



Consumer Grievance Redressal Forum, Kalyan Zone  
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**EE/CGRF/Kalyan/**

Date of registration: 27/03/2017

Date of order : 26/05/2017

Total days : 61

**IN THE MATTER OF GRIEVANCE NO. K/E/1175/1397 OF 2016-2017 OF M/S. SUYOG AGRO & POULTRY PRODUCTS P. LTD., VILLAGE MITHAGAR, AT MURUD, BHALGAON, ROHA ROAD, TAL. MURUD, DIST. RAIGAD-PIN – 402 401 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT BILLING DISPUTE.**

M/s. Suyog Agro & Poultry Products P. Ltd.,  
Village Mithagar, at Murud,  
Bhalgaon, Roha Road,  
Tal. Murud, Dist. Raigad,  
Pin Code 402 401

(Consumer No. 048223201850)

... (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution  
Company Limited  
Through it's Nodal Officer.  
Pen Circle,

... (Hereinafter referred as Licensee)

Appearance : For Consumer - Shri Santosh Powle - CR.

For Licensee - Shri R.B.Mane -Addl.EE and

[Coram- Shri A.M.Garde-Chairperson, 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] The case in brief is that, the consumer M/s. Suyog Agro & Poultry Products Pvt. Ltd. (Consumer No. 048223201850), is engaged in activity of aquaculture ,poultry , fish, breeding, prawan breeding etc. Consumer’s farm is situated at village Mithanagar, Off: Murud, Bhargaon/Roha road, Tal. Murud, Dist. Raigad.

3] The Distribution Licensee MSEDCL on the basis of a purported flying quad inspection held on 25/6/15 issued a letter dated 20/5/16 to the consumer raising a demand of Rs.6,61,120.44, claiming the same to be purported differential tariff over the period of 03 years from August 2012 to May,2015. No purported rate of interest is mentioned or differential mentioned, or how the amount is computed. On 2/6/16 MSEDCL issued e.bill for the month of June wherein MSEDCL shows Rs.6,61,120.44 as debit bill adjustment.

4] Further, the case is that retrospective levy of bills for the period of August 2012 to May 2015 is not tenable and is liable to be set aside. Indian Electricity Act does not permit a Distribution Licensee to unilaterally levy retrospective differential amounts claiming re-categorization of tariff for a period of 34 months. In the case of MIDC V/s. MSEDCL: (Case No.24/2001)the Hon’ble Commission issued following directions to the respondent MSEDCL.

“13. The commission pointed out that as per the MSEB’s Conditions of Supply, it cannot recover arrears with retrospective effect for more than six months in case of metering/billing dispute, as well as the built- in system for periodic check of the meter is lacking. The Commission further observed that of metering error and consequent billing dispute but of an administrative lapse on the part of the Board, who is expected to function in commercially oriented manner, to detect in time whether the rate applied is correct or not. Even after delayed detection by the audit team the respective department took four long years to take a corrective action that effects its revenue earning and consequent cash flow. Such matters cannot be so easily condoned simply on the basis of the MSEB admitting lapse on their part. It will be unfair and unjust to make the hapless consumer to face the inconveniences under duress of the MSEB.”

Further, the tariff categorization by Distribution Licensee has to be undertaken upon issuance of tariff order by MERC and not in a casual manner after passage of 2 years 10 months on the basis of flying squad visit thereby undermining sanctity of the authority of MERC.

5] Consumer relies on Judgments passed in MERC case No.24 of 2001. APTEL Judgment in case no.131/2013, the Hon’ble Ombudsman judgments in cases No.124,125,126 of 2014, Hon’ble MERC order in case No., 42/2015, Hon’ble Ombudsman order in case No.41/15 .

Consumer prays that the letter dated 20/5/16 raising the demand, be set aside and the bill for the month of June 2016 be quashed to the extent, it makes addition on the basis of the said letter.

6] Licensee MSEDCL filed reply on 3<sup>rd</sup> May 2017. There is almost no contest on facts. Dealing only with the Judgments cited, it is contended that case No. 24/2001, of Hon’ble MERC is not applicable to the present case because, herein there is no abrupt reclassification done by MSEDCL . Consumer has been categorized under order No. 19/2012 effective from August

2012. Further, that the said case No.24/2001 was prior to coming in to force of Indian Electricity Act, 2003. As per MERC supply Code Regulation,2013, MSEDCL is empowered to classify or reclassify the consumer in the various tariff categories approved by MERC. Therefore, in the present case MSEDCL has not created any new tariff category other than those approved by the Commission but only categorized the consumer in commercial category.

7] The Licensee, further relied on the Judgment of the Hon'ble Supreme Court in Special Leave Petition Civil Suit No.765/1997, relevant page No.1101, reported in AIR, 1997, Supreme Court . It is contended based thereon that even though a claim might have been barred by Law of Limitation for which the Board cannot initiate recovery proceedings, but can always disconnect the power supply in exercise of power under section 24 of the Electricity Act,1910. Supreme Court has also observed that issuing escaped supplementary bill cannot be carried out as deficiency in service.

8] So-far-as APTEL Judgment in case No.131/2013, is concerned , it is contended that issue of retrospective recovery of escaped billing is pending before the Hon'ble High Court in various writ petitions i.e. 6783/2009. 10764/2011, 498/2009, 6552/2015, 6553/2015 and 6545/2015. Therefore, when the issue is pending before Superior Court, the same may not be decided by the Lower Court until the Hon'ble High Court finally decides the same. So-far-as the Hon'ble Ombudsman orders in case No. 124,125 & 126/2014 are concerned the same have been challenged by the Licensee in Writ Petition No. 6545/2015.In MERC case No.42/2015, no new case Laws are quoted. The case referred have been dealt with by MSEDCL earlier in the reply.

9] So-far-as the Hon'ble Ombudsman's order No.41/16 is concerned, it is contended that as per MERC tariff order dated 16/8/12, in case No. 19/12, aquaculture, sericulture, fisheries, cattle breeding, farms are categorized as HT commercial which is decided by the MERC, hence recovery is in accordance

with the regulation. In case of retrospective recovery petition is filed by the MSEDCL in the Hon'ble High Court which is pending.

10] We have heard both sides. Now at the outset there was tariff order No.19/2012 effective from August 2012 by which aquaculture, sericulture, fisheries, cattle breeding etc. were categorized under commercial Tariff. Present consumer is engaged in activities of Aquaculture, poultry, fish breeding, Prawn breeding etc. In spite of this the consumer was billed under Industrial Tariff till May 2015. It appears that from June 2015 MERC categorized aquaculture and fish breeding activities as fisheries and brought at under Agricultural Tariff. Accordingly, the consumer is being charged under Agriculture Tariff from June 2015.

11] Licensee gave a letter to consumer in May 2016, stating that charging of the consumer under industrial category from August 2012 to May 2015 was incorrect. It should have been charged under commercial category as per the relevant MERC Tariff Order No. 19/2012. Licensee also raised differential bill accordingly in the sum of Rs.6,61,120/-. Letter is based on flying squad report purported to have been made on 25/6/15. The consumer vehemently denies of any such flying squad visit having taken place. Now, there is no sufficient evidence of any such flying squad visit. Some-one sided unilateral documents in that regard will not serve the purpose especially in the present state of things. The change of category from commercial to agriculture was effected by MERC from June 2015. The impugned letter is given in May 2016 it is as if some convenient date is chosen to show flying squad visit to cover the gap from May 2015 to May 2016 which is based on the purported inspection made on 25/6/15. There is no reason for delaying the letter by one year. There was change of tariff to Agriculture from June 2015. Nothing was done from June 2015 to June 2016 that the letter in question was sent, making a reference herein about a visit of 25/6/15. There was lapse on the part of the

Licensee's Officials till May 2015, in applying proper Tariff to the consumer and it becomes gross lapse when nothing was done for further one year therefrom. There is a serious doubt at the outset whether at all there was only flying squad visit in May 2015 as the consumer alleges.

12] Even otherwise, irrespective of when the flying squad visit was made, it is to be noted that the activities of the consumer are very well declared and well known to the Licensee. The Tariff Order No. 1/2012 was very clear for charging the consumer under commercial category, Flying Squad visit, therefore, it totally redundant.

13] Thus, on plain observation, it is a clear case where the Licensee has wrongly applied industrial tariff to the present consumer till May 2015. From June 2015, consumer was brought under agricultural tariff category. Licensee came to know about their mistake in May 2016 and now retrospective application of commercial tariff is sought to be made.

14] In case No.24/2001, relied on by the consumer, it has been held by Hon'ble MERC that no retrospective recovery of arrears 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 recovery, if any, would be prospective only, as the earlier classification was done with a distinct application of mind by 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 on MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the revenue collection etc. as projected in the tariff order. The same could be done either at the time of tariff revision or through a special petition by 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 of when the matter was raised either by the utility or the consumer and not retrospective.

15] We have carefully gone through the above MERC order. As pointed out it is an order, prior to the coming in to force of Indian Electricity Act, 2003, which is presently applicable. The principle laid down however, may be seen. Therein MIDC Murbad the consumer, being situated in Grampanchayat Limit was categorized considering its geographical location. MSEB as it then was realized the mistake that MIDC being a corporate body and considering its activities could not be categorized on geographical considerations. Hence they categorized it in “others” there being no specific categorization done for MIDC, which was apparently later on done since May 2000. MSEB’s Auditors pointed out the anomaly and thereon MSEB raised a revised bill from 1992. MERC held that no retrospective recovery of arrears can be allowed in such case on the basis of abrupt reclassifications of a consumer even though the same might have been pointed out by the Auditor. Mr. Mane appearing for MSEDCL distinguished the case from the present case. In the case cited there was no categorization made for MIDC by the Hon’ble MERC at all. It came to be made in May 2000. In the beginning MIDC being in Grampanchayat area categorization was made accordingly. In the present case, it is not so. There was clear categorization of the activities of the consumer in order No. 19/2012 itself by Hon’ble MERC. But only thing is that there was a mistake on the part of the MSEDCL to apply the charges.

16] There is however, one case of APTEL, Appeal No. 131/2013 cited. In that case consumer Vianney Enterprises was doing the activity of filling and packaging oil. It did not fall in the industrial category (LTIV) because there was no manufacturing activity. But right from inception in 2002 and increase of loads in 2003 and 2007 the consumer therein was being categorized as Industry. Then there was tariff revision on 1/12/2007/Even thereafter the consumer was charged as industrial. MSEDCL realized the mistake and **just** as the present case on the basis a flying squad report raised a bill for arrears right

from September 2002 when the supply was given. The Appellate Tribunal held that arrears claimed from the date of detection of error was correct.

This case of the Appellate Tribunal squarely applies to the facts of the present case. Then there are other similar orders of Hon'ble Ombudsman in case No.124 to 126/2014.

17] In conclusion, it is needless to say that MSEDCL cannot recover the arrears from August 2012 to May 2015. There is no dispute of categorization from June 2015 as the consumer has been categorized as agricultural from June 2015 and is being charged accordingly.

Consumer succeeds.

Hence the order.

### **ORDER**

- 1] Grievance application of consumer is hereby allowed.
- 2] The letter of demand dated 20/5/2016 issued by MSEDCL is hereby quashed and set aside.
- 3] MSEDCL is directed to withdraw the bill issued for the month of June 2016 to the extent of Rs.6,61,120.44 shown as debit bill adjustment and refund / adjust the amount with as per RBI Rate from the date of recovery till total refund / adjustment.
- 4] Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 26/5/2017.

(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.