

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

Case No. CGRF(NZ)/52/2017

Applicant : M/s.Sainath Packaging Products Pvt.Ltd.
Plot no. M-13, MIDC
Hingna Road.Nagpur-44.

Non-applicant : Nodal Officer,
The Executive Engineer,
O&M Division, NUC,
MSEDCL,Butibori

Applicant: - Shri. S.C. Gundalwar.Applicant's representative.

Respondent by 1) Shri. Dilip Uttamrao Ghatol, EE, Butibori O&M Division,
Butibori
2) Shri. Girish Rahate AEE MIDC Sub-Division-II,Butibori

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

ORDER PASSED ON 13.07.2017.

1. The applicant filed present grievance application before this Forum on 19.06.2017 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 07.07.2017.

3. Forum heard arguments of both the sides on dt.10.07.2017 and perused record.

4. The case of the Applicant is as follows:

(a) The connection bearing no. 419993203034 is in the name of the applicant **M/s. Sainath Packaging Products.** at Plot no. M-13,MIDC,Hingna Road.Nagpur-14.It was sanctioned with a load of 75 HP having connected load as 62 HP with Contract Demand 58 HP, since the dt of connection 30.04.1991 and charged under LT-V Industrial category .They were regularly paying their Electricity Bills, which were issued to them time to time by non-applicant. The officials of MSEDCL regularly were inspecting their installation and working of their meter from time to time .The staff of MSEDCL used to take their Meter reading in every month.

(b) On dt.04.10.2016, Flying Squad Nagpur urban ,inspected their premises and prepared spot inspection report stating that they have noticed irregularities in their monthly billing and proposed remedial action of recovery of difference of incentive A to B Zone amounting Rs.516730/-for last three years from them.

(c) On dt.25.11.2016, Non-applicant issued them same recovery as revised Assessment Bill of Rs.4, 58,041/-and requested for Payment of the said bill without providing them details such as details of calculation ,period etc.

(d) The applicant filed their objection with Deputy Director Flying squad, Vigilance; MSEDCL on dt.20.12.2016 for the assessment details, review/revision etc.But did not get any response.

(e) They had requested non-applicant not to take action of disconnection in view of their representation filed with Vigilance. Without considering the same, the non-applicant issued them bill for the month of Feb-2017 for Rs.5.10.580/-inclusive of Assessment amount of Rs.4.58.041/- for which due date of payment was 15.03.2017.

(f) Aggrieved by this, they filed grievance application with IGRC on dt 14.03.2017. However they had deposited current bills on insistence from non-applicant.

(g) Their old meter was replaced by non-applicant on dt.07.04.2017 and 15.04.2017. The slot-wise readings were taken for the month of April-17 and May-17 and therein it is clearly seen that consumption of their unit is for 24 hours and not for only day shift as alleged by Flying squad unit of MSEDCL.

(h) IGRC passed the order on dt.09.05.2017, but simply granted the relief as per section 56(2) of Electricity act-2003 but did not consider their request to issue disputed bill as per slot-wise reading and TOD Tariff.

(i) In response to disconnection notice served by non-applicant on dt 22.05.2017, the applicant has paid the amount of Rs.3, 36,580/- under protest on dt.03.06.2017.

(j) As they were regularly paying their monthly bills and never asked for charging the bills other than the applicable TOD tariff, they are not responsible for making any payment towards the said assessment levied as per irregularities observed by the Flying squad of MSEDCL.

Hence they prayed to quash and set aside the impugned Assessment and to refund excess amount of Rs.2, 60,089/-paid by them, and permit them to pay bills excluding

the disputed amount, interest, DPC and any other penal charges.

5. In response to the appeal, the non-applicant has submitted their reply on dt 07.07.2017 as under:

(a) The installation bearing consumer no.419993203034 of M/s.Sainath Packaging Products at Plot no. M-13, MIDC, Hingna Road.Nagpur-14, was inspected by Vigilance squad and noticed that,

(A) M/s Sainath packaging is billed as LT-V industrial -1 Tariff

(B) While checking the meter, it is found that the consumer is using supply from 9.00 AM to 18.00 Hrs in B zone.

(C) Bill the consumer in proper time zone of TOD

(5) Recover the past period assessment of incentive given to Consumer in "A" Zone

Hence, recovery for three years amounting Rs.516730/-due to wrong incentive given by wrongly billing in A zone category instead of B zone category was proposed by Flying squad.

(b) While auditing the same ,it was observed that ,Power Factor Incentive was not considered, therefore after deducting the Power factor incentive, revised assessment bill of Rs.4,58,041/-was issued to the applicant on dt.25.11.2016.However Applicant did not paid the same. After receipt of online approval of Debit B-80 on dt 30.01.2017, assessed bill was raised in the m/o of Feb-2017. The due date for this bill was dt.15.03.2017, but applicant did not paid the same. Hence notice of disconnection was served on them on dt 16.03.2017.

(c) Applicant filed his grievance with IGRC on dt.14.03.2017.Accordingly matter was

heard. IGRC passed the order on dt. 09.05.2017 partially allowed the appeal of the applicant and directed to charge the assessment bill for two years preceding to dt .04.10.2016.Hence as per directives of IGRC the revised bill amounting Rs.2, 60,089 was raised to the applicant on dt.15.05.2017Accordingly the applicant paid the bill on Dt.06.0.2017under protest.

6. Aggrieved Applicant filed his grievance application with this forum for necessary relief.

7. To enable the Applicant and Non-applicant to put forth their arguments in person, a hearing was conducted before the forum on dt.10.07.17.Forum heard the argument of the both sides and perused documents furnished by them.

8. The applicant reiterated same facts as stated in the appeal during the Argument and further requested to give assessed bill as per slot-wise reading only as tariff is different for each slot. He was even ready to bear the charges in case assessment bill is on higher side while considering slot-wise tariff.

9. The Non-applicant reiterated the facts furnished in their written submission during argument. He further stated that since meter was not TOD meter, slot-wise reading was not taken .However entire consumption recorded by meter is charged considering applicable normal charges for B shift by default. The assessed bill raised is corrected bill for wrong incentive given to the consumer in the billing system. Therefore Applicant is liable for payment for the supply he has utilized and hence, prayed to the forum to dismiss the grievance application.

10. At the time of hearing on 10 July, 2017, the Parties were informed of the Chairperson of the Forum having resigned the office on 16 May 2017, consequent to which the matter would now be 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) Regulation2006 which reads as under,

4.1(c) "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,

8.4 "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:

11. During the argument and discussion, it was observed by the forum that,

(a) On perusal and consideration of both the oral and written submissions made by both the parties it is seen that, it clearly establishes the fact that, during verification of applicant's bills by flying squad, short claims caused by erroneous billing was noticed. While checking the meter, it was found that the applicant was using supply From 9.00 AM to 18.00 Hrs in B zone. But they were billed as per A Zone category for which working hours are 22.00 Hrs-06.00 Hrs along with Incentive instead of B zone category with working hours 06.00 Hrs -09.00 Hrs & 12.00 Hrs-18.00 wherein no Incentive is given. But while going through the bill issued to the applicant for the month of June 2017, after replacement of old meter, out of total 5492 billing units, only 139 units are recorded for A Zone for which charges are minus 1.50 Rs./KWH, 3169 units for B zone (charges are 6.50 Rs./KWH) C zone 1763 units (charges are plus 0.80 Rs./KWH), D zone 70 units (charges are plus 1.10 Rs./KWH). From these figures it can be seen that, the substantial portion of power utilization is under slot "B" and "C" of the meter and accordingly had there been slot-wise division of reading of assessment bill the consumer had to bear excess charges in "c" and "D" zone.

Therefore in absence of TOD meter charging applicant at normal rate in B Zone category is justified and is in order.

(b) The wrong incentive flaw erupted in billing had not come to notice of the non-applicant till 04.10.2016 which is the date of inspection of flying squad. Immediately on receipt of the report from vigilance the assessment Bill is raised. In absence of

TOD meter and TOD meter slot-wise readings availability during the period flaw in billing erupted; the non-applicant has acted as per procedure laid down that is to charge the entire consumption at normal rate which is the same rate as "B"Zone. Hence non-applicant is justified by not charging them as per TOD tariff.

(c) It was the duty of meter reader and billing authority to raise correct bill to the consumer. Instead they did not notice the flaw during the 3 years, error was detected by flying quad during their surprise inspection and assessment of short billing had to carry out. So there is dereliction of duty on part of concern staff.

(d) The fact that applicant had consumed electricity supplied by Non-applicant is not disputed. But error in raising correct bill is occurred due to dereliction of duty on part of concern staff; therefore applicant cannot avoid payment for the electricity consumed by it.

(e) The section 56(2) of the Electricity Act 2003 reads as under,

" 56(2): Notwithstanding anything contained in any other law for the time being in force no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when sum becomes first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied & the licensee shall not cut off the supply of electricity"

The forum is of opinion that, although it is true that liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded but charges would become first due for payment only after a bill is sent for payment therefore shall be the date the period of limitation of two years as provided in section 56(2) of the Electricity Act 2003 shall start running. In the instant

case time period of two years prescribed by section (2) for recovery of the amount started running only from dt.04.10-2014. It is therefore very clear that, even though error is detected in the total bill as per meter reading is for the period from 04-10-2013 to 04-10-2016, recovery of bill shall be for the amount due for the period October -2014 to October-2016 only. Bill amount recoverable for the period earlier to October -2014 is time barred by the limitation. Nevertheless, recovery of bill amount due for the period 04.10-2014 to dt.04.10-2016 is not barred by limitation & is recoverable, IGRC 's order to that effect passed is justified and is in order.

(13) It is only due to negligence of employees of MSEDCL who are responsible for not issuing correct bills whereby consumers is unduly penalized by raising large bills to the tune of Rs.260089 /-

(14) Therefore concern authority of MSEDCL may take action against the employee who is responsible for issuing such a erroneous monthly electricity bills and therefore huge revenue loss is caused to MSEDCL. Therefore this time barred amount may be recovered from the salary of responsible negligent employees.

(15) In view of above, IGRC has correctly passed the order, and needs no interference. Hence applicant is not entitled for any refund, and his grievance application deserves to be dismissed.

Separate dissenting note of Hon'ble Member (CPO) is given as under.

We heard the arguments of both the parties and perused all the papers on record.

The complaint of the Applicant is to quash and Set aside the impugent

Assessment Bill Rs. 458041/-, charge bills as per slot wise consumption and as per TOD Tariff instead of Time 'B' Zone of TOD Tariff, No DPC, Interest and any other penal charges should be levied, and restrain the Distribution Licensee from Disconnection of power supply during pendency of the grievance, Allow Applicant for payment excluding disputed amount & any other relief deem fit.

Applicant challenged the order of IGRC dated 9-5-2017, who directed respondents to charge Assessment bills for the period of 2 years instead of 3 years.

It is an undisputed fact that Applicant is consumer of Non Applicant with consumer no 419993203034 with connected load of 62 HP & sanction load of 75 HP since 30-4-1991 and regularly paying electricity bill without any complaint. It is also an undisputed fact that officials of Non Applicant inspected the electrical installation, working of meter time to time, regularly visited the spot for meter reading without observing any irregularities till Sept 2016.

Authorities of flying squad unit of Non Applicant entered the industrial premises at 16.05 hours on 4-10-2016 and inspected in absence of responsible person of the factory and spot inspection report recorded irregularities and proposed remedial action of bill in proper time zone of TOD & recover difference of Incentive "A" TO "B" zone for Rs. 516730/- for last 3 years or Assess as per sub division level (Annexure 'A' Page 20 to 26)

On 25-11-2016, additional Executive Engineer (MIDC sub Division II) given the copy of the Assessment bill of Rs 458041/- for payment without details of calculations of the Assessment & period of Assessment (Annexure B page 28 to 30)

Applicant vide letter dated 19-12-2016 & 27-12-2016 requested "The Deputy Director (vigilance) & additional Executive Engineer for review of Assessment Bill (page 32 to 40) and also raised dispute before IGRC on 14-3-2017.

It is also undisputed fact that Applicant paid the bills issued by Non Applicant under protest to avoid disconnection of supply as per notices of Non Applicant and Applicant paid bill on dated 5-6-2017 for Rs. 336580/- under protest as per IGRC order for dated 9-5-2017 that is Assessment for 2 years as notice of Non Applicant dated 22-5-2017 threatening of disconnection of Electricity supply for Non Payment of electricity charges with 15 day notice under section 56 (1) of "The Electricity Act 2003". The Non Applicant. Revised Assessment for 2 years as per IGRC order to Rs. 260089/-.

Non Applicants submissions are same as before IGRC with minor additions of Implementation of order of IGRC & prayed dismissal of complaint.

The main dispute is regarding the flying squad of Non Applicant directed for billing 'A' zone instead of time 'B' zone of TOD Tariff & recovery of incentive given for 3 years of amount of Rs 516730/- without any Assessment sheet and there is no explanation of flying squad which shows aristocratic working of flying squad when Non Applicant has to visit the spot for meter reading every month and hence Applicant has not faulted on any count as he paid the bills regularly.

Flying squad before IGRC stated that Applicant is billed as per slot 'A' zone of meter incentive provided to the consumer but Applicant is in 'B' zone and proposed

recovery of 3 years without explanation for non providing Assessment to Applicant.

“IGRC inferred it is a case of under billing due to non-correction in billing system. In order to amicable settlement within the limits of Electricity Act 2003, i.e. Any bills cannot be recovered for more than 2 years, it is felt necessary in the interest of Justice as per law, MSEDCL is entitle to recover amount for 2 years”.

“Grievance application is partly allowed and is directed to charge bills for a period 2 years preceding to 4-10-2016 to consumer and issue corrected bill”.

During Hearing Non Applicant admitted that for a load above 27 HP or 20 KW, It is necessary to install TOD meter and taking proper slot wise reading and billing in proper Tariff. Applicants connected load is 62 HP & Sanctioned load is 75 HP. Hence Non Applicant was responsible for non installation of “TOD” meter and non taking proper slot wise reading & proper billing in Tariff.

It is observed from the order of IGRC, that there is mention of limits of Electricity Act 2003 i.e. any bills cannot be recovered for more than 2 years but smartly avoided to mention the particular section of The Electricity Act 2003 as well as flying squad also failed to specify why they order recovery of 3 years only and why not less or more than 3 years as per the Electricity Act 2003.

In the entire “The Electricity Act 2003” load period of 2 years appears in section 56 (2). IGRC appears to have interpreted that section wrongly which is for future period of recovery from date. When such sum becomes first due on 4-10-2016 unless such sum has been shown continuously, because inspection by the flying squad is on 4-10-2016.

Section 56 (2) reads as under

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously. As recoverable as arrear of charges for electricity supplied and the licensee shall not cut the supply of the electricity”.

Hence on this cannot also, order of IGRC is without legal support and illegal in the eyes of law deserves to be discarded.

IGRC authorities are well aware of the order of MERC dated 11-2-2003 in case No 24/2001 (Para 23) and same is relied by Electricity ombudsman, Nagpur in their in various i.e. Representation No 22/2016 of m/s Ankur Seeds v/s MSEDCL orders, it is as under.

“MERC directed 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 the recovery, if any, would be prospective only as earlier classification was done with a distinct application of mind by the 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 of the MERC, order of the commission will have to be sought as any reclassification of consumer directly affects the Revenue Collection etc. as projected in its Tariff order”. Same could be done either at the time of the tariff revision or through a special petition by the utility.

In all these cases, recovery if any would be prospective from the date of order or when the matter was raised either by the utility or by consumer and not retrospective.

Accordingly, the bill issued to the MIDC should be corrected to ensure prospective recovery of dues from the date of communication about the reclassification.

It is necessary to note that inspite of observation of flying squad on 4-10-2016, the old meter was replaced on 7-4-2017 & 15-4-2017 (After period of 6 months) and slot wise reading taken as per TOD Tariff, Which shows the lethargic working of Non Applicant. Non Applicant & IGRC & flying squad stated that use of supply is shows is 9 Am to 6 Pm which was denied by applicant & stated it is for 24 hours and not only for day shift. Non Applicant failed to produce documentary evidence and slot wise i.e. A.B.C.D. IN TOD Tariff, he is entitle for PF incentive which is reduced.

In view of the above order of MERC, Non Applicant is entitled to recover billing on slot wise reading as per TOD Tariff from 4-10-2016 (dated Inspection by flying squad) but due to non replacement of old meter timely, and non applicant has billed after replacement of meter & paid by applicant, the question of recovery form 4-10-2016 to 7-4-2017 is infractious .

Hence the order of IGRC as well as action of flying squad does not carry any legal support and retrospective recovery for 2 years preceding to 4-10-2016 deserves to quash and set aside and Non Applicant is liable to refund Rs. 260089/-

deposited under protest on 5-7-2017 as per provision of section 62(6) of the Electricity Act 2003 and. Applicant be permitted to pay bills excluding the disputed amount, interest, DPC etc. Any DPC, interest if any charge also deserves to be quash & set aside.

The order of the IGRC dated 9-5-2017 is signed by in charge Mr. M.S. Dhoble but other members of IGRC did not sign as they did not agree with the finding. Hence on this count also order of IGRC is null & void.

This means that when chairperson is appointed in the CGRF and he is absent from sitting of the forum, than 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 but technical member does not get position of Chairperson and second & casting vote, which is done in earlier cases after 16/5/2017, Which is illegal as per me because in case of vacant post of Chairman of MERC, Hon'ble Shri Ajj Khan & Mr. Deepak Lad Saheb sign as member and not as chairman as per miority, Hence order of the Technical person or so called member secretary cannot be order of Majority order.

Naresh Bansod
Member (CPO)

12. In view of the majority we hold that, considering all the above, No vital reasons are found in the appeal to interfere with the order of the IGRC. The proceedings and order of the IGRC is in order. Hence the appeal is dismissed.

Therefore we proceed to pass the following order.

ORDER

1) Grievance application is dismissed.

sd/-
(**Shri.N.V.Bansod**)
MEMBER

sd/-
(**Mrs.V.N.Parihar**),
MEMBER/SECRETARY
& I/C. CHAIRMAN