

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redresses Forum
Nagpur Zone, Nagpur**

Case No. CGRF (NZ)/94 /2017

Applicant : M/s Suryaamba Spinning Mills Ltd,
Survey No. 300, Nayakund,
Parseoni Road, Nagpur.
Non-applicant : Nodal Officer,
Superintending Engineer,
NRC, MSEDCL, Nagpur.

Applicant: - Shri. Javid Babalal Momin applicant's Representative,
Non- applicant: - 1) Shri Ravindra J. Hadke Dy. EE (HT), (NRC)

Quorum Present: - 1) Mrs. V.N.Parihar,
Member, Secretary & I/C.Chairman.
2) Shri N.V.Bansod,
Member

ORDER PASSED ON 19.12.2017.

1. The applicant filed present grievance application before this Forum on 17.10.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressed Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).
2. Non applicant, denied applicant's case by filing reply dated 23.11.2017
3. Forum heard arguments of both the sides and perused record
4. The applicant in this case is. M/s Suryamba Spinning Mills Ltd, At S.No. 300

Nayakund, Parseoni Road Tal Parseoni Dist Nagpur. They have been HT industrial consumer connected on 29.07.1993 at 33KV express feeder. The consumer was availing continuous power supply. They had been paying as per HT-1C industrial tariff since then. As per the Hon MERC tariff order dated 16.08.2012, on dt. 04.02.2013, M/s Suryamba Spinning Mills Ltd, made an application to the MSEDCL asking for a change of category from industrial (continuous) to industrial (Non-continuous) tariff. No action was taken by the MSEDCL on this. They sent a reminder to the MSEDCL on 24.04.2013. 23.09.2013, 06.03.2014. The same application was forwarded to MSEDCL corporate office for necessary approval. But the Non-applicant did not change the same from billing cycle dt.28.02.2013. As per the Hon MERC tariff order dated 26.06.2015, On dt.03.07.2015, applicant made an application to the MSEDCL asking for a change of category from industrial (continuous) to industrial (Non-continuous) tariff. Their category from continuous to Non Continuous was changed from 01.09.2015.

5. Not satisfied with this decision, they approached the IGRC, Nagpur Rural Circle on 02.06.2017 vide case no. 42/2017, asking that (i) their category to Non-continuous to be changed w.e.f. 28.02.2013. and that they should be refunded difference in the amount paid by them from w.e.f.28.02.2013 to 01.09.2015 due to wrong tariff categorization at the non continuous rate instead of the continuous rate, and interest on the amount difference payable to them as per Regulation 60(6) to be adjusted in the energy bill.(ii) Asking for compensation of Rs.100/-as per SOP clause no.9.2 under Standard of performance Regulations.

6. The IGRC by its order dated 24.08.2017 dismissed the compensation application

of M/s. Suryamba Spinning Mills as barred by limitation and directed the Non-applicant to inform the applicant about the status of his application dt.04.02.2013 for change of Tariff category from HT-1C to HT-1N. Aggrieved by this order, the applicant approached this Forum on 17.10.2017 with the following requests:

- a) As per the Hon MERC tariff order date 03.03.2014 & MSEDCL circular & as per SOP norms (sr. No. 9.2), the Applicant should be categorized as Ht-IN from 28.02.2013.
- b) The Difference in the amount from 28.03.2013 to 01.09.2015 due to wrong categorization should be refunded along with interest as per Regulation 60(6) or should be adjusted in the energy bill.
- c) As per the SOP clause No. 9.2 the compensation of Rs. 100/- per week to be given to them.

7. During hearing on 10.11.2017, Non-applicant requested for adjournment till 24.11.2017. On 24.11.2017 Shri. J.B. Momin, Consumer's Representative and Shri. Ravindra G.Hadke , Deputy Executive Engineer for the MSEDCL was present

8. On the basis of applicant's grievance, the Non applicant filed a reply wherein they have stated that the proposal of applicant for giving retrospective effect to the tariff change from HT-1C to HT-1NC from March 2013 has been approved by MSEDCL corporate office. The effect of change of category form Ht-IC to HT-INC was passed from the m/o Sep-15. Regarding tariff difference from the Mar-13 to Aug-15, Non applicant has already passed the credit of differential amount from Continuous to non continuous tariff in the Applicant's energy bill for the m/o Oct-17.

9. As regards to payment of Interest, Non applicant prefer to remain silent in their written reply.

10. As regards to Demand of SOP compensation, Non-applicant stated in their written reply that as far as applicability of compensation as per SOP Regulation is concern, regulation No. 12.of SOP regulation 2014, for determination of compensation clearly states that "Provided also that no claim of compensation shall be entertained if the same is filed later than a period of sixty days from the date of rectification of the deficiency in performance standard". In this matter the deficiency has been rectified in Sep 2015, however the application regarding compensation is filed in IGRC on 02.06.2017. Therefore He requested to Forum, considering the above mentioned points, the application of the consumer may please be rejected, in the interest of justice.

11. Due to the expiry of term of Chairperson of the Forum on dt 30.06.2017, consequent to which the matter was heard by the two remaining Members. At the time of hearing Quorum present was 1) Member Secretary & I/C. Chairman.2) Member (CPO). As per in clause 4.1(c) of MERC (CGRF & EO) R.2006 which reads as, "*Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting.* Needless to say that, in absence of Hon'ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge Chairman has one additional casting vote, therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation2006 which reads as under, "*Provided that where the members differ on any point or points the opinion of the*

majority shall be the order of the Forum. The opinion of the minority shall however be recorded and shall form part of the order”.

Hence, the Judgment is based on majority view of I/C chairman and Member Secretary. However the separate dissenting note of Hon'ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

12. We have perused the record. We have heard the arguments of both the parties.

13. Since the Non-applicant has accepted the fact that, the non continuous tariff has been made applicable from 28.02.2013 since sept-15 itself, and refund of the difference amount due to reassessment at Continuous tariff instead of non continuous during the period to 28.02.2013 to 01.09.2015 is credited in the applicant's Energy bill of m/o Oct-17. The applicant accepted the said contention during hearing. Hence, there is no dispute left on the question of the change of tariff from HT!C to HT-1N since 28.02.2013 and refund of the excessive amount collected by Non-applicant towards wrong tariff categorization during the period 28.02.2013 to 01.09.2015.

14. As regards to payment of interest, the Section 62(6) of the Electricity Act. 2003 is *“If any licensee or a generating company recovers a price or charge exceeding tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.* In Rep. No. 38/2017 between M/s.GTN Industries Ltd. V/S S.E., MSEDCL Hon'ble Electricity Ombudsman,

Nagpur, on. dt 26-9-2017 ordered that *“The interest on the amount collected, may be paid to M/s. GTN Industries at the prevailing bank rate by cheque”*. We rely on the above Judgment and hence Non Applicant is liable to pay interest prevailing bank rate from date of respective payments during period March 2013 to August 2015 by way of adjusting in the energy bill.

15. The forum refers Regulation 12 of the 2014 Regulation which discuss about, the determination of compensation. Proviso to Regulation 12 reads as follows:-

*“Provided that any person who is affected by the failure of the Distribution Licensee to meet the standards of performance specified under these Regulation and who seeks to claim compensation shall file his claim with such a Distribution Licensee within a maximum period of sixty (60) days **from the time such a person is affected by such failure** of the Distribution Licensee to meet the standards of performance.*

Therefore as per the provisions contained in proviso of Regulation 12.2, applicant should have claimed Compensation within a period of 60 days. In this matter the deficiency has been rectified in Sep 2015 however the application regarding

compensation is filed in IGRC on 02.06.2017. In other words he should have claimed compensation on or before 30-11-2016. But for this he directly approached the IGRC on 02-06-2017 for claim of the said compensation. He has not complied with the provisions of proviso to Regulation 12.2 Hon'ble Electricity Ombudsman has clearly stated in representation no.34/2016 at Para 7 as follows:*“It may be noted that Clause 12.2 of SOP Regulations is applicable only when the consumer files his claim with the Distribution Licensee.* We refer this judgment and hold that as the grievance is not filed

within 60 days from the cause of action i.e. on or before 30-11-2016, Hence applicant's claim is time barred as per Clause 12.2 of SOP Regulations, 2014 of MERC.

Separate Note in Case No. 94/2017 by Member (CPO) Mr. Naresh Bansod on 18/10/2017.

(1) The date of filing of the complaint is 17-10-2017. Arguments heard on 10-11-2017. The case file is sent to me for writing separate note on 16-12-2017 at 2.30 P.M. without concurrence of Reg. 8.4 proviso of MERC (CGRF & EO) Regulation 2006 i.e. discussing the point or points of difference amongst member on dias.

(2) Applicant prayed as under.

(A) As per orders of MERC & SOP Regulations, declare the applicant is consumer entitle to qualify his application for Non continuous Tariff from Next Billing Cycle as per Regulation 9.2.

(B) Refund of difference in bill i.e. continous and non continuous as per SOP from date i.e. next billing cycle from of applicant i.e. 28-2-2013 to 1-9-2015 with interest as per 62 (6) of the Electricity Act. 2003 and should be adjusted in the energy bill.

(C) To pay compensation as per SOP Regulations 2005 for delay @ Rs.100/- per week or part their of and any other order deem fit to the forum.

(3) Non Applicant in their reply dated 23-11-2017 stated as under.

(A) M/s. Suryaamba Spinning Mills Ltd. At Nayakunda is a H.T. Industrial consumer connected on 29-7-2013 at 33 KV. Express feeder. The consumer was availing continuous power supply.

- (B) As per the Hon. MERC tariff order dated 16-8-2012, consumer has applied for change of category from HTIC to H.T. NC on 4.2.2013 and same was forwarded to MSEDCL corporate office vide letter dated 3-7-2013 from necessary approval and after getting approval effect of change of category from HT-IC and HT. IN was passed from the month of September 2015.
- (C) Regarding tariff difference from March 2013 to August 2015. MSEDCL has already passed the credit of difference from continuous to Non continuous to the consumer in the bill for the month October 2017.
- (D) As far as applicability of compensation as per SOP Reg.62(6), it is stated that SOP Regulation 2005 regulation No. 12.2. Determination of compensation clearly states that “provided also that no claim of compensation shall be entertained if the same is filed later than a period of 60 days from the date of rectification of the deficiency in performance standard.

In this matter, the deficiency has been rectified in September 20 however the application regarding compensation is filed in IGRC on 2-6-2017 and prayed for rejection of application.

Applicant filed various orders, Judgements of Electricity Appellate Tribunal, MERC, Electricity Ombudsmen, CGRF etc. to throw light on various legal aspects of SOP Regulations 2005 i.e. 9.2 and circulars of MSEDCL on the point of change of Tariff from Industrial continuous to non continuous. Ultimately after clarifications by MERC, on

review petition in MERC (Case 94/2015) against the tariff order dated 26-6-2015. MSEDCL gave the following directions vide Cir. Dated 5-7-2017 & 10-7-2017.

“MERC vide its order under ref. No. ruled that the restriction stipulated by it for tariff change application to be submitted within one month of tariff order is inconsistent with the MERC SOP Regulations 2005. It is settled law that regulations prevails over Tariff order”.

In view of above, you are hereby directed to inform various courts/forums that MSEDCL is bound by mandate of Regulations 9.2 of SOP Regulation 2005 i.e. change of tariff category shall be effected before expiry of the 2nd billing cycle. After the date of receipt of application in all cases including change from continuous to non continuous. The proceedings which are decided by courts/forums based on Regulations 9.2 of MERC but challenged by MSEDCL shall be withdrawn.

All the Judgements/orders and head office circular dated 5-7-2017 & 10-7-2017 are self explanatory and are favouring consumers, clarifying the anomaly/ambiguity regarding interpretation by MSEDCL/Non Applicant.

The disputed points for my consideration are.

(A) Whether applicant is entitled for interest on difference of tariff from continuous to Non continuous from March 2013 to August 2015? Yes.

(B) Whether applicant is entitled for SOP compensation from next billing? Yes.

Ans.(a) : I feel it necessary to mention that in every tariff i.e. Rate of interest on arrears.

The rate of interest changeable on the arrears of payment of billed dues shall be given below.

Sr. No.	Delay in payment month	Interest Rate Per annum (%)
1	Payment made after 60 days and before 90 days from the date of billing.	12 %
2	Payment made after 90 days and upto 180 days from the date.	15 %
3	Payment made after 180 days from the date of billing.	18 %

From the above chart, it is clear that MSEDCL charges interest arrears from 12% to 18%.

In this case MSEDCL recovered the excess amount of difference from continuous to Non continuous due to ambiguity in order in implementation for change by ignoring the mandate of Reg. 9.2 of SOP Regulations 2005, Which is deliberate attempt of MSEDCL. It is very surprising that how the legal department & battery of legal personal of MSEDCL ignored mandate of law. I am of the firm opinion that MSEDCL used the public money for their commercial use for a long period i.e. from 4-2-2013 till Oct.2017.

The Section 62(6) of the Electricity Act. 2003 is as under.

“If any licensee or a generating company recovers a price or charge exceeding tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

It is further surprising that even after the clear circular of MSEDCL dt 5-7-2015,

Non Applicant authorities have taken 4 months time to implement the guidelines & refund the amount for period March 2013 to August 2015 in October 2017 and Judgement of the electricity Ombudsman & Forums, which proves administrative apathy on lethargy and it is unique case of deficiency in service on part of MSEDCL.In recent Judgement of the Electricity Ombudsman, Nagpur dated 26-9-2017 in Rep. No. 38/2017 between M/s.GTN Industries Ltd. V/S S.E., MSEDCL, it is ordered as under.

“The interest on the amount collected, may be paid to M/s. GTN Industries at the prevailing bank rate by cheque”.

During arguments Applicant agreed to receive the interest @ 8% P.A. than specifically the bank rate as per statute of 2003 (EA 2003) which may be more than 8%.

Hence in view of the above observations, Non Applicant is liable to pay interest @ 8% P.A. from date of respective payments during period March 2013 to August 2015 till October 2017.

Ans (b) : It is evident from record that applicant has applied for change of Tariff on 4.2.2013 & other letter dated 24-4-2013 but letter of Non Applicant dated 3-7-2017 to Head Office (Annexure 3) proves that there is no prompt action from Non Applicant and no further pursuasion to resolve the grivence of Applicant. It is also evident that there is total ignorance of various Judgements of Electricity Ombudsman. Appellate Electricity Tribunal as well as forum and observations of Bombay High Court about the monopolistic approach of MSEDCL.In para (d) of the reply. Non Applicant stated the SOP Regulation 2005 Regulation 12.

Determination of compensation clearly states that “provided also that no claim of compensation shall be entertained if the same is filed, later than a period of 60 days from the date of rectification of the deficiency in performance standard”.

Actual provisio of Reg. 12.2 is → Provided that any person who is affected by the failure of the Distribution Licensee to mee the standards of performance specified under these regulations and who seeks to claim compensation shall file this claim with distribution licensee within a period of sixty (60) days from the time such a person is affected by such failure of the distribution to meet the standard of performance.

Hon. Electricity Ombudsman in order dated 19-8-2016 Rep. No.34/2016 Mr. Sunil Chambhare v/s The Executive Engineer Hinganghat in para 7 held as under.

“It may be noted that clause 12.2 of SOP Regulations is applicable only when the consumer files his claim with the Distribution Licensee. The said limitation of 60 days does not apply when the consumer files his claim for compensation with the forum” The grivence of Applicant for period March 2013 to August 2015 is resolved in October 2017. Non Applicant firstly wrongly interpreted the provision of Reg. 12.2 and kept blind eye on above order of Electricity Ombudsman. Hence contention deserves to be dismissed and non applicant is liable to pay compensation as per 8 (ii) change of Tariff of SOP @ Rs.100/- per week or part thereof, from March 2013 till October 2017. The order of IGRC dated 24-8-2017 deserves to be quash & set aside as they faild to implement the order of Head Office dated 5-7-2017 & 10-7-2017 and mandate of SOP Regulations and pass clear orders.

consumer grivence because, it is ultimate burden on common consumers of MSEDCL.

I reply on the Judgement of Hon'ble. Supreme Court of India in the case of "Lucknow Development Authority vs M.K. Gupta – Reported in 1993 (TJ 929 (sc) (cp), AIR 1994 sc (78) and refered by Electricity Ombudsman, Nagpur.

If any any wrong has been committed in cases by the employees of the petitioner, then it is for them to recover this amount of compensation by holding proper enquiry as laid down by Hon'ble Supreme Court as above.

As per 4.1 (C) proviso of above said regulation. Secondly on perusal case No. CGRF (NUZ) 031/2009, order dated 26-6-2009 where so called member secretary i.e. present technical member was representative of non applicant and is well aware that Mrs. Langewar acted as member secretary and Smt. Gouri Chandrayan as member as per regulation 5.2 of above said regulation and same practice was observed to have followed earlier whenever the post of chairperson was vacant.

This means that when chairperson is appointed in the CGRF & Joined and he is absent from sitting of the forum, then technical member, shall be the chairperson for such sitting (during leave, sick leave etc) but presently the Chairperson's post is vacant in the forum on date of sitting, so the technical member and member (CPO) can continue to run sitting and decides the cases as per regulation 5.2 of said regulation but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017. In entire MERC (CGRF & EO) regulations 2006 post of only Technical Member is notified but no post of Member Secretary is notified and hence self designating as Member Secretary is against provisions of above regulation.

Hence order of the Technical person or so called member secretary cannot be a Majority order.

Hence the application and pass clear order deserves to be allowed.

ORDER

1. Non applicant is directed to pay interest @ 8% P.A. as per section 62(6) of the Electricity Act. 2003 from the date of deposit of bills for period March 2013 to August 2015 & further Oct. 2017 (date of giving credit) and adjust in next bill.
2. Non application is directed to pay SOP compensation @ Rs.100/- per week or part thereof from March 2013 to October 2017 as per SOP Appendix 8(ii) for change of tariff.
3. Order of IGRC is quashed and aside.
4. The compliance of this order shall be done within 30 days from the date of this order.

**Member (CPO)
Naresh Bansod.**

16. Before reaching to the final order, it is necessary to decide the matter within two months from the date of filing of the application. Applicant filed application on 17-10-2017. Therefore it was necessary to dispose of the application on or before 17-12-2017. Term of Chairperson In charge of the Forum expired on dt.30 June 2017. Forum heard argument on 24-11-2017. The separate dissenting note of Hon'ble Member (CPO) is given on dt.18.12.2017 due to this, there is delay in deciding the matter

Heard argument on 24-11-2017. The separate dissenting note of Hon'ble Member (CPO) is given on dt. 18.12.2017 due to this, there is delay in deciding the matter.

17. We are of the considered opinion that as the applicant utterly failed to comply the provision of Regulation 12.2, as such he is not entitled for any compensation. Hence we are of the opinion that the grievance application deserves to be partly allowed. In the result, we pass the following order:-

Order

- a. The Representation is partly allowed.
- b. The Order dated 24.12.2017 of the IGRC, Nagpur (Rural), Circle, is set aside.
- c. As applicant is already reassessed at Non Continuous tariff rate instead of continuous rate from March 2013 to August 2015, the interest on the excess amount collected, may be paid to M/s Suryamba Spinning Mills Ltd, at the prevailing bank rate by way of adjusting in the energy bill.
- d. Compliance be reported within one months from the date of this order.

Sd/-
(Shri.N.V.Bansod)
MEMBER

Sd/-
(Mrs.V.N.Parihar),
MEMBER SECRETARY & I/C. CHAIRMA