

.(A Govt. of Maharashtra Undertaking)
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PHONE NO. : 25664314/25664316
FAX NO. 26470953
Email: cgrfbhandupz@gmail.com
Website: www.mahadiscom.in

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

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/

Date:

Hearing Date: 27/11/2018

CASE NO.188/2018

In the matter of refund of tariff difference amount with interest

M/s Allana Investing & Trading Co. Pvt Ltd..... (Hereinafter referred as Applicant)
Plot No M-41/42
MIDC INDUSTRIAL AREA ,TALOJA
DIST –RAIGAD (MAHARASHTRA),INDIA

Vs

Maharashtra state Electricity Distribution Company Ltd
Through its Nodal Officer,
Vashi Circle,Vashi (Hereinafter referred as Respondent)

Appearance

For Consumer :- A. N. Patil

Representative for Respondent :- D. B. Pawar Executive Engineer Vashi Circle

[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 present consumer had filed grievance before IGRC, Vashi Circle but the IGRC did not decide the said grievance within stipulated period of two months, therefore the consumer filed grievance before this forum on 08.10.1.2018.

3. The case of the applicant is as below

The applicant M/s Allana Investment Trading Co. Pvt Ltd is HT consumer at 22KV level bearing consumer no 028619021217 at plot No M-41 , MIDC Taloja Navi Mumbai with contract Demand 2956KVA and connected load 4655KW and date of connection as 10.01.1997 under HT-C tariff Category.

4. The applicant had applied for change billing category from continuous to non continuous by giving consent for changing billing category on 3rd august 2011 to the Superintending Engineer Vashi circle ,MSEDCL but not changed as per regulation 9.2 of 2005 SOP

“Any change of name or change of tariff category shall be effected by the distribution Licensee before the expiry of the second billing cycle after the date of receipt of application”

5. The applicant submitted letter 8/10/2011, 27/01/2012, 06/3/2012,19/07/2012, 03/10/2012, 15/01/2013, 08/04/2013, 08/08/2013 for change of tariff category from express feeder to non express Feeder.
6. The applicant further submit that in the list of consumer ,whose applications were pending for change of category from continuous to non continuous given in MEDCL letter PR-3/Tariff/no 16720 dated 10 July 2017, the name of their connection not included.
7. The Hon'ble Maharashtra Electricity Regulatory Commission issued order in case no 94 of 2015 on date 19/08/2016 regarding change of category from continuous to non-continuous. The amount of tariff difference refund from September 2011 to October 2016 has been neither refunded nor credited in our bill whereas for some other industries as per letter PR-3/Tariff/no 16720 dated 10 July 2017 refund is credited in their bills in October 2017.The Respondent has not followed the guidelines given by Chief Engineer commercial in letter No PR-3/Tariff/no 16720 dated 10 July 2017 and No PR-3/Tariff/no 16403 dated 5 July 2017.
8. The Respondent has not taken action for refund of tariff difference between continuous & non continuous from September 2011 to October 2016 and action of refunding is over delayed. Hence, the Respondent liable to provide interest on tariff difference The applicant prayed for refund of tariff difference continuous to non-continuous for period September 2011 to October 2016 with interest.

9. The notice issued to the Respondent to appear before forum. The Respondent MSEDCL has filed reply dated 27/11/2018. The Respondent Stated as M/s Allana Investment & Trading Co. Pvt. Ltd is HT consumer at 22 KV level bearing consumer no. 028619021217 at Plot No. Plot No. M-42, MIDC Taloja Navi Mumbai, Navi Mumbai with Contract Demand 2950 KVA and Connected Load 4655 KW and date of connection as 10.01.1997 under HT-I C tariff category.
- 10.M/s Allana Investment & Trading Co. Pvt. Ltd letter dtd. 08-10-2011, 27-01-2012, 06-03-2012, 19-07-2012, 03-10-2012, 15-01-2013, 18-04-2013, 08-08-2013, requested for change of tariff category from express feeder to non-express feeder. Further the consumer stated that their name was there in the list of consumers, whose applications were pending for change of category from continuous to non-continuous, given in MSEDCL letter PR-3/Tariff/No. 16720 Dtd. 10.07.2017 Consumer stated that MSEDCL is liable to provide interest on respective monthly tariff difference amounts since September 2011 to October 2016 till month of actual credit /payment. Further consumer has given citation of Hon'ble commissions case No.44 of 2017 for payment of interest applicable for the delay in paying the amount to petitioner in giving connection by MSEDCL to petitioner.
- 11.It is most respectfully submitted that the consumer has not followed the procedure by filing the grievance within 02 yrs from the date on which the cause of action has arisen. As per Regulation 6.6 of MERC (CGRF & Ombudsman) Regulation 2006, the forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Further in the commercial circular 246 it is also stated that Superintendent Engineer is the competent authority to permit consumer to switchover from continuous tariff to HT non-continuous tariff. The circle office shall be competent only to permit prospective implementation & shall

ensure that no retrospective effect is given to any consumer without prior approval of Head office .So, as per this circular competent authority of circle is not empowered to give retrospective effect.

12.Commercial circular 246 also states that the consumer connected on express feeder having continuous supply if demands non-continuous option, shall submit an undertaking on Rs. 200 stamp paper from consumer thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope the situation of Load Shedding/staggering day if the situation arise. In case consumer defaults in his undertaking he will be treated as HT continuous consumer & will be billed accordingly w.e.f such change has been implemented. So, now question arises whether such undertaking was given by the consumer when he has submitted application for changing tariff from continuous to non-continuous and after receipt of application whether he was disconnected from express feeder and only feeding was done by non-express feeder.

13.C.E(Commercial) vide letter 16403 Dtd. 5-07-2017 directed S.E O&M Circle to withdrawal/disposed off the legal cases pending before court/forum in the matter of tariff change from continuous to non-continuous. Further C.E(Commercial) vide letter 16720 Dtd. 10.07.2018 informed that list of pending /approved applications mentioning date of application received at corporate office is uploaded on RAPDRP Portal for change of category from continuous to non-continuous. This office vides Ltr. No. SE/VC/T/HT/2018-19/007155 Dtd. 26.10.2018 has forwarded the matter Of M/s Allana Investment & Trading Co. Pvt. Ltd. to C.E (Commercial) for guidelines and necessary action.

14. The Respondent prayed that it is to bring out those commercial circular 246 states that Superintendent Engineer is the competent authority to permit consumer to switchover from continuous tariff to HT non-continuous the circle office shall be competent only to permit prospective implementation & shall ensure that no retrospective effect is given to any consumer without prior approval of Head office. All calculation will be done by HO(IT) systems only Further C.E(Commercial) vide letter 16720 Dtd. 10.07.2018 informed that list of pending /approved applications mentioning date of application received at corporate office is uploaded on RAPDRP Portal for change of category from continuous to non-continuous . Thereafter, the consumer whether the consumer enquired in the office of C.E (Commercial) to know the reasons for pendency of their case at that time is also not clear. After August 2013, consumer has not approached with his grievances to any office of MSEDCL and now in the month of August 2018 filed an application before IGRC and Oct.2018 before CGRF for refund of tariff difference between continuous and non-continuous from September 2011 to October 2016. Therefore this office has forwarded the matter to Chief Engineer (Commercial) for guidelines and necessary action to be taken and reply in this regard is awaited. After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration to which I have recorded points with reason given below

- 1] Whether the applicant proved that demand of refund of tariff difference continuous to non continuous with interest legal, valid and proper? YES
- 2] Whether consumer complaint is tenable? YES
- 3] What order?

Reasons

15. I have given opportunity to the consumer and his representative who appears before this Forum and also gave the opportunity the Respondent representative to submit their say. Admittedly, there are some issue on which both parties agreed that M/s Allana Investment Trading Co. Pvt Ltd is HT consumer at 22KV level bearing consumer no 028619021217 at plot No M-41, MIDC Taloja Navi Mumbai with contract Demand 2956KVA and connected load 4655KW and date of connection as 10.01.1997 under HT-C tariff Category. Also, the applicant has submitted application dated 08/10/2011, 27/01/2012, 06/3/2012, 19/07/2012, 03/10/2012, 15/01/2013, 08/04/2013, 08/08/2013 to the Respondent requested for change of tariff category from express feeder to non express Feeder.
16. The Maharashtra State Electricity Commission had determined the tariff for supply of electricity by MSEDCL through its Order dated 16 August, 2012, in Case No. 19 of 2012, which came into effect from 1 August, 2012. High Tension consumer divided into Continuous (HT-I-C) and non continuous (HT-I-N). And this is not disputed by the Respondent. As per tariff schedule in tariff order HT-I high Tension (industrial) divides in sub category Continuous, Non Continuous and seasonal. Under HT category note has given that d) Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT Continuous Industry and given continuous supply, while all other HT industrial consumers will be deemed as HT Non-Continuous Industry. If it's assumed that feeder is express feeder then after consumer request/Demand for non continuous tariff to should have to be considered.

17.I gone through the documents submitted by the applicant that he has submitted application for change of tariff from continuous to non continuous on date 8/10/2011,27/01/2012.06/3/2012,19/07/2012.03/10/2012,15/01/2013,08,042013,08.08.2013 which not disputed by the Respondent . It is observed that The Respondent never gave reply to the applicant application.

18.In case no 44 of 2008 order date 12 September 2008 Commission's Ruling and Clarification as below

The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-I continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non –continuous type of supply, and there is no justification for removing the clause “demanding continuous supply” from the definition of HT-I continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of this Order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued.

19.The Hon'ble Maharashtra State Electricity Commission order, it is clarified change of category option only binding to High Tension consumer on express Feeder. As per MERC tariff order dated 16.08.2012 clearly noted under HT-I category as below

Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT Continuous Industry and given continuous supply, while all other HT industrial consumers will be deemed as HT Non-Continuous Industry.

20. Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 Clause 2(1) in the definition of express feeder is given (m) "Express Feeder" is a feeder emanating from the Licensees substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF) ; (l) "Dedicated distribution facilities" means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises

21. As per MSEDCL commercial circular no 124 dated 14.10.2010, point no 5 new sub-categories for Express and Non-express feeders under HT II Commercial Category: The Commission has created two sub-categories for Express and Non-express feeders under HT II Commercial, the revised consumer categorization under HT II Commercial, will be as under: HT II Commercial (A) Express Feeders (i) Educational Institutions and Hospitals (ii) Others (B) Non-Express Feeders (i) Educational Institutions and Hospitals (ii) Others As per directives given by Hon. Commission, HT II Commercial consumers connected on express feeder will be given continuous supply without any load shedding and will be charged as per HT II Commercial (Express Feeder) tariff w.e.f. 01/09/2010. In case any HT II Commercial (on express feeder) consumer communicates in writing that he does not want continuous supply, then load shedding should be undertaken in accordance

with the prevalent load shedding protocol for such consumer and levy the tariff applicable for non-express feeder under HT II commercial category, for such time, as the non-continuous supply is continued. Individual correspondence with all existing HT II Commercial (Express Feeder) and HT II Commercial (Non-Express Feeder) may be undertaken at Circle level to cover the above aspect for change from Express to Non-Express & vice versa. Load shedding protocol should be quarterly monitored by Superintending Engineer and such report to be submitted to the Chief Engineer (O & M) for scrutiny. The proper categorization of HT II consumers under HT II - A (Express Feeder) and HT II - B (Non-Express Feeder) should be carried out carefully to avoid revenue loss and Load Shedding Protocol be strictly implemented for all non-express category feeder

22. The Commission, in its order dated 19th August, 2016 in Review Petition No. 94 of 2015 has held as under:-

- a. *“26.9 From the above judgements, it is clear that the SOP Regulations being in the nature of subordinate legislation, an Order issued in contravention of these Regulations is not tenable. It will also be clear from the wording of Regulation 9.2 , quoted above, that it sets the period within which a Licensee has to dispose of an application for change of tariff category, but places no restriction on when such an application can be made. The provisions of the subsequent SOP Regulation, 2014 are similar. The Commission notes that its Electricity Supply Code Regulations, 2005 also do not circumscribe applications in this manner. Hence, the Commission is of the view that the restriction stipulated by it earlier is inconsistent with the SOP Regulations.”*
- b. *“29. In these proceedings, Shri Ashish Chandarana has cited several specific instances of irregularities committed by MSEDCL while deciding applications for change of category from Continuous to Non – Continuous. While these alleged irregularities cannot be a ground for rejection of MSEDCL’s claim for review and the Commission has already held that its earlier stipulation is inconsistent with the SOP Regulations, MSEDCL has admitted during these*

proceedings that it had taken an adhoc and inconsistent approach not only on such applications but also in different judicial forums with regard to individual cases, and that it had revised its stand in these forums after filing this Petition. The Commission directs MSEDCL to examine and take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applicants.

- c. 30. *In view of the foregoing, the review Petition is allowed. The Commission directs MSEDCL to assess the impact of this Order after examining all the applications received by it which merit revision, based on the principles settled in this order, including the impact on account of any selective, inconsistent or discriminatory treatment given to different applicants, and submit it to the Commission within three months.”*

23.The Chief Engineer (commercial) of The Respondent issued guidelines vide letter MSEDCL letter PR-3/Tariff/No. 16720 Dtd. 10.07.2017 for implementation of MERC order in case 94 of 2015 in the matter of continuous to non continuous.. In this letter point no 1 says “ All pending as well as already disposed of application be considered in accordance with the MERC order in case 94 of 2015 and as per Regulation 9.2 for the approval of change of tariff category” therefore clause of limitation not applicable therefore the applicant application is tenable.

24.It is admitted fact that the application for change of tariff from continuous to non continuous was filed application to the Respondent by their application vide letter 08.10.2011,27-01-2012,06-03-2012,19-07-2012, 03-10-2012, 15-01-2013, 18-04-2013 but the Respondent have not taken any action for conversion from non-continuous to continuous for long period up to issuance of circular MSEDCL letter PR-3/Tariff/No. 16720 Dtd. 10.07.2017 till this period. The Respondent made communication to their H.O for grant permission continuous to non continuous tariff for refund. Lastly after issuance of circular MSEDCL letter PR-3/Tariff/No. 16720

Dtd. 10.07.2017 the Respondent have agreed to grant the difference tariff but sent letter for clarification whether to grant retrospective effect or not it is clear from reading Regulation 9.2 of SOP Regulations 2005 stipulates as below “Any Change of name or change of tariff category shall be effected by the distribution Licensee before the expiry of the second billing cycle after the date of receipt of application.”

25.From the clear wording of 9.2 SOP regulation it is duty of distribution licensee to grant the relief of change of tariff before expire of second billing , Hence , on hearing both sides and going through circular vide letter PR-3/Tariff/No. 16720 Dtd. 10.07.2017 . It is clear that the relief for change of tariff from continuous to non – continuous to be grant by considering their first application 3.08.2011 in line with Regulation 9.2 of the SOP regulation “*Any change of name or change of tariff category shall be effected by the distribution Licensee before the expiry of the second billing cycle after the date of receipt of application*” Accordingly the applicant consumer entitle for relief of refund from Sept 2011 till the applicant has received the change of tariff along with interest as per section 62(6) of electricity act 2003 at the rate 6% P.A from Sept 2011 to Oct 2016 as per rule. Hence, I proceed to pass following order

Order

- a. The applicant application is allowed in case 188 of 2018.
- b. The applicant eligible for non- continuous tariff from September 2011.The applicant entitle for refund of tariff difference between Continuous (HT -1-C) to Non continuous (HT-I-N) for the period September 2011 to 2016. The Respondent MSEDCL is accordingly directed to work out the amount

of refund along with interest payable for above period @ 6% P.A as per Section 62 (6) of the Electricity act 2003.

- c. The Respondent MSEDCL shall be at liberty to adjust the refund amount together with interest payable in the energy bills of the Appellant consumer.
- d. Compliance be reported within one months from the date of this order

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, and 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.