

CONSUMER GRIEVANCE REDRESSAL FORUM KOLHAPUR

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Con. Comp. No. 1/2013-14 /198

Date : 25.06.2013

JUDGMENT

- 1) M/s. Nagreeka Exports Ltd. (Case No.1/13-14)
At Yavluj, Tal : Panhala, Dist. Kolhapur

Appellant

V/s

- 1) Executive Engineer cum Nodal Officer,
M.S.E.D.C.L. Circle Office,
Tarabai Park, Kolhapur
- 2) Executive Engineer,
Maharashtra State Electricity Distribution Co. Ltd.
Rural I Division Office, Tarabai Park, Kolhapur

Respondent

- Corum -**
- 1) Shri B.G. Pawar, Chairperson
 - 2) " G. B. Pankar, Member Secretary
 - 3) " G.C. Lele, Member

MAHARASHTRA ELECTRICITY REGULATORY COMMISSION (Consumer Grievance Redressal Forum & Electricity Obudsman): Regulation 8.2 of Regulation 2006

Judgement by Shri. B. G. Pawar, Chairperson, C.G.R.F. Kolhapur is as follows:

Shri Vonod Garg, (A.G.M. Finance) of Nagreeka Exports Ltd. filed this grievance before the Forum on 15th April 2013 through their representative Shri Satish Shah and Shri T.N.Agrawal as per Consumer Grievance Redressal Forum & Electricity Ombudsman Regulations 2006 against M.S.E.D.C.L. The brief facts are as follows :

Nagreeka Exports Ltd. village –Yavaluj,Tal : Panhala, Dist. Kolhapur is H.T.consumer of M.S.E.D.C.L. bearing No.262079206151. Initially filed the grievance before I.G.R.C. Kolhapur in Schedule X, for giving effect to change tariff category as per M.E.R.C.Order in case No. 72/2007 and Clarificatory Order dated 12.9.2008 in case No. 44/2008 and Company's Commercial circular No. 88 dated 26.9.2008. According to said judgment and circular, the consumer getting supply on express feeder may exercise his choice between Continuous and Non-continuous only once in year during the first month after issue of Tariff Order of the relevant period. M.S.E.D.C.L. has issued tariff circular bearing No. 175 dated 5.9.2012. The consumer applied for change of tariff Continuous and Non-continuous by letter dated 4.10.2012 within one month's time period stipulated above for change of tariff. The Company failed to change tariff and the grievance has been dismissed, hence the appeal.

In this grievance, prayer is made to allow the change with retrospective effect and also refund differential rate between C & NC tariff collected from the consumer. It is contended the order issued by Chief Engineer (Commercial) MSEDCL No. PR-3/Tariff/08656 dated 25.3.2013 to Superintending Engineer Kolhapur Circle to change the tariff category from continuous to non-continuous within one month after approval of proposal by H.O. According to consumer, this is violation of provision of Commercial Circular No.88 which allows change of tariff category with effect from the date of submission of application by consumer. Hence prayed to change the category from continuous and non-continuous by giving retrospective effect.

MSEDCL in its Say filed before the Forum on 21st May 2013 opposed the prayer contending the consumer has not applied within the specified period laid down by hon'ble Commission in Clarification Order dated 12.9.2008, but applied on 4.10.2012. The last Tariff Order was issued by the Commission on 16.8.2012, the consumer should have applied on 16.9.2012. The consumer has not applied within specified period. The issue was a policy matter, the proposal was forwarded to competent authority. The competent authority has approved the change in tariff with effect from one month by order dated 17.4.2013 and the appellant was informed above the same and asked to submit consent on affidavit. But appellant has not submitted the consent. The Company has again referred the matter to comply by letter dated 3.5.2013, guidelines are awaited. Its request to grant one month's time for hearing was rejected. Time was granted upto 3rd June 2013.

In letter dated 3.6.2013 filed before the Forum., it is contended the representative of appellant Mr. Dehere had submitted orally before I.G.R.C. that the appellant is happy with the said approval and further conceded that the withdrawal letter will be submitted to IGRC soon, as no grievance was left to be redressed. But the appeal has been filed on 9th April 2013 without waiting for completion of period stipulated in the regulation for redressal of grievance at IGRC which is 60 days from filing the complaint in IGRC i.e. 13.2.2013.

In the written submission before the Forum filed by the consumer on 22.5.2013, it is contended that application is within one month, but according to Company, the clause in the circular is based on Clarificatory Order issued by the hon'ble Commission dated 12.9.2008 against original Order issued on 20.6.2008 on review petition filed by MSEDCL.

Therefore, the said condition of exercising the choice within one month after the said circular is applicable for the tariff period of Tariff Order 2008 and hence the words ' in the present instance ' are used in the circular. Appellant is trying to misled hon'ble Forum. Reference is made to Judgment and Order of Hon'ble Electricity Ombudsman dated 2.7.2010 in case No.76/2010 as well as 137/2010, 138/2010. Application of consumer is not liable to be considered being not within one month after issue of Tariff Order, hence prayed to dismiss the appeal.

The grievance was taken for hearing before the Forum on 22.5.2013, representative of consumer Shri Satish Shah, Dehre was present, Shri Ahuja and Arali, Asstt. Engineer on behalf of Company were present. Consumer representative Shri Satish Shah made arguments in the line as mentioned in the grievance. It was submitted asking the consent of other consumers is illegal, such letter is not according to law and prayed to refund difference of tariff amount and as per S.O.P. compensation be awarded. In addition to above oral submission, written notes were filed on record. It is contended application is within one month's time period and as per MERC guidelines and circulars, the consumer is entitled to exercise his choice without any change and without any change of technicality. So no condition should be imposed for change of tariff. On page 3 in para 7 & 8 of written notes of argument, Tariff Philosophy has been high-lighted by the Hon'ble Commission on page 193 of AR of 2009-2010 Tariff Order 2010-2011. Reliance is placed upon Judgment and Order of Electricity Ombudsman dated 16.5.2011 in case No. 49/2011 and dated 31.12.2012 in case No. 90/2012.

Following point arises for determination.

- 1) Whether the prayer of the consumer to change tariff from 4.10.2012 and refund of difference rate amount is liable to allowed ?

Answer : No, since application is not filed within one month of passing of Tariff Order by Hon'ble Commission, but the applicants are entitled to change of tariff from Continuous to Non-continuous from 25.4.2013, without giving consent of other consumers as directed by the Company in its circular.

Reasons

A few admitted facts can be summarized as follows :

The consumer is connected as HV supply on 33 KV bearing No. 262079206151. It has applied for change of tariff from HT-IC to HT-INC on 4.10.2012. According to consumer, Company issued Commercial circular bearing No. 175 on 5.9.2012, since the new rates in the year 2012-13 were made applicable as per Hon'ble Commission's Tariff Order dated 16.8.2012. So the application for change of tariff from Continuous to Non-continuous has been filed within one month from issue of Tariff Order. As against it, Company contends application should have been filed on 16.9.2012. Since the consumer has not applied within specified period no change was effected.

Both the parties referred to Hon'ble Commission's Clarificatory Order dated 12.9.2008 in case No. 44/2008, wherein it is clarified consumer getting supply on express feeder may exercise his choice between Continuous and Non-continuous supply only once in year during the first month after issue of Tariff Order of the relevant period. Subsequently, MSEDCL issued Commercial circular No. 88 dated 26.9.2008. In the circular it is stated that in the present instance, the consumer may be given one month time from the date of issue of this circular for exercising his choice but the facts remain. Hon'ble Commission's order specified period within the first month after issue of Tariff Order for the relevant tariff period.

Therefore, the Forum is of the opinion, the consumer relied upon Commercial Circular No.175 dated 5.9.2012 does not extend period for exercising option within one month from 16.8.2012. As per the Commission's Order the direction for filing option on or before 17.9.2012, but it is filed on 4.10.2012 which is not within the limitations prescribed by the Hon'ble Commission. Tariff Order for the relevant tariff period, the Company has relied upon, Judgment of Hon'ble Electricity Ombudsman dated 2.7.2010 in Representation No. 76/2010 and 138/2010. Hon'ble Electricity Ombudsman has observed –

“ Facts on record reveal that Appellant filed application for continuous supply on 22nd December, 2009. Commission has issued the tariff order on 17th August 2009, effective from 1st August 2009. Going by the clarification issued by the Commission earlier in this behalf, it was necessary for the Appellant to exercise the choice in the first month of the tariff order i.e. on or before 17th September 2009. Application in this behalf was filed by the Appellant on 22nd December 2009 to exercise choice. The Appellant was mandated to exercise its choice as contemplated in the order. Since, the Appellant has not observed the stipulation, it is not entitled to claim that the Respondent should accept his choice and provide continuous supply with effect from second billing cycle from the application ”. The facts of the present case, the consumer was expected to exercise his choice within 1st month after issue of Tariff Order for the relevant tariff period i.e. on or before 17.9.2012. The consumer prayed to give effect to change of tariff category from date of consumer's application to the Company i.e. on 4.10.2012.

Admittedly, the Chief Engineer (Commercial) MSEDCL has issued order to Suptdg.Engineer, Kolhapur Circle by letter No. PR-3/ tariff/ 08565 dated 25.3.2013 to change the tariff category from Continuous to Non-continuous with effect from one month after date of approval of proposal by H.O.

The consumer has challenged this contending it is in violation of Commercial Circular No. 88 which allows change of tariff category from the date of submission of application by consumer. The Company has contended being of policy matter, decision is pending with competent authority, adjournment was sought, which was granted till 3rd June 2013 on 22.5.2013 date of hearing. In the Say dated 3rd June 2013 a new plea raised, appeal is filed before expiry of 60 days period stipulated in the regulation for decision by I.G.R.C. which devoid of merit, when we consider date of application dated 13.2.2013 before IGRC and then before the Forum. Reference is made to approval letter issued by Circle Office and the same has intimated to consumer on 22.4.2013, asking him to give consent on affidavit of other consumers, but the consent has not been submitted. A question crops upon for consideration whether consent of other consumers on express feeder is required as per order of Hon'ble Commission, one has to answer in the negative. In the Tariff Order, there is no mention about consent of other consumers, whereas, consumer's representative has annexed with statement a chart of nearabout 9 cases in respect of consumers granted non-continuous tariff, despite being connected on group express feeder sr.no. 5 & 8 i.e. Order of Electricity Ombudsman dated 16.5.2011 and 31.12.2012, wherein no. of consumers connected on group express feeder for 8 consumers respectively i.e. in case No. 49 and for 2 consumers and in case No. 90/2012 for 8 consumers. The Forum has gone through the details of cases referred by the consumer of Hon'ble Electricity Ombudsman dated 16.5.2011 in case No. 49/2011, wherein the application was within one month so the Orders were passed to change the tariff from second billing cycle as per S.O.P. In case No.90/2012 Order dated 31.12.2012, in para 11 the Hon'ble Electricity Ombudsman observed –

“ The tariff order in force was issued by the Commission on 16th August 2012. Any consumer would therefore, be entitled to exercise such option only within one month after issue of new tariff order in future “.

In Para 10 Hon'ble Electricity Ombudsman observed –

“ Any consumer getting supply from express feeder may exercise his choice between Continuous Industrial tariff and Non Continuous Industrial tariff, once in year, within the first month after issue of tariff order for the relevant tariff period “. So the circular issued by the competent authority of the Company bearing No. 175 dated 5.9.2012 directing consumer to furnish consent of other consumers on express feeder for change of tariff communicated to the consumer by letter dated 22.4.2013 bearing No. 3035 is certainly against Letter and Spirit of Tariff Order of Hon'ble Commission. The condition has been incorporated at VII in the letter dated 25.3.2013 bearing No. 8656 addressed to Suptdg.,Engineer, MSEDCL, Circle Office, Kolhapur issued by Chief Engineer (Commercial). It reads –

“ The consent from the consumer, if any, will be obtained before change in tariff category by consumer. (Applicable for group of consumers on same feeder).” which is certainly in violation of Orders of Hon'ble Commission as submitted by Mr. Shah, consumer's representative in the grievance application as well as notes of argument furnished before the Forum on 22.5.2013. Therefore, prayer of the appellant to direct Company to change the tariff from Continuous to Non-Continuous without furnishing consent of other consumers on express feeder has to be allowed. The Company is directed to change tariff from Continuous to Non-Continuous of the present consumer on fulfilling requisite condition as per law without insisting to obtain consent on affidavit of other consumers on same feeder.

A question crops for consideration from which date this change has to be effected ? The Suptdg.Engineer, Circle Office, Kolhapur by letter No.SE/KPC/T/AE/8604 dated 9.12.2012 sought guidance from higher authority in respect of proposal for changing category from HT Continuous to HT I Non-Continuous in respect of 64 nos. of HT consumers under Kolhapur Circle. The Hon'ble Commission passed Tariff Order on 16.8.2012 which is effective from 1.8.2012. The Company has taken 2 months for seeking guidance on approval of competent authority and after direction in the letter No. 8656 dated 25.3.2013, one month's time is given for exercising such option, saddle with condition to furnish consent on affidavit of other consumers. The application of consumer was pending from 4.10.2012 before Suptdg.Engineer, Kolhapur i.e. the competent authority for approving change of tariff by the said Circular No. 175 dated 5.9.2012 and Clarificatory Order for direction to field Officers dated 25.3.2013. So from this date i.e. 25.3.2013 would be the date for change of tariff from Continuous to Non-Continuous in respect of present consumer instead of 4.10.2012. Therefore, the prayer of consumer to change the tariff without affidavit or consent of other consumers on same feeder is allowed, but effect is given from 25.3.2013 instead of 4.10.2012 as prayed, because the consumer has not applied within one month from the date of Tariff approved on 16.8.2012 by the Hon'ble Commission for the relevant period. In view of the above discussion, the consumer's grievance is partly allowed with following Order.

ORDER

- 1) The prayer of the consumer to give effect for change of tariff category from Continuous to Non-Continuous with effect from 4.10.2012 is rejected.
- 2) The Distribution Company is directed to give effect to change of tariff category from 25.3.2013 without insisting from appellant consumer to file consent on affidavit of other consumers on same feeder, and give effect to change of tariff as per Rule 12.2 of S.O.P.
- 3) The Respondent Distribution Company shall report to the Forum about Implementation of this Order as per CGRF & Electricity Ombudsman Regulation 2006 (8.7).
- 4) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai.

Date :

Sd/-
(B. G. Pawar)
Chairperson

1) G. B. Pankar, Member Secretary :

2) Shri G.C. Lele, Member :

Judgment by majority / unanimous rendered by the Forum shall be implemented.