

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

Kharbanda Park, 1st Floor,

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Dwarka, NASHIK 422011

No. / CGRF /Nashik/NUC/N.R.Dn/612/02-2017-18/

Date: 18/05/2017

(BY R.P.A.D.)

In the Matter of

Retrospective Recovery because of Change Of Tariff Category

Date of Receipt :12/04/2017

Date of Decision :18/05/2017

To,

1. Mr. Dilip Ambadas Shinde,
Gat no. 24 (1151) 17 / 2 A,
Plot no 2 (A-4), Sinnar Shivar,
Hotel Shahu and Sai Shahu
District Nashik 422103
(Con. No. 075940340918)

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Complainant

2. Nodal Officer ,
Maharashtra State Electricity Distribution
Com. Ltd.,
Urban Circle office, Shingada Talav,
Nashik
3. Executive Engineer (Rural)
Maharashtra State Electricity Distribution
Com. Ltd. Vidyut Bhavan Nashik Road.

}

Distribution Company

DECISION

Mr. Dilip Ambadas Shinde, Sinnar Shivar , (hereafter referred as the Complainant). Satpur Nashik is the LT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has grievance against MSEDCL for retrospective recovery due to change of tariff from Industrial to Commercial and in view of the disconnection notice the Complainant has directly submitted the representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No. 66 of 2017 on 12 /04/2017.

Case No.02/2017-18 Shjri Dilip Ambadas Shinde

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The Forum in its meeting on 13/04/2017, in view of disconnection notice decided to admit this case directly for hearing on 02/05/2017 at 11.30 am in the office of the forum . A notice dated 13/04/2017 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, Urban Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. S.S. Sawairam , Nodal Officer/ Executive Engineer , Additional Executive Engineer Shri. S.B. Rathod , Dy. Executive Engineer Shri N.B. Rohankar , Assistant Accountant Shri Naresh Arote represented the Distribution Company during the hearing. Shri Suraj Chakraborty appeared on behalf of the consumer.

Consumers Representation in brief :

1. The complainant states that the restaurant at the ground floor, having the shutter used for an hotel purpose and for commercial purpose. It is alleged that such type of activities comes under commercial tariff and not under Industrial tariff for which the supply is given and billed. It is contended that the change of purpose for which neither official intimation was given and no permission sought, therefore, attracts the flying squad have raised the assessment of tariff difference from date of connection of assessed amounting to Rs. 15,51, 750/- (Fifteen lacs fifty one thousand seven hundred fifty only) described in provisional bill.
2. On 22 March, 2017, the MSEDCL flying squad has visited the complainant's premises and prepared Spot Inspection Report. At that time they have noted meter consumer NO. 075940340918 which is live and consumer is paying the bill as per the MSEDCL conditions of supply 2005.
3. The date of connection is 01/11/2013 and applied for commercial connection and paid the all schedule of charges as per Hon'ble MERC guideline and MSEDCL Norms. The complainant states that all his efforts fell on the deaf ears of the Additional Executive Engineer Sinnar –I and Additional Executive Engineer Flying Squad, therefore, being aggrieved and dissatisfied with the illegal assessment made by the Additional Executive Engineer Sinnar –I , the complainant wanted to file objection before Hon'ble C.G.R.F., as per guideline of disconnection of threat given by the respondent No.1 u/s. 56/1 I.E.A. 2003 as per provision of Law.
4. The F/s. Engineer has not followed the company norms as the connection is taken by us for commercial use only then, why the Junior Engineer or S.D.O. fed the wrong entry. The negligence done by his own staff.
5. The F/s. Engineer erred in applying section 126 of the Electricity Act. 2003, as there is no change of purpose regarding the user of the power supply from commercial to commercial purpose. The F/S treated as the theft offender as per their letter to SDO dtd. 22/03/2017, which is bad in law and atrocity of their own staff.

6. There is no revenue loss occurred to tempering is obtain from us. The recovery is baseless and have no point to generate such huge bill.
7. While giving connection the Junior must follow the company Norms and visit the premises personally. We have taken the Hotel for commercial purpose only. It is the MSEDCL staff fault as they have not follow their tariff as the fault is done by own staff of MSEDCL. The MSEDCL awarded us wrong assessment for their own mistake and negligence which is not expectable as per provision of Law.
8. In the order dated 11th February 2003 in case No. 24 of 2001, the Commission has held as under.
"No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. 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."
9. In the order dated 7th August 2014 passed by the APTEL in Appeal No. 131 of 2013 in the matter of Vianney Enterprises Versus Kerala State Electricity Regulatory Commission and anr. In the said case, the APTEL has held that the arrears for difference in tariff could be recovered from the date of detection of the error.
10. Based on the order of the Commission dated 11th February, 2003 in case No. 24 of 2001 and the order of APTEL dated 7th August, 2014, it has been held by the Electricity Ombudsman (Mumbai) in the order dated 23rd December, 2014 in Representation No. 124,125 and 126 of 2014 that the recovery on account of reclassification can be prospective only. It is a fact that the supplementary bill dated 03/02/2017, has been issued pursuant to detection of error for retrospective period from 2016 to 2014.
11. For such other and further reliefs as the nature and circumstances of the case may be required and this Assessing Authority may deem fit and proper be granted.

RELIEF SOUGHT :

1. To squash and set aside assessment made by the Additional Executive Engineer Sinnar –I and Additional Executive Engineer Flying Squad,
2. To declare that the complainant has not made change of power supply from commercial to any other purpose.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 27/04/2017 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

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Observations by the Forum:

1. From the documents and the records submitted to the Forum it is revealed that the complainant was wrongly applied industrial LT-V tariff since date of connection though the application was for commercial purpose (hotel) .
2. The error was detected during the visit of the flying squad of the Distribution Company on 22/03/2017. Based on this the Distribution Company changed the tariff category from LT-V (Industrial) to LT-II (Commercial) and raised the supplementary bill dated 25/03/2017 from the date of connection i.e. 01/11/2013.
3. The arrears are demanded on the basis of tariff category difference and not under section 126 as alleged by the complainant.
4. In this case, the supplementary bill of a big amount has been suddenly raised after a period of about three and half years due to mistake on the part of the Distribution Company. The complainant had asked for connection in commercial category only and the Distribution Company also sanctioned the supply in commercial category as per sanction letter no. 4904 dated 17/06/2013 by Executive Engineer, Nashik Rural Division. But the consumer category was shown as industrial by mistake while feeding the data in the computer by the staff of the Distribution Company . The complainant was therefore getting the bills with LT-V (Industrial) and paying them .
5. Now after detecting the mistake , the Distribution Company has corrected the tariff category. There is no dispute about correcting the tariff after the error is noticed. Only question is about the period of the

past arrears raised .Is the Distribution Company entitled to recover arrears for any unlimited period ?
The answer is not affirmative.

6. Distribution Company , has not gone through the intent of the provision of the Section 56 (2) of the Electricity Act,2003 which reads as under:

56 (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity

7. In the case of Representation No. 27 of 2006, between Mr. Awadesh S. Pande (of M/s. Nand A/15) versus Tata Power Co. Ltd., it was held by Hon'ble Electricity Ombudsman, Mumbai that:

" 25. Issue of the bills belatedly by the Distribution Licensee and that too because of their own mistake cannot be approved to provide additional leverage to the distribution licensee against the consumer protection in the light of the provisions under Electricity Act, 2003. It should also be understood that Section 56(2) balances the interest of both the Distribution Licensee and the consumer. On one hand, it empowers the Distribution Licensee to disconnect supply of electricity in case of neglect to pay. On the other hand, the responsibility is cast upon the Distribution Licensee to claim and recover the arrears within two years from the date when such sum becomes first due. Two years is quite an adequate period available to the Distribution Licensee to raise the bill towards the arrears if remained unclaimed for any reason, which in this case, was due to manual error. In such a situation, it would be unreasonable to interpret the provision of Section 56 (2) in a manner to give a blanket authorization to the Respondent without any time limit to claim the old arrears, if any. Moreover, upon issue of the bills in keeping with the provisions of the Section 56(2), the Distribution Licensee is free to recover the same by any remedy permissible under law including by way of suit as provided under Section 56(1) of the Electricity Act, 2003. This gives sufficient latitude to safeguard the interest of the Distribution Licensee. It is also an admitted position that the claim of the Distribution Licensee does not extinguish even beyond the period of limitation but only the remedy gets barred.

8. It has been held by this Electricity Ombudsman, in several other cases , that past arrears for a period of more than two (2) years, preceding the date of demand / supplementary bill, are not recoverable, in terms of section 56 (1) and 56(2) of the Electricity Act, 2003.
9. Hence the Distribution Company is not entitled to recover the difference of amount between the charges of electricity supplied and the amounts paid by the complainant during the period of more than two years, preceding the impugned supplementary bill dated 25/03/2017. The complainant is liable to pay the difference amount between the charges of electricity supplied and the amounts paid by him during the period of 2 years from 25/03/2015 to 25/03/2017 only. The Distribution Company is therefore directed to revise the said supplementary bill accordingly.

10. For recovery of the remaining charges of electricity supplied prior to 25/03/2015 , the Distribution Company may, if it so desires, seek remedy by way of civil suit before appropriate court of law.
11. The action of the Distribution Company issuing disconnection notice for nonpayment of arrears for more than 2 years is also unlawful in view of the Section 56 of the Electricity Act, 2003.
12. The complainant has quoted the order dated 7th August 2014 by the APTEL in Appeal No. 131 of 2013 in the matter of Vianney Enterprises Vs Kerala State Electricity Regulatory Commission and demanded that difference in tariff should be recovered from the date of detection of the error. But in the said case, the issue was belated demand due to the tariff reclassification by the Regulatory Commission. The facts of the extant case are different. The complainant was already in Commercial Category and has availed benefits of lower tariff since date of supply by mistake on the part of the Distribution Company. Hence this demand is denied.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The Distribution Company should recover the difference of amount between the charges of electricity supplied and the amounts paid by the complainant during the period of 2 years from 25/03/2015 to 25/03/2017 only. The Distribution Company is therefore directed to revise the said supplementary bill accordingly within 20 days from the date of this order.
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 one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .
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

(Sandip D. Darwade)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- A) Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- B) Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- C) Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. ,
Nashik Urban Circle office,