

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

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Office of the
Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/NC/Karjat Dn./483/14-15/

Date: 26/06/2015

In The Mater Of
Recovery of Arrears for Change of Tariff Category

(BY R.P.A.D.)

Date of Submission of the case :01/06/2015

Date of Decision : 26/06/2015

To.

1. Shri. Kambalat Subramaniam Babu
Nagar Road, At Post Jamkhed,
Tq. Jamkhed Dist. Ahmednagar
Jamkhed 413201 , .
(Consumer No.158018056138)

Complainant

2. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Ahmednagar Circle office,
3. Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Karjat Division Office
Dist. Ahmednagar

Distribution Company

DECISION

Shri. Kambalat Subramaniam Babu, Jamkhed, (hereafter referred as the Complainant). Ahmednagar is the L.T. industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company) running a tyre remolding unit in the name of Hindustan Tyres. . The Complainant has submitted grievance against MSEDCL for refund of amount recovered on account of tariff difference to the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No121 of 2015 on 01 /06/2015.

The Forum in its meeting on 02/06/2015, decided to admit this case for hearing on 19/06/2015 at 11.30 am in the office of the forum . A notice dated 02/06/2015 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Ahmednagar Circle Office for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. D.N. Bhole, Executive Engineer , Shri. G.R. Kasabe, Assistant Auditor represented the Distribution Company during the hearing. Shri. Shahid Shaikh appeared on behalf of the consumer.

Consumers Representation in brief :

1. Consumer's connection was checked by Flying Squad, Ahmednagar on 10/07/2014 and meter was found OK.
2. In the month of January 2015, the energy bill was issued with the difference amount charging the tariff difference from Industrial to Commercial from August 2012 for amount Rs. 1,31,507.25.
3. The consumer is a small scale unit registered with the DIC and holding Factory License.

Consumer's Demand:

Withdraw the difference charged in the bill of January 2015 for the change in Tariff from Industrial to Commercial.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 18/06/2015 from the Executive Engineer, MSEDCL, Karjat Division office and other relevant correspondence in this case. Putting forth the arguments on the points raised in the grievance the representatives of the Distribution Company stated that:

1. Shri. Kambalat Subramaniam Babu, having consumer number 158018056138 at Nagar Road Jamkhed is using electricity connection for tyre remolding work. As per report of Dy Engineer Flying squad, Ahmednagar Dt. 18/07/2014 the tariff of said consumer is changed from Industrial to Commercial vide commercial circular No. 175 dt. Aug. 2012.
2. The difference of tariff from Aug. 2012 to Dec. 2014 is charged. As per judgment given by the Nodal officer Cum Ex. Engineer (Adm.) MSEDCL, Circle Ahmednagar on dt. 27/03/2015 the tariff charged to the consumer from Industrial to Commercial is correct.
3. Hence the tariff applicable to the consumer as per commercial circular No 175 is commercial tariff and tariff difference amount is correctly shown in the bill of consumer.

Action by IGRC :

1. Internal Grievance Redressal Cell Ahmednagar Circle conducted hearing on 18/03/2015 for the complaint submitted on 18/02/2015
2. After hearing both the parties IGRC gave decision as per letter dated 27/03/15 as under:
As per Commercial Circular \no. 175 dtd. 05/09/2012, the tariff charged to the consumer from IP to commercial is correct.

Observations by the Forum:

1. The consumer is carrying out the activity of "tyre remolding (retreading)" and the Distribution Company has applied industrial tariff for the electric connection since the date of supply on 03/05/2000.. Later as per MERC tariff order dated 16/08/2012 [in case no. 19/2012] which is applicable with effect from 01/08/2012, the activity of "tyre retreading" is brought under LT II :Non residential/Commercial.
2. The consumer has stated that his unit is a small scale unit registered with the DIC and holding Factory License and claims to continue the industrial tariff. Remold is a synonym for retread. Tyre retreading or remolding is a process where the TREAD (the portion of the tyre which meets the surface of road) of an old tyre is replaced/ repaired using a vulcanizing solution to give fresh lease of life to the tyre. It can not be termed as manufacturing as elaborate in the below mentioned paras.
3. The Hon'ble Supreme Court in the judgement dated 16/10/1979 in case of M/s P.C. Cheriyan v. Mst. Barfi Devi has addressed the issue related to "tyre treading" for recognition as "manufacturing". In the said judgment, Hon'ble Supreme Court has observed that:
".....But in the instant case, by retreading an old tyre does not become a different entity, nor acquires a new identity. The retreading process does not cause the old tyre to lose its original character. The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation for the old components so as to produce a commercially different article or commodity. This question as rightly emphasised by the learned Judge in Jack Zinader, is largely one of fact. In the case before us, all the courts below have concurrently answered this question in the negative. In our opinion, this finding of the courts below is unassailable. The retreading

of old tyres does not bring into being a commercially distinct or different entity. The old tyre retains its original character, or identity as a tyre. Retreading does not completely transform it into another commercial article, although it improve its performance and serviceability as a tyre. Retreading of old tyres is just like resoling of old shoes. Just as resoling of old shoes, does not produce a commercially different entity having a different identity, so from retreading no new or distinct article emerges. The old tyre retains its basic structure and identity.....

4. As per MERC order dated 12/09/2010 [Case no.111 of 2009] under the para 5.4 the tariff philosophy has been elaborated by the Commission . It is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall not apply to the tariffs determined by the Commission . The relevant extract from the said order is reproduced below:

“.....

A similar impression is conveyed as regards the „Industry“ categorisation, with the Commission receiving several representations during and after the Public Hearings, 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 regards, 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 categorisation under Industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorisation of „Industry“ is applicable to such activities, which entail „manufacture.....”

As such even if the consumer holds DIC Registration or Factory License , the industrial tariff will not be applicable unless , the consumer is carrying out a “manufacturing” activity . The present activity of “tyre remolding (retreading) ” carried out by the complainant does not entail “manufacture” and hence not eligible for industrial tariff. The Commission has categorically classified the activity of “tyre remolding (retreading) ” under commercial category (LT II) tariff.

5. There is no dispute that the tariff category LT II :Non residential/Commercial should be applied after detecting that the consumer is conducting business of “tyre molding/retreading”. The only question is about justification for asking retrospective recovery with effect from 01/08/2012. The Distribution Company itself continued to apply industrial tariff till the visit of flying squad on 10th July 2014. The consumer is not at fault for paying the bills under industrial tariff category from August 2012 to June 2014 as they were raised by the Distribution Company under the same category.
- 6 MERC under the order dated 11/02/2003 in Case No. 24 of 2001 regarding retrospective recovery on the basis of reclassification of the tariff category has directed as under:

“.....no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer.....Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively..... In all those cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.”

- 7 The Appellate Tribunal for Electricity (APTEL) in the order dated 7th August, 2014 in Appeal No. 131 of 2013 [in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission] has held that “ the arrears for difference in tariff could be recovered from the date of detection of the error”

- 8 The Honb’le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 124 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Ram Chimanlal Kanojiya (Chiman Automobiles) Vs MSEDCL has mandated as under:

“.....The Representation is thus allowed. The Respondent is directed to recover arrears from the Appellant from billing month of March, 2014 without applying DPC and interest on the said arrears. The arrears already paid by the Appellant should be adjusted and balance amount be recovered from the Appellant”

- 9 The Honb'le Electricity Ombudsman, Mumbai in his order dated 23/12/2014 [In representation no. 126 of 2014] in the similar matter of recovery of arrears after change of tariff category in a case of Mr. Subhash Kailash Gupta (J. S. Auto Garage) has given the same decision denying the retrospective recovery.
- 10 On the basis of the orders of MERC, APTEL and the Electricity Ombudsman ,Mumbai as mentioned above , the Distribution Company is entitled to charge Commercial Tariff from July , 2014 onwards. However retrospective recovery for the period August 2012 to June 2014 on account of tariff difference is to be set aside .

The following order is hereby passed by the Forum for implementation:

ORDER

1. The Distribution Company is entitled to charge Commercial Tariff from July , 2014 onwards only and the retrospective recovery on account of tariff difference for the period August 2012 to June 2014 is set aside.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
3. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Ramesh V.Shivdas)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , O&M Circle office, Ahmednagar.