

**CONSUMER GRIEVANCE REDRESSAL FORUM  
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.  
KOLHAPUR ZONE, TARABAI PARK, KOLHAPUR**

Consumer Complaint No. 332 -2010/

Date :

**JUDGMENT**

1) M/s. Ghatge Patil Auto & Farm Mechanization,  
100 Ft. Ring Road, Sangli – 416 416.

Appellant

**V/s**

- 1) Executive Engineer, ( Office) & Nodal Officer,  
MSEDCL, Circle Office, Vishrambag, Sangli
- 2) Executive Engineer,  
MSEDCL, Urban Division, Sangli
- 3) Executive Engineer,  
MSEDCL, South (Urban) Sub Division, Sangli

Respondent

- Corum -**
- 1) Shri B.G. Pawar, Chairperson
  - 2) “ G. B. Pankar, Member Secretary
  - 3) “ G.C. Lele, Member

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
( Consumer Grievance Redressal Forum & Electrical obudsman)  
Regulation 8.2 of Regulation 2006**

Judgement by Shri B.G. Pawar, Chairperson of C.G.R.F. Kolhapur Date :

The grievance has been filed by General Manager of M/s. Ghatge Patil Auto & Farm Mechanization, Sangli, authorising Mr. L.M. Powar as its representative, before the Forum, on 9<sup>th</sup> December 2010 in Schedule A under Regulation 6.10 of Consumer Grievance Redressal Forum & Electrical obudsman Regulation 2006. Brief facts are as follows :

M/s. Ghatge Patil Auto & Farm Mechanization is the consumer of Distribution Licensee at Sangli bearing consumerNo. 279940488596 with industrial load 25 HP. It is engaged in sale, distribution, servicing and repairs of two wheelers of Hero Honda make and other mechanized vehicles.

The activities of the firm are undertaken in two independent premises which are distinct from each other, one of them is a work-shop with industrial equipment and machinery and the other is a showroom for commercial purposes. The consumer No. of showroom is 279940528750 ( commercial three phase with 8.90 KW authorised load ). The consumer has submitted necessary documents/ certificates to substantiate the use of work shop premises for industrial purpose. The connected load in the showroom consists of load such as fans, lighting and AC, and the work shop consists of hydraulic machinery, washing machine, air compressors and various types of repair equipment required for the work shop purposes etc. in addition to lighting and fans. Thus two different connections were released by M.S.E.D.C.L. under industrial and commercial category. The consumer has paid regularly all the bills from June, 2001 to July, 2010. It is contended that nature of activity in two premises has remained unchanged from June 2001 till this date. The machinery or equipment used in work shop are remained the same.

In the month of April 2010 to June 2010, the consumer has undertaken renovation of the showroom with due notice to the concerned officer of Distribution Licensee. On restoration of supply also, no objections or defects of any kind were pointed out by the Distribution Licensee. The quality of work was inspected and certified to be acceptable. But Dy.Executive Engineer, South Sub Zone, Sangli without any prior intimation or notice informed the consumer by letter No. 1765 dated 9<sup>th</sup> August 2010 the tariff for supply to consumer No. 279940488596 is being changed to commercial however the effective date has not been mentioned. Secondly, the electric meter No. MSD05389 is 19.25% slow in operation, connection to consumer No. 279940528750 is required to be disconnected.

Revised bill of Rs. 88,480/- has been forwarded, which has been received by the consumer on 16.8.2010. The revised bill relates to the period August 2009 to June, 2010. Billing is retrospective for consumption of electricity. Accordingly the charges for supply of electricity for the previous year have already been paid by the consumer. Thus the bill of Rs. 88,480/- amounts to double billing for a past period. The letter dated 9.8.2010 refers to the Commercial circular No. 102 dated 3.11.2009 and the reports of Dy.Executive Engineer, Mobile Squad No. 8522 and 8533 dated 16.7.2010. The grievance is made despite request to supply by the consumer on 6.9.2010, copies of the said circular or reports have not been provided to the consumer. The consumer approached office of the Distribution Licensee i.e. Dy. Ex. Engineer, South Sub Zone, Sangli and the Dy.Ex.Engineer, Mobile Squad, but no explanation was given for unilateral decisions taken by the Company. Hence the complaint to the Forum. The functioning of the meters was also checked and certified to be acceptable in July 2010, that the consumer has renovated in April 2010 the electrical supply system through an authorised contractor. However, nature of activities performed, the machinery employed and the electricity consumption pattern has remained unchanged, the tariff at commercial rates in place of industrial rates for supply through consumer No. 279940488596. A grievance is made that Company failed to give any notice before reclassifying this consumer under commercial tariff and not given any opportunity to represent his case or of being heard. The letter did not mention any effective date that the Company applied the commercial tariff. The decision of the Company is without any legal basis, is unjust and is based on irrelevant considerations. The reports of the mobile squad appears to be driven by strong personal bias and is misconceived.

The change in tariff is improper and incorrect. Action of the Company arbitrary and one-sided which result in grave loss and inconvenience to this consumer. Hence prayed to revoke decision taken by MSEDCL South Zone, Sangli to charge the tariff at commercial rate for supply to consumer No. 279940488596 and cancel the bill dated 5.8.2010 for Rs. 88,480/- charging at commercial rate and issue necessary direction to continue electricity supply as hitherto for consumer with commercial connection – 8.90 KW and Industrial load – 25 HP consumer No. 279940528750 and 279940488596 respectively. The consumer has attached documents as per list in para 8 of the complaint.

Before approaching this Forum, consumer approached I.G.R.Cell, Sangli who has failed to take into account the various grounds and reasons submitted by the consumer in the grievance redressal application and has given its decision without following the principles of natural justice and equity. No hearing was given to consumer. The I.G.R.Cell, Sangli erred holding that the activity of the consumer is not an “ industry “. Reliance is placed on Section 2(j) of the Industrial Disputes Act and the Supreme Court have laid down a triple test to determine whether an activity is industrial or not. (i) there should be a systematic activity (ii) there should exist employer and employee relationship and (iii) the activities should render services to the society at large. The activities of the consumer are clearly covered by the above test and therefore justified as “ Industrial “ activity.

The Distribution Licensee on notice filed parawise reply on 3.1.2011 which has been received in the Forum Office on 11.1.2011. The Dy. Ex. Engineer, South Zone, Sangli by his letter or reply addressed to Secretary of the Forum bearing No. 18. It is contended electricity supply was given to the consumer for industrial purpose through connection No. 279940488596.

Dy. Ex. Engineer, Flying Squad, Sangli inspected the premises of consumer on 16.7.2010 and as per inspection report DVS No. 8522 found that the supply to consumer No. 279940488596 is for sale and service after sale ( washing / servicing of vehicle), sale of spare parts of vehicles which is as per Commercial Circular of H.O. dated 3.11.2009. Therefore, Classification has been changed from industrial to commercial and accordingly instructions have been given to issue the bills. Thus revised bill as per commercial rate to the tune of Rs. 1,55,078/- and amount already paid as industrial Rs. 86,075/- deducted from it and a claim of Rs. 69,003.43 along with Rs. 19,479.24 for 19.25% slow speed of another meter No. 00005389. The revised bill of Rs. 88,480/- of total amount has been issued on 9.8.2010. It is contended that as per Flying Squad inspection report DVS No. 8523 dated 16.7.2010, along with industrial supply there is one more connection classified as commercial consumer No. 279940528750/4 and it is recommended to merge both connections. The consumer has been served with DVS No. 8522 and 8523, one Mr. V.A. Desai has passed the receipt. As per application of consumer dated 6.9.2010, copy of Commercial Circular has been given to him. It is contended that there was no need to test or inspect the meter, which has been inspected by Flying Squad on 16.7.2010, after installation of connection when renovation work was completed. It is contended that Dy.Ex.Engineer, Urban Dn. Sangli by its meter inspection report No. 4117 dated 29.7.2010 informed the consumer about his slow meter, in support, zerox copy of the correspondence has been produced.

Hearing of this grievance was fixed on 12.1.2011 which was postponed on the request of the consumer, since its representative was not available.

The Nodal Officer, Sangli by his letter No. 341 dated 11.1.2011 contended that Dy.Ex. Engineer, Flying Squad, Sangli inspected the connection of consumer No. 279940488596 wherein it is found the meter is checked by acquecheck. It is found it is running slowly by 19.25%. There was scrach to R phase C.T. The energy is consumed for commercial purpose instead of industrial purpose. The consumer was informed that energy consumed through this connection was not for industrial or manufacturing purpose, but sale of vehicle and service after sale, sale of spare-parts. It is contended that no manufacturing process is done at the consumer's premises, so it can not be termed as industrial connection. So according to Commercial Circular No. 102 dated 3.11.2009, old industrial category has been changed to commercial from 1.8.2009 , bill as per new rate has been issued. The difference due to change of category Rs. 69,003/- has been claimed through bill. In respect of slow running of meter, for that purpose, bill of Rs. 19,479/- is issued to the consumer. Report bearing No. 4117 dated 29.7.2010 of Dy.Ex.Engineer, Urban Dn. Sangli produced along with report of Flying Squad and billing working sheet.

The grievance was fixed for hearing at Sangli Camp of Forum on 28.1.2011 which was preponed on 27.1.2011. No present on behalf of the Company. The consumer official and representative Mr. L.M. Powar present. Representative heard at Sangli at 3.00 P.M. on 27.1.2011. Shri L.M.Powar, representative of consumer made a grievance that Commercial Circular No. 102 dated 3.11.2009 has not been provided despite demand. It is submitted the consumer through connection No. 279940488596 consumes energy for industrial purpose. He referred and relied upon various certificates and documents as per Factory Act and definition of industry, the connecton was sanctioned as industrial, since long and bills have been paid accordingly.

No notice has been issued for change in billing classification nor any explanation was given, despite letter and personal visit. So application of commercial tariff is wrong and prayed to revoke the same. In respect of slow speed of the meter, it is contended while shifting of the connection for renovation, officer of the Distribution Licensee inspected the meter and no defect was found. The assessment of slow meter by Flying Squad is incorrect and Flying Squad has checked this meter after three months after installation. A statement was made before the Forum, the meter runs slowly but no defect in its functioning. (C.T. functioning)

On next day i.e. on 28.1.2011, officer of the Forum received a letter, addressed to Ex.Engineer, Urban Dn. Sangli by General Manager of consumer in respect of consumer No. 279940488596. Therein it is stated we are paying bills regularly as per your revised industrial tariff to commercial under protection more over the amount of Rs. 88,000/- is also under dispute, which may not be informed in the energy bill as errors and hence connection should not be disconnected due to the same errors.

The grievance was kept for hearing on 4.3.2011. The consumer representative sought adjournment that has been rejected. Shri Manoj Patil and Shri R.M. Pandhare on behalf of consumer, Jr. Engineer Shri Manadapure, Shri A.A. Mankar they supported the action of Company. The officer of the consumer were asked to keep their representative present. On 7.3.2011 in presence of Shri L.M. Powar and Nodal Officer Shri Kshirsagar the matter was further heard. Mr. L.M. Powar reiterated his statement made before the Forum on 27.1.2011 and grounds raised in the grievance. Referred to definition of "Industry" given in Section 2(j) of Industrial Disputes Act and relied upon Supreme Court case law. It was submitted at the time of hearing that after renovation on 27.4.2010 its report was given and after checking by Distribution Licensee, the supply was released.

ATCT was checked. Distribution Licensee is now bound to explain within 3 months reading of the meter , how it has been recorded as slow as such. Hence prayed to allow the grievance and give the order. As against, Nodal Officer Shri Kshirsagar submitted that originally the connection was given for industrial purpose, where the work shop and servicing centre was run. Category of work shop is changed from industrial to commercial as per report of Flying Squad. The bills as per the commercial tariff has been issued. Show room is not different than work shop. Mr. Kshirsagar further submitted nothing is manufactured at the premises so as to term it industry. As per Circular of H.O., category has been changed from industry to commercial and bills have been issued accordingly and prayed to reject the grievance.

The representative of consumer produced copy of Supreme Court case (2005) 5 SCC to strengthen its arguments in respect of definition of industry under Industrial Disputes Act. Another case law in case Secretary, Madras Gymkhana Club Employees Union Vs. Management of the Gymkhana Club – date of judgement 3.10.1967 and one more case Ahmedabad Textiles Industry's Research Association Vs. State of Bombay - date of judgement 17.11.1960 along with Registration under Small Scale Industry dated 30.7.1997 with zerox copy of application. Following points arise for determination of the Forum.

- 1) Is the applicant consumer entitled to revoke decision of MSEDCL to charge tariff at commercial tariff for supply to consumer's connection No. 279940488596 and cancel the bill as prayed in para 7 of the complaint ?

Answer : No

What Order ?

As follows :



Reasons

The few admitted facts stated as follows :

It is not disputed the present consumer was given supply through two different connections. consumer No. 279940528750 commercial three phase connection – 8.90 KW load and consumer No. 279940488596 industrial load of 25 HP. The energy was supplied for use of work shop for industrial purpose. Admittedly, there is a separate connection for Show room which has been classified and charged at commercial rate. The consumer is not in arrears and regular in payment of bills, since June, 2001 to July, 2010. Dy.Ex.Engineer, South Sub Division, Sangli by a letter No. 1765 dated 9.8.2010 informed the tariff for supply to consumer No. 279940488596 is being changed to commercial and meter No. 00005389 is 19.25% slow in operation and revised bill of Rs. 88,480/- including difference of bill after reclassification from industrial to commercial Rs. 69,000/- has been issued. It is not disputed that the consumer is paying the bills as per commercial category i.e. revised industrial tariff to commercial. This action of Distribution Licensee to charge commercial tariff from June, 2010 onwards is not challenging in this grievance. What is challenged is revised bill from 2.8.2009 to June, 2010. Admittedly, the letter dated 9.8.2010 issued by Dy.Ex.Engineer, South Sub Divn. Sangli mentioned report of Dy.Ex.Engineer, Flying Squad No. 8522 and 8533 dated 16.7.2010.

Now before adverting to the classification of industrial category to commercial, let us examine second para of the grievance i.e. checking of meter by accucheck system and the meter runs slowly by 19.25%. For that purpose, the Distribution Licensee raised bill of 6 months Rs. 19,479/-. It is based upon report of Dy.Ex.Engineer, Urban Dn. Sangli dated 29.7.2010 bearing No. 4117.

As mentioned above, representative of consumer Shri L.M. Powar before the Forum at Sangli on 27.1.2011 did not dispute of slow running of the meter . May it be so, but ground is raised in te grievance in para E, after completion of renovation work, premises of work shop was inspected and certified to be accepted on 27.4.2010 in respect of both consumer numbers. No objection or defects were pointed out by the Company. But no any documents brought on record to substantiate this contention, whereas in the Say filed by Dy.Ex.Engineer, South Sub Dn. Sangli before the Forum on 3.1.2011 received on 11.1.2011, it is contended at the request of consumer on 30.4.2010, the connection was installed for which test report was obtained from the consumer. But old meter was fixed at the new place with box, so there was no necessity to check the meter and meter was not tested or checked. It has been checked by Flying Squad on 16.7.2010. The report of Dy.Ex.Engineer, Urban Sub Dn. Sangli in respect of meter testing bearing No. 4117 dated 29.7.2010, also states that electric meter is running slowly. Thus there are two distinguish reports, one by Flying Squad and one by Dy.Ex. Engineer, Urban Dn. Sangli to justify functioning of the meter slow for which claim of Rs. 19479/- was extended and included in the revised bill. The representative of consmer Shri Powar advanced before the Forum and raised in the grievance that at the time of installation, inspection was done and certificate was given and accepted in respect of both the consumer numbers and no objection was made nor defects were pointed out, is not substantiated by any documents. Therefore, the Forum is of the opinion that there is no merit in the consumer's contention, in respect of slow functioning of the meter and claim of Rs.19479/- .

In respect of claim of arrears Rs. 69,000/- towards difference of energy charges by changing category from industrial to commercial, the consumer is seriously disputing this classification and contended that industrial activity being performed and use of electricity pattern has remained unchanged. Admittedly, initially connection No. 279940488596 was classified as industrial, is not disputed. As per Tariff Order of Hon'ble MERC and decision of Hon'ble MERC in case No. 116/2008, ARR for financial year 2008-09 and tariff determination for year 2009-10 with effect from 1.8.2009 Annexure II approved tariff schedule at Sr.No. 1 under the heading "General". These tariffs supercede all tariffs so far in force including in the case where any agreement provides specifically for continuance of old agreement tariff, or any modifications thereof as may have been already agreed upon. So the Say of Mr.Powar the connection was industrial from inception is of little help.

The Hon'ble Commission in its Order at page 201 observed " Broadly, the categorisation of " Industry " is applicable to such activities, which entail manufacture".

" The Commission has created new category, viz. HT-II Commercial, to cater to all Commercial Category consumers availing supply at HT voltages, and currently classified under existing HT-I Industrial or LT-IV ( Multiplexes and Shopping Malls). This category will include Hospitals getting supply at HT voltages irrespective of whether they are Charitable trust, Government owned and operated etc.

The Distribution Licensee came with a case the change of schedule is based on commercial Circular of H.O. bearing No. 102 dated 3.11.2009 giving effect from 1<sup>st</sup> August, 2009. The copy of Circular has not been produced by Distribution Licensee.

The Respondent Company has not brought on record Circular No. 102 dated 3.11.2009, it has been collected from GAD of Zone Office, Kolhapur. At Sr. No. 6 under the head L.T.II No- domestic-

LT-II non-domestic has been renamed as “ LT II : Non-residential or Commercial”. On the basis of decision of Hon'ble MERC in the case No. 116/2008 approved the detailed tariff order dated 1<sup>st</sup> August, 2009 and at page 226 of 249 in the case No. 116/2008 delivered by Hon'ble Commission under the head Annexure-II – Approved Tariff Schedule effective from 1.8.2009 Order dated 17.8.2009.

Therefore, the submission of Mr. L.M. Powar, representative of consumer, that change of tariff is illegal or without any basis, can not be accepted. The Distribution Licensee is justified in changing the classification of consumer from industrial to commercial in view of decision of Hon'ble MERC.

Shri L.M. Powar, representative submitted the consumer fulfills criteria of Industry definition given in Section 2 ( j ) of Industrial Disputes Act and it is laid down by Hon'ble Supreme court in the case No. State of U.P. V/s Jay Bir Sing reported in (2005) 5 SCC page 1. Undoubtly, it is true the Hon'ble Supreme Court has laid down triple test to determine whether an activity is industrial or not. (i) there should be a systematic activity (ii) there should exist employer and employee relationship and (iii) the activities should render services to the society at large. However, the definition of industry under Industrial Disputes Act can not be brought into service while deciding tariff under Electricity Act 2003, as the tariff order sanctioned and approved by Hon'ble MERC, Statutory Body established under the Act. Hon'ble Commission observed in the Order in case No. 116/2008

“ thus it will be seen as to how different criteria have been used to categorise different types of consumer.” Relevant for our purpose, the criteria of ‘ purpose ‘ of supply has been used extensively to differentiate between consumer categories, with categories such as residential, non-residential / commercial purposes, industrial purpose, agricultural purpose, street lighting purpose, etc. It is further observed, In this context, quite a few consumers have been representing before the Commission during and after the Public Hearings, stating that they are not undertaking any Commercial activity or activities for making profit within their premises, and hence, they should not be classified under the Commercial category. It is clarified that the commercial category actually refers to all non-residential, non-industrial purpose or which has not been classified under any other specific category.

In the said Order at page 201 Hon'ble Commission further observed “it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003 and the import of the categorization under industry under other specific laws can not be applied to seek relief under other statutes. Broadly, the categorisation of “Industry “ is applicable to such activities, which entail ‘ manufacture “.

In view of the observation, Mr. Kshirsagar, Nodal Officer that Distribution Company is perfectly right in submitting before the Forum connection of the consumer in question is rightly classified as commercial since no industrial activity no work of manufacture is carried out or done. Therefore, the submission of Mr. L.M.Powar consumer's connection should be classified as industry instead of commercial as done by Distribution Licensee, can not be accepted.

Needless to refer other case law referred by consumer in case Secretary, Madras Gymkhana Club Employees Union Vs. Management of the Gymkhana Club – date of judgement 3.10.1967 and one more case Ahmedabad Textiles Industry's Research Association Vs. State of Bombay - date of judgement 17.11.1960 wherein definition of industry under Section 2( j ) of Industrial Disputes Act has been laid down with observation what is the determinative test to that effect.

Therefore, the prayer of the consumer to revoke the classification of consumer No. 279940488596 changed from industry to commercial, can not be accepted. Further, prayed to revoke or cancel the bill demanding payment of difference of energy consumption charges after changing classification w.e.f. 1.8.2009 is liable to be rejected. Point is answered in the negative.

In view of finding of point No. 1 in the negative, for the reasons recorded, the grievance of the consumer is liable to be rejected.

Grievance has been received in the Office of the Forum on 13.12.2010, registered on 16.12.2010. Fixed for hearing on 12.1.2011, which has been thrice adjourned on request of consumer, since its representative was not available on these dates i.e. 12.1.2011 and 4.3.2011. On account of huge pendency of challan cases of Kavathe Mahankal Division and DDF cases decided by this Forum during the period, this grievance could not be disposed of within two months.

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**ORDER**

- 1) The Grievance of the consumer M/s. Ghatge Patil Auto & Farm Mechanization, 100 Ft. Ring Road, Sangli is hereby rejected.
- 2) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai.

Date : 29.03.2011

( B. G. Pawar )  
Chairperson

1) Shri G. B. Pankar, Member Secretary :

2) Shri G.C. Lele, Member :