

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

Case No. CGRF(NUZ)/023/2011

Applicant : Shri Ashokkumar Ratanlal Gandhi
24A/25, Great Nag Road,
Unthkhana,
NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
(Franchise Area), Mahal Division,
Nagpur Urban Zone,
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 05.07.2011)

It is grievance application filed by Ashokkumar Ratanlal Gandhi resident of 24A/25, Great Nag Road, Unthkhana, Nagpur on dated 12.05.2011 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (here-in-after referred-to-as the said Regulations.)

The applicant's case in brief is that the applicant had taken electricity supply from MSEDCL (formerly as MSEB) on dated 17.12.2004. At the time of taking said electricity supply, applicant applied before competent authority of MSEDCL alongwith required documents i.e.

- 1) Applicant's SSI Registered.
- 2) MPCB consent to establish the industry.

MSEDCL has issued letter on dated 06.12.2004 to applicant and in this sanctioned letter, it is specifically mentioned that sanctioned load 37 HP issued for industrial purpose. In SSI registration certificate also it is specifically mentioned on page no. 3, which was submitted for getting connection "main service activity as repair and fabrication and vehicle code no. (50200) and servicing and repairing of four wheeler code no. (50200). The applicant is doing the work of fabrication, denting, Engine rebuilding, building body of vehicle and servicing. Therefore as per application of the applicant MSEDCL has granted connection for industrial purpose on 17.12.2004, after verifying about said documents. Flying Squad of MSEDCL Wardha, inspected the applicant's premises and hold that commercial tariff is applicable instead of industrial. Therefore in order to recover difference of tariff, the Flying Squad by their spot inspection report dated 22.12.2010 recommended that existing connection is issued in 36 LT-V I.P.

purpose but actually used for servicing of vehicle of TATA Motors Limited. Therefore the tariff is applicable commercial instead of I.P. The tariff difference is to be charged for last 3 years, as per the order of Flying Squad based on the inspection report of flying squad on dated 22.12.2010. The Flying Squad had issued an order dated 27.04.2011, on that basis a bill of Rs.1,78,811/- signed by Executive Engineer, Mahal Division, Nagpur on dated 11.01.2011 is received by the applicant.

The applicant is doing industrial work and not commercial work, therefore inspection report of flying squad dated 22.12.2010 and its order dated 27.04.2011 so also bill amounting to Rs.1,78,811/- is illegal, contrary to Regulation and therefore needs to be set aside and cancelled.

Therefore the applicant filed present grievance application for following reliefs, namely

- 1) To declare that the respondents are indulged in deficiency in service.
- 2) To declare that the complainant is covered under Industry and industrial connection provided to him is proper and further the complainant has not violated any terms and conditions of Section 126 of EA, 2003.

- 3) To declared that order issued by Dy. E.E. F.S. Wardha dated 27.04.2011 is illegal and applicant is not liable to pay charges as saddled upon him.
- 4) To quash the debit entry to provisional amount to consumer person ledger (CPL) reflecting in energy bill dated 13.04.2011.

The non-applicant denied the claim of the applicant by filling reply dated 14.06.2011. It is submitted that during the checking of applicant connection on dated 22.12.2010 irregularly observed in tariff. Existing tariff is industrial 36 LTV but supply is used for servicing of vehicle of TATA motors i.e. commercial tariff LT-II should have been applied. Hence difference of tariff to be charged from last 3 years. Section 126 of Electricity Act 2003 is not applied. The Dy. E.E. F.S. Wardha has charged assessment for difference of tariff. Bill issued by E.E. Mahal Division, Nagpur for Rs.1,78,811/- and not charged under Section 126 of Electricity Act 2003. In SSI Registration by the applicant, it is mentioned that nature of activity of consumer is servicing and not production. Service of vehicle comes under LT-II commercial tariff and not in 36 LT-V industrial tariff. Therefore application of the applicant is false to be dismissed.

Forum heard the arguments of the applicant in person so also heard the arguments of Mr. Choure Dy. E.E. Flying Squad Wardh, perused the record.

The applicant vehemently argued that the applicant applied for electricity connection in 2004 specifically for industrial purpose. Along-with that application, the applicant had produced a required documents including SSI registration certificate of MPCB consent. In sanctioned letter of MSEDCL on dated 06.12.2004 specific "Industrial purpose" is given by MSEDCL. Therefore MSEDCL was fully satisfied that the connection is for industrial purpose and not for commercial purpose. Since date of connection dated 17.12.2004 till 22.12.2010 MSEDCL is applying the industrial tariff correctly but surprisingly on 22.12.2010, Flying Squad Wardha hold that commercial tariff is applicable.

The applicant further argued that applicant is doing the work of industrial nature i.e. Fabrication, denting, Engine-rebuilding, building body of vehicle and servicing and therefore it is industrial. In support of his contention, applicant replied on the authority of Hon. MERC reported in MERC case no. 116 of 2008 on page no. 229.

The applicant argued that the Flying Squad Wardha had issued illegal spot inspection report dated

22.12.2010 and order dated 27.04.2011, therefore those order may be cancelled and industrial tariff should be applied to the applicant.

On behalf of the non-applicant Mr. Chore Dy.E.E. Flying Squad aggrieved that order issued by him are legal and proper, he support reply dated 14.04.2011 and argued that grievance application deserved to be dismissed.

In this matter Hon. Chairman and Hon. Member of the Forum who are in majority view that grievance application must be allowed, whereas Hon. Member-Secretary of the Forum defer. Therefore descending note of Hon'ble Member-Secretary is noted at the last and decision is based on majority view of Hon. Chairman and Hon. Member of the Forum.

Majority view of the Hon. Chairperson and Hon. Member of the Forum.

Heard both the parties at length perused the record.

It is noteworthy that sanctioned letter of MSEDCL dated 06.12.2004 is available on record, sanctioned by Executive Engineer, Mahal Division NUZ, Nagpur. In this sanctioned letter there is sanctioned of load 37 HP for industrial purpose at plot no. 24A/25 Grate Nag Road Nagpur.

We have carefully perused the certificate issued by industrial security and health Maharashtra State, Mumbai in form no. 4 named and styled as "कारखान्याच्या

नोंदनी व कारखाना चालविण्यासंबंधीचा परवाना” dated 14.12.2005 in this certificate, it is specifically mentioned as under.

कारखाने अधिनियम 1948 आणि त्यासंबंधी असलेले नियम याच्या तरतूदीप्रमाणे ऐ.के. गांधी कारर्स यांना 24ऐ/25 उंटखाना, ग्रेट नाग रोड, नागपूर यांना खालील वर्णन केलेल्या जागेत कारखाना चालविण्यास परवानगी देण्यात आली आहे.

This certificate on dated 14.12.2005 is renewed till 2011. Therefore it is clear that permission to establish industry is given to the applicant and this documents was produced before MSEDCL at the time of filing an application for electrical supply.

Further more applicant produced another Important documents i.e. SSI certificate. In this SSI certificate issued by Govt. of Maharashtra Directorate of Industries in column no. 1-III month of commencement of production on a activity is given on 05.02.2004. In column no. 9 month of restoration of plant of machinery is given as 05.02.2004. In column no. 12 (a) of this SSI certificate, it is specifically mentioned that Main manufacturing / services activity named repair and fabrication of vehicle code no. 50200 is mentioned. In column no. 12 (b) of SSI certificate, it is specifically mentioned that products to be manufactured / service to be provide namely servicing and repairing of four wheeler code no. 50200. In column no. 21. It is specifically mentioned that the date of commencement of production activities is 01.05.2004. In acknowledgement-II issued by Manager District

Industry Centre Nagpur dated 10.02.2010, it is specifically mentioned that item of manufacturer type of certificate to be render is servicing and repairing of four wheeler. All these documents were produced by the applicant at the time of application for electrical supply in 2004. All these documents were attached with application. Therefore MSEDCL was fully satisfied and therefore industrial connection was sanctioned.

Needless to say that one should not confuse with the words “Servicing of four wheeler vehicle” Servicing does not mean only cleaning of vehicle by water and feeling the grice and Oil only. Many time the entire engine of the vehicle has to be unload and rebuild by the expert engineer. Process of heating, cooling, fabricating, denting, engine rebuilding, painting of the vehicle and building body of vehicle all are including in the category of “Servicing”. In case no. 116/2008 relied by applicant following order is passed on page no. 229 in para 7, Hon. MERC hold as under---

“Applicability”

“Applicable for industrial use at Low/Medium voltage in premises for purpose of manufacturing, including that used within these premises for general lighting, heating/cooling etc., excluding Agricultural Pumping loads. This consumer category also includes IT industry and IT enabled services (as defined in the Government of Maharashtra Policy).”

Considering nature of the work carried out by the applicant on the spot and ratio laid down by Hon. MERC in the authority cited supra, this Forum hold that applicant is doing industrial work and it is not commercial work.

It is rather surprising to note that Dy. E.E. F.S. Wardha simply prepared spot inspection report in printed column and he just fill in the blanks. Nodal officer did not produce any documentary evidence on record to show that commercial activity is going on in the unit.

It is noteworthy that Flying Squad did not prepared any panchnama in presence of 2 panchas and representative of the applicant giving graphic narration of the actual work position going on the spot to show no industrial work is going on this spot. In absence such important documents, suppressed by Flying Squad, the non-applicant failed to show that a industrial work is not going on the spot. Considering the documentary evidence on record produced by the applicant in the opinion of the Forum, Unit of the applicant is industry within the meaning of Section 2 (j) of industrial disputed Act and therefore rightly industrial tariff applied since the date of connection till spot inspection by Flying Squad. The spot inspection report of Flying Squad appears is based on only presumption, assumption, Wim and without any basis.

The applicant argued that MSEDCL is recovering industrial tariff in the cases of M/s. Mobile Tower, Industrial Training industry and Digital Colour Lab though there is no production activity at those places but for unit of applicant MSEDCL claim commercial tariff on sole ground that there is no production. It is not proper.

Forum finds much force in this arguments of the applicant. It is noteworthy that this Forum has even passed order in case no. 93/2010,94/2010 & 95/2010 M/s. Digital Photo System Vs. Nodal Officer on order dated 01.02.2011 and held that industrial tariff is applicable to these photo lab and this order is passed by entire majority of the Forum. There are also many photo labs in Nagpur where similar orders are passed for example M/s. Moon Light Photo Studio V/s. MSEDCL is applying industrial tariff and not commercial tariff though there is no production as Photo Labs. Therefore, the reason given by Flying that merely because there is no production in the unit of the applicant, it is not industrial is not legal and proper. This opinion of Flying Squad is arbitrary, against rules and regulations therefore it is illegal and needs to be set aside.

Considering the documentary evidence on record, this Forum by majority of the view that industrial work is going on in the unit of the applicant and therefore industrial tariff is applicable. Forum holds that

commercial tariff is not applicable. Forum also hold that the spot panchnama prepared by Flying Squad Wardha on dated 22.12.2010 and its order dated 27.04.2011 are absolutely illegal. Therefore MSEDCL cannot claim and not entitled to recover any difference of bill Rs.1,78,811/- from the applicant. Therefore bill of Rs.1,78,811/- issued by the non-applicant is illegal and hereby set aside.

For these reason by majority of opinion, Forum hold that application of the applicant must be allowed.

Descending Note of the Member-Secretary CGRF,
NUZ, Nagpur

The grievance in this case has arisen due to the difference in tariff charged from industrial to commercial charged by the Dy. E.E. Flying Squad, Wardha of amount of Rs.1,78,811/- to the applicant. The F.S. unit on inspection of applicant's premises found that the activity was servicing and repairing of the four wheeler vehicles. As per the reply of Dy. E.E. F.S. Wardha, the industrial tariff is applicable for purpose of manufacture as mentioned in MERC tariff order in case no. 116/2008. Also in SSI registration certificate the nature of activity of the consumer is mentioned as service and not manufacturing. Therefore industrial tariff does not apply to the applicant.

On this point I agree with Dy.EE (FS)'s view. In this regard, while referring to the Commission's tariff order dated 17th August 2009, in Case No. 116/ of 2008, relevant portion of the said order reads as under:

“5.4 Commission's Tariff Philosophy

A similar impression is conveyed as regards the “Industry” categorization with the Commission receiving several representations during and after the Public Hearing, 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 statutes. Broadly, the categorization of Industry is applicable to such activities, which entail ‘manufacture’.

Therefore in my opinion, the industrial tariff would be applicable to such activities which entail

manufacture. The documents on record show that the activity in applicant's premises is service and repair. Therefore I agree with change of tariff from Industrial to Commercial, as proposed by Dy. E.E. F.S. Wardha. But the charging should be for past two years only as per section 56 (2) of the EA, 2003.

Consequently Forum in majority view hold that grievance application must be allowed, hence proceed to pass the following order.

Order

The grievance application is allowed.

It is hereby declared that spot inspection report dated 22.12.2010 and order dated 27.04.2011 issued by Dy. E.E. Flying Squad, Wardha are illegal and therefore set aside.

It is hereby declared that unit of the applicant is industrial and therefore industrial tariff is applicable and not the commercial tariff.

It is hereby declared that bill for Rs.1,78,811/- issued by Executive Engineer MSEDCL Mahal Division, Nagpur on dated 11.01.2011 is illegal and therefore set aside and cancelled.

The non-applicant is hereby directed to apply industrial tariff to the unit of the applicant.

In case, applicant paid any excess amount to the MSEDCL, it should be refunded immediately or adjusted in the bills.

The non-applicant is hereby directed to report compliance of the order to this Forum within 15 days from the date of issue of this order.

Smt.K.K.Gharat) (Adv.Smt.GauriChandrayan) (ShriShivajirao S.Patil)
MEMBER MEMBER CHAIRMAN
SECRETARY