

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

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

Date :

Case No. 265

Hearing Dt. 03/06/2009

**In the matter of wrong tariff**

**M/s. Plastic Processor** - Appellant

Vs.

**MSEDCL, Bhandup Division** - Respondent

**Present during the hearing**

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

- 1) Shri R.M Chavan, Chairman/Member Secretary, CGRF, Bhandup.
- 3) Mrs. Manik P. Datar, Member, CGRF, Bhandup.

**B - On behalf of Appellant**

- 1) Shri Unnikrishnan, Senior Executive, consumer representative.

**C - On behalf of Respondent**

- 1) Shri D.S. Dumbre, Ex. Engr., Bhandup Divn., Bhandup
- 2) Shri A.S. Tambde, Dy. Ex. Engr., Pannalal S/Divn., Bhandup.

## **Preamble**

Consumer registered his grievance with this Forum on 04/05/09 vide case no. 265. He made an appeal against order passed by IGRC, Thane vide letter no. SE/TUC/IGRC/2756, dtd. 29/04/09, Appellant is aggrieved of this decision and claimed that recovery charged is totally wrong and baseless.

## **Consumer say :**

From the consumer side Shri Unnikrishnan, Senior Executive represented as under :-

1) The Appellant is the owner of plot no. 8/2 at Kala Industrial estate, Bhandup. The Appellant had let out the said premises to M/s. Bharat Serum and Vaccines Ltd. & M/s. Sire Clinpharm Ltd. who are engaged in the manufacturing activity in other premises & they store their life saving medicines in the above premises as they required the products to be stored under 2 to 8 degree Celsius. The Appellant states that there is no other activity such as commerce or trade is being conducted from the said premises. The packed goods brought from manufacturing units & then placed in the cold storage.

2) The Appellant is provided with the power supply vide consumer no. 100000830709. The Appellant was surprised to receive a final supplementary energy bill dtd. 16/02/09 under section 126 of Electricity Act 2003 demanding a sum of Rs. 11,66,649/-. It was alleged that the said final supplementary bill was issued because of the change of tariff. Appellant stated that no commercial activities are being conducted in the premises, but electricity was used only for the purpose of storing Life saving drugs in the manufacturing unit by the Appellant.

3) Previously, on 30/11/05 the premises was inspected by Mr. Saboo (Flying Squad Officer) but no any irregularity was observed to him pertaining to his connection. The spot inspection report is submitted herewith. Now, MSEDCL is saying that this is unauthorized use. It is very surprising to note the discrepancy between the reports of MSEDCL Officers. Once the MSEDCL Officers are agreed that this is not unauthorized use & now they are issuing bill on the basis of unauthorized use, it is very wrong.

4) The provisional bill of Rs. 11,66,650/- is also wrong. The period of recovery & rate of charges is not mentioned in bill. The bill is calculated randomly which is absolutely wrong and exorbitant.

5) Appellant produce the copy of commercial circular dtd. 17/03/09. In this circular, it is stated that, to categories the cold storage as industry having factory license and S.S.I. certificate as LT (V) industrial category. Therefore, the cold storage comes under 'Industrial' category. Applying appropriate tariff is the duty of MSEDCL. The MSEDCL may apply the tariff applicable to cold storage. But, should not penalize by charging him the bill under section 126 of Electricity Act 2003 for the faults of MSEDCL.

6) The CGRF is rightly having jurisdiction to entertain this matter. The decision of CGRF, Kalyan Zone dtd. 12/06/2008, in the matter of section 135 of Electricity Act .

7) It is not a case of unauthorized use within the meaning of sec. 126 of Electricity Act 2003.

### **Prayer of the consumer**

1) To withdraw the recovery under section 126 of Electricity Act 2003.

2) To permit the MSEDCL to charge the recovery for change of tariff. If the Forum feels that, effective tariff should be commercial but not under 126.

3) To refund him the amount paid against provisional bill.

**Utility Say :-**

The activity of storing of goods is not manufacturing activity; hence I.P. LT V tariff is not applicable. Storage is itself is commercial activity. Period of recovery is mentioned on bill for the change in tariff from industrial to commercial i.e. Feb 08 to Jan 09. The commercial circular dtd. 17/03/09 (PR-3/Tariff/7900), the LT-V tariff is applicable for cold storage activity provided competent authority has accorded approval of categorization of cold storage as industry, if they have a factory license and SSI certificate or any other equivalent document from relevant authority.

In this case, the Appellant has not complied with any documents.

As per Electricity Act 2003 Section 126 (b) (iv) consumer is using supply for different activity which he was been authorized.

**Observations :**

The matter was heard on 03/06/09 both the parties were present. From the deliberations of both parties it is observed that M/s. Plastic Processor was industrial unit sanctioned for 60 HP by MSEDCL (then MSEB) in around 1987. The owner of this industrial unit at plot no. 8/2 at Kala Industrial Estate, Bhandup has let out premises to M/s. Bharat Serum and Vaccines Ltd. & M/s. Siro Clinpharm Ltd. and utilizing premise for cold storage of life saving drugs.

In the year 2005 on dtd. 30<sup>th</sup> Nov. 2005 then Dy. Ex. Engr., Flying Squad, Bhandup inspected the premises and found that the premises was used for cold storage and accordingly mentioned in his report, but Respondent have ignore it a for billing purpose. On this inspection report Appellant reiterated that if Respondent would have change the tariff in the year 2005 the question of charging bill under 126 of E.A. Act 2003 would not be arise and hence Respondent is at the fault for which he should not be held responsible. The Appellant further states that in the present matter, section 126 of the Electric Act 2003 is not applicable.

Per contra; thus Respondent's argument was focused on the issue that the Appellant used electricity supply in this premises for cold storage which covered in commercial activity where as it was sanctioned for industrial activity, hence the occupier has changed the purpose without pre intimation or sanctioned of Respondent (utility). While arguing for the Respondent Shri D.S. Dumbre, Ex. Engr., Bhandup reiterated their stand mentioned in the written statement of defense. It was contended that commercial circular dtd. 17/03/09 (PR-3/Tariff/7900) states that the LT-V tariff is applicable for cold storage activity provided competent authority has accorded approval of categorization of cold storage as industry, if Appellant have a factory license and SSI certificate or any other equivalent document from relevant authority.

On enquiry by Forum to the Appellant whether they have such certificate? on this Appellant state that at this moment he have no such certificate but will produce within 2 days, but till date Appellant unable to produce such certificate before the Forum.

Facts of the case and documents on record reveal that the Appellant is using electricity supply for the cold storage, which is commercial activity and is not sanction by the Respondent.

The Respondent's argument was wholly based on section 126 (b) (iv) of E.A. 2003, which states as 'unauthorized use of electricity' means the usage of electricity for the purpose other than for which the usage of electricity was authorized. The respondent accordingly served the bill amounting Rs. 11,66,649/-.

In the present case, the Respondent has already dealt the matter under section 126 of Electricity Act 2003. But as given in the (MERC & Electricity Ombudsman) Regulation 2006 section 6.9, which reads as under:

**Section 6.9** : The Forum may reject the Grievance at any stage if it appears to it that the Grievance is :

- a) frivolous, vexatious, malafide;
- b) without any sufficient cause;
- c) there is no prima facie loss or damage or inconvenience caused to the consumer.

Provided that no Grievance shall be rejected in respect of sub-clauses (a), (b) and (c) unless the applicant has been given an opportunity of being heard.

Thus, the case was entertained in Forum. The Appellant is clearly not satisfied with the decision taken by the Respondent in this behalf. That being so, it is necessary to look at the provisions of Law relating such cases. Section 127 of the Act provides that, any person aggrieved by the final order made under Section 126 may, within 30 days of the said order prefer an appeal in such form, verified in such manner to the Appellate authority as prescribed but in this case Appellant also not availed the opportunity to file appeal before the authority as given under section 127 of E.A. 2003.

Moreover regulation 6.8 of the CGRF Regulation specifically ousts the jurisdiction of the Forum to deal with the grievances relating to section 126 of the E.A. 2003.

In view of this, it is not for the Forum to go through the facts of the case and pass any value judgment as to whether there was any unauthorized use of electricity in the present case. In view of this, the representation deserves to be and is hereby rejected.

## **ORDER**

The case is being of unauthorized use and already dealt by Respondent under section 126 of E.A. 2003 Forum have no preview to interfere as (MERC& Electricity Ombudsman) Regulation 2006, Section 6.8 ousts the jurisdiction of the Forum to deal with cases relating to Section 126 of E.A. 2003. Hence case is deserved to be and is hereby rejected.

No orders as to cost.

Both the parties are to 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 10 June,2009.

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**

**R.M. CHAVAN  
MEMBER SECRETARY  
AND I/C CHAIRMAN  
CGRF, BHANDUP**