

**Consumer Grievance Redressal Forum  
Maharashtra State Electricity Distribution Co. Ltd.  
Bhandup Urban Zone, Bhandup**

Ref. No. Secretary/MSEDCL/CGRF/BNDUZ/                      Date

Case No. 346

Hearing Dt. 26/10/2010

**In the matter of wrong tariff**

**M/s. Shakuntala Babanrao Mande**                      -                      Appellant

**V/s.**

**MSEDCL Thane (U)**    -                      Respondent  
**Shil Sub division**

**Present during the hearing**

**A - On behalf of CGRF, Bhandup**

- 1) Shri D. N. Dodke, I/C Member Secretary, CGRF Bhandup.
- 2) Mrs. Manik P. Datar, Member, CGRF, Bhandup.

**B - On behalf of Appellant**

- 1) Shri Kishor Wayal – Consumer representative

**C - On behalf of Respondent**

Absent

**Preamble: -**

Mrs. Shankutala Babanrao Mande is the LT consumer of MSEDCL at 342, Mangalmurti Automobiles, Dahisar Mori, Dist Thane having consumer no 000340413083. He submitted his grievance to IGRC on 29 July 2010. But no hearing was held and hence he approached to this Forum on 12/10/2010. Accordingly case was registered on 12/10/2010 vide case no 346 and hearing was fixed on 26/10/2010.

**Consumer Say: -**

Mr. Kishor Wayal was present to represent the case on behalf of Appellant. He stated as follow.

His business activity is a petrol Pump. The supply was sanctioned and released by competent authority on 1/11/1996 for industrial purpose after verifying the documents as business activity.

He further stated that his business is registered as "Factory" as per Factory under registration no 85/652 dt. 25/5/2001. The factory License was issued by Chief Inspector (Factories), Maharashtra State, Mumbai.

The joint Director of Industrial Department has also approved his plans under factories Act 1948 vide their letter dt 15/10/2004.

He further reiterated that all document were submitted to the utility at the time of releasing the supply and accordingly utility sanctioned it for industrial purpose and they were receiving the bills on LT- V tariff up to September 2009.

Appellant agitated that in the month of May 2010, they received a bill of Rs. 6, 04,480/- which shows the arrears of tariff difference from industrial to commercial for the period of December 2001 to September 2009 amounting to Rs. 5,75,797.99/-.

Considering the above facts, consumer raised that how can MSEDCL charged with commercial tariff which is not applicable to them. This decision of MSEDCL is arbitrary and not binding on them.

To support his arguments he submitted a copy of Supreme Court's decision in case of M/s. Qazi Noorul H.H.H. petrol pump and another v/s Deputy Director, Employees State Insurance Corporation. Where Hon'ble Supreme Court held that Employees State Insurance Act 1948 applies to the petrol pumps. As pumping oil is a manufacturing process. Hence "Manufacturing process" and "Power" used in the Act, have the same meaning as in the factories Act 1948.

He also state that as per EA 2003 section 56, the MSEDCL can recover the tariff difference for 24 months prior to the date of detection. In this case utility charges the tariff difference for 101 months which is wrong and illegal activity of MSEDCL. According recovery should be charges from May 2008 to April 2010.

**Prayer of the Consumer :-**

1) MSEDCL should withdraw the recovery amount for 77 months i.e. December 2001 to April 2008 as per section 56 of EA 2003.

- 2) MSEDCL should withdraw the interest and DPC.
- 3) MSEDCL should grant us the six equal installments for payment of balance recovery amount if any.
- 4) MSEDCL should provide detail calculation sheet for recovery to be charged 24 months.
- 5) The bill for month of May 2010 is issued for the recovery of tariff difference for the period of December 2001 to September 2009. The recovery amount is worked out for tariff difference i.e industrial to commercial tariff in our view the recovery bill is wrong & baseless and hence it should be squash.

**Utility Say :-**

As they did not received the papers before the hearing utility submitted their compliance on 03/11/2010 i.e after the hearing. They stated as follows.

The above consumer was billed on commercial tariff up to Nov. 2001. From Nov 2001 to Sept 2009; he was billed on industrial tariff.

As per the MSEDCL Circular no. PR-3/ Tariff/ 684 no. 36692 dt. 11/10/2007, it was informed that the competent authority has decided to cover all the petrol pumps under commercial category only. Utility requested all their officers to immediately change the wrongly applied industrial tariff to commercial tariff to all petrol pump connections and also directed that in case there exists two connections then both these connections should be clubbed together and commercial tariff should be applied to these connections.

Considering the above circular Appellant consumer was charged on commercial basis with retrospective effect from Dec 2001 to Sept 2009. Accordingly arrears were raised amounting to Rs. 5, 75,797.99/-.

From October 2009 bills are issued as per commercial tariff.

From the submission of utility it shows that Dy. Executive Engineer wrote a letter to Executive Engineer on 17/08/2010 explaining that consumer's bill of May 2010 for tariff difference of Industrial to commercial for the period December 2001 to September 2009. He further added that it was explained to the consumer. But now it was noticed by utility that no documents regarding this, matter were available in the office. As soon as they would get the document, it would be informed to the consumer.

He also explained that as per the decision from the Circle office, the rectification of bill of the consumer will be done.

**Observation :-**

Appellant consumer's representative was present during the hearing.

No one was present from utility's side as they did not received the papers before the hearing date. Forum had received the complaint on 12/10/2010 and intimation was sent to Nodal officer and Executive Engineer on 13/10/2010. Observing the above it was the duty of the Nodal officer to intimate the concerned division well in

advance to submit the point wise submission to the Forum.

Submission from the Appellant and arguments during hearing the it is clear that the disputes relates to categorization of tariff by the Respondent. Earlier the Respondent levied industrial tariff to the Appellant up to September 2009. After that it started levying commercial tariff. The Appellant submitted several documents to support his claim.

He submitted Hon'ble court judgment extract in case of M/s. Quxi Norral H.H.H. Petrol pump and another V/s. Deputy Director E.S.I Corporation where Hon'ble Supreme Court held that section 2(K) (ii) of the Factories Acts states that pumping oil is a manufacturing process. Hence ES Act applies to the petrol pump.

Considering the above fact Appellant consumer states that he registered as a "Factory" as per factories Act 1948. Hence utility should apply him industrial tariff. His activity falls under the category of industry. He also showed some electricity bill, which mentioned his activity as industrial.

Submission made utility reveal that utility changed tariff of the consumer from December 2001 to September 2009 considering their own Circular no, PR-3/tariff/684/no. 36692 dt. 11<sup>th</sup> Oct 2007, which states that the competent authority had decided to cover all the petrol pumps under commercial category only. The direction come into force with immediate effect on retrospective basis. However, the consumer was charged

as per commercial tariff from Dec 2001 to September 2009.

The Appellant was firm on his say that it falls in the category of industry only.

Fact of the case is that whether Appellant consumer really falls under the category "Industry". To clarify this Hon'ble Ombudsman clarify the commission's tariff philosophy in the case of 10 of 2010 which states as

#### "5.4. Commission's Tariff Philosophy

In this context quite a few consumers have been representing before the commission during and after public hearing, stating that they are not undertaking any 'Commercial' activity or activities for making 'profit' within their premises, and hence, they should not be classified under the 'commercial' category, it is clarified that the 'commercial' category actually refers to all 'non-residential, non-industrial' purpose or which has not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals, educational institutions, airports, bus-stands, multiplexes, shopping malls, small and big stores, automobile showrooms etc. are all covered under this categorization. Clearly, they cannot be termed as residential or industrial. In order to bring clarity in this regard, the commission has renamed this category as 'non- residential or commercial' in this order.

A similar impression is conveyed as regards the 'Industry' categorization, with the commission receiving representations from the hotel industry, leisure and travel

industry, etc., stating that they have also been classified as 'industry' for the purpose of taxation and/ or other benefits being extending by the Central Government or State Government, and hence, they should also be classified as 'industry' for the purpose of tariff determination. In this regard, it is clarified that classification under industry for tax purposes and other purposes by the Central Government or State Government shall apply to matters within their jurisdiction and have no bearing on the tariff determined by the Commission under the Electricity Act, 2003, and the import of the categorization under industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorization of 'industry' is applicable to such activities, which entail 'manufacture'."

Considering all above facts and commercial Circular issued by competent authority, the Appellant consumer has been rightly charges under commercial tariff.

Now question remain for the period the utility charged to the consumer.

Utility does not have any records of date of detection. From the records available with the Forum it shows that from Oct. 2009, utility was charging the consumer as per commercial tariff. But utility fails to feed the deta which was noticed in April 2010 and accordingly bill of arrears was issued for Rs. 5, 95,965/- in the month of May 2010 for the period form Dec 2001 to Sept 2009.

As regards, Is Respondent entailed to recover the charges from Dec 2001 to Sept 2009.



*As per EA 2003 u/s 56(2):*

*Notwithstanding anything contained in any other for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplies and the licensee shall not cut off the supply of the electricity.*

Close look to the above, it clearly shows that the sum of arrears was first due in the month of October 2009. Hence utility can charges the consumer as per commercial tariff for 24 months prior to October 2009.

Appellant further stated that utility should grant six equal monthly installments for the payment of arrears. But utility can grant the installment at their discretion as per MERC (Electricity Supply Code and other conditions of supply) Regulations 2005, there in Regulation 15.7.1 which reads as the Distribution Licensee may, at its discretion, allow consumers the facility of payment of arrears by the way if installments.

But utility has its own Circular no PR-3/ Tariff/ 24156 dt. 18 July 2009 about grant of installments for payment of supplementary bill raised due to corrective action by MSEDCL where consumer is not at fault.

In the present case it is very explicit that the relevant categorization is not a job of consumer and hence he is not at fault. It is therefore the duty of utility to observed it's own above circular to facilitate the consumer.

## **ORDER**

- 1) The bill raised towards recovery of tariff difference from Dec 2001 to Sept. 2009 should be reworked for 24 months prior to October 2009.
- 2) No DPC and interest to be charged.
- 3) The request of Appellant for grant of six installments should be given observing utility's own directives.
- 4) The assessment sheet towards the tariff difference recalculated for 24 months should be provided to the Appellant.

No orders as to cost.

Both the parties should be informed accordingly.

The order is issued under the seal of consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup on 30 November 2010.

Note : 1) If Consumer is not satisfied with the decision, he may go in appeal 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 go in appeal before the Hon. High Court within 60 days from receipt of the order.

**MRS. M.P. DATAR  
MEMBER  
CGRF, BHANDUP**

**D. N. DODKE  
MEMBER SECRETARY  
CGRF, BHANDUP**