

**Consumer Grievance Redressal Forum
Maharashtra State Electricity Distribution Co. Ltd.
Bhandup Urban Zone, Bhandup**

Ref. No. Secretary/MSEDCL/CGRF/BNDUZ/ Date :

Case No. 389

Hearing Dt. 11/08/2011

M/s. S. M. R. Bearing Pvt. Ltd. - Applicant

V/s.

MSEDCL (Vashi) - Opponent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri R.M Chavan, Member Secretary, CGRF, Bhandup.
- 2) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Applicant

- 1) Shri Anil Sathe—Consumer Representative
- 2) Shri S. Kumar

C - On behalf of Opponent

- 1) Shri Kachre, Ex. Engr. Nodal Officer Vashi circle.
- 2) Shri Shri V.G. Hannawar, J.E.

Complain in brief is:-

The utility has charged the consumer at commercial rate which according to consumer should have charged as Industry. The consumer M/s. METSO Automation India Pvt. Ltd. (for the sale of referred hereto as M/s Metso) is a company carrying on its activities at leased premises of SMR Bearing Pvt. Ltd. leased for 5 years.

The Electricity connection is till date in the name of M/s. SMR Bearing Pvt. Ltd. (the lessor), consumer no being 000149035660. M/s Metso applied for fresh HT supply on 29/07/2009 informing the utility that the main job of M/s Metso is to design, produce and Distribute control kits on 15/03/2011. Spot inspection was carried on by utility. Utility issued a supplementary bill u/s 126 of Electricity Act 2003 on 31/03/2011. Thereafter on protest and representation by M/s Metso, utility withdrew the said supplementary bill issued u/s. of E.A. 126. Thereafter utility issued one more supplementary bill of Rs. 22, 68,030/- towards difference in tariff. The utility has also issued notice of disconnection on 05/8/2011.

Thus M/s Metso has approached this Forum seeking relief against wrong tariff & notice of disconnection.

Consumer's Say: -

The main contention of consumer is that the utility has charged at commercial rate under wrong notion, which should have been at industrial rate; the consumer being in business of "Manufacturing control kits". The consumer has further contended that the utility had charged u/s. 126 of Electricity Act. 2003, which was withdrawn on the protest of the consumer and clarify the fact that the utility has already intimated for change in the utilization of premises by M/s. Mesto.

Utility's Say :-

- 1) Consumer has approached this Forum without seeking justice from IGRC, thereby violating the produce established by the MERC Regulations. Thus on the very ground case of the consumer should be dismissed.
- 2) The utility has admitted the fact that the consumer was charged for ` 7,23,901.57 u/s 126 of Electricity Act, vide bill dated 31/03/2011 & the same was then withdrawn. Thereafter the consumer was given

a supplementary bill on 22/06/2011 for the difference in tariff (from Industrial to commercial), but the consumer refused to accept this bill & showed willingness to pay monthly average bill of ` 2, 73,985/- only. Since this was not maintainable under law, utility issued a notice u/s 56(1) to the consumer on 05/08/2011.

As per the Opponent say, the dominant use of electricity is for air conditioner and computer for IT enabled activity. Moreover, the infrastructure is found more for office use. The Opponent further added that the consumer do not posses the certificate for IT enable industry, hence considering these facts, the consumers is rightly billed on commercial activity

As to the use of electricity it was consumer say vis a vis say of the utility. Thus, the Forum considered it prudent to a carry on a joint site inspection, jointly with nodal officer of the utility.

The joint inspection was carried out on 8th Sept 2011 by in Shri Madke, Chairperson of the Forum, Shri. Chavan, Member Secretary, and Dr. Mrs. Sabnis, Member of the Forum along with Nodal officer Shri Kachare of the utility.

Observation :-

M/s. Mesto Automation India Pvt. Ltd. is carrying out is activities in a Mesto House, A 464, TTC Industrial Area MIDC, Tetavali Mahape, Navi Mumbai 400 710. The building has ground plus 2 floors.

On 2nd floor, a process of designing was carried out & the majority of the work is done with the help of computers.

1st floor is devoted for software programming & also has an office area for the executives.

On ground floor, panels were assembled, tested, packed & dispatched.

All these activities carried on at different floors of the building were ancillary to each other.

The real dispute lies between the parties as to the purpose for which the electricity has been consumed. Though the utility has charged the consumer for commercial use it is contention of the consumer that since they are in manufacturing activity, utility should have charged as per "Industry".

Though the Electricity Act 2003 does not give definition of Industry, the same can be derived from the Industrial Disputes Act 1947, which defines industry as "industry means any business, trade, undertaking, manufacture or calling of employees & includes any calling, service, employment handicraft or industrial occupation or avocation of workmen.

The definition mandates that there should be systematic activities for production, supply or distribution of goods or services.

Also, the word MANUFACTURE has been defined under Consumer Protection Act 1986 which says sec 2 (j) Manufacture means a person who-

- 1) Makes or manufactures any goods or part thereof or
- 2) Does not make or manufacture any goods, but assembles parts thereof made or manufactured by other or
- 3) Puts or causes to be put his own mark on any goods made or manufactured by other manufacture.

Thereby meaning of the industry can be gathered as any business where production/ supply/ assembly/ distribution of goods or service is carried on.

The consumer's tariff order dated 17/08/2009 has prescribed various tariff categories as under:-

LT-II- electricity used at low or medium voltage in all non residential, non industrial premises &/ or commercial premise for commercial consumption for operating various appliances used for purpose such as lighting/ heating/ cooling/ washing/ cooking/ entertainment/ leisure/ pumping in follow places

A) Non residential, commercial, business premises including shopping malls.

B) All educational institutions, Hospitals dispensaries

C) Films, studios, cinemas, theatres, including multiplexes, hospitals, leisure, meeting halls, recreation places.

LT V- applicable for industrial use at low, medium voltage in premises for purpose of manufacturing including that used within these premises for general lighting, heating, cooling etc, excluding agricultural pumping loads. This consumer category also includes IT enabled services.

During joint site visit, the Forum has noticed that the activities of the consumer at said premises consists of manufacturing of software programs along with its necessary hardware components, its assembly and dispatch which mandates to categorize it under the words Industry & Manufacture.

It is settled position of Law that an establishment should be charged as per its activity & not merely based on various certificates which it has obtained.

Thus with the foregoing discussion the Chairperson and Member have arrived at a conclusion that the consumer should be labeled as carrying on industrial activity & utility should charge them as per industrial tariff.

The utility has prayed to consider the consumer under HT-II commercial category as they do not have IT enable certificate but Forum feels that the categorization of any consumer is based on the activity going on and not merely on the certificates he has obtained.

The utility has also prayed before thus Forum to dismiss this complaint as the consumer has not followed the procedure of approaches IGRC as prescribed by the Act.

But since there was notice to the consumer u/s 56 (1) for disconnections of electricity & since the IGRC does not have power to issue any interim relief against this notice it is right of the consumer to approach this Forum seeking relief in nature of interim order against disconnection of electricity. Thus the Forum does not see any merit in the prayer of the utility.

Member Secretary's Opion :-

There is a difference in the opinion of Member Secretary and other two Members of the Forum. The Member Secretary is of opinion that consumer has dominant load of air conditioner i.e 160 kw out of 300 kw of total connected load and computers used for software programme development which does not includes in manufacturing process. Moreover, being consumer is not declared by the Govt. as IT enabled industry it should be bill on commercial tariff.

Considering the majority in the Forum is of opinion that consumer should be billed as per the industrial tariff being all activities are ancillary to the manufacturing process.

ORDER.

Complaint no 389 is allowed.

Utility is directed to charge the complainant as per industrial tariff

Consumer to pay the bills along with arrears within a period of 2 months from the date of receipt of the corrected bills

No order as to cost.

Both the parties should be informed accordingly.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 1st of October 2011.

Note :

1) If Consumer is not satisfied with the decision, he may go in appeal 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 go in appeal before the Hon. High Court within 60 days from receipt of the order.

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

S. D. Madake
CHAIRMAN
CGRF, BHANDUP

R.M. CHAVAN
MEMBER SECRETARY
CGRF, BHANDUP