

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

*“Vidyut Bhavan”,  
Ratanlal Plots,  
Akola: 444 001  
Tel.No.2434476*

Dt-08/04/2013

**Complaint No.12/2013**

**In the matter of Shri Harish Dhirajlal Auondhiya, Washim for change in tariff of electric supply.**

**Quorum :**

Shri T.M.Mantri,	<b>Chairman</b>
Shri P.B.Pawar,	<b>Secretary</b>
Shri A.S.Gade	<b>Member</b>

**Shri Harish Dhirajlal Auondhiya, Washim**

... Complainant

...VS...

MSEDCL Circle Office,Washim

... Respondent

1 The complainant has approached this forum in respect of grievance of plain assessment bill made by N.A.licensee for Rs.10,32,046/- which was later on freshly assessed for Rs.4,40,855/-. The complainant's contention that the said plain assessment bill needs to be set aside for the reasons given in the complaint. As per complainant he has sought connection for his hotel establishment, after verifying and legal provisions by the N.A.licensee, the supply was made. There is no fault on the part of the complainant for industrial categorization of consumer and when this was realized so no penal action has been proposed, only plain assessment of bill as referred to above has been made. Reference has been made to the provisional assessment dt. 04/07/12 issued by Flying Squad, Aurangabad, as Annexure A/1. According to complainant it is a commercial user. Because of the illegal and arbitrary action of the said squad, complainant has lodged representation vide Annexure A-2. After hearing the complainant has received letter dt. 25/1/13 alongwith plain assessment sheet for Rs. 4,40,885/- whereby the complainant's representation seems to be have been partly allowed. The complainant is having not been satisfied even for the said fresh assessment approaching this forum for grievance.

Reference has been made to the provisions of Electricity Act so also the supply Code 2005 with averments that there is no provision of plain assessment in the said supply code which is notified by MERC. By issuing alleged plain assessment for Rs. 4,40,883/- the N.A.licensee has exceeded jurisdiction and it has violated provisions of supply Code 2005 .

2 According to the complainant there were no arrears against him and he was prompt in making payment of the bills. In any case the electricity is the key expenses in Hotel business, as it has a vital role in determining the rates of services to be provided to the customers. On the basis of bills issued by N.A.licensee, the complainant has taken the same into account for determining rent and other charges. The complainant now therefore cannot bear such burden, on account of mistake on the part of the employees of the N.A.licensee. In any case it has no legal base to claim for alleged 17 months for the period 2.1.08 not 02/06/09 as mentioned in assessment sheet, hence the same needs to be set aside. Copies of documents filed with the complaint.

3 Reference has been made to the order of MERC in 24 of 2001 dt. 11/2/03 in respect of legality of retrospective recovery of arrears, stating that no retrospective recovery of arrears can be made, on the basis of abrupt re-classification of the consumer. On that ground the complainant cannot be asked of past recovery but it will pay commercial tariff only after re-classification, hence he is compelled to approach the forum, seeking reliefs prayed for .

4 Notice as per regulations issued to the concerned office of the N.A.licensee for its reply to the complaint. The reply was filed, late, wherein various averments of the complainant in substance have been admitted, including that of inspection of premises by the Flying Squad. It is stated that as the complainant was utilizing supply for commercial purpose i.e. Hotel, action was taken under 126 of Electricity Act by issuing bill for Rs.10,32,046/-. The complainant approached the office and after giving opportunity of hearing, the Dy.E.E.Flying squad Aurangabad has withdrawn the action under Section 126 of Electricity Act 2003 by issuing bill of tariff difference for 17 months as the user was for commercial purpose. The bill issued to the complainant for Rs.4,40,885/- is in order as the N.A.licensee is only recovering the tariff difference. The copies of assessment sheet (provisional bill) letter dt. 28/1/13 and assessment bill for Rs. 4,40,855/- have been filed with the reply.

5 The matter was then posted for arguments heard Shri Ashish Chandarana, the learned representative for the complainant and Shri R.B.Mahure, Dy.E.E., the learned

representative for the N.A.licensee. As per the advancement of the N.A.licensee as well as submissions made the action under section 126 of I.E.Act has been withdrawn being as it was not found proper on the part of the N.A.licensee the earlier assessment by the Flying Squad as per assessment sheet (provisional bill) dt. 4.7.12 was for Rs. 10,32,046/- and the period mentioned therein for 17 months. It is undisputed that letter dt. 28.1.13 came to be issued by concerned Dy.E.E. wherein the said provisional bill has been set aside and revised assessment/bill for Rs. 4,40,855/- came to be issued. It is pertinent to note that in the said letter it has been mentioned that only bill is of tariff difference for the period 2<sup>nd</sup> January,2008 to June 2012 for Rs. 4,40,855/- When even according to the complainant the connection in the said establishment had been since July,2008, how the earlier period thereto could have been taken into consideration as mentioned the said letter dt. 28/1/13 i.e since 2<sup>nd</sup> Jan. 08. Here it is further needs to be noted that in the assessment sheet the period of assessment mentioned as “17 months”. According to the N.A.licensee the complainant ought to have been charged for commercial tariff and therefore the bill in question with revised assessment has been issued.

6 It is admitted position that procedure for making applicable of a tariff to the consumer is carried out by the N.A.licensee. The consumer has no role therein. After submission of application for connection, the various formalities are to be fulfilled by the N.A.licensee and depending upon the user, the tariff is to be applied. Here it is not the case that the consumer did not disclose the purpose of user of the electric supply. For the mistake of the concerned staff of the N.A.licensee now it cannot blame the consumer. In any case the Hon.ble MERC in caser No. 24/2001 decided by order dt. 11.2.13, has considered this aspect of retrospective recovery in such contingency and it has been laid down therein.

*23. In light of the above observations the Commission directs the following:*

*“ 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 sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any*

*reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.”*

As per the said ruling no retrospective recovery of such nature can be allowed on such abrupt re-classification. Here it is pertinent to note that the complainant has levied the charges on his customers on the basis of the electricity charges levied at the relevant time against him. Those customers have gone. Now the N.A.licensee is trying to revise the past bills on the basis of change of tariff, how the consumer/complainant can recover such excess amount from the customers, who have already utilized the services of the consumer/complainant in the past. The Hon.ble MERC in view in such contingency has laid down that no retrospective recovery is permissible. Consequently there seems to be substance in the grievance of the complainant. Though the complainant has sought for setting aside the said revised bill in its entirety but this forum is of the view that from the date of issue of first assessment bill i.e. 4.7.12 the tariff of commercial rate could be levied and claimed from the complainant. During the course of submissions the learned representative for the complainant has submitted that the complainant is ready to pay the bill at the said tariff, in future. Suffice to say that when the N.A.licensee has issued assessment sheet/provisional bill for first time, that time complainant has been made aware of the tariff at which he will have to pay electricity charges. Consequently the submission made by the learned representative that in future the complainant is ready to pay as per that tariff cannot be said to be well founded. In view of such observations and conclusions this forum is inclined to set aside the said assessment bill of Rs. 4,40,855/- issued by the N.A. Licensee by giving directions in terms of following order, hence this unanimous order.

**ORDER**

- 1) Complaint 12/2013 is hereby partly allowed. The plain assessment bill of Rs. 4,40,855/- issued by the concerned office of the N.A.licensee is hereby set aside with direction to issue bill at commercial tariff to the complainant from 04/07/12 onwards by issuing fresh bill and complainant to deposit the same within fifteen days from the receipt thereof.
- 2) The N.A.licensee to issue subsequent monthly bills regularly to the complainant as per the said tariff which is applicable to it as per regulations.
- 3) In the circumstances parties to bear their own costs.
- 4) Compliance report to be submitted within a period of three months from the date of receipt of this order.

Sd/-  
(A.S.Gade)  
Member

Sd/-  
(P.B.Pawar)  
Secretary

Sd/-  
(T.M.Mantri)  
Chairman