

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai 400005.
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Case No. 24 of 2009

In the matter of
Petition filed by Shri. M. H. Kakkad appealing against Electricity
Ombudsman's order dated Feb. 02, 2009 on wrong assessment/ Average
Billing by Torrent Power Ltd., Franchisee of MSEDCL.

Shri. V.P. Raja, Chairman
Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Shri. M. H. Kakkad
Shop No. 2, Zenith Compound
Kalyan Road, Opp. Aasbib Masjid
Bhiwandi 241 302

... Petitioner

V/s

The Suptd. Engineer
Maharashtra State Electricity Distribution Company Ltd.
Kalyan Road
Bhiwandi

... Respondent

ORDER

Dated: August 6, 2009

Shri. M. H. Kakkad, filed a Petition on 16.02.2009, appealing against the decision of Electricity Ombudsman contained in Order dated 5th February 2009 with regard to wrong assessment/ average billing by Torrent Power Ltd., a franchisee of MSEDCL, for withdrawal of average billing from 01.01.2007 to 31.12.2008 and further till date, under Sec. 57, 94(f) and 94(2) of EA 2003.

2. The prayers that have been made are as follows –
1. *In the light of the above facts I have to request your honour and pray before you to kindly consider for withdrawal Average Billing from 01.01.2007 to 31.12.2008 and till current date;*
 2. *Compensation may kindly be considered for legal expenses incurred by me from TPL committee, Bhiwandi, CGRF Bhandup, Electricity Ombudsman, Bandra and presentation before your honour to the extent of at least Rs.50,000/- and into considering of my Mental stress and Tensions;*



3. *As per MERC Regulation for non Reading of Meter of Rs. 200/- per Month from 01.01.2007 to 31.12.2008 and till date.*

3. Shri M. H. Kakkad has Motive Power connection (total 10 HP) for Power loom purpose. According to the Petitioner, his meter had burnt on 10.01.2007 and was replaced by MSEDCL on 20.01.2007, but no report of meter replacement was given to the Petitioner. Torrent Power Ltd. (TPL), franchisee of MSEDCL, took charge of the area from MSEDCL on 26.01.2007, and, subsequently no readings of the meter took place and the billings were done on average basis, of which the Petitioner came to know only when he collected the duplicate bill in April 2007, although his power loom was completely closed.

Further, the meter was stolen in May 2008, for which police complaint was lodged by Shri Kakkad, on 05.05.2008.

4. The Petitioner filed a complaint with Internal Consumer Grievance Redressal Cell of TPL, but was not satisfied by the ICGR's order dated 30.07.2008 (due to revision of billing given from May 2008 and not from 01.01.2007) which was based on the Petitioner not having made Application for non-use of supply before May 2008, and was based on police complaint for theft of the Meter.

5. Subsequently, Consumer Grievance Redressal Forum, Bhandup, by its order dated 29.12.2008 waived the bills from December 2007 to April 2008, after payment of dues balance with the consumer for the period of February 2007 to November 2007.

6. The Petitioner filed a representation with the Electricity Ombudsman on 9.01.2009, against which under the Electricity Ombudsman's order dated 5.02.2009, the case was rejected.

7. Shri M. H. Kakkad has therefore filed a Petition with the Commission, appealing against the said order of the Electricity Ombudsman. The issues raised by Shri M. H. Kakkad are same as were raised before the Ombudsman.

8. The matter was heard on 07.07.2009. During the hearing, the Petitioner was represented by Shri M.A. Usmani and Shri P.D. Thakkar and the Respondent, was represented by its GM Legal, AM (Legal), AM (Tech.) and AM (F&A). The Commission observed that as per the judgments of the Supreme Court and subsequent judgements passed by the Appellate Tribunal for Electricity, grievances of the consumers can be redressed only by the Grievance Cell, CGRF and the Ombudsman, and there is no further Appeal. The Commission observed that it would not have the jurisdiction to entertain the present complaint.



9. The Commission enquired of the Petitioner as to whether he had anything additional to say about the Commission's jurisdiction to entertain the appeal. The Petitioner had nothing to add.

10. The Appellate Tribunal has in its judgement dated 30th March, 2009 in Appeal No. 180 of 2008 has held inter alia as under:-

“14. On going through the Judgments referred to above and also the provisions under Sections 42(5) and 42(6) of the Act, it is clear that there cannot be any controversy with regard to the position of law which has already been settled to the effect that the consumer has got the remedy to get the grievance redressed by filing a complaint before the Grievance Cell and thereafter by filing the Appeal before the Ombudsman which is final and no Appeal could be filed before the State Commission.”

In its judgment dated 30th March, 2009 in Appeal No. 181 of 2008, the Appellate Tribunal held as under:-

“Even when there is no appeal is provided as against the above order passed by the Ombudsman, the State Commission cannot usurp the jurisdiction of the Grievance Redressal Forum or the Ombudsman by going through the validity of the order passed by the Ombudsman.”

...

This contention cannot be countenanced in view of the decision taken by this Tribunal as well as Supreme Court wherein it has specifically been held that the Consumer cannot approach the Commission for Redressal of his grievances as there is specific remedy available for the Consumer to approach the concerned authorities like the Grievance Cell and the Ombudsman whose award is final and against which no appeal will lie with the Commission.”

11. Having heard the Petitioner, and after considering the materials placed on record, in view of the above judgments, the present complaint raising a grievance against the impugned order passed by the Ombudsman cannot be admitted as the Ombudsman's award is final against which no appeal will lie with the Commission. The Commission holds that the present complaint is not maintainable and is hereby dismissed.

Sd/-
(S. B. Kulkarni)
Member

Sd/-
(A Velayutham)
Member

Sd/-
(V. P. Raja)
Chairman



(P.B. Patil)
Secretary, MERC