

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.17/2016

Date of Grievance : 25.05.2016

Date of Order : 02.08.2016

In the matter of change in load & tariff category & exorbitant billing.

M/s.Indus Towers Limited,
2010, E-Core, 2nd floor,
Marvel Edge, Viman Nagar,
Pune- 411014.

Complainant

(Hereinafter referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Ganeshkhind Urban Circle,
Pune.

Respondent

(Hereinafter referred to as Licensee)

Quorum

Chairperson

Mr. S.N.Shelke

Member Secretary

Smt.B.S.Savant

Member

Mr. S.S.Pathak

Appearance

For Consumer

**Mr.Sachin Mahangade } (Representatives)
Mr.D.S.Talware**

For Respondent

**Mr.D.S.Padalkar,E.E., Kothrud Dn.
Mr.S.R.Waiphalkar,EE,Pimpri Dn.
Mr.B.B.Bhamare, Bhosari Dn.
Mr. M.K. Suryawanshi, Shivainagar Dn.**

1. The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.
2. The consumer submitted the grievance before the IGRC, GKUC, Pune on 8.3.2016 about time barred energy bills issued by the Licensee but the IGRC,

GKUC did not give any decision within the stipulated period therefore the consumer approached to CGRF, with the grievance in Schedule-A.

3. The papers containing the above grievance were sent by the Forum to the Superintending Engineer, M.S.E.D.C.L., GKUC, Pune vide letter no. EE/CGRF/ PZ/Notice/17 of 2016/110 dtd.25.05.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 09.06.2016.
4. We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) M/s.Indus Towers Ltd. is a Co. basically an Infra structure provider company for different mobile tower operators with multiple consumer numbers throughout India in general & under Ganeshkhind Urban Circle, in particular under various sub-divisions including Dapodi, Kharalwadi, Bhosari-I, Shivajinagar, Ganeshkhind, Deccan, Kothrud, Warje, Bhosari-II, Chinchwad, Sangvi, & Pradhikaran etc. The sub-division wise list of consumers where the grievances raised with provisional /assessment bill amount is enclosed herewith in schedule-A.
 - ii) As per the tariff orders came into force from time to time, the tariff made levied was industrial or commercial. Details of change of tariff are as under: -

S.No	MERC Case No.	Date of order	Tariff applicable
1	116 of 2008	17.08.2009	Industrial (IT & ITES)
2	111 of 2009	12.09.2010	Industrial
3	19 of 2012	16.08.2012	Commercial
4	APTEL order in Appeal No.211 of 2012 & 215 of 2012	07.11.2012	Industrial
5	121 of 2014	26.06.2015	Industrial

- iii) The above mentioned consumers received provisional/assessment bills from the above mentioned Sub-divisions from Nov.2010 to Dec.2015.
- iv) The Sub-divisionwise list of 80 consumers & its assessed differentiation amount & payment details of the consumers etc. are enclosed herewith in Schedule-A.
- v) The sub/divisionwise bills for assessment /provisional tariff difference are as under for ready reference :

S. No	Sub-division	Total no. of consumers	Total amount of difference Rs.
1.	Dapodi	2	1,33,260
2	Kharalwadi,	7	12,90,647
3	Bhosari-I,	5	23,73,140
4	Shivajinagar,	3	2,69,280

5	Ganeshkhind,	4	12,80,272
6	Deccan,	13	53,36,515
7	Kothrud,	14	56,51,263
8	Warje,	11	50,78,714
9	Bhosari-II,	2	8,71,786
10	Chinchwad,	7	30,52,374
11	Sangvi,	8	37,82,590
12	Pradhikaran	4	20,40,636
	Total:-	80	3,11,60,477

- vi) The above mentioned bills were issued by the Licensee as per the MERC tariff applicable for Industrial consumers. The MERC classified non residential & Commercial consumers on the basis of their load and the categorization is as under :
- 0 to 20 KW
 - Above 20 KW & upto 50 KW
 - Above 50 KW
- vii) The MERC classified the Industrial consumers on the basis of their load & the categorization is as under :
- 0 to 20 KW (27 HP)
 - Above 20 KW (above 27 HP)
- $$1 \text{ KW} = 0.746 \text{ HP}$$
- $$\text{Hence } 25 \text{ KW} = 33.51 \text{ HP}$$
- viii) Presently, the tariff applicable to above mentioned consumers is Industrial.
- ix) The Licensee while changing the tariff from Commercial to Industrial, the load of the consumer was to be changed from KW to HP. But it was mistakenly not changed. Consequently it remained as 25 KW instead of 33.51 HP. Therefore the Industrial tariff came to be levied to the consumers wrongly having load above 25KW.
- x) Some of the sub-divisions threatened the consumer by issuing notice under 56 (1) of the Act to deposit arrears of said bills or supply will be disconnected within 15 days.
- xi) The consumer deposited approximately amount of 50% of provisional bills under protest.
- xii) The consumer approached to IGRC with complaint (Annexure-X) dated 08.03.2016 that all provisional/assessment bills are time barred and not due to the Licensee in terms of section 56(2) of Electricity Act, 2003.
- xiii) The IGRC did not give any decision within stipulated period therefore the consumer approached to the Forum with complaint in Schedule 'A'

5. The consumer representative Mr. Talware submitted that they (M/s. Indus Towers Ltd.) received provisional/assessment bills from above mentioned sub-divisions under Ganeshkhind Circle, amounting to Rs. 3,11,60,477/- for the period Nov.2010 to Dec.2015 i.e. where in it was stated by the Licensee that the consumer was under billed due to wrong load and tariff therefore provisional bills are raised. However the consumer is regular payer of bills having no arrears against any consumers. All these provisional/assessment bills are being time barred, not recoverable and not due to the Licensee. He further submitted that if at all any recovery of arrears is made under section 56 (2) of Electricity Act of 2003 then the limitations of 2 years of recovery of such arrears is binding. The said arrears are being for more than 2 years cannot be recovered & barred by Law.
6. Mr. Talware placed Reliance on the following judgments of the High Courts.:
 - a) W.P.(L) No.221 of 2006, Mr. Awadesh, S.Pandey Vs. Tata Power Co.Limited, AIR 2007 Bom.52.
 - b) W.P.No.8894 of 2007 in the case of MSEDCL Vs. M/s.Greenword Magnum Enterprises, decided on 7.09.2007.
 - c) W.P.No. 6783 of 2009 in the case of MSEDCL Vs. Venco Breeding Farms Pvt. Ltd. and Anr. decided on 5.3.2010.

He lastly submitted to set aside all the provisional bills issued by the Licensee being time barred and to refund the 50% amount which was paid by the company under protest towards the impugned bills.
7. On the other hand it is submitted on behalf of Licensee that as per the tariff orders came into force time to time, the tariff category made levied accordingly to the mobile towers. The MERC in case no.19 of 2012 vide order dated 16th Aug.2012 has approved the change of categorization of mobile towers, microwave towers, satellite antenna etc. from Industrial to Commercial. Being aggrieved and dissatisfied by the said tariff order, M/s.Bharati Airtel (Appeal 211 of 2012) & Idea Cellular (Appeal No.215 of 2012) approached to APTEL. The Hon'ble APTEL set aside the tariff order dated 16.8.2012 to the extent of mobile towers etc. as to categorization as Commercial vide order dated 7th Nov.2012. Thereafter the Licensee issued Commercial Circular vide no. PR-3/cos/10472 dated 15.4.2013 issuing directives that the Industrial tariff to be made applicable to all telecom towers w.e.f. 1st Aug.2012. Accordingly the same was implemented. Therefore presently the tariff applicable to Mobile Towers is Industrial.
8. The Licensee further submitted that presently the tariff applicable to mobile tower consumers is Industrial. However, while changing the tariff, the load of consumer was to be changed from KW to HP. But it was mistakenly not changed. Resultantly it remained as 25 KW but which should have been 33.51 HP. Accordingly the Licensee issued the tariff difference bills to the said consumers totaling to Rs. 3,11,60,477/- .

9. The Licensee further submitted that the mistake was made during the change of tariff and the load change was not effected accordingly i.e. the load above 25 KW directly taken as 25 HP instead of 31.51 HP (KW conversion into HP was not done) & it's a clerical mistake of calculations/human error which led to under billing of the consumer. Therefore bar of limitation as contemplated under Section 56 (2) of the Electricity Act, 2003 is not applicable. Therefore recovery of due amount more than 2 years can be made.

The Licensee placed reliance to the case, **M/s. Rototex Polyester Vs. Administrator, Dept. of Dadara & Nagar Haveli (UT) Electricity Department of Silvassa, 2010 (4) BCR 456**. Hon'ble High Court Bombay held that-

A consumer is under billed due to a clerical mistake of calculation-bar of limitation cannot be raised. Hence, challenge of petitioner is not tenable & Section 56(2) of EA is not bar for recovery of due amount by respondents.

10. It is further submitted on behalf of the Licensee that a sum cannot be said to be due from the consumer unless bill of the Electricity charges is served upon the consumer. The Licensee placed reliance to the case - **H.D. Shourie Vs. Municipal Corporation of Delhi, AIR 1997 Delhi 219**, wherein Delhi High Court observed that

The word "due" in this context must mean due and payable after a valid bill has been sent to the consumer. It does not mean 7 days' notice after consumption of the Electricity & without submission of the bill.

11. The Licensee further contended that bar of limitation is not applicable if the consumer was under billed due to clerical mistake or human error or a such similar mistake. The Licensee placed reliance to the following judgments.
- i. Brihanmumbai Municipal Corporation Vs. Yatish Sharma, 2007 (3) Bom CR 659
 - ii. U.A.Thandani & Anr. Vs.BEST undertaking & an 2000 vol. 102 (2) Bom. L.R. 502
 - iii. Bharat Barrel & Drums Mfg.Co.Pvt.Ltd. Vs. The Municipal Corp. for greater Bombay, AIR 1978 Bom. 369.
 - iv. Devraj Vs. BSES Yamuna Power Ltd.,W.P.No.5360 Delhi High Court.
 - v. Swastik Industries Vs. MSEB,(1997) 9, SCC 465.
 - vi. NDMC Vs.Karamchand Thapar and brothers Pvt. Ltd., LAP No.211/2009 Bombay High Court.

12. The Licensee further contended that the various judgments delivered by the Hon'ble High Court of judicature at Bombay there seems to be the conflicts of the view between two folded sets of judgments in respect of the interpretation of Section 56(2) of the Electricity Act, 2003, particularly the entitlement of the distribution Licensee to recover the amount against arrears more than two years. The judgments referred by the consumer in the case of

i) *Awadesh S.Pande*, ii) *Green Word Magnum Enterprises*, iii) *Venco Research & Breeding Farms Pvt. Ltd*, cited *Supra* are not applicable to the present case.

13. The Licensee further contended that the regulation no. 15.2 of MERC supply code, 2005 provides the bill details & there is a clear indication of the due date for the payment of electricity bill. The Licensee raised the provisional/assessment bills of differentiation amount as per Regulation No.3.4 of MERC supply code, 2005. Therefore the consumer is liable to pay the amount of said bills. Hence grievance be rejected.
14. The provisions of section 56 of the Electricity Act, 2003 are necessary to be reproduced for the purpose of deciding the controversy. It reads as under :

56. Disconnection of supply in default of payment:

(1) *Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply transmission or distribution or wheeling of electricity to him, the licensee or the generating company any, after giving not less than fifteen clear days notice in writing to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :*

Provided that, the supply of electricity shall not be cut off if such person deposits, under protest –

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee.

(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 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 off the supply of the electricity.*

15. Sub-Section-(2) of Section 56 does not allow charges and dues beyond the period of two years. But in case where such dues have been continuously shown as recoverable as arrears of charges for electricity supplied, Section 56 (2) allows such recovery. On the perusal of above mentioned judgments referred by both the parties, it is clear that there is a conflict of opinion on the point of the interpretation of Section 56(2) of the Electricity Act, 2003. In the present case the tariff

applicable to the consumer is "Industrial". In case of Industrial tariff load is to be sanctioned in terms of Horse power (HP). While changing the tariff from Commercial to Industrial instead of applying correct load in terms of HP as 33.51 HP, wrong load i.e. 25 HP was applied and therefore according to the Licensee wrong bills for a lesser amount have been issued to the consumers. Hence the impugned bills seeking recovery of the difference have been issued to the consumers. Therefore the Licensee sought recovery of difference for the period from Nov.2010 to Dec.2015 for 63 months as has been contended by the consumer.

16. The division bench of Bombay High court in the case of **Awadesh S.Pandey Vs.Tata Power Co.Ltd. reported in AIR 2007, Bombay, observed that –**

Submission of counsel for the petitioner is that the provisions of Section 56 do not empower respondent No.1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for nonpayment of those dues. In other words what is sought to be contended is that if the demand or part of the demand is time barred the provisions of section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision, enabling the generating company or the Licensee to cut-off supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on Sub-section (2), it was strenuously urged that Section 56(1) cannot be resorted to after the period of two years from the date when such demand became first due.

In our opinion, Sub-section (2) only provides limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee or the generating company can exercise its power of coercive process of recovery by cutting of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can made recovery by way of a suit. In our opinion, therefore, the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is merit in this petition.

17. Above mentioned ratio in the case of Awadesh S.Pandey was applied by the Bombay High Court in the subsequent judgments in the case of MSEDCL Vs.

Green Word Magnum Enterprises , W.P.No.2894 of 2007 decided on 7th Sept.2007 & in the case of MSEDCL Vs.Venco Breeding Farms Pvt.Ltd. W.P.No.6783 of 2009 decided on 5th March 2010.

18. It seems that there is conflict of views between two folded sets of judgments referred to above delivered by the high courts in respect of the interpretation of Section 56 (2) of the Electricity Act, 2003. Similarly there is a direct conflict of views between the division benches of Bombay High Court in the case of Awadesh S Pandey & judgment in the case of Rototex (Supra). In W.P.No.10764 of 2011 Hon'ble single bench of Bombay High Court while referring the matter to a larger bench in respect of interpretation of Section 56(2) of the Act vide order dated 17th Jan.2012 observed as under:

If the Distribution Licensee is allowed to wake up after several years and serve bill for a differential amount and thereafter, argues that the amount became due only after service of such bill for a differential amount, in my opinion, then this will not only be contrary to the legislative intent under Section 56(2) of the Electricity Act, 2003 but it will also result in the situation where an innocent consumer may be suddenly faced with a huge demand in respect of the bill even beyond two years of service of bills and will be forced to pay the same without any corresponding mechanism for recovery of charges of difference of the said amount from his customer or consumer to whom said consumer of electricity may have provided goods or service. This will be clearly unjust and arbitrary. In my opinion, interpretation of Section 56(2) done by the Division Bench in the case of Rototex Polyester (Supra) results in a situation where the Distribution Licensee can wake up and issue a supplementary bill after any number of years without there being any limitation on the number of years after which said supplementary bill is issued and can thereafter, claim that the amount becomes dues from the date on which it is sought to have been levied and demanded by presenting a bill by claiming that the amount becomes due only when the supplementary bill is issued. Such interpretation will lead to absurd results.

19. Therefore relying on the cited judgments in the case of Awadesh S. Pandey Vs. Tata Power Co.Ltd., (Supra) & the subsequent judgments in the case of MSEDCL Vs. Green Word Magnum Enterprises & MSEDCL Vs. Venco Reasearch & Breeding Farms Pvt. Ltd.& the latest judgment in the case of MSEDCL Vs. the Electricity Ombudsman in W.P.No. 10764 of 2011 cited Supra this Forum holds that past arrears for a period more than 2 years in terms of Section 56(2) of Electricity Act, 2003 are barred by limitation. Hence for the reasons mentioned above in our considered opinion it is necessary to allow the present grievance application partly, directing the Licensee (MSEDCL) not to recover the difference amount of the Electricity charges beyond the period of two years from the demand by way of provisional/assessment bills. However, we hold that MSEDCL is entitled to recover the bills towards the difference of less billed amount only during the limitation period i.e. from Dec.2013 to Dec.2015.
20. The Technical Member of the Forum (Member/Secretary) was on Earn Leave for medical treatment for the period 14.7.2016 to 26.7.2016 & hence the grievance could not be disposed off within stipulated period.

Date : 02.08.2016

I agree,

Sd/-
S.S.Pathak
 Member
 CGRF:PZ:PUNE

Sd/-
S.N.Shelke
 Chairperson
 CGRF:PZ:PUNE

Member Secretary, (B.S.Savant)

I have gone through the above reasoning and my opinion in this matter is differing as below:

In Case of M/s. Rototex Polyester & V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvassa 7 ors., 2010 (4) BCR 456, cited supra Hon'ble High Court Bombay held that when consumer is under billed due to clerical mistake, bar of limitations is not applicable.

Hence the propose recovery is correct amounting to Rs.3,11,60,477/- for the period Nov.2010 to Dec.2015 & recoverable from the above mentioned consumers, as this is only clerical mistake. The necessary installments for payment to the consumers shall be given as per MSEDCL Rules & Regulations without interest & DPC.”

Sd/-

B.S.Savant

Member/Secretary

CGRF:PZ:PUNE

Hence the order by majority

ORDER

1. Grievance application is partly allowed.
2. Provisional /assessment bills issued by the Licensee for the period Nov.2010 to Dec.2015 amounting to Rs. 3,11,60,477/- in respect of 80 consumers as mentioned in the enclosed list are hereby set aside.
3. The Licensee to issue the revise bill making it limited only for 24 months for the period Dec.2013 to Dec.2015 excluding DPC & Interest.
4. The Licensee shall not recover time barred amount for the period Nov.2010 to Nov.2013.
5. The Licensee to adjust the amount paid by the consumer under protest in the revised bill and the future bills of the consumer.
6. The Licensee to report compliance within one month from the date of receipt of this order.

Sd/-

S.S.Pathak

Member

CGRF:PZ:PUNE

Sd/-

S.N.Shelke

Chairperson

CGRF:PZ:PUNE

Encl:- Schedule-A

Date :- 02.08.2016

Note :- The consumer if not satisfied may filed representation against this order before the Hon.'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg.,
Bandra Kurla Complex, Bandra (E), Mumbai-51.

