

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

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

Dt- 16/12/2013

Complaint No.91,93,94/2013

In the matter of grievance of illegal recovery of Electricity Duty and refund
thereof with interest With Others

Quorum :

Shri T.M.Mantri,	Chairman
Shri A.S.Gade,	Member
Shri P.B.Pawar,	Secretary

JDS Ginning & Oil Mill,At Sategaon Tq.Anjangaonsurji.(Con.No.3666539005960)
.... (Complaint No.91)
M/s Maharashtra Cotton Industries,At Pandhari (Con.No.359979005780)
.... (Complaint No.93)
M/s Maharashtra Cotton Ginning, At Pandhari (Con.No. 359979005791)
... (Complaint No.94)
... Complainants

...VS...

The Executive Engineer, MSEDCL, Dn.Office, Achalpur ... Respondent

Appearances:

Complainant Representative: Mr.Ashish Subhash Chandarana

Respondent Representative: Shri Pise, A.E. MSEDCL Sub Dn. Anjangaon Surji

1. In the matter of grievance of recovery of illegal electricity duty and others. In this group of complaints the grievance is made in respect of illegal recovery of electricity duty by all the complainants. As far as complainant in

complainant No.94/2013 the grievance is also about refund of security deposit. Whereas in the complaint 93/2013 there is also grievance about tariff in addition to others.

That considering the submissions made on behalf of both the parties the matters have been heard together and as per submissions made on behalf of both the parties, by this common order matters are being decided.

2. As far as common grievance about electricity duty is concerned it has been alleged that though the State Govt. of Maharashtra has specifically exempted from payment of electricity duty from 01/04/2004 and the said exemption extended till 31/03/2014 by issuing notification, inspite thereof the N.A. illegally levied and recovered electricity duty so also in contravention to the circulars issued by the licensee itself. It is further alleged that inspite intimation by the concerned electricity duty authority, as well as concerned officer of the licensee, there has been no uniformity adopted and illegally electricity duty has been recovered. Reference has been made that the Circle Office, Akola is not recovering the electricity duty from the consumers in the Circle by referring to example of M/s Ganesh Cotspin. The complainants have claimed refund of electricity duty illegally recovered alongwith interest @ 9.5% on the basis of awarding of such relief by Hon.ble Electricity Ombudsman so also costs.

3. The complainant No.94/2013 (M/s Maharashtra Cotton Ginning) has further claimed that inspite permanent disconnection of the connection, the security deposit alongwith interest has not been refunded within the

prescribed time, hence it has claimed relief of refund of S.D. with interest and compensation.

4 In complaint No.93/2013 the complainant (M//s Maharashtra Cotton Industries) has alleged that the old S.D. alongwith interest as per regulations has not been refunded after up-gradation from LT to HT, so also grievance is made that the HT establishment of the complainant is billed at seasonal rate whereas the complainant wants it as non-seasonal rate and inspite demand the tariff category has not been changed resulting in recovery of more amount so the complainant is entitled for refund of the excess amount.

The complainants have accordingly prayed for reliefs in their respective complaints.

5 Notice as per regulations issued to the N.A. for submission of reply. From the concerned office of the N.A.licensee reply came to be filed, late. It has been stated that calculation for refund of electricity duty as per State Govt. Notification are carried out for the period March,2009 to March,2013 and no electricity duty is charged from April,2013. Refund of Rs.1,27,655/- against electricity duty is adjusted in bill of Oct.2013 as far as complaint No.91 (M/s JDS Ginning and Oil Mill) is concerned.

6 As far as complainants in complaint No.93,94 identical reply has been given stating that as per Govt. Notification the calculation for refund of electricity duty are carried out and refund of electricity duty in respect of M/s Maharashtra Cotton Industries(Complaint No.93) is of Rs.76,351/- whereas it is Rs.1,60,955/- for M/s Maharashtra Cotton Ginning(Complainant No.94) thereby total refund of Rs.2,37,346/- is being adjusted against energy bills of

HT consumer M/s Maharashtra Cotton Industries as both LT consumers are now converted to HT consumer under that name. According to N.A. as the amount of electricity duty recovered from complainants was immediately paid to the State Govt. so no interest be awarded and the action is not with malafide intention.

7 The matter was then posted for arguments. Heard Mr. A.C.Chandarana the learned representative for the complainants and Mr. Pise, A.E. the learned representative on behalf of the N.A.licensee. During course of arguments it was pointed out on behalf of complainant that the N.A. has not stated anything in respect of grievance of S.D. and change of tariff as made by the complainant in Complaint No.93,94 but has given reply only on the point of claim of refund of electricity duty. That time Mr. Pise, the learned representative of the N.A.licensee has requested for time for submitting the supplementary reply in Complaint No.93 and 94 stating that it seems because of mistake or over-sight the reply for those claims have not been filed. The request was granted and accordingly on 22/11/2013 supplementary reply came to be filed in Complaint No.93 and 94 stating that as both these consumers have not submitted original receipt of S.D. hence the amount of S.D. could not be refunded and now by letter dated 22/11/2013 the consumers have been requested to submit original S.D. receipts whereby the amount can be refunded. This is to avoid misuse of those receipts.

08 As far as claim of change of tariff of complainant in Complaint No.93 is concerned, it is stated that as per tariff order of 2003 such shifting can be done only once at the beginning of the financial year on written intimation, in

advance at least a month i.e. on or before 28th Feb. and the complainant has been requested to submit such application for change of tariff.

09 As far as claim of the complainants in respect of illegal recovery of electricity duty, it is admitted position that the State Govt. has exempted from levying such electricity duty from 1/4/2004 onwards. No doubt after verifying of the complaint, steps have been taken for refund of electricity duty recovered. The basic illegality was committed. When the Govt. had granted exemption of electricity duty the same could not have been levied in the bills, consequently, could not have been recovered. Here it is pertinent to note that the Circle Office of the N.A.licensee has not billed and recovered electricity duty from the consumers in view of the Govt. notification. So apparently there was different treatment to the consumers. Merely because the steps have been taken for refund of electricity duty, the illegality committed could not be justified. The record clearly shows that though the complainants made grievance for refund, it was not promptly attended. In view thereof submission made on behalf of the non-applicant for not awarding interest, cannot be accepted. The Hon.ble Ombudsman has awarded interest in the Identical cases of illegally recovery of electricity duty. The complainants have relied there-upon i.e. order in representation No.50/2013. Needless to say here that it is because of latches/negligent attitude on the part of concerned officer/staff of the N.A. hence as per the order of Hon.ble Supreme Court in Lukhnow Development Authority versus M.K.Gupta reported in 1994 S.S.C.1(iii) Page 243 it is their personal liability. The N.A.licensee to take appropriate action therefor for the liability of interest being levied in terms of this order against them.

10 As far as claim of refund of S.D.in above complaints 93,94 are concerned, the stand taken on behalf of N.A. in supplementary reply is not at all convincing, considering the provisions in regulations. As per regulation the S.D. is required to be refunded within period of one month. Nothing has been pointed out that the consumer has to submit original S.D.receipt duly signed and discharged. The submissions made by the learned representative of the complainant that not only in the records but also on the electric bills the amount of S.D. is mentioned is not contraverted and in any case while making payment of S.D. the N.A. can obtain receipt about such payment from the consumers. Consequently the averments in reply and submissions made during course of arguments on behalf of the N.A. are not acceptable.The provisions under regulations are binding on the N.A. and upon failure to meet the standard of performance accordingly, the liability arises and N.A.cannot disown the same as per regulations.

11 As per regulation 9.4 of MERC (Standard of performance of distribution licensee for a period for giving supply and determination of compensation)Regulation 2005 there is obligation on the licensee to repay the amount within a period of 30 days and in the Appendix A, levying of compensation payable to the consumer for failure to meet SOP provided under regulation is given. As per clause 7(iii)of Appendix A, the compensation payable has been specifically mentioned. Considering the rival submissions and more particularly submission of the learned representative of N.A.licensee for taking lenient view, this forum is of the view to consider it appropriately. Needless to say that here also it is the negligent and lethargic attitude of the concerned officer/staff, hence the liability needs to be imposed against such

erring official and N.A.licensee to take appropriate steps for that financial burden arising on that account, in this order.

12 As far as claim of the complainant in complaint 93/2013 (M/s Maharashtra Cotton industries) for non-seasonal tariff, it has been submitted by the learned representative that the bills ought to have been issued at seasonal tariff, hence the relief is sought about rectification of tariff category so also refund of excess amount collected so far with interest. In supplementary reply filed on behalf of the N.A., reference has been made to tariff order of 2003 and submitted that it is for the consumer to seek appropriate tariff that too only once during the year, at the beginning, with written notice in advance at least a month i.e. on or before 28th February. The learned representative of the complainant has submitted that some documents he will file within a few days in respect of declaration of the choice of seasonal months, issued on behalf of the N.A. whereby the consumer has to declare seasonal month. The learned representative of the N.A. has submitted that such requirement is to be done but here the question is whether the complainant had given such declaration. On behalf of the complainant written communication was received in the office of CGRF on 2/12/2013 with copy of letter of Superintending Engineer, Yavatmal addressed to all seasonal HT consumers. Upon considering the rival submissions with material on record and this written communication received on 2/12/13 it is clear that even according to complainant neither the complainant has submitted details of seasonal months nor the N.A.licensee has made any query in that respect. If one considers the letter of S.E.Yavatmal filed by the complainant on record, it is clear that as per that letter the HT consumers have

to make such demand in writing on or before 28/02/2012 whereby the electric bill can be prepared accordingly. Further it is mentioned therein that if compliance is not made, then billing shall be done as per earlier practice. So it can be clear that the consumer/complainant has to give details of seasonal months. Here in the present case admittedly the complainant has not given, that too, in writing before the due date. Nothing has been filed on record from the side of complainant that though it is consumer since March,2010, at any time had asked for such option. On the contrary in the complaint for the first time it has been stated that the applicant is billed at “seasonal”, which it “wants” as a non-seasonal. Plain reading thereof means for the first time such express desire has been made that the complainant wants billing as a non-seasonal tariff. In such facts and circumstances the complainant’s request for rectification of tariff category from seasonal to non-seasonal for earlier period so also for refund of the amount collected with interest, cannot be accepted. As is clear from record for first time complainant “wants” such change in tariff category. As per the documents filed by the complainant itself and the referred tariff order, such option is to be made in writing, one month prior of the financial year i.e. on or before 28th Feb. Consequently the N.A. to take cognizance of this “written communication” of the complainant as far as billing for further period i.e. from March 14 onwards. As a safety the complainant to submit such written proposal as required on or before 28th Feb. In view thereof this relief of change of tariff category and refund of amount for the past period cannot be accepted.

13 In view of the above observations and conclusions this forum proceeds to pass following unanimous order with the observations that the N.A.licensee to take appropriate steps against erring officials/staff as per judgement of Lukhnow Development Board versus M.K.Gupta.

ORDER

- 1 The complaint Nos 91,93,94 of 2013 are hereby partly allowed. The N.A.licensee to make adjustment of respective amount of electricity duty recovered from each of the complainants in the forthcoming energy bills of each of the complainants, alongwith interest @ 9% from the date of collection till adjustment.
- 2 The N.A.licensee is also directed to refund/adjust amount of security deposit of both the complainants 93,94 of 2013 (M/s Mahatashtra Cotton Industries & M/s Maharashtra Cotton Ginnig)alongwith compensation @Rs.100 per week as per clause 7(iii) of Appendix A of MERC (Standard of performance of distribution licensee, period for giving supply and determination of compensation) Regulation 2005 for the delayed period.
- 3 The claim of the complainant of 93/2013 (Maharashtra Cotton Industries) for refund of amount on account of seasonal tariff category is hereby rejected. The parties to take appropriate steps in that regard in terms of the above order.

- 4 The N.A.licensee to pay cost of Rs.1000/- to each of the complainants and the N.A.licensee to take appropriate steps against the erring officer/staff as laid down as per ruling of the Hon.ble Supreme Court in Lucknow Development authority versus M.K.Gupta reported in 1994 S.C.C.(i) page 243, as well as ordered by Hon.ble Electricity Ombudsman.
- 5 That the compliance report to be submitted within a period of one month.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman