



Consumer Grievance Redressal Forum, Kalyan Zone

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No.EE/CGRF/Kalyan Zone/

Date of Grievance : 24/08/2016

Date of Order : 20/01/2017

Total days : 152

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1053/1267 of 2016-17 IN RESPECT OF M/S. AARTI DRUGS LTD. PLOT NO. 21 & 22, MIDC, TARAPUR, BOISAR, TAL. & DIST. PALGHAR REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING CHANGE IN TARIFF FROM HT-IC TO HT-IN.

Aarti Drugs Ltd.

Plot No.21 & 22,

MIDC, Tarapur, Boisar,

Tal. & Dist. Thane.

(Consumer No. 003209025580)

... (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited

through its MSEDCL, Addl. Ex. Engineer,

Vasai Circle,

... (Hereinafter referred as Licensee)

Appearance : - For Consumer : Shri Pratap Hogade -Consumer's representative.

For Licensee :- Shri V.B. Jagtap -Nodal Officer, Vasai Circle.

Shri H.A.Khan- Dy.EE, Vasai Circle

{[Coram- Shri A.M.Garde-Chirperson, Shri L.N.Bade-Member Secretary and Mrs.S.A.Jamdar- Member (CPO)]}

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 Redressal 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. 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 (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Brief facts of the grievance application are that, consumer is running a factory, having HT supply bearing consumer No. 003209025580. The consumer submitted that it is connected on express feeder. The consumer further contended that there are different categories of HT industrial consumers i.e. Continuous (HT-IC) & Non Continuous (HT-IN) and accordingly separate tariffs are charged since October 2006. CR stated that the consumer may opt his choice between Continuous & Non Continuous as per MERC order in Case Number 44/2208 dated 12/09/2008. MSEDCL has also issued Commercial Circular Number 88 dated 26/09/2008. Also there is a clear provision regarding change of Tariff category in SOP regulations.

3] CR submitted that there was continuous supply till July 2012, but after MERC order dated 16/8/12 there was a huge hike in the tariff and therefore, it was very difficult for them to survive and run their business. The consumer was also not using the electricity on staggering day i.e. Friday. Again there was hike tariff in September 2013. Hence, as per MERC Order, MSEDCL Circular & SOP Regulations, they have opted for Non-continuous Category and have submitted written applications to MSEDCL on 24/02/2014. As per directions of MERC and SOP regulations, it was binding on MSEDCL to implement "Non Continuous" Tariff and Charges thereunder but the MSEDCL had erred in not giving approval to their demand. Then after MERC declared New Tariff order on 26/06/2015. After the said order they have again applied for HT IN tariff and MSEDCL applied HT IN Tariff to them from 01/01/2016 i.e. from January 2016 bill.

4] The consumer further submitted that the said sanction of MSEDCL is in contravention to MERC order & SOP regulations laid down by MERC and though the consumer is eligible for Non-continuous tariff from the date of it's application, the consumer is deprived from legally justified tariff under HT I N category and has been charged HT IC Tariff from March 2014 to December 2015. Thus it deprived of justice for the above period.

5] Consumer pleased that the tariff charged and applied for this period is illegal, in contrary to the procedure, SoP regulations and order and guidelines of MERC and this act of MSEDCL is absolutely void and it needs to be set aside and excess amount so charged from the date of our application may kindly be refunded with interest or be adjusted against our future energy bills and hence this complaint is filed before honorable Forum.

6] Consumer also pleaded that the Excess Tariff Charged for the abovementioned period by MSEDCL is totally false, illegal and contrary to MERC order, SoP Regulations & guidelines. So we do not accept & deny this act of MSEDCL which is contrary to laid down legal provisions. In support to it's claim, consumer submitted relevant orders, legal provisions and our detailed submissions, reasons and grounds are given as below:

7] The MERC Tariff order dated 16/08/2012 came in force from 1/8/2012. As per said Tariff Order & Approved Tariff Schedule in the order, there are 3 sub categories as under

- i] Continuous Industry (on express feeder) - HT-I-C
- ii] Non-continuous Industry (not on express feeder) HT-I-N.
- iii] Seasonal Category.

CR highlighted the Clause (iv) in tariff booklet of MERC Tariff Order which reads as below:

"(iv):- Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry & given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry."

8] CR submitted that hence we are eligible for HT-IN Tariff as per SoP regulations & also compensation of Rs 100 per Week for the delay period as per SoP regulations.

Lastly CR prayed for refund of excess amount so charged from the date of the consumer's application with interest or adjusted against it's future energy bills.

9] Consumer approached IGRC but not satisfied with the order of IGRC dtd 11/8/2016, hence, the consumer approached to this Forum and

this grievance is filed before this Forum on 24/8/2016. His grievance application along with accompaniments sent to the Nodal Officer vide this Office letter No.EE/CGRF/Kalyan/228 dated 30/8/2016.

10] The Licensee appeared and filed reply dated 9/9/16 and denied all statements averments and contentions raised by the consumer. The Licensee submitted that the consumer is having supply from 23/7/2004. The consumer is on express feeder and hence categorized HT-IC as per MERC tariff order from October 2006 till December 2015. The consumer submitted an application dated 24/10/2014 in the Circle Office, at Vasai for change of tariff from HT-IC to HT-I-NC ,after scrutiny the said application was sent to Chief Engineer (Comm) on 6/3/2014. The consumer was on express feeder and his application was not within one month of last tariff order and hence consumer was categorized as HT-IC as per MERC tariff order from October 2006 till December 2016. In case No.121/2014 MSEDCL has changed the tariff of consumer. The consumer has filed the present case for refund of tariff difference for the period **February 2014 to December 2015** or from the second billing cycle from the date of application dated 24/2/2014 as per MERC SOP Regulation.

11] The Licensee further contended that the MERC by Tariff Order dated 20/6/2008 in case no. 72/2007, in the consumer category of HT-I Industry, three tariff categories were introduced for the first time viz.1] continuous industry (on express feeder, ii] Non-continuous Industry (not on continuous feeder and iii] Seasonal Industry. MERC clarified in the clarifactory order dated 12/9/2008 in case No. 44/2008 that consumer who is availing supply on express feeder may exercise his option within one month after issue of tariff orders passed by MERC dated 17/8/2009 in case

No.116/2008,12/9/2010 in case No. 111/2009 and 16/8/2012 in case No. 19/2012 for relevant period. However none of these occasions the consumer exercised his choice between continuous and non continuous supply within one month after issue of these tariff orders. The consumer first time submitted application for change of tariff on 29/11/2013 from HT-C to HT-1NC and the said application was not within one month of last relevant tariff order dated 16/8/2012 and therefore, consumer was not entitled for change of tariff.

12] The Licensee further contended that on 4/10/2013, the Circle Office sent application of consumer to Chief Engineer (Comm) , Corporate Office, MSEDCL. The Chief Engineer (Comm) allowed his request for change of tariff from July 2013. The Licensee further stated that in the tariff order dated 31/5/2008,20/6/2007 under tariff category HT- Industry Note No.4 reads as under:

13] Only HT Industries connected an Express Feeders and demanding continuous supply will be deemed as HT continuous Industry and given continuous supply, while all other HT Industrial consumers will be deemed as HT non continuous industries.

In case No. 44/2008, MSEDCL made the following prayers to MERC:

d] The clause “demanding continuous supply” , may please be removed from the definition of HT-I (continuous Industry).

e] Existing consumer’s categorized under HT-I continuous as on April 1,2008 should be continued under same category.

f] HT-I (continuous) Tariff category should be applicable to all industries connected on Express feeder irrespective of whether they are continuous or non-continuous process industries.

14] As per MERC order dated 12/9/2008 in case No.44/2008 ,clarified that the consumer getting supply on express feeder may exercise

his choice between continuous and non-continuous supply only once in a year , within the first month after issue of tariff order for relevant period.

15] Lastly, the Licensee prayed for rejection of the grievance application of the consumer.

16] We have heard the matter, the Licensee has submitted written arguments. We find that the categories of consumers for continuous and non continuous supply were first introduced in 2006, in view of shortage of electricity supply then. As we gather further, inspite of shortage of electricity supply for distribution, some industries were considered to be eligible for continuous supply and were provided with the same on request of course with some higher tariff. Earlier, there was a certificate required from the concerned Competent Authority to the effect that a particular industry falls in continuous category so as to be eligible for continuous supply. Later-on there were some changes made on account of some difficulties in getting the above mentioned certificate from the respective authority whereby the certificate was dispensed with if the industry required continuous supply considering it's activity. Later-on the things changed further and, anybody could change from one category to other. Then it so happened that by reason of sufficiency in power supply there was no more power cut. Power was made continuously available on demand and the consumers preferred to change to non continuous category to avoid excess tariff specially because of alleged increase in tariff. In Tariff order of 2012 a condition was put to make application within one month of the order for change of category. This was made in order that the Licensee should be able to know before hand categories so as to manage the supply properly. It so happened , however, that few applications were made within one month

of the tariff order for change of category from continuous to non-continuous, which were allowed by the Licensee. Thereafter, applications were made even after one month of the tariff order, the said applications were rejected by the Licensee on the ground that they were not made within one month of the tariff order. However, there were instances in which the applications were granted. There were contradictory interpretation of the tariff order of the condition of one month to make application. Then came the Review Petition moved by Licensee itself before the MERC bearing 94/2015 in which all the questions were set at rest.

17] The Commission in the above said review matter inter-alia held that SOP Regulations 9.2 gives unfettered powers to the consumer to change the category by making an application and the Licensee was bound to change the category from the next billing cycle. That being so Licensee before us in this case had no points to make against the case of consumer. The Licensee practically agreed in principle to the case of the consumer. The only submission made was that the MSEDCL is a body corporate and will frame policy and methodology for implementation of the findings of the Commission in the Review Petition no.94/2015 and issue guidelines. It is, rightly pointed out in this context that those are the internal matters of the Licensee.

18] So-far-as compensation under SOP is concerned, CR Mr. Hogade fairly does not insist.

This matter could not be decided within time as the Hon'ble Chairperson took charge on 20/09/2016 of this Forum and the matter was reheard.

19] Taking into consideration, all the above points, we find it fit to allow the grievance application of the consumer.

Hence the order.

ORDER

1] Consumer's grievance application is hereby allowed.

2] The Licensee is directed to apply non continuous tariff to the consumer from second cycle after the application given on 24/02/2014 for change of tariff.

3] The Licensee is further directed to refund the differential amount recovered from the consumer due to wrong application of continuous tariff from the second cycle after the application till rectification. The same may be done by adjusting it in the next ensuing bills.

4] The Licensee is also directed to work out the amount of interest on the differential amount as per RBI rate and pay the same to the consumer.

5] Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 20/01/2017.

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(L.N.Bade)
Member Secretary
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.