

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD

Case No. CGRF/AZ/JLN/42/ 2007/11

Date of Filing: 10/05/2007.

Date of decision: 08/06/2007.

M/S Amar Amit Jalna Alloys Pvt.Ltd. -- The Consumer
(Con.No. 510019005672) Complainant.

V/s

MAHARASHTRA STATE ELECTRICITY BOARD,
The Distribution Licensee.

Sub: Grievance under the Maharashtra Electricity Regulatory
Commission, (Consumer Grievance Redressal Forum and
Ombudsman) Regulation 2006

The consumer complainant M/S M/S Amar Amit Jalna Alloys Pvt.Ltd., Shelgaon, Tal.Badnapur, Dist.Jalna has filed his grievance in annexure 'A' on 10-05-2007 under Regulation number 6.10 of the Regulation 2006 through its Director Shri Dembada . A copy of the grievance was forwarded on 14-05-2007 to the Nodal Officer and Executive Engineer(Adm), in the office of the Superintending Engineer, M.S.E.D.C.Ltd. Jalna , with a request to furnish his response within 15 days from the date of receipt of the letter and hearing in the matter was fixed on 4.6.2007 at Jalna.

The grievance of the consumer , in brief, as per consumer is as stated below.

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The contention of the consumer is that his is a continuous process industry and that he has been charged at the rate of Rs. 2=85/ unit , which is actually for non continuous process industries, the rate for continuous industry being Rs. 2=15/ unit The consumer received bills for Oct. & Nov. 2006 at the rate of Rs.2=15/ unit, however for Dec.06 onwards he has been charged at the rate of Rs. 2=85 per unit. In the bill of Dec.2006 the difference of Rs.0=70 / unit for the consumption of Oct.& Nov.06 was also recovered from him. The contention of the consumer is that MERC as per its Tariff order has fixed the tariff of Rs. 2=15/ unit for continuous process industry and Rs. 2=85/ unit for non-continuous process industries. The consumer has approached the Supdt. Engineer for revision of energy bills as per MERC order vide his application dt. 23.2.07. Since he did not get any response from the Distribution Licensee he filed writ petition No.2530/2007 before the Hon’ble High Court of Bombay, bench at Aurangabad. The Hon’ble court vide its order dt..27.4.07 & dt. 3.5.07 directed the petitioner to avail alternate remedy under section 42 of Electricity Act 2003 and observed that the concerned authority shall decide the petitioner’s application if made on or before 15.7.07. The consumer requested the Forum to allow him to make part payment of Rs. 20 lacs out of total outstanding bill for the month of April 2007 and also sought a direction to the D.L. not to disconnect his power supply .

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On the date of hearing i.e. 4.6.07 , the consumer and his representative were present. Nodal officer Shri Rathod & fleet of officers were present on behalf of D.L. The Nodal officer has already filed his response on 1.6.07 under the signature of Supdt. Engineer on the grievance of the consumer and a copy thereof was given to the consumer.

The Nodal officer in his response has stated that as per commercial circular No. 52 dt.7.5.07 the consumer has submitted has submitted continuous process Industry certificate from D.I.C. Jalna vide letter dt.17.5.07. The Nodal officer in his response admitted that the bills for Oct.& Nov.2006 were issued at the rate of Rs.2=15/ unit by mistake and from Dec.2006 onwards the bills were issued at the rate of Rs. 2=85 per unit. The Nodal officer , referring to Commercial circular No.47 dt.4.11.06 has stated that continuous process industries is defined as high tension industrial consumers who are at present exempted from Load shedding will be treated as being on express feeders shall henceforth be classified as continuous industry. It is further contended that the industries subjected to, load shedding shall be classified as Non continuous . The Nodal officer has further stated that after receiving detail guidelines from Head office Mumbai, related to commercial circular No.52 dt.7.5.07 , the bills from Oct.2006 to March 2007 will be revised. The consumer and the Nodal officer were heard and the case was reserved for decision.

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We have gone through the grievance of the consumer and copies of bills ,copy of Writ Petition and other documents filed by him. We have also gone through the response of the D.L. and commercial circular No. 52 & 47 and other documents filed along with the response.

At the outset , we would like to observe that the MERC vide its tariff order dt. 20.10.06, has fixed the tariff for continuous and non continuous process industries. The rate for continuous process industries is fixed at Rs. 2=15 /unit and that for non continuous process industries at Rs.2=85 /unit From the documents filed we find that the D.L. has filed petition seeking review of tariff order dt.20.10.06 before the Maharashtra Electricity Regulatory Commission (herein after referred to as MERC) Amongst other things the D.L. has sought clarification regarding categorization of continuous & non continuous consumers , citing a case of M/S Bajaj Auto located in Pune Urban which is non continuous process industry connected to an express feeder and has sought permission to issue bills in accordance with commercial circular No.47 though it was not strictly in line with the commission's order. The D.L. in his response has mentioned that continuous process industry is one which is not subjected to staggering day and which is connected to express feeder and non continuous industry are subjected to staggering day. The MERC by its order dt.7.2.07 (Case NO. 59 of 2007) in the matter of petition seeking review of tariff order dt. 20.10.06 has clarified as below.

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“ The commission clarifies that the continuous and non continuous categories are differentiated based on the continuous and non continuous nature of the process adopted in the industries and not based on whether the industries are connected to express or non express feeders.”

The commission further clarified that the development commissioner of Industries or similar authorities designated by State Govt. are the appropriate Forum to certify whether an industry is a continuous process industry or a non continuous process industry. It is also further clarified therein that the industries need to submit required certifications from state industrial development authorities to avail the tariff allocated for continuous process industries. The Govt. Of Maharashtra in Industries department vide its resolution dt.4.4.07 has designated the General manager of D. I .C. 's as competent authority to issue the certificates relating to continuous process. The D.I.C. vide its letter dt.18.5.07 has certified the consumer industry to be continuous process industry. The D.L. in its response has stated that after receiving guidelines from their H.O. Mumbai the bills will be revised. However at the time of hearing the Nodal officer has filed letter dt.25.5.07 in which Chief Engineer (Commercial) has clarified that “ if necessary you (Supdt. Engineer) may consult Zonal Ex. Director or Director (Operation) before deciding the case.”

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As a matter of fact this letter dt.25.5.07 from C.E. Commercial has been issued in reply to a reference made to him (C.E. Comm.) seeking clarification about charging of tariff at the rate of Rs.2=15/ unit in case of industries which have filed certificate from General Manager D.I.C. about they being continuous process industry. As a matter of fact commercial circular No. 52 has been issued by C.E. Commercial only and when a query in this regard was made to him , he has directed the S.E. to seek clarification from Ex. Director.

The order of MERC dt. 7.2.07 in case No. 59 of 2006 is very clear and candid . The commission has clarified that an industry can be categorized as continuous process industry or non continuous process industry based on continuous or non continuous nature of process adopted in the industry and not based on whether the industry is connected to express feeder or non express feeder. Subsequent to this order of MERC the Govt .in Industries department vide resolution NO. SSI-2001/(1266)/ Industries-7 dt.4.4.07 has authorized the general manager D.I.C. to issue the certificate regarding continuous process industries .The consumer has filed certificate from General manager D.I.C. about his industry being continuous process industry vide latter's certificate dt.18.5.07.

The consumer on 28.5.07 has sought for Interim order and requested the Forum to direct the D.L. to accept part payment of Rs.20 lacs

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against outstanding bills for the month of April 2007 and to direct the D.L. not to disconnect the power supply of the consumer. The request of the consumer regarding disconnection was considered by the Forum and the D.L. was directed not to disconnect the supply of the consumer till the decision in the matter. So far as the request of the consumer seeking direction to D.L. to accept part payment of Rs.20 lacs against out-standing bill of April.2007, was not considered by us, as we fail to understand as to how the consumer has come with a request of Rs.20 lacs as part payment. It is subsequently that we came to know that in previous litigation before the Supreme Court, the Supreme court has directed the consumer to pay certain amount on payment of which the supply of the consumer was to be reconnected. It was further ordered by the Supreme court that the consumer shall pay the current bill thereafter and also pay Rs. 20 lacs towards arrears outstanding against him.

In light of the above observation, we are of the opinion that the consumer industry is a continuous process industry and the consumer is entitled to avail the tariff allocated for continuous process industry. Here we would also like to observe that the tariff order dt.20.10.06 was for 1.10.06 to 31.3.07 , as the next tariff order was scheduled to be operative from 1.4.07. However the next order (subsequent to (order 20.10.06) has actually been issued on 27.4.07 and is operative from 1.5.07.

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Needless to say the consumer shall be entitled to avail the tariff allocated for continuous process industry from 1.10.06 to 30.4.07.

Hence the following order

O R D E R

- 1. The D.L. shall revise the bills from Oct.2006 to April 2007 by charging the consumer at the rate of Rs.2=15/ unit .**
- 2. The excess payment made by the consumer shall be adjusted against bills due .**
- 3. The interim order dt.28.5.07 stands vacated.**

The D.L.& the consumer shall comply with the above order and report compliance to the Forum.

Inform the parties and close the case.

(H.A.KAPADIA)
Member

(V.G.Joshi)
Member Secretary

(R.K.PINGLE)
Chairman

