

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
JALGAON ZONE
Office of the
Consumer Grievance Redressal Forum
Ajantha Chauphuli , Old M.I.D.C.
Jalgaon 425 003

No./CGRF /JLGZ/JLG Circle/JLG Dn/C.No.10 &11-2016-17 / 00078 Date: 24 OCT 2016
(BY R.P.A.M.)
Date of Submission of the case : 29/08/2016
Date of Decision : 21/10/2016

COMMON ORDER
(In the matter of Change of Tariff)
Case No. 10 / 2016-17

- 1) Laxmi Cotex Pvt Ltd,
Ghat No.725/2, Avhane,Kanalda Road,
Taluka, Dist-Jalgaon.425001.
(Con. No.110019004830)

Case No. 11 /2016-17

- 2) Laxmi Ginning & Pressing Factory,
Ghat No.725/2, Avhane,Kanalda Road,
Taluka, Dist-Jalgaon.425001.
(Con.No.110019003050)



V/s

- 1) Executive Engineer & Nodal Officer ,
Maharashtra State Electricity Distribution Co.LTD.
Circle office, Jalgaon.
2) Executive Engineer ,
Maharashtra State Electricity Distribution Com. Ltd.
Division office, Jalgaon.

DECISION

M/s Laxmi Cotex Pvt Ltd, and M/s Laxmi Ginning & Pressing Factory are HT industrial consumers (hereafter referred as the Complainants) of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company) has filed a complaint regarding converting tariff category from Express Feeder to Non Express Feeder. The grievances were submitted to the Internal Grievance Redressal Cell at Jalgaon Circle Office, but not satisfied with the decision of the IGRC. The consumers have submitted representations to the Consumer Grievance Redressal Forum in Schedule "A". The representations are registered at inward no.85 and 86 on 29/08/2016 respectively.

It was decided to admit these cases for hearing after consulting the Forum . The matter was fixed for hearing on 30/09/2016 at 11.30 a.m. and 12.30 p.m. in the CGRF Office, Jalgaon and notices to that effect was sent to the complainant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office , Jalgaon for submitting para wise comments to the Forum on the grievance within 15 days under intimation to the consumer. The copy of this notice was also endorsed to the Superintending Engineer, Circle Office , Jalgaon and Executive Engineer ,Jalgaon Division.

Shri N.D.Narayane, Executive Engineer, Shri R.F Pawar Dy. Executive Engineer Shri Jayesh Hiwale, Sr.Manager (F&A) & Shri D.L. Baviskar, Dy.Manager (F&A) Jalgaon Circle office, represented the Distribution Company during the hearing. Shri Inder Tiwari and Shri.Prakash Ananda Narkhede attended on behalf of the complainants.

Both these matters have arisen because of change for tariff by the Distribution Company . The facts are identical and the same issues arise for consideration. Hence the Forum has proposed to decide them by a common order.

Laxmi Cotex Ltd. C N. 10/2016-17 and Laxmi Ginning & Pressing Factory C N. 11/2016-17

1 of 6

Consumer's Representation in Brief :

1. The complainants are HT Industrial consumers . The complainants requested the MSEDCL Circle office authority for changing the tariff category of their connection i.e. to apply the tariff applicable to Non Express Feeder industry instead of Express feeder industry as supply to the industry is not given from express feeder . The supply to other industries from this feeder is been given. Following are some other consumers to whom supply is been given from this feeder.
2. Since the supply from this feeder is given not only to this industry but to the following industries also:
 1. Akansha Cotex Pvt. Ltd (Recently Permanently Disconnected)
 2. Hari Cotspin Pvt. Ltd.
3. Hence the complainants have made requests long back, that this feeder should not be treated as Express feeder. In-spite of lapse of such long period, no cognizance of their letters was taken nor there was any communication in this matter from Superintending Engineer's circle office. In-spite of written correspondence and follow up, no action for change of tariff was initiated.
4. Hence the complainants filed an appeal with IGRC of Jalgaon Circle office . After giving hearing, the Cell has passed the order for proper energy bills for subsequent period from the application for change of tariff.
5. The complainants are not satisfied with the order of the IGRC. Though they had made the application long back in the year 2011 no cognizance of their letter was taken. Even when they made another application on dated 17th October 2015, no action was taken and they had to file an appeal with the IGRC cell for change of tariff. The request for revision of bills is not considered.
6. In-spite of IGRC order dated 29th June 2016, tariff has not yet been change as per energy bill for the month of July 2016.
7. From the date of application of the consumers (17/05/2015) request of the consumer for change of tariff considered and bills to be revised accordingly.
8. In this relation it is submitted that IGRC has considered that they should be charged as per tariff applicable to consumer not on express feeder.
9. IGRC has considered to revised the energy bills from the date second application i.e. from 17th May 2015. However first application was made on dated 11th October 2011 but no cognizance of this application was taken by MSEDCL office. Hence cause of action was in continuation and request for change of tariff should have been considered from the first application. If the IGRC have considered the second application dated 17th May 2015, they should have considered bill revision from two years prior to this application considering the cause of action was in continuation. For the fault of the MSEDCL consumer should not be suffer.
10. Though MSEDCL was aware that they are not on express feeder and some other consumer on this feeder are being charged with tariff applicable to consumer not on express feeder, they should have changed the tariff on their own. But in-spite of their application this has not been change and consumer is sufferer for the fault of MSEDCL.
11. Hence considering the natural justice IGRC should have considered revision of energy bills from the date of first application.

Demands of the Consumers:

1. Since it has now decided by IGRC cell of MSEDCL that the consumer is not on express feeder hence tariff for Non Express feeder should be applicable with immediate period.
2. The bills should be revised from the date of the first application. As the cause of action was in continuation and the fact was brought to the notice of MSEDCL but they failed to take any action
3. Even if the second application is considered the consumer should have been entitled for revision of tariff from the two years prior to the second application as the cause of action was in continuation.
4. To pass the order for revision of the energy bills considering tariff applicable to consumer not on express feeder from the date of first application.
5. Interest on excess amount lying with MSEDCL and interest as per prescribed applicable rate may please be given.

Arguments from the Distribution Company:

The Superintending Engineer , Jalgaon Circle has submitted a point wise written reply to the Forum by letters no. 4948, 4949 and 4961 dated 30.09.2016 which state as under:

1. Change in tariff shall be implemented in the next billing cycle i.e. month of October -2016 as per IGRC order.
2. The complainants says that "IGRC should have considered bill revision from two years prior to this application considering the cause of action was in continuation" But this point is not raised in IGRC hence it requested not to consider in this hearing.
3. Further in this regard the consumer has already given the consent for continuous tariff & given permission to connect other 3nos of consumer which was committed in IGRC hearing for continuous tariff vide letter dated 25/08/16.
4. The tariff category applied to this consumer was HT I S (Industrial Seasonal) from December 2008 to December 2014. After January 2015 tariff category of HT I C (Continuous Industrial) is being applied till date.

Action by IGRC :

1. The complainants submitted the grievance to the Internal Grievance Redressal Cell, Jalgaon , Circle office on 26/05/2016 .
2. Under letters dated. 29/06/2016 ,the IGRC took following decision:
 - ✓ महाराष्ट्र राज्य विद्युत वितरण कंपनी मर्यादित यांनी आपण मागणी करेपर्यंत योग्य विद्युत बिले दिल्यामुळे बिल दुरुस्ती मागणी मान्य करण्यात येत नाही.
 - ✓ ग्राहकने मागणी केलेल्या तारखेपासुन दि.१७.१०.२०१५ सदर ग्राहकची मागणी मान्य करण्यात येत असुन त्यानुसार महाराष्ट्र राज्य विद्युत वितरण कंपनी मर्यादित यांनी कार्यवाही करावी.

Observations by the Forum:

1. M/s Laxmi Cotex Pvt Ltd. has been given supply on 06/12/2008. and Laxmi Ginning & Pressing Factory on 23/11/2006 respectively.
2. The Forum perused the application dated 11/10/2011 by M/s Laxmi Cotex Pvt Ltd. (acknowledged by the Executive Engineer on 14/10/2011). In this application a request was made by the complainants to apply rates as per industrial feeder instead of express feeder. But it is seen from the letter dated 30/09/2016 of the Superintending Engineer, Jalgaon Circle and the CPL that the tariff category applied to this consumer was in fact HT I S (Industrial Seasonal) at that time and not HT I C (Industrial Continuous) of Express Feeder . Hence the letter dated 11/10/2011 by the complainants becomes irrelevant .However there was no reply/clarification given to this letter by the Distribution Company .
3. The Forum has tracked various orders of the MERC and the Distribution Company regarding the change of the tariff category , express feeder and seasonal tariff as summarized below:
 - ✓ Till May 2000 , the concept of the seasonal tariff was existing. But as per MERC tariff order dated 05/05/2000 it was decided that : *"The concept of seasonal consumers has been removed. All such consumers will be billed at the rates applicable to the category to which they belong."* However after various representations from the stake holders , the concept of "Seasonal Consumer", was retrospectively reintroduced by the Hon'ble Commission by its Orders dated 13th December 2000 & 27th August 2001 respectively and has been continued in subsequent tariff orders.
 - ✓ The Seasonal Consumers are defined as *"One who works depending upon weather conditions, during a part of the year up to a maximum of 9 months, such as Cotton Ginning Factories, Cotton Seed Oil Mills, Cotton Pressing Factories, Salt Manufacturers, Khandsari / Jaggery Manufacturing Units, or such other consumers as may be approved by the Commission from time to time."*
 - ✓ As per tariff order dated 10.03.2004 issued by the MERC the following observation are made by the Commission in para 48 :

" The seasonal category will include all consumers who opt for a seasonal pattern of consumption, without the need for further approval from the Commission. The consumers should approach the MSEB for classification under the seasonal category if their business is such that electricity requirement is seasonal in nature. The shift from seasonal to normal connection and vice-versa can be done only once each year, at the beginning of the year"

- ✓ According to the Departmental Circular (Commercial) No. 668 under PR-3/TARIFF/28957 Dated 30/07/2002 “ *Every seasonal consumer will have to declare, in the month of April of every year, his specified peak season for that year. The declaration cannot be changed during the financial year. Declared Season refers to High Demand Season.*”
5. The Regulation No. 4.13 (b) of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 stipulate that “*change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.*” SOP Regulations, 2005 valid upto 19th May 2014 contained equivalent regulation 9.2 This regulation provides all time right to the consumer for change of category as per his need.
 6. When the abundant electricity was available there was no idea of Express or Non-Express Feeder and Continuous supply/Non-Continuous supply. There was only single Tariff Category for all industrial consumers. MERC introduced two categories in HT-I Industries (i) Continuous Industries, (ii) Non-Continuous Industries, w. e. f. 1.10.2006 for the first time by the Tariff Order dated 20.10.2006 in Case No. 54/2005,. In the Tariff Order dated 27.4.2007 and detailed order dated 18.5.2007 in Case No. 65/2006 applicable from 1.5.2007, MERC further classified those categories as under:-
 - (i) HTI Continuous Industry (On Express Feeder).
 - (ii) HT-I Non-Continuous Industry (On Non-Express Feeder)
 Foot Note no. 8 under the said category reads as under:-
 “Only HT Industries connected on Express Feeders and demanding continuous supply will be deemed as HT Continuous and given continuous supply, while all other HT industrial consumers will be deemed as HT Non-Continuous Industry”
 7. The Commission’s tariff order dated 20th June, 2008, also mandates as under:

“Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry.”
 8. MSEDCL in the petition in Case No. 44 of 2008 before the Commission seeking clarification of the Tariff Order dated 20th June, 2008 in Case No. 72 of 2007 requested that :
 - a) the clause “*demanding continuous supply*” may please be removed from the definition of HT-I (Continuous Industry);
 - b) Existing Consumers categorized under HT-I Continuous as on April 1 2008 should be continued under same category;
 - c) HT-I (Continuous) tariff category should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non-continuous process industries.

On this petition, the Commission by its order dated 12th September, 2008 gave the following Ruling and Clarification

The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-I continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non – continuous type of supply, and there is no justification for removing the clause “demanding continuous supply” from the definition of HT-I continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the year ,within the first month after issue of the Tariff Order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of this Order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorisation will be continued.

The condition of applying for change of category from continuous to non-continuous within one month of the issue of the tariff order continued in further tariff orders . However later in the tariff order dated 26th June, 2015 in Case No. 121 of 2014 there was a slight modification. The Commission ruled that :

“...In this regard, the Commission, further clarifies that the consumer getting supply on express Feeder may exercise his choice between continuous and non-continuous supply anytime during the financial year but only once in the financial year with one month prior notice.”

9. As per SOP regulations ,2014 under section 2(m) “ Express Feeder ” is defined as “a feeder emanating from the Licensees substation to connect to a single point of supply, which also includes dedicated distribution facility (DDF) ”As this feeder has got more than one consumer it can not be treated as Express Feeder now. .
10. It is seen from the records that , the complainants had applied to the then Distribution Franchisee M/s Crompton Greaves Ltd. (which was responsible for the distribution work on behalf of the MSEDCL from 01/06/2011 till 11/08/2015) by a letter dated 09/11/2014 for change of HT Seasonal to Non seasonal HT Industrial Tariff . The Unit Head , M/s Crompton Greaves Ltd. (CGL) Jalgaon informed the complainants vide letters no. 4282 and 4283 dated 19/12/2014 as under:
- ✓ The application is under process
 - ✓ The tariff will be changed in consultation with the MSEDCL.
 - ✓ At present there is no express feeder charges applied being HT I Seasonal category.
 - ✓ As per the prevailing practice declared and non declared season month is to be declared before the financial year i.e. before 1st April and intimation of the change is to be given in the month of March i.e. the last month of the financial year.
 - ✓ If approved the tariff will be changed to HT-I Express Feeder
 - ✓ The effect of the tariff change will be given after taking legal and technical opinion of the MSEDCL

But there is nothing on the record to show what opinion was offered by the MSEDCL in this case. The CGL has not waited till April 2015 as envisaged in their letter . As per the CPL , the tariff seems to be changed from the month January 2015 to HT-IC (Continuous Industrial) . However if we go strictly by the contents of the said letter , the category change should have been effected from month of April 2015. It is not understood why the tariff category HT-IC (Continuous Industrial) was applied when the complainants has not demanded the continuous supply. Every consumer on Express feeder need not be applied continuous tariff unless specifically demanded by him. In this case it may be noted that the consumer has not demanded the continuous supply .

11. From the record submitted to the Forum and the directions in the MERC orders as discussed above, it is seen that the complainants have not demanded the continuous power supply from the Distribution Company at the time of supply or at the time of changing the category. Hence it should be treated as HT non-continuous industry. But from the electricity bills produced by the complainants , it seems that the complainants is categorized as HT-I Continuous Industry from January ,2015 onwards without any such demand by the complainants. On the contrary complainants has demanded change to HT-I Industrial category .
12. As per electricity bills for M/s Akanksha Cotex Pvt. Ltd and M/s Hari Cotspin Pvt Ltd. which are the other HT consumers supplied from this feeder , the tariff applied is HT-I S (Industrial Seasonal)
13. In fact as per regulation 4.13 of the MERC (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 “*change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.*” Hence the tariff category to HT I would have been changed in the month of December 2014 for a normal category consumer . But this being a case of seasonal consumer , “The shift from seasonal to normal connection and vice-versa can be done only once each year, at the beginning of the year” in view of the MERC directives as mentioned in the preceding paras . As such the change to normal industrial connection HT-I N should have been effected in the month of April 2015 on the basis of the application dated 09/11/2014.
14. The Distribution Company has not provided any record to show whether the complainants have demanded for the continuous supply at the time of the power sanction or later or agreed for the continuous tariff , though it has been mentioned in the latter dated 30/09/16 by the SE, MSEDCL, Jalgaon that “*consumer has already given the consent for continuous tariff*”

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the Distribution Company is hereby directed to change complainants’ tariff category from HT I Seasonal Industry to HT I Non Continuous Industry, with effect from April , 2015, and refund the excess amounts recovered with interest at bank rate of the Reserve Bank of India, in terms of Section 62(6) of the Electricity Act, 2003, read with Regulation no. 11.3 of MERC (Terms and Conditions of Tariff) Regulations, 2005.

The grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

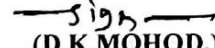


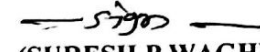
ORDER

1. The Distribution Company is hereby should change complainants' tariff category from HT I Seasonal Industry to HT I Non Continuous Industry, with effect from April- 2015, and refund the excess amounts recovered with interest at bank rate of the Reserve Bank of India.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
3. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings suomoto or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the appellant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.





(RAJAN S. KULKARNI)
MEMBER


(D.K.MOHOD.)
MEMBER-SECRETARY
Consumer Grievance Redressal Forum
Jalgaon Zone


(SURESH P.WAGH)
CHAIRMAN

Copy for information and necessary action to:

1. Chief Engineer , Maharashtra State Electricity Distribution Company Ltd. , Jalgaon
2. Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd, Jalgaon.


Member Secretary/Executive Engineer
MAH. STATE. ELECT. DIST. CO. LIMITED
Consumer Grievance Redressal Forum
Jalgaon Zone, Jalgaon