



(A Govt. of Maharashtra Undertaking)
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Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg, Bhandup (W),
Mumbai – 400078.

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

Date

Case No. 17

Hearing Dt. 15.07.2016

In the matter of application of commercial tariff dispute

M/s. AIRCEL /Patel Punit Builders Pvt. Ltd.,

- Applicant

Vs.

M.S.E.D.C.L. Valhi Division

Respondent

Present during the hearing

A - On behalf of CGRF, Banda

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri. Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Archana Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. T. Ramasuramian – Consumer Representative
- 2) Shri. Deep Singh

C - On behalf of Respondent

- 1) Shri. S.S. Patil Executive Engineer, Vashi Division.

Con. No 000149036560

ORDER

1. Above said consumer filed this complaint against respondent utility for withdrawal of bill charge as commercial tariff instead of Industrial rate and also pray for refund of amount paid which is connected for charging commercial rate.
2. According to consumer it is company incorporated under the provisions of the companies Act 1956 having registered office at Anna Salai Marg road, Chennai .Applicant required to status ITES Centre with tower as designated direction of the department of telecom Government of India. All the facilities and tower under the scheme of IT/ITES available at M/s. Patel Punit Builders on the given address consumer entered into agreement with M/s. Patel Punit Builders on 10.12.2008. The power supply to the above said address given to the IT/ITES centre with effect from 9.11.2009 in the consumer name M/s. Patel Punit Builders who was occupying the premises at Mahape new Mumbai. Activities carried out by the M/s. AIRCEL Ltd falls under the category of IT/ITES centre.
3. According to consumer unit is registered with director of industries with supply power at industrial areas applicable under MERC Regulation. There is government policy IT/ITES already publish on dated 10.06.2014. Consumer received demand notice along with supplementary bill which is attached by the consumer along with complaint. After receiving the said bill and demand notice date 18.06.2014 the bill was demanded Rs. 1,74,041/- towards difference of recovery of category 56 HP IT to 79 HT II B for the period August 2012 to Jan 2014. Consumer was directed to deposit to said amount within 15 days. Hence the supply is liable to be disconnected. As such consumer attach the notice of demand along with the complaint. After receiving the said bill and notice consumer raised objection to the authority

of respondent utility and filed complaint on 24.09.2014 before IGRC. IGRC Vashi filed to have any decision consumer also approach the Hon'ble High court and raised dispute by filing Writ Petition consumer relied on various decision of Bombay High court mention in Writ Petition in 6702/2009.

4. According to consumer the tariff required to be applied as industrial at the establishment of consumer falls within the direction of authority under IT/ITES establishment. Consumer also having proper certification this is produce before the authority. Consumer alleged that the power supply use for industrial purpose and not for commercial purpose. Action taken by respondent utility changing category of tariff from Industrial to commercial on 16.08.2012 is illegal and improper. Consumer relied on various tariff orders of MERC Rules and Regulation and also relied on policy of Gov. Maharashtra mention in case **116/2008**. It is contention of consumer that Hon'ble High courts pass order in writ petition 9337 on 18.03.2015 and directed to approach before this Forum and copy of order is filed on record. This complaint is filed by this consumer has representation dated 02.07.2015 for not decided by IGRC within 2 month .On dated 14.03.2016. Consumer received letter from Superintending Engineer, Vashi Circle for application of commercial tariff. At that time consumer approach for reasonable equal installment. Accordingly, letter was sent to Superintending Engineer, Vashi Circle .Consumer pray for withdrawal of the issued bill by respondent utility charging as commercial tariff in 2005. Consumers pray for refund of electricity charges and appropriate relief. Consumer also pray for interim stay for not to disconnection till matter is finally decided. consumer filed various demand bill received from respondent utility copy of judgment notification direction of Government

Policy for applying tariff form IT/ITES units and other various judgments and certificate issued by competent authority.

5. After filing the complaint notice was issued to the respondent utility. Respondent utility appeared and filed reply Para wise on dated 24.05.2016. Respondent utility also filed all relevant document, Circulars, judgment and direction issued time to time by MERC. Respondent utility filed joint inspection report dated 16.01.2015. Circular dated 08.12.2014, commercial Circular, revision of tariff Circular No.243 dated 03.07.2015, copy of APTEL Order in Appeal No. 234,235,211 and 215 of 2012 and various order pass by Hon'ble High Court Bombay in similar cases. Respondent utility submitted that the demand bill and notice was issued after joint inspection report of flying squad dated 16.01.2015 as per contention of the said report. The document perused executed between M/s. Patel Punit Builders Pvt Ltd., and present consumer. Flow chart shown activity carried out under GSM network structure. The certification submitted PVT IT park registration in the name M/s. Patel Punit Builders Pvt Ltd., issued by DIC.
6. There after consumer was directed to submit additional document in his possession between sufficient periods, no proper authenticated document submitted by consumer. Therefore direction issued by Superintending Engineer letter dated 08.12.2014 referring Commercial Circular No.175 and various letter as referred APTEL order issued dated 05.11.2012 setting aside the relevant part of tariff order on 16.08.2012. Aptel pass order on 21.03.2013 in favor of Telecoms Company and directed to charge at industrial tariff to mobile tower form 01.08.2013. At the same was convened to officer for implementation of order and direction already given to the officer where the mobile tower installation found they should inspect

through flying squad and observed which tariff is applicable for telephone exchange recovery committee decision held on 09.02.2013. All telephone exchange shall be check for confirmation of commercial tariff In case mix load from telephone exchange and mobile tower are together separate meter shall be installed and load required to be segregate. The telephone exchange power supply should be charge as commercial tariff and the mobile tower supply be charge as industrial tariff.

7. In view of Circular No.175 and decision of Aptel order appropriate tariff shall be applicable as per guideline issued through letter No. 30396 dated 06.11.2013 .Circular 243/03.07.2015 specifically gave direction under clause 16 tariff for mobile tower and tariff for other activities. Therefore, notice and demand bill issued by the respondent utility of calculation of tariff difference and amount bill is legal, proper and correct. Therefore, complaint filed by consumer liable to be dismiss with cost.
8. After perusing complaint of the consumer notice and demand bill ,document, circular filed by the consumer and notice reply given by respondent utility following point arose for our consideration to which
 - 1) Whether demand bill issued charging at commercial tariff by respondent Utility since 2012 claiming difference arrears are legal valid and proper.
 - 2) Whether consumer is entitled for any refund towards excess payment.
 - 3) Whether industrial tariff shall be applicable to the consumer is yet since what date?

Reasoning

I have given opportunity on various dates to the consumer and his representative and also to the respondent utility officer on various dates. They appear before the forum and made submission. It appears from the dispute consumer enters into an agreement with M/s. Patel Punit Builders Pvt Ltd., the original consumer having occupying the premises. The agreement of sale submitted by consumer dated 05.12.2008 minutely perused .so as per term and condition of agreement there is mention in the clause he can apply to the competent authority at their own cost and obtain the proper certification to conduct the work on the said premises. At clause no 14 sub-clause No. IV, It means that consumer required to apply to competent authority and obtain necessary certificate which is required to give benefit applicable to the actual work carried out in the premises.

The contention of the consumer entire building is name and filed as IT-ITES sector and having registration certificate dated 29.06.2010 is sufficient to claim the benefit by this consumer. I disagree in the submission of consumer on the ground that to claim any benefit by the consumer. The certificate issued in the name of consumer must be produce which is requirement to claim to tariff rate benefit. It is necessary to mention that the load supply to the premises for telephone exchange and mobile tower form the common point of power supply. The sanction load is 470KW part of the load is use for mobile tower equivalent to 20 and 25KW and all remaining load use for telephone exchange. Therefore charging of commercial tariff for entire load is not proper .It is contention of consumer but unless the separate meter is installed segregation of connecting load cannot be calculated and access properly. Therefore to my view necessary check required to be taken for installation of separate meter for the supply use for mobile tower and part of the supply receive to the telephone exchange setup premises.

Consumer try to submit the recent technology of mobile services are different form MSE telephone exchange and therefore application of telephone exchange considering the nature of work and receiving single to BTS tower, BTS MSC signal of individual user cannot be done by telephone exchange and therefore the technology used for mobile tower is different and therefore industrial tariff shall be applied.

In view of the own contention of respondent utility there is Aptel judgment direction given and various changes is made in tariff schedule charge supply to the mobile tower should be in the category of industrial purpose and therefore segregation of unit required to be access separately. The policy and the requirement to charge at industrial tariff for entire premises M/s. Aircel Ltd., consumer required to filed proper documentation where as LOI certificate in the name and address survey no 144/145, building no. 02, Samrat Ashok peth commercial Zone Yervada, Pune is filed on record similarly in the name of M/s Aircel Ltd., MIDC certificate filed on the address second flower, Opus Centre, Central Road,MIDC, Andheri East, Mumbai. But no proper authenticated certificate is filed on record showing the address presently occupied by the consumer. Therefore charging of commercial tariff to the unit of consumer cannot be threat to be wrong decision. The certification which is relied by the consumer which is issued in the name M/s. Shah and Cheeda Homes Ltd ., And M/s. Patel Punit Builders Pvt Ltd., as private sector information technology part on the plot over 797,TTC Rabale, Navi Mumbai for availing benefit under IT/ITES category the authority give direction to implement Government Policy under clause 2 unit coming under public or private park have to obtain individual IT unit LOI registration to avail benefit to IT/ITES.No certification produce by the consumer and therefore application of commercial tariff since to be legal valid and proper.

However the objection taken by consumer for recovery of arrears since 2012 tariff difference will claim by respondent utility cannot be said to be legal valid and proper and first Aptel judgment and order in Appeal No. 131 **M/s Vennay Enterprises V/s. MSEDCL** no retrospective recovery of tariff is permissible in this present case .Back arrears of tariff difference claim by the respondent utility is required to be withdrawn and set aside. The respondent utility can recovered tariff under the category of commercial category tariff from the date of joint inspection dated 16.01.2015 earlier recovery is already received by MSEDCL shall be refunded to the consumer with interest at 9% per annum. From the date of recovery to claim to realization of amount hence the consumer hereby directed to apply for certification and produce IT/ITES certificated issued by competent authority on given address under the agreement till then commercial tariff shall be applicable. Considering the nature of dispute and involvement of large revenue amount the consumer allows paying the difference of arrears if due in 12 equal installment along with current bill. I found argument advance by representative of consumer challenging the requirement to change the policy and necessity to filed individual application is unwarranted and not required this submission is against the direction of Aptel judgment order and guidelines and not according to the circular issued by respondent utility authority.

Therefore, such submission is illegal not tenable. True it is that the subject matter of the WP No.7884/10 are the demand bills issued earlier by MAHADISCOM and the Hon. High Court, while granting stay had taken the assistance of order passed by MERC in 2009 in which telephone exchange or mobile tower were not categorized. It is equally true that in the MERC order no.19/2012 dated 16.08.2012, the telephone exchange services and the mobile towers have been recategorised by MERC as Commercial and Industrial one respectively MERC is the competent authority to categorize and re-categorize the

services offered and it can never be a matter of debate before C.G.R.F. The main question before us as to whether it was possible for Mahavitran to immediately raise the bill followed by disconnection notice in the present case. It was not wrong on the part of Head Office of Mahadiscom to issue circulars in view of the order passed by MERC on categorizing the services because they were general in 3 nos.

Points Findings

1. Whether the bill and disconnection notice dated 18.02.2013 is correct and proper.
2. What order as per final order nature but it was not possible and was also not proper on the part of Mahavitran to raise demand bill followed by disconnection notice when the interim stay granted by the Hon. High Court in W.P. 7884/2010 was in force. It is only on this background the demand bill and disconnection notice must be held as illegal and uncalled for. It was possible for Mahavitran to move the Hon. High Court to vacate or modify the stay order granted earlier in the light of recategorisation with effect from 01.08.2012 and thereafter to issue demand bill and disconnection notice to the present appellant. It is on this background the impugned bill and the disconnection notice issued by Mahavitran must be said to be illegal and uncalled for and needs to be withdrawn and called back Hence I answer the point in the negative.
3. In the result the claim appeal succeeds and demand bill and disconnection notice need to be squashed.

Hence we proceed to pass following order.

Case Nos. 130 of 2011 and 131 of 2011 In the matter of Petition filed by Godrej Properties & Investment Limited and Godrej Castlemaine under Sections 86 and 94 of the Electricity Act, 2003 seeking Clarification of the Tariff Order dated August 17, 2009 in Case No. 116 of 2008

After hearing the parties, the Commission is of the view that the present matter is clearly a billing related dispute between the Petitioners who are the consumers of MSEDCL, the distribution licensee. The Petitioners appear to seek redressal of billing related grievance by the Commission under the garb of seeking clarifications. This approach cannot be permitted. In view of the law settled by the Hon'ble Supreme Court in "**Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd**" reported in AIR 2008 Supreme Court 976, this Commission cannot redress individual billing disputes of consumers. Hence, the present Petitions are dismissed as not maintainable. Since, every Order of the Commission is a speaking Order and therefore, the Commission is of the view that there is no need of any further clarification in the present matter. With the above, the present Petitions in Case Nos. 130 and 131 of 2011 stand dismissed as not maintainable. Hence, considered by me.

After perusing the entire relevant document I found grievance made by the consumer should be partly allowed. Hence I proceed to pass following order.

ORDER

- 1) The consumer complaint No. 17/2016 is partly allowed.
- 2) The respondent utility charging commercial tariff since 2012 stands illegal and set aside.

The respondent utility directed to issue the revised bill charging commercial tariff calculating the units consumed for supply to the telephone exchange from the date of joint inspection

Proceedings closed.

Both the parties be informed accordingly.

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

Note:

1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman

The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

**ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP**

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