

MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.
KONKAN ZONE RATNAGIRI
Consumer Grievances Redressal Forum Ratnagiri

Consumer case No. – 15/2015
Consumer case No. – 14/2015

Date :- 27.07.2015
Date :- 23.07.2015

Karunya Marine Export Pvt.Ltd.
Survey No.42,Hissa No. 1&2
Rahatagar,Peth Killa
Ratnagiri

Complainant

Gadre Marine Export
3298 –A,Mirkarwada,Ratnagiri

Complainant

Superintending Engineer
Maharashtra State Elec.Dist.Co.Ltd.
Ratnagiri

V/S

Opposite Party

Quorum of the Forum

- 1) **Mr. V.R. Kamble**
Member - Secretary
- 2) **Mr. J.P. Biwalkar**
Member

On behalf of consumers

- 1) **Mr. H.B. Tripathi**
(Representative)

On behalf of opposite party

- 1) **Mr. D.V.Mehetre**
Executive Engineer,
Ratnagiri Circle
- 2) **Mr.N.V.Aajagaonkar,**
Additional Executive
Engineer,Flying Squad,
Ratnagiri
- 3) **Mrs. Jyotsna G.Sonone**
Assistant Law Officer,
Ratnagiri
- 4) **Mrs. L.S.Paradkar**
Circle Office,Ratnagiri

Maharashtra State Electricity Regulatory Commission Consumer Grievance Redressal Forum and Ombudsman Regulation 2006 Vide Clause No.8.2

- 1) Since both the complainants have raised similar grievances combined hearing was held on 02.09.2015 when the complainants' single representative and the representatives of opposite party advanced their respective arguments. The facts and documents relied upon are identical. We have therefore decided to club the cases for the purpose of combined order.
- 2) M/s Karunya Marine Export Pvt. Ltd. is a consumer of MSEDCL having electricity supply since 07.02.1977. The consumer No. is 210019006101. The consumer has a cold storage unit for processing, freezing and storage of fish/fish products and marine sea food products. The unit was classified as industrial unit since beginning till February 2015 when the classification was changed by MSEDCL as HT- II- N (commercial) with retrospective effect from 01.08.2012. The consumer was informed by MSEDCL that the supplementary bill would be issued for retrospective recovery. Since the consumer had objection to the change in classification and consequent retrospective recovery, the consumer filed a complaint with IGRC which decided the matter and issued order dated nil, rejecting the complaint. It is against the order of the IGRC that the consumer has filed this complaint with the Forum on 27.07.2015.
- 3) On receipt of a complaint, registered at Sr.No.15/2015, the S.E. Circle Office MSEDCL Ratnagiri was provided with a copy and was asked to submit his say relating to the complaint. The S.E. submitted the detail explanation vide letter no. 4160 dt.04.08.2015.
- 4) a) The hearing was held on 02.09.2015 after serving sufficient notice to both the parties in terms of Regulation No.6.14 of MERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006.
b) Mr. H.B. Tripathi represented the consumer and Shri. D.V. Mehetre, the Executive Engineer Circle Office, MSEDCL, along with Shri. N.V. Ajagaonkar Additional Executive Engineer Flying Squad, Mrs. J.G. Sonone and Mrs. L.S. Paradkar , were present on behalf of MSEDCL; the opposite party (O.P.)
- 5) a) Mr. H.B. Tripathi, the representative of the consumer stated that the activity run by the consumer includes cold storage, processing, freezing and storage of fish and fish / marine food products. Besides Ice making is also undertaken. Electricity supply has been obtained with connected load of 655 KW. With 530 KVA. This is HT supply obtained on 07.02.1977. Since beginning the unit was categorised as 'Industrial' unit and industrial tariff HT -1- N was applied till January 2015. However, though the charges for electricity were paid without default the tariff was changed by MSEDCL from February 2015 and bills were raised @ HT-II (Commercial) tariff, without notice. The MSEDCL also informed that this change in classification from 'Industrial' to 'Commercial' is with effect from 01.08.2012 and supplementary bill for retrospective arrears would be raised.

- b) Mr. Tripathi further stated that prior to MERC order dt. 29.09.2006 two tariffs i.e. HT- I Industrial and HT -II Industry were applicable and all Industrial units were billed according to the applicable tariff. In the order dt.29.09.2006 in case no.54 of 2005 HT – I and HT –II industries were combined. HT- I - P was subdivided into continuous process industry and non continuous process industry. The tariff order dt. 07.02.2007 in case no. 59 of 2006 clarified the above subcategories. In terms of MERC order dt. 27.04.2007 in case of 65/2006 the tariff applicable to the cold storage was HT- P- I for continuous process Industry on express feeder and non continuous process industry on non express feeder.
- c) Referring to Government of Maharashtra GR. Dt.04.04.2007 and MSEDCL circular no. 52 Mr. Tripathi stated that the activity of cold storage and refrigeration for manufacturing of ice, plate freezing, chilling etc. are treated as continuous process industry and billed as such at HT-P-I tariff.
- d) Mr. Tripathi further added that according to tariff orders dt. 31.05.2008 and 20.06.2008 in case no.72 of 2007 new tariff i.e. HT- II (Commercial) was made applicable for cold storage unit and HT- I for continuous and non continuous process Industry. In December 2008, without obtaining ruling from MSEDCL, tariff for cold storage was changed from Industrial to Commercial in some places. According to competent Authority's circular no.PR- 3/Tariff/7900 dt. 17.03.2009 SSI Registration, factory License were to be relied upon. According to Tariff order dt.07.08.2009 in Case No. 116 of 2008 HT- V tariff was applicable for precooling plants and cold storage units for agricultural produce and HT- I for others. Further in the case of order dt.12.09.2010 the Commission clarified that HT- V tariff was applicable to all cold storages irrespective of ownership and HT-I for others.
- e) Mr. Tripathi stated that MERC order dt. 16.08.2012 effective from 01.08.2012 include aquaculture, sericulture, fisheries, cattle - breeding, farms in commercial categories, while proposal for including cold storage and pre-cooling plants for preservation of agricultural products under commercial category was rejected by MERC. The ice manufacturing etc. was neither proposed nor discussed under HT-II. The petition of MSEDCL was silent about applicability of HT –II (Commercial) tariff to cold storage and this point was not at all discussed in the entire process of tariff determination.
- f) Mr. Tripathi relied on Oxford dictionary meaning of the word 'Fisheries' which means breeding and rearing of fish.
- g) Mr. Tripathi said the categorization was changed unilaterally by MSEDCL in February 2015 from HT-I Industry to HT-II (Commercial). The consumer's activity is in Industrial premises and heavy power driven machinery is used for processing. The HT-II (Commercial). Tariff is applicable for use of electricity in non- residential non - industrial premises.
- h) Mr. Tripathi further argued that at the time of request for electricity supply form –A (Industrial Connection) along with other documents was

submitted. Mr. Tripathi showed with permission of Forum, a sample of fresh fish and product, to demonstrate that there is a transformation from fresh fish to final product sent to the market. He vehemently argued that MSEDCL has misinterpreted the MERC order and the dispute raised by consumer was decided by MSEDCL itself though it should have been referred to third party. Instead, MSEDCL could have sought clarification from MERC particularly in the view of the fact that the matter relates to consumers paying huge revenue to it.

- i) Before concluding Mr. Tripathi stated that the Association of Sea Food Exporters has already submitted a petition relating to identical issues to MERC and its case no.42 is pending before MERC and present consumer is a member of the Association.
 - j) Mr. Tripathi prayed for relief as stated is the complaint in form 'A'.
- 6) Mrs. Sonone advanced argument on behalf of MSEDCL (O.P.) and stated that
- 1) It was true that commercial tariff was made applicable to the complainant From February 2015.
 - 2) So far supplementary bill for retrospective recovery has not been issued and hence there is no cause of action for the consumer.
 - 3) The Association of which the complainant consumer is a member, has already filed its petition with MERC and it is pending before MERC. The said petition pertains to same issues raised before this Forum. In view of these facts the grievance cannot be entertained by the Forum.
 - 4) Though the petition has been admitted, MERC has not granted any stay in this matter.
 - 5) The Electricity Ombudsman has also rejected appeal of other consumer for the reason that identical issues are pending before MERC.
 - 6) There is no intention to harass the consumer. MSEDCL has merely Implemented the order of MERC and upon fresh order of MERC the Classification of consumer has been changed as 'Industry' with effect from 01.06.2015
 - 7) Mrs. Sonone added that Director (Operation) provided an opportunity to the Association to be heard and Mr. Tripathi was present at the time of hearing. She requested that complaint be rejected.
Mr. Ajgaonakar the Additional Executive Engineer clarified that detail report of inspection of various units was sent to H.O. alongwith flow- chart of the activity and the decision was taken at appropriate level in H.O., It is not correct to say that 'Vigilance' had an upper hand.
- 7) Heard both the complainant and the opposite party. The following issues arise for consideration of Forum.
- A) i) Whether Forum has jurisdiction of entertain the grievance when Complainant's identical grievance s are pending before Maharashtra Electricity Regulatory Commission (the Commission, in short)

- ii) Whether MSEDCL be restrained from issuing supplementary bill with Retrospective effect from August 2012
- iii) Whether HT-I tariff Industrial is applicable to the consumer
- iv) Whether recovery at HT-II (Commercial) tariff is proper in case of this Consumer.

B) It is on record that the complainant's Association i.e. The Sea Food Exporters Association of India has filed the petition No. 42 of 2015 before the Commission and has raised similar issues, therein. In the said petition the Association has prayed as under.

- 'a) The Petitioner Association therefore prays that a this Hon'ble Commission be pleased to hold the Respondent, MSEDCL guilty of disobedience of the orders and directions passed by this Hon'ble Commission relating to retrospectively.*
- b) This Hon'ble Commission be pleased to hold the Respondent liable for disobedience of the tariff order dated 16.08.2012 by deliberately and willfully ignoring the term "non Industrial Premises" in the tariff Entry HT-II Commercial and thereby disobeying the said tariff order.*
- c) For declaration that the Respondent has initiated tariff categorization nearly one and the half /two years (1 ½ /2 years)post the passing of the tariff order dated 16.08.2012 by willfully and deliberately initiating tariff categorization with visits from Vigilance Department/ Flying Squad of the Respondent*
- d) The Respondent be directed to purge the contempt / willfully disobedience of the tariff order dated 16.08.2012. by withdrawing all actions initiated including all bills issued by re-categorizing the Industry /Factories of the Members of the Petitioner Association under the tariff category /tariff head HT- II Commercial.*
- e) Directions be issued to the Respondent, MSEDCL to ensure proper categorization upon passing of tariff order within a reasonable time as stipulated by the Commission to ensure that the Respondent, MSEDCL are not harassed and subjected to undue hardship.*
- f) Pending hearing and final disposal of the case all the bills including supplementary bills issued by the Respondent, MSEDCL to the extent of re-categorization of the Factories/industries of the Members of the petitioner Association into HT-II Commercial be stayed and the Respondent, MSEDCL and its officials/agents be restrained from taking any coercive step against members of the Petitioner Association in respect of the willful and deliberate recategorization of the industry/ Factory of the Members of the petitioner Association into HT- II Commercial;*
- g) Appropriate refunds in respect of the differential amounts towards the tariff categorization HT Commercial claimed by the MSEDCL from the Members of the petitioner Association be granted with interest at the rate of 12%*
- h) The Hon'ble Commission be pleased to order interim and ad-interim reliefs in term of prayers (f) above;'*

Though the petition has been filed by the Association, the list of members annexed to the petition as exhibit includes the name of complainant@ serial No.22

The reliefs sought by the complainant consumer from this Forum are as under

- ‘ i) MSEDCL be directed to withdraw the notice letter dt. towards recovery of arrears of past period.**
- ii) MSEDCL be restrained to issue supplementary bill for the past period with retrospective effect from August 2012 to January 2015 after considering orders of Hon. MERC, Hon. APTEL and Hon. MERC Ombudsman in similar cases.**
- iii) MSEDCL be directed to apply correct tariff HT-I Industrial to our unit as per MERC tariff order only.**
- iv) MSEDCL to refund the excess amount recovered due to illegal change of tariff applied (HT-II N Commercial instead of HT-I industrial) along with interest.’**

The Prayer at d-f and g covers all the reliefs mentioned above.

- c) The Regulation No.6.7 (d) of The MERC (CGRF and Electricity Ombudsman) Regulation 2006 reads as under

The Forum shall not entertain a Grievance:

6.7 (d) *‘Where a representation by the consumer, in respect of the same grievance, is pending in any proceeding before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal arbitrator or authority.’*

Since grievances are already pending before the Commission this Regulation 6.7 (d) undoubtedly bars the jurisdiction of this Forum to entertain the grievance. Therefore, the grievance of the consumer cannot be entertained by this Forum and hence issue at 7 A(i) is answered in the Negative.

- 8) It is a fact that though the letter no SE/RC/ACCTS/1335 dt.11.03.2015 about retrospective recovery has been sent by MSEDCL to the consumer it is not a notice under the provisions of Electricity Act 2003 but only intimation. Secondly as confirmed by Mrs. Sonone, during hearing supplementary bill has not been raised so far. Hence we are inclined to agree with Opposite Party’s argument that there is no cause of action at this stage. No directions are considered necessary in this behalf. Additionally we observe that No.9 (d) under prayers to the Commission reads as under.

‘ The respondent be directed to purge contempt / willfully disobedience of the tariff order dt.16.08.2012 by withdrawing all actions initiated including all bills issued by recategorising the industry /factories of the members of the petitioner association under the tariff category/head HT –II commercial.’

The text..... **Withdrawing all actions including all bills** is noteworthy. Thus it is beyond the jurisdiction of this Forum to consider the issues at 7A(ii to iv) and hence it is not necessary to go into the merits thereof .

9) The complainant consumer has submitted a letter dt.02.09.2015 at the time of hearing and has requested for direction to MSEDCL not to disconnect power supply till the final decision of the Commission. The section 56(1) of Electricity Act 2003 provides for mandatory notice of 15 clear days before disconnection. It is not on record that such a notice has been served by MSEDCL nor has it threatened to disconnect the supply. As such this request cannot be considered at this stage.

The consumer may, if necessary, approach the Forum afresh if notice of disconnection is issued by MSEDCL.

Resultantly no, relief can be granted to the complainant and the complaint deserves to be rejected.

Consumer Complaint Number 14 dt.23.07.2015 in case of M/s Gadre Marine Export V/S Superintending Engineer, Ratnagiri Circle, Mahavitaran, Ratnagiri :

The consumer is having electricity supply since 03.03.1878. The consumer number is 210019006136 with sanctioned load and demand of 874 KW and 938 KVA respectively. The consumer has a cold storage for processing, freeizing and storage of fish/fish product and marine food product. The classification of the units since beginning was 'industrial' and was changed by MSEDCL as 'commercial' without notice with retrospective effect from 01.08.2012. The billing at HT-II (Commercial) tariff was done. MSEDCL also intimated that supplementary bill for retrospective recovery would be sent separately. The consumer has objection to reclassification as 'commercial' from 'Industrial' and also to supplementary bill for retrospective recovery. The complaint with IGRC was rejected and hence this appeal.

The complaint was registered at sr.no. 14/2015. The combined hearing was held on 02.09.2015 alongwith another complaint of Karunya Marine Export Pvt.Ltd. having identical issues and facts.

The written and oral submissions in both the cases are similar and made by one and the same representative Mr. H.B.Tripathi. Both the complainants are the members of the Sea Food Exporters Association of India which has already submitted its petition containing same grievances to MERC and the petitions are pending before the Commission. The representatives of Opposite Party have confirmed that their defense in case no. 14 of 2015 is similar to the one in case no.15 of 2015. Therefore our analysis and decisions stated above in case of M/s Karunya Marine Export Pvt. Ltd. equally hold good in case of Complaint no.14 also.

A copy of this order be kept in the file of case no.14 of 23.07.2015.
In view of above position the Forum proceeds to pass the following

order.

Order

- 1) Consumers' complaint is rejected.
- 2) No order as to cost.
- 3) In case consumers desire to appeal against this order they should file the appeal at the following address.

Secretary,
Electricity OMBUDSMAN,
Maharashtra State Electricity Regulatory Commission,
606/608, Keshava Building,
Bandra Kurla Complex,
Mumbai – 400 051.
Phone No.022 – 2659 2965.

Shri. V.R. Kamble
Ex.Engineer,C.G.R.F.
Konkan Zone

Shri. J.P.Biwalkar
Member,C.G.R.F.
Konkan Zone

Date : 16.09.2015

Place : Ratnagiri