

(A Govt. of Maharashtra Undertaking)

CIN : U40109MH2005SGC153645

PHONE NO. : 25664314/25664316

FAX NO. 26470953

Email: cgrfbhandupz@gmail.com

Website: www.mahadiscom.in

Consumer Grievance Redressal Forum

“Vidyut Bhavan”, Gr. Floor,

L.B.S.Marg,Bhandup (W),

Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/299

Date: 30.01.2018

Hearing Date: 16.01.2018

CASE NO.41/2017

**IN THE MATTER OF WRONG RECOVERY BILL AND APPLICATION OF
PROPER TARIFF UNDER IT/ITES CATEFORY**

M/s. Dharamchand Paraschand Export,

(Capital First Ltd.),

Office No.B-3,4th floor,

S.No.279, Road No.16,W-16,

Wagle Estate Thane (w) Mumbai-400604.

(Consumer No. 000010726352)

. . . . (Hereinafter referred as Consumer)

Versus

Maharashtra State Electricity Distribution Company Limited

through its Nodal

Officer,

Thane Circle, Thane

. . . . (Hereinafter referred as Licensee)

Appearance : For

Licensee

Shri. R.K. Marke, AEE, Wagle Sub Division

For Consumer – Shri. Harshad Sheth, consumer Representative

[Coram- Shri A.M. Garde- Chairperson, Shri. R.S.Avhad -Member Secretary

and Vacant - Member (CPO)].

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. Maharashtra Electricity.
2. Consumer herein is Dharamchand Paraschand Export having consumer No. 000010726352(B.U. 4542) Thane Circle LT V B (presently LT II C) contract demand -141 KVA. The user in capital First Ltd.,
3. The user capital First Ltd., contends that provisional bill was given on 19th Jan. 2017 in the Sum of Rs. 2, 22, 82,890/- supply was disconnected for non-payment. They paid full amount on 22nd July 2017.
4. The above bill included retrospective recovery of Rs. 80 Lac on the ground that Industrial tariff was wrongly applied instated of commercial. On the contrary according to the complaint as per IT/ITES policy, supply is to be given under industrial tariff, but category was wrongly changed as commercial from Dec. 2016. Hence excess collected till July 2017 in the sum of Rs.22,88,996/- be refunded along with interest.
5. It is further the contention that wrong bill for July 2017 is issued. Interest is wrongly charged at Rs 15,47,592.50
6. Prayers an made
 - a) Refund of Rs. 80 Lac with interest as per Dec. 62(6) of E.A. 2003.

- b) Against phase recovery payable amount was Rs. 19,06,366, against which Rs. 141 Lac are recovered, hence excess recovered be refunded with interest as per section 56 of E.A. 2003.
- c) The category of industrial is retained.
- d) Refund excess amount collected due to changes of category form December 2016 while date of reinstalment i.e. Rs. 22,88,996/- along with inters as per section 62(6).
- e) Bill of July 2017 may be revised by deleting the amount of Excess collection of Rs. 2103592 and interest wrongly charged Rs. 15,47,592.50.
- f) Disconnection is not applicable.

7. Licensee in reply contends as below

M/s. Dharmchand Paraschand Exports is LT consumer. The date of connection is 04.01.2013.

M/s. Capital First Ltd, is not the consumer and has no right to raise the grievance before CGRF, M/s. Capital First Ltd has not submitted any power of attorney from consumer M/s. Dharmchand Paraschand Exports for filing the grievance, hence the present petition is not maintainable.

Please refer Regulation No. 6.8 (d) of MERC (CGRF and Ombudsman) Regulations, which is attached herewith,

As per above regulation, the Forum shall not entertain the matter in case of recovery of arrears where the bill amount is not disputed.

In present case, the supplementary bill was issued to consumer on dtd. 19.01.2017 amounting Rs. 2,22,82,890/-.

Several disconnection notices are issued to consumer.

The consumer has paid the entire amount without any protest. The consumer has not submitted single protest letter before payment of supplementary bill.

The consumer has not challenged the disconnection notices before any Forum or Court, also not obtained any Stay order against the

disconnection notice and dully paid the supplementary bill amount without any protest.

As per Reg. No. 6.8 (d), the present grievance is not maintainable before this Hon'ble Forum.

The consumer has submitted the protest letters after payment and paid the amount with free consent.

In present case recovery is already made, where the bill amount is not disputed by consumer before payment.

In present case, the supplementary bill was issued to consumer on dtd. 19.01.2017. The supply disconnected after issue of notices on dtd. 22.07.2017. The consumer has not challenged the matter before any Court or Forum in the period of 19.01.2017 to 22.07.2017.

On the date of disconnection, the consumer paid the entire amount without any protest.

Hence, present matter is not maintainable.

The flying squad inspected the premises on dtd. 19.10.2016 and on the basis of MRI Report observed that (point no.4), R phase current found missing form dtd. 05.06.2013.

The Hon'ble Ombudsman observed in case No. 60 of 2017 and Review Petition No. 07 of 2017, there is no any limitation for recovery in case of current missing from any phase. The both orders are attached herewith.

The flying squad also observed in point no. 1 that, the consumer is billed as per industrial tariff; however, consumer not submitted any valid permanent registration certificate for It/ITES purpose. Hence, the flying sqad proposed the recovery for tariff difference.

As per Hon'ble Bombay High Court Order (Division Bench) in W.P. No. 7015 of 2008 dtd. 20.08.2009 that, there is no limitation in case of plain tariff difference recovery. The order attached herewith.

Both the recoveries are for the period of May-2013 to Nov. 2016 and consolidated recovery amount is Rs. 2,22,82,890/- which is already

recovered on dtd. 22.07.2017. The copy of flying squad Report is attached herewith.

8. We have heard both sides.

a) Locus Standi:-

MSEDCL raises an objection of Locus Standi of the complaint saying that one M/s. Dharamchand Prasadchand Export is their consumer and not the complainant.

Admitting the said fact the complaint contends and also point out from the documents viz the lease agreement and DIC certificates that they are the users and are entitled to file the grievance As such the objection raised is no sustainable.

b) Missing Phase R Current:-

Licensee MSEDCL States that Flying Squad inspected the consumers premises on 19.10.2016 and on the basis of MRI report observed that R Phase current was found missing from 05.06.2013. The MRI report and instantaneous parameters data has been produced which we have gone through. There are also documents produced in support of the statement that the meter was found OK on testing in the lab and further R phase and B phase CT's were found saturated, as such the meter showed slowness by 55-67% from 05.06.2013 to 19.10.2016. Recovery is therefore worked out from 05.06.2013 onwards.

Licensee relies on the orders of the Hon'ble Ombudsman in case No. 60 of 2017, Review petition No. 07/2017 (Mumtaz case) and of the Hon'ble High Court (DB) in Rototex Case and Submitted that such Recoveries are to be allowed and even the objection of limitation cannot sustain.

As against this complainant states that metering is the sole responsibility of the licensee MSEDCL, as such consumer cannot be penalised for irregularities in periodical checking of the meter and

maintain its condition. However as we see, consumer/user is not being penalised at all. Only plain recovery is taken out without interest and DPC etc. In fact the licensee may make an inquiry and penalize the defaulting official but then legitimate recovery cannot be denied. In a similar case Hon'ble Ombudsman in Mumtaz's case bearing no 67/2017 has clearly upheld the claim of the license therein. Even the point of limitation raised by the consumer was turned down by the Division bench of the Bombay high Court in Rototex case cited by the consumer herein.

On the above legal issue consumer tried to place reliance on the judgment of the Hon'ble Ombudsman Mumbai in the case of M/s. Arpee consultancy Pvt. LTd., Vs MSEDCL (Representation No. 91/2015). The case of Mr. Awadhesh Pandey Vs.Tata Power (AR 2007 BOM 52) and case of M/s. Rototex (Bombay High Court DB) have been referred. Consumer has also cited the case of M/s. Excel Industries.

We have carefully studied all the above cited cases and orders passed therein. It appears that Awadhesh case came first. Hon'ble Ombudsman Mumbai as held that Licensee therein was entitled to recover arrears upon correction of the bills as per proper MF but limited to only two years past as provided in section 56(2) of the Act. Consumer points out that the matter when taken up before the Hon'ble High Court, The Division bench of Hon'ble High Court upheld the order of the Hon'ble Ombudsman. Relevant paragraph of the Judgement both of the Hon'ble Ombudsman and the High Court reproduced in the judgment of M/s. Excel Industrial have been pointed out to us. Going by that, it can be seen that the D.B. of Bombay High Court has explained the purpose of section 56(2) as below.

“.....In our opinion sub section(2) only provides a limitation, that the course to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long as sum is due,

which is within two years of the demand and can be recovered, the licensee or the generating company can exercise its power of coercive process of recovery by cutting of electricity supply. This is a special mechanism provided to enable the License or generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of suit” Thus in that matter Hon’ble High court recognised the power of the licensee to recover its dues independent of the enabling provision of section 56 (2) this is one .

A reference is made to W.P. 6783 of 2009, W.P. NO. 2894 of 2007 and RP No. 146 of 2009 and submitted that the view of the division Bench of the Bombay High Court above discussed (Awadhesh case) was affirmed. None of the both judgment are produced for perusal.

Be that as it may, the judgment in Rototex case (W.P. NO. 7811/2018) is very clear and applicable to the present case. The issue that came up before this division Bench never came up in earlier case before the Hon’ble Bombay High court as seen above. In a case of MF similar to Excel Industries case the question was raised about interpretation of the expression “sum due” in section 56(2) and it was held by their lordships the amount becomes due when the valid bill has been sent to the consumer. CR MR. Seth submitted that a reference with respect to which decision of High Court is correct pending before the Hon’ble High Court No such order is shown.

Even otherwise it is not shown as to how the judgement in Rototex case is not binding on the Forum.

Tariff Application

There is retrospective recovery shown in the impugned bill as against wrong application of tariff. For this one has to examine the facts of the case from the beginning. Supply was given in Jan. 2013 under LT II B

commercial tariff. Then on 12 July 2013 consumer gave letter along with LOI as per 2012 IT/ITES policy for applying Industrial tariff which request was granted and since then Industrial tariff was being applied to the consumer/ user. Thereafter came the circular No. 212 of 1st October 2013 for addressing various problems faced by the filed officers in applying tariff orders to IT/ITES unit. It was stated in the circular No. 212 interalia that IT/ITES activity means IT/ITES as described in Maharashtra IT policy 2003 and 2009. They should have registration certificate for IT/ITES from Competent authority as prescribed. Then came the Circular No. 243 of 3rd July 2015.

On 19.10.2016 flying squad of MSECL visited consumer /user's premises for inspection and interalia found that there was no prescribed registration certificate from competent authority with the consumer for IT/ITES, as such on getting report they concluded that there was wrong application of tariff under Industrial category. The category was changed from Industrial to commercial. In addition to that MSECL raised a bill for the difference in tariff with retrospective effect which is called in question and apparently successfully. There are several judgments both of ombudsman and APTEL in support of the said proposition. That part of the recovery for the retrospective period has to be quashed.

Mr. Seth the CR submitted that even after the flying squad inspection, commercial tariff cannot be applied because they had already applied for registration certificate which they received on 19.05.2017. He submitted that certificate dated 19.05.2017 dates back to commencement of the business. We have gone through the registration certificate and do not find anything therein indicating that the registration has to be considered from the date of commencement of business. Mr. Seth underlined the sentence in the certificate which says that the date of commencement of business was 27.09.2012, but that by itself does not amount to giving retrospective effect to the certificate from date of commencement of

business. On the contrary the matter below that sentence sets at rest any query in that regard. It says that the certificate shall be valid for three years from the date of issue. That claim therefore miserably fails.

In the above view of the entire matter on all the issues consumer/ user succeeds on the issue of retrospective recovery of difference in tariff preceding the flying squad inspection. Grievance fails on remaining counts.

OEDER

1. Grievance is partly allowed.
2. The retrospective recovery on account wrong application of tariff till the flying Squad inspection on 19.10.2016 stands quashed. MSEDCL to revise the bill accordingly and refund the amount with interest at RBI rate.

Grievance stands dismissed on remaining issues.

Both the parties should be informed accordingly.

The compliance should be report within one week.

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address. “ Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051”
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon’ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or

- c) Delay in compliance of this decision issued under” Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor, world Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.

I Agree/Disagree

**ANANT M. GARDE
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**