



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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NO. K/E/1619/1957 of 2019-20

Date of registration : 05/10/2019

Date of order : 19/11/2019

Total days : 45

IN THE MATTER OF GRIEVANCE NO.K/E/1619/1957 OF 2019-20 OF THE CHIEF TRUSTEE, SWAMI SHANTI PRAKRUTIC CHIKITSA YOGA KENDRA, ULHASNAGAR – 5, DIST. THANE, PIN CODE – 421 005 REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT DIFFERENTIAL TARIFF RECOVERY.

The Chief Trustee,

Swami Shanti Prakruti Chikitsa Yoga Kendra,

Ulhasnagar – 5, Dist. Thane,

Pin Code – 421 005

(Consumer No.021517007398, LT - Res.)

... (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution

Company Limited

Through it's Nodal Officer/Addl.EE.

Kalyan Circle-II, Kalyan

... (Hereinafter referred as Licensee)

Appearance : For Licensee - 1) Shri.Vinod Vipar, AEE, Ulhasnagar S/dn.- V

2) Smt.Nita Ishi, AA, Ulhasnagar S/dn.- V

For Consumer - Shri.B.R.Mantri (C.R.)

[Coram- Shri.A.P.Bhavthnkar -Chairperson, Shri.A.P.Deshmukh-Member Secretary
Mrs.S.A.Jamdar- 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 sub-section 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]. Hereinafter 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) Consumer complaint no.1957 of 2019The Chief Trustee, Swami Shanti Prakruti Chikitsa Yoga Kendra, Ulhasnagar – 5 V/s Addl. Executive Engineer, Ulhasnagar S/dn.-V. Complaint about illegal retrospective recovery claiming, tariff difference due to change of wrong tariff categorization.Consumer No.021517007398, BU No.4174, connecting load 20 HP, date of connection 17/07/2012. Above said consumer received bill on 06/08/2018 claiming wrong tariff categorization.Retrospective recovery claim since June-15 to May-17 for amounting Rs.3,37,916/- After receiving the said bill along with demand made by Respondent utility at initial stage Consumer approached IGRC and filed grievance on 03/10/2019 raising objection for demand of bill dtd.06/08/2018 for debit adjustment amount shown Rs. 3,17,250.90 payable by the consumer. According to consumer Flying Squad visited the premises and verified the connection. As per the report of flying squad, Respondent Utility issued bill claiming period Jun-15 to May-17 and requested to pay the same. Consumer objected for the said bill ,stating that as per MERC Supply Code Regulation 15.1, 15.2, 15.5 they have paid all the bills raised by Respondent Utility and protested only principle arrears amount due differential tariff recovery due to wrongful categorization as pointed out by Flying Squad. As per Supply Code the debit bill recovery has not related to escaped billing due to error in meter or in billing as per MERC Supply Code Regulation 15.3, 15.4.According to consumer representative Respondent Utility has disobeyed commission's direction that any reclassification of the consumer must follow a definite process of natural justice and recovery, if any, would be prospective period only. Consumer further stated that Flying Squad recovery for earlier period and action taken by utility MSEDCL of recovery process for earlier period tariff difference without any notice and hearing amounts to violation of principle of natural justice. Any reclassification of tariff is responsibility of Licensee and for mistake/ fault of Licensee, consumer cannot be burdened due to wrong categorization previously applicable to the consumer. As such Licensee not empowered to recover the arrears.As per Supply Code 2005 and Provisions of Electricity Act2003 supplementary bill charge for previous period is wrong and it is violation of section 15 of Electricity Act. According to consumer, MERC decided Case no.24/2001 on 11th Feb 2003 as well as general circular commercial No.377 dtd.02/07/2003 and APTEL judgment in appeal no.131 of 2013 dtd.07/08/2014 in a case of M/s Vianney Enterprises versus Kerala State Electricity Regulatory Commission. Also relied on MERC order in case no.42 of 2015 and M.A. No.3 of 2015, 4 of 2015 and pray that current bill which is issued dated 06/02/2018 is disputed claiming illegal and the utility cannot claim retrospectively. After filing the said grievance before IGRC on 03/10/2019 the notice was issued by IGRC for hearing but the said complaint was not decided by IGRC within stipulated period of 2 months. Therefore consumer approached to this forum and filed grievance in schedule form no. 'A' on 23/10/2019 and claimed that difference of tariff recovery due to reclassification from category as public services for the period Jun-15 to May-17 in bill July-2018 is wrong and illegal. Consumers pray for set aside the recovery bill and also pray for necessary and proper direction to the utility. After filing the said dispute, this office issued notice to Respondent utility and directed to file

reply on or before 23/10/2019. After receiving the said notice Respondent utility appeared and file reply on 22/10/2019. Respondent utility submitted that the consumer was receiving bill in the category of Industrial 37, LT-V B-I since the date of connection. The connecting load is 20 HP contract demand 20 KVA Consumer number is 021517007398. According to utility Addl. Executive Engineer, Kalyan Circle – II, Flying Squad visited the premises and made inspection. As per the report, the Flying Squad reported that appropriate tariff 73 LT X-B public services should have been applied instead of 37 LT-V B-I and also suggested to initiate proceedings to apply plain recovery tariff difference Since Jun-15 to May-17. As per the said report of inspection, the premises is used for the Swami Shanti Prakruti Chikitsa Yoga Kendra Hospital for nature care treatment and as per MERC tariff order June 2015, the hospitals, spiritual organizations are categorized as public services. Hence bill revision effected during the period Jun-15 to Apr-18 and tariff difference calculated amounting to RS 3,70,251/-, which was approved in the month of July -2018 and the bill revision details are filed by preparing B-80 and after discussion with IGRC the dispute was finalized. Therefore proper tariff categorization was applied and the bill revision was made properly. Meanwhile consumer tariff was not updated in the system even though it is fed through the NC module with ID No 15451741. Hence recovery needs to be done for period of May'18 to Sep'19 for industrial to public services others tariff. Bill revision put up with Revision ID 9987420 for period May'18 to Jan'19 for Rs 72946.85 and Revision ID 10649260 for period Feb'19 to Sep'19 for Rs 65973.28. The recovery for period of two years was calculated as per direction of MERC and the Electricity Ombudsman judgment in case no.142 of 2019 order dtd.26/06 /2019. As per provision of section 56 (2) the previous 24 months recovery from date of detection is allowed. Also by Hon Ombudsman order recovery is payable in 6 equal installments. Therefore 24 month recovery prior to date of detection is claimed. Amount of Rs 3,70,251/- + Rs 72,946/- and Rs 65,973/- i.e. total amount Rs 4,56,780/- liable to be paid by consumer. Utility prays for rejection of complaint with cost. Respondent utility enclosed copy of inspection report Flying Squad dtd.11/05/2017. With copy of B-80 17/10/2019, copy of correspondence bill consumer also attached copy of judgment and orders relied by them.

I have perused document filed by consumer and Respondent utility carefully following point arose for my consideration to which I have recorded by finding to the points the reason given below.

Points :

- i) Whether Respondent utility entitled to claim tariff difference recovery retrospectively since June-15 to Apr-18 due to wrong categorization Tariff difference arrears claim?
- ii) Whether consumer is entitled to change of Tariff category.
- iii) Whether consumer is entitled for any relief?
- iv) What order?

Reasoning :

I have perused document filed by consumer and Respondent Utility carefully it appears that the date of connection as per record which is available on the 17/07/2009. The premises is admittedly used by consumer for Swami Shanti Prakruti Chikitsa Yoga Kendra Hospital, at Ulhasnagar-V. The premise was never earlier inspected by official of utility. However as per the report of Flying Squad on 11/05/2017 the premises carefully verified and found the tariff category which was applied to the consumer for LT-V B-I. The purpose of using the supply at premises was also verified and reported that Swami Shanti Prakruti Chikitsa Yoga Kendra Hospital natural care treatment activity undertaken by consumer in the said premises. As per MERC circular and tariff categorization, which was subsequently made in the category of LT X-B public services. According to utility the proper tariff is applicable as per suggestion of Flying Squad and therefore the utility taken action to change the category and recovery of tariff categorization for considerable wrong period. In the said period 3 reminder were issued to the consumer starts from 04/07/2017 to 07/12/2017, but the consumer not responded to these reminders nor produced any documents in support of the contention of utility for fixation of proper categorization. Therefore Respondent Utility seems to have taken process of fixation of proper categorization as per direction and intimation was given 09/02/2018 and communicated the intention of utility to change the tariff categorization and as per CPL'75549' units, which is claimed to be used by the consumer should be billed. It is to be billed due to change of public service categorization to the premises. Bill revision was made and the amount of 3,70,251/- was charge in the bill and demanded as a debit entry shown in the bill dtd.06/08/2018.

Which is challenge by the consumer by filing grievance in IGRC on 03/10/2019. It is surprising to note that IGRC have not taken proper legal action not decided the dispute within stipulated period as per regulation and therefore consumer approached to this forum in filing grievance in form no. 'A'. Therefore the first opportunity to decide the dispute at first stage IGRC not followed by utility without any assigned proper reasons.

I have given opportunity to consumer and representative and heard the matter on 12/10/2019. It appears that consumer filed various orders and direction of MERC to claim that retrospective recovery of wrong classification of tariff bill issued to the consumer for earlier period. I have carefully gone through the documents filed by consumer. The Respondent Utility submitted reply and reason why retrospective recovery 24 months prior to the date of detection is claimed. The bill show debit entry in the bill dtd.06/08/2018. Respondent Utility relied on the order of Ombudsman in case no.142 of 2019 dtd. 26/08/2019 the said copy of order peruse for this forum. It appears that in the given case the tariff was change from Industrial to Commercial and as per provision of section 56 (2) 24 months recovery arrears can be claimed by utility and which was allowed by Ombudsman payable in 6 equal monthly installments. But the consumer strongly relied on other various orders and circulars and insisted this forum to apply the tariff category from the date of communication. According to consumer the demand and communication is made on 06/08/2018. As debit entry shown first time in the bill and this was

valid communication to the consumer and there for tariff difference recovery cannot be retrospectively. With due respect to the documents and orders relied by the consumer It appears that the statute allowed utility to claim the arrears as shown in various judgments and orders of Hon'ble Ombudsman. In case no. 142 of 2019, which is more applicable and acceptable as recent full judgment, also allowed utility to claim 24 months arrears due to wrong classification of tariff in given case. Therefore I am not inclined to except the contention of consumer and to term the demand of 24 months by utility in the bill is illegal and therefore the grievance of the consumer is bound to fail and therefore I found the bill issued 24 months prior to date of detection is valid and proper. The said bill can be paid in 10 equal monthly installments. Proper categorization is to be applied LT-XB public services to this consumer, which is not applied till today. I am inclined to give direction to utility to claim and assess the bill 24 months prior from date of detection 11/05/2017 to claim tariff deference arrears and recover the bill without charging any interest, DPC and penalty. Hence I proceed to pass following order:

Hence the order

ORDER

- 1) The Consumer complaint stands dismissed.
- 2) No order of cost. The utility entitled to recover arrears of bill 24 months earlier from the date of detection of error 11/05/2017. The said arrears can be paid in ten equal monthly installments without charging any interest DPC and penalty. Consumer is not entitled for any other relief.

Date: 19/11/2019

Sd/-
(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

Sd/-
(A.P.Bhavthankar)
Chairperson
CGRF, Kalyan

Sd/-
(A.P.Deshmukh)
Member Secretary
CGRF, Kalyan

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, 606/608, Keshav Bldg, Bandra Kurla Complex, Mumbai 51".
- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

- c) delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & 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.