

**Before Maharashtra State Electricity Distribution Co. Limited Consumer Grievances Redressal Forum, Pune Zone, 925, Kasabapeth Building, IInd flr. Pune-11**

**Case No.14/2013**

**Date:- 29/3/2014**

**In the matter of**

**- Complainant**

The Chairman,  
Jamuna Vihar  
Co-Operative Housing Socy.Ltd.,  
50-51, Koregaon Park, Pune-411001.

**V/S**

The Supdt. Engineer,  
M.S.E.D.C.L.  
Rastapeth Urban Circle,  
Pune.

**- Opponent**

**Quorum**

Chair Person	Shri.S.D.Madake
Member/Secretary,	Shri.N.S.Prasad
Member	Shri.Suryakant Pathak

1. Complainant filed the complaint as per Section 42(5) of Electricity Act-2003.
2. According to Complainant Jamuna Vihar Co-Operative Housing Socy. Koregaon Park used electricity supply for residential purpose only. The single point HT bulk supply is provided by M.S.E.D.C.L. bearing connection No. HT-170019006266. The tariff applied is HT VI as per tariff order of MERC.
3. According to complainant in 2009 M.S.E.D.C.L. had changed tariff from HT-VI to HT-II on the ground that complainant rent out the premises to the devotees of Osho who comes for meditation and thus premises is used for commercial purpose.

4. Complainant filed complaint before Internal Grievance Redressal Forum for change of tariff from HT-II to HT-VI. The IGRC by order dated 16.9.2009 directed that electricity bills be issued as per HT-VI tariff.
5. According to complainant, in spite of the decision by IGRC on 16.9.2009 again M.S.E.D.C.L. charged electricity bills as per LT-I tariff as per Dy.E.E. Flying Squad, Pune's letter. It is submitted in the letter that as per commercial Circular No.175 dated 5.9.2012 LT tariff is applicable to complainants premises with effect from June-2008.
6. Complainant explained in detail through Advocate notice dated 10.1.2013 and tried to convince that as per law & MERC order HT-VI tariff is applicable to complainant's premises.
7. Complainant moved IGRC for Redressal of grievance through complaint submitted before I.G.R.C. & IGRC dismissed the complaint on 8.8.2013 justifying the M.S.E.D.C.L.'s action for applying tariff LT-I.
8. Complainant contended that, IGRC failed to observe that it is a residential complex even proof of Registration was submitted by complainant.
9. Complainant prayed for the application of HT-VI ( R) tariff instead of LT I and amount recovered in excess be refunded.
10. M.S.E.D.C.L. filed written statement and resisted the claim of complainant. It is an admitted fact that complainant is consumer and the connection is since 27.12.1990. It is averred that as per agreement dated 14.12.90 between complainant & M.S.E.D.C.L. purpose for electricity supply was as 'domestic complex' and the tariff applicable was HT-VI.
11. Opponent contended that, present consumer is charged, as per rates applicable to HT tariff levied with effect from June-2008. As per tariff order dated 7.7.2008 HT VI residential would be applicable only to group housing societies.
12. Opponent further contended that as per MERC order dated 16.8.2012. HT-VI tariff will be applicable only for group Housing Societies and colonies of Industrial consumers and Educational Institution. It is averred that HT VI tariff is applicable to 'Group Hsg. Societies' and LT-1 tariff is applicable to Housing Societies.

13. Opponent stated that, persons who teach mediation of Osho stay in the premises for a certain period and they are not permanent residents in the said flats. There is no proof of residence like ration card identity card or any address proof of the residents.
14. Opponent contended that though the society is registered a housing society but the activities carried on at the said society are of spiritual nature.
15. It is further submitted the supplementary bill dt.26.8.2013 is properly issued as per consumption and tariff orders passed by MERC.
16. On pleadings of both sides following points arise for our determination.
  - i) Whether the M.S.E.D.C.L. is justified to issue supplementary bill w.e.f. June-2008.
  - ii) What order  
Our findings are
    - i) In the negative
    - ii) As per final order

**: REASONS :**

17. Heard both sides. Perused complaint, written statement, MERC Orders, Written notes of arguments filed by both sides & all documents produced on record by consumer & MSEDCL.
18. On the date of hearing, we thought that there exists element of a settlement which may be acceptable to the parties, we persuaded both sides for amicable settlement of dispute relating to supplementary bill. Both sides initially has taken a few to settle a dispute outside the court. However inspite of sufficient time, the parties failed to settle the dispute by compromise.
19. The Chairman of IGRC observed in order dated 8-8-2013 that it is necessary to ascertain whether the premises is utilize for spiritual activities which are service oriented. We felt it is necessary in the interest of justice to visit the said premises in order to ascertain the actual use of the electricity supply & purpose of the electricity supply. We also felt it necessary again to direct the parties to find out means for compromise as the issue was of financial implications & rights of the consumer. Both side

representatives were present when we visited the said place on 31.12.2013. We noticed that there are 46 tenements & 7 members of the said housing society. We noticed that the disciples of Osho & visitors who are involved in spiritual education as a teacher & student were staying in the said society. This time also both parties could not arrive at a settlement in respect of the electricity bills.

20. According to consumer MSEDCL is entitled to recover electricity bill as per the tariff applicable to HT-VI category. We have perused the MERC orders dtd. 17.8.2009 in Case No.116 of 2008 & noticed that HT-VI is applicable for consumers taking supply at HT voltages at single point for consumption within HT residential complexes, VIZ, group housing societies, colony's of Industrial consumers, educational institutions etc. In our visit it revealed that said society is not a group housing society & only the premises is used for temporary residence of persons involved in spiritual activities.
21. In fact the electricity bills during the period between 2008 to 2012 are charged as per the category LT-I applicable for Residential consumer. On perusal of the rates applicable on various categories the minimum charges or lowest rates are to LT-I category. It appears that though it is a housing society & the activities are carried out of spiritual nature the electricity bills are issued as per rates applicable to LT-I category, these rates are comparatively lower than other categories. In our view the bills issued as per LT-I category are reasonable just & proper. There is no violation of any order of MERC.
22. The MERC introduced revised tariff schedule HT Public Service (HT-IX) which is applicable to Educational Institutes, Hospitals, Dispensaries, Primary Health Care Centers, Spiritual Organizations which are service oriented etc.
23. MSEDCL issued Commercial Circular No.203 dtd.16.7.2013 & included the Spiritual Organization for the application of HT-IX. As per Commercial Circular No.203 a new tariff category called Public services has been made

applicable w.e.f. 1<sup>st</sup> Aug.2012. The said Circular is based on MERC tariff order dtd.16.8.12 in Case No.19 of 2012. In view of this we hold that MSEDCL is entitle to charge electricity bills from consumer as per the rates applicable to HT-IX w.e.f. 1<sup>st</sup> Aug.2012. We are of considered view that the Circular No.203 dtd.16.7.2013 is based on order of MERC.

24. The MSEDCL has issued the supplementary bill on 26.8.2013 and due date of payment is shown as 26.9.13. As per the supplementary bill it appears that the supplementary bill is from June-2008 to July-2013 for the difference of tariff from HT-VI to LT-I. The bills further indicate that the bill for subsequent period is for the difference of LT-I to HT-IX.
  
25. On careful consideration of submissions made by both sides and on perusal of all documents it appears that the consumer is liable to pay the electricity bills as per the rates applicable to LT-I category till July-2012 and as per the HT-IX category from 1.8.2012. As per the provisions of Electricity Act-2003 Section 56 (2) the said Section is reproduced below as under:  
“ Not withstanding 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”.
  
26. As per the law no sum due from any consumer under this Section shall be recoverable after the period of 2 years from the date ,when such sum becomes first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity. The consumer is liable to pay the electricity bill for a period of two years from the date of issue of supplementary bill dt.26.8.13. Therefore MSEDCL is entitled to recover the electricity bill for period between 26.8.11 and 26.8.13. The MSEDCL is under obligation to issue the revised bill from period w.e.f. 26.8.11 to 26.8.13.

27. M.S.E.D.C.L. raised supplementary bill on 26.8.2013 towards the tariff difference with retrospective effect from June-2008. The Hon'ble Electricity Ombudsman, in several cases held that recovery of past arrears is permitted for a maximum period of two years preceding the date of the supplementary bill. In the case No.27 of 2006 Mr. Awadesh S. Pande Vs.Tata power Co.Ltd. It was held by Hon'ble Electricity Ombudsman that :

“ Issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake cannot be approved to provide additional leverage to the distribution licensee against the consumer protection in the light of the provisions under Electricity Act, 2003. It should also be understood that Section 56(2) balances the interest of both the Distribution Licensee and the consumer. On one hand, it empowers the Distribution Licensee to disconnect supply of electricity in case of neglect to pay. On the other hand, the responsibility is cast upon the Distribution Licensee to claim and recover the arrears within two years from the date when such sum becomes first due. Two years is quite an adequate period available to the Distribution Licensee to raise the bill towards the arrears if remained unclaimed for any reason, which in this case, was due to manual error. In such a situation, it would be unreasonable to interpret the provision of Section 56(2) in a manner to give a blanket authorization to the Respondent without any time limit to claim the old arrears, if any. Moreover, upon issue of the bills in keeping with the provisions of the Section 56(2), the Distribution Licensee is free to recover the same by any remedy permissible under law including by way of suit as provided under Section 56(1) of the Electricity Act, 2003. This gives sufficient latitude to safeguard the interest of the Distribution Licensee. It is also an admitted position that the claim of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred.”

28. The Hon'ble Bombay High Court upheld the decision of Electricity Ombudsman in a writ petition L (2221) of 2006 in Mr.Awadesh S.Pande Vs.Tata Powers Co. Tata Powers Co.Ltd. on 5.10.2006. Hon'ble High

Court held that, only those charges for a period of two years previous to the demand could be recovered under the provision of Section 56 (2) of the Electricity Act. The M.S.E.D.C.L. is independently entitled to file a suit for recovery of amount as per law.

29. The law laid down by the Hon'ble Bombay High Court was also affirmed by Hon'ble High Court in cases of M.S.E.D.C.L. Vs. M/s.Green World Magnum Enterprises as well as in a case of M.S.E.D.C.L. Vs. Venco Breeding Farms Pvt. Ltd.(W.P.6783 of 2009) decided on 5.3.10.
30. It is evident on record that MSEDCL on 4.4.2009 has charged electricity bill to the premises of consumer on commercial basis. The present consumer challenged the said action before IGRC by submitting "X" form on 14.8.2009. The said complaint was heard on 11.09.2009 and Chairman IGRC decided the said complaint in favour of consumer. The IGRC observed that the use of electricity supply is not commercial and directed opponent to recover the charges as per residential purpose. The said order was implemented with immediate effect. There after all the bills were issued to consumer as per the residential purpose. The supplementary bill issued on 26.8.13 also includes the period of the operation of order of IGRC dtd.16.9.2009. We hold that the recovery of electricity bill during the operation of the said order is not just & proper.
31. MSEDCL is entitled to recover the electricity bill for a period of 2 years Prior to 26.8.13. The Act of the MSEDCL to issue supplementary bill resulted in causing undue hardship to consumer. Consumer is entitled to pay the revised supplementary bill by equitable installments, as the consumer is subjected to harassment due to failure of official of opponent to take proper steps within a reasonable time. Consumer is entitled to pay said bill without levy of interest or DPC.
32. Considering the public money involved and rights of consumer we proceed to pass the following order:

## ORDER

1. The supplementary bill issued by MSEDCL is set aside.
2. MSEDCL is directed to issue revised supplementary bill covering the period between 26.8.11 and 26.8.13 as per the rates applicable to LT-1 category for period between 26.8.11 to 31.7.12 and as per the rates applicable HT-IX category for period between 1.8.12 to 26.8.13 within period of 30 days.
3. The consumer is permitted to pay the supplementary bill in 24 monthly equal installments. The first installment shall be payable one month after receipt of supplementary revised bill.
4. These installments shall be paid without levy of interest or DPC as per guideline no.2 of Circular dtd.18.7.2009 issued by (Director Operation).
5. No order as to cost.

N.S.Prasad,  
Member/Secretary

Suryakant Pathak  
Member

S.D.Madake  
Chair Person

Date:- 29/03/2014