

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

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

Dt-12/06/2013

Complaint No.48,49,50,51,52,53,54/2013

In the matter of Jaya Kamlesh Patel & others for applicability of proper tariff

Quorum :

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

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| 1)Jaya Kamlesh Patel I (Case no.48/2013) | Con. No. 359970000265, Pandhari.
.....(Complainant-1) |
| 2)Shri Devidas Nemade (Case no.49/2013) | Con. No. 359971201663, Pandhari.
.....(Complainant-2) |
| 3)Shri Pravin Thakare (Case no.50/2013) | Con. No. 359970002098, Pandhari.
.....(Complainant-3) |
| 4)Shri Sachin Rase (Case no.51/2013) | Con. No. 3531110000235, Pathrod.
.....(Complainant-4) |
| 5)Shri Mahadeo Bhonde (Case no.52/2013) | Con. No. 359971203313, Pandhari.
.....(Complainant-5) |
| 6)Shri Akshay Tate(Case no.53/2013) | Con. No. 359970001121, Pandhari.
.....(Complainant-6) |
| 7)Shri. Vinod Kholalkar (Case no.54/2013) | Con. No. 353110000243, Pathrod.
.....(Complainant-7) |

...VS...

Executive Engineer MSEDCL Achalpur,

..... Respondent

1 This is a group of complaints involving same and identical grievance, as well as same and identical defense reply and as per submissions made on behalf of both the parties, common arguments were advanced and by this common order these complaints are being decided.

2 The complainants grievance is in respect of applicability of wrong tariff. The complainants are consumers of the N.A.licensee, having cold room storage wherein storage of ag. products like banana, orange, chili etc. can be done and presently there is storage of banana. It is alleged that since release of the connection i.e. since Oct.2010 the N.A.licensee had applied commercial tariff whereas by referring to case No.116/2008 order dt. 17/8/09 MERC has allowed agricultural tariff to such consumers. Reference has been made to provisions of supply code 2005 wherein duties cast on the N.A.licensee to apply/revised tariff of the consumer in pursuance to tariff orders of MERC. It is alleged that it is thus clear that because of fault of N.A.licensee the complainants were not placed in correct tariff. Reference has been made to MERC order and commercial Circular No.102. Keeping in view this the IGRC Amravati has given direction to refund excess recovery made in violation to those circulars apart from change of tariff category, when the complainants approached the said authority.

3 It is alleged that as per order of MERC in case No.19/2012 dt. 16/8/12 the complainants are entitled for Ag. tariff which means that even prior to release of connection to the complainants that tariff of Ag. tariff was applicable for cold storages, hence representation was made to IGRC. In spite order passed by the IGRC as referred to above, the N.A. did not comply it.

4 It is alleged that in spite order of IGRC to adjust the excess amount recovered from the complainants that was not done on the contrary there was huge pressure from the side of the N.A.licensee including that of threat of disconnection. The complainants therefore made representations dt. 28/3/13 copy of which annexed with complaint, but to no effect. On the contrary the concerned A.E. had assured that the order of IGRC will be implemented early, so also requested to co-operate him to meet out the target of recovery. The complainants agreed and deposited Rs. 72,000/- and so on by others on 30/3/13 vide receipt no. 5603180. Provisional bill therefor has been made available from

N.A.side. It is alleged that inspite thereof the N.A.licensee has threatened for disconnection of the supply on the ground want of fictitious arrears, by referring to notice of one such consumer on 30/4/13. The complainants are neither liable to pay alleged arrears in view of not only the tariff order but also order of IGRC and in fact for credit balance the complainants are entitled for adjustment thereof so also interest, hence sought relief prayed for. Bunch of documents came to be filed along with complaint.

5 The complainants have also prayed for interim relief in view of the alleged threat of disconnection. After hearing this forum had passed Ad-interim order. From the side of the N.A.licensee reply came to be filed after receipt of the notice, but belatedly and in the meantime ad-interim order has been extended till further orders. As already stated above common reply came to be filed from the side of the N.A.licensee stating that as everything is common for complainants claim, hence one reply is filed. It is stated that all the complainants are consumers having their cold storage/rooms plants used for artificial ripening of bananas and not other Ag. products. For the whole year the consumers are using for common aspects and not for seasonal purposes, the same activity is carried out for the whole year. It is stated that raw bananas are purchased from local farmers and after washing, they are kept in plastic crats at particular temperature, thereafter ethylene gas injection is done through coolers/AC and after 4/5 days bananas are ready for sale in market. It is stated that thereby it is not only called storage but process of ripening bananas is carried out, which comes under commercial process, therefore, tariff made applicable is correct.

6 It is stated that all these facts were not placed before IGRC hence direction was given by IGRC for changing of tariff to Agriculture tariff. After it came to know process of artificial ripening of banana in cold storage in Jan,13 the tariff of the complainant has been again changed to commercial. It is stated that LT Ag. tariff for cold storage is

applicable only to “perishable Ag. produce in its natural form” as per commissions ruling statement on page No.109 of MERC tariff order, copy of which has been annexed. It is stated that the process of banana ripening is called as “A plant” which comes under natural process so the tariff applicable to complainants unit should be of natural tariff LT-V as per order of MERC. Hence, it has been requested that either commercial or IP tariff be directed to be applied and not Ag. tariff.

7 The matter was then posted for arguments. Heard Mr.Ashish Chandarana, the learned representative for the complainants and Mr. J.S. Paikine with Shri G.L.Pise, A.E., the learned representative for the N.A.licensee. During the course of arguments this forum wanted to know as to how and on what basis, the tariff has been changed which were issued for Dec. 12 as Ag. tariff but later on again they were changed to commercial tariff. By letter dt.13th June,2013 the concerned A.E. has mentioned that no any documents are available at this office regarding the change of tariff from Ag. to commercial, during the month of Jan,13. But later on submitted additional information dt. 18/06/13 with copies of some of the documents. Likewise on behalf of complainants written notes of arguments came to be filed along with documents more particularly in respect of making applicable to Agriculture tariff to cold storage connection along with bills. Copies have been exchanged between parties.

9 After giving considerable thoughts to the rival submissions made on behalf of the parties as well as the available material on record, it is clear that the defense and submissions on behalf of the N.A.licensee in the present proceeding is short, in the form of submissions that in the cold storage of the complainant only banana is being stored and processed for ripening. During course of arguments this has been disputed from the side of the complainant and it has been pointed out that the earlier A.E. who was working there since long is not working there and the new A.E. who is before this forum has recently joined the place. On enquiry the A.E. has submitted that only once he has

visited the plant of the complainant, that too, recently. Considering the overall material on record, more particularly order of IGRC dt. 31/12/12 –10th Jan.13 this forum did not find substance in the submissions made on behalf of the N.A.licensee. At the time of hearing before IGRC then A.E. has made submissions which are reflected in the said order. From the said order it is clear that he has categorically admitted not only about the mistake in applicability of the tariff but correction in the of the bills issued to the complainant with further submission that the bill of Dec.12 has been issued as per the corrected tariff and for remaining two consumers of Pathrot, the bills are being corrected in Jan.13. There is reference of circular No.102 in respect of applicability of the tariff . The IGRC has categorically directed that as per tariff order of MERC for cold storage, the bills of all the complainants be corrected and corrected revised bills be issued to the consumers and whatever amount is payable to the complainants, in view of excess amount recovered from them, the same should be adjusted in the forthcoming bills. It is thus clear that the defense raised in the present proceeding is not only by way of after thought but also has no basis. Reliance is placed from the side of the N.A.licensee on order of MERC (of which only part portion is produced on record). From the side of the N.A.licensee page no.109 of tariff order is placed on record, wherein there is reference of “commissions ruling”, on going through the said documents it is clear that intentionally entire ruling of the commission is not produced. The further part of the commissions ruling is on page no.110. From the said ruling of the commission it is clear that the commission has not approved the proposal of the N.A.licensee to restrict the tariff of cold storage only to “perishable Ag. produces under its natural form” but it has maintained its earlier ruling from page no.108. It is clear that sub part 2.26 deals with “cold storage systems” and there is reference of commissions tariff order dt. 17thj August,2009 whereunder LT Ag. tariff has been made applicable to pre-cooling and cold storage units. There is further clarification that irrespective of they are pre-cooling and cold storages are being used by farmers or traders and irrespective of ownership pattern.

If one goes through this para in its entirety, it is clear that there is no ambiguity in the Commission's order and the recitals in reply of N.A.licensee that Agriculture tariff for cold storage is applied only to "perishable Agriculture produces in its natural form" as per ruling of MERC, is totally incorrect. As per tariff order of MERC coupled with commercial circular No.102 dt. 3/11/09 it is clear that LT-IV Ag. tariff category has been made applicable to pre-cooling and cold storage also. In the subsequent tariff order 19 of 2012, this has been further clarified, so the defense raised from the side of the N.A.licensee is totally incorrect.

9 As already observed above in the tariff order referred to above, Ag. tariff is made applicable for cold storage. The complainant's representative has produced on record relevant part of review of 11th five year plan, dealing in respect of cold storages ripening chambers etc. Here it is pertinent to note that to some of the consumers of cold storages the Ag. tariff has been applied and being continued. On behalf of the complainant's documents of N.A.licensee in the name of M/s Malhar Enterprises, V.R.Akotkar, dealing in cold storages have been filed, including the electric bills. From these documents it is also clear that the Ag. tariff has been made applicable and in the matter of Madhav Enterprises it is from May,11. Thus, there is more than sufficient material available on record in support of the case of the complainant.

11 Here it is pertinent to note that the complainant was making grievances about making applicable the Ag. tariff and before IGRC this was agreed. It was in fact given in writing by letter dt. 26/12/12, i.e. before passing of the order by IGRC. That in the bill of Dec.12 the tariff of cold storage is made applicable which means Agriculture tariff was made applicable. On the basis of submissions made before IGRC, order was passed as referred to above. Even that has not been complied with, so the complainant had given letters dt. 28/3/13 copy of which is on record as Annexure A-5, having acknowledgement about receipt thereof from the said office. The complainant have made grievance

including that of alleged threat of disconnection. From Annexure A-6 it is clear that the bill of alleged orders have been issued and the complainant has been forced to make the payment in order to protect the interest of the concerned officer in meeting out the recovery target . In fact as per order of the IGRC, there was excess recovery made from the complainant by applying wrong tariff rate, direction was given not only for correction of the bill as per Ag. tariff but also to adjust the excess amount recovered from the complainant in the forthcoming bills. Admittedly this letter of 28/3/13 of the complainant has not been replied. On the contrary threat of disconnection in the form of issuing notices under the alleged provisions of the act have been issued. This is nothing but act of high handedness. That the concerned officer inspite order of IGRC as well as tariff order, did not make compliance thereof but to enhance his image, has got further excess amount recovered from the complainants, under the pretext of co-operation so as to meet his target of recovery. The submissions made on behalf of the complainants that not only request was made by the A.E. but also assurance was given about giving effect to the order of IGRC early, has to be believed in the facts and circumstances itself. It is further to be noted that these specific averments made by the complainants, in the complaint, have not been denied in the reply. In the legal sense it amounts to admission. As there is no specific denial those averments has to be accepted. In any case, the circumstances referred to above clearly goes against the N.A.licensee. Man may tell lie but circumstances do not, on this principle also the complainants have supporting material. The complainants are therefore entitled for appropriate relief not only in respect of applicability of Agriculture tariff but also entitlement for interest for the excess amount recovered from them, in view of provisions under section 62(6)of Electricity Act, at the bank rate. This forum will deal with this aspect in the final order, appropriately.

12 That upon considering the available material on record, it is clear that the subsequently produced documents from the side of N.A.licensee on 18/6/13 is only to

save skin of somebody. They are neither clear nor to the point. They are not in compliance with the directions given. In any case they are in contravention to the tariff order, IGRC order. Taking into consideration the totality of the facts and circumstances, this forum expects that the N.A.licensee to take appropriate action against the concerned officer/staff of the concerned office for the negligence and lethargic attitude on their part, apart from taking action under Service Rules. Needless to say that the N.A.licensee may recover the monetary liability which is arising against it, because of this order, from the concerned officer/staff including that of liability of payment of cost to the complainants. With such observations this forum proceeds to pass following unanimous order.

ORDER

- 1 Complaint 48 to 54 of 2013 are hereby allowed and the N.A.licensee is directed to apply Agriculture tariff to the complainants and to comply with order of IGRC dt. 10/1/13.
- 2 The N.A.licensee to issue correct and revised bills to the complainants as per Ag. tariff, clearly showing the excess payment received from the complainants and to adjust the said excess amount from the forthcoming bills payable by the complainants.
- 3 The N.A.licensee to pay interest @ 6% per annum on the said excess amount till the said amount is adjusted in its entirety, in terms of this order.
- 4 The N.A.licensee to pay cost of Rs.1000/- to each of the complainant towards cost of the present proceeding.
- 5 The N.A. licensee to take appropriate action against the concerned officer/staff of the concerned office for negligence/lethargic attitude resulting in monetary liability

against the licensee and to recover the same from them, apart from other action as per Service Rules.

6 Compliance report to be submitted within a period of three months from the receipt of this order.

Sd/-
(A.S.Gade)
Member

Sd/-
(P.B.Pawar)
Secretary

Sd/-
(T.M.Mantri)
Chairman