

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

Consumer case No –45/2009

Date: 10/09/2009

1) Sarpanch Grampanchayat Nachane
At post Nachane, Tal –Ratnagiri,
Dist. Ratnagiri.

Complainant

V/S

1) Supdt. Engineer,
Maharashtra State Electricity Dist.
Company Ltd., Ratnagiri Circle,
Tal.Dist.-Ratnagiri

Opposite Party

Quorum of the Forum

- 1) Mr. D. S. Jamkhedkar
Chairman
- 2) Mr. J. L. Sonavane
Secretary member
- 3) Mr. N. A. Kulkarni
Member

On behalf of consumer

- 1) **Shri.Santosh P.Savant
Secretary, Gram-Panchayat
Nachane.**
- 2) **Shri. Sanjay J. Ghosale
UDC, Gram-panchayat,
Nachane.**

On behalf of opposite party

- 1) **Shri. S. V. Kshirsagar
Ex. Engineer(administration)
circle office, Ratnagiri.**
- 2) **Shri. B.G. Boargoankar
Assistant Accountant
circle office, Ratnagiri**

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

The H.T. consumer having No.210019009790 approached to this Forum under the prescribed format "A" and the grievances are filed along with all the particulars.

Upon filing this, Forum issued a letter vide no. 555 dated 16/09/2009 calling for the explanation and such other particulars related to the said grievances. The office of S.E. Ratnagiri circle, Ratnagiri failed to furnish the particulars and the explanation till 3rd October, 2009 and hence in terms of clause No.6.9 of MERC regulation notice was issued for personal hearing on 3rd Oct. 09 and the case is heard on 14th Oct., 2009.

The particulars of consumer grievances are as follows: The Grampanchayat Nachane Tal & Dist. Ratnagiri holding the Consumer No.210019009790 is having the category of High Tension Public Water Supply Scheme. The consumer is providing water supply to the rural area. The said consumer is also having special features about this scheme and there are certain concessions granted by Govt. of Maharashtra. The said Grampanchayat is an Executing body and the nature is that of an agency.

The Mahavitran issued them supplementary bills for the period from Oct.2006 to May 2008 in Sept.2009, the said supplementary bills were not acceptable to the consumer and it objected for such Bills. According to the consumer, the supplementary bills are not correct and should be withdrawn. The further objection is about the category i.e. High Tension Industrial, this also has been objected and submitted that water is supplied to the residential premises in rural area and tariff should have been applied accordingly as consumer is not profiteering.

Under the above circumstances consumer demanded that the amounts under supplementary bills for the period from Oct 06 to May 2008 and additional bill from June 08 to March 09 should not be recovered and the tariff pattern should also be amended in terms of residential category instead of High-Tension Industrial for charging the Elect. Consumption.

During, the course of hearing on 14th Oct 2009, parties present, advanced their argument. The consumer Nachane Grampanchayat submitted that since the date of supply the category is Industrial instead of residential. The grampanchayat is acting as agency for the distribution of water supply. The scheme belongs to Govt. of Maharashtra and the Grampanchayat is only executing the part of agreement in the interest of rural community at large. The bill for the period from 2006 till April 09 for the backlog period is against the basic principles and contrary to the basic provisions of law. The bills amounting to Rs.237362/- and Rs.96,442/- issued for earlier period are not correct and should not have been issued. It was further submitted that the said amount should be waived and the category should be changed to Residential instead of Industrial. The electricity is used for the exclusive purpose of distribution of water and the engagement is for the purpose of water supply scheme. No commercial income is generated nor electricity is used for profiteering. Thus, in terms of rules also Tariff categories should also be based on the purpose of usage of supply by such consumer and this should be followed in our case, added by the consumer.

As against the letter issued by Forum on 16/09/2009 for filing the submission within 10 days, the representative of Mahavitran filed the written submission bearing number 5329 dated 09/10/2009 during the course of hearing only and could not justify the delay in filing the say. The copy of the say was handed over to the consumer. The Assistant Accountant H.T.billing Mr.Borgaonkar on behalf of Mahavitran explained the factual position of the case and admitted that the amended Tariff bills for recovery i.e. for the previous period are issued to the consumer vide bill dated 13-04-2009 amounting to Rs.96,442/- due to the revision in Tariff and the raised bill is a difference for the period from July 08 to March 09. It was further contended that for the same reason another

supplementary bill dated 04/09/2009 is issued amounting to Rs.2, 37,363/- due to Govt. Audit enquiry for the period from October 06 to April 07 and May 07 to May 08. The representative further clarified that consequent upon the order of MERC from dt.01/12/2003, 01/10/2006 and from 01/05/2007 the same were not done in time and even the withdrawal of concession was also not communicated to concerned consumer. The representative could not clarify the exact billing position and he could not justify the bills raised in respect of earlier period. The copies of Tariff orders were not made available. He further argued as to why the notice was issued for disconnection of supply. He also added that Mahavitran is willing to grant the installment facility so as to square up the arrears arose due to issue of supplementary bills. He further added that audit compliance is still pending and the action of Mahavitran is in accordance with the Tariff orders issued by MERC in this regard. No other point was argued and upon discussion during hearing and in the absence of relevant particulars time was asked by Mahavitran for 15 days and considering the importance of the case this was allowed up to 25th October,09 for which consumer also consented.

Upon verifying the relevant record, documents, various circulars and such other particulars and considering the arguments advanced by both the parties, the Forum is of the opinion that for a Public Water Scheme, issue of supplementary bill that to for a period from Oct.2006 to May 2008 and for the period from June 2008 to March 2009 is a violation on the part of Mahavitran. As far as the relevant law is concerned the basic issue of Tariff and charging pattern is well settled. The Regulatory Commission is empowered and accordingly categories of the consumers are decided and on the basis of purpose of usage of supply, classification is made and rates are charged accordingly. The hon'ble Regulatory Commission issued the Tariff orders effective from 01.10.2003, 01.10.2006 and also from 01.05.2007. These Tariff orders are made available timely and under such circumstances, the Mahavitran was under obligation to recover the charges with immediate effect and Forum do not find any reason as to why this has been kept pending for more than four years and how it is justified to issue the supplementary bills in the year 2009. As regards the issue of supplementary bills are concerned the basis adopted for one bill is Tariff orders of MERC and for another bill the audit enquiry of Govt. Audit party vide enquiry No.7 dated 10-06-2009. It was brought to the notice by the Audit party about the withdrawal of concession. It was further suggested by it that the supplementary bill should be issued and the Amount recovered if any should also be informed to audit party. During the course of hearing, it was confirmed by the Mahavitran that no further steps are initiated as regards compliance of audit is concerned. It is also observed from the Tariff orders vide case No.65 of 2006 that the HTIV-Public Water works is classified and while deciding best Tariff, the said Tariff is made applicable for all High Tension Public Water Supply Scheme and this is further divided into express feeders and Non express feeders and accordingly demand as well as energy

charges are decided. It is the established fact that once Tariffs orders are finally issued by MERC, Mahavitrans either has to accept or challenge them before appellate authority. However, it is not evident nor rules are framed as regards the effective date. It is therefore, concluded by this Forum that Mahavitrans is not empowered nor there is provision that the recovery for the year 2006 should be made applicable in the year 2009 that to when the audit party specifically objected and issued further directions in this regard. It is also observed that there are serious lapses on the part of Mahavitrans and in fact for High Tension consumers in whose case revenue of Lakhs of rupees involved, Mahavitrans has not at all bothered. It is further revealed that even the withdrawal of concession was not at all communicated to the concern consumer.

It was also noticed that apart from relevant law, the clause No.13 of the Electricity Supply Code and other Conditions of supply also provides that the distribution licensee may classify or reclassify a consumer into various approved Tariff categories by commission 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. Thus, consequent upon the issue of orders, Mahavitrans would have settled the issue or should have amended and the amended Tariff ought to have been recovered. This has not been done in this case. Absolute negligence resulted into the further harassment to the consumer for no fault on his part. The public water scheme is framed by state Govt. and the Grampanchayat of the village area is only acting upon in terms of the agreement and that's why a separate category is also framed by the authority of MERC also. This itself proves that such scheme or distribution agency should not suffer merely on Technical grounds. In this case, the category, as well as classification is also challenged by the consumer. However, it is out of the ambit of Forum's jurisdiction and for that consumer will have to approach to the Hon'ble commission only. Thus, the issue left as to how far Mahavitrans is competent to issue supplementary bills for the earlier period commencing from 2006. The Answer is negative since no such provisions are made in the law. The billing section of Mahavitrans issued the supplementary bills during the 2009 and claimed that consumers is in arrears and further issued notice under section 56 of the electricity act 2003. The provision of section 56 provides that

"Notwithstanding any thing contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Thus, from the said provisions it is clear that such type of recovery is already barred. And Hence, It is held that supplementary bills or its recovery are totally illegal and it is a clear cut violation on the part of Mahavitrans in recovering the

charges applicable for the period from 2006 onwards, and as such, both the supplementary bills issued in this regard needs to be withdrawn. This clause also provides that no sum due from any person under this section shall be recoverable after a period of 2 years from the date when such sum became first due, unless the same has been shown continuously as recoverable as arrears of charges for electricity supplied. Mahavitrان would have acted upon immediately but it failed in discharging its duties and obligations. Audit objection cannot be considered as a reason or the same has nothing to do and also cannot act beyond the provision of law. If it is a loss to Mahavitrان, Mahavitrان can very well take necessary action against concerned employees. In any case, consumer should not be held responsible to pay this arrears arising out of this issue. Thus, the consumer's grievances are accepted and it deserves appropriate relief in accordance with the provisions of the law.

As regards other aspects are concerned, Mahavitrان ought to have followed the rules and regulations and more particularly standard of performance. Clause No.9 under the title "other services" and sub clause No.9.2 clearly provides that any change of Tariff category shall be effected by the distribution licensee before the expiry of the second billing cycle after the date of receipt of applications or such other intimation/particulars are made available in this regard. The authorities of Mahavitrان are already aware about the various aspects and the particular character of this customer and as such they would have acted upon in a right directions. The Tariff orders are released long back and the said Circle Office for H.T. consumer waited for a period of more than 3 years and that to upon receipt of audit objection in a haphazardous manner and totally violated the basic principle of law. Thus, the action initiated by Mahavitrان is contrary and against the provisions of the law. The communication and such other particulars are made available to the consumer only upon audit and that to during the year 2009. Thus, the action itself is barred by limitation.

Under the circumstances of this case and considering the provisions of law, the supplementary bills issued amounting to Rs.96,442/- and Rs.2,37,362/- are held illegal and the same needs to be withdrawn. The lapses on the part of Mahavitrان are serious one for which separate enquiry may be initiated so as to avoid further recurrence of such type of cases.

It is also observed that right from filing of the grievances, the concerned authorities of the Circle Office not at all bothered nor they responded in the right spirit. The unfortunate part is that such approach itself is a casual one. They never responded to Forum for the filing of the explanation and even the consumer copy is delivered during the course of hearing on 14th of October. The Ex. Engineer administration Mr.Kshirsagar and Assistant Accountant H.T.billing Mr.Boargaonkar appeared before Forum but the Ex. Engineer did not argue and he

was not in a position to confirm anything about this issue and where as the Assistant Accountant Mr.Boargaonkar of H.T.billing being the lower authority somehow could participate in the hearing and time was asked up to 25th of October. In spite of the time allowed, they once again not responded and further particulars were not made available. It is therefore in the interest of Mahavitran, Forum would like to suggest that this also needs to be investigated and the higher authority should find out as to why the lapses are repeated and the concerned officers are still neglecting the revenue aspects of the Mahavitran and the consumer interest which they are suppose to follow. FORUM waited till 7th of Nov. to receive the relevant particulars and such other papers/documents as agreed by Mahavitran during the course of hearing. Considering the time bound schedule of the Regulatory Commission regarding issue of order, No alternative is left but to pass the order for the redressal of the grievances of the consumer. Not a single communication is delivered by the Mahavitran from the date of hearing till the date of decision. This act and the approach on the part of Mahavitran itself prove as to how they are functioning. The concern authorities should follow the further inquiry and they are at liberty to initiate further course of action against the responsible officers. The Forum is of the opinion that the action should be penal one and should not be the routine enquiry and the routine course of Action.

As regards the consumer protection is concerned it is provided in the Electrician Act 2003 and pursuant of the provision of 57 of the said act, Licensee is under obligation to follow the standards of performance and failure on the part is liable for compensation. The level of compensation payable to consumer for failure to meet standard of performance is as per appendix A & the clause No.7 of said appendix provides that change of tariff category should be amended from the second billing cycle of otherwise Rs.100/-(Rupees Hundred only.) per week or part there of for such delay amounts to payable of compensation to the affected consumer and he is quite eligible for such compensation. However, considering the period involved the period for compensation is taken into account for one year instead of three year. Thus, the compensation works out to Rs. 4,800/-(Rupees Four thousand eight hundred only.) for the year. The consumer also deserves such other cost for the continuous harassment and it would be more appropriate to grant the such relief and accordingly a further sum of Rs.2000/-(Rupees Two thousand only.) deserves to paid to him, so as to safeguard the consumer interest. Thus, the consumer engaged in the said category is eligible for the compensation and the grievances are to be redressed in accordance with the provision of law alone. Thus, considering the grievances, the particular furnished by both the parties and the arguments advanced, Forum concluded that the said grievances are acceptable and in view of the above findings and observation as narrated here in above, the following order is passed to this effect and Mahavitran should comply within the period in terms of this orders.

Order

1. In terms of specific provisions of law and in view of the particular circumstances of the case the issue of supplementary bill for the period from Oct 06 upto May 2008 amounting to Rs.2,37,362/- & the supplementary bill for the period from June 2008 upto March 2009 amounting to Rs.96,442/- are held as illegal and be withdrawn by the Mahavitrans immediately. Since, the action initiated by Mahavitrans is illegal, and barred by limitation no recovery of such supplementary Bills from the consumer be effected. Mahavitrans should comply within a period of 15 days from the date of receipt this order.
- 2) Mahavitrans is directed to pay the sum of Rs.4,800/- (Rupees Four thousand eight hundred only.) as compensation for the failure to meet the standard of performance in terms of the regulations of Regulatory Commission. The consumer should also be paid a sum of Rs.2000/- (Rupees Two thousand only.) being the cost of expenses and for the purpose of harassment. Mahavitrans should comply with this immediately, or the adjustment should be carried out in the bill for the month of Nov.2009.
- 3) In view of the specific findings and considering the facts established it is suggested to initiate separate enquiry for the responsible officers and to initiate penal action within a period of 40 days and to file the compliance accordingly with this Forum.
- 4) The Circle Office Ratnagiri should file the compliance of this order within a period of 40 days, failing which, penal action will attract in accordance of the provisions of law.
- 5) In case consumer desires to appeal against this order, he should file the same on the following address within period of 60 (sixty days) on the following address:

**Secretary – OMBUDSMAN Maharashtra State Electricity Regulatory
Commission 606/608 Keshava Building Bandra Kurla Complex Mumbai
400051.**

Phone No. 022-26592965

J. L. Sonawane	D. S. Jamkhedkar	N. A. Kulkarni
Ex. Engineer	President	Member
Secretary Member	Consumer grievances	Consumer grievances
Consumer grievance	Redressal Forum	Redressal Forum
Redressal Forum	Kokan Zone	Kokan Zone
KokanZone,	Ratnagiri	Ratnagiri
Ratnagiri.		

Place : Ratnagiri

Date : 09.11.2009