Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Urban Zone, Nagpur

Case No. CGRF(NUZ)/092/2012

Applicant : Shri Ranjeet Narayan Deshmukh,
C/o National Tyres, 5, Ashish Towers,
Telephone exchange square, C.A.Rd.,
NAGPUR : 440 008.

Non–applicant : Nodal Officer,
The Executive Engineer,
(O&M) Dn. I
M.S.E.D.C.L., Nagpur.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Smt. Gouri Chandrayan,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON DT. 19.10.2012

1. The applicant filed present Grievance application on Dt. 27.8.2012 under regulation 6.4 of the MERC (CGRF & Ombudsman) Regulations 2006 (hereinafter referred to as the Regulations).

2. The applicant's case in brief is that the applicant received the energy bill of May 2012 for unit of the applicant at Kapsi (Kh.) having electrical load of 25 kW. This bill of Rs. 2,55,117.84 indicates the bill adjustment amount of Rs. 227745/-. Therefore the applicant issued a letter to M.S.E.D.C.L.

Ultimately the Asstt. Engineer, MSEDCL, Mouda Sub-Division handed over the documents i.e. spot inspection report of flying squad and provisional assessment bill of Rs. 227745/- towards the difference of tariff LT-V to LT-II. The assessment is made since August 2009 to November 2011. No retrospective recovery of arrears can be allowed on the basis of abrupt reclassification of the consumer. Therefore the applicant filed present application with a request to set aside provisional assessment bill of Rs. 227745/- issued in May 2012 and to pay compensation of Rs. 25000/- to the applicant.

3. Non applicant denied the applicant's case by filing reply Dt. 17.9.2012. It is submitted that as per MSEDCL rules and regulations, industrial tariff is to be applied to manufacturing agencies only. All other industries which are carrying out only repairing works are charged on commercial tariff. Industrial unit of the applicant had applied for industrial connection and issued industrial connection on 5.3.1998. As per MSEDCL rules, the applicant should have established the manufacturing unit. Instead, repairing unit was established. MSEDCL was unaware of this fact and therefore industrial tariff was applied to the unit. In flying squad visit on Dt. 14.2.2012 to the unit, the fact came to be known. Hence the tariff was corrected from last 30 months. Assessment is done on normal tariff and no penalty charges are applied. Consumer has paid the assessment charges on 31.7.2012.

4. Forum heard arguments of both the sides and perused the record.

5. In this report of flying squad, it is specifically mentioned that 1) Consumer is found billed on Industrial tariff. 2) Consumer is found utilizing power for Car denting, painting workshop by name National Car Care which is a commercial activity. As per MERC tariff order commercial tariff is applicable to the consumer. In this report following remedial action is proposed:-

1) Change the tariff of consumer from LT – V to LT – II.

2) Recover charges for difference of tariff for past period.

6. It is noteworthy that in Column No. 20 of this inspection report, it is specifically mentioned that the "above mentioned details and irregularities pointed out have been checked in my presence and I agree with the same".

7. Below this specific endorsement there is signature of consumer that too, in English. Therefore english knowing applicant is signatory to the spot inspection report and hence this report is not arbitrary or exparte but it is duly signed by the applicant.

8. It is pertinent to note that grievance application is drafted by the applicant in such a way just to mislead everybody. Entire application is ambiguous. It is not mentioned in entire grievance application whether applicant is

doing industrial work, production work or commercial work. There is no pleading of the applicant in entire grievance application that he is doing industrial or manufacturing work. On the contrary there is one copy of application signed by the applicant on record and this copy is produced by the applicant himself. In this copy of application which marked as '1' the applicant submitted to M.S.E.D.C.L. Mouda Nagpur that "We are having accidental repairs work shop named as National Car Care Kapsi (Kh.), Bhandara Road, Nagpur". Therefore from this application of the applicant it is clear that unit of the applicant is merely repairing work shop and applicant is not doing any industrial work. Therefore it is clear that commercial tariff is applicable and no industrial tariff.

9. In reply of Non applicant Dt. 27.9.2012, it is specifically submitted that as per M.S.E.D.C.L. rules and regulations, industrial tariff is to be applied to manufacturing agencies only. All other industrial which carrying out only repairing works are charged on Commercial tariff. The industrial unit of the applicant had applied for industrial connection and issued connection on 5.3.1998. As per M.S.E.D.C.L. rules and regulations applicant should have established manufacturing unit but instead of manufacturing unit the applicant is doing repairing work. M.S.E.D.C.L. was unaware of this fact and therefore was applying industrial tariff as per the application of the applicant. In flying squad visit Dt. 14.2.2012, the fact came to be known and hence tariff was corrected from last 30 months. The assessment is done on

normal tariff and no penalty charges are applied. Consumer has paid the assessment charges on 31.7.2012.

10) In case no. 116/2008 Hon. MERC has clarified in its tariff order applicable from August 2009 that broadly the categorization of the industry is applicable to such activity **which entails manufacture**.

In this order in case no. 116/2008 it is held as under.:

"*A similar impression is conveyed as regards the 'Industry' categorization, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc., stating that they have also been classified as 'industry' for the purpose of taxation and / or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as 'industry' for the purpose of tariff determination. In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorization under Industry under other specific laws cannot be applied to seek relief under other statues. Broadly, the categorization of 'Industry' is applicable to such activities, which entail 'manufacture'.*

11) In order dated 30.12.2009 in case no. 11/2009, The Commission has clarified the commercial category actual refers

to all category which have not been classified into any specific category. In this order Hon. Commission held that …..

> *"It is further clarified that the 'commercial' category actually refers to all categories using electricity for 'non-residential, non-industrial' purpose, or which have not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals educational institutions, airports, bust-stands multiplexes, shopping malls small and big stores, automobiles showrooms, etc, are covered under this categorization. Clearly, they cannot be turned as residential or industrial. As regards the documents submitted by the Petitioners to justify their contention that they are 'Charitable Institutions' the same are not germane to the issue here, since the Electricity Act, 2003 does not permit any differentiation on the basis of the ownership. As regards the parallel drawn by the Petitioners' between the nature and purpose for which supply is required by Government Hospitals. ESIS Hospitals, etc, and Public Charitable Trust hospitals, the Commission clarifies that it has been attempting to correct historical anomalies in the tariff categorization in a gradual manner. In the impugned Order, the Commission had ruled that Government Hospitals, ESIS Hospitals, etc; would be charged under LT I category, even though they may be supplied at HT voltages. This anomaly has been corrected in the subsequent Tariff Order, and all hospitals,*

irrespective of ownership, have been classified under HT II Commercial category".

12) Similar view is taken by Hon. Electricity Ombudsman Mumbai in case of representation no. 140/2009. In the matter of M/s. Atul Impex Pvt. Limited V/s. MSEDCL decided on 02.02.2010 it is held that……

"Here the word 'industrial' is not specifically denied in the tariff order. Therefore, it has to be understood in its natural, ordinary and popular sense, meaning thereby the industry should have some manufacturing activities. As is seen, from the above that the Appellant is a research and development establishment which can be clearly distinguished from the industrial / manufacturing purpose. Therefore, the Appellant's prayer that it should be categorized under the HT I – Industrial tariff (which is meant for industrial purpose / consumers) does not sound to reason, especially when read with the provisions of the tariff orders, effective from 1st June, 2008 onwards".

13) In appeal no. 116/2006 decided on 04.10.2007 Hon. Appellate Tribunal for Electricity (Appellate Jurisdiction) held as under…..

"It will not be correct to borrow the definition of "Industry" from 'other statutes' for the purpose of holding that the appellant ought to be billed as per Industrial Tariff. In Union of India Vs. Shri R.C. Jain (AIR 1981 SC 951), the Hon. Supreme Court refused to borrow the meaning of the words 'local fund' as defined in the General Clauses Act

on the ground that it is not a sound rule of interpretation to seek the meaning of the words used in an Act, in the definition clause of 'other statutes'. In this regard it was held that definition of an expression in one Statute must not be imported into another."

14) In representation no. 5/2011 before Hon. Electricity Ombudsman Mumbai in the matter of the Automotive Research Association of India Vs. MSEDCL decided on 15.03.2011 it is held that as under. ….

"Now in order to appreciate the Appellant's argument, it will be necessary to understand as to which category of consumers can be considered as industrial. Documents and submissions made by the Appellant undisputedly show that it is a Research and Development Association. The Appellant has also not claiming that it is doing mass production of items and sells them. Instead, the Appellant carries out R & D, testing, certification, service and management support and makes prototypes which in turn, is used by Automotive manufactures for mass production and sale. The Appellant, therefore, cannot logically claim that it manufactures the products. The word "manufacture" as is defined in the Oxford dictionary means "make something on a large scale using machinery, making of goods on a large scale using machinery". The Appellant has not produced anything to show that it has a licence to manufacture and sell the products. Therefore, it is difficult to accept the contention that it should be classified as an activity to get the HT Industrial tariff. The

Commission has also clarified that the 'Commercial' category actually refers all categories using electricity for non industrial purpose or which have not been classified under any other specific category."

15) On close scrutiny of the case, it appears that the applicant is doing repairing of Cars only and the applicant is not doing any manufacturing work. Therefore relying on these cited authorities we hold that commercial tariff is applicable to the unit of the applicant and not the industrial tariff. Therefore commercial tariff applied by M.S.E.D.C.L. is perfectly correct, legal and valid. Therefore assessed bill issued by M.S.E.D.C.L. to the applicant is correct so far as tariff is concerned.

16) Now there is another grievance of the applicant that non applicant had recovered charges for 30 months and it is not permissible at law. For that purpose the applicant placed his reliance on order passed by Hon'ble MERC in case No. 24/01 Dt. 11.2.2003 and argued that no retrospective recovery of the arrears can be allowed on the basis of any abrupt reclassification of the consumer even though the same might have been pointed out by Auditor. We have carefully perused the cited case by the applicant. In our opinion, facts of the present case and facts of the cited case are totally different and distinguishable. As per the facts of case No. 24/2001 decided by Hon'ble MERC, it was case of Grampanchayat. Without any notice or intimation M.S.E.B. has raised bill Dt. 12.3.2001 including arrears amount of Rs. 348000/- and the tariff was

abruptly reclassified. However, the facts of the case in hand are totally different and distinguishable. Present case is not case of abrupt reclassification of the consumer. On the contrary as per the facts of the present case the applicant has misled M.S.E.D.C.L. even at the time of obtaining electrical connection on 5.3.1998. The applicant had applied for industrial connection and therefore as per his application industrial connection was issued on 5.3.1998. As the applicant applied for industrial connection it was necessary for the applicant to do industrial and manufacturing work but instead of the same the applicant was doing repairing of the Cars. Believing the words of the applicant industrial tariff was continued but applicant was dishonestly taking benefits of industrial tariff since long. Ultimately on 14.2.2012 during surprise visit of flying squad, it was pointed out that the applicant applied for industrial connection and therefore as per his application industrial tariff was applied but in fact the applicant is not doing industrial work but doing commercial work and hence the tariff was changed. Therefore case in hand is not the case of "abrupt reclassification of the consumer". Facts of the present case are far away from the facts of the case No. 24/01 decided by Hon'ble MERC and therefore the case is not applicable to the present case. It is an admitted fact that non applicant has charged commercial tariff since last 30 months. In our considered opinion, according to Section 56 (2) of Electricity Act 2003, non applicant is entitled to recover the arrears of 24 months only in commercial tariff. To that extent only, relief can be given to the applicant. However all other claims of the applicant deserve to

be dismissed.Resultantly Forum proceeds to pass following order :-

ORDER

1. Grievance application is partly allowed.
2. Non applicant is hereby directed to recover the arrears in commercial tariff since before 24 months of spot inspection report of flying squad Dt. 14.2.2012 and M.S.E.D.C.L. change the tariff of the applicant from L.T. – V to L.T. – II and to recover charges of difference of tariff for last 24 months before spot inspection report of flying squad Dt. 14.2.2012 and to revise the bill to that extent only instead of 30 months.
3. All other claims of the applicant are hereby dismissed.
4. Non applicant to comply this order within 30 days from the date of this order.

Sd/-	Sd/-	Sd/-
(Smt.K.K.Gharat)	**(Adv.Smt.GauriChandrayan)**	**(ShriShivajirao S.Patil)**
MEMBER	MEMBER	CHAIRMAN
SECRETARY		