



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
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Date of Grievance : 23/10/2013  
Date of Order : 23/01/2014  
Period Taken : 91 days

**IN THE MATTER OF GRIEVANCE NO.K/E/739/883 OF 2013-14 IN RESPECT OF M/s. VIJAY INDUSTRIES,FLAT NO.42,ATGAON, MUMBAI –NASIK HIGHWAY, ATGAON, TAL-SHAHAPUR, DIST-THANE, REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN ABOUT REFUND OF AMOUNT RECOVERED BY APPLYING WRONG TARIFF CATION FROM JUNE 2007 AS HT IC.**

M/s. Vijay Industries ,  
Flat No.42, Atgaon Industrial Complex,  
Mumbai-Nasik High way, Atgaon,  
Tal. Shahapur, District-Thane.

(Hereinafter referred  
to as consumer)

Versus

Maharashtra State Electricity Distribution

Company Limited through its

(Hereinafter referred as Licencee)

Suptd. Enggineer Kalyan Circle-II,Kalyan,

Appearance :- For Consumer - Shri Mantri, Consumer Representative

For Licensee - N.B.Khan Executive Engg. And Nodal Officer

(Per Shri. Sadashiv S. Deshmukh, Chairperson)

1] This Consumer Grievance Redressal Forum has been established under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers. The regulation has been made by the Maharashtra Electricity Regulatory Commission vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, 2003. (36 of 2003).

2] In this matter the papers contending above grievances were sent by the forum vide letter No. EE/CGRF/K.0465 dated 25/10/2013 to the Nodal Officer of

Licensee. In response, the Officers of the licensee attended and filed reply on 07/12/2013.

3] We heard both sides at times. During hearing, consumer is represented by representative Mr. Mantri and for Licensee Nodal Officer Shri Khan. We have gone through the grievance application, reply filed by the Officers of licensee. On the basis of arguments advanced and contentions raised by both the sides, following factual aspects are disclosed:

a] Admittedly consumer is having supply to its industry from 20/12/1996 Consumer is assessed as per tariff applicable issuing bills regularly till Jun 2007 and those bills are already paid.

b] Consumer after June 2007, charged as HT-IC that aspect is now challenged contending that in fact consumer ought to have been shown as HT IN and charged accordingly but, as supply given to the consumer was not continuous. As per tariff order 65/2006 dated 18/7/2007, though consumer has not specifically sought or demanded continuous supply from June 2007 but Licensee shown consumer as HT IC and hence amount is recovered which is at higher side. Its recovery is sought.

c] It is contended that right from beginning supply was available to the consumer and as per the prevailing tariff, consumer was charged as a industry. But, orders are passed by Hon'ble MERC in case 54/2005 on 20/10/2006, wherein tariff was determined for financial year 2006-07, clubbing of previous categories and introducing tariff as per process in the industry having supply. Present consumer was having continuous process and it is dealt accordingly. But further, in the case No. 61/2006 Hon'ble MERC passed tariff order for the year 2007-08 and in the said order mode is changed from process based Industry to supply given to industry on express feeder, exercising continuous supply. In the tariff order under the heading of 'HT Industrial Consumer categorizations' details are specified and clarified how the tariffs are simplified. Last portion of that paragraph reads as under:-

*'Hence the commission has simplified the terrific categories in the case of industry,. And 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. This has become necessary in view of the prevailing uncertainty and absence of clarity as regards certifications of industry as 'continuous ' by the relevant authorities.'*

Accordingly, this clarification makes it clear that by introducing categorizations HT continuous (HT IC) and HT non continuous (HT IN), previous categorization will not remain. More important thing is deeming provision introduced in it, in case of consumers having continuous supply intends to continue it has to demand continuous supply if there is no such demand than it is to be deemed as non-continuous supply. Accordingly, exercising the option is for opting for continuous supply. It is contended that consumer has not exercised any such option. However, in the bills categorization is continued as HTIC instead of HT IN and consumer is charged at a higher side and its refund is sought from June 2007.

d] It is contended by the consumer that though consumer applied to the Officers and IGRC on 25/3/2013, grievance is not redressed in its favour IGRC passed order on 31/5/2013. Hence this complaint is presented on 23/10/2013.

e] It is contended on behalf of licensee that claim of consumer is barred as consumer failed to approached this Forum within 60 days from the date of order of IGRC hence it be rejected.

f] Though not pleaded, an attempt is done on behalf of licensee, contending that this grievance is not filed within two years of the cause of action. Hence grievance filed before this Forum is barred by limitation.

g] It is contended that as per the tariff order in case No.19/2012 dated 16/8/2012, consumer was required to exercise the option for converting to continuous

or non-continuous within one month of the order. But it is not exercised by consumer. Hence conversion sought cannot be accepted.

h] It is further contended that consumer had already approached the licensee vide letter dated 29/8/3013 for change of category i.e. from continuous to non continuous, it is being pursued with the Hon'ble Chief Engg. Commercial and it is being dealt sympathetically. Accordingly, it is contended that officers of Licensee will act as per the directions of Chief Engineer.

4] In this matter we are required to address the issue of limitation raised by licensee. This aspect of limitation is to be considered in the light of MERC Regulation 2006. As per the said Regulation, if, any matter is taken to IGRC , IGRC to decide it within 60 days. If, it is not decided within 60 days consumer can approach this Forum. Even order of IGRC if passed, can also be brought before the Forum by filing grievance application, challenging its correctness. There is no specific provision which specifies period of limitation for approaching Forum within 60 days of the order of IGRC. If, at all such limitation could have been thought proper and introduce in the regulation, it could have been totally clear. However, from regulation, it is seen that orders of CGRF can be taken to Hon'ble ombudsman by filing representation and in that case period of limitation is prescribed in Clause No.17.2. Accordingly, we find there is no specific provision of 60 days bar to challenge the order of IGRC in this Forum. Officers of licensee were not able to lay hand on any other provision in support of the contention that as this grievance is submitted after 60days of the order of IGRC as stated therein, this grievance cannot be entertained. Accordingly, we find there is no force in the objection raised.

5] In continuation of above aspect of limitation an unsuccessful attempt is made to contend that this grievance covers the period from June 2007 and hence, this forum cannot deal the matter when cause of action is prior to two years. In this regard, it is seen that consumer had approached this Forum after the order of IGRC within two

years of the order and as per the regulations this Forum can admit such grievances if brought before the Forum within two years. Regulation Clause No.6.6 speaks about it. It is just necessary to mention that consumer can approach this Forum within two years of cause of action, it may be even without approaching IGRC or within two years of the order of IGRC. There is a provision for approaching the Forum directly and in that case cause of action is to be considered, if it is within two years, directly . But, if matter is coming after the decision of IGRC than it should be within two years of the date of order of IGRC. This legal position is totally clarified by our Hon'ble High Court in the case M/s. Hindustan Petroleum V/s. Mah. State Electricity Distribution Co. Ltd. in Writ Petition No.9455/2011 decided on 19/1/2012. In Para 13 Hon'ble Lordships made this position clear . Hence we find no force in this second limb of argument.

As per MERC order in Case No. 54/2005, towards determination of tariff for financial year 2006/07 dated 20/10/2006. MERC considered change in tariff categories/slabs. It considered existing consumer categories as HTP-I (BMR-PMR) and HTP-II Industries (non BMR/PMR) and noted that said category was on the basis of geographical location , but the commission for the said financial year 2006-07 combined those two into one category i.e. HT-I. It was based on nature of industry, whether it is required to be run continuously i.e. uninterrupted or non-continuous industry. Accordingly, on the basis of continuous process consumer who were to take that continuous supply were required to produce from the concerned Government Authorities, certificate about continuous process in the industry and others who were not under that category, they were not continuous. Accordingly, those categories were devised as HT-I continuous (HT-IC) and HT-I non-continuous (HT.IN).

Aforesaid classification was further considered in tariff order for the year 2007-08 i.e. case No.65/2006,decided by MERC on 18/5/2007. In the said order, MERC considered the categorization based on the nature of industry and further noted that said order i.e. 54/2005 was reviewed in case No. 59/2006. Consumers' were given opportunity to approach the Industrial Department of the Government and to seek appropriate certification about continuous industry and time limit was given. However, Commission received

grievances thereafter from various parties i.e. industrial consumers, that they were not able to take certification from the Industrial Department. Though, Government also issued resolution on 4/4/2007 empowering all General Managers of District Industries Centers to certify the nature of continuous industries, however, there was no any positive result of certification. Ultimately, in the case No.65/2006 vide order dated 18/5/2007, MERC again revised the tariff pertaining to HT Industry. The said observation is as under:

*'Hence the commission has simplified the tariff categories in the case of industry, and only HT industries connected on express feeders and demanding continuous supply, will be deemed as HT continuous industry and given continuous supply, filed all other HT industrial, consumers will be deemed as HT non-continuous industries. This has become necessary, in view of the prevailing un-surrounded and absence to clarify as regard certification of industries as on continuous by relevant authorities.*

This order brought into force from May 2007.

Accordingly, now it is seen that prior to 2006-07, categories were HTP-I, HTP-II, for the year 2006-07, those changed into HT-IC and HT-IN based on process in the industries. In review case No. 59/06, time was granted to some industries to have their categorization producing certificate from Industrial Department of the Government. However, for the year 2007-08 in tariff order 65/2006 dated 18/5/2007, said category reconsidered and HT-IC and HT-IN are introduced on the basis of supply given on continuously on express feeder and otherwise. Accordingly, criteria of supply of 24 hours on express feeder that too on exercising of option by concerned Industry was primarily considered.

After the tariff order in 65/2006 for year 2007-08 category of HT-I continuous and HT- I non-continuous, continued. However, Review Petition bearing No. 44/2008 was filed by the Licencee, which is decided on 12/9/2008. It was for seeking clarification. In the said order, clarification was given that HT-IC continuous is devised, considering the benefit of load, relief that could be achieved. Accordingly, in the said order direction was given as under: 'However, it is clarified that the consumer getting supply of express feeder may exercise his choice between continuous and non-continuous supply only once in the year within first month after issue of the tariff order for relevant tariff period. In the present case, consumer may be given one month time from the date of issue of this order, for exercising

his choice. In case, said choice is not exercised within specified period, then existing categorization will be continued.

This order makes it clear that option was given for the persons who are on express feeder getting continuous supply. However, the matter before this Forum of the present consumer is peculiar one. Admittedly, supply is not on express feeder. Supply is not continuously available to the present consumer. Initially, as stated above, consumer was governed by the category of continuous, on the basis of process in the industry. That period is from 1/10/2006 to 1/5/2007 per the tariff for the year 2007-08, vide order in case No. 65/2006 dated 18/5/2006 with effect from 1/5/2007, tariff was applicable as continuous only wherein supply was available on express feeder continuously for 24 hours. However, as the present consumer was not on express feeder, supply was not available continuously, it ought not to have been continued as consumer having benefit of continuous supply and treating it HT-IC, from 1/6/2007, though in the tariff order 2008-09 clarification is given, as sought by Licensee, there is no any change, but position is just reiterated.

In view of aforesaid factual aspect, it is clear that consumer with others in group of 16-17 was not on the express feeder, supply was not available continuously, though for one year consumer was taken in the category of HT continuous, it was on the basis of process of industry. But the said category again revised in the year 2007-08 with effect from 1/5/2007 and HT-IC, for that period, was, for supply available to the industry on express feeder continuously for 24 hours. However, the present consumer is not on express feeder and hence, there is no question that it is to seek any option. Accordingly, aspect of exercising option, by the consumer is not required. Though consumer has further sought changing the category, it is unnecessary as it is not on express feeder.

Accordingly it is to be considered whether it is to be treated as HT-1N from June 2007 and it ought to have been done by Licensee itself suo moto. Whether it was necessary on the part of consumer to seek any change by exercising option within one month from the date of order in case No.72/2007 or in case No. 44/2008.

We find the order of MERC 65/2006 dated 18/5/2007 is clear. In the said order deeming provision is made and in the light of said deeming provision, Licensee was to act. Deeming provision was of the nature that if, at all, consumer was having supply under the

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category of continuous prior to that date on the basis of process in the Industry and that after the said order if he was intending to have a continuous supply i.e. uninterrupted on express feeder then he was to exercise option, seeking continuous supply, and if no such option is exercised then automatically as per deeming provision, supply was to be treated as not continuous and it will be HT-1N. This could have been consistently carried forward for further years and hence we find this is a first point at which Officers of Licensee failed to appropriately classify the consumer as HT-1N. However, for their non-action, status of consumer shown as HT-1C and tariff of that nature charged, even after June 2007, which is not correct and the flaw remained at that time, needs to be corrected and needs to be read as HT-1N and hence whatever amount is received classifying as HT-1C required to be returned considering tariff applicable as HT-1N. We find consumer is claiming treatment equal to that of other consumers connected on the said feeder. Example is quoted of **Pentex** case referred above, wherein excess amount is refunded and hence we find same is required to be followed. There is no any other reason to take other view . This grievance is to be allowed.

This matter could not be decided in prescribed time as matter was taken up from time to time till 4<sup>th</sup> January, 2014, on that day Licencee filed one more reply and consumer placed on record copies of bills from April 2007 and others.

Dated: 23/01/2014.

**I agree**

**(Mrs.S.A.Jamdar)**  
**Member**  
**CGRF, Kalyan.**

**(Sadashiv S.Deshmukh)**  
**Chairperson**  
**CGRF, Kalyan.**

**View of Member Secretary –**

I have gone through the above reasoning. I am not agreeing with it. The matter clarified by the Superintending Engineer, Kalyan Circle-II of the Licencee as per letter No.SE/KC-II/Tech/04980 dated 07/12/2013 is correct. Hence, this grievance for refund from June 2007 should not be allowed.

**(Chandrashekher U.Patil)**  
**Member Secretary**  
**CGRF, Kalyan Zone**



Hence ,order by majority.

**ORDER**

Grievance of the consumer is hereby allowed.

Licensee is directed to refund the amount to the consumer which is recovered applying tariff as per HT-1C category, From June 2007, making it limited to HT-1N category and said difference is to be refunded within 60 (Sixty) days from the date of this order.

Interest be paid by Licensee on the said sum as on the date of demand made by consumer with the Licensee i.e. on 29/8/2013 as per RBI Bank rate.

Compliance is to be reported within further 30 days of paying the amount.

**I agree**

**(Mrs.S.A.Jamdar)**  
**Member**  
**CGRF, Kalyan.**

**(Sadashiv S.Deshmukh)**  
**Chairperson**  
**CGRF,Kalyan.**

**Note:-**

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

*“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”*

- b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-

*“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”*

- c) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.