

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

Case No. CGRF(NUZ)/130/2015

Applicant : M/s. Trimurti Ispat Pvt. Ltd.,
Sheela Complex, Amravati Rd.,
Nagpur.

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

Applicant :- Shri Sumit Goenka

Respondent by 1) Shri Setty, Dy. E.E. (HT), NRC, MSEDCL,
Nagpur.

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

2) Adv. Subhash Jichkar
Member.

3) Shri Anil Shrivastava,
Member / Secretary.

ORDER PASSED ON 13.10.2015.

1. The applicant filed present grievance application before this Forum on 14.8.2015 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 applicant is consumer of M.S.E.D.C.L. connected on 33 kV. Applicant has a Contract Demand of 2600 kVA. On the feeder of consumer, more than one consumers are connected. Hence it is non express feeder since beginning. Commission determined the tariff applicable from 1.6.2008 and further in tariff order Dt. 12.9.2010 applicable from September 2010 and further in tariff order Dt. 16.8.2012 applicable from August 2012, held 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". M.S.E.D.C.L. filed an application for clarification for tariff order applicable from 1.6.2008. Commission passed order in case No. 44/08 that there is no justification for removing the clause "demanding continuous supply" from the definition of HTC industries. M.S.E.D.C.L. on the basis of above order issued circular No. 88 on 26.9.2008 high lighting the features of Commission's order to the effect that "only HT industries connected on express feeder and demanding continuous supply will be deemed as HTC industries and given continuous supply while all other HT industrial consumers will be deemed as HT non continuous industries". "Consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply once in a

year within 1 month from the issue of relevant tariff order for the relevant period”.

3. Applicant submitted his request to change the tariff category to non continuous tariff as per letter dated 27.12.2012 to change his tariff to non continuous tariff. Copy of said letter is enclosed as Annexure ‘B’. There was no communication on the application of the applicant. Hence applicant submitted reminder on 25.2.2013 26.2.2013. Superintending Engineer, M.S.E.D.C.L. Nagpur requested Chief Engineer (Com.), M.S.E.D.C.L. vide letter dated 18.3.2013 to issue approval and necessary guide lines in the matter for change of tariff from express feeder to non express feeder with respect of applicant’s application and who has applied for change in tariff category based on the revision in rate vide com. circular No. 183 Dt. 1.1.2013. But till date, there is no revision in tariff order is received. There was no communication from M.S.E.D.C.L. Therefore applicant approached to I.G.R.C. His grievance was registered with I.G.R.C. on 24.4.2015 and it was rejected on 22.5.2015. Being aggrieved by the said order passed by I.G.R.C. applicant approached to this Forum and claimed to issue directions to M.S.E.D.C.L. to change the tariff of the applicant to non continuous tariff (non express feeder) and revise all energy bills of applicant from June 2008 till date, considering and applying non express tariff with interest.

4. Non applicant denied applicant’s case by filing reply dated 2.9.2015. It is submitted that M/s. Trimurti Ispat Pvt. Ltd.

is HT consumer having contract demand of 2600 kVA, connected load 2390 kW and connected on 33 kV industrial feeder from 220 kV Kalmeshwar S/s. feeding continuous supply without any load shedding, hence charged as H.T. continuous tariff. M.S.E.D.C.L. issued Com. Circular No. 88 Dt. 26.9.2008 in line of orders passed by Commission in Case No. 72/07 and 44/08. Said circular further clarified "Consumer may be given one months time from the date of issue of circular for exercising his choice. In case such choice is not exercised within stipulated period, then existing categorization will be continued. Non applicant further submitted that as per order passed by Commission in case No. 44/08, consumer has to apply for exercising his choice from continuous to non continuous within one month from the tariff order. But the consumer failed to apply within 1 month from the issue of tariff order and has applied on 27.12.2012 considering the order issued by Commission in case No. 107/12 in which revision in TOD charges was allowed to M.S.E.D.C.L. Thus the said order is not a tariff order. Change in tariff can not be allowed. Last tariff order which was issued by Hon'ble MERC was in case No. 19/12 which is in consonance with MERC order that change in tariff categorization should be allowed after one month of the issue of tariff order. Relying on the same principal CGRF has passed order in case No. 90/15 dismissing the grievance application and copy of the said order is at Annexure '1'.

5. Non applicant further submitted that Hon'ble MERC had issued new tariff order on 26.6.2015 vide case No. 121/14.

Accordingly, Head Office had issued instructions and procedure regarding permission of tariff category to consumers from HTC to HT non continuous vide circular No. 246 Dt. 11.8.2015, which is at Annexure '2'. Necessary change in tariff will be effected after necessary completion of requirement made in Com. Circular 246 issued by Chief Engineer (Com.) Mumbai.

6. Forum heard arguments of representative of the applicant Mr. Goenka and Mr. Bhadikar, representative of M.S.E.D.C.L. and perused record.

7. In MERC's tariff order Dt. 20.6.2008 in case No. 72/07 effective from 1.6.2008, it was clarified that "only HT Industries connected on express feeder and demanding continuous supply will be deemed as HT continuous industries and given continuous supply, which all other H.T. industries consumers will be deemed as HT non continuous Industries". But in clarificatory order by Hon'ble MERC Dt. 12.8.2008, it is clarified that "Consumer getting supply on express feeder may exercise his choice between continuous to non continuous only once in a year within first month after issue of tariff order for relevant tariff period". **In the present instance, consumers 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 time, then existing categorization will be continued.** It is clear from the clarificatory order that if the consumer was to change his categorization from continuous to non continuous,

consumer has to give his choice between continuous / non continuous within 1 month from the date of issue of clarificatory order dated 12.9.2008 and related circular of M.S.E.D.C.L. No. 88 Dt. 26.9.2008. But the consumer did not submit his choice and hence continued to be billed as per existing HT- I C industries tariff. Thereafter tariff order dated 12.9.2010 in case No. 111/09 came in to effect from 1.9.2010. Admittedly consumer did not submit his choice between continuous to non continuous at that time also. It is an admitted fact that for the first time applicant filed application for change of tariff category to non continuous tariff on Dt. 27.12.2012. For this purpose we place our reliance on the authority of Hon'ble Electricity Ombudsman Nagpur.

8. 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.

9. 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.

10. Facts of the cited ruling and facts of present case are similar and identical and therefore this ruling is squarely applicable to the case in hand and relying on the authority cited supra we hold that application deserves to be dismissed.

11. Hon'ble Electricity Ombudsman Nagpur has discussed this issue in detail and passed order dated 9.1.2014 in representation No. 116/13. Hon'ble Electricity Ombudsman has conclude that clarification and choice of change of tariff provided in case No. 44/2008 is restricted to tariff order Dt. 20.6.2008 only **passed in case No. 72/07, as the said choice is not provided in subsequent tariff orders.** It is pertinent to note that that though said order is passed by Hon'ble Electricity Ombudsman Nagpur is challenged in Writ Petition No. 2398/14, Hon'ble High Court has not granted any interim relief nor quashed the said order and therefore said order is still in force, valid in the eyes of law and undoubtedly a binding legal force. Relying on the authority cited supra, we hold that grievance application deserves to be dismissed.

12. Tariff order for the period 2012-13 issued by Hon'ble MERC on 16.8.2012 and consumer has submitted his option for

non express feeder supply on 27.12.2012. Therefore said choice is not given within 1 month from the tariff order Dt. 16.8.2012 and hence applicant has absolutely no case on merits.

13. In para 5 of the grievance application, applicant submitted that Hon'ble Commission revised tariff with respect to TOD charges for F.Y.2012-13 on 26.12.2012. According to the applicant this order in respect of TOD charges is amounting to new tariff order. However, we do not agree with this argument and it is not legal argument. In our considered opinion order passed by Hon'ble Commission with respect to TOD charges for F.Y. 2012-13 Dt. 26.12.2012 is not a tariff order at all and hence change in tariff w.e.f. 27.12.2012 can not be allowed. Last tariff order which was issued by Hon'ble MERC was in case No. 79/12 Dt. 16.8.2012. It is policy matter of M.S.E.D.C.L. which is in consonance with MERC order that change in tariff category should be allowed within 1 month after issue of tariff order. Applicant failed to file application within 1 month from the date of tariff order and hence there is no force in contention of the applicant.

14. We have carefully perused prayer of the applicant in grievance application. It is really flimsy and funny too. Because according to the applicant, for the first time, he filed an application for change of tariff on 27.12.2012, whereas in prayer clause he claimed to revise all energy bills of the applicant from June 2008. It is an admitted fact that since June 2008 till 27.12.2012 applicant did not file any application for change of

tariff. Application of the applicant Dt. 27.12.2012 is also untenable at law. Even then applicant appears to have claimed retrospective effect for revision of his bills on the basis of his untenable application Dt. 27.12.2012 since June 2008. In our considered opinion on the basis of illegal application for change of tariff Dt. 27.12.2012, no retrospective effect can be given on revision of bill and under no stretch of imagination bills can be revised for preceding 4 years i.e. since June 2008.

15. Applicant submitted that he filed application for change of tariff on 27.12.2012. We have carefully perused copy of the said application. It is at Ex. 8, with grievance application. It shows that though application for change of tariff is typed on 27.12.2012, in fact it was presented in the office of M.S.E.D.C.L. on 29.12.2012. Last tariff order issued by Hon'ble MERC was in case No. 19/12 Dt. 16.8.2012 but applicant presented his application on 29.12.2012 and hence is not within 1 month from the tariff order. Therefore grievance application deserves to be dismissed.

16. Applicant claimed to revise energy bills w.e.f. June 2008, but present grievance application is presented before this Forum on 14.8.2015. 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". Considering prayer clause of the grievance application, cause of action arose in June 2008 and grievance application is filed in 2015 and therefore according to regulation 6.6 of the said

regulation, application is barred by limitation and on this ground also grievance application deserves to be dismissed.

17. Applicant relied on the authority of Hon'ble Rajasthan High Court, M/s. Aditya Mills Ltd. Vs. Rajasthan State Electricity Board Dt. 4.11.1968 and another authority of Hon'ble Supreme Court of India in the matter of Union of India & another Vs. Tarsemsingh Dt. 13.8.2008. We have carefully perused both these authorities cited by the applicant. However, facts of both these authorities are totally different and distinguishable and therefore these authorities are not applicable to the case in hand.

18. On behalf of the applicant, it is argued that there is continuous cause of action and therefore there is no limitation. According to the applicant though he filed an application for change of tariff in 2012, he can claim revision of energy bill with retrospective effect since 2008. However, we do not agree with this argument, because firstly application of the applicant for change of tariff Dt. 27.12.2012 is not within 1 month from tariff order and therefore it is an illegal application. Secondly on the basis of illegal application Dt. 27.12.2012 applicant can not claim retrospective effect for revision of bill since June 2008. Thirdly grievance application is filed after 7 years from the date of alleged cause of action in June 2008 i.e. in the year 2015 and therefore it is hopelessly barred by limitation.

19. On behalf of the applicant it is argued that there is continuous cause of action and therefore there is no limitation. However, we do not agree with this argument. In entire MERC(CGRF & EO) Regulations 2006, there is no concept of “continuous cause of action” but regulation 6.6 is mandatory. Therefore we are bound by the provisions of regulation 6.6. Therefore we hold that grievance application is barred by limitation.

20. Before reaching to the final order, we must make it clear that on the date of filing of the grievance application and even on the date of hearing of the grievance application, Shri A.S. Shrivastava, Executive Engineer, then Member/Secretary of the Forum was present. Hearing was concluded on 11.9.2015. But on 30.9.2015, Shri A.S. Shrivastava, then Member/Secretary of the Forum is retired from service. Till retirement of Shri A.S. Shrivastava, matter was not discussed for voting under regulation 8.1 of the said regulations. Today, on Dt. 7.10.2015, there was discussion about voting between Chairman and Shri Jichkar, Member of the Forum, and at the time of this voting Shri A.S. Shrivastava can not remain present because he is already retired on 30.9.2015. Therefore at the time of deciding the matter, Forum was only 1) Chairman and 2) Shri Jichkar, Member. Hence the order is signed by both of them.

21. Even if for the sake of argument for some time, point of limitation is kept besides, even then on merits also grievance

application is untenable at law and deserves to be dismissed.
Hence Forum proceeds to pas following order :-

ORDER

- 1) Grievance application dismissed.

Sd/-
(Adv. Subhash Jichkar)
MEMBER

Sd/-
(Shivajirao S. Patil),
CHAIRMAN