

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

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

Dt-12/06/2013

Complaint No.27/2013

In the matter of Dy.Engineer MIDC Sub Dn.Yavatmal for applicability of proper tariff

Quorum :

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

Dy.Engineer MIDC Sub Dn.Yavatmal

... **Complainant**

...VS...

MSEDCL Division Office ,Yavatmal

... Respondent

1 The complainant MIDC Yavatmal has approached this forum in respect of grievance about applicability of HT-I tariff instead of HT-IV and refund of excess amount paid to the N.A.licensee . The complainant’s claim in substance is that HT connection has been availed in the name of Dy.E.E. Yavatmal for water supply scheme to industrial area Yavatmal, Pusad. Since Nov.2011, the N.A.licensee has changed the tariff to HT-I and inspite making representations oral as well as in writing, no cognizance thereof has been taken. On the contrary the complainant is paying monthly bills as per tariff HT-I, in order to avoid disconnection. It is alleged that though the complainant has approached to IGRC Yavatmal for Redressal of grievance but the said authority has also not given relief.

2 It is alleged that the complainant is a statutory authority established by Govt.of Maharashtra, under MIDC Act, 1961 and providing basic amenities including water supply to the industries, residence etc. It is alleged that substantial part of the MIDC water supply is provided outside the areas of several Municipal Corporation, Municipal Council, Gram panchayat at subsidized rates. Considering the intention of MERC in tariff order, the complainant qualifies for HT IV Public water supply tariff as there is no change in the user till now. Reference has been made to the matters in connection

With MIDC at other places such as Nanded, Kalmeshwar, etc. alleging that they got the relief of applicability of HT-IV tariff, hence the complaint is seeking the reliefs prayed for. Along with the complaint copies of documents came to be filed.

3 The N.A.licensee has opposed the claim by filing reply after receipt of the notice of this forum, belatedly. It has been stated that as per Circular No.175, dt. 5/9/12 if the sewerage treatment plant is used for local governing bodies like Gram panchayat, Municipal Corporation, Municipal Council, Cantonment Board, then HT-IV tariff will be applicable. There is no reference at all of MIDC therein. Further more it is stated that the HT connections are being also used for supply of water to housing colonies, Darda Engineering College hostel, etc. hence the applicability of HT-I tariff is correct and justified. Alongwith reply copies of bunch of documents came to be filed. Matter was then posted for arguments.

4 Heard Mr.Daberao, Dy.E.E. MIDC, the learned representative for the complainant and Shri S.M.Mdavi, E.E. the learned representative for the N.A.licensee who has also filed written notes of arguments along with copies of orders of Hon.ble High Court. A copy of which has been given to the complainants representative. Both the learned representatives have also made oral submissions. On behalf of the non applicant licensee objection has been also raised in view of pendency of the matter before the Hon.ble High Court on the same and identical issue between the parties. Upon considering the rival submissions coupled with the legal provisions and the documents on record this forum is deciding the matter accordingly.

5 It is an admitted position that MIDC Yavatmal is providing facilities to the industries in the MIDC area so also supply of water apart from the industries and MIDC. It has been brought on record that the water supply is also being made to housing colonies, as well as Darda Engg. College hostel etc. The controversy is in respect of applicability of the tariff. According to the complainant HT-IV tariff ought to have been made applicable but incorrectly HT-I tariff is being made applicable, where under the complainant is required to pay more amount than what it is liable . Both the parties have filed bunch of documents and complainant has referred to certain orders of CGRF at other places so also order of Electricity Ombudsman in Representation No.55 of 2011. Whereas the non applicant licensee has relied upon the provision of regulation 2006, orders of Hon.ble High Court in written petition No.3623 of 2012 with W.P.3691 of 2012 and W.P.No.9065 of 2011 with W.P.10967 of 2011. So also the reference has been made to the tariff

order. On going through the tariff order in pursuance to Case No.19 of 2012 HT-I Industry and applicability thereof has been given whereas HT-IV HT-Public Water Works and Sewage Treatment Plant, In the said tariff order applicability is given as under:

HT IV: HT- Public Water Works and Sewage Treatment Plants

Applicability

“Applicable for use of Electricity/ Power Supply at high Voltage for pumping of water, purification of water and other allied activities related with Public Water Supply Schemes and Sewage Treatment Plants provided such Public Water Supply Schemes and Sewage Treatment Plants are owned, operated and managed by Local Self Government Bodies, like Gram Panchayat, Municipal Council, Municipal Corporation including Maharashtra Jeevan Pradhikaran, and cantonment boards:

Public water supply schemes and sewage treatment plant (including other allied activities) owned, operated and managed by any other Agency than Local Self Govt. body (excluding Maharashtra Jeevan Pradhikaran) shall not be eligible for HT IV Tariff and shall be billed as per either HT II(A) or HT II(B) or as the case may be, except those covered in HT I.”

6 On going through the same it is clear that the water supply schemes and sewerage treatment plant which are operated and maintained by local self-governing bodies like Gram panchayat, Municipal Council, Municipal Corporation including Maharashtra Jeewan Pradhikaran and cantonment board are covered therein. From the subsequent part of the said portion it is clear that such plants operated and maintained by any other agency other than local governing bodies (excluding Maharashtra Jeewan Pradhikaran) shall not be entitled for HT-IV tariff but shall be billed as per category named therein. The intention of giving exception to Maharashtra Jeewan Pradhikaran apart from local governing bodies, clearly demonstrates the intention therein. There is no inclusion of MIDC therein like Maharashtra Jeewan Pradhikaran. This requires special attention.

7 As far as submissions made on behalf of the complainant above and with reference to orders of CGRF at other places as well as order and representation No.55/1 one has to note the respective dates of these orders. As per submission made on behalf of the N.A.licensee as well as documents on record it is clear that the identical controversies between the parties were taken before the Hon.ble High Court in W.P.No.9065/2011 with W.P.10967 of 2011 so also W.P.No.3623 of 2012 with W.P.3691 of 2012 In the

earlier petitions the copy order dt. 20th Dec.2011 is filed whereas in latter W.Ps. copies of order dt. 2nd May,12 of Hon.ble High Court is filed on record. The submissions made by the learned representative of the N.A.licensee that order of Ombudsman has been stayed by the Hon.ble High Court has not been contraverted from the side of the complainant. From the order of the Hon.ble High Court in W.P.9065 of 2011 it is clear that the Hon.ble High Court, in para no.2 has taken into consideration the controversy in respect of both these parties and further observed that this type of dispute will continue to arise at several places in the state so this is a fit case which has to be disposed off by giving priority. Accordingly order was passed. The submissions made by the learned representative of the N.A.licensee that the complainant and its officials are very well aware of the order passed by Hon.ble High Court and inspite thereof they have filed the present complaint. He has referred to regulation 6.7(d) of Maharashtra Electricity Regulatory Commision (CGRF and Electricity Ombudsman) Regulation 2006, in support of his submission that this complaint should not be entertained. For ready reference the said provision is reproduced here in below :

6.7 The forum shall not entertain a Grievance:

- a)
- b)
- c)

d)where a representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority.

There is no convincing reply from the side of the complainant to this legal submission made on behalf of the N.A.licensee but the learned representative of the complainant has re-iterated about orders of CGRF and Ombudsman. When query was made with the learned representative about the status of the W.P. referred to above, it has been pointed out that the W.Ps. are still pending before the Hon.ble High Court. It is thus clear from the record that the same and identical controversy between the parties is pending before the Hon.ble High Court. The dates of the order of High Court as referred to above being later in point of time, as well as the order of the Hon.ble High Court becomes the law of the land, the same are required to be taken into consideration being on the same and identical controversy. The reliance of the complainant on other orders referred to above will not be of much assistance in view of order of the Hon.ble High Court.

Consequently this forum is of the view that the fate of the controversy between the parties being pending before the Hon.ble High Court, it will not be just and proper to deal with the same here. The order of the Hon.ble High Court on the said controversy between the parties will be applicable to the present case in hand also, apart from other like controversies pending if any. The complaint is therefore disposed off in terms of above order by unanimous decision.

ORDER

1 Complaint 27 of 2013 is hereby disposed off as the same and identical controversy between the parties being pending before the Hon.ble High Court in W.P.No.3623 of 2012 and 9065 of 2011, the decision therein shall be applicable to the present case in hand also. The said decision will be binding on parties.

2 In the circumstances parties to bear their own costs.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman