

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

Case No. CGRF(NUZ)/050/2011

Applicant : The Executive Engineer, (E&M)
MIDC Division,
Plot No. X-50, Hingna MIDC Area,
(Kalmeshwar Industrial Area),
NAGPUR.

Non-applicant : MSEDCL represented by
the Nodal Officer-
Superintending Engineer,
Nagpur Rural Circle,
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 17.11.2011)

It is the grievance application filed by Executive Engineer, (E&M) MIDC Kalmeshwar Industrial Area, Nagpur on dated 17.09.2011 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 MIDC Kalmeshwar industrial area is a statutory body

established by Government of Maharashtra under MID Act 1961 to provides basic amenities like road, street light, effluent / drainage disposal etc. including potable water supply to industries, residents etc. It is to mention that a substantial part of water supply is provided outside the areas for several Municipal Corporation, Municipal Council, Grampanchayat at heavily cross subsidized rates as a social responsibility. MIDC Kalmeshwar has established water work at Kalmeshwar the raw water is lifted from the bank of River Wena at our Jackwell from where after proper purification & treatment potable water is being supplied to industrial use as well as domestic use in Kalmeshwar industrial area. At Jackwell MIDC has availed HT power supply from MSEDCL to run water works, the tariff applicable to MIDC water works shall be HT-IV category which is the only category applicable to water as per MERC tariff. Copy enclosed to application at present Superintending Engineer, Nagpur Rural Circle, MSEDCL, Nagpur is HT IN and we are requesting to levy as per tariff HT-IV as there is difference of (4.60 – 3.50) Rs.1.1 per unit. Therefore applicant filed present grievance application.

The non-applicant denied the case of applicant by filing reply on dated 21.10.2011. It is submitted that consumer no. 430019004117 in the name of Executive Engineer Divisional Office is Non-Express feeder and date of connection is 18.11.96, purpose of

connection is for water pump, water supply to Kalmeshwar industrial area. Water is supply to MIDC Kalmeshwar Jackwell on the Bank of River Wena and industrial use as well as domestic use in Kalmeshwar area. In the tariff charged is HT – 1 as the feeder is Non-continuous feeder with Load-Shedding.

But the consumer as per letter dated 24.08.2011 requested to charged the HT-IV tariff. On the basis of order passed by Hon. Electricity Ombudsman Mumbai) in case no. 55 / 2011 dated 07.06.2011 and requested for refund amount of different in tariff to the consumer.

The consumer was being charged as per HT-industrial tariff since December 2009 i.e. over a period of more than 21 months (Bills enclosed at Annexure “C”) and during this period the consumer at never complaint about the tariff.

Industries in MIDC Kalmeshwar use water for various purpose :-

- a) As a raw material e.g. ,manufacturing of Mineral Water, beverages, liquor etc.
- b) For various purposes industries for processing like heating and cooling e.g. steel industry, food industry etc.
- c) For general purposes like drinking water, washing etc.

In reply of MSEDCL rates charged by Nagpur Hingna MIDC are re-produced about rates of water.

Local bodies Nagpur Municipal Corporation revised rate from 01.07.2011 are given as per Annexure "G". Therefore it can be inference MIDC water work Kalmeshwar, public water work as per the supply of water industrial purpose. Therefore tariff HT industrial tariff is correctly applicable. The grievance application deserves to be dismissed. .

In this matter Hon. Chairman and Hon. Member of the Forum are in majority view that grievance application much be allowed. Whereas Hon. Member-Secretary differ and of the opinion that grievance application is liable for dismissed. Therefore descending note of Hon. Member-Secretary is noted at the bottom of the order and the judgment is passed of majority view of Hon. Chairman and Hon. Member.

View taken by Hon. Chairman and Hon. Member which is majority view.

Forum heard argument from both the sides and perused the record.

It is noteworthy that on page no. 2 of reply of MSEDCL dated 21.10.2011, it is specifically mentioned that consumer was being charged as per HT industrial tariff December 2009 that is over a period of more than 21 months bills (Enclosed at Annexure "C") and during this period consumer has never a complaint about the tariff. Therefore it is clear that for the first time cause of action arose in December 2009 when consumer was being charged as per HT industrial tariff. Present

grievance application filed on 17.09.2011 before completion of period of limitation of two years. Therefore present grievance application is within the limitation, according to Regulation 6.6 of MERC (CGRF AND Electricity Ombudsman) Regulation 2006 and it is not barred by limitation. In support of this contention the non-applicant MSEDCL even produced a copy of electricity bill for the month of December 2009 as per Annexure "C" field alongwith reply. Therefore it is clear that present grievance application is perfectly within limitation.

Forum has carefully perused special and specific facts of the present case, fact of the matter decided by ---

- 1) Hon. Electricity Ombudsman Mumbai in case no.55 / 2011 Executive Engineer V/s. MSEDCL Bhandup Zone dated 07.06.2011.
- 2) Order passed by Hon. CGRF Latur in case no. 309A /22A / 2011 and 309 B/ 22 B/2011 dated 13.05.2011.
- 3) Order passed by the Hon. Electricity Ombudsman Mumbai in case no. 108 decide on 26.08.2011 in the matter of MSEDCL V/s. MIDC Sangli dated 26.08.2011 and order passed by Hon. CGRF Nashik Zone in the matter Dy. Executive Engineer MIDC Ahemdnagar V/s. MSEDCL, Facts of all these cases and fact of the case in hand are similar and identical. All these cases were filed within the period of limitation of two years likewise present

case is also filed within the statutory period of limitation of two years and therefore order passed by Hon,. Electricity Ombudsman Mumbai dated 07.06.2011 in case no. 55/ 2011 is squarely applicable to the case in hand.

In order dated 07.06.2011 in case no. 55/2011 Executive Engineer MIDC V/s. Bhandup Zone pass by Hon. Electricity Ombudsman Mumbai, it is held on page no. 5 and 6 as under

“It is abundantly clear from the above that the industrial tariff would be applicable to such activities which entail ‘manufacture’. Therefore there appears no dispute in the approach that the industrial tariff will be applicable to consumers using electricity for the activities which entail ‘manufacture’.

It is undisputed that MIDC is a statutory body established under the Maharashtra Industrial Development Act, 1961. It is not a company established under Companies Act. It provides amenities like roads, streetlights, water supply, etc to all public industries, local residents, Municipal Corporation Gram Panchayat, etc. without any restrictions. It is Appellant’s argument that MIDC has a distinct status of a statutory body rendering service to public. It acts as an agent of Government for development of Industrial area and other public infrastructural facilities under the MID Act, 1961. Public Water supply is one of such activities. It took supply of electricity for its Ransai water supply

plant in Uran, district Raigad from the Respondent for lifting and supply of water to industries, Uran Municipal Council, 57 villages and other users without any restriction. It was billed at HT IV Public Water supply tariff from date of commencement of supply of electricity till June 2010. There is no change in the purpose for which electricity is utilized. These facts are not disputed.

On 23rd June, 2010, the Respondent issued a letter to all its Superintending Engineers O&M Circle communicating its decision that in case where water is utilized for MIDC area and / or adjoining areas for drinking, the industrial tariff may be applied and sewage treatment plant is to be billed under HT IV (Public Water Works and Sewage Treatment Plants) and under LT-III (Public Water Works and Sewage Treatment Plants). The Respondent raised appellant's bill for the month of July 2010 at HT I Continuous Industry tariff and also issued a bill for the difference in HT IV and HT I tariff for the period of August 2009 to June 2010. The appellant disputed this, The appellant has submitted that the tariff orders 116 of 2008 and 111 of 2009 passed by the Commission clearly state that HT IV tariff is applicable to all Public Water supply and Sewage Treatment Plants without any restriction or discrimination between the agencies or bodies who undertake this public service or between water supply and sewage treatment plant. Perusal of the said tariff orders corroborates this. It is also clear from the said

tariff orders that there is no restriction in application of this tariff to a particular utility, agency of Govt. department, local body etc. Therefore, the appellants vehemently pleaded that HT IV tariff is applicable to MIDC water supply plants. The Respondent did not submit say or argue to contradict this position except submitting a letter dated 26th May 2011, belatedly during the hearing, requesting to direct MIDC to furnish some information. Perusal of this information sought also clearly show that the information sought is not at all relevant to determine the tariff of the Appellant, in terms of the said tariff orders, issued by the Commission. On perusal of all submissions made by both parties and the tariff orders, I have no hesitation to hold that water supply activity of MIDC, by any stretch of imagination, cannot be treated as an industry, which entails manufacture. HT I Industry tariff, Continuous or Non continuous, cannot be made applicable to the Appellant. The HT IV Public Water supply and Sewage Treatment Plant, squarely applies to the Appellant, in terms of the said tariff orders passed by the Commission.

In the result, Appellant's representation is allowed. The Forum's order is set aside. All bills raised by the Respondent at HT I Industrial tariff are set aside. The Respondent shall raise revised bills at HT IV Public Water Work and Sewerage treatment tariff. “

As we have pointed out that specific and special facts of the present case of MIDC Kalmeshwar are similar and identical with the facts of the case decided by Hon. Electricity Ombudsman Mumbai, therefore relying on above said orders, Forum hold by majority view that considering pleading of both the parties and the documentary evidence adduced by both the parties, it appears that water supply activities of MIDC Kalmeshwar cannot be treated as an industry, which entails manufacturer and therefore HT-I industries taken, continuous and non-continuous cannot be made applicable to MIDC Kalmeshwar. Considering specific facts and circumstances of this case. The HT-IV public water supply and sewerage treatment plant, squarely to applicant MIDC Kalmeshwar, in terms of said tariff order passed by the Commission.

Descending Note of Hon. Member-Secretary

1. "The PWW category is a subsidized category. The basic purpose of PWW is to provide safe and healthy drinking water facility. As far as Water Works facility of Grampanchayat, Municipal Corporation/Council is concerned majority use of water is for drinking purpose only. The majority of their consumers are residential consumers which is again a subsidized category. However, in the case of MIDC water works majority use of water is for industrial purpose as stated by the non-applicant in his submissions. In addition to this, in some industries this water is used as raw material for their industrial activity and the MIDC is charging to these industries at much higher rates. Also the applicant in his reply stated that irrigation department is charging 5 times more royalty from MIDC for Industries using water as raw material. This indicates that majority of their consumers are industrial consumers which is a subsidizing category. Hence I convince with the view of the non-applicant that the intention of MIDC by charging higher rates for industries is nothing but to earn profit. Therefore in my

opinion, MIDC water works does not fall under PWW category.

2. The water supply activity of MIDC, cannot be treated as an industry, as per tariff philosophy of commission as it does not entail manufacture. Therefore MIDC water works cannot be treated under industrial category.
3. From the above two points, I opine that MIDC water works does not belong to PWW and industrial category. Hence the category of MIDC water works can be decided on the basis of MERC order in Case no. 111 of 2009 which clarifies that.....

It is clarified that the “commercial” category actually refers to all “non- residential, non-industrial” purpose, or which has not been classified under any other specific category. ”

Therefore the grievance application of the applicant in majority view must be allowed, Hence Forum proceed to pass the following order.

ORDER

The grievance application filed by MIDC Kalmeshwar is allowed.

All bills raised by the non-applicant MSEDCL NRC at HT I industrial tariff are set aside.

The non-applicant shall raised revised bills at HT-IV public water works and sewerage treatment unit for applicant MIDC Kalmeshwar.

Excess amount recovered shall be refunded to the applicant. Since December 2009.

The non-applicant is directed to comply the order within 30 days from the date of this order and report compliance shall be intimated.

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