

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

Case No. CGRF(NUZ)/093/2015

Applicant : M/s. Shilpa Steel & Power Ltd.,
1-4, Wanjara Layout,
Kamptee Road,
Nagpur 440 026.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
MSEDCL,,
NAGPUR.

Applicant :- Shri Suhas Khandekar.

Respondent by 1) Shri Rody, Nodal Office.
2) Shri Dahasahastra, SNDL Nagpur.

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 3.7.2015.

1. The applicant filed present grievance application before this Forum on 8.5.2015 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 non applicant charged commercial rate for electricity consumed in the office, although this office is within the industry premises. In tariff order of MERC Dt. 12.9.2010 in case No. 111/09, it has been clarified that consumer's categorization should reflect main purpose of consumer premises. Hence office of the industry can not be levied commercial tariff. Hence billing on commercial purpose for electricity used in the office of the applicant has been incorrect right since the time it was levied i.e. since January 2010. Applicant is entitled for refund of amount of Rs. 19,97,747/- as on 31.3.2015. Applicant applied to I.G.R.C. for refund of the amount and I.G.R.C. rejected the application on the ground of barred by the limitation under regulation 6.6 of the said regulations as application is not filed within 2 years from the date of cause of action. Being aggrieved by the order passed by I.G.R.C. applicant approached to this Forum & claimed refund of the amount of Rs. 19,97,747/- as incorrect recovery w.e.f. January 2010 till 31.3.2015 along with interest.

3. Non applicant denied applicant's case by filing reply Dated 26.5.2015. It is submitted that commercial consumption within factory premises was recorded by separate meter and billed as per commercial tariff till May 2015. In tariff order of Hon'ble MERC Dt. 12.9.2010 in case No. 111/09, it is clarified that consumer's categorization should reflect the main purpose of consumer premises. In view of MERC's order Dt. 12.9.2010 and Commercial Circular No. 124 issued by Director (Operation), M.S.E.D.C.L. implemented new tariff w.e.f. 1.9.2010. The commercial consumption in factory premises is to be charged as per

industrial tariff. Excess amount if any collected may be refunded through next upcoming energy bills.

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

5. At the outset it is noteworthy that in the notice issued by this Forum to M.S.E.D.C.L. Dt. 12.5.2015 under regulation 6.14 (reverse side), it is specifically directed to M.S.E.D.C.L. to file their para wise reply. As per the said regulations, it is the bounden duty of Executive Engineer, Nodal Officer, Nagpur Urban Circle, to file para wise reply. Though there is detail application of the applicant in several paras, even then Executive Engineer, Nodal Office, Nagpur Urban Circle, filed very short (not para wise) reply Dt. 26.5.2015 and thereby violated the relevant regulations laid by Hon'ble MERC. Therefore reply filed by Executive Engineer, Nodal office, Nagpur Urban Circle appears to be very strange.

6. We have carefully perused grievance application of the applicant minutely. It is the contention of the applicant that there is incorrect billing since January 2010. However, applicant did not plead anywhere in the entire grievance application that since January 2010 till today, whether applicant filed a single application to Officers of M.S.E.D.C.L. claiming that commercial tariff applied in January 2010 is incorrect and it should be changed. Bear reading of the entire grievance application shows that since January 2010 applicant did not take any pains to file any application to any officer of M.S.E.D.C.L. to change the tariff. For the first time applicant filed his grievance application under

regulation 6.2 before I.G.R.C. on 24.4.2015. Therefore since January 2010 till 24.4.2015 applicant did not challenge the tariff. Cause of action arose to file present case in the year January 2010. According to regulation 6.6 of the said regulations "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 refund since January 2010, therefore according to him cause of action arose in January 2010. However, present grievance application is filed on 8.5.2015 and therefore it is hopelessly barred by limitation and deserves to be dismissed.

7. It is nowhere the case of the applicant that since January 2010 till today at any time, he filed any application to officers of M.S.E.D.C.L. about incorrect billing with request to revise the bill. It is incumbent on the part of the applicant first to apply to the office of M.S.E.D.C.L. about alleged improper billing and with a request for issuance of revised bill. However, applicant did not file any application to the office of M.S.E.D.C.L. since January 2010 till today alleging the incorrect billing and to revise the bill but directly approached to Learned I.G.R.C. in the year 2015. Therefore grievance application is barred by limitation. Present grievance is nothing but an attempt to extract huge amount of Rs. 19,97,747/- illegally from M.S.E.D.C.L.

8. Furthermore, applicant did not plead anywhere that office situated in the industry premises is merely an administrative office. Applicant did not plead anywhere in grievance application that in the said office there is no factory outlet for the sale of products manufactured in the factory and

therefore it can not be said that office is purely for administrative purpose and there is no outlet for sale of products manufactured in the factory. Hence applicant is not entitled for any amount.

9. Applicant relied on order passed by Hon'ble Electricity Ombudsman Mumbai in representation No. 128/10 Dt. 5.10.2010. However, we have carefully perused the authority cited supra. Facts of the authority cited supra are far away from the facts of the present case and therefore authority cited supra is not applicable to the case in hand. As per facts of the authority cited supra, C.G.R.C., Nagpur Zone as per order dated 9.8.2010 passed an order and observed that M.S.E.D.C.L. can not recover arrears from the appellant from May 2000 to December 2009 by raising supplementary bill dated 8.2.2010 since it is time barred as per section 56 (2) of Electricity Act 2003, and claim of M.S.E.D.C.L. was set aside as barred by limitation. In the case in hand, no supplementary bill is issued by M.S.E.D.C.L. to the applicant since January 2010. On the contrary bills issued to the applicant are regularly issued by M.S.E.D.C.L. every month and there is no question of time barred recovery. Furthermore, as per authority cited supra, previously bill dated 8.2.2010 for Rs. 886940/- was calculated towards difference between HT – I (CL) and HT – VI (RL) tariff from May 2000 to January 2010. Since the amount was substantial the consumer sought installments and 2 installments were paid under **protest**. In the case in hand, no supplementary bill was issued and applicant did not pay under protest at any time. As per facts of the authority cited supra, by its letter dated 23.2.2010, consumer in said authority claims that payment was done under protest. However, as per facts of the present case, no

application was presented by the applicant to M.S.E.D.C.L. & payment was not under protest. On the contrary, the applicant is paying the amount since January 2010 till 31.3.2015, without any challenge. Therefore facts of the present case are totally different and distinguishable and hence authority cited supra is not applicable to the case in hand.

10. Secondly as per facts of the authority cited supra, there was sub meter for administrative building and canteen and considering peculiar facts and circumstances of the case it was held that canteen and lighting in the factory can not be treated as commercial activity. In the case in hand, applicant did not plead whether office of the applicant is administrative office or whether there is outlet for the sale of the products manufactured in the factory. Therefore facts of the case in hand are different and distinguishable and hence authority cited supra is not applicable to the case in hand.

11. Representative of the applicant admitted before the Forum that M.S.E.D.C.L. have changed the tariff in the year April 2015. Therefore so far as present changed tariff is concerned, there is no dispute. The dispute is only whether applicant is entitled to claim refund since January 2010 amounting to Rs. 19,97,747/-. In our considered opinion, claim since January 2010 is hopelessly barred by limitation specially when there is no application of the applicant to M.S.E.D.C.L. since January 2010 till today at any moment.

12. Therefore grievance application is untenable at law and 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