

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/JALCircle/JAL U Dn/C.No.22-2016-17/

No 000257

Date: 14 MAR 2017

(BY R.P.A.D.)

Date of Submission of the case : 08/02/2017
Date of Decision : 10/03/2017

To.

1) M/s Godavari Foundation,
Gat No315/305/321,NH-6,
Jalgaon, Tal-Dist-Jalgaon.
(Consumer No. 110639005160)

} Complainant

2) Executive Engineer & Nodal Officer,
Maharashtra State Electricity Distribution Co LTD.
Circle office, Jalgaon.

3) Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Division office, Jalgaon (UCR).

} Distribution Company



DECISION

M/s Godavari Foundation, Gat No315/305/321,NH-6, Jalgaon is HT-IX E consumer (hereafter referred as the Complainant) of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company) has submitted a grievance regarding charging of Tax on Sale of Electricity in the electricity bills with the Internal Grievance Redressal Cell (IGRC) , MSEDCL, Jalgaon Circle Office. However being not satisfied with the decision of the IGRC the complainant has filed the representation to the Forum in Schedule "A" which is registered at inward no. 15 on 08.02.2017.

It was decided to admit this case for hearing after consulting the Forum . The matter was fixed for hearing on 23.02.2017 at 12.00 P.m. in the CGRF Office, Jalgaon and a notice 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 UCR Division.

Shri Sanjay M. Aakode, Superintending Engineer , Shri N.D.Narayane, Nodal officer & Executive Engineer, Shri R.F Pawar Dy.Executive Engineer, Shri Jayesh Hiwale, Sr. Manager (F&A) & Shri D.L. Baviskar Dy,Manager(F&A),Circle Office Jalgaon, represented the Distribution Company during the hearing. The complainant or his representative were not present.

Consumer's Representation in Brief :

1. The aforesaid establishment was duly registered under Maharashtra (Bombay) Public Trust Act and was & is engaged in educational activity, which is strictly Non-Industrial & Non-Commercial activity; therefore the aforesaid H.T. Connection was & is billed as per the HT-IX (B) (i) - Public Services (Others) Tariff, which is promulgated by Honorable MERC, by the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon. Copy of the Bill is enclosed.
2. As per the notifications promulgated by Government of Maharashtra, by exercising of the powers conferred by Section 3 of the Maharashtra Tax on Sale of Electricity Act, 1963 (Mah. XXI of 1963), from time to time, the rate of Tax on Sale of Electricity was and is declared NIL on the electricity consumed by any consumer who has other than Industrial and/or Commercial Consumer/s. All the copies of the Notifications are enclosed herewith.
3. Even though the aforesaid establishment was & is engaged in educational activity, which is strictly Non-Industrial & Non-Commercial activity as well as the Tax on Sale of Electricity was & is not applicable to the aforesaid establishment, the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon is charging Tax on Sale of Electricity, in the Electricity Bills.
4. The said act of the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon was and is strictly illegal and unconstitutional.
5. Accordingly the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon had made & prepared excessive Electricity Bills by charging Tax on Sale of Electricity, in the Electricity Bills.
6. So the complainant has submitted an application to the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon, to stop charging Tax on Sale of Electricity, in the Electricity Bills, as well as refund us the amount which was collected by them, under the head namely Tax on Sale of Electricity, on dated 21.01.2016. The copy of the said Application is enclosed herewith.
7. But as no one took cognizance in this regard. the complainant has submitted a Grievance before IGRC (Internal Grievance Redressal Cell), Jalgaon, for order to stop charging Tax on Sale of Electricity, in the Electricity Bills as well as for order to refund us the amount which was collected by the Office of the MSEDCL, Jalgaon, under the head namely Tax on Sale of Electricity, on dated 25.07.2016.
8. The office of the IGRC has dismissed, the above mentioned Grievance, without mentioning any reason, on dated 06.12.2016. Copy of the said Order is enclosed herewith.
9. The office of the IGRC has given the above mentioned decision, without considering all these Government Resolutions, Judgment of the Honorable ATE and Orders of Honorable MERC and without mentioning any reason and/or surmise, in this context.
10. Hence, the complainant is approaching the forum, by submitting said Grievance Application, for order to stop charging Tax on Sale of Electricity, in our Electricity Bills as well as for order to refund us the amount, which was collected by the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon, under the head namely Tax on Sale of Electricity.
11. As per the notifications promulgated by Government of Maharashtra under the Maharashtra Tax on Sale of Electricity Act, 1963 (Mah. XXI of 1963), from time to time, the rate of Tax on Sale of Electricity was and is declared **NIL** on the electricity consumed by any consumer who has other than Industrial and/or Commercial Consumer/s.
12. Our aforesaid establishment was & is engaged in educational activity, which is strictly Non-Industrial & Non-Commercial activity, so that the Tax on Sale of Electricity was & is not applicable to our aforesaid establishment, as per the law.

Relief Sought :

1. Order to stop charging Tax on Sale of Electricity, in our Electricity Bills.

2. Order to refund us all the amounts, which was collected by the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon under the head namely Tax on Sale of Electricity, from time to time.
3. Order to confer interest on all the amounts, which was collected by the Office of the Superintending Engineer, Circle Office, MSEDCL, Jalgaon under the head namely Tax on Sale of Electricity, from time to time, from the date of Collection of the said Amount.
4. Award to Applicant Rs. 10,000/-, as a cost of the said application, which should be payable by the MSEDCL.
5. Any other suitable and equitable orders may kindly be passed in favor of the Applicant for the sake of justice.

Action by IGRC :

1. The complainant submitted the grievance to the Internal Grievance Redressal Cell, Jalgaon, Circle office on 29.07.2016 .
2. Under letter no.6382 dated. 06/12/2017,the IGRC took following decision:
"From the letter dated 25.10.2016 of the Superintending Engineer, Circle Office Jalgaon that Tariff applied i.e. Tax sale on Electricity Duty is as per Rule."

Arguments from the Distribution Company.

The Nodal Officer & Executive Engineer , Jalgaon Circle office has submitted a written reply to the Forum by letter no. 896 dated 22.02.2017 which states as under:

1. Industrial, Energy and Labour Department in Notification dated 21, April 2015 stated with effect from 1st April, 2015 in respect of sale of electricity to industrial or commercial consumer **8 paisa** per unit Tax on Sale of Electricity to be charge and in respect of sale of electricity to any other consumer other than industrial or commercial consumer's **NIL** rate Tax on Sale of Electricity to be charge.
2. Our Contention is that in Industrial, Energy and Labour Department in Notification dated 21, April 2015 is not clearly mentioned that Education Institute exempted from Sale Of Electricity Duty. For example in exemption of Electricity Duty in Maharashtra Electricity Duty Act, 1958 clearly mentioned that Electricity duty shall not be leviable on the units of energy consumed in respect of charitable institution registered under the Bombay Public Trust Act, 1950 for the purpose of, or in respect of school or college imparting education or training in academic or technical subjects.
3. HT Commercial Tariff is further bifurcated into Public Services in order to provide public utility services lower Tariff rate i.e. HT-IX-Public Services, but original nature it is Commercial Tariff only. So in President Godavari Foundation Tariff HT-IX - Public Services (B) Other which is Commercial nature only and Liable for Tax Sale of Electricity Duty.

Observations by the Forum:

1. The complainant's representative Shri Shyamsundar Agrawal informed the Forum as per letter dated 21/02/2017 that he is unable to attend the hearing scheduled on 23/02/2017 in person because he is out of Jalgaon for the period 22-24 February 2017. He requested the Forum to consider the written argument already submitted and take the decision on merits. He also requested to postpone the hearing in case the Distribution Company does not submit their written say during the hearing.
2. The Distribution Company has already submitted their written reply to the representation vide letter dated 22/03/2017 to the forum with a copy to the complainant. The Forum decided to conduct the hearing based on the written representation of the complainant in his absence.
3. The complainant consumer is HT consumer with connected load 450 kW and Contract Demand 400 KVA with the date of supply as 30/03/2010.The tariff category applied is HT-IX B (Public Service -Others)
4. The Distribution Company has argued that "*HT Commercial Tariff is further bifurcated into Public Services in order to provide public utility services lower Tariff rate i.e. HT-IX-Public*

Services, but original nature it is Commercial Tariff only." The Distribution Company has failed to interpret the tariff classification properly. The discussions in the foregoing paras shall elaborate this point.

5. Earlier the Educational Institutions were charged the commercial tariff. But there were certain representations against this by the concerned stake holders. Later different appeals were filed by the Association of Hospitals, Educational Institutions, Sports Academy and Spiritual Foundations, etc; challenging the orders of Maharashtra State Electricity Regulatory Commission for the Financial Year 2008-09 and the FY 2009-10 to the Hon'ble Appellate Tribunal of Electricity (APTEL). They challenged creating HT-II Commercial Category/LT Commercial category for the hospitals/educational institutions. In the proceedings on these appeals the Hon'ble APTEL has dealt with the question "Whether the Hospitals, Educational Institutions dispensaries and other service oriented organisations etc., have to be treated differently under Section 62 (3) of the Act under the head 'purpose for which the supply is required' ? After going through the appeals in detail, the Hon'ble Tribunal passed a Judgment dated 20 October, 2011 and summarized its finding at para 57 of the said judgement and summarized its finding at para 57 of the said judgment as under:

- i. The State Commission in the present case wrongly placed all the consumers including the Appellants who were neither domestic nor industrial nor falling under any of the categories under the Commercial Category. The purpose for which the supply is required by the Appellants can not be equated at par with other consumers in the Commercial Category. The Appellants are seeking separate categorisation on the basis of purpose for which the supply is required by the Appellants i.e. rendering essential services.
- ii. The real meaning of expression „ "purpose for which the supply is required" as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The Railways and Delhi Metro Rail Corporation have been differentiated as separate category as they are providing essential services. The same would apply to the Appellants as well. (iii) The application of mind should be on identifying the categories of the consumers who should be subjected to bear the excess Tariff recoverable based on a valid reason and justification.
- iii. The re-categorisation of Charitable Hospitals and Charitable Organisations and grouping them with the consumers of the category such as Shopping Malls, Multiplexes, Cinema Theatres, Hotels and other like commercial entities is patently wrong.
- iv. By the impugned order, the State Commission classified the members of the Appellants into "Commercial category following a mechanical approach. This has been done only because the Appellants cannot fall under either in the industrial or agricultural or residential category and therefore, the Appellant would automatically fall in the Commercial Category. This is not a proper approach. In case the State commission felt that the Appellants are not falling under any particular existing category, then the State Commission ought to have applied its mind and provided for a new category and given them a competitive Tariff having regard to the purpose for which the electricity is used by them.
- v. The State Commission may classify the hospitals, educational institutions and spiritual organisations which are service oriented and put them in a separate category for the purpose of determination of Tariff."
- vi. We feel that the re-categorisation should be implemented by the State Commission in the next Tariff Order which is yet to be passed for the following reasons....."

- ✓ Hence based on the directives by the Hon'ble APTEL, the MERC introduced "Public Services" category both for LT and HT (LT-X and HT-IX) consumers first time in the tariff order dated 16 August 2012 in case no. 19/2012 operative from 01/08/2012. In the said order the Hon'ble Commission has given following ruling:

"..... As per the ruling mentioned above, it is imperative that the Commission create new a category based on the "purpose of use" of electricity under the provisions of the Section 62 of the EA, 2003. Therefore, as against MSEDCL's proposal of creation of a separate category for

Government owned, managed and operated hospitals and educational institutes, the Commission has decided to introduce a new category called "Public Services". This consumer category is applicable to entities which are essentially providing public services. The Commission has designed the Tariff for this category in a manner so that the average billing rate for this category is higher than the average cost of supply, but below that of the Commercial category.

- ✓ Later in the tariff order dated 26 June 2015 operative from 01/06/2015 The "Public Services" were bifurcated into Government (LT-X (A) and HT-IX (A) and Others (LT-X (B) and HT-IX (B).
- ✓ The same categories are continued in the tariff order dated 16 November 2016 operative from 01/11/2016.

The plain reading of all the above tariff orders reveal that the HT-IX (B) is a subcategory of HT consumers and not of the HT commercial consumers as interpreted by the Distribution Company. By no stretch of imagination HT-IX (B) consumers can be classified as HT commercial consumers. For such consumers HT-II category already exists. Hence this consumer does not certainly fall into commercial category.

6. As per the Maharashtra Tax On Sale Of Electricity Act, 1963 notified on 21st April 1963, the Govt of Maharashtra has levied a tax in respect of all sales of electricity to a consumer by a power utility at such rate and from such date, either prospective or retrospective, as may be specified by the State Government, by notification in the *Official Gazette*. Since then the Govt of Maharashtra has issued from time to time various notifications prescribing the rates of tax on sale of electricity for consumer categories. The notification issued by the Industries, Energy and Labour Department, relevant for this case are notification No. SRP 20015/CR-48/NRG dated 21/04/2015 applicable from 01/04/2015. As per this notification :

| Sr. No. | Area | Rate of Tax applicable |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| 1. | In the areas covered under the license granted to Tata Power Company, Reliance Energy Limited and the Brihan Mumbai Electricity Supply and Transport Undertaking <ul style="list-style-type: none"> a. in respect of sale of electricity to industrial or commercial consumers. b. in respect of sale of electricity to consumers other than Industrial & Commercial Consumers | 24.04 paise per unit 16.04 paise per unit |
| 2. | In City areas covered under the licens, granted to the Maharashtra State Electricity Distribution Company Limited, In respect of sale of electricity to the Industrial and Commercial Consumers. | 9.04 paise per unit |
| 3. | In any other area in the State_____ <ul style="list-style-type: none"> a. In respect of sale of electricity to industrial or commercial consumers. b. Is respect of sale of electricity to any other consumers other than Industrial or commercial consumers. | 8 paise per unit Nil |

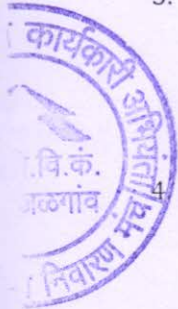
7. Based on the above GOM notification dated 21/04/2015, the Distribution Company has also issued a commercial circular no. 217 P-Comm/Accts/Tax on Sale/21265 dated 12/05/2015 directing the field officers to charge the tax on sale of electricity at the above rates with the instructions to the IT department to appropriately modify the billing programme.
8. It has been reported by the Distribution Company that they have sought guidance from the CE (Commercial) Mumbai by a letter dated 22/07/2015 for application of the tax on sale of electricity in this case.

9. It is however seen that in this case though the consumer is not from industrial (HT-I) or commercial category (HT-II) the Distribution Company has applied tax on sale of electricity to it in the bills. The complainant consumer is clearly classified by the Distribution Company itself in HT-IX (B) (Public Services -Others) as per MERC tariff order dated 26/06/2015. It is neither an industrial nor a commercial consumer. Hence no tax on sale of electricity is applicable to this consumer with effect from 01/06/2015.

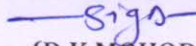
In view of the observations as elaborated in the preceding paragraphs the following order is passed by the Forum for implementation:

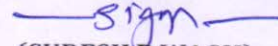
ORDER

1. The Distribution Company should not charge the tax on sale of electricity to the complainant from the ensuing bill to be issued after the date of this order. The amount recovered towards tax on sale of electricity from 1st June 2015 should be refunded with the interest at Bank Rate of RBI till the date of refund.
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 *suo motu* 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 complainant 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

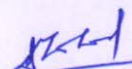

(D.K. MOHOD)
MEMBER-SECRETARY


(SURESH P. WAGH)
CHAIRMAN

Consumer Grievance Redressal Forum
Jalgaon Zone

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. DIS. CO. LIMITED
Consumer Grievance Redressal Forum
Jalgaon Zone Jalgaon