

**Maharashtra State Electricity Distribution Co. Limited  
Consumer Grievances Redressal Forum, Baramati Zone,  
Baramati**

**Case No.04/2012**

**Date: 30/11/2012**

**In the matter of  
M/s. Ultra Tech cement  
Limited (Unit:- Hotgi cement works)  
Near Hotgi Railway station, Hotgi station-413215  
Dist- Solapur.**

**- Complainant**

**V/S**

**Superintending Engineer, M.S.E.D.C.L.  
Solapur Circle**

**- Opponent**

**Quorum**

**Chair Person**

**Mr. S.D.Madake**

**Member/Secretary**

**Mr. D.U.Ghatol**

**Member**

**Mr. Suryakant Pathak**

- 1) Complainant is a company registered as per companies' Act 1956 carrying on cement manufacturing business at Hotgi Solapur. M.S.E.D.C.L. supplies electricity to complainant under high tension category having consumer No.331569004752. The said supply is on express feeder with zero loads shedding having supply for continuously for twenty four hours throughout the year. The company manufactures cement and as such the said manufacturing process is continuous one. Accordingly connections are taken by the company from M.S.E.D.C.L. The company pays approximate three crores rupees per month regularly. The company falls under HTP-1 continuous process Industry.
- 2) The Maharashtra Electricity Regulatory commission by its order dated 29.09.2006 in case No. 54/2005 has passed as order declaring the tariff for various categories. The operative tariff order of M.S.E.D.C.L. for financial year 2006-2007 in table 4 summary of HT tariff effective from 1.10.2006 is given. MERC has changed HT category into HTP-I (Industrial) in which there are two types (i) HTP-I continuous Industrial and HTP-I non-continuous Industry. The

energy charges for HPT-I continuous Industry are Rs. 2.15 /kwh and for HTP-I non-continuous are Rs. 2.85 per kwh.

- 3) M.E.R.C. introduced additional supply charges based on feeder. If the Industry is connected on express feeder ASC charges applicable on 42% of consumption and in case of non-express feeder 28% of consumption irrespective of process category as continuous or non-continuous
- 4) As per the orders of M.E.R.C. company has to submit the certificate from District Industries center Solapur, certifying the category of industry as continuous or non-continuance for availing the tariff applicable for continuous industry during the period between Oct.2006 to April.2007. The said certificate was needed within 45 days. The company approached District Industry center for issuance of certificate from time to time but said certificate was not issued within the time prescribed in the order of M.E.R.C. General Manager District Industries center issued certificate on 14.07.2009.
- 5) M.S.E.D.C.L. Solapur circle by its letter dated 9<sup>th</sup> April 2008 has issued bill to Complainant Company treating as non-continuous process Industry for a period between 1.10.2006 to 30.04.2007. The said payment was made by company under protest .Thereafter M.D.E.D.C.L. Solapur by letter dated 25.05.2008 demanded an amount of Rs.8836876/- (Eighty eight lakhs thirty six thousand eight hundred & seventy six rupees only).
- 6) Complainant prayed for waiving of the difference bill of Rs. 8836876/- and refund of Rs.6,61,439/- paid in pursuance of letter dated 9<sup>th</sup> April 2008.
- 7) M.S.E.D.C.L. denied the contents of the complaint and submitted that the bills are issued properly as per the orders of MERC. It is submitted that as per the orders of MERC, all the HT Industrial consumers have to produce the necessary certificate within the stipulated time of 45 days. The failure on the part of complaint to submit certificate within time, resulted into issuance of bills.
- 8) The point that arises for determination of this forum is whether the M.S.E.D.C.L. has wrongly issued bills treating complainant Company as HTP-I non- continuous process Industry? Our answer is in the negative.
- 9)Complainant produced on record various documents along with the complaint. In order to decide the issue, it would be proper to briefly state, how the matter reached to this forum. Initially, when the supplementary bill was

issued to complainant on 25.05.2008, treating the same as non-continuous industry, complainant filed special civil suit no. 187 of 2009 before the civil judge senior Division Solapur on 14.08.2008. The civil court by its order 14.08.2008, directed to maintain the status- quo till the appearance of the parties. The civil court decided Ex 5 applications and the said application was rejected on 30.06.2011. Being dissatisfied with the order of civil court, the complainant preferred civil appeal no.1457/2011. Both sides filed consent terms before Hon'ble High-court. The Hon'ble High-court disposed off the appeal as per the consent terms.

- 10) In pursuance of the order of Hon'ble High-court complainant approached the forum. Initially complaint was filed on 27.02.2012 before Internal GRC on 27.02.2012. The said complaint came to be disposed off on 12.04.2012. Stating that certificate as required as per the decision of MERC was not filed within stipulated time.
- 11) Being aggrieved by the decision of I.G.R.C. Complainant filed this complaint on 30.05.2012. Both sides were present for hearing at Solapur on 10.07.2012. Considering the fact that there exists element of settlement between the parties, we persuaded both sides to settle the matter by way of settlement. Both sides agreed and sought time to move their senior officers for taking further decision. The complainant wanted to file authority letter to represent the company. The matter was kept for hearing on 14.08.2012 by consent at Baramati. The matter was heard at Baramati. Both parties stated that application for settlement has been made by complainant, M.S.E.D.C.L. authorities have moved to their senior officials for taking the decision but the decision was not taken till this date. The forum is of the opinion that some time may require to decide the issue of settlement, however the settlement had not been arrived at till this date. We have confirmed that no compromise has taken place between the parties.
- 12) Complainant relied on application dated 19.07.2011, copy of order dated 29.09.2006 in case no.54/2005 passed by Hon. MERC, letter dated 20.10.2006 sent by complainant to District Industries center Solapur, letter dated 25.10.2007 to complainant by Sup. Eng. M.S.E.D.C.L., commercial circular no.52 dated 07.05.2007, letter dated 19.11.2007 by complainant to M.S.E.D.C.L., Letter dated 19.04.2008 by M.S.E.D.C.L. to complainant, letter dated 14.05.2008 to complainant by M.S.E.D.C.L., letter dated 14.10.2008 by

M.S.E.D.C.L. to complainant, letter dated 08.11.2008 by complainant to M.S.E.D.C.L. letter dated 09.07.2009 by complainant to DIC. Letter dated 14.07.2009 to M.S.E.D.C.L by D.I.C. Letter dated 15.07.2009 by complainant to M.S.E.D.C.L. Letter dated 7 July 2009 by M.S.E.D.C.L to complainant, letter dated 10.08.2009. by M.S.E.D.C.L. to complainant.

- 13) We have carefully perused the documents produced on record by complainant. These documents are in the form of letters addressed by complainant for withdrawal of bills and by MSEDCL for payment of bills. The issue is based on the order passed by MERC. On tariff relating to continuous process industries, the commission observed.

As regards the interveners, the Commission observes that if they were earlier certified as continuous process industry they will pay the base tariff of Rs.2.15 per unit (KWH) towards energy charge and ASC of 42% or 30/23% depending on whether they are on express feeder or non express feeder located in Industrial & Urban Agglomerations' or "Other Regions" respectively. If not certified earlier the interveners and / or its members may approach DCI for certification on whether it is a continuous process industry or a non continuous process industry and submit the same to the Petitioners to avail the applicable tariff w.e.f. 1<sup>st</sup>.October, 2006. Further more, in the event of any grievance on account of alleged wrong categorization , the machinery to agitate such issues is provided in the Regulations made by the Commission in pursuance of sub sections (5) , (6) and (7) of section 42 of the E.A. 2003 . The intervening party and /or its members may approach the concerned consumer grievance redressal forums established by the Petitioners and file their representations. Representations may be filed with the Electricity Ombudsman, on non redressal of grievance by the said forums."

- 14)The record shows that, the complainant company was not certified earlier . The complainant company filed application to District Industry centre on 20/10/2006 for certificate of continuous/non continuous process industry for the first time. As per rules said certificate was required to be submitted within 45 days. However, the said certificate was not submitted on time. The MSEDCL sent letter on 25/10/2006 to company to submit the certificate, again on 25/10/2007 MSEDCL asked the company to submit certificate within one week. However, the company failed to submit within stipulated time. Therefore claim by MSEDCL on the basis of non-continuous process industry would not be

unreasonable. Sufficient time was given to company to submit certificate, but it was not filed till July-2009. We are of the view that failure on the part complainant company to submit certificate within reasonable time authorized MSEDCL to charge as per rates applicable to non continuous industries as per the policy decision taken by MERC.

As per the law, laid down by Hon'ble Supreme Court in matters of economic policy, price fixation, foreign affairs and political matters, the courts has to observe judicial self restraint. This was observed in

Balco Employees Union V Union of India (2002) 2 Sec.333

" It is evident from the above that it is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a Policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical".

In Bihar state Electricity Board V Usha Martin Industries (1997)  
5 Sec. 289

Hon'ble Supreme Court held.

"We are of the view that High court was clearly in error in directing modification of the tariff fixed by the board.

In Krishnan Kakkanth VS Govt. of Kerala and Ors. 1997(9) SCC 495, it has been held that unless Government policy is demonstrably arbitrary, capricious, irrational, discriminatory or violative of constitutional or statutory provisions, the Courts cannot strike down the same.

In the result we are of the considered view that MSEDCL has not wrongly issued bills treating complainant company as HTP-I non continuous process Industry. Therefore we are not convinced with the arguments of Complainant Company. The complaint is liable to be dismissed with no order as to cost.

ORDER

- 1) Complaint is dismissed.
- 2) No order as to cost.

**Mr. S.D. Madake  
(Chairperson)**

**Mr. D.U. Ghatol  
(Member Secretary)**

**Mr. SuryankantPathak  
(Member)**

**Date: 30/11/2012**