

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/AUC/714/2018/54
Registration No. 2018120059**

Date of Admission : 11.12.2018

Date of Decision : 16.04.2019

M/s. Rucha Engineers Pvt. Ltd. & Others (2) : COMPLAINANT
K-249, MIDC, Waluj,
Aurangabad
(Consumer No. 490019009073)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd., : RESPONDENT
Through it's Nodal Officer /
The Executive Engineer, MSEDCL,
Urban Circle, Aurangabad.

For Consumer : Shri. A.N.Patil

For Licensee : Shri. R.P.Nahata , I/C Executive Engineer
Urban Circle, Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson

Shri Laxman M. Kakade, Tech. Member/Secretary

Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant M/s. Rucha Engineers Pvt. Ltd. & Others (2), K-249, MIDC, Waluj, Aurangabad is a consumer of Mahavitaran having Consumer No. 490019009073. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL, Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 11.12.2019.

BRIEF HISTORY & FACTS RELATING TO THE GRIEVANCE:

- 2) The complainant has submitted his grievance as under :-
- i. Rucha Engineers Pvt Ltd - 490019009073, Rohit Exhaust System Pvt Ltd- 490019044560, Rohit Exhaust System - 490019040540 have applied for change of category from continuous to non-continuous by giving consent for changing category on 13th January, 2014 to The Manager, GTL Limited, Franchisee of MSEDCL, Aurangabad Circle received by GTL on 22nd February 2014. Franchisee/ MSEDCL did not change billing category to non-continuous from March 2014 as per regulation 9.2.
 - ii. In the mean time the Hon'ble Maharashtra Electricity Regulatory Commission (hereinafter referred as the Commission) issued Order in Case No. 94 of 2015 regarding changes of category from continuous to non-continuous.
 - iii. With regard to change of tariff category, Regulation 9.2 of the SOP Regulations, 2005 are applicable :

- iv. As per regulation 9.2 of the SOP Regulation 2005 & as reaffirmed by the Hon'ble Commission's Order in case No. 94 of 2015 dtd 19 Aug 2016, MSEDCL Chief Engineer, Commercial Letter No. PR-3/Tariff/ no 16403 dtd 05 July 2017 & Pr-3/Tariff/no 16720 dtd 10 July 2017 tariff difference between continuous & non continuous should have been given from March 2014 to May 2016 for Rucha Engineering & for both Rohit Exhaust from March 2014 to October 2016.
- v. MSEDCL has not changed billing category from continuous to non continuous from March 2014 for all three connections as per regulation 9.2. Hence as per Hon'ble Commission's Order in case No. 94 of 2015 dtd 19 Aug 2016, MSEDCL Chief Engineer, Commercial Letter No. PR-3/Tariff/ no 16403 dtd 05 July 2017 & Pr-3/Tariff/no 16720 dtd 10 July 2017 for tariff difference between continuous & non continuous from March 2014 to May 2016 for Rucha Engineering & for both Rohit Exhaust from March 2014 to October 2016 MSEDCL has initiated action.
- vi. The amount of tariff difference refund from March 2014 to May 2016 for Rucha Engineering & for both Rohit Exhaust from Mar 2014 to October 2016 has been credited in December 2017 bills. But the amount is credited after a very long delay and actually it is done in December 2017 without any fault of the petitioners. Hence, MSEDCL is liable to provide interest on respective monthly tariff difference amounts since March 2014 to December 2017.

- vii. That the Hon'ble Commission has already stipulated the principle of providing the interest amount applicable for the delay in paying the amount from the due date till the actual date of its payment. The relevant Order passed by the Hon'ble Commission is in Case No. 44 of 2017.
- viii. In view of the above settled law by the Hon'ble Commission, MSEDCL is liable to provide interest on respective monthly tariff difference amounts since March 2014 to December 2017. Hence, interest for such difference for the above period shall be allowed at the same rate, the Hon'ble Commission has allowed carrying cost to MSEDCL in various Tariff Orders
- ix. Moreover, there also has been delay in providing such interest cost, MSEDCL is also liable to pay interest on such delayed payment of interest cost from March'14 till actual date of payment of such interest at the rate of Delayed Payment Surcharge in accordance with principle laid in Case No. 44 of 2017 (interest on the delayed payment from due date till the actual date of payment).
- x. The petitioners are entitled to claim interest under section 62(6) of Indian Electricity Act 2003. It is further requested that a specific timeline should be stipulated as required by Regulation 17.18 of the MERC (CGRF and EO) Regulations, 2006
- xi. M/s Rucha Engineers Pvt Ltd - 490019009073, Rohit Exhaust System P Ltd - 490019044560, Rohit Exhaust P Ltd- 490019040540 prayed that
 1. To provide interest at the same rate, the commission has

allowed carrying cost to MSEDCL in various tariff orders on respective monthly tariff difference of amounts since March 2014 to May 2016 till December 2017 and also interest on delayed payment of such interest amount from March 2014 to May 2016 for Rucha Engineering & from March 2016 to October 2016 Rohit Exhaust till the actual date of payment of such interest at the rate of delayed payment surcharge .

- 3) The Respondent has submitted say(P.No.39) as under :
1. That, the present complainant is not having any dispute in respect of refund of tariff difference amount of continuous to non-continuous tariff change, which is credited by the MSEDCL on the order passed by Hon'ble MERC in case No. 94/2015.
 2. Regarding same issue of change of tariff from continuous to non continuous, in the matter of W.P. No. 5437/2013 (MSEDCL, Akola Circle V/s M/s. Ruhatiya Spinners Ltd), Bombay High Court, Nagpur Bench vide judgment and order dated 10.09.2014, party allowed the petition and held that "Under sub section (6) of Section 62, it is only If any licensee or a generating company recovers a price or charge exceeding tariff determined under said section, then excess amount can be recovered by the person who has paid such price or charge equivalent to the bank rate without prejudice to any other liability incurred by the licensee. It is not in present case no such price or change exceeding the tariff determined under section 62 was sought to be recovered. Hence, award of interest at the rate of 9 % is therefore not in accordance with law. Said part of the order will therefore have to be set aside."

3. The claim is not legal. Complaint may be dismissed.
- 4) The petitioner has submitted rejoinder (P.No.105) as under :
1. As per regulation 9.2 of SOP regulations 2005 billing category should have been changed from Feb 2014 to May 2016 for Rucha Engineering while for Rohit Exhaust from Feb 2014 to October 2016. Consumer was charged higher tariff of continuous instead of non-continuous. After MERC order 94 of 2015 date 19-8-2016 MSEDCL issued letter dated 10th July 2017 to refund additional tariff charges recovered by charging continuous category instead of non-continuous. Tariff differences between continuous & non-continuous were refunded in bills of December 2017 for the period Feb 2014 to May 2016 for Rucha Engg & for the period Feb 2014 to Oct 2016 for Rohit exhaust two connections.
 2. As per section 62 (6) of IE Act 2003, refund of excess amount recovered than tariff should be done with interest by MSEDCL to the complainant.

Sr. No	Name of Consumer	Interest requested on	Total Amount on which interest demanded	Basis on which interest asked	Rate of interest requested
1	Rucha Engg. Cons no 490019009073	Monthly tariff difference amounts from Feb 14 to May 16 up to Dec 17	Rs. 44,62,031/-	Section 62 (6) of IE Act 2003	12% per annum or @ forum decides
2	Rohit Exhaust System Cons no 490019040540	Monthly tariff difference amounts from Feb 14 to Oct 16 up to Dec 17	Rs 8,62,379/-	Section 62 (6) of IE Act 2003	12% per annum or @ forum decides
3	Rohit Exhaust System Cons no 490019044560	Monthly tariff difference amounts from Feb 14 to Oct 16 up to Dec 17	Rs 4,39,375	Section 62 (6) of IE Act 2003	12% per annum or @ forum decides

3. The Complainant has requested to pay interest rate to be 12% or@ decided by Hon Forum on monthly tariff difference amounts from Feb 2014 to May 2016 upto Dec 2017 for Rucha Engg & from Feb 2014 to Oct 2016 upto Dec 2017 for Rohit Exhaust both connections.
- 5) The respondent has submitted say (P.No.107) to rejoinder stating following facts :-

1. Tariff difference is given by MSEDCL in December 2017 HT bills the details are as below :-

Sr. No.	Consumer No.	Name of Consumer	Refund for period	Effect given month	Amount of refund
1	490019009073	M/s. Rucha Engineering Pvt. Ltd.	Apr-1 to May-16	Dec-17	Rs.4462032.98
2	490019040540	M/s. Rohit Exhaust System	Jan-14 to Oct-16	Dec-17	Rs. 862373.45
3	490019044560	M/s. Rohit Exhaust System	Jan-14 to Oct-16	Dec-17	Rs. 439377.37

2. The effect is given to respective consumers in December 2017 HT Bills. So, now interest can't be awarded. Order passed by Hon'ble High Court Bench Nagpur in its W.P. No. 5437/2013 dtd. 10.09.2014 may be considered.
- 6) The petitioners have submitted their additional say (P.No.123) as under:
1. MSEDCL has given reference of Writ Petition no 5437 of 2013. This WP is prior to MERC order in case of 94 of 2015 dated 19-8-2016. MERC is technical expert in such matters. In WP 5437/2013 order main point has been dealt with is, consumer has not submitted change of category application / option within one month of tariff declaration. This is not relevant after MERC order 94/2015, in the order 94/2015, there is mention of this W P no 5437 of 2013 on page no 8.

2. Hence reference of W P 5437 of 2013 has no relevance after MERC Order No.94/2015. MSEDCL is not going through MERC order 94 of 2015 properly. In that order on page no 30 in point no 29, it is clearly mentioned that MSEDCL has changed its stand after filing review petition 94/2015.
- 7) It is submitted that :-
- 1) MSEDCL has accepted that that it has charged higher tariff of continuous instead of lower tariff of non-continuous. Hence it has refunded tariff difference as stated in their say also.
 - 2) As MSEDCL has charged higher tariff, hence as per section 62 (6) of IE act 2003, MSEDCL is liable for paying tariff difference along with interest.
 - 3) W P 5437 of 2013 has no relevance after MERC order in case of 94 of 2015 dated 19-08-2016.
- 8) We have perused all the documents placed on record by both the parties. Heard consumer Representative Shri. Ashok Patil & Shri. Nahata I/C Executive Engineer, Urban Circle Aurangabad for the Respondent.
- 9) Following points arise for our determination & we have recorded its findings thereon for the reasons to follow/-

POINTS	ANSWER
1) Whether the complaints are entitle for interest on tariff difference amount i.e. from continuous to non continuous for the period March 2014 to December 2017 as claimed?	NO.
2) Whether the complaints are entitle for interest on delayed payment of such interest amount from March 2014 to May 2016 (form M/s Rucha Engineering Pvt.LTD) & March 2016 October 2016 (for M/s Rohit Exhaust System) till actual payment of such interest?.	NO.

- 10) **Points 1 & 2:** All the petitioners are HT - 1A consumers, having industrial connection at 11 KV level. On, 13 January 2014 all petitioners have submitted application to MSEDCL for change of category from continuous to non-continuous. Said application was received by MSEDCL on 22nd February 2014.
- 11) Regulation 9.2 of the SOP Regulations, 2005 provides as under:-
“9.2 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”.
- 12) That after internal correspondence & on seeking approval from Head Office Dt.13.08.2016 (as referred in the letters P. No.29) MSEDCL has informed to petitioner M/s. Rucha Engineering that its tariff will be changed thenceforth i.e. after August 2016, from HT-IC to HT- IN). That, thereafter on 19th August 2016, Hon’ble MERC has passed order in case No.94/2015 & Misc. application Nos. 5,6 & 7 of 2015, in the matter of petition of MSEDCL for review of tariff order dtd. 26.06.2015 in case no.121/2014 with regard to disallowances relating to exercise of choice between continuous & Non continuous supply. At para 29 & 30 following observations are made:
“In these proceedings, Shri. Ashish Chandarana has cited several specific instance 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 ad hoc 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 applications.

“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 applications, and submit it to the Commission within three months.

- 13) That, on the basis of order passed in case No.94/2015, MSEDCL has issued circular No.16720 dt. 10th July 2017 & directed to examine & take appropriate action with regard to treatment given to different applications. Directions were issued for disposal of application change of category from continuous to Non continuous & method of approval is also guided.
- 14) That MSEDCL in the electricity bill of all three petitioners of January 2018 i.e. bill of December 2018 , adjusted the amount of tariff difference as follows:

1	M/s. Rucha Engineering (Bill & Statement P.No.109,110)	44,62,031.80	For March 2014 to May 2016
2	M/s.Rohit Exhaust C.No.490019040540 (Bill & Statement P.No.111,112)	8,62,379.46	For March 2014 to October 2016
3	M/s. Rohit Exhaust C.No.490019044560 (Bill & Statement P.No.113,114)	4,39,375.00	For March 2014 to October 2016

- 15) Admittedly, billing category of M/s.Rucha Engineering though ought have to been changed from March 2014, but was changed from May 2016 & of both M/s.Rohit Exhaust, it appears to be charged from October 2016 i.e. after order passed in case No. 94/15 dt.19.08.2016. The refund amount of tariff difference for all petitioners was credited in their bills of December 2017, as given in details in above table.
- 16) In this back-drop the petitioners have claimed interest on these tariff difference amounts from March 2014 to December 2017.
- 17) Sec.62(6) of Indian Electricity Act, provides as under :-

“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.

- 18) Learned C.R. Shri. Patil has produced on record various orders passed by Honable MERC, to support the claim of interest. As agains this, Nodal Officer Shri. Nahata has relied upon the Judgment passed by Honable Bombay High Court in W.P.No.5437 of 2013 MSEDCL, through Superintending Engineer, Akola V/s M/s. Ruhatia Spinners Pvt. & other decided on September 10, 2014 , copy of it is produced at P.No.115 to 121.

In that case , there were identical facts, wherein the original petitioner has requested for change in category from continuous to Non continuous on 04.10.2012. Approval was received on 27.02.2013. Hence change was effected as per Circular No. 175, from 01.03.2013. Hence, original petitioner submitted complaint before CGRF claiming change of tariff HT-IC to HT In from 01.08.2012 instead of 27.02.2013 CGRF, Amravati Zone,

granted the claim at & also awarded interest at the rate of 9% P.a. on the difference amount with costs of Rs. 2000 & compensation of Rs. 1000. The said order was under challenge before Honable High Court.

The Honable Bombay High on the point of interest has made following observations at para 7 of the judgement :-

“In so far as grant of interest at the rate of 9% p.a. is concerned, the same has been granted by relying upon the provision of Section 62(6) of the said Act. Under sub Section (6) of Section 62 it is only if any licensee or a generating company recovers a price or charge exceeding the tariff determined under said section, then the excess amount can be recovered by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee. It is not in dispute that in present case no such price or charge exceeding that tariff determined under Section 62 was sought to be recovered. Hence, award of interest at the rate of 9% is therefore not in accordance with law. Said part of the order will therefore have to be set aside. In so far as the award of compensation and costs are concerned said part of the order does not deserve to be interfered.

Considering the ratio laid down in the aforesaid case, in the present case similar facts are forthcoming so, claim of interest of the petitioner is held as not maintainable.

- 19) Learned C.R. Shri. Patil has challenged applicability of the ratio of case w.p. 5437/2013, on the ground that subsequent order was passed in case No.94/2015, dt. 19th August 2016 by Honable MERC, who is technical expert. It is argued that, there is reference of w.p.No.5437/2013 in the order of case No.94/2015. MSEDCL has charged higher tariff of continuous instead of low tariff at Non-continuous & therefore claim of interest requires to be awarded.

- 20) It is important to note that though order in w.p.No. 5437/2014 was passed on 10th September 2014, i.e. earlier to order dt. 19.08.2016 of case No.94/2015 however, the basic concept as to whether interest has to be awarded or not in case of charge at category from HT-IC to HT IJN is once decided by Honable High Court , it would prevail. Fact remains that, there were no directions issued by MERC in order of case No. 94/2015 to grant interest. As such, we are unable to accept the submission of C.R. Shri. Patil. We hold that the ratio laid down in w.p. No.5437/2013 is binding & hence claim of interest in similar situated facts , can't be awarded.
- 21) We are aware that we have in case No.684/2018, M/s Umesh Board & Paper Mills Pvt.Ltd. decided on 18.09.2018 & in case No. 702/2018, M/s Dhoot Campack Pvt.Ltd. V/s MSEDCL, granted interest. Those were also cases of change of category from continuous to Non-continuous. However, for the first time, in this case Judgment passed in w.p.5437/2013 is cited & produced before us. So we have taken this view in this case on considering the ratio laid down of the aforesaid case.
- 22) It is also to be noted that in case No. 94/2015 at para 12.4 there is reference, that SLP No.1911/2015 in which order dt. 10 September 2014 i.e. w.p. No. 5437/2013 is challenged before Honable Appex – Court. That the said SLP is pending before Honable Appex – Court.
- 23) C.R. Shri. Patil in support of his claim laid his figure on the various orders as follows:-

First is case No.44/17, Mangesh Madhukar Patil V/S MSEDCL , decided by Honable MERC, dt.16 Feb-2018 where in , it was the case of delay caused in releasing Residential connection, inspite of order passed by CGRF, Ratnagiri. In that context, Honable MERC has directed MSEDCL to pay amount of Rs. 500 per day from 01.04.2016 to 27.04.2017, (the date of connection) & to pay to the petitioner interest for the delay in the paying that amount from 27.04.2017, till payment. The facts of the said case are on different footing, hence not applicable to present case.

- 24) Second case relied on is case No.94/15 (produced at p.No. 42) about which reference is already made above.
- 25) Third case is case No.103/18, Wind Mill Form Division V/S MSEDCL, decided on 15th June 2018(produced at P.No.75) by Honable MERC. Wherein the petitioner was generating Co. & the dispute was delayed payment by MSEDCL. In that backdrop order for principal amount & interest was passed. The present case is completely on different footing of facts hence ratio therein is inapplicable to present case.
- 26) Fourth case is 23/2004, M/s Lloyds Steel Industries Ltd. V/s MSEDCL, decided by Honable MERC dt.18.10.2005 (produced at P.No.87), wherein illegal recovery of since line charges from petitioner Co. & for reinstatement of contract demand was in dispute. In that context interest was granted. The facts of the said case are inapplicable to present case.
- 27) Fifth case is case No.28/18 (copy produced at P.No.92) M/s Raymond Uco Denim Pvt. Ltd. V/S MSEDCL, Yavtmal, decided by CGRF, Amravati dt. 28.12.2018. Though it was also a case of tariff difference continuous & Non continuous , interest was granted, however, there is no reference of w.p.No.5437/13 decided by Bombay High Court. So also it has no binding force.
- 28) Rather pertinent to note that in present case since 22.02.2014, till August 2016, time was consumed for seeking approval of H.O. Documents in the form of letter goes to show that on 24/03/2014, 05/05/2014, 23/06/2014, communication was internally going on between GTL & MSEDCL, & MSEDCL & its H.O. Thereafter on 19/08/2016, order in case No.94/15 was passed & accordingly circulars were issued actions were finalized by MSEDCL as per directions issued in case No. 94/15 & ultimately refund of difference amount of all the petitioners were credited in the energy bill of December 2017, so delay caused can't be said as deliberate.

- 29) It is imp. To note that what is prohibited is recovery of price or charge exceeding the tariff determined under this section & then only the generating Co. will have to pay the interest on the difference. It is only when a licensee or generating co. deliberately recovers or extracts from a person price or charge in excess of the price determined v/ss.62 (6), that person can claim the excess price or charge paid by him alongwith interest. So for this purpose also we are unable to accept the claim of interest of the petitioners.
- 30) Considering the ratio laid down in w.p. No. 5437/13, in the present case also, there being delay in payment of tariff difference, under Sec. 62(6) interest can't be granted. As the petitioner is not entitle for interest, we answer point No.1 in the negative. Consequently point No.2 is also answered in the negative. We proceed to pass following order in reply to point No.3.

ORDER

- 1) Complaint stands dismissed.
- 2) Parties to bear their own cost.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member