

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

Case No. CGRF(NUZ)/090/2015

Applicant : M/s. Bhagirath Textiles Ltd.,
Sarvodaya Cloth Market,
Gandhibagh,
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
Nagpur Rural Circle,
MSEDCL,
NAGPUR.

Applicant :- Shri S.S. Goenka.

Respondent by 1) Shri B.A. Wasnik, E.E.
2) Shri Shetty, A.E.

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 30.6.2015.

1. The applicant filed present grievance application before this Forum on 2.5.2015 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).

2. Applicant's case in brief is that the applicant is the consumer of M.S.E.D.C.L. connected at 33 kV voltage. Applicant has a contract demand of 2500 kVA. Commission determined the tariff applicable from 1.6.2008 and further in tariff order Dt. 12.9.2010 applicable from September 2010, mentioning there in that "only H.T. Industries connected on express feeders and demanding continuous supply will be deemed as H.T. Continuous industries and given continuous supply, while all other H.T. Industrial consumers will be deemed as H.T. non continuous Industries. H.T. Tariff book let applicable from 1.6.2008 and applicable from 1.9.2010. M.S.E.D.C.L. filed application for clarification of tariff order applicable from 1.6.2008 and in case No. 44/08 Commissioned ruled that there is no justification for removing the clause "demanding continuous supply" from the definition of H.T. – I continuous category. M.S.E.D.C.L. on the basis of above order issued Circular No. 88 on 26.9.2008. Commission revised the tariff and issued an order imposing additional energy charges vide order No. 95/13 Dt. 5.9.2013 and directed M.S.E.D.C.L. to charge AEC 1 & AEC 2, from the billing month of September 2013. MERC also issued orders in case No. 28/13 & 44/13 on 3.9.2013 and 4.9.2013 and imposed AEC 3 & AEC 4 charges. M.S.E.D.C.L. also issued Circular No. 209 Dt. 7.9.2013, imposing AEC 1, AEC 2, AEC 3 & AEC 4 charges.

3. Applicant further submitted that he submitted his request as per letter Dt. 14.9.2013 to change his tariff to non continuous tariff i.e. within 1 month from the date of order in case No. 28/13 and case No. 44/13, which has imposed additional tariff items AEC 3 & AEC 4 in consumers tariff. There was no communication on the application of the applicant. Therefore he

submitted reminder dated 5.3.2014. M.S.E.D.C.L. rejected the application of the applicant as per letter dated 12.3.2014, saying that applicant's request for change of tariff can not be considered and in case applicant wants to avail non continuous tariff, he will have to lay a separate feeder at his own cost on which load shedding / staggering day protocol can be operated. As there was no communication from M.S.E.D.C.L. he approached to I.G.R.C. on 29.1.2015. I.G.R.C. rejected the grievance on 25.2.2015. Being aggrieved by the order passed by I.G.R.C. applicant approached to this Forum.

4. Applicant further submitted that applicant's feeder is not express feeder. There is no separate definition provided in Electricity Act 2003, rules & regulations for express feeder and non express feeder. Applicant is not connected on express feeder because more than one consumers are connected on same feeder. Applicant is connected on non express feeder since beginning. According to above directives, MSEDCL should have charged H.T. non continuous tariff to all the H.T. Consumers and only H.T. Industries connected on express feeder and demanding continuous supply should have been charged express feeder tariff. Therefore applicant filed present grievance application for issuance of directives to M.S.E.D.C.LO. to change the tariff of the applicant to non continuous tariff (Non express feeder) and revise all energy bills of the applicant from June 2008 till the date of considering and applying non express feeder tariff, as per directives of the commission issued in the tariff order and clarificatory order.

5. Non applicant denied applicant's case by filing reply dated 18.5.2015. It is submitted that applicant M/s. Bhagirath

Textiles Ltd. at Village Mohali Taluka Kalmeshwar District Nagpur is the H.T. Consumer under Nagpur Rural Circle, bearing Consumer No. 430019004141 with Contract Demand of 2500 kVA, connected load 2520 kW and connected on 33 kV voltage Kohli feeder feeding continuous supply without any load shedding. Hence charged as H.T. Continuous tariff. Hon'ble MERC has passed tariff order dated 20.6.2008 in case No. 72/2007 for the year 2008-09 and specified that "Only H.T. Industries connected on express feeder and demanding **continuous supply** will be deemed as H.T. Continuous Industries and given continuous supply, while all other H.T. Industrial consumers will be deemed as H.T. non continuous Industries". Later on, clarificatory order dated 12.9.2008 has been passed by Hon'ble Commission in case No. 44/2008 and clarified that "The consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year within the first month after issue of tariff order for relevant tariff period. In the present instance, consumer may be given one month time from the date of issue of this order for exercising his choice. In case such choice is not exercised within stipulated period, then existing categorization shall be continued.

6. It is further submitted by the non applicant M.S.E.D.C.L. that consumer in his initial application Dt. 28.3.1996 requested for giving supply on 33 kV level and in the load form it is specifically mentioned at Page No. 12 that the said unit is continuous process industry working in 3 shifts. Hence 24 hrs. supply is required. Further in the important point of load form at Page No. 2 (a), nature of industry is once again mentioned as Continuous Process. Upon these and as per request, the consumer

was given supply on 33 kV Kohli S/s. feeder. Being a sub station the supply being fed is of continuous nature and is not subjected to any load shedding. Copy of the application and letter is enclosed with the reply as Annexure I.

7. Non applicant M.S.E.D.C.L. further submitted that as per order passed by the Hon'ble Commission in case No. 44/08 the consumer has to apply for exercising his choice from continuous to non continuous supply within one month from the tariff order but applicant consumer failed to apply within one month from issue of tariff order and has applied on 14.9.2013, considering order issued by Commission in case No. 95/13 in which it was allowed to M.S.E.D.C.L. to collect AEC charges but as the said order is not the tariff order, the change in tariff can not be allowed. Last tariff order issued by Hon'ble MERC was in case No. 19/12 Dt. 16.8.2012. Thereafter Hon'ble MERC has not passed any tariff order. Regarding this, MSEDCL, has applied for approval of tariff order vide case No. 121/14 Dt. 4.12.2014 before Hon'ble MERC. But Hon'ble MERC has not passed any order till date. It is a policy matter of MSEDCL which is in consonance with MERC order that change in tariff category should not be allowed after one month from the issue of tariff order. The consumer is connected on 33 kV S/s. interconnecting feeder from 220 kV Kalmeshwar S/s. to 33 kV Kohli S/s. The matter being policy matter and any change in tariff has to be effected after due approval of Head Office. Applicant was informed of non consideration of his application as per letter dated 12.3.2014 relying on the orders passed by Hon'ble Electricity Ombudsman in representation No. 116/13.

8. Non applicant MSEDCL further submitted that Hon'ble Electricity Ombudsman Nagpur has discussed this issue in detail and passed an order dated 9.1.2014 in representation No. 116/13 and concluded that clarification and choice of change of tariff provided in case No. 44/08 is restricted to tariff order dt. 20.6.2008 passed in case No. 72/07 as the said choice is not provided in subsequent tariff orders. Though the said order is challenged in Writ Petition No. 2389/14, Hon'ble High Court has not granted any interim relief nor quashed the order. Therefore the said order is still in force and valid in the eyes of law. Grievance application deserves to be dismissed.

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

10. It is noteworthy that along with reply of MSEDCL, important document Annexure 'A' is produced on record. It is initial application of the applicant made in the year 1996 i.e. on 28.3.1996. We have carefully perused this initial application of the applicant. In this application, applicant requested for giving supply on 33 kV level and in the load form, it is specifically mentioned at point No. 12 that the said unit is continuous process industry working in 3 shifts, hence 24 hours supply is required. Furthermore, in important point of load form at point No. 2(a), the nature of industry is once again mentioned as **continuous process**. Upon these and as per request of the applicant consumer, consumer was given supply on 33 kV Kohli s/s. feeder. Being sub station supply being fed is of continuous nature and is not subjected to any load shedding.

11. As per order passed by Hon'ble Commission in case No. 44/08 the consumer has to apply for exercising his choice from continuous to non continuous within one month from the tariff order. It is rather surprising to note that applicant consumer failed to apply within 1 month from the issue of tariff order and has applied on 14.9.2013 on the pretext of order issued by Hon'ble Commission in case No. 95/13 dt. 5.9.2013 in which it was allowed to MSEDCL to collect AEC charges. However, it is pertinent to note that said order dated 5.9.2013 in case No. 95/13 passed by Hon'ble Commission is not the tariff order and therefore applicant failed to exercise his option within one month from the date of issue of tariff order and therefore change in tariff can not be allowed. It is noteworthy that last tariff order which was issued by Hon'ble MERC was in case No. 19/12 Dt. 16.8.2012 and thereafter Hon'ble MERC has not passed any tariff order. It appears that applicant is intending to mislead the Forum arguing that order dated 5.9.2013 in case No. 95/13 is tariff order. However, in our considered opinion, it is not a legal argument and attempt to mislead the relevant authorities and the Forum. It will not be out of place to mention here that regarding this, MSEDCL, has applied for approval of tariff order vide case No. 121/14 Dt. 4.12.2014 before Hon'ble MERC but Hon'ble MERC has not passed any order till date. It is a policy matter of MSEDCL which has in consonance with MERC order that the change in tariff category should not be allowed after one month from the issue of actual tariff order dated 16.8.2008.

12. It is noteworthy that in similar case M/s. Hardoli Paper Mills Vs. Superintending Engineer (NRC), M.S.E.D.C.L. Nagpur, representation No. 116/13, decided on 9.1.2014, Hon'ble

Electricity Ombudsman Nagpur has delivered very important judgement and said ruling of Hon'ble Electricity Ombudsman applies to the case in hand squarely. In this authority, Hon'ble Electricity Ombudsman Nagpur held as under :-

“The Commission is of the view that MSEDCL should not ignore the benefit of load relief that could be achieved, in case certain HT-I continuous industries who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence the HT industrial consumer connected on Express Feeder should be given the option to select between continuous and non continuous type of supply and there is no justification for removing the clause “demanding continuous supply” from the definition of continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year, within the first month after the issue of the Tariff Order for the relevant Tariff period, in the present instance, the consumer may be given one month’s time from the date of issue of this order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”. The clarificatory order dated 12.9.2008 was followed by the Commercial Circular dated 26.9.2008.

13. While insisting for change in tariff from HT-I continuous to non continuous, the appellant has put great emphasis on the above clarificatory order which was followed by Commercial Circular No. 88. But the appellant is forgetting that the said clarificatory order dated 12.9.2008 as well as Commercial

Circular No. 88 are restricted to the detailed Tariff Order dated 20.6.2008 in Case No. 72/2007. The said tariff order was in existence from 1.6.2008 till 31.7.2009 because tariff order dated 17.8.2009 in Case No. 116/2008 became applicable w.e.f. 1.8.2009. The option to change the Tariff category from HT-I continuous to non continuous industries was not there in the subsequent Tariff Orders in Case No. 116/2008, 111/2009 and 19/2012. The clarificatory order dated 12.9.2008 in Case No. 44/2008 will not automatically apply to the subsequent Tariff Orders. Obviously the appellant could not give its choice for change of tariff category from HT-I continuous to non continuous industries. Thus the respondent was perfectly justified in not entertaining the said application of the applicant and continuing to charge HT-I-C tariff to the appellant.

14. Facts of the cited ruling and facts of the present case are similar and identical and therefore this ruling is squarely applicable to the case in hand. Relying on the authority cited supra we hold that grievance application deserves to be dismissed. Hon'ble Electricity Ombudsman Nagpur has discussed this issue in detail and passed an order Dt. 9.1.2014 in representation No. 116/13. Hon'ble Electricity Ombudsman has concluded that the clarification and choice of change of tariff provided in case No. 44/08 is restricted to tariff order dated 20.6.2008 passed in Case No. 72/07 as the said choice is not provided in subsequent tariff orders. It is pertinent to note that though the said order is challenged in Writ Petition 2389/14, Hon'ble High Court has not granted any interim relief nor quashed the said order and therefore the said order is still in force, valid in the eyes of law and undoubtedly has a binding legal force.

15. Relying on the authorities cited supra, we hold that grievance application deserves to be dismissed.

16. Furthermore, date of initial application of the applicant is 28.3.1996 in which continuous supply was applied. As per order passed by Hon'ble Commission in case No. 44/08, consumer has to apply for exercising his choice from continuous to non continuous within 1 month from the tariff order. Last tariff order issued by Hon'ble MERC was in case No. 19/12 Dt. 16.8.2012. Thereafter, Hon'ble MERC has not passed any tariff order. Applicant for the first time applied for change of tariff on 14.9.2013 i.e. not within one month from the date of tariff order. Therefore said application of the applicant is untenable at law.

17. It is rather surprising to note that in prayer clause No. 2 of the grievance application applicant claimed relief for issuance of directions to MSEDCL to change the tariff of applicant to non continuous (non express feeder) and to revise all category bills of the applicant from June 2008. In our considered opinion, claim of the applicant to revise the bills w.e.f. June 2008 is barred by the limitation even according to regulation 6.6 of the said regulations. According to regulation 6.6, Forum shall not admit any grievance unless it is filed within 2 years from the date on which cause of action has arisen. As applicant claimed to revise the bills since 2008 (without any basis), according to the applicant cause of action arose in June 2008 and hence grievance application seeking the relief from June 2008 is hopelessly barred by limitation.

18. Needless to say that in prayer clause 1 of the grievance application, interim relief was claimed for issuance of directions to change the tariff to non express feeder tariff from September 2013 or from the second billing cycle from the date of application i.e. in October 2013, but applicant gave in writing on grievance application itself that the claim of interim relief and final relief may be decided in final order. Therefore considering request of the applicant we are deciding the grievance application on merits.

19. For these reasons, in our opinion grievance application deserves to be dismissed. Hence following order : -

ORDER

- 1) Grievance application is dismissed.

Sd/-
(Anil Shrivastava)
MEMBER
SECRETARY

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN