

.(A Govt. of Maharashtra Undertaking)
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Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg, Bhandup (W),
Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 81/594 Date: 10.08.2018

Hearing Date: 26/6/2018

CASE NO.81/2018

In the case of Proper tariff and retrospective recovery

Dr.Nayan Chamklal Shah

A-442, Road No,28

Wagle Estate Thane (W)-4000604

Consumer No 000010210291..... **(Hereinafter referred as Consumer)**

Versus Maharashtra State Electricity Distribution Company Limited

Through its Nodal Officer

Thane Circle, Thane**(Hereinafter referred as Respondent)**

Appearance

For Consumer –G.S Iyer Consumer Representative

For Licensee – Shri.Delip Mehtre Executive Engineer Thane

Circle, Thane, Shri.D.M Jadhav

[Coram- Dr. Santoshkumar Jaiswal- Chairperson, Shri. R.S.Avhad -Member Secretary and Sharmila Ranade - Member (CPO)].

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Here in after referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.'
2. The Applicant consumer has filed the grievance on dtd. 26/02/2018 before IGRC, Vashi Circle against the retrospective recovery. However, the IGRC not entertained the grievance within stipulated period, hence, consumer filed application for interim order against threat of disconnection from Distribution Licensee to this Forum under regulation 8.3 .
3. The consumer has filed this representation stating as under:-
 - i. Shri.Narayan Chamklal Saha is director /proprietor of unit Paramount Health services (TPA) Ltd and having register as IT/ITES service Enterprises industry which nature of activity

includes Data processing Center, Data Mining, Call center and paying current bill regularly but supply was disconnected on date 05/03/2018 even matter is pending before IGRG and reconnected in last night on same day.

- ii. The supplementary bill of Rs 7720419/- was accordingly issued towards Industrial to commercial tariff difference for the period June 2015 to Nov 2017. The retrospective recovery raised as debit bill adjustment in bill of Month Jan 2017.
- iii. Certificate was issued by the District Industries center being the competent authority. The year of commencement of Information Technology / Information Technology enabled services (IT/ITES) activities was shown in the certificate as 2013.
- iv. our establishment has been functioning throughout as IT/ITES from 2013 and also during the disputed subject period of recovery and it is also today in the same business IT/ITES and protest this arbitrary & illegal retrospective recovery claim raised under commercial tariff and it set to be aside

4. The Respondent MSEDCL has filed reply by letter dated 20March 2018 and also again reply on 17 April 2018 stating that initially submitted reply withdrawn .The reply dated 17 April 2018 stating as under:-

- i. Shri. Nayan Champaklal shah is our HT consumer bearing consumer number 000019040670 under Wagale Estate sub-Divison .The date of connection is dtd 11.10.2013.

- ii. As per tariff order in case no 121 of 2014 effective from dtd 01.06.2015, the HT-II (commercial Tariff)is applicable in case the IT/ITES unit does not receive Permanent Registration certificate from competent Government Authority ,After submission of Permanent Registration Certificate by consumer to MSEDCL office ,the HT-I category is applicable till the validity of the certificate .
- iii. Accordingly notice issued to consumer to submit copy of Permanent Registration Certificate for IT/ITES purpose issued by MIDC. The consumer submitted IT registration certificate on dtd 19.12.2017 which is valid up to 19.12.2020.
- iv. The consumer not submitted any Registration certificate for the period of Oct -2015 to Oct 2017.Hence in accordance with MERC tariff order the plan recovery for tariff difference between industrial to commercial is worked out and supplementary bill of 18 months of amounting Rs 77,20,419/- issued to consumer.
- v. The IT tariff is concessional Tariff and applicable to registered IT/ITES units having permanent Registration certificate.
- vi. There are various orders and judgments issued by Hon'ble Highcourt ,APPTTEL MERC and ombudsman dealing with present subject,in some order s,it is mentioned that the restropective recovery for tariff difference not permissible. However ,it is settled principal of law that the "Act" always prevails on the Judgment .there are different Judgments on

the issue of retrospective recovery . In the case of Rototex Polyster V/s Administrator, it is held that there is no limitation on plan recovery; In some cases the limitation prescribed upto 24 months

vii. In one case, the APTEL held that, retrospective recovery of tariff difference is not permissible in the case of abrupt classification .However as per constitution; the law declared by Supreme Court is only biding .The 24 month's recovery of as per section 56(2) of electricity Act 2003.

viii. As per section 56(2) of Electricity act 2003 the distribution licensee is entitled for plan recovery for 24 months Period .The issue regarding recovery period above 24 months period is pending with Hon'ble Bombay High court –Larger Bench-However, there is no any stay order from Hon'ble High court for recovery up to 24 months. Pray that the grievance filed by consumer is baseless and meritless the same may kindly be dismissed

5. During the hearing , the consumer pointed out that no spot verification report from Respondent and the industrial to commercial tariff retrospective recovery raised as debit bill adjustment in the bill for January 2018 of Rs 77,20,418. The retrospective recovery of tariff difference calculated for the period June 2015 to Nov 2017.The MESDCL authorities /representative visited the company every month to take reading. Commercial circular (Commercially MSEDCL clearly states by the way guidelines for IT/ITES the file offices shall verify the premises of IT/ITES consumer and after confirmation of actual IT/ITES activity in the premises of consumer and submission of LOI/Registration certificate by consumer for IT/ITES purpose issued competent

.Government authority for Individual IT/ITES unit, thereafter the field officers shall apply industrial tariff to such IT/ITES units. The Respondent has neither claimed nor produces any evidence to show that the consumer was not indulging in IT/ITES activity. The consumer also submits that certificate from Technical advisor, MIDC shows IT/ITES carried out during period 2014 to 2017. The consumer also quote that The appellate Tribunal for Electricity (APTEL) in appeal no 131 of 2013 in the matter of *M/s Vinney Enterprises Versus Kerala State Electricity Regulatory commission* has also rejected retrospective recovery of the Distribution Company(KSEB), In the said case ,the APTEL has held that the arrears for difference in tariff could be recovered from the date of detection of the error only also the electricity Ombudsman (Mumbai in case no 124,125,126 &94 dated 23 Dec 2014 & 25th January has rejected retrospective recovery of the distribution company MSEDCL and directed to refund amount by adjusting in the bill. The CGRF Nashik also passed order that retrospective recovery on the account of tariff difference for the past period be set aside in case no 82,85 and121 of 2015.

6. He further pointed out that in Writ petition no 6545 of 2015, 6552 dt 2015 and 6553 of 2015 filed by MSEDCL in Hon'ble High court of Judicature at Bombay against the order passed by Hon'ble Electricity Ombudsman in the representation no 124, 125 & 126 of 2014. The Hon'ble High court given the ruling dated 15th July 2015 that” The status-quo in respect of the recovery is directed to be maintained the learned Counsel for the Respondent No 1 submits that The Respondent no should not be shown as being in arrears of the amount claimed by the petitioner .Upon this the learned Counsel for the petitioner assures the court that respondent no 1 would not be shown in arrears in terms of the impugned order.

7. He further submit that the issue of the escaped bill recovery claim is yet to be decided by the larger bench of the Hon'ble High court in the various writ petitions clubbed together before it as the court is still to decide on the interpretation of allowing any such retrospective tariff recovery claim of Respondent in the name of escaped bill at this stage .applicability of section 56(2) of the IE act 2003 in such cases of tariff applicability and recovery of section 56(2) and also nowhere in the circular/tariff order commercial circular no243 (PR)-3/Tariff/27642 date 03/07/2015 stated that retrospective recovery should be done . The consumer therefore stated that the supplementary bill is illegal, arbitrary and bad in laws.

8. The Respondent MSEDCL other hand pointed the supplementary bill has been issued on the basis that consumer did not produce any permanent registration certificate from competent authority under IT/ITES and therefore recovery was workout and hence HT-II commercial tariff applicable .The supplementary was bill issued for the period from June 2015 to Nov 2017 for tariff difference Industrial to commercial. The consumer subsequently applied to MIDC and obtained IT Registration certificate on dated 19.12.2017, which is valid up to three years from dated 19.12.2017. The Respondent further submitted that Bombay High court order/judgments in W.P no 10764 of 2011 and 24/01/2012W.P no 2894 of 2007 ,W.P no 6783 of 2009 dtd 5/3/2010, In case Awadesh Pandey Vs Tata power, Rototex Polyester Vs Department and Hon'ble Ombudsman in representation 119 of 2011 the retrospective recovery for tariff difference for the 24 months maintainable as per the provision of section 56(2) of Electricity Act 2003., He submitted that the plain tariff difference recovery for 24 Months period is legal and proper and prayed that the grievance filed by consumer is baseless and merit less.

9. We heard both parties at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the both sides. On its basis following aspects were disclosed.

There is retrospective recovery shown in the consumer bill as against the wrong application of tariff. The supply was given in Jan October 2013 HT-1A. It is not in dispute that superintending Engineer of Licensee vide letter dated 22/12/2017 informed to consumer to submit the original IT/ITES certificate for the period June 2015 to Nov2017 and pay the supplementary energy bills of difference of tariff i.e Industrial to commercial for above amounting Rs 77,20,419.00 within 15 days otherwise this amount will be added in energy bills. It is observed that when initial establishment was admittedly doing the activity cover IT/ITES certificate mention IT-ITES.Data processing Center, Data Entry operations, Data mining, Data Storage Call Center services and to support his contention the consumer filed authenticating proper certificate issued by General Manager , District Industries Center .The consumer also produced registration certificate for Data processing or data mining and call center certificate dated 19/12/2017 and also letter addressing to Superintending engineer ,Thane that Dr. Nayan Saha unit was functioning as IT unit during the period 2014 to 2017 from technical advisor MIDC Mumbai. From the above facts it is clear that activity in the premises of above consumer is IT related. It was observed and pointed out by member secretary that consumer was not having valid permanent IT/ITES certificate as mandated as per Hon'ble MERC's Tariff dated 26/06/2015 in Case No. 121 of Where such establishment does not hold the relevant permanent registration certificate, the Tariff shall be as per LT-II Category, and the LT V category shall be applicable to it after receipt of such permanent registration certificate and till it is valid for said period. As such since the date of inspection the Respondent was

entitled to charge consumer under commercial tariff for want of permanent registration certificate from competent authority. Consumer has produced the required certificate from MIDC which is dated 19.12.2017. The Respondent was therefore within its right to charge the consumer under commercial tariff from date of inspection or date of raising supplementary bill till the date of valid registration certificate. The main issue is about retrospective recovery prior to the date of inspection Dec 2017. There are several judgments of APTEL and Ombudsman on this issue no retrospective recovery in such case can be allowed. Therefore retrospective recovery for disputed period absolutely illegal and not maintainable and therefore I found there is substance in the contention consumer raising the dispute. Hence, I proceed to pass following order.

ORDER

1. The consumer complaint 81/2018 allowed
2. The Supplementary bill for period June 2015 to Nov 2017 is stand quash and set aside.

No order as to the cost

I Agree/Disagree

I Agree/Disagree

**MRS. SHARMILA RANADE,
MEMBER
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.
“ Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051”
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon’ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or
- c) Delay in compliance of this decision issued under” Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05”
- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.