

(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. 620

Hearing Dt. 02.01.2016

In the matter of billing.

M/s. Punit International 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. Ravindra S. Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Archana Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. J.J.Khochare – Consumer Representative

C - On behalf of Respondent

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

ORDER (06.02.2016)

consumer No. 00001192176

1. Above named consumer filed this complaint against the order passed by IGRC (in case of 15 of 2015, order dated 09.07.2015) for wrong recovery due to change of tariff from Industrial to Commercial, thereby claiming difference of arrears since date of connection.

2. the consumer has raised following objections before us:

- The consumer received supplementary bill of Rs. 2,89,79,227/- for the period from June 2008 to March 2014
- notice of disconnection was received dated 25/08/2014.
- The consumer has taken HT connection for Oil feed face Industry vide agreement executed by Punit International and M/s. Schlumberger Asia Services Ltd., executed in favor of responded utility and the date of connection is 13.06.1997.
- Recovery notice issued without following the rules and natural justice.
- Activity carried on at the premises is Industrial. Thus the change of category to Commercial is baseless and illegal.
- No opportunity was given to M/s. Schlumberger Asia Services Ltd., company to explain the position.
- Notice issued for recovery of tariff from Industrial to Commercial for the period June 2008 to March 2015 is wrong.
- Recovery of arrears beyond the period of 2 years and notice of disconnection for the same is against the Provision of Electricity Act 2003.

Thus the consumer has prayed that

- the recovery bill raised should be set aside and
- difference amount which is already paid by consumer should be adjusted in subsequent bill.

The utility filed its reply and raised following points:

- M/s. Punit international is our HT consumer bearing No. 000119021766.

- MSEDCL has released the supply to the applicant by an agreement dated 13.05.1997, for only Industrial warehouse purpose.
- The HT connection is sectioned for connection Load 57KW and contract demand 400KVA.
- The tariff applied to the consumer till January 2014 was Industrial tariff.
- Inspection of the consumer's premises was done on 01.02.2014 and again on 08.04.2014 when it was noticed that the above supply is being utilized by company named M/s. M/s. Schlumberger Asia Services Ltd., on the same premises of M/s. Punit International.
- That M/s. M/s. Schlumberger Asia Services Ltd. is carrying on the activity of maintenance and servicing of tools used for off-shore activities.
- M/s. Punit International has not informed MSEDCL about leasing the premises to M/s. Schlumberger Asia Services Ltd. and the change in purpose of use of electricity by that licensee company.
- This information is important to MSEDCL for applying the correct tariff and to recover the bill as per the tariff established by MERC.
- MSEDCL has changed the tariff category of M/s. Punit International as per the change in purpose and commercial tariff HT –II applied from June 2008(As per MERC order form June-2008-HT Commercial category) is correct.
- Bill raised to M/s. Punit International towards tariff difference for the period from June 2008 to March 2014 for Rs. 2,89, 79,226/- is correct, as it is not permissible to change the purpose for which the electricity used; without informing MSEDCL under prevailing Rules and regulation.

- As per the Regulation No. 13 of the MERC Regulations, 2005, the Distribution Licensee may classify or reclassify a consumer into tariff categories based on the use of supply by such consumer (Provided that the distribution Licensee shall not create any tariff category other than those approved by the Commission).
- MSEDCL has suffered the loss of revenue amounting to Rs.2,89,79,226/- due to change in category (M/s. Punit International has sublet its premises to M/s. Schlumberger Asia Services Ltd. for carrying on the activity of Maintenance and servicing of tools used for off-shore activities; which amounts to change of purpose of use of electricity supply) . This is public money and MSEDCL has right to recover it.
- As per report of Additional Executive Engineer, Koper Khairane the supplementary bill and notice was issued for Rs. 2,89,79,226/- for the period June 2008 to March 2014.
- Previous activity was of industrial ware house, which is now maintenance and servicing of tools used for off-shore; which comes under the category of commercial activity.
- IGRC order is passed after giving opportunity of hearing.
- Presently there is no industrial activity taking place at the premises.
- Commercial tariff applied on the basis of inspection report is proper and legitimate as per Regulation and direction issued by Competent Authority. Utility is entitled to recover the difference of tariff calculated on account of change of category (from Industrial to Commercial) and consumer is liable to pay the same.

3. Being aggrieved by the said order the consumer filed grievance before this Forum on 05.11.2015. After filing the said grievance notice was issued to responded utility and after service of the said notice responded utility filed its reply on 24.01.2015.

4. Contentions of utility are:-

- At the said premises M/s. Punit International (HT consumer at 22KV level bearing the contract demand is 400KVA and connecting load is 570KW, date of connection: 13/6/97) was carrying on business under industrial category.
- The inspection was carried out by MSEDCL authority at the consumer premises and found that instead of original consumer M/s. Punit International, M/s. Schlumberger Asia Services Ltd. was running on its activities of maintenance and service tools used for off-shore.
- During the inspection, spot Punchnama done and report submitted; which indicate that there are no industrial activities found. No manufacturing activities were carried on at the said premises.
- Initially the power of supply to M/s. Punit International was sanctioned under the category of Industry as per MERC directives (as mention in the judgment case No. 72/2007 dated 20.06.2008). Therefore tariff of M/s. Punit International was raised on HT-I industrial.
- After the spot inspection report, HT I industrial tariff was changed to commercial.
- From June 2008 to March 2014, supplementary bill of Rs. 2,89,79,227/- was raised towards the difference in the tariff category.

- A letter was issued along with supplementary bill form office of SE vide letter no SE/WC/HTV/3949 dated 25.08.2014, against which grievance was filed before IGRC on 30.01.2015.
 - After a due hearing, change of tariff from Industrial to Commercial and charging difference of arrears for the period June 2008 to March 2014 was held proper.
 - Responded utility filed detailed reply along with a copy of tariff order in case no 19/2012.
 - As per Regulation No.13 of MERC regulation 2005 allegation of wrong reclassification raised by consumer is not proper. The difference of tariff calculated since June 2008 to March 2014 and claiming of amount Rs.21,89,79,226/- was considered as proper.
 - The allegation of tariff difference calculation for more than 2 years was not considered as the said issue is referred to a larger bench and is subjudiced.
 - Therefore responded utility claims arrears from the date when such amount became first due and entire bill revised as per changed tariff. The said demand is proper and legal as per directives.
5. In support of said contention responded utility filed copy of commercial circular No. 81 dated 08/07/2008 and copies of judgment of both the Writ Petitions.
 6. Consumer has already filed copy of certificate issued by Maharashtra Provision Control Board 2007, copy of registered of Factory Licensee in favor of M/s. Schlumberger Asia Services Ltd. dated 29.06.2005.

7. We have perused all the document filed by consumer and respondent utility. After perusing all the documents placed on record by both the parties, matter was heard on 2/3 different dates by this Forum.

8. During the hearing the queries raised by this Forum were replied by both the side. After perusing the rival contentions of consumer and respondent utility, following points arose for our consideration:

1] Whether consumer entitled for claiming difference of arrears adjustment which he has already paid and entitled him for till as industrial category.

2] Whether respondent utility entitled to change the tariff as per actual use found and to charge and reclassify the tariff as commercial and claim the difference of tariff amount bill from consumer.

3] Whether responded utility can claim arrears of difference of tariff beyond the period of 2 years.

4] Whether consumer is entitled to any relief.

6. Reasons

- i. We have given opportunity to consumer and his Representative to argue on the points raised in this case and also gave opportunity to responded utility for justification of changing the tariff from Industrial to Commercial of said establishment and charging difference of tariff arrears for the period from June 2008 onwards.
- ii. It is the case of consumer that in year 1997 the connection was sanctioned for industrial propose under HT I industrial category. After giving visit to the premises and after verification of actual activities carried out in the unit, it was found that the original consumer in whose favor the connection was sanctioned was not in actual possession. Premises were transferred in the name of M/s.

Schlumberger Asia Services Ltd., under the agreement and after details verification it was found that the activities carried out in the premises were not of industrial purpose. It is contention of consumer that the existing occupier is licensee under factory Act section 52 and the activity there under is industrial. As defined under factory Act section 52 where ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried out with the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952). Manufacturing activity also defined under the statute which indicated the activities of repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal, or so far as the definition all the activities under taken by consumer falls under the category of industrial purpose. The consumer relied on this definition.

- iii. Utility argued that the activities carried out in the said premises does not fall within the said definition and therefore activities as per MERC tariff schedule indicated as other than industrial purpose.
- iv. More over the demand of supply is 400KVA was sanctioned by letter of SE on 19.07.2004. the agreement executed between MSEDCL and M/s. Punit, clause 7(a) says that the utility is entitled to carry out the changes in the tariff schedule for the purpose of energy supply and the consumer is bound to the pay tariff charges as applicable to the consumer. Therefore the consumer is bound by this agreement to pay the charges as per commercial tariff which is from the date of inspection in next billing circle. However it is the contention of the respondent utility that original consumer transferred the said premises to M/s. Schlumberger Asia Services Ltd., under the agreement. Despite an opportunity given, consumer failed to produce the said agreement for perusal of this Forum.

- v. It is contention of consumer that in view of license issued by Competent Authority and NOC from Maharashtra Provision Control Board indicate that the activities of maintenance and servicing of tools were subsequently changed under the head of factory . It is also contended by the consumer that since the premises situated at Plot No. 21, TTC industrial Area, MIDC Mahape, Navi Mumbai, industrial tariff ought to have been applied.
 - vi. It appears that subsequent change of establishment and of activity was not informed by M/s. Punit International to the respondent utility.
9. To my view failure to inform the change of establishment resulted in calculation of unit as it was already sanctioned under industrial category and the same was continued. M/s. Schlumberger Asia Services Ltd. continued to take the benefit of this tariff till the date of inspection.
 10. We found that the failure to convey this change either by previous consumer or subsequent user of the premises has already benefited this consumer by applying HT I industrial tariff and continued to pay the charges till the date of inspection.
 11. We hold that the consumer should not be allowed to take benefit of his own wrong. Therefore the action of respondent utility of charging commercial tariff and claiming supplementary bill could have been justified. But the Rules and Regulation formed under E.A. though section 56(2) permit change of tariff category as introduced under MERC Rules and Regulation.
 12. We have perused spot inspection report dated 1.02.2014 along with copy of panchanama and other relevant documents filed on record during the hearing of IGRC, letter issued on 25.08.2014 to original consumer M/s. Punit International to inform duly that the tariff since June 2008 to March 2014 has been revised and difference of arrears demanded because of change of tariff applicable to the unit after verification of activities.

13. Therefore contention of consumer cannot be accepted at this stage and there is nothing on the record or no certificate issued by Competent Authority produced to show that the activities conducted by this present user M/s. Schlumberger Asia Services Ltd. at premises falls under to category of industry.
14. Therefore to my view unless such certificate issued by competent authority is produced, in view of circular and case commercial tariff should be applied to this consumer and billing is required to be assessed on the basis of change of tariff from industrial HT I & II to commercial. (tariff order 72/2007 dated 20.06.2008, circular issued by respondent utility No. 81 dated 07.06.2008 effective from 01 June 2008)The consumer is liable to pay the bill.
15. However we cannot forget that the consumer has received the bill after the inspection. have taken surprisingly informing changes of tariff form Industrial to commercial and claiming of difference of arrases by the respondent utility the notice is issued while issuing the notice the respondent utility is bound by the statue under section 56 (2) as it was wrong application of tariff commercial to claim to the knowledge on the date of inspection the notice indicated demand under the said notice was continuous as provided under section 56 on I.E.A.
16. The said bill was demanded under the change of tariff category which is duly informed. This cannot be said to be illegal. But as per the statute, under section 56(2), respondent utility cannot claim the bill for more than 2 years. The period of 2 years has to be calculated from the date of detection. Therefore consumer is justified in claiming the payment of arrears of bill within the stipulated period permitted under the statue not exceeding 2 years.
17. To my view the arrears of earlier period cannot be waved of as the electricity was already used by subsequent user under Industrial category tariff and also was paid.
18. Now the recovery of earlier period can be claimed from consumer by the filing a Civil Suit before appropriate authority, subject to period of limitation.

19. The reason given for rejection of claim of consumer is merely the judgment reported i.e. Writ Petition no 10764/2011, which is subjudiced before Hon'ble High Court and which is still pending.
20. To my view the under taking or Indemnity Bond can be obtained from consumer accepting liability of old arrears beyond the period of 2 years subject to decision of the matter subjudice before Hob'ble High Court. As this juncture, we have to follow provisions of section 56(2) of I.E.A. Therefore I have no other option but to set aside the order of IGRC.
21. Also while granting installment for the payment of 2 year's arrears , utility shall not charge interest and penalty thereon.
22. The other prayer of consumer for application of industrial HT I tariff is not applicable to the unit of M/s. Schlumberger Asia Services Ltd. Thus these prayers deserve to be dismissed.
23. After considering all the documents and submissions made by both the parties, we are inclined to partly allow the complaint and proceed to pass the order as follows:

ORDER

1. Consumer compliant 620 of 2015 is partly allowed.
2. The respondent utility shall charge the bill against the consumer applying Ht commercial express tariff charges from the date of inspection onwards.
3. The respondent utility shall assess the difference of arrears in tariff calculation from Industrial to Commercial 24 month earlier from the date of detection without charging DPC and interest on the said amount.
4. Consumer is allowed to pay bill in six equal installment along with current bill.

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

I Agree/Disagree

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

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

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