

**CONSUMER GRIEVANCE REDRESSAL FORUM,  
AMRAVATI ZONE, AKOLA.**

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Dt.05/03/2014

**Complaint NO.105 /2013**

**In the matter of grievance pertaining to arbitrary changing of tariff from  
non-continuous to continuous, refund of charges etc.**

**Quorum :**

Shri T.M.Mantri, Chairman

Shri P.B.Pawar, Secretary

Shri A.S.Gade, Member

Shri Sant Gadge Baba Sahakari Soot Girni Pvt. Ltd, Akola. .... Complainant

...VRS....

The Superintending Engineer, O & M Circle Office, Akola. .... Respondent

***Appearances :***

Complainant Representative : Shri D. M.Deshpande.

Respondent Representative : Shri N.S. Chitore, Ex.Engineer, Akola(R.)Dn.

Shri P.R. Lahane, Assistant Law Officer, Akola.

1. The complainant has approached this forum in respect of his grievance about the charging of tariff from HT-1-N to HT-1-C without the consent of the complainant, contrary to law as well as in contradiction of orders of MERC in Case No.44 / 2008, so also the refund of cost of CT and PT of Rs.1,04000/- plus testing charges of Rs.18000/-. The complainant's case in brief is that since 21.4.2008, it is HT consumer At Shivapur Feeder. The complainant requested for a separate

express feeder some time in 2008 with willingness to incur cost of bay and 11 KV express feeder. The Executive Engineer (Rural) by letter dated 26.3.2008 submitted estimate to Superintending Engineer, Akola for approval and accordingly it was granted as per letter dated 22.4.2008 and accorded approval to use already existed 11KV bay on payment of Rs.8,32,110/-. This amount was paid by the complainant on 5.5.2008 as is clear from the letter of N.A. dated 21.3.2013. As per the Complainant, it could not execute the work of Express Feeder up to June 2010 and requested the N.A. for revised estimate. The SE, Akola conveyed approval on 16.9.2010 and after completion and testing by Executive Engineer, on 13.4.2013, the Feeder was commissioned.

2. According to the complainant, the dispute has arisen from the Bill of April 2013 wherein higher tariff of HT-1-C was made applicable instead of 56 HT-1-N. The relevant bills of March and April 2013 have been annexed alleging that as the complainant was not aware reason for changing of tariff and applicability of higher tariff, the grievance was submitted vide letter dated 16.9.2013.

3. The orders issued by the MERC is binding on the SDE/JE as per the provisions of Electricity Act, 2003 and reference has been made to tariff order dated 20.6.2008, wherein applicability of continuous tariff was elaborated specifying that HT Industries connected to Express Feeder and demanding continuous supply will be deemed as HT continuous Industries, whereas all other HT Industries will be deemed as HT non-continuous. The N.A. Licensee filed Case No.44/2008, objecting this change in tariff order and requested the Commission that HT continuous tariff category should be applicable to all the Industries connected to the Express Feeder irrespective whether they are continuous or

non-continuous process industries. This request of N.A. Licensee was rejected by the MERC laying down 3 conditions for applicability of HT-1-C and these conditions have been elaborated. According to the complainant, it has only applied for Express Feeder and not demanded continuous tariff and never exercised option to change HT-1-N to HT-1-C. It is further, alleged that after issuing tariff order No.19/2012 in August 2012, the tariff has been changed from 13.4.2013 without the complainant's consent and without any approval from the HO(Commercial).

4. According to the Complainant, applicability of HT-1-C tariff is illegal and arbitrary, so also in contravention to the orders of MERC and hence the excess amount recovered needs to be refunded with interest at the rate of 9.5%, reference has been made to Section 62 (6) of Electricity Act 2003 in that respect. And further Applicability of HT-1-C tariff from April 2013.

5. The reference has been made to the direction of Commission in Case No.70/2005. As per the Complainant the check meter has been installed at its cost on Express Feeder. In fact the cost of metering is to be incurred by the N.A. as per the Commission, not only this, its testing fees of Rs.18000/- has been recovered from the Complainant. The Complainant incurred Rs.1,04000/- towards the cost of CT & PT so the same needs to be refunded with testing fees of Rs.18,000/- alongwith the interest as claimed. Reference has been made for the relief demanded in that behalf. According to the Complainant, as per the provisions under the Electricity Act of 2003, safeguarding interest of the consumer is to be looked into. Hence, sought relief and prayed for :

- 1) Applicability of HT-1-N tariff from April 2013 onwards.
- 2) Crediting of difference amount recovered illegally from 13.4.2013 and refund cost of CT-PT(Metering) Rs.1,04000/- plus Rs.18000/- towards testing charges, alongwith 9.5% interest, so also prayed for cost of Rs.5000/- with any other relief.

Alongwith the complaint, copies of documents came to be filed.

6. Notice as per regulations was given to the N.A. for submitting para-wise reply to the complaint. The reply was not filed in time. The matter was posted for hearing at that time, reply came to be filed from the side of N.A. on 22.1.2014, stating that the provisionally the Complainant was connected on 11KV Shivapur Express Feeder alongwith all types of category consumer and this feeder was applicable for load-shedding. The complainant has submitted the application demanding Express Feeder in December 2007 and accordingly estimate dated 22.4.2008 came to be issued. The complainant did not executed the work till April 2013.

7. Further, it is stated that the Complainant in his letter of 26.12.2007 informed that he is facing about 12 hours of load shedding, under these circumstances it needs express feeder with own expenses which clearly indicates that it wanted continuous supply for their industry. Sanction estimate dated 22.4.2008 was issued.

8. It is stated that the Complainant has been shifted on Express Feeder on 12.4.2013 and since then gets an un-interrupted supply. According to the N.A.

the complainant is enjoying the staggering day. In view thereof the complainant cannot escape from his liability by mere saying that it had not demanded continuous supply in the application.

9. As per the N.A. the complainant is one to one 11 KV Sant Gadge Baba Express Feeder and gets un-interrupted supply since installation of Express Feeder with staggering holiday which has been observed on particular day of the week. According to the N.A. that the consumer is classified to be on Express Feeder and categorized as HT-1 continuous and it can change classification, as the new tariff order has been issued by MERC. According to the N.A., the present Complaint has been filed as the complainant wants to escape from the liability and lastly pressed for dismissal of the complaint. That copies of some documents came to be filed with the reply.

10. On behalf of the complainant certain additional documents came to be filed at the time of hearing. Copies of which have been given to the N.A. Herd Shri D.M.Deshpande, Learned Representative for the Complainant and herd Shri N.S.Chitore, Ex.Engineer, (R.) Dn. Akola, alongwith Shri Lahane, Asstt. Law Officer, Learned representatives of the N.A. After giving anxious thought to the rival submissions made by the both the parties and on going through the available material on record, this Forum proceeds to pass this order :

11. As is clear from the record since April in 2008, the complainant is HT consumer of the N.A,. The N.A. has filed on record letter dated 26.12.2007 which means that it is prior to availing of power to the Complaint, in April 2008. No

doubt estimate in April 2008 came to be issued to the Complainant but the fact remains that because of certain difficulties, the complainant has not gone for the same. But the fact remains that it has paid the amount of Rs.8,32,110/- This is also mentioned in the Correspondence of N.A. in the letter dated 21.3.2013. From the record, it is further clear that by letter dated 17.6.2010, the complainant had asked for its own Express Feeder and the recitals of this letter are material, so far as the present controversy of the parties is concerned.

12. At this stage it is pertinent to note that Case No.44/2008 is in respect of review sought by the licensee in tariff order fixed by MERC. As per the Tariff Order, the (MERC) has specified that “only HT Industries connected on Express Feeder and demanding continuous supply will be deemed as HT continuous industry and given continuous supply while all other Industrial consumer will be deemed as HT non-continuous industry.” In the order the Hon. Commission has referred to what was the submission made on behalf of Licensee and elaborated licensee’s request in the said order, the same are as under:

- (a) the clause of “demanding continuous supply” may please to be removed from the definition of HT-1(Continuous industry),
- (b) Existing consumers categorized under HT-1 continuous as on April 2008 should be continued under the same category.
- (c) HT-1 (continuous) tariff category should be applicable to all Industries connected to the Express Feeder irrespective of whether they are continuous or non-continuous process industries.

13. The Hon. Commission has given its elaborated ruling and clarification to the submission made on behalf of Licensee:

### **Commission's Ruling and Clarification**

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 to 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 categorisation will be continued.

So it is clear that the Hon. Commission has not accepted the submission of NA Licensee and accordingly, the HT industrial consumer connected on Express Feeder has to be given option to select between the continuous and non-continuous type of supply. The Commission pointed about the submission of the Licensee for removal of clause "demanding continuous supply" from the definition of HT-1 continuous category. It is further clear that the consumer has been given opportunity to exercise choice of continuous and non-continuous

supply, only once in a year. So as per the definition of HT-1 continuous industry two categories are necessary that is connected to the Express Feeder as well as demand of continuous supply. Here in the present case, as already referred in the Letter dated 17.6.2010, the Complainant is relevant and it only refers to having its own Express Feeder. At this stage, it will be necessary to consider the letter dated 24.6.2011 of Director (Operations) of Licensee to all Chief Engineers. The learned representative of the complaint has drawn attention of this Forum to the recitals thereof more particularly the subject, which deals with the "Withdrawal of load shedding. to the Industries on staggering day." From the said letter it is clear that the load shedding has been almost withdrawn from 1.1.2011. Further para refers that it is decided to withdraw load shedding entirely to the industries on staggering day. Further, it has been asked to give wide publicity in local News Papers. So apparently the load shedding has been withdrawn as per the N.A. including to the industries on staggering day. In view thereof the pleas raised in the reply from the side of N.A. are of no relevance. In the same manner, the judgement of Hon. High Court in Writ Petition No.4059 /2010 will not be much help to the submission made by the N.A. The facts thereunder clearly shows that they are not applicable in view of the existing tariff order, withdrawal of load shedding even on staggering days to the industries as referred to above and order of MERC in 44/2008. The Para No.7 of the said judgement of Hon'ble High Court clarifies the position in view of distinguishing factors as involved in the present case. This forum finds substance in the submissions made on behalf of the complainant that in view of the different set of questions involved in the present matter and as per the ruling of Hon. MERC referred to above, merely because the Complainant is on Express Feeder does not satisfy the requirement



so as to include it in the category of HT-1 continuous industry. As already observed above in the letter dated 17/06/2006, there is no reference of demanding of continuous supply, but it refers to only express feeder. As per Tariff order and MERC ruling existence of both these conditions are necessary for continuous tariff category.

14. It is to be noted that the Complainant has filed on record the Electricity Bill of March 2013 and April 2013 issued by the N.A itself. In the Bill of March 2013 in front of tariff, it is mentioned "56 HT-1-N" whereas in the bill of April 2013, it has been mentioned as "55 HT-1-C". The complainant's letter dated 16.9.2013 refers to the change made by the N.A, in the Tariff HT-1-N to HT-1-C. It is specifically mentioned by the complaint that it never demanded continuous tariff but its demand was for Express Feeder and inspite of praying orally, nothing was done and hence this letter was issued. As No reply has been given, the Complainant approached IGRC but as no remedy has been provided, the present complaint is filed. The Complainants submission that neither any hearing was given by Internal Grievance Redressal Cell nor any order is passed, has not been contraverted from the side of N.A.

15. As is clear from the record, the position prior to 2008 was different. The continuous tariff was made applicable by default to the industries having express feeder. In the above referred order, MERC has laid down the applicability of HT-1 (Continuous industry) and as referred to above, it has been mentioned in the tariff order that " only HT industries connected on Express feeder and demanding continuous supply will be deemed as continuous industry and rest of all other will

be deemed as HT non-continuous industries.” As already observed above the N.A. Licensee has sought clarification from the MERC in that respect and the Hon. Commission laid down the ruling and not accepted the submission of the Licensee. It has been submitted on behalf of the complainant that non-continuous tariff was made applicable to the complainant till March 2013 and since April 2013 the tariff has been changed to HT-I-C (Continuous tariff) without its consent. It is pointed to note that the even under tariff order as per the Case No.19/2012 Hon. Commission has specified the applicability of HT-1 industry. The rates of schedule have been fixed for continuous industry on express feeder and non-continuous industry (not on express feeder). The page No.327 of the said tariff order below the “Rate of schedule,” there is title “Note” and item No. iv thereof is relevant, so far as the present controversy is concerned. It reads as :

“(iv) – Only HT industries connected on Express Feeder and demanding continuous supply will be deemed as continuous industry, while all other industries will be deemed as HT non-continuous industry.”

16. As already observed above since 1.1.2011 electricity supply is available to all 24 hours in view of the withdrawal of load shedding. Considering the rival submission as well as tariff order of MERC order in Case No.44/2008 as well as the bills of the complainant upto March 2013 and April 2013 onwards it is clear that there is substance in the grievance of the complainant. Merely because the complainant was connected on Express Feeder does not fulfill the requirement of applicability of HT-1 continuous tariff. The letter of the Complainant more particularly of 17.6.2010, does not mention of demand of continuous supply. The reliance of the N.A. on the complaint’s letter dated 26.12.2007 is of no consequence as admittedly the said letter was not acted upon. In any case since

July 2011 the load shedding has been withdrawn to the Industries including the industries on staggering day. The attempt on the part of N.A. to make tariff of HT-1 applicable from April 2013 cannot be justified, the Complainant is therefore entitled for relief in that respect.

17. As far as the claim of the Complainant for refund of cost of CT & PT metering and Transformer testing charges are concerned, the Complainant has filed on record the relevant documents such as : Invoices of CT & PT for Rs.52500/- each, so also confirmed Quotation / Demand note of the N.A. towards Testing charges of the Transformer of Rs.18,000/- along-with receipt. The testing certificate thereof has been filed on record. As per the directives of MERC, the NA is not entitled to recover the charges. Even as per the provision under the Regulation, the NA cannot recover any amount or charges except without the approval of MERC. Nothing has been brought on record from the side of N.A. to point out that the MERC has approved recovery of such charges. Here it is pertinent to note that in the reply which has been filed on behalf of N.A., this has not been dealt with. The N.A. has been authorized for recovery of metering cost but only for the items provided as 1 to 11. On behalf of N.A. the learned representative has tried to submit that N.A. has never asked the complainant to incur these expenses. So also it has been tried to submit that in the Prayer it has been mentioned not to allow the prayer 1 to 7 of the complaint. It is suffice to say that such submission has no meaning at all. Not giving of reply to the specific pleas raised in the complaint, it means the admission as per the legal provisions. Consequently, the Complainant is entitled for proper relief in respect of grievance.

18. The complainant has also asked for interest at the rate of 9.5% so also claimed Rs.5000/- as cost, with any other relief. This has been opposed from the side of the N.A. This forum is considering this aspect appropriately while passing the final order. On the basis of above reasoning and the conclusions, this forum proceeds to pass following unanimous order :

**ORDER**

1. The N.A is directed to restore the HT-1-N tariff category to the complainant from April 2013 and to credit amount of difference of tariff recovered under the head HT-1-C from the complainant, in the forthcoming bills payable by the complainant.
2. The N.A. is also directed to refund the cost of metering (CT & PT) of Rs.1,04000/- alongwith the Rs.18000/- recovered towards testing charges. These amounts are also to be adjusted in the forthcoming bills of the complainant.
3. If the N.A fails to adjust the amounts as per the order in the next bill, it shall be the liable to pay interest at the rate of 9%, till making of such adjustments.
4. The N.A. is also liable to pay the cost of Rs.1000/- to the complainant for the present proceeding.
5. That the compliance report be submitted within the period of one month from the date of this order.

Sd/-  
(A.S.Gade)  
Member

Sd/-  
(P.B.Pawar)  
Secretary

Sd/-  
(T.M.Mantri)  
Chairman