

(A Govt. of Maharashtra Undertaking)

CIN : U40109MH2005SGC153645

PHONE NO. : 25664314/25664316
FAX NO. 26470953
Email: cgrfbhandupz@mahadiscom.in
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/

Date

In the matter of refund of tariff difference arrears cons. No. 000148026260

Case No. 599

Hearing Dt. 05.11.2015

M/s. Viputhi Agro Cold Storage

- **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.Ravindra S.Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. Suraj Chakraborty – Consumer Representative

C - On behalf of Respondent

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

ORDER (20.11.2015)

1. Above named consumer complainant has filed this complaint against the respondent utility. He is consumer of respondent utility since 14.02.2003, having HT connection No.000149026260. He had registered case before IGRC, but he was not given any date for hearing. In the mean while he

received notice under section 56 (1) of Electricity Act. 2003 against recovery of arrears of bill from date 14.02.2003 to 22.05.2015. for Rs. 18, 03, 550/-.

2. He raised grievance before IGRC alleging that the claim by respondent utility is for more than period of 2 years, which is not permitted as per limitation provided under the Act. It is time barred claim raised by respondent utility which is contravention of provision of 56(2) Electricity Act 2003. Therefore respondent utility cannot claim arrears for more than 2 years and recovery is therefore bad in law. The supplementary bill and demand notice and action of disconnection taken by respondent utility is liable to be set aside with cost.
3. The cause of action in the month of May 2015. Accordingly consumer filed this claim before this Forum on 12.06.2015. The consumer also filed copy of disconnection notice under section 56 (2) letter issued by SE, Vashi O & M, 22.05.2015 and all other relevant documents along with complaint.
4. After filing the said complaint before this Forum notice was issued to the respondent utility. Respondent utility appeared and filed their para wise reply and copy of IGRC order passed on 26.08.2015. The consumer also claimed refund of arrears deposited by him from 29.10.2009 to 2011 due to converting tariff and made counter claim for set off.
5. It contention of respondent utility that they have released HT connection on application of consumer for the premises M/s. Viputhi Agro and Cold Storage Pvt. Ltd., Plot No. C-8/4, TTC, MIDC, Pawane, Navi Mumbai on 14.02.2003 for cold storage. At the time of release of connection tariff applied was 56 HP-I-N industrial as per prevailing tariff order.
6. It is contention of respondent utility that the tariff for agricultural pre-cooling and storage for agricultural produce was newly introduced in June 2008 and accordingly in the month of August 2011, the said consumer informed this office that they are having pre-cooling and cold storage for agriculture produce only. Thereafter premises of the said consumer were inspected on

07.11.2011 and it was confirmed that the said consumer is using the supply for pre-cooling and cold storage for agriculture produce only.

7. Accordingly then the tariff of the said consumer was changed from 56 HT-I-N Industrial to 40HT-V agricultural from November 2011. The said HTV tariff category has following sub categories:
 - A. Poultry (exclusively for layer and broiler activity [code 63HT V])
 - B. High tech Agriculture (green house tissue culture, Mushrooms etc.) purpose.[code 32HT V]
 - C. Pre-cooling and cold storage for agriculture produce.[code 40HT V]

There was punching of wrong code (63 instead of 40), the cold storage for agricultural purpose. The correction of code has been effected in November 2013.

8. Accordingly the supplementary bill towards the difference of 63 HT-V-N and poultry 40HTV pre-cooling and cold storage for agricultural produce tariff of Rs. 18,03,550/- for period November 2011 to October 2013 has been issued vide T.O.L. No. SE/VC/HTB/2573/22.05.2015. According to respondent utility as per Regulation No.13 of MERC (Electricity supply code and other condition of supply Regulation 2005) distribution licensee made classification and reclassification into various tariff categories, based on the purpose of supply by such consumer provided that the distribution licensee shall not create any tariff category other than those approved by commission.
9. According to respondent utility as per order passed by Bombay High Court in writ petition No. 10764 of 2011 dated 24.01.2012 in the matter of MSEDCL Vs Electricity Ombudsman, the reference has been made to larger bench and the issue is pending for determination and adjudication.

10. According to utility the distribution Licensee can demand charges for consumption for electricity for the period more than 2 years preceding the date of the first demand of charges (whether the utility can demand charges for more than 2 years). The Division Bench viz. Avdesh S. Pandey Vs Tata Power Co. Ltd., reported in AIR 2007(BOM) 52 so also the Judgment of the Division Bench in the case of Rototex Polyester and Anr. (2009 SSC online Bom1257) have interpreted the provisions of section 56(2) of the Electricity Act 2003.
11. Since the larger Bench of the Bombay High Court is seized of these issues which are yet to be adjudicated upon finally, it would be in the interest of justice and fair not to consider the prayer of the petitioner regarding application of section 56(2) in this case.
12. As per the regulation No. 13 of MERC (Electricity Supply code and other Conditions of Supply Regulation, 2005 the distribution licensee may classify or reclassify a consumer into various commission approved tariff categories, based on the purpose of supply by such consumer. Provided that the distribution licensee shall not create any tariff category other than those approved by the commission.
13. MSEDCL has strongly opposed the prayer of the consumer on the ground that it is public money; the recovery of that revenue is must for good working of MSEDCL.
14. It is submitted that the difference of tariff category due to wrong punching of code 63 instead of 40 HT V N causing loss of recovery of revenue is likely to affect the earning of respondent utility. Therefore consumer complaint is dismissed reserve to be dismissed with cost.
15. After perusing the contention of consumer and the reply of the utility, following points arose for our consideration as follows:

1. Whether respondent utility can recover the arrears of tariff difference beyond period of 2 years.
 2. Whether issuing of supplementary bill, disconnection notice under section 56(2) E.A. 2003 and demand of arrears for more than 2 years liable to be set aside.
 3. Whether the consumer is entitled to the counter claim of refund of earlier payment made by him for period from 2009 to 2011 and require the claim to be adjusted for the refund if any.
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16. The consumer also relied upon the relevant documents of correspondence between respondent utility including various letters sent by him to respondent utility. The consumer also relied upon judgments of in review petition **6783** of 2010 order date 24.03.2011 judgment of MERC in case of 53/2015 and Writ Petition No. 6164 of 2014 and Writ Petition No. 10764/2011 in case of MSEDCL Vs Electricity Ombudsman order dated 24.01.2012.
 17. The consumer also filed the rejoinder and written notes of arguments on 27.08.2015 and claimed refund of change of tariff plan difference for the period from 24.10.2009 to December 2011.
 18. We have given equally opportunity to the consumer and the respondent utility Nodal Officer Shri. Sandeep S. Patil, Executive Engineer also revised acting in IGRC in deciding the case he also raised objection for refund or counter claim raised by consumer in this case. According to respondent utility to grievance ought to have been claim within the period 2 years from the date of cause of action CGRF regulation 6.6 of CGRF and ombudsman 2006. According to utility the claim revised by the consumer for refund of difference of tariff arrears from 01.1.2009 to 01.06.2011 cannot be claim after the period of 2 years and therefore counter claim of consumer is liable to be quite and

set aside of the respondent utility mention in supplementary bill for tariff difference arrears 18,03,350/- should be allow.

19. We have given consideration to the issue of revised tariff and a point of limitation which is strongly raised by both the parties.

Reasons

20. According to the me the solve dispute and the claim revised by consumer alleging the recovery of arrears tariff difference and period of claim mention in supplementary bill should be allowed more than 2 years to my view both issue are related to the recovery alimentally return revenue recovery either form consumer or as claim by respondent utility of difference of arrear is lightly to be effected monitory loss and monitory game of both the party. Here in this case constitutional dialog if aware date levy it the period of limitation of arrears and tariff difference is contrive strictly than both the consumer respondent utility is lightly to be suffer and adversely effected on monitory loss. I decide to consider the issue of limitation very literally as the view of consider take point of limit liberty it should be application for both the party on base basis law of pearly. It issuing justification to be done to both the party equally and fairly.
21. Also another reason to consider claim of this consumer for the refund for the period from 24.10.2009 to 2011 is: the period of 2 years touches the date in 2011, where the consumer was alert and readily made correspondence with respondent utility. This has also been agreed by the utility and also is reflected in judgment of IGRC. Also as per earlier record the it is seen that the consumer had claimed for the refund towards the tariff difference, which the utility did not consider.

22. Thereafter persistently consumer was demanding tariff difference arrears along with interest @ 12% from time to time. According to respondent utility the power is used for pre-cooling and cold storage for agriculture purpose. There was application of correct tariff and respondent utility changed it from 56HT-N-to 40HTV i.e. from Industrial to agriculture. But the effect was given from November 2011. The effect is made applicable from November 2011 and supplementary bill was issued against the consumer claiming the tariff difference arrears for November 2011 which was due to application of wrong tariff. Representation of consumer was not considered.
23. To our view earlier claim of consumer for refund of this tariff difference which was already paid. This amount should be waived off, considering welfare and benefit of the consumer. Therefore we are allowing counter claim and set of the charges levied. We are thus giving directions to respondent utility to calculate the tariff difference arrears as claimed by the consumer for the period 29.10.2009 to November 2011 and calculated amount shall be given as adjustment and deduction from the claim raised by respondent utility in supplementary bill.
24. In view of the period of supplementary bill claimed in this case from November 2011 to October 2013 the date of inspection of premises and fact of confirmation the actual use of power supply for the purpose of pre-cooling and cold storage for agriculture produce only. Respondent utility has already applied the conversion of tariff and changed category 56HT-I-N Industrial to 40 HT-V agriculture since November 2011. Therefore to our view respondent utility can claim the arrears of difference tariff, but it shall not charge any interest and penalty or other charges as no wrong was committed by the consumer, on contrarily it was prayed by consumer for application of proper tariff to his unit. Therefore only the tariff difference can be recovered.

25. We also perused various citations relied by consumer and placed before us, viz. i. period of limitation for recovery of arrears (utility cannot claim arrears for more than 2 year).

26. But the judgment relied has been referred to the larger bench. Thus, we hold that the respondent utility can claim the arrears more than 2 years subject to final decision of the judgment. Till then the respondent utility can recover the tariff difference arrears for 2 years prior from the date of inspection and demand of supplementary bill. Therefore, we inclined to allow the claim of the consumer and modify the supplementary bill as claimed by the respondent utility in this case.

We proceed to pass following order.

ORDER

1. Consumer complaint No. 599/2015 is allowed.
2. The respondent utility shall calculate the tariff difference considering that already paid by consumer for a period from 29.10.2009 to November 2011 and amount should be deducted from the supplementary bill raised.
3. The respondent utility shall calculate the tariff difference for two years from the date of cause of action (7/11/2011) without any interest DPC and other charges.
4. No order as to cost.

Both the parties should be informed accordingly.

Proceedings disposed of.

Compliance should be reported within 30 days.

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

I Agree/Disagree

**DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP**

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

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