

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No.10/2016

Date of Grievance : 12.04.2016

Date of Order : 27.05.2016

In the matter of exorbitant billing.

M/s. Shunya Foundation,
S.No.123, Koregaonpark,
Pune - 411001.

Complainant
(Herein after referred to as Consumer)

Versus

The Executive Engineer,
M.S.E.D.C.L.,
Bundgarden Division,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Mr. D.H.Agrawal
Mr.S.S.Pathak

Appearance

For Consumer

Mr.Vijay S.Patil
Mr.M.K.Sarda } **Representatives**

For Respondent

Mr. Yelpale, Ex. Engineer,
Bundgarden Dn.
Mr. Bishwas B.Bhosale, Addl. Ex.Engr.
Wadia Sub/dn.

- 1) The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations, 2006.
- 2) Being aggrieved and dissatisfied by the order dated 17.3.2016 passed by IGRC, Rastapeth, Pune, thereby rejecting the grievance, the consumer above named prefers this grievance application on the following amongst other grounds.

- 3) The papers containing the above grievance were sent by the Forum to the Executive Engineer, M.S.E.D.C.L., Bundgarden Dn., Pune vide letter no. EE/CGRF/PZ/Notice/10 of 2016/72 dtd.12.04.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 26.04.2016.
- 4) We heard both sides at length and gone through the contentions of the consumer and reply of the licensee and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) The consumer namely M/s.Shunya Foundation vide consumer No.170015579865 connected on 12.02.1991 in the tariff category LT-V (Industrial).
 - ii) Previously,the Collector of Pune vide order no.PML/315/ I/ dated.5.3.1990 as per Govt. of Maharashtra, Revenue & Forest Dept. Memo No. IND/3489/263/CR-63/89/ J-5, dated 31.1.1990 has leased out land admeasuring 4 H. 34 R including 0.22 -83 R area under encroachment made by the adjoining plot holders of Koregaonpark, Tal. Pune city, Dist.-Pune and adjoining the area of both the sides of Nalla flowing through the Koregaonpark estate for a period of 15 years from the date of possession of the said land on payment of lease rent of Re.1/- p.a. for the purpose of Garden & maintenance of Nalla on the terms and conditions mentioned in the said order dated 5.3.1990.
 - iii) The above mentioned nalla is situated at CTS No.123 Koregaonpark, Tal. Pune City, Dist. Pune as shown in the map Annexed thereto.
 - iv) According to the consumer, the said nalla and adjacent area was uncleaned, unhygienic and dirty. The consumer, in the interest of Public decided to make it clean. The Pune Municipal Corporation granted permission to the consumer for creating of garden provided with lights, water fountain, Public sanitary convenience, jogging track, children's play grounds etc. on the said land in the interest of Public at large.

- v) According to the consumer the said Public garden is open to the Public free of charge. No any fee is charged to the Public for using the said garden or the facilities therein.
- vi) The consumer was regularly receiving bills as per tariff category LT-V (Industrial) till Nov.2015.
- vii) Addl. Ex. Engineer, Wadia Sub/dn. informed the consumer vide letter dated 2nd Dec.2015 regarding payment of electricity bill as per tariff category LT-X (B) since the consumer has been using electricity for garden water pump purposes and therefore new tariff category will be applicable as LT-X (B(Other Public Service) from Dec.2015.
- viii) Accordingly the Licensee issued provisional bill of Rs.87310/- in the month of Nov.-2015 stating that the tariff difference amount from Industrial to other Public Service, as per letter V.R. JE, (KP) 27.11.2015 and also Additional Executive Engineer instructions.
- ix) The consumer challenged the said bill as it was not as per MERC Regulations. According to the consumer the correct tariff category as applicable would be LT-VI and not LT-X (A) or LT- X (B).
- x) The consumer filed grievance before IGRC. RPUC, Pune 22.1.2016. However the IGRC rejected the grievance of the consumer vide impugned order dated 17.03.2016 stating that as per Commercial Circular No.243 dated 3rd July 2015 the tariff category LT-X (B) , Public Services others as applied is correct and proper and that the installments be granted to the consumer for paying the difference bill as per Circular .

5. The consumer representative Mr.Vijay Patil submitted that they were shocked when they received Licensee's letter dated 2.12.2015 stating that Tariff category Public Service Other i.e. LT-X (B) was applicable to the consumer and the said new category will be applicable from Dec.2015 Bill. The Licensee issued provisional difference bill of Rs.87,310/-. They raised objection to the said bill as it was not as per MERC Regulations and as per correct tariff. According to the consumer proper tariff applicable to them as per MERC Tariff order dated

26.6.2015 in the case no.121 of 2014 and Licensee's subsequent circular thereto is "LT-VI" and not LT-X (A) or LT-X(B). Mr.Patil further submitted that the Licensee did not provide any relief to them, therefore, the consumer approached to IGRC, Rastapeth Urban Circle, with the complaint. The matter was heard but the IGRC vide impugned order dated 17.3.2016 rejecting the complaint directed to pay the tariff difference bill of Rs.87,310/- and the tariff as applied LT-X(B) other public service, was to be proper and correct.

6. Mr.Patil further submitted that there is nalla in the said premises which is belonging to the Government and the said land is leased out to the consumer and the Pune Municipal Corporation granted permission to the consumer to create the garden provided with street light, water fountain, Public sanitary convenience, jogging track, children's play ground in the interest of Public.

7. Accordingly, the consumer, made the garden provided with street light, water fountain, Public sanitary convenience, jogging track, children's play ground in the interest of Public which is open to the public at large free of charge and no any fees is charged to the Public for using the said garden or facilities provided therein. He further submitted that as per tariff order dated 26.6.2015 in the case no.121 of 2014 and Licensee's subsequent commercial circular no.243 dated 3rd July 2015, LT-VI (Street light) category should be applied to the consumer. The nalla park is a public garden and power is used for lighting in Public garden which is open to the general public free of charge. On the contrary, tariff category LT-X A(Public Services) is applicable to the Government Educational Institute & Hospitals. M/s.Shunya Foundation is none of them. The Licensee initially issued tariff difference provisional bill considering category LT-X (A) which is erroneous. Similarly LT-X (B) Public services - others category is also not applicable to this consumer because the consumer does not charge any fee for the services provided by them to the Public unlike Educational Institutions, Hospitals, Pathological Lab, etc. which provide services charging fees.

8. Mr. Patil further submitted that the Licensee has not observed the Regulations made by MERC regarding Accesses to consumer's premises. As

such the inspection is illegal and action taken on the basis of illegal inspection becomes automatically illegal.

9. Mr.Patil lastly submitted that the Licensee be directed to apply correct tariff i.e LT-VI instead of LT-X(B) and revised bill be issued from the month of Dec.2015 onwards and the amount of tariff difference recovered in excess be refunded or adjusted in future bills.
10. On the other hand, Mr.Yelpale, Ex.Engineer, Bundgarden Dn. submitted on behalf of the Licensee that according to verification report dated 27.11.2015, the consumer has been using supply for water pump and garden light at S.No.123, Koregaonpark. The said land is owned by the Government and this consumer is maintaining the garden on the said land. The electric connection was given in the name of consumer for water pump of the garden. The additional executive engineer, Wadia Sub/dn. Vide letter dated 2.12.2015 informed the consumer that the tariff category is changed from LT V(Industrial) to LT-X (B) Public services-others and to pay difference bill. He further submitted that as per commercial circular no.243 dated 3.7.2015 LT-VI (St. lights) category shall be applicable for LT-Street light use and for use of electricity/power supply at low /medium voltage exclusively for the purpose of street light services. He further submitted that the premises in possession of the consumer is owned by the Government and electricity /power supply is used for water pump of garden maintained by the consumer. Therefore the tariff category LT-X (B) Public Services-others as applied is correct and accordingly difference bill amounting to Rs.87,310/- is also correct and proper and consumer is liable to pay the same and the grievance be rejected.
11. Following points arise for our determination. We give our findings thereto for the reasons stated below-

Points	Findings
1. Whether the tariff category, LT-X (B) Public Services-others, as applied by the Licensee to the consumer is proper and	Yes.

Correct?

2. Whether the Licensee is entitled to recover arrears of tariff difference from Oct.2013 to to Nov.2015 as mentioned in the provisional bill? No.
3. What order? As per final order.

12. REASONS.

As to Point no.1

Admittedly, the consumer is maintaining garden for the public at large on the Government land with the permission of Municipal Corporation. The consumer namely, "Shunya Foundation" is a registered public trust vide no.E-12488 (Mumbai) dated 17th Nov.1989. The Government of Maharashtra leased out 04 Hecter 34 Aar. Area out of S.No.123 for 15 years for lease of Re.1/- p.a. Vide order passed by Collector Pune vide No.PML-315-1 Pune dated 5.3.1990. The main object of the said trust (consumer) is to create Ecological environment for the physical spiritual benefit of the Public. The Licensee made inspection of the premises of the consumer and submitted verification report vide no.JE KP dated 27.11.2015 mentioning therein that the supply is being used for water pump. Accordingly the Addl.Ex.Engineer, Wadia Sub-dn. sent letter dated.2nd of Dec.2015 to the consumer stating that the electricity is being used for garden water pump purpose, so tariff will be applicable, "LT-X(B)" Public Services-other and therefore to pay tariff difference electricity bills for the period from Oct.2013 to Nov.2015 as per tariff category Public Services-others LT X(B) and that the said new tariff category will be applicable from Dec.2015 bill. Accordingly the Licensee issued provisional bill of Rs.87310/-. The consumer challenged the said bill on the ground that proper tariff category would be LT-VI (Street light) and not LT X(A) or LT X(B).

13. The MERC in the tariff order dated 26.6.2015 in the case no. 121 of 2014 introduced separate category for Government schools and Hospitals. Public service category has been divided into two sub categories, namely

(A) Government Educational Institutions, Hospitals and primary health centers, and

(B) other public services. The above mentioned tariff order supersedes all tariffs so far in force. The Licensee issued commercial circular no.243 dated 3-

07-2015 for guidelines and for the implementation of the said tariff order of the commission.

The tariff category, LT X (A) : LT – Public services – Government Educational Institutes & Hospitals is applicable as under.

This tariff shall be applicable to all Educational Institution, such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centers and Pathology Laboratories and Libraries and Public reading rooms of state or Central Government, Local Self Government bodies such as Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat. Sports Club/Health Club/ Gymnasium/ Swimming pool attached to the Educational Institution/ Hospital Provided said Sports Club/Health Club/ Gymnasium/ Swimming Pool is situated in the same premises and is primarily meant for the students/ faculty employees/ patients of such Educational Institutions and Hospitals.

Similarly, the tariff category LT X(B) : LT- Public Services – Others is applicable as under :

This Tariff shall be applicable to Education Institutions such as Schools and colleges, and Hospitals, Dispensaries, Primary Health Care Centers and Pathology Laboratories and Libraries and Public reading rooms other than those of State or Central Government, Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat; all offices of Government/Municipal Bodies, Local Authority, local self-government, Zilla Parishad, and Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad, and Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad and Gram Panchayat; Police Stations, Police Chowkies, Post Offices, Defence establishments(army, navy and air-force), Spiritual organizations which are service oriented, Railway/Monorail/Metro except traction, State Transport establishments,; and State Transport Workshops, Transport Workshops operated by Local Authority, Fire Service Stations, Jails, Prisons, Courts, Airports (only activity related to aeronautical operations), Ports, Sports club/ Health Club/ Gymnasium/ Swimming Pool attached to the Educational Institution/ Hospital provided said Sports Club/ Health Club/ Gymnasium/Swimming Pool is situated in the same premises and

is primarily meant for the students/faculty employees/patients of such Educational Institutions and Hospitals.

14. According to the consumer the proper tariff category for its trust would be LT VI : LT Street Lights.

Applicability of said tariff category is as under.

This category shall be applicable for Street Light use, and for use of Electricity/ Power Supply at Low/ Medium Voltage exclusively for the purpose of Street Light Services.

It shall also be applicable for use of Electricity/Power Supply at Low/Medium Voltages for the following (but not limited to) purposes, irrespective of whether such facilities are owned, operated and maintained by a Local Self-Government body:

- a) Lighting in Public Gardens (which are open to the general public free of charge, and not including gardens in private townships or amusement parks):*
- b) Traffic Signals & Traffic islands ;*
- c) Public Sanitary Convenience;*
- d) Public Water Fountains; and*
- e) Such other Public places open to the general public free of charge.*

This category shall be also be applicable for public lighting of streets which are open for use by the general public. Streets in residential complexes, commercial complexes, industrial premises, etc. will be billed under the tariff of respective categories. This Tariff shall also be applicable in case power supply has been released on High Tension for providing Street Light services.

15. Therefore, tariff category, “ LT-VI : LT street lights” is mainly for the use of electricity for the purpose of street light services. It is nowhere mentioned in the said category that it shall also be applicable for use of electricity for water pump. The verification reports of the Licensee dated 27.11.2015 and 8.2.2016 clearly disclose that the supply is being used by the consumer for water pump and garden and the said land is owned by the Government and the Garden is maintained by the consumer. Though the consumer is not charging any fees to the Public for the park and facilities provided therein, still, supply is not being utilized mainly for street lights. The said connection is given for the water pump and the supply is being mainly utilized for the maintenance of the Garden and not exclusively for the street

lights. The consumer, "Shunya Foundation" is a Public Trust. The MERC in the tariff order dated 26.6.2015 in the case no.21 of 2014 has introduced separate tariff category for the Government Schools and Hospitals as LT-X (A) and for other public services as LT-X(B). Therefore we found that tariff category LT-VI(LT street lights) is not applicable to the consumer. But tariff category, LT-X(B) Public services - others as applied by the Licensee to the consumer is proper and correct. The consumer can take advantage of the tariff category LT-VI only after making separate connection exclusively for street lights with the permission of Licensee by making necessary compliance as per rules. Hence we answer point No.1 in the affirmative.

16. As to Point No.2

The Licensee inspected the premises of the consumer and submitted verification report dated 27.11.2015. Accordingly, the Additional Ex. Engineer vide letter dated 2.12.2015 informed the consumer that the tariff category public services-others LT-X(B) would be applicable and to pay difference electricity bills for the period of Oct.2013 to Nov.2015. Thereafter the Licensee issued supplementary bills of Rs.87,310/- to the consumer in the month of Nov.2015 which was challenged by the consumer as mentioned above.

17. Admittedly, the tariff order dated 26.6.2015 in the case no.121 of 2014 supersedes all the tariffs already in existence. The tariff order dated 26.6.2015 came into force from 1st June 2015. Prior to that there was no tariff category as LT-X (B). Therefore the Licensee cannot enforce it by issuing supplementary bill to the consumer from Oct.2013.

It is pertinent to mention that initially the consumer was billed under LT-V (Industrial) and the consumer was regularly paying the said bills of this category till Nov.2015. The Licensee reclassified the said consumer in the tariff category LT-X(B) as per tariff order dated 26.6.2015 in case No.121 of 2014. Regulation 13 of the MERC (Electricity supply code and other conditions of supply) Regulations, 2005 allows the distribution Licensee to classify or reclassify a consumer into various categories

approved by the Commissioner based on the purpose of supply. It provides as under :

13. Classification and Reclassification of Consumers into Tariff Categories :- *The Distribution Licensee may classify or reclassify a consumer into various Commission- approved tariff categories based on the purpose of usage of supply by such consumer :*

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.

18. The Maharashtra Electricity Regulatory Commission (the commission) in the order dated 11th Feb.2003 in case no.24 of 2001 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.

19. Similarly, the appellate Tribunal for Electricity (APTEL) by the order dated 7th Aug.2014 in appeal no. 131 of 2013 in the matter of Vianney Enterprises v/s Kerla State Electricity Regulatory Commission and another has held that the arrears for difference in tariff could be recovered from the date of detection of the error.
20. Similarly, based on the order of the commission dated 11th Feb.2003 in Case No.24 of 2001 and the order of APTEL dated 7th Aug.2014, it has been held by the Electricity Ombudsman (M) in its order dated 23rd Dec.2014 in Representation no.124,125 & 126 of 2014 that the recovery on account of reclassification can be prospective only. Similarly in the order dated 11th Jan.2016 in Representations No.91 of 2015 the Hon'ble Electricity Ombudsman (M) has held that retrospective recovery is not allowed and the respondent is directed not to recover the difference of arrears of Rs.41,55,761/- from the appellant.
21. The Licensee made inspection of the premises of the consumer on 27.11.2015 and issued supplementary bill to the consumer from Oct.2013 to Nov.2015 for Rs.87,310/-. The Licensee can recover the difference bill amount from the date of

detection of the error i.e. from 27.11.2015. Therefore, the supplementary bill of difference bill amount of Rs.87,310/- for the above mentioned period needs to be set aside. The Licensee is required to issue the revised bill to the consumer from the date of detection of error i.e. from 27.11.2015. Hence we answer point no.2 in the negative.

Lastly, we proceed to pass following order :

ORDER

1. Grievance of consumer is partly allowed.
2. The demand raised by the Licensee quantifying dues to the tune of Rs.87,310/- by way of Supplementary bill of tariff difference amount for the period of Oct.2013 to Nov.2015 is hereby set aside.
3. The impugned order dated 17.3.2016 passed by IGRC Rastapeth Circle, is hereby set aside.
4. The Licensee is to issue such revised bill of tariff difference amount to the consumer from the date of detection of error i.e. from 27.11.2015 as mentioned in this judgment without applying DPC and interest.
5. The Licensee should not take any coercive action against the consumer towards the supplementary bill mentioned above.
6. The amount of tariff difference as mentioned in the provisional bill if recovered be adjusted in future bills.
7. The Licensee to report the compliance within one month from the date of this order.

Delivered on: - 27.05.2016

Sd/-	Sd/-	Sd/-
D.H.Agrawal	S.S.Pathak	S.N.Shelke
Member/Secretary	Member	Chairperson
CGRF:PZ:PUNE	CGRF:PZ:PUNE	CGRF:PZ:PUNE

Note :- The consumer if not satisfied may filed representation against this order before the Hon.'ble Ombudsman within 60 days from the date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Bldg.,
Bandra Kurla Complex, Bandra (E), Mumbai-51.