

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

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

January 15,2014.

Complaint No.92/2013

In the matter of grievance about assessed bills and tariff category

Quorum :

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

Chairman ,Krushi Utapanna Bazar Samiti, Mangrulpir ... Complainant

...VS...

The Executive Engineer, MSEDCL, Washim ... Respondent

Appearances:

Complainant Representative: Shri Ashish C.Chandarana,Akola

Respondent Representative: Shri M.N.Pandhare,, A.E. Mangrulpir

1. The complainant has approached this forum in respect of demand note from N.A. for Rs.6,14,300/- on account of alleged tariff difference. The complainant had made representation to the concerned A.E. with copy to higher authorities but no attention has been paid, hence the complainant approached to this forum for redressal of his grievance.

2. It is alleged that complainant is a semi-govt. organization known as Agricultural Produce Market Committee, Mangrulpir. The Flying Squad Washim inspected the premises on 22/2/2013 but have not provided any inspection report, however letter dated 05/03/2013 was received on 12/3/13, alongwith alleged bill for Rs.6,14,300/- alleging tariff difference LT(V)A to LT(II) for the period March,2010 to February,2013. It is alleged that the complainant came to know that wrong tariff was applied in the past as per N.A. In spite sending letters nothing was done.

3. It is alleged that in any case if the complainant is placed in wrong tariff category because of fault of distribution licensee, it is not empowered to recover arrears on alleged ground for difference of tariff. Reference has been made to regulation 13 of supply code and alleged that classification/re-classification of consumer, as per approved tariff category, is the duty and responsibility of licensee. For the wrong tariff applicability by the licensee the consumer cannot be burdened. Reference has been made to supply code 2005 in respect of the recovery of energy charges and alleged that there is no provision for recovery of tariff difference in case of applicability of wrong tariff. According to the complainant it has consulted the experts who are of view that the tariff category should be of Public Services and not commercial as directed by the Flying Squad. Instead of taking action against the guilty officer the N.A. is raising the bill illegally in contravention to the regulation against the complainant. Reference has been made to case No.24/2001 of MERC order dt. 11.2.2003 where

under the ruling was given that no retrospective recovery can be made on the basis of abrupt classification of the consumer, hence the complainant is seeking to reliefs applied for. Alongwith complaint copies of documents came to be filed.

4. Notice as per regulations issued to the N.A. for submitting reply. Inspite receipt of notice and seeking adjournment for filing reply the reply was not filed. The matter was then posted for arguments and at the time of argument on 03rd January,2014, reply came to be filed with application to permit reply to be filed on record. Such permission was granted. In reply the N.A. has narrated the facts only in respect of visit of Flying Squad Washim on 22/2/2013 and further stated that the said squad has directed A.E.Mangrulpir under letter dt. 28th Feb.13 for issuing the bill of Rs.6,14,300/- for tariff difference alongwith the spot inspection report and final/provisional assessment sheet.

5 It is stated that as per those directions assessment bill of Rs.6,14,300/- was prepared and issued with letter dt. 05/03/13. It is stated that the bill is correct hence complaint needs to be dismissed.

6 Heard Shri A.C.Chandarana, the learned representative for the complainant and Shri Pandhare, A.E.the learned representative for N.A. Here it is pertinent to note that in reply of the N.A. which was came to be filed belatedly, there is no reply to various averments made by the complainant in the complaint In substance the reply states that as per direction of the Flying Squad, Washim, the impugned bill came to be issued. Admittedly the complainant is consumer of the licensee since

more than 35 years. It is not in dispute that it is Ag. produce market committee. Though the complainant has issued letters raising grievance about the impugned bill nobody bothered, neither replied nor justified issuing of such bills. Admittedly the complainant had been paying the electric bills regularly and there was nothing in arrears. The alleged bill of Rs. 6,14,300/- is towards alleged difference of tariff according to the N.A., that too for the period March,2010 to Feb.2013. Admittedly during that period i.e. March,10 onwards till Feb.13 the N.A. has issued bills of electric charges and the complainant has paid the same. The N.A.s representative has submitted that after visit of the Flying Squad it has prepared the bill of alleged tariff difference and that has been forwarded to the complainant, when query was made in respect of production of A-1 form which was submitted by the complainant it was said that it is not available. According to the N.A. it was plain assessment, so it is clear that complainant was not at fault and whatever bills issued have been remitted. The impugned bill is for alleged tariff difference that too for the period of last three years, prior to the visit of Flying Squad. It has been admitted that complainant was never informed at any point of time prior to 22/2/13 or till issuing of letter dated 5/3/13 that the tariff category under which bills have been issued and recovered from the complainant was incorrect.

7 As per the Maharashtra Electricity Regulatory Commission (Electricity supply code and other conditions of supply)Regulation 2005 more particularly regulation No.13 classification and re-classification of consumers into tariff categories is the duty and responsibility of the

distribution licensee. As per approved tariff by MERC the distribution licensee has to make applicable the tariff category to particular consumer. So admittedly it is clear that the N.A. has applied particular tariff category even for the alleged period. The flying squad has allegedly made applicable "other tariff category" and accordingly impugned bill came to be issued. So it is clear that whatever fault/latches in making applicability of tariff was that of N.A. According to complainant the N.A. cannot penalize the complainant for fault and latches on the part of concerned officer/staff. The complainant has also submitted that there cannot be retrospective recovery on account of change of tariff category and has relied upon order of Hon.ble MERC in case No.s24/2011 in the similar type of grievance. In para-23 of the order it has been laid down that no retrospective recovery of arrears can be done on account of abrupt re-classification of the consumer and further laid down that in such cases, recovery if any, would be prospective. In order to appreciate the same the said paras 23/24 are reproduced here below-

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

No retrospective recovery of arrear 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.

24. Accordingly, the bill issued to the MIDC should be corrected to ensure prospective recovery of dues from the date of communicating about the reclassification”.

8 As already observed above in the reply the N.A. has not at all dealt with this and other pleas raised by complainant in any case the order of MERC is applicable and binding on N.A. According to the complainant even commercial category could not be made applicable to it as it is doing public services and the category of “public services” to be made applicable. This has been opposed from the side of the N.A. With regard to submissions of the complainant for applying tariff of public services nothing in support has been pointed out. If one goes through the tariff order, it is clear that for each tariff category to whom it shall

be applicable has been specified, the complainant could not point out that APMC is placed under public services tariff category. Under non-residential/commercial category it has been specified that it is applicable to all non residential, non industrial and business premises. Even govt. offices have been included in that category apart from others, so it supports the submissions of the N.A. that commercial category is rightly made applicable. The complainants request for making public services tariff category applicable to it cannot be accepted.

9 This forum upon considering the available material on record more particularly the order of Hon.ble MERC is of the view that appropriate change of category from March,2010 to Feb.13 and issuing of alleged bill on that basis is contrary to the regulation as well as order of MERC. The tariff category can be changed at the most from the date of alleged inspection i.e. on 22/2/2013. So the issuing of bills under the changed category ought to have been from 22/2/13 at the most. MERC has laid down that such recovery should be prospectively, consequently the impugned bill needs to be set aside and it required to be rectified in terms of this order. Needless to mention here that if concerned officer/staff of the N.A. would have made applicable the correct tariff category then the losses to the licensee could have been avoided. For fault/latches on the part of concerned officer/staff of the concerned office of the N.A., the licensee to take appropriate steps including that of recover of monetary losses as laid down by the Hon.ble Appex Court in the matter of 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. With such observations the forum proceeds to pass following unanimous order.

ORDER

- 1 The complainant No.92/2013 is hereby partly allowed. The impugned bill of Rs.6,14,300/- towards alleged past tariff difference is set aside and the N.A. is directed to issue revised bill in tariff LT-II category from 22/02/2013 onwards and amount if any collected from the complainant to be adjusted in the forthcoming bills payable to the complainant in that category.
- 2 In the circumstances the N.A. is liable to pay cost of Rs.1000/-.
- 3 The N.A.licensee to take appropriate steps/action against the erring officer/staff of concerned office of the N.A.for causing monetary losses to the licensee as laid down by Hon.ble Appex Court in the matter of 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.
- 4 That the compliance report to be submitted within one month from this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman