

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
AjanthaChauphuli , Old M.I.D.C.
Jalgaon 425 003

No. / CGRF /JLGZ/DHL Circle/DHL U Dn/C.No.08-2016-17 / Date: 30 SEP 2016
(BY R.P.A.D.) No 00073

Date of Submission of the case : 05/08/2016
Date of Decision : 30/09/2016

To.

- 1) Matoshree Diagnostic Center Pvt Ltd,
34,37 Garud Complex,Near Kamalabai
High school, Dhule.
(Consumer No. 080011321881)
- 2) Executive Engineer & Nodal Officer ,
Maharashtra State Electricity Distribution Co LTD.
Circle office, Dhule.
- 3) Executive Engineer ,
Maharashtra State Electricity Distribution Com. Ltd.
Division office. Dhule Urban.

Complainant

Distribution Company



DECISION

Matoshree Diagnostic Center Pvt Ltd is LT consumer (hereafter referred as the Complainant) of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company) being charged LT II C tariff category . The complainant has filed a representation to the Forum against the order dated 8th July 2016 passed by the Internal Grievance Redressal Cell (IGRC) , MSEDCL, Dhule Circle Office. The IGRC by its order has rejected the complainant's request for changing the tariff to LT-X –B (Public services) category . The representation in Schedule "A" is registered at inward no. 79 on 05/08/2016.

It was decided to admit this case for hearing after consulting the Forum . The matter was fixed for hearing on 09/09/2016 at 12.30 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 , Dhule 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 , Dhule and Executive Engineer .Dhule Urban Division.

Shri V.M.Shinde, Nodal officer & Executive Engineer, & Shri P.H. Machiye Add. Executive Engineer, Circle Office , Dhule, represented the Distribution Company during the hearing. Dr. Pankaj S. Deore. represented by the complainant .

Consumer's Representation in Brief :

1. The complainant is a private limited company running MRI services which is part of a diagnostic unit in Dhule since last 4 years.
2. They applied to MSEDCL and installed a new transformer and new meter at their own cost.
3. MSEDCL has put them under tariff category of LT.II C which is a commercial category.

4. As the company runs only MRI machine on given meter and has no other business, they demanded change of tariff category to LT.X.
5. MSEDCL denied that change stating that as per commercial circular 243 dated 3rd July 2015, separate mention of MRI services is not given in general description of LT. X category though mention of hospital and pathology services is there in the circular.
6. The complainant first time applied to the Additional Executive Engineer , Dhule on 16/09/2014 for change of tariff category . to LT X. But the Additional Executive Engineer , Dhule by a letter dated 07/10/2014 denied the change.
7. The letter from MSEDCL stated that MRI services do not come under public services.
8. This is wrong. We have following explanation for our demand.
 - a) MSEDCL has Applied Public Services ie. LT. X category to MRI centers in other districts. 2 such examples are provided.
 - b) In commercial circular 243, Diagnostics units run by government establishments are included under HT-IX A Category i.e. public services category for HT Consumers. If a government run diagnostic unit is a public service, same should be applied to private diagnostic unit.
 - c) MRI helps in diagnosis of patient by taking images of their body parts in same way as a pathology laboratory which helps in diagnosis of patient by taking body fluids like blood or urine.
 - d) As MRI is related to patient management, it does same work as that of a hospital or pathology laboratory and hence needs to be included under public service category.
 - e) Regarding MSEDCL's reason (that separate mention of MRI services is not given in general description of LT.X category though mention of hospital and pathology services is there in the circular 243) ample clarification is given by higher authorities ie. ATE and MERC as follows :-
 - I. Judgement of the Hon'ble ATE dated 20 October, 2011, in Appeal No.110,111,170,171,201 & 202 of 2009 and 70,71,78,79,80,81 & 82 of 2010, in which the Tribunal ruled as under, : *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. (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.*
 - II. *In its order for case no: 19 of 2012 : MERC has stated that :*

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.

III. In its order in case no. 118 of 2012, MERC has clearly stated that :

27. The reference of consumer categories such as LT-II (Non-residential or commercial), LT-V (LT Industry) and LT-X (Public services) in above quoted tariff schedule is only for the purpose of indicative nature of activities however, the Commission hereby clarifies that such beneficial tariff ((LT-II (Non-residential or Commercial)),LT-V (LT Industry) and LT-X (Public services)) will be applicable to all such activities

IV. In the same judgment MERC further states that :

30. However, the Commission would like to clarify that it is a duty cast on the Licensee to implement each and every Order of the Commission in its letter and spirit

From the above judgments it becomes clear that merely by not mentioning MRI or Diagnostic services under LT. X categories in circular 243 ,MSEDCL can not deny us LT.X category as i) the list provided in circular is only for the purpose of indicative nature of activities and ii) purpose of use is not looked at .

Consumer's Demands:

- 1: To convert our tariff category to LT- X .
- 2:To refund excess bill charged from date of installation.

Action by IGRC :

1. The complainant submitted the grievance to the Internal Grievance Redressal Cell, Dhule, Circle office on 15/06/2016 .
2. Under letter dated. 08/07/2016 ,the IGRC took following decision:
 - ✓ From the facts stated by consumer representative and MSEDCL representative the forum in concurrence with MERC order case no.121/dtd.2014 (w.e.f.June-2015) and MSEDCL Circular no. 243 conclude that...
 - LTX (B) :-Public Services-Others.**
 - ✓ MERC in its order has categorized consumers under LT-XA for Government public services and LT-XB for private Public services. LT-XB schedule does not include MRI centers. Pathology laboratories have been clearly classified under LT-XB. Hence MRI centers cannot be considered as Pathology laboratories as represented by consumer representative. The case is rejected.
 - ✓ The consumer is here by requested to pay the bill.

Arguments from the Distribution Company.

The Additional Executive Engineer , Urban Sub-Division-1, Dhule has submitted a written reply to the Forum by letter no. 2443 dated 08.09.2016 which states as under:

1. MERC in supply code regulation 13 have stated 'The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer : Provided that the Distribution Licensee shall not create any tariff category other than those'
2. Also section 62 (3) The Appropriate Commission shall not , while determining the tariff under this Act, Show under preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area , the nature of supply and the purpose for which the supply is required.
3. Above Regulation/sections clearly conclude that commission is empowered to categorize the consumers and not the utility.
4. MERC order case no.121/dtd.2014 (w.e.f. June-2015) and MSEDCL Circular no 243 state that....
MERC in its order has categorized consumers under HT-IXA for Government public services and HT-IXB for public services others. HT-IXB schedule does not include Diagnostic centers/ MRI centers as public services. Hence MRI centers have not been considered as public services as represented by consumer representative.
5. As per procedure laid down under the I.E. Act 2003 section 62, MERC for supply code regulation no 13 the forum is requested to reject the case.

Observations by the Forum:

1. The complainant is an LT consumer running the activity of "Magnetic Resonance Imaging (MRI)" with sanctioned load 71.92 kW. The complainant is presently being charged LT II (C) tariff as per the MERC tariff order dated 26/06/2015 in case no.121/2014 [effective from 01/06/2015]. But the complainant has demanded that categorization should be changed to LT X - Public Services as be made.
2. According to the MERC tariff order dated 26/06/2015 LT II - Non Domestic tariff category (which is further divided into three sub-categories like (A) for loads between 0-20 kW; (B) for loads between 20-50 kW and (C) for loads above 50 kW) is applicable for electricity used at Low/Medium Voltage in all non-residential, non-industrial premises and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in the following places (but not limited to):
 - a) Non-Residential, Commercial and Business premises, including Shopping malls/Show rooms;
 - b) Combined lighting and power services for Entertainment, including film studios, cinemas and theatres, including multiplexes, Hospitality, Leisure, Meeting/Town Halls and Recreation and Public Entertainment places;
 - c) Offices, including Commercial Establishments;
 - d) Marriage Halls, Hotels / Restaurants, Ice-cream parlours, Coffee Shops, Guest Houses, Internet / Cyber Cafes, Telephone Booths not covered under LT I above, and Fax / Xerox Shops;
 - e) Automobile and any other type of repair centres, Retail Gas Filling Stations, Petrol Pumps & Service Stations, including Garages, Tyre Retreading / Vulcanizing units;
 - f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries, Beauty Parlours & Saloons;
 - g) Banks, Telephone Exchanges, TV Stations, Micro Wave Stations, All India Radio Stations, ATM Centres;
 - h) For common facilities, like Water Pumping / Street Lighting / Lifts / Fire Fighting Pumps / Premises (Security) Lighting, etc. in Commercial Complexes;
 - i) Sports Club, Health Club, Gymnasium, Swimming Pool;
 - j) Electricity used for the external illumination of monumental/historical/heritage buildings approved by Maharashtra Tourism Development Corporation (MTDC);
 - k) Construction of all types of structures/ infrastructure such as buildings, bridges, flyovers, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines for all purposes; and for any construction or renovation activity in the existing premises;
 - l) Any residential LT consumer, with consumption greater than 500 units per month (current month during which the supply is being taken), and who undertakes construction or renovation activity in his existing premises, does not require any separate temporary connection, shall be billed at his LT-II Commercial Tariff rate;
 - m) Milk Collection Centres;
 - n) Airports (only activities not related to aeronautical operations);
 - o) Independent Research and Development units, not covered under any other category;
 - p) Electrical Charging Centres for Hybrid Vehicles; provided that, in case the consumer uses the electricity for charging his own Vehicle at his premises, the tariff shall be as per the parent category of supply

A plain reading of the above will reveal that the activity of "Magnetic Resonance Imaging (MRI)" or any other activity similar to it is not covered in the above list. Still the Distribution Company has placed this activity under LT II (C).

3. A separate category for LT consumers providing public services has been created under "LT X: LT - Public Services". Broadly LT X (A) covers **Government Educational Institutes and Hospitals** and LT X-(B) covers public services by others (i.e. in private/non-government sector).

- ✓ LT X-(A) tariff is applicable to all Educational Institutions, such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms of State or Central Government, Local self Government bodies such as Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat. Sports Club / Health Club / Gymnasium / Swimming Pool

attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students / faculty/ employees/ patients of such Educational Institutions and Hospitals.

- ✓ Whereas LT X-(B) tariff is made applicable to Educational Institutions such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms other than those of State or Central Government, Municipal Bodies, Zilla Parishads, PanchayatSamities or Gram Panchayat; all offices of Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad, and Gram Panchayat; Police Stations, Police Chowkies, Post Offices, Defence establishments (army, navy and air-force), Spiritual Organisations which are service oriented, Railway/Monorail/Metro except traction, State transport establishments,; and State Transport Workshops, Transport Workshops operated by Local Authority, Fire Service Stations, Jails, Prisons, Courts, Airports (only activity related to aeronautical operations), Ports, Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students /faculty/ employees / patients of such Educational Institutions and Hospitals.

A plain reading of the above reveals that Educational Institutions and Hospitals (with other related medical services such as Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries have been considered as "Public Services" for the purpose of tariff. The Commission has further bifurcated these activities into two subcategories like activities run by the Government and run by others (private/non-government) providing different rates of electricity charges .

4. When the Forum tracked the historical background of this issue, it was seen that :
- ✓ Earlier the Hospitals and 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) .
 - ✓ One of the appellant Association of Hospital Mumbai challenged creating HT-II Commercial Category/LT Commercial category for the hospitals. In the proceedings on these appeals the 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 Judgement dated 20 October, 2011 and summarized its finding at para 57 of the said judgement 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-categorization 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.....

It was on this background ,the "Public Services" category was first introduced in the tariff order dated 16 August 2012 in case no. 19/2012 operative from 01/08/2012 .

5. Now let us examine what is exactly the activity of "Magnetic Resonance Imaging (MRI)". **"Magnetic Resonance Imaging** is a diagnostic technique that uses magnetic fields and radio waves to produce a detailed image of the body's soft tissue and bones. An MRI Centre provides also a medical service similar to the Pathological Laboratory which is "a medical specialty that diagnoses the cause and nature of diseases. Pathology involves examining and testing body tissues from biopsies and bodily fluids from samples including blood and urine."
 - ✓ **Diagnosis** is "The act or process of identifying or determining the nature and cause of a disease or injury through the evaluation of patient history, examination, and review of laboratory data."
 - ✓ Diagnosis can be based on Clinical Test (based on symptoms) Pathological Test (based on testing body tissues and fluid) and MRI Scan (based on radiological tests of body's soft tissue and bones) .
 - ✓ Hence medically the objective of both MRI Centre and Pathological Laboratory are the same.

As interpreted by the Hon'ble ATE in its above mentioned order dated 20/10/2011 " 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."

6. The list of "Public Service" indicated in the tariff order can not be taken as "exclusive" . The list can not be exhaustive to include all the activities falling in this category .We will have to go by the "letter and spirit" behind this classification. For example a "Naturopathy Centre" , has to be classified under LT-X or HT -IX category treating it as "hospital" as this activity also involves treatment of diseases (that avoids drugs and surgery) with the use of natural agents such as air, water, and herbs and physical means. Hence it can not be denied this tariff merely because the activity is not specifically mentioned in the list. In this regard the Hon'ble Commission in its order dated 16 July 2013 in case 118/2012 has clearly ruled as under:

"..... However, the Commission would like to clarify that it is a duty cast on the Licensee to implement each and every Order of the Commission in its letter and spirit. In case, licensee has any doubt about interpretation of the Order of the Commission, they should file clarification Petition before the Commission for correct implementation of the Order"

7. In the MERC tariff order dated 26 June 2015, Public Services tariff is applicable to HT Government Diagnostic Centres having HT power supply [as per HT -IX (A)]. However The words "Diagnostic Centres" are missing in this list given below LT X(A). It does not mean that the Government Diagnostic Centres having LT power supply will not be applied public services tariff.
8. There may not be mention of a specific activity but it can be of similar nature to other activities mentioned. The Hon'ble Supreme Court in (1976) 2 SCC 310 in the judgement of State of Kerala Vs. N M Thomas has held that if there is intelligible differentia which separate a group within that class from the rest and that differentia has nexus with the object sought to be achieved, there can be further classification. The relevant portion of the judgement is extracted below:

"83. A classification is reasonable if it includes all persons who are similarly situated with respect to the purpose of the law."

9. Quoting the Regulation 13 of the Supply Code, the Distribution Company has argued that the Commission is empowered to categorise the consumers and not the utility. The said regulation of the MERC Supply Code, 2005 is as under:

13. Classification and Reclassification of Consumers into Tariff Categories:

The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

Actually this regulation empowers the Distribution Company to classify a consumer into an appropriate tariff category already approved by the Commission. It does not allow the Distribution Company to create a new tariff category but casts the responsibility on it to identify a tariff category for a consumer based on its proper interpretation. This work can not be just mechanical involving only matching the words used in the order but may need application of mind to interpret the "letter and spirit" behind the classification.

10. As mentioned in the representation by the complainant, the following consumers from other districts carrying MRI activity are classified under LT-X (Public Services) category by the MSEDCL :

| Name | District | Consumer No. | Date of Supply | Category |
|----------------------------------------|----------|--------------|----------------|----------|
| 1. Eureka Diagnostic & Research Centre | Kolhapur | 266513113315 | 06/03/2012 | LT-XB |
| 2. Unity MRI Centre Pvt. Ltd. | Buldhana | 300310306251 | 26/07/2011 | LT-XB |

11. As such the Forum comes to the conclusion that the activity of MRI Centre has to be considered as "Public Service" and the tariff LT-X (B) should be made applicable to the them as per their nature of the load.
12. The documents submitted by the complainant it is revealed that the application for the change of tariff was done 16/09/2014 for the change of category. As per regulation 4.13 (b) of the MERC Standards of Performance of Distribution 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". Hence the tariff category in this case should be changed from the billing cycle falling after September 2014.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, 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 tariff category of the complainant should be changed to LT X (B) with effect from the billing cycle falling after September 2014. The difference on account of tariff change should be refunded in the ensuing bills.
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 moto 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', BandraKurla 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

(P.J.PAWAR)
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., Dhule.


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