



Consumer Grievance Redressal Forum, Kalyan Zone
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No. K/E/864/1058 of 2015-16

Date of Grievance : 22/04/2015

Date of Decision : 15/02/2017.

Total days : 664.

IN THE MATTER OF THE GRIEVANCE NO. K/E/864/1058 of 2015-16 IN RESPECT OF M/S. SUBIR PRECISION INDUSTRIES P. LTD. S.NO.7,VILLAGE GORAD, NEAR GANESHPURI, TAL. WADA- 401 204 DISTRICT-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF EXCESS AMOUNT COLLECTED TOWARDS TARIFF DIFFERENCE FOR CONSUMER No. HT-001519036390.

M/s. Subir Precision Industries P. Ltd.,
S.No.7 Village Gorad,
Near Ganeshpuri,
Tal. Wada -401 204
(Consumer No. HT-001519036390)

.... (Hereafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution
Company Limited through its
Nodal Officer-Cum-Executive Engineer,
MSEDCL, Vasai (E).

.... (Hereinafter referred as Licensee)

Appearance : For Consumer – Shri B.R.Mantri-Consumer's representative.
For Licensee - Mrs.Ruchita S.Desai-Dy.Manager F&A Vasai Circle.
Shri Jagtap – Nodal Officer/EE-Vasai Circle.
Shri Rajiv Waman - ALO-Vasai Circle.

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

1] 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 grievance 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 and Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014’.

2] Grievance in brief is that, consumer is engaged in production of engineering goods which comes under non-continuous production. They applied for new power connection on 2/3/2010 for their industry situated at S. No. 7 at Village Gorad, Near Ganeshpuri, Tal. Wada, Dist. Thane. Accordingly sanction of new power supply was granted on 6/5/2010 by Superintending Engineer, MSEDCL, Vasai with condition no.15 in the Sanction order, as below: “Government Load Restriction Orders as prescribed and amended from time to time shall be applicable to you (consumer) You will have to observe the staggering holidays as decided by the Government, which is at present Fridays for Thane District.”

New connection HT was released on 15/1/2011.

3] It is further the grievance that as per condition no.15, consumer has declared it’s factory holiday on Friday due to unavailability of power supply on that day.

4] It is the grievance further that, MSEDCL has been charging tariff of HT-IC instead of HT-IN. Consumer had not demanded continuous supply,

though connection was from Express feeder as informed by MSEDCL. Never ever did MSEDCL inform to the consumer about availability of supply on

continuous basis. Consumer also have not operated it's industry on Friday in violation of Condition No.15.

5] It is the contention, therefore, that as per MERC Order in case No. 72/2007 and clarificatory Order in case No.44/2008 dated 12/9/2008 and MSEDCL commercial Circular No.88 dated 26/9/2008 and order dated 26/12/2012 in Case No.107 / 2012 passed by MERC, consumers are entitled to be governed by non-continuous category tariff and prays for refund of the excess amount recovered by applying continuous category tariff.

6] In reply MSEDCL contended that the present matter is related to the same subject matter and based on same application to IGRC Vasai dated 15/7/2014 which has been heard and decided on 17/12/2014 and MSEDCL has now challenged the said order vide W.P. No. (Stamp) 11983/2015 before Hon'ble Bom. High Court and hence this complaint is liable to be rejected in view of 6.7 of MERC (CGRF & Ombudsman) Regulation 2006.

7] It is further the contention that MERC tariff order dated 20/6/2008 in case No. 72/2007 introduced three tariff categories in HT I Industries, i] Continuous (on express feeder), ii] Non continuous Industry (not on express feeder), iii] Seasonal Industry. Then by clarificatory order dated 12/9/2008 in case no. 44/2008 MERC clarified that the consumer getting supply on express feeder may exercise **option** within one month after the issuance of tariff order.

8] It is pointed out that after the clarifactory order dated 12/9/2008 three tariff orders were passed by MERC, 1] Tariff order dated 17/8/2009 in case No. 116/2008, Tariff order dated 12/9/2010 in case No.111/2009, 3] Tariff order dated 6/8/2012 in case No. 19/2012. However, consumer did not exercise his choice between continuous and non continuous supply within one month.

But consumer submitted his application for change of category tariff from continuous to non continuous category for the first time on 15/7/2014.

9] It is further the contention that in Tariff order dated 31/5/2008/20/6/2008 in case No. 72/2007 under Tariff Category HT Industry note No.4 reads as under:-

“Only HT Industries connected on express feeder 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 following prayers to MERC.

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

- a] The clause “demanding continuous supply” may please be removed from the **defendant** of HT-1 (continuous category).
- b] Existing consumers categorized under HT-1 continuous as on April 1, 2008 should be continued under same category.
- c] HT-1(continuous) Tariff category should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non continuous process industries.

10] MERC by order dated 12/9/2008, in case No. 44/2008 clarified as under :

“It is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year within first month after issue of the Tariff order for the relevant tariff period.

11] We have heard both sides and have gone through all the Regulations, Circulars and judgments cited on either side . The first point raised in the reply is that the issue raised in this proceeding has already been heard and decided by this Forum in Grievance / Complaint No. 1015/2014 and the appeal against the judgment therein is challenged by MSEDCL before the Hon’ble High Court. In this context it can be seen from the complaint in

Grievance/complaint No. 1015/2014 that the consumer had only prayed for change of tariff category. An additional prayer is made for refund though it is

because and for the month wherein MSEDCL failed to give uninterrupted supply from the date of release i.e. 15th January 2011. In the present proceeding Also consumer claims refund , but on the ground that consumer is entitled to be governed by the Non continuous tariff category and is entitled to refund for wrong charging since beginning i.e. from 15th January 2011. Further it can be seen that consumer has given up his claim for refund in Grievance No. 1015/2014 for whatever reasons assigned therein. That being so the issue in the present matter is different from Grievance No. 1015/2014.

12] Now although the above discussed point does not help MSEDCL, there are several questions which remain to be answered by the consumer. The first question is why the present issue was not raised in case No.1015/14. Second point is about limitation. There is one more glaring factor that the consumer has not pressed the prayer of refund in case No.1015/14 on 17/12/14 and thereafter present grievance was filed on 20/4/15. Thus whether having not put up the claim in case No. 1015/14 when consumer had the opportunity to do so and also long delay disentitles consumer from putting up the present claim. These principles are elementary in Civil Procedure Code Order II Rule 2 and this is not merely technicality. Consumer has cleverly not pressed refund issue in case No/1015/2014 and filed this present grievance as an after thought. In grievance No. 1015/2014, there appears clear prayer for change of category for continuous to Non continuous, but no claim to apply non continuous tariff for earlier period.

13] Now, coming to the facts of this matter, admittedly, the consumer is on express feeder being HT Industry. Tariff order dated 31/5/2008 and

clarification date 20/6/2008 in case No.72/2007 under tariff category HT-1
Industry Note No.4 reads as under:

“Only HT Industries connected on 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.

MSEDCL made the following prayers to MERC in case No.44/2008: -

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

b] Existing consumers categorized under HT-I continuous as on April 1, 2008 should be continued under same category.

c] 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] By order dated 12/9/2008, in Case No.44/2008, MERC clarified as under:

It is clarified that the consumer getting supply on express feeder may exercise it’s choice between continuous and non continuous supply only once in the year, within first month after issue of the tariff order for the relevant tariff period.

15] As we examine the clarificatory order the MERC did not remove the said clause viz “demanding continuous supply but they merely gave option to the consumer on express feeder to choose between continuous and non continuous.

16] In Case No. 35/2014, before the Hon’ble Ombudsman Nagpur , there was clear exercise of option by the consumer for non continuous category made in the application made for connecting the supply itself. In case No.35/2014, before the Hon’ble Ombudsman Mumbai also the consumer was a non continuous supply consumer. The consumer applied for additional load which was granted to it. After release of additional load, the consumer was billed for continuous category and it is clear that the consumer being already a

non continuous category, did not choose continuous category while applying for additional load but his category was changed to continuous.

17] Herein case is bit different. Consumer applied for supply for HT-I and was granted the supply. Consumer did not mention his choice at all whether continuous or non continuous, at least we did not come across an such record but was connected on express feeder. Question, that arises therefore is whether in such a case, MSEDCL is entitled to charge the consumer as continuous category. Note -4 of the Tariff order, clarificatory Order in case No. 44/2008 does not indicate any such intention. The same was the proposition accepted in case No.26/2016 before the Hon'ble Ombudsman Mumbai.

18] Above being the view of the matter consumer further points out that condition No.15 of the sanction Order, herein before referred, clearly brings fetters on the continuous supply of power. Consumer also shows actual interruption of supply by producing CPL. The question has been rightly raised therefore whether applying continuous tariff is legal and proper in the present case.

19] Having said as above, when we deal with this particular case on facts further it can be seen that consumer does not put up a claim till 15/7/2014 that it should be governed by non continuous category for charging tariff. On 15/7/14 consumer asks for change of category for the first time i.e. in case No.1015/2014. Consumer there also only asks for change of category from continuous to non continuous but does not claim that it should have been charged under non continuous category right since beginning in 2011. Consumer does not ask for refund accordingly, though there was refund claimed on different grounds for three months in which according to consumer supply was interrupted. Consumer has not pressed the said prayer of refund therein and subsequently in the present case claimed for refund on different title.

The claim may not be negated under O-II Rule 2 of C.P.C. being based on a different title but then the question of limitation will arise.

20] In case No. 26/2016, Hon'ble Ombudsman Mumbai had occasion to deal with the point of limitation and relying on the Judgment of the Hon'ble Bom. High Court in the case of HPCL V/s. MSEDCL, reported in 2012 (3) ALL MR, 839 held that limitation starts running from the date when IGRC failed to redress the grievance.

21] We have gone through the judgment cited. It is to be noted however that 6.6 of MERC (CGRF and Electricity Ombudsman) Regulations 2006 makes a provision for limitation for taking cognizance of a grievance by the CGRF in which it is clearly mentioned that the Forum shall not take cognizance of any grievance beyond the period of two years from the date when the cause of action arises. The grievance is to be filed with the Forum within two years of the arising of cause of action.

22] Decision of IGRC cannot give rise to a cause of action. The said view finds support in the Judgment in the case of MSEDCL, and another v/s. Electricity Ombudsman and another (WP No.1650 of 2012) in which case His Lordships AV Nirmal J, inter alia reproduced the entire list of articles 72 to 91 of Indian Limitation Act 1963, to rule as to when the cause of action arises. His Lordships went on to hold that cause of action does not arise on the date of decision of IGRC.

23] Thus bar of limitation applies to the present case. As we have seen the claim for refund is made on 20/4/2015 for the first time. Consumer can claim for two years immediately preceding 20/4/2015. Consumer has already been granted the relief in that regard from 1st September 2014 onwards by order

passed in Grievance No.1015/2014 Thus the consumer is entitled for refund for two years immediately preceding 20/4/2015 barring the period from the change of category in case No.1015/2014 i.e. 01/09/2014 till 20/4/15.

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.

Hence the order.

ORDER

- 1] Grievance application of the consumer is partly allowed.
- 2] Licensee/MSEDCL is directed to charge the consumer for non continuous tariff for the period of two years immediately preceding 20/4/15 barring the period from the date of change of category in case No.1015/2014, i.e. 01/09/2014 to 20/4/2015.
- 3] Licensee is further directed to calculate the differential amount wrongly collected from consumer for the said period and pay the same or adjust the same in the future bill of the consumer.
- 4] In the special facts of this case and because of belated claim made no interest is allowed on the differential amount.
- 5] Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 15/02/2017.

(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.