

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/ AZ / AUR/ R/ 651/ 2017 / 44
Registration No. 2017090015**

Date of Admission 06.09.2017
Date of Decision 28.11.2017

Shri Sk. Sattar Sk. Nabi, : COMPLAINANT
C/o Ajantha Auto Services,
Gut No. 2/196/1, Sillod 431112,
Dist. Aurangabad.
(Consumer No. 495510351281)

VERSUS

- 1) The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Rural Circle,
Aurangabad.
- 2) Addl. Executive Engineer, : RESPONDENT
Flying Squad,
Aurangabad Rural.

CORAM

Smt. Shobha B. Varma, Chairman
Shri Laxman M. Kakade, Member Secretary
Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The present complaint is filed in respect of consumer No. 495510351281 with a prayer to quash the assessment bill of Rs. 99854/- and not to disconnect the electric supply of the complainant and to issue revised bill without levying interest and DPC as per commercial tariff for the period March 2014 onwards. So also to pay suitable compensation.

Brief History of the case :-

2) The complainant is owner of the premises situated at Gut No. 2/396/1 Sillod Dist. Aurangabad. That he has taken electricity connection for his LPG Pump Station at aforesaid premises and is consumer of the respondent.

That the respondent is officer of MSEDCL.

3) The complainant has taken three phase LT connection of 10 HP for LPG pump station situated at the aforesaid premises in July 2008. That, while submitting the application for electricity, the purpose of use of electricity and the load requirement are made clear.

4) That after inspecting the premises and after receipt of requisite amount, the respondent released three phase LT Connection to the LPG Pump station of the complainant on 10.07.2008, the service connection report enclosed with the application showing purpose use of electricity is commercial.

5) That the complainant has paid all the bills issued by the respondent regularly and there was no dispute regarding payment of bill up to February 2014.

6) It is submitted that on 11.03.2014, the flying squad unit of respondent visited the premises and after inspection prepared a spot inspection report, which discloses that the meter was found satisfactorily, however at Para -17 following remarks were passed by flying squad "Meter is taken for LTV Ind. Purpose,

however actual use is for LPG Auto pump i.e. L.T. II Commercial purpose.” The copy of inspection report is filed by the complainant.

7) It is submitted that during the inspection on 11.03.2014, the complainant handed over the copy of service connection report in which the tariff category was mentioned as commercial, that the flying squad officer on going through the service connection report assured to charge tariff difference charges for last two years from the date of inspection will be recovered as per the MERC directives and provision of electricity act 2003

8) It is submitted that after inspection dtd. 11.03.2014 all the bills were issued as per old tariff i.e. LT V, the complainant received a bill of Rs. 4761/- for the month of December 2014 and the same was paid by the complainant on 21.01.2015, however the complainant was shocked on receiving bill of Rs. 1,03,502.80 for the month of January 2015 in which 99812.91 was shown as debit adjustment amount, details were not provided alongwith the said bill. So the complainant on receipt of said abnormal bill contacted the office of respondent with the request to provide details of assessment bill. The concerned officer verbally told that the said bill adjustment was done on the basis of instructions of Flying Squad Division and details will be provided only after receipt from Flying Squad office, the complainant could not pay the regular monthly bill as respondent were not ready to accept the part payment.

9) It is submitted that since no details were provided and the amount of arrears was increasing on every bill, therefore on 29.02.2016 the complainant submitted application to respondent with a request to hand over the copy of bill and assessment details. The copy of the said letter is produced.

10) It alleged that on persuasion by the complainant, the respondent though has handed over the copy of assessment bill but not the details of assessment till today.

11) It is submitted that ongoing though the said copy of the bill it is seen that assessment bill issued under section 126, EA 2003 bears date 03.03.2016 , which is in violation of section 126 EA 2003 as the provisional bill was issued after 12 months from the date of inspection, the copy of the said bill is produced.

12) It is submitted that the said bill discloses for tariff difference for the period July 2008 to February 2014, that since there were no details of amount of the bill provided by the respondent, inspite of persuasion by the complainant, therefore complainant was not aware as to whether the bill is issued for tariff difference or u/s 126, EA 2003. Copy of the bill is produced.

13) That on receipt of the bill dtd. 03.03.2016 u/s 126, EA 2003, the complainant registered his protest vide, letter dtd. 31.03.2016 which is annexed with the petition. Thereafter the complainant did not receive any correspondence from the respondent.

14) Therefore the complainant with a view to clear his liability of payment of electricity charges requested respondent to issue separate bill for monthly consumption, accordingly the bills for the period January 2015 to February 2016 were received and complainant paid Rs. 32630/- vide receipt no. 3786137 dtd. 31.03.2016

15) That the respondent has issued monthly bill from the date of connection i..e. July 2008 till March 2014 as per industrial tariff category, inspite there was clear mention of tariff category by the complainant and also in the service connection report dtd. 11.03.2008 that the flying squad officer for verification of service connection report has suggested to recover the difference as per

provisions of EA 2003. However, issued bill u/s 126 EA 2003 which is not applicable, in this case but intends to extract money.

16) It is submitted that the provision of Section 56 (2) is violated by respondent for the reason that the inspection was carried out on 11.03.2014 and amount was claimed from July 2008 up to March 2014. It is alleged that, on account of abrupt change of tariff from industrial to commercial, without giving opportunity of hearing to the complainant, which is against principles of natural justice. It is submitted that change in tariff is effective from the date of inspection and respondent can't make retrospective recovery. Hence the complaint.

17) Dy. EE Sub Dn. Sillod, the respondent 1) has submitted his say (page 44) dtd 18.09.2017 on the basis of authority given by nodal officer. It is submitted that on the basis of quotation accepted by the respondent dtd. 24.06.2008, on 10.07.2008 the new connection for 10 HP GAS pump was given to the complainant and accordingly report was submitted. Accordingly the concerned staff member has filled NSC report and billing charged.

18) That on 11.03.2014, the Flying Squad Aurangabad Rural has inspected the spot and as per their report Meter is taken for LT V Industrial Purpose & actual use is for LPG Auto Pump LT-II Commercial Purpose. And remedial action proposed (Sr. No. 57819 dtd 11.03.2014) Change the tariff LT-II Commercial and in the tariff to II commercial and recover the same. It is submitted that as per the spot inspection report, bill of tariff difference from industrial to commercial for July 2008 to February 2014 for the amt Rs. 99584/- is issued u/s 126 of EA 2003 to the complainant, thereafter the billing department changed the tariff IP to Commercial in March 2014.

19) As the consumer did not pay the tariff bill, so in January 2015 (+) B-80 was charged. On 29.02.2016 the consumer submitted an application demanding the

copy of the bill and report of Flying Squad on the ground that the bill which was given to him was lost and, therefore the respondent on 04.08.2016 provided the documents of spot inspection report and bill to the complainant. That, on 31.03.2016, the complainant lodged his protest and did not accept the said bill. Accordingly for the period Jan 2015 to Feb 2016 the separate bills for the electricity consumption was given to the complaint for the amt. of Rs. 32625/- and it was deposited on 31.03.2016 by the complainant vide receipt No. 3786137. It is necessary to prefer appeal within six months from the date of issuance of the bill as per application of the complainant. However, the complainant has not filed any appeal for the period from 11.03.2014 up to 31.03.2016. That the tariff difference bill given by the respondent is correct. Hence it is prayed that complainant may be directed to deposit the bill issued by the respondent.

20) In the additional say dtd. 29.09.2017 (Page 78) it is submitted, that the complaint is not within limitation as per rules 6.6 of MERC Regulation 2006 (CGRF and Ombudsman).

21) It is submitted that as per the demand and quotation FQ – 009660- was found of Industrial Category. After the complainant has submitted the quotation & paid the fees, the concern Jr. Engineer, Sillod has released the electric supply of the complainant of aforesaid consumer no. and accordingly submitted NSC report No. 006210 dtd. 10.06.2008 before the Sub Division. At that time, on FQ the tariff was Industrial and on NSC report the tariff was commercial, so inadvertently / confusion, the billing was made for Industrial Category, instead of Commercial Category on 11.03.2014 after spot inspection the bill which was issued carries the following remarks :-

22) “Bill under Section 126 of Electricity Act 2003 as per Flying Squad, Rural Aurangabad spot inspection date 11.03.2014 toward tariff difference industrial to

commercial period July 2008 to February 2014 an amount of Rs. 99854/-." However, the copy of the bill shows that, it was issued for the period July 2008 to February 2014 only of commercial category. Therefore, flying squad is the proper officer to explain about it & he may be called upon. The A-1 form is not found in the record of Sub Division and therefore, it is prayed that the bill given to the complainant for the period July 2008 to February 2014 of commercial tariff is according to use of complainant is correct, therefore he may be directed to deposit the bill amount.

23) The Dy. Executive Engineer Sillod Sub Division MSEDCL Aurangabad and Additional Executive Engineer, MSEDCL Flying Squad (Rural) Aurangabad have jointly filed their say (Page No. 124) on 07.11.2017. It is submitted that u/s 126 EA 2003 is attracted to the disputed bill.

24) It is submitted that as per inspection of Flying Squad dtd. 11.03.2014, provisional bill of Rs. 99854/- was issued to the consumer and the same was received by the complainant. That in the letter dated 29.12.2016, issued by the complainant, he has admitted the fact that he has lost the bill and inspection report of Flying Squad.

25) It is submitted that the bill being issued u/s 126 of EA 2003, therefore, the complainant ought to have presented appeal u/s 127 of EA 2003 and ought to have deposited half of the assessment amount in order to entertain the appeal. However, in order to give go by to the said procedure the present application is filed, therefore the jurisdiction of forum is barred. So also complaint is not within limitation and therefore not maintainable. So it may be dismissed with directions to the complainant to pay the bill.

26) The complainant has given rejoinder to the above reply on 14.11.2017 (Page 131) and denied the change of use by the complainant. The complainant

submitted that the remarks of inspection dtd. 11.03.2014 para 17, 18 and 20 are material, it is further submitted the inspection report does not show any remark about issuance of bill u/s 126 of EA 2003.

27) It is contended that after inspection dtd. 11.03.2014 all the bills till December 2014 were issued as per industrial tariff and were paid by the complainant the bill for Rs. 4761/- for Dec 2014 was paid on 21.01.2015 and thereafter in January 2015 the disputed bill was issued

28) It is submitted that inspite of the request of the complainant the respondent No. 2 did not provide details of bill adjustment and copy of bill issued by respondent No. 2 It is after constant follow up, the res no. 1, handed over copy of the bill dtd. 03.03.2016 of Rs. 99854/- as the res no. 1 claiming the said amount as recoverable in all future bills therefore complaint is filed.

29) It is submitted that both the respondents have submitted separate bills in the name of complainant. Respondent no. 1 bill dtd. 03.03.2016 shows that the bill of Rs. 99854/- is for tariff difference, for the period July 2008 to February 2014 whereas, respondent No. 2 bill (date not visible, shows that the said bill is provisional issued u/s 126 of EA 2003, hence it is clear that the respondent No. 2 intends to harass the complainant and extracting money by grabbing the complainant. It is submitted that, change in tariff is effective from date of inspection.

30) It is submitted that therefore the application may be allowed and the Respondent No. 1 may be directed to pay Re. 1 (by cheque) towards deficiency in service and to direct res no. 2 to pay Rs. 5000/- for intentional harassment by issuing bill u/s 126 EA 2003.

31) We have gone through the application, say, rejoinder and all documents placed on record by both the parties. We have heard consumer representative Shri Kapadia and Nodal Officer, Shri Nikam and Shri Adhikar Dy EE, Sillod.

32) Following points arise for our determination with our findings thereon for the reasons to follow :

Sr. No.	POINTS	FINDINGS
1)	Whether the complaint is within limitation?	Yes
2)	Whether the assessment bill of Rs. 99854/- is covered u/s 126 of EA 2003?	No
3)	Whether the disputed bill is in-correct & required to be quashed?	Yes
4)	Whether this Forum has jurisdiction to try the dispute?	Yes
5)	Whether directions preventing disconnection of electric supply of complaint are necessary?	Redundant
6)	Whether it is fit case to grant compensation?	No
7)	What order & costs?	As per final order

REASONS

33) The fact that complainant is consumer of Res. since July 2008 & has taken three phase LT connection of 10 HP for his LPG Pump Station at Sillod is not disputed. His consumer No. is 495510351281.

Point No. 1 – Up to February 2014 billing was assessed in industrial category. Admittedly on 11-03-2014, Flying Squad, Aurangabad Rural visited the spot & prepared spot inspection report (P. No. 48), thereby detecting actual use for commercial, but assessment made by Res. was for industrial category &

accordingly made observation in their report. It is also signed by representative of the complainant, namely Pathan Aslam Fakira, who appears to be manager. So this date is first date of cause of action. However, the date of receipt of bill to the consumer is the only material date for cause of action. For that purpose the date of acknowledgement of bill is not at all forthcoming. Either side has not produced on record any document in order to show such service of bill to the complainant within 7 days of 11-03-2014. However, the complainant has submitted that the bill & copy of inspection report being lost, therefore he has issued letter dtd. 29.02.2016 (P. No. 17) to the Res. demanding the copy of bill & inspection report. In this letter the complainant has not communicated the specific date of service of bill on him, so also Res. also failed to show such date & failed to produce acknowledgement. As such no inference warrants about service on the complainant within 7 days at the inspection dtd. 11-03-2014. This fact is also substantiated with the incident that even after inspection dt. 11.03.2014 up to December 2014, the Res. has charged the tariff as industrial, which can be gathered from the copy of ledger of the complainant. Be the fact as it may, it is be seen that in the month of January 2015 for the first time, the complainant has received the bill of tariff difference debit adjustment Rs. 99812.00. However, no details of this bill were given, which is also seen from ledger A/c. produced on record. It is submitted by the complainant that, thereafter he has made communication with Res. with request to provide details of the said bill, but inspite of verbal assurance, details were not provided by the Res. this fact went unexplained by the Res. Then, on 29-02.2016, the complainant has issued & sent letter (P.No. 17) to the Res. demanding copy of bill & inspection report. Accordingly, the copy of assessment bill dtd. 03.03.2016 was issued by the Res. u/s 126 of EA 2003, for tariff difference of 99854.00 for July 2008 to February

2014, but no details are described. That the complainant lodged his protest on 31.03.2016, vide letter produced at P. No. 19. That on the same day separate bill for monthly consumption was issued by the Res. for the period January 2015 to February 2016 for the amount of Rs. 32630.00 (P. No. 21) & it is paid by the complainant on 31.03.2016 vide receipt (P. No. 22).

34) Considering the above material dates, it is evident that though 11.03.2014 is the first date of cause of action, however, there is no document to show service of the bill within seven days from 11.03.2014 to the complainant. So also considering the ledger entries of charging industrial tariff till December 2014 & leads to inference of no proper communication of tariff difference bill on the basis of spot inspection made to the complainant till December 2014. Since after January 2015, the complainant went on persuading the Res. to give him details & thus on 03.03.2016, he has received the tariff difference bill for Rs. 99854.00 for the period July 2008 to February 2014 but without details. So it is seen that the cause of action continued till 31.03.2016 & thereafter the tariff difference amount is carried forward in the consumer ledger till February 2016. Though, the Res. alleges attraction of Section 126 of EA 2003, but procedure is not followed. As such the cause of action is continued therefore, the complaint filed on 04.09.2017 is within two years from 03.03.2016, hence complaint is within the ambit of R. 6.6 of the MERC Regulations 2006, CGRF & Ombudsman). As such We answer point No. 1 in the affirmative.

Point Nos. 2 & 4 :- Considering the contentions raised by the Res. No. 1, in their say dtd. 29.09.2017 (P. No. 78) as per quotation of the complainant FQ – 009660 – It was Industrial Category, however at the time installation of electric connection & submitting NSC report No. 006210 dtd. 10.06.2008 tariff was

categorized as commercial. Therefore following contention raised in the say is reproduced :-

35) “FQ वरील Tariff ऑद्योगिक व NSC Report वरील Tariff Commercial असल्याने तत्कालीन बिलिंगच्या कर्मचाऱ्यांच्या नजरचुकीने / संभ्रमाने सदर विद्युत ग्राहकाचे बिलिंग Tariff हा commercial ऐवजी Industrial भरण्यात आला”.

36) This particular admitted fact by Res. is sufficient to show that Section 126 of EA 2003 is totally inapplicable to the present state at affairs. As such the ratio laid down in the case cited by Consumer Representative Shri Kapadia, Dattatraya Narayan Kulkarni V/s MSEDCL in representation No. 64/2013 is in applicable to present case. So also on the bill itself dtd. 03.03.2016 (P.No. 18) there is clear ref. that, it is tariff difference bill. As such, We answer point NO. 2 in the negative. As such we hold that this forum has jurisdiction to try the complaint. We answer point No. 4 in the affirmative.

Point No. 3 :- The disputed bill (P. No. 18) is for tariff difference Rs. 99854/- for the period July 2008 to February 2014. It is issued as per directions issued in Spot Inspection report (P. No. 48, 49). It is important to note that, Form No. A-1, is not forthcoming, about which in the say dtd. 29.09.2017, it is stated by the Res. that, it is not found. Be the fact as it may, from the say dtd. 29.09.2017, it is very clear that in the quotation FQ No. 009960 the complainant referred the category as “Industrial”, however considering the use & in the NSC report dtd. 10.06.2008 bearing No. 906210 produced at P. No. 54 & 16, the tariff was corrected by the Res. as “Commercial” category. But assessment of bill was made at Industrial rate & now it is claimed to have been done by inadvertence, certainly, this explanation is not plausible & not acceptable. Fact remains that, for the deficiency in administration committed by the Res. for which consumer shall not suffer.

37) Here is the case of under billing though classification was correctly shown in the NSC report. Details of the disputed bill is also not given. Here, thereafter question arises about what period of tariff difference requires to be taken in to account for recovery. For that purpose Sec. 56 (2) of EA 2003, lays down as under :-

38) “Section 56 : Disconnection of supply in default of payment. – (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

39) Herein this case, the date of initially giving the bill of tariff difference is not forthcoming. So date 03.03.2016 is presumed as the date when first bill is issued. Irrespective of this fact the assessment charges are carried forward in the ledger since January 2015 onwards, therefore the recovery can very well be made preceding two years from 11.03.2014.

40) In this respect Consumer Representative Shri Kapadia has submitted that the recovery has to be made prospectively from the date of detection of error. In support of his argument, he has placed reliance of the decision of the case, Appeal No. -131/2013, Vianney Enterprises V/s Kerala State Electricity Regulatory Commission delivered by Appellate – Tribunal for Electricity (Appellate Jurisdiction) wherein – tariff difference was ordered to recover from the detection of error. On going through the facts of the said case, it was wrong classification of category. Here in this case there is under billing & it was due to mistake though classification of category was correct as per NSC report; So also the recovery is consistently shown in ledger since January 2015, as such the ratio

of that case is inapplicable to present case. So also another case cited by Consumer Representative, Shri Kapadia in the case of MSEB Tariff rate applicable to street light services for Murbad & Additional Murbad Industrial Area delivered in case No. 24/2001 by MERC dtd. 11 February 2003 is also the case of abrupt re-classification. So applying the same analogy of first case, here is not the case of reclassification. Hence ratio of the case is inapplicable to present dispute.

41) Thus, it being not the case of abrupt reclassification, but though classification was correct, but assessment was incorrect, the tariff difference amount is carried forward in the ledger as such recovery of tariff difference is required to be made preceding two years from 11.03.2014 from the complainant & therefore the disputed assessment bill is incorrect. It requires to be revised without levying interest & DPC charges. Thus, We answer point No. 3 in the affirmative.

Point No. 5 :- Since there is no cause for this issue at this stage, it is redundant.

Point No.6:- Considering the nature of dispute, it is not proper to grant compensation to the complainant. It is the case of wrong assessment through classification is proper. Hence, We answer this point in the negative.

42) Considering above discussion, we proceed to pass following order in reply to point No. 7 :-

ORDER

The Complaint is partly allowed in the following terms :-

- 1) The assessment bill of Rs. 99854/- is hereby set aside & quashed.
- 2) The Respondents are hereby directed to issue revised bill to the complainant charging the tariff LT-II –Commercial from the date preceding two years from dtd. 11.03.2014 (i.e. from dtd. 11.03.2012) without levying interest & DPC.

- 3) Rest of prayer is rejected.
- 4) Parties to bear their own costs.
- 5) Disciplinary action be initiated against concern employees of Res. who are at fault.
- 6) Compliance be reported within thirty days.

Sd/-
Shobha B. Varma
Chairman

Sd/-
Laxman M. Kakade
Member / Secretary

Sd/
Vilaschandra S.Kabra
Member