



(A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum

“Vidyut Bhavan”, Gr. Floor,

L.B.S.Marg,Bhandup (W),

Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/127/590

Date:22.03.2017

Case No. 127/2016

Hearing Dt. 14/2/2017

In the matter of application of wrong tariff change from industrial to commercial and recovery of assessment of bill arrears

Mrs. Nirmala Padamnabhan.

- Applicant

Vs.

M.S.E.D.C.L. Kalamboli Sub Division

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri.Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Archana Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri.Suresh Boynal – Consumer Representative
- 2) Shri. Amit Ganpatrao Desai

C - On behalf of Respondent

- 1) Shri.Nilesh R. Songire, Additional Executive Engineer, Kalamboli Sub Division.

Consumer No. 028652843761 Connected Load 50HP Contract Demand -63KVA

Billing Unit 0345 Kalamboli S/dn Panvel Urban Division, Vashi Circle

1. The said supply is using by consumer for Tyre Re treading Company having LT industrial tariff situated shop No.28 sector No 04/E, Truck Terminal, Kalmboli.Taluka –Panvel Dist Raigad. It is submitted by consumer that the supply was sanction LT motive power of Tyre Retreading workshop since 2001. Consumer submitted document as per requirement time to time include SSI registration NOC of his establishment under industrial business power supply the said supply is used for Tyre Retreading Company. On 25.05.2016. Additional Executive Engineer, Flying Squad Kalyan to visited the spot and verified the tariff and also suggested to change the tariff accordingly. Since august 2012 the tariff order required Tyre moulding /Retarding activities to be billed under commercial tariff. However the said unit was charge as per industrial tariff for earlier period therefore on 06.06.2016 respondent utility calculated the amount as per difference of commercial tariff and issued the bill for amounting Rs.5,73,350/- claiming difference of industrial unit to commercial unit with effect from 01 August 2012 .The provisional bill was issued on 30.05.2016 showing retrospective recovery as MERC tariff order August 2012 for the category of Tyre Retarding should be charge as commercial LT II C. Accordingly in the month of July 2016 supplementary bill was issued for amounting Rs 573350/- to the consumer with retrospective effect. Accordingly the said bill was objected by consumer raising dispute before IGRC by giving application in from No. 6.Consumer relied on MERC 24/2001 dtd.11.02.2003 directing no retrospective recovery arrears can be allowed ***“No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people.The same***

cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective”. In view of the judgment in Appeal 131/2013 **M/s. Viney Enterprises Vs Kerala State Electricity Regulatory Commission** raised objection of retrospective recovery claim in the bill of difference of tariff recovery it should be from the date of detection of error only. Consumer as per decision of Ombudsman Mumbai in case No. **124,125,126 of 23.12.2014** retrospective recovery bill and adjustment issued by MSEDCL was directed to be refund similar order given by CGRF Nasik in **85 & 121/2015** and relied on decision of this forum. The consumer pray that the supplementary bill showing retrospective recovery amount Rs.5,73,338/- should be withdrawn and consumer should be charge only by commercials tariff as illegal and against the regulation. Consumer pray for withdrawal of the said bill and giving direction for apply proper tariff. Initially the complaint was filed before IGRC in Schedule ‘X’ IGRC registered the complaint case No.95/2016-17 on dtd.29.09.2016. IGRC gave opportunity of hearing two the both parties in on dated 30.12.2016. IGRC gave finding and complaint is partly allowed and six month instalments were granted by IGRC to pay arrears charging commercial tariff difference along with current bill.

2. Being dissatisfied of the said order of IGRC consumer approach to the Forum and filed this grievance on dated 17.01.2017. After filing the said dispute notice was issued form the respondent utility after service of notice

respondent utility appeared and filed reply on 07.02.2017. The reply of respondent utility flying Squad inspection made on 30.05.2016 certificate issued by General Manger District Industry centre Thane carried out the activities in the premises Tyre Retreating services category and according to utility it is not manufacturing activities. Respondent utility relied on Commercial Circular 175/243.The respondent utility claim as per Regulation on 13 Of MERC (Electric Supply Code & other Conditions of Supply) Regulations,2005. Respondent utility authorized and categorization in commercials category since the tariff category order issued by MERC on august 2012..Respondent utility submitted that difference of industrial tariff change to Commercial tariff amount Rs. 5,73,350/- is properly charge in bill 6.6.2016 and giving direction to consumer to pay the bill along with current bill no interest DPC or penalty was charge against the consumer. Respondent utility submitted that it is revenue recovery of MSEDCL and it is public money work undertaken under government utility by MSEDCL the consumer complaint is not tenable liable to be dismiss with cost.

After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration to which I have recorded my finding to the point for the reason given as below:

1. Whether respondent utility entitled to change the tariff from industrial to commercial for Tyre Retreading unit situated in kalmboli, Panvel District Raigad.
2. Whether respondent utility is entitled to recovered supplementary bill claiming retrospective recovery of change category from industrial to commercial since 01.08.2012

3. Whether consumer is liable to pay difference of arrears from changing the category of industrial to commercial form the date of inspection 30.05.2016.
4. Whether consumer was entitled for any relief.
5. What order?

Reasons

I have perused consumer complaint filed before IGRC and also before this Forum minutely. Consumer relied on judgment Representation No.41/2016 **M/s. Shivam Industrial** Hon'ble ombudsman on 30.06.2016 copy of judgment Appeal No. **131/2013**. I have perused and gone through the judgment minutely I heard the submission made by consumer representative and also read the reply filed by respondent utility there is dispute raised by the consumer after receiving supplementary bill. There is no dispute the supply is used to the premises undisputed for the purpose of Tyre Retreading Company. It is not the manufacturing unit as defined. The supplementary the change of tariff as claim by the utility affected as per circular 127&243 dated. 05.09.2012 and 30.07.2015 enable utility to claim the tariff from 01.08.2012 and therefore it is charge as per LT II commercial tariff difference rate and issue the bill. The grievance as earlier decided by Hon'ble Ombudsman and in view of the judgment in **Appeal No.131/2013** the utility required to calculate the bill as stated by consumer from the date of detection of error in this case the date of detection of error is revealed from the date of inspection 30.05.2016. Therefore the retrospective recovery bill applied change of tariff since August 2012 and bill issued charging LT II commercial tariff is wrong illegal and liable to be quash and set aside. It is necessary for me to mention that in view of resent tariff policy applied since 01.11.2016 MERC considered the Tyre Retreading Industrial should be charge as per industrial tariff and not commercial. Therefore the

issues is now already decided by Competent authority it further pertaining to note that the difference of arrears between the period date of detection of error till 01.11.2016 whether can be recovered as per commercial tariff as it is earlier period. The consumer could not convince me why the recovery between the period of detection of error till applying of new tariff neither there is cleared guidelines about recovery of those arrears issued to the respondent utility the issue is considered by me as the said recovery should be made liable to be paid by consumer therefore I am inclined to allow the complaint and proceed to pass following order.

ORDER

1. The consumer complaint No. 127/2017 is allowed.
2. The Respondent utility directed to revise and reissue the bill claiming tariff difference arrears charging commercial tariff only for the period of the date of detection till 01.11.2016 as per commercial tariff rate the said bill shall be paid by consumer with 10 equal monthly installments along with current bill. The consumer shall execute Indemnity bond of recovery of earlier tariff difference subject to decision of writ petition pending before Hon'ble High court. No interest DPC and arrears shall be charge against the consumer. Consumer directed to pay the bill along with current bill in equal monthly installment of 10 months. No order as to the cost.

Proceeding close.

Both the parties be informed accordingly.

The order is issued under the seal of Consumer Grievance Redressed Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman
The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

I Agree/Disagree

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP

RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP