

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

Consumer case No – 77/2011

Date :- 22.03.2011

Mr.Anwar Gulam Husen Patankar.
A/P – Kasba, Tal – Sangmeshwar.
Dist - Ratnagiri.

Complainant

V/S

- 1) **Executive Engineer,**
Maharashtra State Elec.Dist.Co.Ltd.
O&M Division Ratnagiri.
- 2) **Assistant Engineer,**
Sangmeshwar Sub - Division

Opposite Party

Quorum of the Forum

- 1) **Mr. D. S. Jamkhedkar**
Chairman
- 2) **Mr. V.B.Jagtap.**
Secretary Member
- 3) **Mr. N. A. Kulkarni**
Member

On behalf of consumer

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Mr.Anwar Gulam Husen Patankar.
Mr.Jayant P.Biwalkar.

On behalf of opposite party

- 1) **Mr.S.P.Deshpande**
Dy.Ex.Engineer
Ratnagiri Division
- 2) **Mr.U.B.Sonar (A. E.)**
Sangmeshwar Subdivision
- 3) **Mr.K.M.Sathe (U.D.C)**
Sangmeshwar Subdivision

Maharashtra State Electricity Regulatory Commission Consumer Grievance Redressal Forum and Ombudsman Regulation 2003 Vide Clause No.8.2

1. Consumer has approached this Forum with the stay application to the recovery and disconnection based on re-classification of his Electric Supply to the service station.

The case of the consumer runs as follows :-

2. Consumer Anwar Gulam Hussain Patankar runs a service station. According to him he runs it since 1995 and the connection was classified as Industrial connection and he paid the consumption charges accordingly.
3. It is further his case that a notice was served upon him on 11th March 2011 calling upon him to pay Rs.11032.85 as arrears from Aug 2009 on or before 26th March 2011 or to face disconnection. It is on this background he has directly approached this Forum and submitted from A with required documents.
4. A notice was served upon opponent Mahavitaran along with copy of application calling upon it to submit the say. Accordingly opponent has submitted the say on 13th April 2011 and opposed the application.
5. It is submitted by Mahavitaran that the vigilance squad of Mahavitaran had visited the site of applicant and informed the Assistant Engineer, Sub Division Sangmeshwar to charge and recover the arrears based on commercial tariff from the applicant with effect from Aug 2009 to Jan 2011. Accordingly notice was sent to applicant before this Forum. It is submitted that notice is given as per Rules and Regulation, so the complaint be dismissed.
6. On the basis of the rival submission matter has been fixed for hearing on 03.05.2011 and both the parties made their submission.
7. It was vehemently urged by Shri.Biwalkar the power of attorney for the consumer that through the consumer is not challenging the re-classification as commercial consumer and the tariff charges thereafter the consumer is under no-liability to pay the arrears from Aug-2009 and the recovery / demand to that effect be treated as illegal. He submitted that the connection to the service station was initially classified as 'Industrial' and by the aforesaid notice consumer was informed that it was re-classified as commercial and arrears as per changed tariff have been claimed from Aug 2009, which is illegal as no retrospective effect could be given as per direction of MERC and circular no.377, dated 2nd July 2003 issued by Mahavitaran. He submitted that re-classification has been done abruptly and so Mahavitaran is not entitled to the arrears. Reliance was also placed on the provisions of S.56 (1) of Electricity Act to claim the relief.

8. On the other hand, Shri.Deshpande, Dy. Executive Engineer for mahavitaran placed reliance on the Circular no.377 ,dated 2nd July 2003, so also order passed by Hon'ble Ombudsman in Representation No.42/2007 and C.G.R.F Kolhapur in Cons.A.No.100/2010 on 14th Oct 2010. Placing reliance on these documents, he urged that the recovery is perfectly legal and the consumer is liable to pay the arrears claimed under notice, so a submission has been made that the complaint be dismissed. The Jurisdiction to entertain complaint by C.G.R.F. is also challenged.
9. In view of the rival submission, following points arise for our consideration and we have given findings against each of them for the reasons given below.

<u>Points</u>	<u>Findings</u>
1) Whether Forum has Jurisdiction to entertain complaint.	Yes
2) Whether Mahavitaran is entitled to claim arrears from Aug 2009 to Jan 2011.	Yes
3) Whether notice dated 11.03.2011 is legal & proper	No
4) What order	As per final order

Reasons :

Point No.1 :-

10. Though belatedly, a point has been raised on behalf of Mahavitaran that in view of the 3 tier system framed under the Electricity Act and Regulations Framed by MERC, it was not possible for the consumer to directly come to the Forum and he should have first approached IGRC.

In fact, such objection should have been taken at the first blush, but it was not taken. Mahavitaran has submitted itself to the Jurisdiction of Forum and has submitted say to the complaint. Now, at the stage of argument, this objection is forthcoming, which is not proper and legal.

Apart from that, under the Regulations, if the stay to the notice of disconnection is to be claimed then consumer has to approach C.G.R.F. and this exactly gives Jurisdiction to C.G.R.F. to entertain dispute.

In view of this legal position, the Forum is of the considered view that C.G.R.F. has jurisdiction to entertain dispute and the point is answered accordingly in the affirmative.

Point No.2 :-

11. Before going to the rival submissions, let us summarize the admitted facts. It is not in dispute that complainant runs a service station since 1995 and as per the rules or categories prevailing at that time; his connection was classified as Industrial connection. It is also not disputed that as per the orders passed by MERC in case No.116/2008, the electric supply to the service station was re-classified as commercial. The consumer has accepted the re-classification, so also he has no objection to the charges raised from March 2011 onwards.
12. The only point in debate before this Forum is whether Mahavitaran is entitled to recover arrears from Aug 2009. A notice has been issued raising the demand and the bill on 11th March 2011 and as such the arrears claimed from Aug 2009 are perfectly legal so far as provisions of S.56(1) of Electricity Act are concerned. Now the question is whether this demand amounts to claim with retrospective effect.
13. We find that Mahavitaran has made representation to Hon'ble MERC for reclassification of certain categories and revision in tariff and it was numbered as case no 116/2008. We have obtained the copy of the said order from website. The Para 5 of the said order deals with,

5 :- TARIFF PHILOSOPHY AND CATEGORY WISE TARIFFS FOR 2009-2010.

Sub Para 5.1 of the order deals with 'Applicability of Revised Tariffs' and the relevant portion runs as follows.

The revised tariffs will be applicable from August 1,2009. In cases, where there is a billing cycle difference for a consumer with respect to the date of applicability of the revised tariffs, then the revised tariff should be made applicable on a pro-rata basis for the consumption. The bills for the respective periods as per existing tariff and revised tariffs shall be calculated based on the pro-rata consumption(units consumed during respective period arrived at on the basis of average unit consumption per day multiplied by number of days in the respective period falling under the billing cycle.

So the order so far as it relates to revised tariffs based on category is concerned, the same has been given effect from 1st Aug 2009 and as such Mahavitaran is certainly entitled to recover arrears from Aug.2009.

14. It was urged by Shri.Bivalkar that category was changed abruptly which is prohibited by circular no.377. It is to be noted that this circular is of 2nd July 2003 and a procedure was clarified while changing the category. It is on this backdrop a representation was made by Mahavitaran to MERC for re-classifying certain categories and the permission has been given by MERC to reclassify the categories and to revise the tariff and it has been directed in Para 5.1 of the said order that effective date shall be 1st Aug 2009 . It is on this backdrop neither the re-classification can be called as abrupt nor the demand can be treated as demand with retrospective effect. If the claim would have been for the period prior to 1st Aug 2009 then the same could have been termed as claim with retrospective effect. So there is no substance in the submission that the bill raised is illegal.
15. The order passed by Hon'ble Ombudsman relates to the interpretation of S.56 of Electricity Act. In the case before us, we have already observed and held that demand is perfectly legal & is in keeping with S.56 of Electricity Act. It cannot be said that S.56 (2) of Electricity Act has any role to play in the matter before us, as claim is in limitation.
16. With the aforesaid observations and reasoning, we have come to the conclusion that Mahavitaran is entitled to claim arrears from Aug 2009 to Jan 2011. Hence the point is answered in the affirmative.

Point No.3 :-

17. In view of our finding given to point no.1, the demand must be said to be legal and valid. However the notice before disconnection must be as per S.56(1) of Electricity Act, first it should be 15 days notice and secondly a specific demand of sum due should be made in that notice and bill of the sum due should be raised. If we go through the notice given by Mahavitaran then we find that a 'Quotation' was sent demanding the amount and not the bill. No details of the arrears have been communicated. So it cannot be said to be legal notice envisaged under 5.56(1) of Electricity Act. Hence the Forum finds that notice sent to consumer is not legal & proper. Mahavitaran is under obligation to issue fresh notice mentioning sum due, with details and the bill be raised to that effect so the point is answered in the negative.
18. Point No.3 – In view of the aforesaid findings, the complaint application deserves rejection Hence order.

ORDER

- 1. The application of the consumer stands rejected, with no order as to costs**

- 2. The interim stay order passed by this Forum on 22.03.2011 stands vacated. The notice dated 11th March 2011 be called back. The Mahavitaran shall issue fresh notice 5.56(1) of Electricity Act raising the bill of the sum due, to the consumer and then shall recover amount accruing to law.**

- 3. In case consumer desires to appeal against this order he should file his appeal to the following addresses.**

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

**D.S.Jamkhedkar
Chairman ,C.G.R.F
Konkan Zone**

**V.B.Jagtap
Ex.Engineer,C.G.R.F
Konkan Zone**

**N.A.Kulkarni
Member,C.G.R.F
Konkan Zone**

**Date : 15.06.2011
Place : Ratnagiri**