, for its factory located at Gut No. 184, village Kaygaon, Taluka Gangapur, District Aurangabad.
- ii. The Complainant, in the year 2007, applied for enhancement of Contract Demand from 1500kVA to 2000kVA, and the Opponent sanctioned the additional load.
- iii. The metering Cubicle, CTs, PTs, TOD Meter which are required to be provided by the Opponent were not available with the Opponent, and, therefore, Opponent asked the Complainant to procure the metering cubicle and allied material. The Complainant purchased the said material and the same was installed and commissioned at its factory, by the Opponent in 2007.
- iv. The Complainant, in July 2008, again applied for enhancement of Contract Demand from 2000kVA to 2500kVA, which was sanctioned by Opponent in January 2009. As per the direction of the Opponent, the Complainant had procured a set of CTs of ratio 50/5A and after due testing, the same was installed and commissioned in 2009.
- v. The Complainant contended that due to non-availability of the requisite material (metering cubicle and allied material including CTs) with Opponent, the Complainant was asked to procure the material. After charging the installation and, releasing of 2500kVA load, the old CTs and other material (purchased by the Complainant) was taken into possession by the Opponent.
- vi. Subsequently, the Complainant made an application, on 04th Oct., 2009, with the Opponent for refund of cost of material amounting to Rs.2,89,213/-. The Opponent, in January 2010, refused to refund the amount paid by the Complainant towards the purchase of CTs and also did not return the material.
- vii. The Complainant approached the CGRF, Aurangabad Zone, for refund of cost of metering cubicle, CTs and other allied material, amounting to Rs.2,89,213/- along with interest @12%
- viii. CGRF, Aurangabad Zone, taking into consideration the Commission's Order in Case no. 70 of 2005 dated 08th Sept., 2006, on 'MSEDCL's Schedule of Charges' wherein the Commission directed that 'the meter and meter box should be provided by the Distribution Licensee and the cost of meter & meter box shall be borne by the licensee - - -', and also pointing out that the definition of 'Meter' as per the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, includes the CTs, passed its order dated 6th Oct., 2010, as follows:

“ *D. L. is directed to refund:-*

<i>(1) Cost of 33kV Cubicle</i>	<i>Rs.1,72,250/-</i>
<i>(2) Cost of 33kV 50/5A CT's (3Nos.)</i>	<i>Rs. 53,341/-</i>

Total Rs.2,25,591/- should be refunded through energy bill.”

3. Aggrieved with the non-compliance of the said Order passed by CGRF, Aurangabad Zone, the Complainant filed the present complaint before the Commission.
4. The Commission vide Notice dated 07th March, 2011, scheduled a hearing in the matter on 1st April, 2011. During the hearing held on 1st April, 2011, Shri Anil Bhambere, Manager Finance, Kaygaon Paper Mills Ltd., appeared on behalf of Complainant, whereas Km. Kishori Tahele, Junior Law Officer, MSEDCL, alongwith Shri Arun Patil, Ex. Engineer, MSEDCL, Aurangabad, appeared on behalf of the Opponent.

The Complainant reiterated its submissions in terms of the complaint as filed. The Opponent submitted that MSEDCL had filed a Writ Petition (no.2032/2011) before the Hon'ble Bombay High Court, Aurangabad Bench, against the Order dated 30th September, 2010 passed by the CGRF, Aurangabad Zone, and, that after a hearing held on 24th March, 2011, the Hon'ble High Court, with a notice for final disposal, returnable on 30th June 2011, had granted a stay, subject to the Petitioner depositing 50% of amount with the Registry of the High Court. The Opponent further submitted that MSEDCL was prepared to deposit, soon, the amount with the Court.

5. Taking into consideration, the above submission, the Commission directed the Opponent to keep the office of the Commission informed of the progress in the case and adjourned the matter.
6. The Commission scheduled a further hearing in the matter on 18th August, 2011.
7. Subsequently, the Opponent vide its letter dated 02nd August, 2011, submitted a copy of the Order dated 1st July 2011, passed by the Hon'ble High Court, Aurangabad Bench, in the said Writ Petition. In the Order dated 1st July 2011, the Hon'ble High Court, taking into consideration the definition of "Grievance" as defined under Regulation 2.1(c) of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006, observed that:

"5. By no stretch of imagination the grievance of Respondent No. 1, mentioned above, would be covered by this definition. A consumer's grievance contemplated under the Regulations is basically a complaint about fault or inadequacy in quality of performance of the Electricity Distribution Company. In this case, admittedly, there is no grievance that performance of the petitioner-company, as distribution licensee, had been imperfect or otherwise. The grievance of Respondent No. 1 is in respect of breach of statutory obligation allegedly committed by the petitioner-company. So, the grievance would not fall within the four corners of the term "grievance" defined under the Regulations.

6. Shri H.F. Pawar, learned Advocate for respondent No. 1 then tried to show me certain orders passed by the Maharashtra Electricity Regulatory Commission in the matter of complaint filed by certain consumers of the petitioner-company for refund of the amount, etc. The Commission directed the petitioner-company to refund the amount to the consumer in those cases. I am afraid, even though in similar situation, the petitioner-company was directed by the Commission to refund the amount to their consumers, still such orders are not capable of being utilized as precedent. I have made sufficiently clear above that the dispute between the parties

is of civil nature and would not be covered by the term 'grievance'. The Consumer Grievance Redressal Forum, which had passed the impugned order, apparently did not have jurisdiction to entertain a complaint of this nature. Respondent No.2-Forum thus could not have decided the dispute of this nature. Therefore, the orders passed by the Commission will be of no use to respondent No.1.

7. In view of this, without expressing any view on merits of the claim/ defence/ Forum's decision, I am inclined to allow this petition. The Writ Petition is allowed. The impugned order of the Forum stands set aside. The amount deposited by the Petitioner shall be refunded to them."

8. During the hearing held before the Commission on 18th August, 2011, Shri Anil Bhambere, appeared on behalf of Complainant, whereas Kishori Tahele, alongwith Shri Arun Patil, Ex. Engineer, MSEDCL, Aurangabad, appeared on behalf of the Opponent. Both the parties submitted as per pleadings.
9. Having heard the parties, and after considering the materials placed on record, the Commission is of the view that the present complaint is liable to be dismissed as Hon'ble High Court, Aurangabad Bench, has set aside the CGRF, Aurangabad Zone, Order dated 6th October,2010, compliance of which is a subject matter of the present complaint.

The complaint in Case no. 25 of 2011, is therefore dismissed.

Sd/-
(Vijay L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman