

MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO.LTD
Consumer Grievance Redressal Forum
Nagpur Zone Rural,Nagpur

Application /Cse No.CGRF/NZ/Rural/250 OF 2010

In the matter of request for revision of supplementary bill
in accordance with Section 56(2) of the Electricity Act, 2003& change of tariff category

M/s. Maharashtra Metal Powders Ltd Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd..... Respondent

Present:

1. Shri. V.R.Khobragade,Chairman
2. Shri. M.G.Deodhar, Member
3. Smt.S.B.Chiwande,Member Secretary

On behalf of the Appellant:

1. Shri. Suhas Khandekar.Representative
2. Shri.J.S.Maloo

On behalf of the Respondent:

1. Shri. P.T.Reshme, Executive Engineer
2. Shri. Madavi, Jr.Law Officer

ORDER

Date: 9th August, 2010

The Appellant has filed grievance application in form schedule A under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (C.G.R.F & E.O) Regulations,2006 on Dt.28.06.2010.The grievance arises out of Internal Grievance Redressal Cell(for short Cell) Bhandara Circle's order issued on 10th May 2010 in which it is held that difference in bill charged by applying Commercial tariff to the appellant is correct. The Cell rejected appellant's grievance. Being aggrieved with the Cell's order, the present grievance has been filed by the Appellant. Brief details of the grievance are as under.

The Appellant is a HT consumer of Maharashtra State Electricity Distribution Co. Ltd. (hereinafter referred to as the Respondent) having Contract demand of 1000 KVA.He has also been provided with L.T Submeter. The units of Manufacturing unit were billed under HT I category & that of Submeter were billed under HT VI Residential

category. On Dt. 05.02.2010 Dy. Executive Engineer Flying Squad of MSEDCL visited Appellants premises & conducted spot inspection & concluded that the present billing for submeter was done as per Residential Tariff though the uses of electricity is for lighting, Administrative building & Canteen purpose hence proper tariff for submeter to be applied & assessment to be recovered of less billing for previous period. The Respondent raised the Bill on Dt 08.02.2010 for Rs.886940/- as provisional Bill for the period from May 2000 to December 2009 for differential amounts between HT VI Residential and HT II Commercial tariff. Since the amount was Substantial, the Appellant requested for installments to pay the amount. The request was granted by the respondent & the Appellant has paid the amount in three installments under protest. The Appellant then approach to IGRC on the ground that the Respondent can not raise the bills for more than two years under section 56(2) of the Electricity Act 2003 and that the tariff HT II applied by the Respondent was incorrect. The assessment should be as per tariff of HT I which is for Industrial purpose instead of Commercial. The Cell passed the Order on 10th May 2010 but the Appellant is not satisfied with the impugned order & hence this grievance. The Appellant feels that the Cell has erred by not interpreting properly the provision under Section 56(2) of the Electricity Act 2003 in making its decision. The Appellant has cited Electricity Ombudsman's order passed in representation No.144 of 2009 in support of his case. The Appellant has already paid the amount of provisional bill raised by MSEDCL. The Appellant has prayed that the respondent should be directed to refund the excess amount collected with interest as per standard Bank rate & the bill should be assess for two years as per section 56(2) of the Act.

The Respondent filed it's parawise reply on Dt. 09.07.2010 to the points raised by the Appellant. The respondent stated that the Appellant is his HT consumer with Contract demand of 1000 KVA. Apart from HT Industrial meter for which HT I tariff was applied, there is a Submeter bearing Sr.No.07194684 for lighting purpose for which HT VI Residential tariff was applied to the Appellant from the Dt of connection. It's Flying Squad inspected Appellants premises on Dt. 05.02.2010 and pointed out that Submeter provided for lighting purpose used for Administrative Building & Canteen as per Residential tariff hence proper tariff for submeter to be applied & assessment to be recovered of less billing for previous period. Therefore provisional bill for the difference in Residential and Commercial tariff for submeter for the period from May 2000 to Dec 2009 was raised on Dt 08.02.2010 of Rs.886940/-. The Appellant approached to the Superintending Engineer Bhandara with a request for installments as the amount is huge & agreed to pay without any protest. The Appellant falsely & malafidely claimed that the provisional bill amount is being paid under protest. The Respondent further stated that the Appellant had not raised any objection till the Dt. of inspection of its premises by its Flying Squad as the bills were raised as per tariff HT I for Industrial use & HT VI Residential for Submeter & Paid the bill without any protest. As soon as the Respondent raised the bill & change the tariff category from Residential to HT II commercial for submeter the Appellant realize its mistake & stated that the activities carried out in their premises are industrial hence HT I tariff should be applicable & not commercial.

As regards recovery of past dues under section 56(2) of the Electricity Act 2003 the respondent submits that the differential amounts were claimed after realizing the mistake noticed for the first time, when its Flying squad made spot inspection on Dt. 05.02.2010. The respondent further contended that the assessment period covers two different period governed by two different provisions of law. The period from May 2000 to June 2003 when the Indian Electricity Act 1910 was in force, more specifically the

Section 24 thereof which provided no limitation for recovery..He cited the case decided by Hon'ble High court in A.I.R 1978 & Hon'ble Supreme Court in A.I.R 1999 in support of his case. The another period from June 2003 to Dec 2009 when the Electricity Act 2003 came into force .As per Section 56(2) of this Act no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due.He further states that the sum becomes due on the date on which bill is raised. In this case the supplementary bill was raised first time in February 2010 & therefore it becomes due in February 2010 & is recoverable. The Respondent has cited Order passed by Hon'ble High Court of Judicature at Bombay in respect of Writ petition No.264 of 2006,between Brihanmumbai Municipal Corporation versus Yatish Sharma.With this submission the Respondant prays to dismiss the appeal.

The matter was heard on 5th August 2010 Shri.Suhas Khandekar Representative ,Shri.J.S.Maloo,represented the Appellant.Shri.P.T.Reshme Executive Engineer Bhandara Division,Shri.Madavi Jr.Law Officer were present on behalf of the Respondent. Shri.Khandekar reiterated Appellants submission made in the grievance.He cited the recent Order passed by the Hon'ble Electricity Ombudsman in representation No.92 of 2010 Dtd 28th July 2010 & 93 of 2010 Dtd.29th July 2010 & urged that the Respondent is not entitled to recover the differential amounts between Residential & commercial tariff for a period of more than two years prior to the date of supplementary bill.The Appellant also submitted the copies of Page No.14,15,28 & 29of the Factories Act 1948 ,wherein the requirements of lighting & canteen are clearly mentioned which shows integral part of Factory ,they have to be treated as an activity associated with factory,Similarly the Administrative activities related to production wages,labour welfare etc, therefore they can not be construed as a Commercial activity. The Respondent argued that it has raised the provisional bill for the difference of tariff from May 2000 to Dec 2009 due to non declaration of uses of electricity of submeter for administrative building & Canteen in the initial stage by the Appellant.The Respondant cited & relied upon the judgment in writ petition no 264 of 2006 in the case of Brihanmumbai Municipal Corporation versus Yatish Sharma & others delivered by Hon'ble High Court of Judicature at Bombay,similarly the cases decided by Hon'ble High Court in A.I.R 1978 & Hon'ble Supreme Court in A.I.R 1999 to justify his points.

Having heard upon the parties & on careful consideration of documents on record it is noticed that the Appellant had raised two issues before the Forum the first one related to levy of commercial Tariff for use of electricity for Administrative Building & Canteen,Street Lighting.The other issue was about the recovery of bill raised by respondent for the differential amount between residential and Commercial tariff from May 2000 to Dec 2009.The Appellant felt that such recovery bill raised by the respondent on Dt.08.02.2010 is barred by time. Facts on record show that the Appellant has HT connection for Industrial purpose situated at Maregaon,Shahapur,Dist-Bhandara & tariff applied fo this was HT I.There is one submeter for residential use (As per Appellants say) for which HT VI residential tariff was applicable.Till Dec.2009 the bills were raised as per tariff HT I for Industrial use and HT VI for residential for submeter.There is no dispute in this behalf prior to the dt of supplementary bill raised by the respondent.Appellants grievance arose only after the respondent converted the tariff from Residential to Commercial for Submeter.The Appellant uses the the electricity from submeter for its Administrative building & Canteen .This shows that the use of electricity is neither for Manufacturing nor for Residential purpose.The Appellant therefore falls

under HT II Commercial Category as per the tariff order,.IGRC has made similar observation on this point.

On issue of past recovery,it is clear from the decisions made in the representation no.92 of 2010 & 93 of 2010 of Electricity Ombudsman that the Respondent ,Distribution Licensee is not entitled to recover past arrears raised by way of supplementary bill for more than two years preceding the Dt of Demand(08.02.2010) in accordance with section 56(2) of Electricity Act 2003.

In view of above it is concluded that the Respondents claim to recover arrears pertaining to the period of May 2000 to Dec 2009 by raising the Supplementary bill on 08.02.2010 is clearly time barred as per section 56(2) o the Electricity Act 2003.The said claim deserves to be & is hereby set aside as barred by limitation.The respondent is directed to rework the bill accordingly.Excess amounts recovered if any shall be refunded

With the above observations the Forum unanimously pass the following order

ORDER

- 1.Application is partly allowed
2. The Respondent should recover the charges of electricity supplied for a period of two years preceding the dt of demand.
- 3.The respondent should refund the excess amount if recovered.
- 4.There is no order as to cost.

Sd/-	Sd/-	Sd/-
(V.R.Khobragdae)	(M.G.Deodhar)	(Smt.S.B.Chiwande)
Chairman	Member	Member Secretary
CONSUMER GRIEVANCE REDRESAL FORUM		
M.S.E.D.C.L (NAGPUR ZONE RURAL) NAGPUR		

**CONSUMER GRIEVANCE REDRESSAL FORUM
NAGPUR ZONE (RURAL) M. S. E. D. C. L.**

Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
NAGPUR – 440 013

SHRI V.R.Khobragade,IAS(Retd)
Chairman

PH.(R)2457651(M)9923136412 (O) 0712- 2022198

Shri M.G.Deodhar,
Member

(M)9422805325

NO. CGRF/NZ/R/

Date :

**Certified copy of order dtd 9th August,2010 in Case No. 250/2010 is
enclosed herewith.**

Member-Secy/ Exe.Engineer,
C.G.R.F.(NZ-R)MSEDCL
N A G P U R

Copy to:-

1. M/S. Maharashtra Metal Powders Ltd., at Maregaon, Post-Shahapur, District-Bhandara.
2. The Chief Engineer,Nagpur Zone (Rural)MSEDCL, Vidyut Bhavan,Katol Road, Nagpur.
3. The Exe.Engineer/N.O., O&M Circle Office, MSEDCL. Bhandara. --
4. The E.E.,C.C.O&M Dn., MSEDCL, Bhandara for information and necessary action.

Address of **the Electricity Ombudsman** is given as below.

Office of - **The Electricity Ombudsman**,
Maharashtra Electricity Regulatory Commission,
606-608, Keshava Building,
Bandra-Kurla complex,
MUMBAI- 400 051

TEL.- 022 - 26592965 (Direct)
022 - 26590339 (Office)