

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

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

January 20,2014.

Complaint No.96/2013

In the matter of grievance about excessive elec.bills with other reliefs

Quorum :

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

Shri Rajeshwar M. Niwal, Yavatmal ... Complainant

...VS...

The Executive Engineer, MSEDCL Yavatmal ... Respondent

Appearances:

Complainant Representative: Shri Ashish C.Chandarana,Akola

Respondent Representative: Shri Tagalpalliwar, E.E. Yavatmal

1. The complainant has approached this Forum making grievance about plain assessment bill of Rs.2,38,303/- with interest and DPC came to be issued to it. The complaint in brief is that the complainant is engaged in activity of automobile workshop and the connection was released on 12/01/2006 since then industrial tariff is made applicable by the authorities of the licensee. The premises of the complainant was inspected by the authorities of the licensee and later on the complainant received bill dated 10/4/13 for Rs. 2,38,303/-

on account of alleged tariff difference claiming recovery since the date of release of connection with endorsement on bill as 'temporary'. It is alleged that surprisingly provisional bill dt.14/4/13 is already debited in computerized bill dated 9/4/13. In spite approaches made by the complainant to various authorities for reviewing the bill, but to no effect.

2. Notice of disconnection under Section 56 was received on or about 24/9/13 and it has been alleged that the said action is not at all attracted. The complainant had made representation in writing, which is unanswered.

3. It is alleged that legally if wrong tariff category has been made applicable the licensee is not empowered to recover arrears on account of difference of tariff. Reference has been made to regulation 13 of supply code, so also it is alleged that classification/reclassification is the primary duty of licensee. For mistakes/faults of N.A. the complainant cannot be burdened.

4. Reference has been made to supply code 2005 more particularly section 50 of Electricity Act,2003 alleging that there is no provision for recovery in tariff difference, in any case classification/reclassification of the tariff is responsibility of the licensee. Instead of taking action against the erring officer, the licensee is raising bill upon complainant in contravention to the statutory provision.

5 Reference to order in Case No.24/2001 by MERC on 11th Feb.2003 has been made. Having left no other alternative complainant approached to this forum for grievance in respect of excessive bill and sought reliefs prayed for. Copies of documents came to be annexed with complaint.

6 Notice as per regulation came to be issued to the concerned office of the N.A. licensee. No reply was filed but time was sought to submit reply again on the adjourned date the reply was not filed and matter was fixed for hearing, the time reply came to be filed. Copy of which has been served to the complainants. Reference has been made to tariff order effective from 01/04/07 and order of Hon.ble MERC in 65/2006 dt. 18//5/2007. It is stated that for first time differentiation has been made amongst the consumers to be billed in as per LT-II non-domestic tariff whereas IP tariff i.e. LT(V) was to be billed for industrial consumers industry etc. Reference has been made to commercial circular No.45.

7 Reference has been made to order of MERC. Similarly reference to the regulation 13 of supply code has been made alleging that it empowers the N.A. to charge such type of assessment, hence the assessment in question was accordingly made.

8 It is stated that as there was conflicting view, the matter was referred to larger bench of Bombay High Court. Likewise reference has been made to the order of Electricity Ombudsman, Nagpur in representation 18/2013 and lastly prays for dismissal of the complaint. It has been lastly stated that the N.A. be allowed to have proportionate assessment at least for two years. Copy of some documents came to be filed with reply.

9 Heard Shri Ashish Chandarana, the learned representative of the complainant and Mr.P.S.Tagalpaliwar, E.E.Yavatmal the learned representative of the N.A. If one goes through the reply filed on record from the side of the

N.A. it is clear that only on technical grounds the reply has been filed but nothing has been stated in respect of averments made by the complainant in the complaint. Admittedly the complainant is consumer since long and having automobile activities. According to the complainants representative only because of alleged reading and report of Flying squad the N.A. has issued impugned bill without actual verification as already observed above. The parties have filed documents with regard to the N.A. defense and stated that is a case of "escape bill", but he same cannot be accepted, considering the legal provisions under the statute and rules. As is clear from record the automobile units like complainant has been placed under commercial category w.e.f. 01/08/12 as per order in case No.19/12. As far as reliance placed by the N.A. in order of MERC & High Court it is clear that they were dealing in respect of "escape bill" which is not applicable as far as complainant is concerned.

10 Admittedly as per provisions under regulations classification of tariff category and re-classification thereof is to be carried out by licensee as per order of MERC effective from the respective date. Here in the present case the reference of the N.A. on the documents as well as orders of the Hon.ble High Court, it is clear that the same are not of much help to the complainant. In order provisions of Section 56(II) of Electricity Act, 2003 have been considered along-with the regulations. It is pertinent to note that the controversy was in respect of escaped billing which is not the case in the present matter. Copy of clarificatory order dt.19th July,2004 in respect of case No.24/2001 vide order dated 11/2/03 has been duly considered in that 24/2001. The Hon.ble Commission has laid down that no retrospective recovery of arrears can be allowed on the basis of any abrupt re-classification inspite pointing out the same

by the Auditor. It has been laid down there that any re-classification is to be as per definite process of natural justice. Recovery if any would be prospective only and such case cannot be categorized as escaped reading/billing. So on going through the available material on record, it is clear that the reliance placed by the N.A. on its supporting orders, they are not applicable. Firstly they are on different controversies, there is no case of "escaped billing". Nothing has been pointed out in justification thereof, specially when it was not case of escaped bills but case of applicability of wrong tariff as already observed above. Classification and re-classification as per tariff order, is the duty and responsibility of the licensee. It cannot abruptly make the change and cannot make claim of arrears, retrospectively. The complainant has rightly relied upon the judgment of Hon.ble MERC in case No.24/2001. In the said matter also this controversy was allowed to be involved, however on going through the said judgments it is clear that they are pertaining to the "escaped billing" and "not of changed tariff", case of abrupt re-classification. It has been laid down that re-classification if any, would be prospectively. The relevant paras 23 and 24 of order in case No.24/2001 is helpful to the complainants submissions.

11 The N.A. has not at all dealt with various aspects in reply, on the contrary the reply shows that the notice was given for the period of about seven years. Admittedly as per tariff order in case No.19/12 the automobile workshop is placed under LT-(II) non-residential commercial. The complainants submission for making it applicable residential commercial, cannot be accepted.

12 The learned representative of the N.A. licensee has submitted that in any case assessment of the last two years may be allowed. At this stage it is pertinent to note that according to the N.A. assessment for the last two years needs to be allowed has no meaning or supporting material. Here, it is pertinent to note that though the impugned bill is from 1/12/2006 however the N.A. has tried to relied upon tariff order of 2007. Consequently, this forum proceeds to pass following unanimous order.

ORDER

- 1 The complaint No.96/2013 is hereby partly allowed. The impugned plain assessment bill of Rs.2,38,303/- is hereby set aside. The N.A. is directed to revise the said bill under commercial category w.e.f. 01/08/12 as per tariff order No.19/2012. Any amount if the complainant has paid to be adjusted in terms of the order, under that tariff.
- 2 In the circumstances parties to bear their own costs.
- 3 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