

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

Case No.32/2015

Date of Grievance : 08.10.2015

Date of Order : 04.12.2015

In the matter of recovery of arrears after change of tariff category.

Shri Ram Retreads
Gate No.61, Shindewadi
At/Post Shindewadi
Tal- Bhore, Dist PUNE
(Consumer No.179431656027)

Complainant
(Herein after referred to as Consumer)

Versus

The Executive Engineer,
M.S.E.D.C.L.,
Mulshi Division,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chair person
Member Secretary
Member

Mr. S.N.Shelke
Mr. D.H.Agrawal
Mr. S.S.Pathak

Appearance

For Consumer

Mr.Rahul.A.Warke, Representative

For Respondent

Mr. R.V.Pawar Ex.Engineer,
Mulshi Dn
Mr.Dere, Dy.Ex.Engr.
Nasarapur Sub/dn.

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.
- 2) Being aggrieved and dissatisfied by the order dated 29.09.2015 passed by IGRC Pune Rural Circle, Pune, thereby rejecting the grievance the consumer above named prefers this grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Mulshi Dn, Pune vide letter no. EE/CGRF/PZ/Notice/32 of 2015/292 dtd.12.10.2015. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 28.10.2015.
- 4) We heard both sides at length, gone through the contentions of the consumer and reply of the respondent and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) Consumer namely Shri Ram Retreads having consumer No. 179431656027 connected on 13.10.1997 for industrial purpose and billed as per tariff category LT-V-B.
 - ii) The MSEDCL Flying Squad unit Kalyan - II visited the factory of the consumer on 21.5.2015.
 - iii) The Flying Squad submitted inspection report on 21.5.2015 stating that tariff category should be commercial as per MERC order in Case No.19/2012.
 - iv) The Licensee intimated to the consumer about difference amount by issuing bill of Rs.3,58,159/- towards difference between Industrial & Commercial for the period from Aug.2012 to May-2015.
 - v) Thereafter the Licensee issued notice of disconnection of power supply dated 11.8.2015 to the consumer.
 - vi) The consumer approached the IGRC with grievance dated 21.8.2015 in Form -X.
 - vii) The IGRC, PRC, Pune rejected the grievance of the consumer stating that the Licensee has properly applied the tariff category vide impugned order dated 29.9.2015.
- 5) The consumer representative Mr.Rahul A.Warke submitted that the Flying Squad of the Licensee visited the factory of the consumer on 21.5.2015. Thereafter they received energy bill of Rs. 3,58,159/- for the period from Aug.2012 to May-2015. Thereafter the consumer received notice of

disconnection of supply on 11.8.2015. Therefore they submitted grievance to the IGRC, PRC Pune but the IGRC rejected grievance. He further submitted that their factory is a Small Scale Industrial Unit and not a Commercial establishment. They are taking orders from various agencies for tyre remolding and used so many raw materials and during the process of all machinery are used as per sanctioned load 30 HP. He further submitted that their factory is registered under directorate of Industries, Govt. of Maharashtra vide Registration No.111916757 dtd.25.7.1994 of District Industries Centre Pune. Therefore he submitted that the retrospective bill amount of Rs. 3,58,159/- is wrong and unjustified and be set aside since they are not at fault for paying the bills.

- 6) On the other hand Mr.R.V.Pawar the Ex.Engineer, Mushi Dn. submitted on behalf of Licensee that the consumer is connected on 30.10.1997 for Industrial purpose and bills were issued as per Industrial tariff i.e. tariff category LT-V-B. The Flying squad unit Kalyan-II visited the consumers factory 21.5.2015 and submitted spot inspection report on 21.5.2015 and recommended that the tariff category should be commercial as per MERC order in case no. 19 of 2012. On the basis of the said report, Licensee intimated and issued bill of Rs. 3,58,159/- to the consumer towards the difference between Industrial & Commercial tariff for the period from Aug.2012 to May-2015. But the consumer failed to deposit the said arrears therefore, the disconnection notice dated 11.8.2015 was sent to the consumer. The bill issued to the consumer is proper correct and legal as per tariff order dated 16.8.2012 and therefore the said grievance may be dismissed with the cost.
- 7) The following points arise for our consideration. We give our findings thereon for the reasons stated below.

Points	Findings
1) Whether the Licensee is entitled to Retrospective recovery of arrears on the basis of its spot inspection from the date of MERC tariff order dated 16.8.2012 in	In the negative

case no.19 of 2012 w.e.f. 1.8.2012 ?

- 2) What Order ? As per final order.

8) REASONS

Admittedly, the consumer was billed under Industrial category from the date of connection i.e. from 13.10.1997 under Tariff, Category LT-V-B. As per the tariff order dated 16.08.2012 in Case No.19 of 2012 of the commission, the activity of the consumer falls under category LT-II (Commercial). The commission in tariff order dated 16.8.2012 under LT-II (Non residential or commercial) listed the following category:-

e) Automobile and any other type of repair centers, Retail Gas Filling stations, Petrol Pumps & Service Stations including Garages, Tyre Retreading/Vulcanizing units.

- 9) Regulation No.13 of MERC (Electricity of Supply Code & Other condition of supply) Regulations, 2005 reads as under:

13. Classification and Reclassifications of consumers into Tariff

Categories : The Distribution Licensee may classify or reclassify a consumer into various commission approved tariff categories based on the purpose of usage of supply by such consumer :

Provided that, the Distribution Licensee shall not create any tariff category other than those approved by the commission.

- 10) The MERC under order dated 11.2.2003 in case no.24 of 2001 regarding retrospective recovery on the basis of reclassification of tariff category has directed as under :

No retrospective recovery of arrear 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 the 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.

11) The appellate tribunal for Electricity (APTEL)in the recent order dated 7.08.2014 in appeal No.131 of 2013 (in the matter of vinney enterprises versus Keral State Electricity Regulatory Commission) has held that -

“The arrears for difference in tariff would be recovered from the date of detection of the error” .

12) The Hon’ble Electricity Ombudsman, Mumbai in his order treated 23.12.2014 in the representation no. 124 of 2014 in the similar matter of recovery of arrears after change of tariff category in the case of Mr.Ram Chimanlal Kanojiya (Chiman Automobiles) Vs. MSEDCL has directed the respondent i.e. MSEDCL

to recover the arrears from the date of spot inspection without applying DPC & Interest on the said arrears. The arrears already paid by the appellant should be adjusted and balance should be recovered from the appellant.

13) Thereafter the Hon’ble Electricity Ombudsman, Mumbai in his order dated 23.12.2014 in representation No.126 of 2014. In the case of Mr.Suhas, Kailash Gupta (J.S. Auto Garage) Vs. MSEDCL in the similar matter of recovery of arrears after change of tariff category has given the same decision denying the retrospective recovery.

14) After the order of Commission dated 16. 08.2012 in Case No.19 of 2012, the Licensee should have immediately reclassified tariff category of the consumer from LT-V-B Industrial- to LT-II (Commercial) and charged the consumer accordingly. However the consumer was continued to be charged under LT-V-B Industrial Tariff. The Flying squad of the respondent while carrying out the inspection pointed out that the consumer should have been charged for tariff category LT-II Commercial as per the tariff order dated 16.8.2012. There is no dispute that the tariff category LT-II non residential/Commercial should be applied after detection of the error since the consumer is conducting business of tyre retreading. The consumes is not at fault for paying the bills under Industrial tariff category from Aug.2012 till the date of spot inspection as the said bills were raised by the Licensee under the same category. Therefore on the basis of orders of MERC, APTEL & the Electricity Ombudsman, Mumbai, as mentioned above, the distribution company (Licensee) is entitled to change tariff

category from Industrial to Commercial from the date of spot inspection i.e. from the date of detection of error. However the retrospective recovery from Aug.2012 to May-2015 needs to be set aside. Hence we answer point no.1 above in the negative.

Date : 04.12.2015

I agree,

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

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

Member Secretary, (Dinesh H.Agrawal)

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

In Case of M/s. Rototex Polyester & another V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvassa & Others, reported in 2010 (4) BCR 456, Hon'ble High Court Bombay held that

“ A consumer is under billed due to a clerical mistake, bar of limitation cannot be raised. Hence challenge of petition is not tenable & Sec.56 (2) of E.A.is not a bar or recovery of due amount by Respondents. Hence the propose recovery is correct & recoverable from consumers, as this is only clerical mistake, installments for payment as per MSEDCL circular should be granted without interest & DPC.”

Sd/-
D.H.Agrawal
Member/Secretary
CGRF:PZ:PUNE

Hence the order by majority

ORDER

1. Grievance of the consumer stands allowed with cost.
2. Retrospective recovery during the period from Aug.2012 to April - 2015 is hereby set aside.

3. The impuned order dated 24.08.2015 passed by IGRC, GKUC, Pune is hereby set aside.
4. The Licensee is directed to refund or adjust the amount in bill recovered for the period Aug.2012 to April-2015 on account of tariff difference alongwith interest equivalent to the Bank rate under Section 62 (6) of the Electricity Act-2003 from the date of deposit till the date of refund.
5. The Licensee is directed to recover arrears from the consumer from the billing month May-2015 onwards without applying DPC & interest in the said arrears.
6. The licensee to report compliance to this forum within one month from the date of this order.

Delivered on: - 04.12.2015

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

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

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.