



Consumer Grievance Redressal Forum, Kalyan Zone
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301
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No. K/E/814/ 983 of 2013-14

Date of Grievance: 01/8/2014

Date of order : 19/9/2014

Total days : 50

IN THE MATTER OF THE GRIEVANCE NO. K/E/814/983 OF 2014-15 IN RESPECT OF SHRI ZAKHIR HUSEEN MOHNEEM CHOUDHARY, OPPOSITE KAJAL PETROL PUMP, NETIVLI ROAD, ULHASNAGAR-421 003, DIST. THANE, HRREDRESSAL FORUM KALYAN ZONE, KALYAN S. REGARDING CHANGE OF TARIFF AND RECOVERY RETROSPECTIVELY.....

Shri Zakhir Huseen Mohneem Choudhary,
Opposite Kajal Petrol Pump
Netivali Road,
Ulhasnagar -421 003,
Dist. Thane.

.... (Hereafter referred as Consumer)

(Consumer No.021510964389)

V/s.

Maharashtra State Electricity Distribution
Company Limited through its Additional
Executive Engineer, Sub-Divn-I,
Ulhasnagar -3

.... (Hereinafter referred as Licencee)

Appearance for Consumer– Shri B.R.Mantri-Consumerr’s Representative.
For Licensee- Shri Shedge-Addl. Executive Engineer,
Shri Joshi – Asst. Accountant

(Per Shri Sadashiv S.Deshmukh, Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as ‘MERC’. This Consumer Grievance Redressal Forum has been established as per the

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notification issued by MERC i.e. “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/3003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations.

2] This grievance is brought before us by consumer on 1/8/2014. Consumer received bill dated 20/6/2014, for Rs.3,71,320/- covering the period from April 2012 to June 2014, assessed applying tariff rate LT-II. It is contended that retrospectively such tariff cannot be recovered. Consumer received letter dated 18/7/2014, for paying said amount within 15 days or to face action of disconnection.

3] In this matter on receiving the grievance, it’s copy along with accompaniments, was sent to the Nodal Officer vide this Office Letter No.EE/CGRF/0293 dated 1/8/2014.

In response to it, Officers of Licencee appeared and filed reply on 26/8/2014 and claimed that bill will be revised from August 2012 to March 2014 instead of charging from April 2012. Further reply given on 16/9/2014 and clarified change of tariff, is, as per the tariff order of MERC in Case No. 19/2012 decided on 16/8/2012.

4] On the basis of the respective contentions both sides made submissions. On it’s basis following factual aspects are disclosed:-

a] Consumer is having industrial supply from 13/7/2011 and charged as per industrial tariff, applying LT-VA.

b] On 20/3/2014 Flying Squad of Licencee inspected consumer’s supply and noted that consumer is required to be charged as per tariff category LT-II as prescribed by MERC in it’s tariff order 19/2012. It further directed the billing authority to charge consumer retrospectively from April 2012 onwards till June 2014.

c] As per the observation of Flying Squad consumer was served with a bill dated 20/6/2014, for Rs.3,71,720/- and it is demanded by issuing further letter on 18/7/2014,

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specifying 15 days time limit for making it known that if it is not paid in specified period supply will be disconnected.

d] Due to said threats of disconnection, consumer approached this Forum. It is the contention of consumer's representative that though LT-II tariff category will be made applicable, but it cannot recover the amount from the day when it is made applicable i.e. from April 2012 or 1/8/2012, it cannot be recovered retrospectively, but prospectively from the date of visit of Flying Squad i.e. 20/3/2014. Towards it, he relied on the order of MERC in Case No. 24/2001 dated 11/2/2003.

e] Licencee in reply came up with a plea that said bill will be reconsidered and recovery will be done from 1st August 2012 onwards only, and not from April 2012. The reliance placed on MERC order is replied observing, it is not applicable to the present case.

5] In view of the aforesaid details, one thing is clear that consumer is having supply, initially it was provided under the category of Industrial supply, bills were issued which were paid by consumer. But as per the tariff order of MERC 19/2012 dated 16/8/2012, separate category is evolved for the supply given to the consumer and others, having the peculiar nature of work. Admittedly, consumer is having motor garage and car repairing is carried out therein. As per the aforesaid tariff order new category is of following nature:

**'LT-II, LT- Non Residential or Commercial
Applicability**

[A] 0-20 KW

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 /leaser, pumping in following (but not limited to), places;

e] **Automobile and any other type of repair centers,** Retail Gas Filling Stations, Petrol Pumps and Service Centers including Garages, Tyre Retreading/Vulcanizing units' ---

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Accordingly, there is no dispute that this LT-II category is applicable to the present consumer. The tariff order though passed on 16/8/2012, it is made applicable from 1/8/2012. Hence, in any case, for consumer tariff category cannot be made applicable for a period prior to 1/8/2012. This position is fairly conceded by the Officers of Licencee. Accordingly, bill issued applying said category from April 2012 is not correct, Officers of Licencee made submissions agreeing to correct the claim, applying this tariff from 1/8/2012.

6] Consumers' representative referred to MERC (Supply Code) Regulation Clause 13 and submitted that it is Licencee who is to classify, reclassify consumer as per tariff category approved by MERC. It is submitted that this being the responsibility of Licencee, it is to be done in time and hence if, there is any delay/ flaw in applying the tariff, said tariff arrears cannot be recovered retrospectively. CR submitted that in this matter tariff LT-II is applicable for the work being done by consumer from 1/8/2012 but its recovery from April 2012 cannot be done retrospectively. It should be prospectively, i.e. only from the date of visit of Flying Squad and said date of visit of Flying Squad is 20/3/2014.

For this analogy CR referred to case No. 24/2001 decided by MERC on 11/2/2003. He precisely referred to Para Nos. 23 and 24 of the said order. CR heavily relied on this order of MERC which was pertaining to recovery from MIDC. MIDC was charged at par with Gram Panchyat street light, but subsequently after ten years, that too on the basis of auditor's objection, Licencee perceived that it is to be charged under '**others**' and hence arrears were claimed applying reclassification as '**others**' for ten years. Said action was disputed and taken to Hon'ble MERC, on the ground of retrospective reclassification. While dealing it, Hon'ble MERC observed that there cannot be any such retrospective applicability of reclassification and recovery of dues. More particularly, MERC considered that MIDC was required to recover the amount from its users, such bills if paid it will be hit by bar under Limitation Act and though specifically in Electricity Act, there is no clause of applicability of Limitation Act, but

Limitation Act will be applicable. Generally as per Limitation Act, the period of limitation is of three years for recovery of dues. However, considering the position of MIDC, Hon'ble MERC ruled that recovery if any of such amount should be prospective, from the date when the matter raised by either side and not retrospectively. Accordingly, MERC directed Licencee to issue bills prospectively and not retrospectively. In this light, CR herein contended that this should be made applicable to present consumer. If prospective application of tariff is made applicable, relying on order of MERC there will not be any illegality.

7] On behalf of Licencee, it is submitted in the aforesaid order of MERC relief is granted to the MIDC, considering the ground that recovery was for more than 10 years and that MIDC would not able to recover such charges from it's consumers which is hit by Limitation Act. It is submitted that period of limitation of three years is taken into account by the Hon'ble MERC. It is submitted, in this matter, tariff order is passed on 16/8/2012 making it applicable from 1/8/2012. Till to the date of visit of Flying Squad on 20/3/2014, appropriate tariff as per LT-II was not made applicable and said delay is hardly of 18 months or so. Accordingly, it is contended that Licencee is seeking the recovery of appropriate difference of amount due to applicability of tariff, with effect from 1/8/2012. Accordingly, it is submitted that though bill is raised, seeking arrears from April 2012, it will be reset and will be sought from 1/8/2012.

8] Considering the aforesaid submissions of rival parties, when tariff category LT-II is applicable to the consumer with effect from 1/8/2012, it's recovery in the year 2014 cannot be said to be illegal or hit by limitation. It is nothing but seeking recovery of appropriate arrears of tariff amount which was not charged. This in no way will cause any prejudice to the individual consumer, who had already utilized the energy and required to pay, at the rate prescribed by MERC from 1/8/2012. The reliance placed by Ld. CR on the order of Hon'ble MERC case

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No.24/2001,dated 11/2/2003 is not applicable to the present set of facts. Hence, arguments of Ld. CR cannot be accepted.

9] In view of aforesaid analysis it is clear that consumer can be asked to pay the difference as per the new tariff i.e. LT-II for the period after 1/8/2012. No doubt, said recovery will be for the period of 23 months or so. Consumer's representative made further submission that in case consumer is being directed to pay, from 1/8/2012, the difference of tariff, then he cannot be thrust with the said liability at once in lumpsum for 23 months, but he be provided with 23 equal installments without adding any interest or DPC. He made it clear that even in the original demand there are no such charges added.

In response to it, Officers of Licencee submitted appropriately this Forum can consider, providing relief of installments. Accordingly we find consumer cannot be thrust with the liability abruptly for total period in lumpsum, as the Licencee not performed it's duty and discharged the responsibility in right time which was required to be done from 1/8/2012 . Hence, installments are to be granted for 23 months with equal sum from the total due arrears. Licencee to work out the dues for said period without adding any DPC and/or interest.

10] In view of the above, grievance of the consumer is to be allowed.
Hence the order.

ORDER

1] Grievance of the consumer is hereby allowed.

2] Bill issued by Licencee from April 2012 to June 2014 dated 20/6/2014 for Rs.3,71,320/- is hereby set aside.

Licencee is directed to work out quantum of arrears afresh, applying tariff LT-II from 1/8/2012 onwards, without applying DPC and/or interest on said arrears giving liberty to consumer to pay it in 23 equal installments, commencing from the month of October 2014. Consumer to pay the said installments along with the regular bill for the month without fail.

4] Licencee to submit compliance of above within one month from the date of this order.

Dated: 19/9/2014.

I agree

I agree

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

(Chandrashekhar U.Patil)
Member Secretary
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

- c) 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”

- d) 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.

