



Consumer Grievance Redressal Forum, Kalyan Zone  
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No. **K/E/1145/1366 of 2016-17**

Date of Grievance : 21/03/2017

Date of order : 26/05/2017

Total days : 66

**IN THE MATTER OF GRIEVANCE NO. K/E/1145/1366 OF 2016-17 IN RESPECT OF KALASH AQUA LLP, NO.188,115 & 113, HISSA NO.2-52-5, BEHIND VILLAGE BHATTACHA MAL, TAL. SHRIVARDHAN, DIST. RAIGAD, PIN – 402 110 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING BILLING DISPUTE.**

Kalash Aqua LLP,  
Sev. No.188,115 & 113, Hissa No. 2-52-5,  
Behind village – Bhattacha Mal,  
Tal.–Shrivardhan,  
Dist- Raigad -Pin – 402 110

(Consumer No. HT-046459025710) ( Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution Company Limited  
through its MSEDCL,  
Supt. Engineer Pen Circle,  
Raigad ....

(Hereinafter referred as Licensee)

Appearance : For Consumer–Shri Harshad Sheth: C R .

For Licensee - Shri Mane- Nodal Officer /EE Pen Circle.

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] Case in brief is that, the consumer M/s Kalash Aqua LLP (Cons. No. 046459025710) was given power supply on 17<sup>th</sup> December 2013 for the purpose of Fishery. Consumer was categorized and charged under Industrial category. Then in January 2015, there was flying squad inspection and based on it’s report, consumer’s tariff was changed to commercial tariff from January 2015. MSEDCL then added an amount of Rs.30,87,931 in the bill dtd. 12<sup>th</sup> March 2015 of February 2015 as difference from December 2013 to December 2014, due to incorrect application of tariff. Consumer claimed refund of the retrospective recovery. So also the consumer challenges the prospective recovery from January 2015 to June 2015 under commercial tariff and claimed refund of Rs.21, 14,110/- by relying on the MERC order No.42/2015 in the case of Sea food Exporters Association.

3] As it appears that association of the Fisheries, consumers filed writ petition in the Hon’ble High Court against the action of change of tariff

category from Industrial to Commercial. Present consumer also filed grievance before this Forum ( bearing No. 1061 of 2015-16) in which installments were granted and the grievance was disposed of by this Forum.

4] The consumer again filed grievance No.1345 of 2016-17 contending that MSEDCL cannot make retrospective recovery of the charges of 13 months from December 2013 to December 2014. The matter was referred to IGRC to consider on merit and the grievance was disposed of. IGRC in turn however, rejected the claim of the consumer, whereupon this fresh grievance is filed by the consumer.

5] There is no reply filed by the Licensee in this grievance, but a detailed reply is filed in grievance No.1397 of 2017-18, which is an identical case and vehement arguments have been advanced by Mr. Mane, appearing on behalf of the MSEDCL. It is submitted that case No. 24/2001 is not applicable to the facts of this case because herein there is no abrupt classification done by MSEDCL. Consumer has been categorized under commercial tariff on the basis of MERC order No. 19/2012 effective from August 2012. Further, that the said case was prior to coming into force of Indian Electricity Act 2003. As per MERC Supply Code Regulation, **2013**, MSEDCL is empowered to classify or reclassify of the consumer in various tariff categories as approved by MERC. Therefore, in the present case MSEDCL has not created any new tariff category other than those approved by the Commission.

6] The Licensee, further relied on the Judgment of the Hon'ble Supreme Court in Special Leave Petition Civil 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.

7] 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 cases referred have been dealt with by MSEDCL.

8] 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.

9] 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.

10] 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.

11] 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.

12] Thus, so-far-as the retrospective recovery is concerned the said addition made in the bill for the period from December 2013 to December 2014 is liable to be quashed.

13] So-far-as the prospective recovery of Rs.21,14,110/- is concerned consumer had challenged the change of tariff in 1061/2015-16 but had withdrawn the same . Secondly, the consumer relied on the MERC order No. 42/2015 of Seafood Association case which we have gone through. The said order speaks about applicability of commercial tariff to activities of fisheries which does not extend to the further chain of processing into essentially different forms. The present consumer admittedly does not indulge in processing activities. There is no production of any kind. As such

the contention that it fell in industrial category is not acceptable. Hence, the prospective recovery from January 2015 to June 2015 amounting to Rs.21,14,110/- cannot be quashed.

Hence the order.

### ORDER

- 1] Grievance application of consumer is hereby partly allowed.
- 2] The addition of Rs.30,87,931/- made in the bill of February 2015 as difference due to wrong application of tariff for the period from December 2013 to December 2014 is hereby quashed and set aside.
- 3] The Licensee is directed to refunded above said amount to consumer along with interest at RBI rate from the date of recovery till refund / adjustment
- 4] The prospective recovery made under commercial tariff from January 2015 to June 2015 amount to Rs.21,14,110/- is upheld.
- 5] 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.