

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

Case No. CGRF(NUZ)/038/2012

Applicant : M/s. Aditya Auto Agencies,
Plot No. 691, New Cotton Market,
Ghat Road,
NAGPUR.

Non-applicant : Nodal Officer,
The Superintending Engineer,
(Distribution Franchisee),
M.S.E.D.C.L., NUC, 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. 22.5.2012

The applicant filed present Grievance application on Dt. 26.3.2012 under regulation 6.4 of the MERC (CGRF & Ombudsman) Regulations 2006 (hereinafter referred to as the Regulations).

1. The applicant's case in brief is that Dy. Exe. Engineer, Flying Squad, Nagpur had inspected the installation of the applicant on 18.4.2011 and proposed the recovery on account of change of user from Industrial to Commercial with retrospective effect. Provisional bill of Rs. 80,359/-

(revised w.e.f. August 2009) is issued to the applicant. Illegal demand of Rs. 80359.- was raised in the bill of November 2011. Unit of the applicant is industrial unit and therefore commercial tariff is not applicable. The unit of the applicant is used only for industrial purpose and not for any commercial purpose. Therefore charging the bill as per commercial tariff is illegal.

2. Therefore the applicant filed case No. 0012/12 before I.G.R.C. Nagpur. As per order Dt. 6.3.2012, I.G.R.C. (M/s. SPANCO - Distribution Franchisee) Nagpur rejected the grievance application of the applicant. Therefore the applicant filed present grievance application before this Forum and claimed relief to revoke the demand of Rs. 80359/- and continue to charge as per industrial tariff.
3. Non applicant resisted the case of applicant by filing reply Dt. 11.4.2012. It is submitted that during the inspection of unit of the applicant, it is observed that supply is authorized for industrial purpose and billed as per industrial tariff L.T.-V but the supply is used predominantly for automobile servicing and there is no activity of manufacturing. Hence according to Hon'ble M.E.R.C. tariff order in case No. 116/08 decided on 17.8.2009 and its tariff determination philosophy, as there is no manufacturing activities and supply is used for laundry / pressing and ironing purpose, it is proposed to be billed as per L.T.-II (CL tariff). Accordingly, provisional

bill of Rs. 80,359/- is issued to the applicant revised w.e.f. August 2009.

4. Hon'ble M.E.R.C. has clarified in its tariff order in case No. 116/08 applicable from August 2009 that broadly, categorization of industry is applicable to such industry which entail manufacture. Further in its order Dt. 30.12.2009 in case No. 11/2009, the Commission has clarified that commercial category actually refers to all categories which have not been classified into any specific category. Similar view is taken by Electricity Ombudsman in representation No. 10/10 and 140/2009.
5. During the inspection in presence of the applicant, representative of the applicant was asked to provide manufacturing details and final goods manufactured but the applicant failed to do so and no evidence is produced.
6. It is held by Hon'ble Supreme Court in Civil Appeal No. 1065/2000 that where there is no specific definition given in the act, therefore expressions are to be given the common parlance meaning and must be understood in their natural, ordinary and popular sense. Hon'ble Appellate Tribunal for Electricity (ATE) in appeal No. 116/05, decided on 4.10.2007, it is observed that "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), Hon'ble Supreme Court refused to borrow the meaning of the words 'local funds' 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 of 'other statutes'. In this regard it was held that definition of an expression in one statute must not be imported into another".

7. In respect of representation No. 140/2009 decided on 2.2.2010, the Hon'ble Electricity Ombudsman has rightly observed that the word 'Industrial' is not specifically defined 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 for mass production of items for sale.
8. In respect of representation No. 05/2011, decided on 15.3.2011, Hon'ble Electricity Ombudsman has rightly observed that, "Relying upon the judgement of Appellate Tribunal for Electricity (ATE) in appeal No. 116 of 2006, decided on 4.10.2007, the forum held that though the activity of the appellant is industry under the definition given in the Factories Act, 1946, it will not be correct to borrow the definition from other statute for the purpose of billing it at industrial tariff, determined by the Commission under Electricity Act 2003".

9. At the time of inspection and further say the appellant can not produce anything to show that it has a license to manufacture and sell the manufactured products, therefore the appellant can not logically claim that he manufactures the products.
10. It is also clarified in the tariff order that commercial category actually refers to all categories using electricity for non Residential, non industrial purpose or category, which has not been classified into any specific category.
11. In view of the above, as there is no any manufacturing of products at appellant's unit, hence it must be held that LT – II (Commercial) tariff is applicable to the unit of the applicant. Application deserves to be dismissed.
12. Forum heard arguments of both the sides and perused the record. It is noteworthy that on the date of hearing of the matter, the Non applicant filed specific application for dismissal of the grievance application as per Regulation 6.7 (d) of the said regulations, alleging that during the pendency of this matter, the applicant filed regular Civil Suit No. 3903/12 before the 11th Joint Civil Judge, Jr. Division, Nagpur for declaration, Injunction, and quashing the bill issued by M.S.E.D.C.L. for the month of November 2011 so also filed an

application under Order 39 rule 1 & 2, read with section 151 of CPC. The matter was fixed for urgent hearing for interim relief on 10.5.2012 and learned Civil Court had granted interim relief to the applicant. The applicant in his plaint at Para No. 9 has submitted that the plaintiff (applicant) has approached to the Grievance Cell (Forum) of the defendant (M.S.E.D.C.L.) but this grievance cell are not meant for the grievances of consumer but meant for protecting the defendants and sheltering their wrongful action and therefore, the plaintiff is having no remedy to ventilate his grievance elsewhere and therefore the plaintiff is approaching this Hon'ble Court for appropriate relief. From this averments, it is crystal clear that the applicant has not having faith in this Hon'ble Forum and hence on this count only the application deserves to be dismissed

13. As per regulation 8.3 of the said regulations, this Forum may pass Interim Orders against the threatening of disconnection by the distribution licensee. In this case, the applicant has never applied for interim relief nor there is any threatening regarding disconnection of the supply. Hence without availing the available remedy, the applicant has approached the Civil Court for same reason. Hence on this count, Grievance application deserves to be dismissed. The application is also barred by principle of Res-Judicata (subjudice) as provided under section 10 of CPC. As per regulation 6.7 (d) of the

said regulations, the Forum shall not entertain the grievance where representation by the consumer in respect of same grievance is pending in any proceeding before any court, tribunal or arbitrator or any other authority or decree or award or final order has been passed by any such court, tribunal, arbitrator or authority. The applicant has filed civil suit and committed breach of the said regulation. Therefore, the grievance application deserves to be dismissed.

14. During the course of hearing, Mr. P.K. Jain, the Proprietor of the applicant, made statement at bar and argued that the applicant filed regular Civil Suit No. 3903/12 before 11th Jt. Civil Judge, Jr. Dn. Nagpur and filed application under order 39 rule 1, CPC. He further admitted that interim injunction is granted in favour of the applicant and restraining M.S.E.D.C.L. from disconnecting the electric supply. Therefore, this is an admitted position.

15. It is noteworthy that Mr. Gundalwar, accountant for M.S.E.D.C.L. had produced copies of plaint in Regular Civil Suit No. 3903/12 pending before learned 11th Jt. Civil Judge, Jr. Dn. Nagpur so also produced copy of application under order 39 rule 1 & 2 read with section 151 of CPC. He also produce copy of summons to M.S.E.D.C.L. in the same suit by same Civil Court.

16. Forum has carefully perused the entire pleadings in the plaint in regular Civil Suit No. 3903/12 and application for temporary injunction pending before learned 11th Civil Judge, Jr. Dn. Nagpur. It is noteworthy that the representation by the consumer in present grievance application in case No. CGRF/38/12 before this forum is in respect of same grievance which is pending in proceeding before the learned 11th Jt. Civil Judge, Jr. Dn. Nagpur in Suit for declaration, injunction and quashing of bill issued by M.S.E.D.C.L. Not only this, the interim injunction is also granted by learned Civil Court in the same matter by passing interim order.
17. According to Regulation 6.7 (d) of MERC (CGRF and Electricity Ombudsman) Regulations 2006, Forum shall not entertain the grievance where representation by the consumer in respect of same grievance is pending in any proceedings before any court, tribunal or arbitrator or any other authority or decree or award or final order has already been passed by any such court, tribunal, arbitrator or authority.
18. Record shows that the matter pending before learned 11th Joint Civil Judge, Jr Division, Nagpur in regular Civil Suit No. 3903/12 and the matter pending before this Forum in present grievance application is one and the same and therefore according to the regulation 6.7 (d) of the said regulations, present grievance application

is untenable at law. Jurisdiction of this Forum is barred as per mandatory language used in the regulation 6.7 (d) of the said regulation. Therefore, now this forum has absolutely no jurisdiction to entertain the present grievance application and grievance application deserves to be dismissed. Resultantly the forum proceeds to pass the following order :-

ORDER

1. Grievance application is dismissed.

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