



Consumer Grievances Redressal Forum

UrjaBhavan, 3rd Floor, Bhigwan Road, Baramati -413102

Tel. No. 02112-244772, 74 (O), Fax No. 02112- 244773

mail: cebaramati@mahadiscom.in / cgrfbaramati1@gmail.com

CONSUMER GRIEVANCE REDRESSAL FORUM, MSEDCL, Baramati Zone, BARAMATI.

Case No.: 13/2015

Date of Grievances: 27/11/2015

Date of Order: 10/2/2016

In the matter of change of tariff category from continuous to non continuous

Shree. Bhimeshwarilspat Pvt. Ltd.
J-18/2/5, Additional MIDC, Satara-415004.
Consumer No.190569021850

Complainant

(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L., O&M, Circle, Satara

Opponent

(Herein after referred to as Licensee)

Quorum

Chairperson
Member
Member Secretary

Mr. Shahaji Narsingrao Shelke
Mr. Suryankant S. Pathak
Mr. R.L.Rajandekar

Appearance:-

For Consumer: -

Mr. Suresh Sancheti (Representative)

For Respondent: -

Mr.Satish Rajdeep, Executive Engineer (Adm.), MSEDCL,
O&M Circle Satara.
Mr.Nisar.S.Shikalgar, Jr.Law Officer, Satara Circle.

1. The Consumer has filed present Grievance application under regulation No. 6.4 of the MERC (CGRF& E.O.) Regulations 2006. Herein referred to as the Regulations.
2. Being aggrieved & dissatisfied by the order dated 21/09/2015 passed by IGRC Satara Circle, Satara, thereby, rejecting the grievance, the consumer above named prefers the present grievance application on the following amongst other grounds.

3. The papers containing the above grievance were sent by the forum to the Superintending Engineer, O&M Circle, Satara vide letter No. EE/CGRF/BMZ /No.6202 Dated 30/11/2015. Accordingly the Distribution License filed its reply on 10/12/2015.
4. We heard both sides at length, gone through the contention of the consumer and reply of the respondent & documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) The Consumer Shree. Bhimeshwari Ispat Pvt Ltd. is a company which manufactures steel. The consumer is a H.T. consumer connected on 14/08/2007.
 - ii) The consumer is a H.T. consumer categorized as HT-1 Industrial Continuous connected on 14/08/2007 on 33 KV level bearing consumer No. 190569021850.
 - iii) The Consumer has requested for sanction of additional load from 3000 KVA to 9900KVA.
 - iv) The License has released additional load of 6900 KVA on 11 June 2012 under category of HT-1 express.
 - v) The Consumer was billed under HT-1-N prior No. release of additional load.
 - vi) As per sanction letter the consumer was required to carry out various works like laying of express feeder line from 132 x 33 KV EHV sub station and other related work.
 - vii) After completion of all the works the said connection was released on 33KV compress feeder.
- 5) Mr.Suresh Sancheeti, the consumer representative submitted that the consumer was connected on 14.8.2007 on 33KV level and was billed under HT-I N category. Thereafter the additional load was sanctioned to the consumer on 11.6.2012 and the consumer was billed under HT-I C category. Thereafter all subsequent bills have been issued under HT-I C category. In case No.19/2012 the MERC passed an order stating that-
"Only HT Industrisries on express feeder and demoanding continuous supply will be deemed as HT continuous Industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non continuous industry".



6) He further submitted that consumer had not made any demand for continuous supply, though the consumer was on express feeder but did not demand continuous supply. The word, "and" appearing in the above mentioned tariff order Acts as conjunctive which joins the two sentences, thereby prescribing to conditions to be complied with, to be charged under HT continuous supply. He placed reliance on the supreme court case in **Collector of customs Vs. KELTRON components complex Ltd. , AIR-1992 (4) ECR 161** in which interpretation of the word "and" has been given. The word "and" is a conjunction pertinently defined as meaning, "together with", "joined with", "along or together with", "added to or linked to", used to the conjoin word with word, phrase with phrase, Clause with clause. It is a word used to denote joinder or union. He further submitted that it is set rule of law that in case of ambiguity an interpretation which is in favour of tax payer is to be adopted as held in, **Sneh Enterprises Vs. Collector of Customs, (2006) 7 SCC 714**. Mr.Sancheti further submitted that the IGRC has failed to understand the difference between laying of 33KV express feeder line from 220 KV EHV Sub station to the company premises and demanding continuous supply. There can be a consumer who is connected on express feeder and still categorizes under HT-1 N. Since the consumer has not asked for continuous supply. He further submitted that for giving supply of 9900 KVA on 33KV feeder against the limit of 5000 KVA under SOP, MERC in its order has directed to recover the energy charges based on EHV Sub station reading or consumer end reading, which is higher. However there is no provision in the tariff order that the consumer to be billed under HT_1 C category, if supply is more than SOP limit. He further submitted that the undertaking given by the consumer regarding not raising any complaint in connection with quality of supply is for any fluctuation/interruptions due to giving power supply at lower voltage level than as per SOP limits. However, it is not to be clubbed with tariff category. Mr.Sancheti lastly submitted the implementation of tariff category, HT-1 C be declared void ab initio and Licensee be directed to issue all further bills under the tariff category, HT-1-N category and be directed to refund of tariff difference with interest at the rate 18% per annum.

7) On the other hand, it is submitted on behalf of Licensee that the MERC in the tariff order dated 12.09.2008 in case no.44 of 2008 has made following clarification.



The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-1 continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non-continuous type of supply, and there is no justification for removing the clause "demanding continuous supply" from the definition of HT-1 continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period.

8) Respondent further submitted that in the above mentioned tariff order MERC has ruled and clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year i.e. within the first month after issue of the tariff order for the relevant tariff period. However, in case such choice is not exercised within the specified period, the existing categorization of that consumer will be continued. Subsequent to the MERC order dated 16.8.2012 in case no. 19 of 2012 the MSEDCL issued circular no.175 dated 5.9.2012 in order to implement the tariff order uniformly all across.

9) Respondent further submitted that the present consumer has filed appeal (Representation) No.59/2015 against the order passed by CGRF, in Case No.5 of 2015 dated 18.6.2015 and in the said representation Honorable Electricity Ombudsman vide order dated 4.9.2015 directed the respondent (MSEDCL) to take decision on the application dated 7.3.2014 filed by the said consumer within two months from the receipt of the said order. Thereafter the present consumer being aggrieved and dissatisfied with the order dated 18.6.2015 filed review petition no. 13 of 2015 before H'ble Ombudsman but it was rejected vide order dated 23.11.2015 stating that all the other aspects raised by applicant were already considered while passing the order dated 4-9-2015, the issue of applicability of Regulation 9.2 is still pending with commission.

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- 10) The respondent further submitted that the MSEDCL has filed appeal in Hon'ble Supreme Court against the judgment passed by Hon'ble High Court in W.P. No.5437 of 2013 and now the matter is posted on 12.01.2016. The MSEDCL has also moved commission by a petition no.94 of 2015 for metering sub category under HT Industrial tariff, continuous and non continuous in only one category and deferment of all pending cases of conversion of tariff from continuous to non continuous till the decision of the commission. In view of this position and with a view to avoid multiplicity of future litigation it would not be proper to grant any relief to the appellant.
- 11) The respondent further submitted that the present consumer was billed under HT-1 N prior to release of additional load and after release of additional load it was charged under HT-1 C. It means the consumer has knowledge from the beginning of billed under HT-1C. The first bill was issued to the consumer under HT-1 C in the month of July-2013, therefore the consumer has not filed complaint within the period of 2 years from the date of knowledge and therefore the present complaint is bared vide Section 6.6 of MERC CGRF Regulations.
- 12) It is pertinent to mention that the present consumer has previously filed grievance application before this forum vide case no. 5 of 2015 and this forum passed order that decision of the said grievance application is differed till the decision of petition No. 9 of 2015 filed before MERC or till the decision of High Court Writ Petition ST No. 1728 of 2015. The present consumer. Thereafter the present consumer against the decision of Forum dated 18.6.2015 filed representation before Hon'ble Electricity Ombudsman (M) vide No.59 of 2015 and the Hon'ble Ombudsman vide order dated 4.9.2015 held that the dispute relates only for the intervening period. Hence, the respondent MSEDCL is directed to take decision on the application dated 7 th March 2014 of the appellant within a period of 2 months from the date of receipt of this order.
- 13) Regulation No.6.7 of MERC (CGRF and E.O.) Regulations, 2007 to the extent of relevance reads as under -



6.7 The Forum shall not entertain a grievance : -

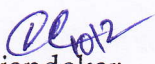
- (c) unless the Forum is satisfied that the grievance is not in respect of the same subject matter that has been settled by the Forum in any previous proceedings ;

The grievance application filed by the consumer in respect of changing of tariff category from continuous to non continuous was settled by this Forum vide order dated 18.6.2015. and the representation vide No.59 of 2015 filed by the consumer against the order of the Forum has also decided by the Hon'ble Ombudsman vide order dated 4.9.2015, therefore present grievance application in respect of same subject matter is not tenable according to law.

Therefore grievance is liable to be rejected. Hence the order

ORDER

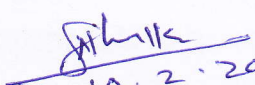
- 1) The grievance of the consumer is dismissed.
- 2) No order as to cost.


R.L. Rajandekar
Member/Secretary

CGRF:BMTZ:BARAMATI


Suryakant Pathak
Member

CGRF:BMTZ:BARAMATI


S.N. Shelke
Chairperson

CGRF:BMTZ:BARAMATI

Note:-The Consumer if not satisfied may file representation against this order before the Hon'ble Ombudsman within 60 days from date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, BandraKurla Complex,
Bandra (East), Mumbai-51.