

(A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum

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REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/689 Date: 26.11.2018

Hearing Date: 05.06.2018

CASE NO. 88 / 2018

In the matter of Retrospective Recovery regarding IT/ITES Consumer

Shri. Rohit Shantilal Shah,
2 nd and 3rd Floor, Kerom IT Park,
Plot no. A-112,
Road No. no.21, Wagle Estate,
MIDC, Thane (W)-400604.

(Consumer no. 000011675450 and 000011675441 under Kisan Nagar Sub-Division.)

..... (Hereinafter referred as Applicant)

Vs

Maharashtra state Electricity Distribution Company Ltd

Through it's Nodal Officer,

Thane Circle,Thane

..... (Hereinafter referred as Respondent)

For Consumer – Shri. Omkar Dev – Consumer Representative

For Licensee - Mrs. Gauri Brahmane, Additional E.E. Kisan Nagar.

[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. The consumer has filed this representation stating as under:-

The applicant has filed this representation stating as under

2. The Applicant is LT- IT consumer under Kisan Nagar under Thane 1 Division. The Applicant having two electricity connections bearing Consumer no. 000011675450 and 000011675441. The Applicant obtained sub-letting permission from MIDC and handed over entire third floor to M/S Delcure Life Science Ltd for IT Purpose on rental basis. The IT Purpose is specifically mentioned in the sub-letting permission.
3. The Respondent issued the supplementary bill for retrospective recovery amounting Rs. 17,28,180/- and 13,79,230/- on dtd. 04/01/2018 for non submission of IT Certificate. However, Kerom IT Park is registered IT Park and having registration certificate for entire IT Park. The MSEDCL not considered said IT certificate and proposed the recovery from Dec-15 to Nov-17. The MSEDCL also changed our tariff from Industrial to Commercial from Dec-2017.

4. The Respondent thereafter issued the disconnection notice on 23.02.2018 M/S Delcure Life Science Ltd also obtained the IT Registration Certificate from MIDC on dtd. 20/03/2018.
5. The applicant submitted that M/S Delcure is engaged in IT Business and having all registration certificates. The Udyog Aadhar Certificate for IT purpose issued by MSME Department. As per above certificate, the date of commencement of IT Activities is dtd. 01/04/2015.
6. The GR of Maharashtra Govt. dtd. 17/02/2017 is submitted by applicant, The relevant para no. 4 of said GR is as below:- ***"After the unit goes into production / commences activity, and obtains registration and submits it to the power distribution company, the power supplied shall be charged at industrial tariff from the date of commencement of production / activity".*** As per above mentioned provision, the electricity tariff shall be charged as per Industrial Rates from the date of commencement of IT Activities. The date of commencement of our IT Activities is dtd. 01/04/2015. The copy of UAN Registration Certificate is self explanatory. The date of commencement of IT Activities in UAN is 01/04/2015. Hence, the industrial tariff is applicable from the date of commencement of IT Activities as per GR passed by Maharashtra Govt.
7. The applicant has also stated that retrospective recovery is not permissible as per the order of commission in case No. 24 of 2001 and the order of APTEL in appeal no 131 of 2013 as well as the orders passed by the Electricity Ombudsman in case no 116 of 2016 dtd. 26/12/2016 ,order in case no. 91 of 2015 dtd.11/01/2016 and Order in case no. 126 of 2014 dtd. 23/12/2014.
8. **"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 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 senses of the term to be recovered retrospectively.

9. The applicant also submit the Respondent not challenged the MERC Orders before APTEL Delhi, orders dated 11th February, 2003 in Case No. 24 of 2001 and order in Case No. 48 of 2015 vide order dtd.06/12/2016. Hence, the MERC Orders are binding on Respondent as the same are not challenged by Respondent before APTEL-DELHI.
10. As per Commercial circular No. **212** for IT/ITES Units, **in Para no.(1) i)** of said circular it is specifically mentioned that the commercial tariff should be applied to consumer **till the date of actual commencement of IT/ITES Activities.** In present case, applicant using the supply for IT/ITES Activities from the date of connection and applicant never used the supply for Commercial Purpose at any time. Applicant's Unit is IT Industry and there is no any scope for running of commercial activity. Hence, only industrial tariff is applicable as the applicant is using the supply for IT/ITES Activities from the date of Commencement.
11. The applicant has, therefore, prayed to direct the Respondent to withdraw the supplementary bill of Rs. 17,28,180/- and 13,79,230/- towards tariff difference for the period of Dec-2015 to Dec-2017. and direct Respondent to convert our tariff as Industrial w.e.f. Dec-2017

The Notice issued to The Respondent through his nodal officer IGRC cum Executive Engineer. The Respondent has filed reply stating as under,

12. The applicants personally inform all the facts and told to submit the permanent registration certificate of above consumer's premises on dated 29/09/2016. In the verification it was found that the supply of entire second floor is used by M/s. Sarom Fab Pvt. Ltd. and they neither possessed individual IT certificate

for their own unit and for 2nd floor unit. Directions were once again given to consumer to submit Permanently Registration Certificate under IT/ITES unit for their individual unit named M/s. Sarom Fab. Pvt and for the unit on 3rd floor. Even after that, consumer did not submitted the certificate of both the units (consumer numbers: 000011675441 and 000011675441) to this office Again the site verification on same premise was done by the Respondent on 04.12.2017 and requested to submit the Permanent Registration Certificate for all the units in their IT Park. The Respondent was again requested to the consumer vide letter no AEE/Kisan/2017-18/T-4/1039(Consumer No.-000011675450)) and AEE/Kisan/2017-18/T-4/1042 (Consumer No.-000011675441)dated 05.12.2017 to submit Permanent registration certificate

13.The Respondent has submitted that as per Hon'ble MERC's Tariff dated 26/06/2015 in Case No. 121 of 2015(refer page no. 331, Attached as Annexure-'B'), "This Tariff shall also be applicable for use of electricity / power supply by an establishment covered under the Information Technology (IT) and IT Enabled Services (ITES) as defined in the Government of Maharashtra Policy prevailing from time to time." "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." On the basis of Tariff Order dated 26/06/2015, and requested the consumer bearing consumer no.000011675441/0 and 000011675450/0 to submit the Permanent Registration certificate regarding IT units vide letter no Addl.EE/KN/2016-17/T-18/701(Consumer No.-000011675441) and Addl.EE/KN/2016-17/T-18/703(Consumer No.-000011675450) dated 19.07.2016.

14.The Respondent also stated that as per Indian Electricity Act 2003 section 56(2) and as per various orders issued by Hon'ble Bombay High Court Double bench (WP No. 7015 of 2008, dated 20/08/2009 in case of M/s Rototex Polyester: there is no any limitation in case of plain tariff difference recovery),

APTEL(Appeal no. 131/2013, dated 7/08/2014: it had held that arrears for difference I tariff could be recovered from the date of detection of the error), Ombudsman (representation no. 124, 125 and 126 dated 23/12/2014: “Any reclassification must follow a definite process of natural justice and the recovery), CGRF (case no. 63/2018, dated 13/3/2018:commercial tariff to be levied from the date of detection of error/inspection till the date of submission of the certificate) and MERC (Case no. 24/2001, dated 11/02/2003): Orders, the undersigned had rightfully levied the recovery of two years which also includes the period on which the undersigned had first requested to submit the registration certificate after giving sufficient time and natural justice to the consumer (i.e from December-15).

15.The issue of interpretation of provision of Section 56 (2) of the Act is pending for decision on a reference made to the larger bench of the High Court. It would, therefore, be in the interest of justice not to consider the claim of the Appellant/Consumer at this stage.

16.As per IT/ITES policy -2015 of Govt. of Maharashtra, has already mentioned that, “Power consumed will be charged at industrial rate for the common facilities in the IT Park (such as lobbies, central air conditioning. Lifts, escalators, effluents treatment plant, wash rooms etc.) Which are used by the units, excluding support service areas, after the registration is granted to the IT Park by the Directorate of Industries and Development Commissioner of the SEZ for and IT SEZ. A separate meter will have to be provided by the developer to the individual IT/ITES units in the IT Parks for leased or purchased premise.” Again in POWER TARIFF SUBSIDY it is also specified that,“ New IT/ITES units located in areas other than A and B areas classified as per the Package Scheme of incentives and established in registered IT Park be eligible to get power tariff subsidy for 3 years @ Rs. 1/- per unit consumer from the date of registration of the IT units with the Directorate of Industries after commencement of IT/ITES activity or equal to the investment

- made in IT Hardware on the date of registration of the unit with Directorate Industries, whichever lower.”
17. Directorate of Industries vide its letter no. DIC/IT/2015/90, 05/01/2015, dated had clearly specified that each and every unit in an IT park has to get separate registration certificate for their unit.
18. The applicant has stated that, Consumer intently did not submit the registration certificate for both the units which are registered on his name even after repetitive follow up from this office was trying to take the undue benefit every time by submitting Registration certificate (issued for whole IT park) to all his separate units in the IT Park to remain categorized as per Industrial tariff. Therefore, prayed to disallow application of applicant as supplementary bill is legal and valid.
19. Heard both parties, I have gone through the contented of the grievances application and also gone through the point wise reply submitted by the Respondent. It appears admittedly that there is case of retrospective recovery case. The dispute arises when retrospective recovery supplementary bill issued to applicant and the disconnection notice serve. It is not disputed that the said amount was towards tariff difference for the period Dec-2015 to Dec-2017 on consumer number 000011675450 and 000011675441. The supplementary bill issued on date 04/01/2018 for non submission of IT Certificate. The Respondent relied on provision of section 56(2) of the Electricity Act 2003, which reproduce as below ***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 such sum become 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.*** and Judgement of Hon'ble High court of Bombay in the *matter Rototex Polyester V/s*

Administration Dadra Nagar Haveli and claimed the recovery of tariff difference. The Judgment of Hon'ble Bombay High Court (WP No. 7015 of 2008, dated 20/08/2009) in case of M/s Rototex Polyester submitted by Respondent is relating to recovery in MF case and not tariff difference case. The said judgment is not applicable in present case.

20. There is also conflict of Judgements of two division benches of Hon'ble High court of Bombay in the matter **Rototex Polyester V/s Administration Dadra Nagar Haveli** and **Awadesh Pandey Vs Tata power Co. Ltd** regarding interpretation of 56(2) of the electricity Act 2003. The matter is pending before larger bench of High court.

21. Similarly, in the order dated 11th February 2003 in case no 24 of 2001, the commission has held that no retrospective recovery of arrears can be allowed on the basis of abrupt reclassification of consumer even though the same might have been pointed out by the Auditor, Similarly, the APTEL in its order dated 7th August 2014 in appeal No 131 of 2013 has held that arrears for the difference in the tariff could be recovered from the date of detection error. In the order dated 11th February, 2003 in Case No. 24 of 2001, the MERC with regard to retrospective recovery has held as under:-

“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 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 senses of the term to be recovered retrospectively.”

22. The electricity Ombudsman Mumbai in case no 124,125,126 &94 dated 23 Dec 2014 & 25th January has rejected retrospective recovery of the

MSEDCL and directed to refund amount by adjusting in the bill. The issue involved in present case, as aforesaid, is squarely covered by the order of the Commission as well as of the APTEL and it will not be governed by the provision of Section 56 (2) of the Act or the judgment in the matter of *M/s Rototex Polyester V/s Administration Dadra Nagar Haveli* . In above said Judgments shows that the Respondent can only recover the charges prospectively from the date of detection of error Hence, I proceed to pass following order

ORDER

1. The consumer complaint 88 / 2018 allowed
2. The Supplementary bills dtd. 04/01/2018 for retrospective recovery issued to 000011675450 and 000011675441 for period June 2015 to Nov 2017 is hereby quashed and set aside.
3. The Respondent shall charge commercial tariff prospectively from the date of inspection till the date of IT Permanent Registration certificate submitted by applicant and for other period respondent shall apply industrial tariff.
4. No order as to the cost.

The respondent shall submit its compliance within 30 days from the date receipt of this order.

I Agree/Disagree

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

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

I Ravindra S . Avhad , Member secretary as member of Forum disagree with opinion of other members point wise clarification for that as given below

M/s. Rohit Shantilal Shah , Kerrom IT Park,III Rd Floor No A/12,Road No 16 (Consumer No 00011675450) and 2nd floor (Consumer no 000011675450) Rd Floor No A/12,Road No 16 is LT consumer under Kisan Nagar Subdivision billing unit no. 540 Respondent Utility representative Additional Executive Engineer kisan Nagar visited above premises and requested to applicant to produce Permanent Registration certificate

After constant follow up by the Respondent the applicant had not submitted permanent Registration certificate as per MERC Tariff order dated 26th June 2015 in case no 121 of 2014 Page no.331 and MSEDCL Commercial circular No 243-Revision in Electricity Tariff & Implementation Thereof Dated 03.07.2015 the industrial Tariff is applicable to IT/ITES units defined in the applicable IT/ITES policy of Government of Maharashtra where such units as does not hold the relevant IT Permanent Registration Certificate ,The tariff shall be as per the LT-II category and the LT-V(B) tariff shall apply to it after receipt of such IT permanent Registration Certificate and till it is valid. The Respondent on dated 04/01/2018 issued the supplementary bill to applicant for consumer 000011675450 and 000011675441 for period June 2015 to Nov 2017.

Respondent utility was informed applicant consumer/Applicant to produce valid permanent Registration certificate for IT/ITES time to time and also informed regarding Change of Tariff applicable from existing LT Industrial to LT commercial & recovery of Tariff difference for period June 2015 to Nov 2017 .Applicant M/s not produce Valid IT/ITES Permanent Registration certificate for above said period So in my view as per provisions in circular no 243 referred above and MERC Tariff order dated 26th June 2015 in case no 121 of 2014 Page no.331 supplementary bill (From LT

Industrial to LT commercial) for period June 2015 to Nov 2017 is legal ,proper and valid .

**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) 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.

