

(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. 574 /2014

Hearing Dt. 28.04.2015

In the matter of wrong application of tariff and excess billing

M/s. Foarstar Frozen Foods Pvt Ltd.,

- Applicant

Vs.

M.S.E.D.C.L. Vashi Circle

- Respondent

Present during the hearing

A - On behalf of CGRF, Bhandup

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

B - On behalf of Appellant

- 1) Shri. Dilip Parsnis – Consumer Representative

C - On behalf of Respondent

- 1) Shri. S.B. Kachre, Nodal Officer, Executive Engineer, Vashi Circle Office.

ORDER (23/04/2015)

1. Above name complaint filed this complaint against the respondent utility alleging that his respondent utility Vashi Circle bearing consumer No. 028619019557 and carrying out industrial on given address through representative Mr. Dilip Parsnis. He submitted the complaint with Interim Relief application on

27.10.2014 stating that his having HT connection M/s. Foarstar Frozen Foods and date of connection 10.03.1995 to 02.12.2013 flying squad, Vashi inspected the above said premises and field inspection report as fisheries industries obtain connection but activity are going on as commercial therefore gave instruction authority to change in tariff from industrial to commercial tariff but Flying Squad Vashi was not actually inspected thoroughly of the premises of company to verify the entire process and activities done by company at site as per flying squad, report MSEDCL change category of tariff from industrial to commercial on June 2014. as per tariff order approved by merc dated 1st august 2012. direction to implement by circular by msdecl authority but the factory the manufacturing with vegetarian and fish food processing activity without given any notice of hearing or opportunity to file objection if any change of tariff made by MSEDCL from industrial HT V to commercial HTII and MSEDCL issued supplementary bill of Rs. 5,15,25,836/- for the period 01.08.2012 to 31/05/2015 for 22 months calculating 10248009 units on 04/10/2014 and claim the arrears of bill rs 5,15,25,836. with current bill as per commercial tariff

- 2.** It is the contention of consumer prayed give direction to utility at interim stage to withdraw supplementary bill issued by MSEDCL on dated 04/10/2014 or hold advance till matter is finally decided to restore the tariff as industrial to from commercial and excess amount which is collected by utility.
- 3.** After filing the complaint along with Interim Relief application by consumer on dated 23.03.2015. notice was issued to respondent utility .there on which respondent filed reply to the said interim application through Nodal Officer Shri. S. B. Kachre. It is stated that by respondent as per Regulation No. 13 of the MERC (Electricity Supply Code and other Condition of Supply) Regulation 2005 the distribution Licensee and classify and reclassify a consumer on to various category approved by commission appeared actually bases on the

purpose of supply by such consumer. Provided by distribution licensee shall not create any tariff category other than those approve by the Commission. Under sec 61 of electricity act 2003

- 4.** It is contention of respondent MSEDCL as apply HT II Commercial category applied for fisheries as per inspection of flying squad report observation made of that premises and power unit consumption is being use for the purposed fishing process activity such as washing and weighing and icing, per-processing (fish cutting/Ring/Tentacles/whole clean/fillets/PD/HL easy peeled etc.) blast freezing water glazing, packing and clod storage all this activity comes under the fisheries.
- 5.** Further contention of respondent utility had Hon'ble MERC in it tariff order dated 16.08.2012 mention that activity such as Aquaculture, Aquaculture and Fisheries fall under HT-II commercial category. Therefore there is no any ambiguity in the tariff order about the tariff category applicable to Fisheries and the MSEDCL relying and regulation No. 13 of MERC applied this category with consumer. So, there was no any fault of the part of MESDCL.
- 6.** It is further contention of respondent utility in public hearing the MSEDCL consumer representative also participate activity in this process. Therefore the consumer was already aware as per the new tariff order dated 16.08.2012 the tariff applicable to them HT II C. therefore there is no fault with MSEDCL and representative of MSEDCL is public money the recovery of revenue in the time must for good working of government utility of MSEDCL. Therefore respondent utility strongly objection to grant interim relief preventing lost of public recovery which suffers financial loss to MSEDCL or the other hand the applicant paid the dispute amount under protest. If any till final order shall continually pay and deposit will not cost any justice to both parties in this circumstances. The Interim Relief application restores to be rejected.

- 7.** After filing the reply utility respondent on dated both consumer his representative and the respondent utility through Nodal Officer, Executive Engineer was present at time of hearing this Forum sufficient opportunity to both the parties to aggrieve the issue at length. Accordingly on three subsequent hearing full opportunity was given during those hearing all 3 Member of Forum gave full consideration to determination of issue involved referred .
- 8.** During the said hearing volume nus all the document filed by consumer along with correspondence letter.earlier order of IGRC dated 13.05.2014 and letter correspondence issued inter between inter see authority of respondent utility by Chief Engineer, Commercial and SE made further correspondence to consumer all these documents minutely perused by us.
- 9.** This Forum also considers and perused initial application filed by consumer for obtaining for new connection and the agreement executed by consumer at that time with all relevant document filed by consumer at the time of obtaining new connection. Are minutely gone thoroughly
- 10.** Further this Forum also perused flying squad detail report, demand bill notice u/s 56 of electricity act 2003. application of Interim Relief dtd. 13.01.2015. I have gone through circular and notification resolution and approved tariff of MERC refer in case 19/2012.
- 11.** This Forum also gone through the demand bill issued by respondent utility claiming arrears of change of tariff category from industrial HT to commercial HT II. This Forum also gone through the various application of consumer and consider the sanction load and connected load to the premises the dispute which is raised at time of Interim Relief such as minutely consider by this Forum.

12. After considering various Judgment and order pass earlier by this Forum order on the issue. Director of operation which decided this issue order filed submitted by utility for our kind perusal the notice which is given under section 56(1) for demand of 54881850.88/- dated. 17.03.2015 which is filed on the record is all perused in the main the time of matter is passing application interim relief application for earlier hearing till today.

13. This Forum was inform that all India association of sea foods industries also raised similar issue before of MERC and seek similar interim relief application is filed before MERC in case No. 42 of 2015.after taking cognizance The notice which issued to the respondent utility is files reply on record for perusal. As below

No. MERC/Case No. 42 of 2015/ 00024 08 April, 2015

NOTICE

Subject: Petition filed by The Seafood Exporters Association of India under Section 142 & 146 of the Electricity Act, 2003 read with sections 62, 64 and 86(1)(a) of the Act in terms of the Orders passed by the Hon'ble MERC.

Case No. 42 of 2015

The Seafood Exporters Association of India (Regional Office:810, Vashi Infotech Park, Sector 30-A, Vashi, Navi Mumbai – 400705) has submitted a Petition under affidavit on 25.03.2015 under Sections 62, 64, 86(1)(a), 142 & 146 of the Electricity Act, 2003 for seeking relief on account of change in tariff category of the members of the Petitioner's Association, by MSEDCL.

The main prayers of the Petitioner are as under-

"In the facts and circumstances, mentioned above, it is respectfully prayed that the Hon'ble Commission may be pleased to:

a) The Petitioner Association therefore prays that a this Hon'ble Commission be pleased to hold the Respondent, MSEDCL guilty of disobedience of the

orders and directions passed by this Hon'ble Commission relating to retrospectively.

b) This Hon'ble Commission be pleased to hold the Respondent liable for disobedience of the tariff order dated 16.08.2012 by deliberately and willfully ignoring the term "non Industrial Premises" in the Tariff Entry HT-II Commercial and their by disobeying the said tariff order.

c) For declaration that the Respondent has initiated tariff categorization nearly one and the half / two years (1 1/2 to 2 years) post the passing of the tariff order dated 16.08.2012 by willfully and deliberately initiating tariff categorization with visits from Vigilance Department / Flying Squad of the Respondent.

d) The Respondent be directed to purge the contempt / willfully disobedience of the tariff order dated 16.08.2012 by withdrawing all actions initiated including all bills issued by re-categorising the Industry / Factories of the members of the Petitioner Association under the tariff category / tariff head HT-II Commercial.

e) Directions be issued to the Respondent, MSEDCL to ensure proper categorization upon passing of a tariff order within a reasonable time as stipulated by the Commission to ensure that the Respondent, MSEDCL are not harassed and subjected to undue hardship.

f) Pending hearing and final disposal of the case all the bills including Supplementary bills issued by the Respondent, MSEDCL to the extent of re-categorisation of the factories / MERC/Case No. 42 of 2015/ 00024 08 April, 2015

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industries of the Members of the Petitioner Association into HT-II Commercial, be stayed and the Respondent, MSEDCL and its officials / agents be restrained from taking any coercive step against the members of the Petitioner Association in respect of the willful and deliberate re-categorisation of the Industry / Factory of the Members of the Petitioner Association into HT-II Commercial;

g) Appropriate refunds in respect of the differential amounts towards the tariff categorisation HT Commercial claimed by the MSEDCL from the members of the Petitioner Association be granted with interest at the rate of 12%.

h) The Hon'ble Commission be pleased to order interim and ad-interim reliefs in terms of prayers(f) above;

i) This Hon'ble Commission be pleased to award cost for these proceedings against Respondent No.1 and in favour of the Petitioner.

j) The Hon'ble Commission be pleased to pass such other orders as this Hon'ble Commission may deem fit."

3. I am directed to communicate that the hearing in the above matter will be held in the presence of the authorized consumer representatives on **Thursday, 16 April, 2015 at 11.30 hrs** in the office of the Commission at 13th Floor, Centre No.1, World Trade Centre, Cuffe Parade, Mumbai - 400 005.

4. The Petitioner is directed to immediately serve a copy of its above mentioned Petition (both in soft and hard versions) to the Respondent and the authorised consumer representatives before the scheduled date of hearing.

5. The Respondent is directed to submit its say on affidavit, if any, on the above mentioned Petition with a copy to the Petitioner and the authorised consumer representatives well in advance.

14. It appears to the Forum after going through the said notice the same issued is under consideration for relief is pending before Hon'ble MERC.

15. In view of the Rules and Regulation of CGRF and Ombudsman Rule and Regulation 2006 processor as connected under the act section 42©. It appeared to the Forum that Ombudsman is competent authority Higher authority of deciding the issue looking in to the matter and which is under their kind consideration now last date of notice 16 April 2015 shortly date is being fix by MERC for consider Interim Relief application.

16. In this circumstances the provision of section10CPC required to stay to the proceeding and hearing of matter of having necessary to the consider by

this Forum avoid conflicting decision in determination of issue proper forum and correctness of issued pending before Higher appellate authority as and it is referred narrated in judgment which is reported as under comes for our consideration which is as follow

To answer the second question, it would be apposite to excerpt Section 10 of the CPC:

“Section 10 - Stay of suit

*No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government 3[***] and having like jurisdiction, or before the Supreme Court.*

Explanation.- xxx

Section 10 requires that *first*, the matter in issue in the later proceedings must also be directly and substantially in issue in the first suit, *second*, the earlier suit must be between the same parties litigating under the same cause title, *third*, the earlier suit must be pending in a Court having jurisdiction to grant the relief claimed in the later suit. To determine whether the matter in issue in the later proceedings is also directly and substantially in issue in the earlier proceedings, it must be seen whether final decision in respect of the earlier proceedings will act as *res judicata* in the later proceedings. See *NIMHANS* (supra). In other words, it must be determined whether the decision in one would non-suit the other.

This question may be answered briefly. The suit documents reveal that the plaintiff in the suit i.e. the borrower in this writ petition had sought to hedge risk against fluctuation in the currency exchange rate of US \$ against the Indian Rupee. The defendants in the suit were the bank and its representative had proposed to the borrower to enter into derivative transactions, as it would cover and hedge its exchange fluctuation risk. The documents were to be prepared in standard form, though the plaint avers that the “...*standard format was not made known to the*

plaintiff”; yet the borrower allegedly relied on the representations of the bank. The borrower claimed that the defendant Bank knew of its dependence on the latter’s knowledge and expertise in the area of these complex contracts. It is averred that, subsequently, the senior management of the borrower discovered that these derivative transactions were contrary to RBI circulars and guidelines, and were merely speculative transactions. On this ground, the plaintiff/respondent moved the High Court, through a civil suit, claiming that these derivative contracts were *void ab initio* and unenforceable, and that the defendant/writ petitioner had fraudulently obtained consent on these transactions from the plaintiff.

To answer the final question, the requirement of concurrent jurisdiction of the two fora cannot be considered to be fulfilled if the Court before which the later suit is pending possesses the jurisdiction to grant the relief claimed in the earlier suit. This is to be understood in light of the principle behind Section 10 which is to ensure that two courts with concurrent jurisdictions do not record conflicting findings in respect of two matters in which the same issues are directly and substantially in issue. The intent is to avoid multiplicity of proceedings, in that a final finding in the earlier proceedings ought not to act as *res judicata* in the later proceeding. (Ref. *Pukhraj D. Jain and Ors. v.G. Gopalakrishna*, AIR 2004 SC 3504, and *NIMHANS* (supra)). It is evident from the text of Section 10 that if its requirements are fulfilled, then the Court before which the later suit was filed is required not to proceed with the trial of the suit. Thus, it is only later suit that will be susceptible to a stay under Section 10.

Likewise, the petitioner submits that proceedings before the DRT cannot be considered a “suit”. Without going into the meaning of the term “suit”, this Court finds that the principle of Section 10 is to avoid multiplicity of proceedings and conflicting findings being recorded by two fora that are equally competent to hear the issues. In this light, technical arguments like whether a proceeding can be termed a “suit” or not cannot be determinative of the dispute. In the present case, the following observations in *Nagabhushana* (supra) ought to be kept in mind in this regard: “14. *The principles of Res Judicata are of universal application as it is based on two age old principles, namely, “interest reipublicae ut sit finis litium” which means that it is in the interest of the State that there should be an end to litigation and the other principle is “nemodebet his veari, siconstet curiae quod sit pro un aeteademn cause” meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common*

to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

15. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation.”

*No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government 3[***] and having like jurisdiction, or before the Supreme Court.*

Explanation.- xxx

Section 10 requires that *first*, the matter in issue in the later proceedings must also be directly and substantially in issue in the first suit, *second*, the earlier suit must be between the same parties litigating under the same cause title, *third*, the earlier suit must be pending in a Court having jurisdiction to grant the relief claimed in the

later suit. To determine whether the matter in issue in the later proceedings is also directly and substantially in issue in the earlier proceedings, it must be seen whether final decision in respect of the earlier proceedings will act as *res judicata* in the later proceedings. See *NIMHANS* (supra). In other words, it must be determined whether the decision in one would non-suit the other

17. After giving minutely consideration of the views express in Judgment and order by Hon'ble Supreme Court. This Forum also feels that Interim Relief application which is filed by consumer is pending in consumer Case No. 574 required to be stayed for until further hearing and proceeding before MERC conclusion. Hence I proceed to Pass Following order.

ORDER

1. The consumer Complaint No. 574 /2014 and Interim Relief application hereby stayed for the hearing of proceeding till the issue which is pending before Hon'ble MERC in case no 42/2015 till the final decided of the proceeding association of seafood's Industries avoid complicating decision

Both the parties be informed accordingly.

Proceeding stayed.

Compliance should be reported within 45 days.

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.

DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP

ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP

S.B.BHALSHANKAR
MEMBER SECRETARY
CGRF, BHANDUP