

A Govt. of Maharashtra Undertaking)
CIN : U40109MH2005SGC153645

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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. 88/2016

Hearing Dt.30.08.2016

In the matter of refund of difference wrong tariff due and provisional bill MF:2 arrears recovery

M/s Shree Imaging Pvt . Ltd.,

- Applicant

Vs.

M.S.E.D.C.L., Gadkari Sub Division.

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil Bavthankar, Chairman, CGRF, Bhandup
- 2) Shri.Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.

B - On behalf of Applicant

- 1) Shri. Manish Shah

- Consumer Representative

C - On behalf of Respondent No. 1

- 1) Shri. R.B.Kore, Addl. Executive Engineer, Gadkari Sub Division.

Consumer No

1. Above named consumer filed this complaint against respondent utility stating that the consumer is having supply consumer No. 400000004144 tariff LT II billing unit 4728 sanction load 149 KW, and change of tariff category of LT II C to LT X public service on the ground the said connection is used by consumer for primary Health Care Centre. According to consumer he obtained the premises for running M/s Shree

Image Pvt. Ltd. above named address date of connection 07.01.2011. According to consumer initially the supply was obtained under the category of 71 LT II commercial. The consumer regularly paying the said bill to the respondent utility issued time to time. Consumer obtained the said premises on execution of agreement for running Imaging Pvt Ltd., business. Consumer also obtained the said connection. However, respondent utility applied wrong tariff under the category of 71 LT II commercial. Thereafter additional power supply request made by the consumer in the month of July 2013 by issuing letter. Accordingly, after verification of proper document which is verified by respondent utility. Consumer submitted that the businesses carried out in the premises shall under the category of primary Health Centre. In view of adding category LT X - LT public services is applicable to the premises actual using the purpose of supply in primary Health Care Centre use for Pathology laboratory and other public related purpose. However, the respondent utility issued supplementary bill to the consumer showing liability of payment of additional amount from Jan 2011 to July 2013. On the ground the billing record wrongly added MF: 1 instead of MF:2 . The supply is use by the consumer from Jan. 2011 to July 2013. Therefore difference of calculation of amount from wrong tariff MF: 1 which is corrected to MF: 2 for the period Jan. 2011 to July 2013 and claim arrears difference of tariff from above said period Jan.2011 to July 2013 amounting Rs. 23,71,580/- payable by the consumer. Respondent utility also claim pays the said bill in 12 regular installments. Accordingly, consumer submitted that he paid the said amount by cheque from 28.09.2013 to 28.07.2014 and deposited with the respondent utility authority. Initially consumer approach to the IGRC authority and raised the dispute by filing representation in Schedule 'X'. IGRC authority registered cases vide case No.12/2016 on dated 07.06.2016 opportunity of hearing given to both the party by IGRC cell on 16.06.2016. IGRC after hearing both party pass order the conversion of tariff category LT II C to LT X C on 17.02.2014 from the date of application filed by consumer. IGRC directed to pay the consumer difference of MF: 2 recovery from the above said period in view

undertaking and consent given. IGRC also directed respondent utility to make inspection of this premises on 17.02.2014 and verified actually use of supply and determine the tariff applicable to the consumer and accordingly change of tariff should be effected. IGRC also decided given direction to respondent utility to take appropriate action and reference No.4.13 (b) MERC SOP regulation 2014. IGRC refuse to award the interest refund and all incentive of TOD of tariff charges as under regulation No. 6.6.& the claim is time barred. Being dissatisfied with order of IGRC decision communicated to the consumer this consumer approach to the Forum and filed complaint in Form No "A" it is prayer of consumer. The application of proper tariff of MF:2 recovery should be restricted from 2 years from the date of detection in view of section 56(2). Consumer also prays for refund of excess amount paid to utility and claim refund with interest. Consumer pray for refund of excess deposited amount with interest and liable to recovery only half of DL and withdrawal of interest and other charges and claim refund of interest as per RBI approved rate. Consumer filed copy of IGRC judgment and order Form No Schedule 'X' provisional bill issued by respondent utility dated 03.08.2013 undertaking and prayer of difference of MF:2 recovery agreed by the consumer under agreement dated 30.8.2013 all other details bill issued time to time from 25.10.2012 onwards and pay to grant proper relief.

2. After filing the said complaint notice was issued to the respondent utility. After service of notice respondent utility appeared and filed reply on 29.08.2016.
3. It is contention of respondent utility that the consumer obtained this supply under the name M/s. Shree Image Pvt. Ltd., on 07.01.2011. The LT II tariff against consumer no.400000004144 sanctions Load 139KW. It is found the recovery of MF: 2 difference units already consume by this consumer was charge from the date of connection July 2013 which was convey to the consumer vide TOL 1465 on 03.08.2013. It is submitted by respondent utility undertaking submitted by consumer at division office dated 31.08.2013 and allow to pay the difference of amount 2371580/- in 12 installments. It was communicated to consumer vide letter 2759

dated 02.09.2013. It is further submitted by utility on 29.011.2014 consumer submitted application of CCFC Thane and claim refund of amount paid due to wrong tariff from August 2012 ought to have been charge form tariff LT X instead of LT II C and withdrawal of the interest on the said paid amount. According to utility the tariff apply to the consumer with effect from July 2014. However, request of consumer refund due to change of tariff claim retrospective was refused by the utility in view of provisions in MERC SOP Regulation 2014 clause No.4.13(b) as per direction effect of change of tariff given to the consumer form second billing cycle after receipt of the application. However, reliant place by consumer on judgment in Case No.579,580 & 581 of 2015 M/s. Balaji Builders and Developers order dated 13.05.2015 the change tariff of difference avails from second billing cycle of receipt of application. Respondent utility refused to accept the grievance of consumer on application dated 29.011.2014 as it is time barred beyond the period of 2 year the relief is claim .My consumer cannot be permitted in view of MERC, Consumer Grievance Redressal Forum and Ombudsman Regulation 2006 as per clause no 6.6 and as per order of IGRC 19.05.2016 in case No.127 giving direction to the respondent utility the change of tariff applicable to the consumer from the second billing cycle form the date of receipt application form consumer. It is submitted that as per letter received from consumer on 16.06.2016. The change of tariff allowed on 17.02.2014. but that actual tariff was change to effect from July 2014 instead of change of tariff benefit given to the consumer form March 2014 to June 2014 and oversight by mistake the credit was given Rs. 7,88,231/- in sept 2014 in the consumer account refund of tariff from Sep. 2012 to June 2014 . The financial benefit already given to the consumer which now calculated for March 2014 to June 2014 and amount of Rs. 1, 06,002/- which was less as compared to credit amount 7, 88,231/- which is already given by this office. Therefore respondent utility pray to grand the monitory relief by passing order by reversal of amount Rs. 6,82,229/- minus amount 7,88,231/-, 1,06002/- be given only to the consumer by MSEDCL by revised of calculation of bill. Therefore substantial

relief is already given to the consumer and therefore consumer complaint having no prima -faicie case and claim made by consumer is beyond period of 2 years no benefit can be given to the consumer. Respondent utility pray for rejection of claim and give monitory benefit is subject to the calculation and prayed no interest or any other charges entitled to refund by consumer.

4. After perusing the rival contention and objection raised by the consumer and after hearing the reply of utility following point arose to our consideration. To which we have recorded our finding to the point for the reason below.
 - 1) Whether respondent utility entitled to recover the difference of MF:2 arrears by application of wrong tariff MF:1 instated of MF:2 amount Rs. 23,71,580/-
 - 2) Whether consumer entitled to claim refund of difference tariff amount due to change of tariff from LT II C to LT II X public service tariff applicable to the consumer.
 - 3) Whether consumer is entitled for refund of any amount with interest.
 - 4) Whether claim of the consumer claiming difference of refund of tariff amount beyond period of limitation in view of Provision 6.6.
 - 5) Whether consumer shall not permitted to claim any relief in view of undertaking and already paid the difference of amount by installments.

Reasons

5. Consumer obtained this supply for running business of Image scanning on the occupied premises since date of connection and was paying bill as per demand. It is found by the own claim of the consumer/ he did not made any application for conversation of tariff from LT II C to LT X C till 29.11.2014. The supplementary bill was issued by respondent utility claiming recovery of unit of wrong MF was applicable to the consumer MF: 1 instead of MF: 2. The supplementary bill claim by the consumer on the date of raising the dispute the question of limitation applicable to the consumer as well as to the respondent utility total arrears of recovery under the wrong action either paid by the consumer or by application of wrong tariff difference

when it is notice the total arrears cannot exceed more than 2 years. There must be universal application of limitation clause to the both side under various decision the contention of the respondent utility not justified in claiming MF: 2 arrears recovery claim form 07.01.2011. The application of tariff when it is notice by the respondent utility there are claiming under the wrong tariff category the mistake committed by respondent utility cannot be justified on any other ground. It is failure of obeying the direction of MERC order and application proper tariff when it is introduce on 01.08.2012. According to me to grievance is raised required to be divided in two issue.

A. Whether respondent utility can be recovered the wrong tariff MF: 1 instead of MF: 2 excess more than 2 year liability on consumer to pay the difference is legal and proper.

B. Whether consumer is entitled to claim the difference of unit due to wrong application of tariff from LT II C to LT X LT public services. According to me the period of two years shall be restricted to the recovery and also applicable for refund of difference of tariff.

6. It appears from the dispute raised by consumer he made application for change of tariff on 29.11.2014 when application is made to CCFC Thane and claim informing respondent utility wrong tariff is application to the establishment occupied by the consumer. Therefore respondent utility insisted on the claim of refund of difference of tariff is application form the date of application next billing cycle and therefore less amount calculated by respondent utility and already adjustment is given. However, as per second issued the difference of wrong MF recovery made liable to the consumer amount 23, 71,580/- was exorbitant beyond the period of 2 years. To my view even the consumer already deposited amount in 12 monthly installments which is agreed by letter dated 02.09.2016 bearing no 2759 already deposited amount should be considered by respondent utility properly. The monitory adjustment which is directed by IGRC in there order is required to be re-access properly. The amount which

already collected by respondent utility is more than period of 2 years from the date of detection. I have perused guidelines and judgment given by MERC and in view of Regulation 4.13 (b) MERC SOP regulation 2014, The recovery insisted by respondent utility beyond the period of 2 years made contravention of section 56(2) period of limitation 2 years. Respondent utility submitted the calculation claiming MF: 2 recovery arrears form 01 Jan 2011 to July 2013. The amount is claim in supplementary bill more than the period of 2 years. To my view respondent utility cannot claim MF: 2 recovery arrears more than period of 2 year in view of section 56(2) of E.A.2003 and therefore supplementary bill liable to be quashed and set aside. It is necessary to give direction to the respondent utility MF: 2 difference arrears should be restricted to 24 months prior to the date of detection of error already amount deposited shall be refund to the consumer with interest 9% from the date of deposit till realization of amount. It should be refunded and not adjusted coming to the issue of claiming refund of amount. The consumer admittedly filed application to CCFC, thane on 29.11.2014 and claims the calculation of difference of tariff amount liable to be refunded. It should be separately calculated for the period of 2 years as consumer also not entitled to get benefit asking refund of excess amount recovered more than 2 years as the period of limitation of 2 years shall made equally liable restricted to the consumer and also to the respondent utility. Therefore respondent utility directed to calculate the amount of difference change of tariff from LT II C to LT X for the period of 2 years. Earlier form the detection of mistake and restricted the refund liability with appears that consumer paid already amount by cheque by installment coming from 28.09.2013 to 28.07.2014 & total amount already deposited by consumer shall be calculated properly. The difference entitled by the consumer by refund should be access and calculated properly for the period of 2 years. Respondent utility entitled to considered amount already adjusted and given tariff shown in the bill should be deducted actual refund amount payable to the consumer. It may result in complication of financial liability therefore this Forum in client to

access the calculation of 2 issue separately one Claiming difference of tariff amount from MF: 1 to MF: 2 for the period of 24 months shall be calculated separately and second wrongful recovery application improper tariff of LT II C amount recovered shall be applicable form liability of refund to the consumer restricted for 2 year in spite of his date of application. The refund should be restricted 2 years from the date of detection. Hence I am in client to allow the complaint and proceed to pass following order.

ORDER

1. The consumer complaint No. 88/2016 is allowed.
2. Respondent utility can be recovered the wrong unit MF: 1 instead of MF: 2 for 2 years from date of detection.
3. Consumer is entitled to claim the difference of amount due to wrong application of tariff from LT II C to LT X LT public services for the period of two years from date of detection and refund amount

Proceeding close.

Note:

1) If Consumer is not satisfied with the decision, he may file representative 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**