

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

Case No.15/2016

Date of Grievance : 17.02.2016

Date of Order : 20.06.2016

In the matter of change of tariff category and accordingly recovery of arrears.

M/s.Lupin Ltd.,
Gat No.1156, Ghotawade,
Tal.Mulshi, Dist.-Pune
(Consumer No.182919044340)

Complainant
(Herein after referred to as Consumer)

Versus

The Supdt. Engineer,
M.S.E.D.C.L.,
Pune Rural Circle,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Mr. D.M.Sonone
Mr.S.S.Pathak

Appearance

For Consumer

Mr.Ajit Deshpande
Mr.Pramod Kulkarni } **Representatives**
Mr.Chandrakant Kathote

For Respondent

Mr.S.R.Pawade,Supdt.Engineer
Pune Rural Circle

(Per Mr. S. N. Shelke, Chairperson)

- 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 04.11.2015 passed by IGRC, Pune Rural Circle, 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 Superintending Engineer, M.S.E.D.C.L., Pune Rural Circle, Pune vide letter no. EE/CGRF/PZ/Notice/15 of 2016/108 dtd.25.05.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 07.06.2016.
- 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. Lupin Ltd., having consumer No. 182919044340 connected on 22.9.2008 in the tariff category HT-I (Industrial) with contract demand of 1600 KVA and connected load of 2528 KW.
 - ii) The consumer is having Industrial Bio technology Unit from 2008 and is engaged in manufacturing as well as in Research & Development activities, as “ Recombinant Bio Therapeutics “ .
 - iii) Consumers units has been registered as a Biotech unit with director of Industries, Govt. of Maharashtra, Policy for Biotech Industries, vide registration certificate dated 14th Jan.2015.
 - iv) Consumer was billed under HT-I (Industrial) category from Sept.2008 till May 2015.
 - v) The Licensee, SE (PRC) Pune vide letter dated 7th July 2015 informed the consumer that only Research & Development Activity is being carried at their Ghotawade Unit as per spot inspection report submitted by Ex. Engineer Mulshi Dn. dated 15th June 2015, HT-II (Commercial) category is to be applicable for R & D Units outside Industrial premises.
 - vi) Thereafter the Licensee i.e. SE(PRC) Pune issued supplementary bill to consumer vide letter dated 11th Aug.2015 for tariff differentiation amount of Rs.6,86,61,400/- for past 34 months from Aug.2012 to May-2015
 - vii) The Licensee carried joint inspection of the premises of the consumer on 28.9.2015 and submitted report that the power supply is used

about 35% to microbial and mammalian manufacturing process and other is used for R & D and other utilities.

- viii) Licensee served notice of disconnection to the consumer on 3.11.2015 and reminders on 7.11.2015, 4.12.2015 and thereafter disconnected the supply of the consumer on 11.12.2015.
 - ix) Consumer submitted letter requesting to allow them to pay the disputed arrears in six installments and accordingly 1st installment was paid under protest on 11th Dec.2015.
 - x) The Licensee restored the supply of consumer on 11th Dec.2015 at 21.30 Hrs.
 - xi) Consumer approached to IGRC (PRC) with a complaint to set aside the impugned supplementary bill of differentiation amount being illegal.
 - xii) The IGRC rejected the grievance vide impugned order dated 4th Nov.2015 stating that changed tariff category as HT-II from Aug.2012 to May-2015 is found to be in order and the consumer is bound to pay the tariff difference charged by MSEDCL. It is further ordered that as per tariff order of 2015, to convert the tariff from HT-II to HT-I w.e.f. June-1, 2015 as per the Biotech Policies of Government of Maharashtra, which includes manufacturing and R & D of Biotech Units.
 - xiii) In the letter sent by SE (PRC) dated 6th Jan.2016 to CE, (Comm.) it is mentioned that, " as per the verification by Ex. Engineer, Mulshi Dn. the consumer has utilized for R & D (Pharmaceutical type) therefore the tariff was changed from HT-I to HT-II in the month of June-2015.
- 5) The consumer representative Mr. Ajit Deshpande submitted that the consumer was billed under HT-I (Industrial) category from Sept.2008 till May 2015. The SE (PRC) vide letter dated 7th July 2015 informed the consumer that as per spot inspection report submitted by Ex. Engineer, Mulshi Dn. vide letter dated 15th June 2015, only Research & Development activity is being carried out at consumer's Ghotawade units, HT-II i.e. Commercial category is to be applicable for R & D Units situated outside

Industrial premises. Thereafter the S.E, (PRC) vide letter dated 11th Aug.2015 issued the supplementary bill for the past period of 34 months of differential amount of Rs.6,86,61,400/- for the period from Aug.-2012 to May -2015.

- 6) Mr. Deshpande further submitted that the applicability of the modified tariff should only be prospective, after the consumer is informed and under any circumstances, retrospective changing of tariff is unlawful. He further submits that verification by the Ex. Engineer, Mulshi Dn. in June-2015 was unilateral change in tariff category from HT-I to HT-II i.e. from Industrial to Commercial. He further submits that as per MERC order dated 26th June 2015 consumer's biotech units have been classified under HT-I (Industry) and therefore consumer's unit being biotech unit is thus billed as per HT-I (Industry) from 1st June 2015. He further submits that being aggrieved by the actions of MSEDCL, they approached to IGRC (PRC) filing a complaint in respect of setting aside of above mentioned unlawful supplementary bill but the IGRC vide impugned order dated 4.11.2015 ordered in favour of MSEDCL and stated that the retrospective difference in tariff category commercial for the period from Aug.2012 to May 2015 is to be in order.
- 7) Mr. Deshpande further submitted that the consumer approached to SE, PRC vide letters dated 20.10.2015, 6.11.2015 and 23.11.2015 requesting that not to charge tariff differential retrospectively and to consider it only from the date of detection (Spot Inspection) of Mulshi Dn. In the meanwhile on 28thSept.2015 the S.E. PRC, MSEDCL with its officials visited factory premises at Gat No.1150, Ghotawade and carried joint inspection and in the said report indicated that, "the power supply is used about 35 % to microbial and mammalian manufacturing units and the other is used for R & D and other utilities". Therefore it is necessary to classify their installation under the HT-I (industrial).
- 8) He further submits that the MSEDCL issued a disconnection notice vide letter dated 4th Dec.2015 for nonpayment of arrears. They requested to CE, Commercial vide letter dated 7th Dec.2015 to look into the matter and give them relief from payment of supplementary bills but there is no any reply till date. In the meanwhile the MSEDCL disconnected the supply on 11th

Dec.2015. Since all pharmaceuticals manufacturing processes and medicine are important, they immediately submitted a letter requesting to allow them to pay the disputed arrears in 6th installments. Accordingly 1st installment was paid under protest on 11th Dec.2015. Thereafter their supply was restored on 11th Dec.2015 at 21.30 Hrs.

- 9) Mr. Deshpande further submitted that the supplementary bill issued by the MSEDCL for retrospective period of 34 months is not tenable but can be recovered from the date of detection of error. He relied on the order passed by MERC in case No.24 of 2001, dated 11th Feb, 2003. He further relied on the order dated 23 Dec.2014 passed by the Hon'ble Electricity Ombudsman (M) in representation no. 124 of 2014 in the matter of Ram Chmnlal Kanojiya Versus MSEDCL wherein it was held that recovery should be prospective. He further placed reliance to the judgment dated 7th Aug. 2014 of APTEL in appeal no.131/2013 wherein it was held that arrears of difference in tariff category would be recovered only from the date of detection of error. He lastly submits that the above mentioned supplementary bill issued by the Licensee be set aside and the difference due to tariff category should only be charged prospectively from the date of detection of error and the Licensee be directed to refund the amount of supplementary bill paid by them alongwith interest at the rate 12 % p.a.
- 10) On the other hand, Mr. S.R.Pawade, the Supdt. Engineer, PRC submitted on behalf of Licensee that the consumer having contract demand of 1600 KVA and connected load of 2528 KW for Industrial purpose was connected on 22.9.2008 for the purpose of pharmaceutical products (medicines) in the tariff category HT-I (Industrial). The Ex. Engineer, MSEDCL Mulshi Dn. made spot inspection of the premises of the consumer on 15.6.2015 and in that verification it was found that the consumer is using /utilizing the electricity only for research and development activity (pharmaceutical type) at the said premises. Actually the commercial tariff (HT-II) was applicable for R& D units situated outside industrial premises as per MERC tariff order of 2012. The said fact was intimated to the consumer through SE, PRC letter dated 7.7.2015. Thereafter the Licensee changed the tariff of the consumer

from HT-I (Industrial) to HT-II (Commercial) w.e.f. 1.8.2012 in the month of June-2015 as per tariff order of 2012. Accordingly supplementary bill was issued to the consumer vide SE, PRC Letter dated 11.8.2015 of Rs. 6,86,61,400/-.

- 11) Mr.Pawade further submitted that joint inspection of consumers' premises was carried on 25.9.2015 in the presence of the consumer. In that inspection, it was found that the power supply is utilized for Research and Development activity of pharmaceutical category and other utilities for 65% & microbial and mammalian manufacturing process for about 35%. He further submits that the consumer filed the complaint before IGRC, on 1.9.2015 against the order of change of tariff and differential amount charged for the period from Aug.2012 to May-2015 with retrospective effect wherein the IGRC was pleased to pass order on 4.11.2015 that the tariff order of 2012 does not specifically mentions the biotech units are to be billed as per Industrial category. The said tariff order specifically mentions that the R& D Units to be billed as per Commercial Category. The difference charged under commercial category from Aug.2012 to May-2015 is found to be in order and the consumer is bound to pay the tariff difference charged by MSEDCL and further orders to convert the tariff from HT-II to HT-I w.e.f. June-1, 2015 as per the tariff order of 2015, as per the Biotech policies of Govt. of Maharashtra, which includes manufacturing and R&D of Biotech units.
- 12) Mr. Pawade further submits that due to nonpayment of supplementary bill, notice u/s 56 (i) of the Act was issued to the consumer on 3.11.2015 but the consumer failed to pay the said arrears within the stipulated notice period. Thereafter reminders were sent to the consumer vide letters dated 17.11.2015, 4.12.2015 as to pay the arrears on or before 8.12.2015 but the consumer failed to pay the said arrears. Therefore the Licensee disconnected the supply of the consumer on 11.12.2015.
- 13) After the disconnection, the consumer agreed to pay the arrears in 5 equal installments of Rs.1,07,55,711/- each vide letter dated 17.12.2015 and amount of arrears paid in 5 installments with current bill till date.

- 14) Mr.Pawade further submits that as per Section 56 (1) of Electricity Act,2003 the Licensee has all rights to receive the due amount or to take necessary steps in case the due amount is not recovered. He further submits that the order passed by Hon'ble APTEL dated 7th Aug.2014 in appeal no.131 of 2013 in the matter of Vinayak Enterprises Vs. Kerala Electricity Regulatory Commission is not applicable to this case since that case was about classification & reclassification of tariff but in the present case only the correct or appropriate tariff was applied and implemented as per MERC tariff order of 2012. He further submitted that the Bombay High Court allowed the claim of Licensee for the recovery of additional amount for the period more than 2 years on the basis of clerical mistake or if the consumer was under billed due to clerical mistake or human error or such like mistakes. He placed reliance to the case (i) Bharat Barral & Drums Mfg. Co.Pvt.Ltd.Vs. The Municipality Corp. for Greater Bombay, AIR 1978 Bom.369, (ii) U.A.Thadani Vs. Best Undertaking and Anr., AIR 2000 Bom 264, (iii) Rototex Polyester & Anr.Vs.Administrator, of Dadra & Nagar Haveli (U.T.) Elect.Dept.Silvasa & Ors., [2010 (4) BCR 456]. He further submits that there are conflicting views of Bombay High Court as to recovery of amount. Pointing out another view, he submitted that in the case of Mr.Awadesh S.Pandye Vs. Tata Power Co. Ltd., & Ors., AIR Bom 52, it is held that as long as a sum is due which is within two years of the demand can be recovered. He further submits that the issue of recovery of arrears has been referred to the larger bench comprising of three judges and the Writ Petition No.6783/2009, 10764/2011, 498/2009,1850/2013, 147/2014,1360/2015 have been tagged. He lastly submits the grievance of the consumer be dismissed with cost.
- 15) Following points arise for our consideration. We give our findings thereon for the reasons stated below.

	Points	Findings
i)	Whether as per spot inspection report submitted by Ex.Engineer, Mulshi Division dated 15.6.2015, the Licensee can recover arrears of Rs.6,86,61,400/-	No

retrospectively towards tariff differentiation for the period from Aug.-2012 to May-2015 i.e. for 34 months vide supplementary bill dated 11.8.2015, on the basis of MERC tariff order dated 16.8.2012 in case no.19 of 2012 ?

ii) What order? As per final Order.

16) Reasons :

Admittedly, the consumer namely M/s.Lupin Ltd. having consumer no. 112919044140 was connected on 22.9.2008 in the tariff category HT-I (Industrial). The Ex. Engineer, MSEDCL, Mulshi Dn. inspected the premises of the consumer on 15.6.2015 and it was found that the consumer is using the electricity for only Research & Development activity (pharmaceutical type) at the said unit. According to the Licensee Commercial tariff (HT-II) is to be applicable for Research & Development unit situated outside the industrial premises. Therefore the Licensee informed the said fact to the consumer vide its letter dated 7.7.2015. Thereafter the Licensee issued the supplementary bill to the consumer of differentiation amount i.e. from HT-I(Industrial) to HT-II (Commercial)to the tune of Rs.6,86,61,400/- for the period from Aug.2012 to May-2015 i.e. for 34 months vide bill dated 11.8.2015. The Licensee issued notice u/s 56(1) to the consumer on 3.11.2015 and reminders thereof on 17.11.2015 and 4.12.2015 and thereafter disconnected the supply on 11.12.2015. The consumer made part payment of arrears on 11.12.2015 & the very same day supply was restored. Thereafter the consumer paid remaining arrears under protest in five installments.

17) The IGRC vide impugned order dated 4.11.2015 held that the MSEDCL has properly applied tariff to the consumer and confirmed differentiation amount as charged by MSEDCL for past period under commercial category. However further directed that to convert the tariff from HT-II to HT-I w.e.f. 1st June 2015 as per tariff order of 2015. In fact, the impugned supplementary bill is for the period from Aug.2012 to May-2015 on the basis of tariff order

dated 16th Aug.2012. Therefore the impugned supplementary bill is not subject matter under new tariff order dated 26.6.2015.

- 18) The MERC in the tariff order dated 16th Aug.2012 in case no. 19 of 2012 has laid down as under:

HT-Industry

Applicability:

This category includes consumers taking 3-phase electricity supply at High Voltage for industrial purpose. This tariff shall also be applicable (but not limited to) for use of electricity/power supply for Administrative office/Time office, Canteen, Recreation Hall/ Sports Club/ Health Club /Gymnasium/ Swimming Pool exclusively meant for employees of the industry, lifts, water pumps, firefighting pumps, premises (security) lighting etc. provided all such Administrative Office/Time office, Canteen, Recreation Hall / Sports Club/Health Club/ Health Club/ Gymnasium/ Swimming Pool, lifts water pumps, firefighting pumps, etc. are situated within the same industrial premises and supplied power from the same point of supply.

- 19) According to the consumer the supplementary bill dated 11.8.2015 issued by the MSEDCL is illegal as the arrears of tariff difference can be recovered only from the date of detection of error and no retrospective recovery is allowed as per the existing rules & regulations. According to them they have paid all the dues of electricity in timely manner as per the bills raised in past. They have accounted the cost of electricity for the past period, in the cost of their products, sold during that period and therefore they are not able to pay the amount of supplementary bill. They have also paid taxes on their income for the past period and various other taxes on the basis of cost of production and hence levying of such demand for past period is unjustified and exfacie illegal.

- 20) Classification & Reclassification as per Regulation No.13 of the MERC (Electricity supply code and other conditions of supply) Regulations, 2005 in short, the supply code regulations, is the responsibility of the Licensee

Regulation No.13 of MERC (Electricity of Supply Code & Other condition of supply) Regulations, 2005 reads as under:

13. Classification and Reclassifications 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.

After the tariff order dated 16th Aug.2012 in case no.19 of 2012 of the Commission, the Licensee was required to change the tariff category of the consumer from HT-I (Industrial) to HT-II (Commercial) and should have charged the consumer accordingly. It is the responsibility of the Licensee to apply proper tariff category as per the tariff order of the commission as per the above mentioned Regulation no.13 of the supply code Regulations & if there is any lapse, the Licensee should take action against the erring officials.

- 21) The consumer placed reliance to the order dated 11th Feb.2003 in case no.24 of 2001 of the MERC. The Commission has directed 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.

- 22) Similarly in the order dated 7th Aug.2014 passed by the Appellate Tribunal for Electricity (APTEL) in Appeal No.131 of 2013 in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission and anr , it is held that the arrears for difference in tariff could be recovered only from the date of detection of error.
- 23) 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 Hon'ble Electricity Ombudsman (Mumbai) in its orders dated 23rd December, 2014 in Representation No.124, 125 and 126 of 2014 and Representation No.16 of 2016 that the recovery on account of reclassification can be prospective only.

- 24) The Licensee pointed out that the orders dated 23rd Dec.2014 of Electricity Ombudsman (Mumbai) have been challenged in the Bombay High Court by filing Writ petition No.6545 of 2015. The Licensee also pointed out that the larger bench comprising of 3 judges has been constituted and the W.P.Nos. 6783/2009, 10764/2011, 498/2009, 1850/2013 have been tagged. Also by its order dated 10.7.2015 further W.P. No. 495/2015 has been directed to be tagged with these proceedings. It is further pointed out that there are conflicting judicial views, one has enunciated the principal that section 56 (2) has no application to a demand made by the Licensee or the Electricity Board for the unpaid amount of the Electricity consumed, if the consumer was under-billed due to clerical mistakes or human error or such like mistakes, on the contrary, another set of judgments have enunciated the principal that sub-section (2) of Section 56, only provides a limitation, that the recourse to recovery by cutting of electric supply is limited for a period of 2 years from the date of when such sum became due. Therefore according to Licensee, it is authorized to recover charges of Electricity supplied in accordance with such tariff as may be fixed time to time by the Commission and as per supply code regulations.
- 25) The Hon'ble High Court has not set aside the orders dated 23rd Dec. 2014 passed by Hon'ble Electricity Ombudsman (Mumbai) in Representation No.124, 125 & 126 of 2014. Therefore the retrospective recovery of arrears from the consumer is liable to be set aside. In view of the above discussion the supplementary bill issued by the Licensee dated 11.8.2015 for differentiation amount of Rs.6, 86,61,400/- for period from Aug.-2012 to May-2015 for 34 months is to be set aside. Hence we answer Point No. (i) in the negative.
- 26) Initially this Forum had rejected the said grievance on the ground of delay vide order dated 22.02.2016. The consumer filed representation against the impugned order before Hon'ble Ombudsman (Mumbai) vide Representation No. 23 of 2016. The Hon'ble Ombudsman set aside the impugned order passed by the Forum dated 22.2.2016 and remanded the matter to the Forum for deciding the grievance of the consumer in accordance with law treating

the grievance to be within the period of limitation and directed to decide the grievance on merits within a period of 1 month from the date of receipt of the said order. Accordingly the grievance is renumbered as 15 of 2016. The order of Hon'ble Ombudsman dated 18th May 2016 was received to this office on 25.5.2016. Hence the grievance is decided within stipulated period.

Date : 20.06.2016

I agree,

Sd/-
S.S.Pathak
Member
CGRF:PZ:PUNE

Sd/-
S.N.Shelke
Chairperson
CGRF:PZ:PUNE.

Member Secretary, (D.M. Sonone)

I have gone through the above reasoning and my opinion in this matter is differ as :

In case of M/s. Lupin Ltd. is a consumer having pharmaceutical manufacturing process R &D since the date of connection. Now the consumer was charged under HT-II (Commercial) category for a period of Aug.2012 to May-2015 as per the spot inspection report of Ex. Engineer, Mulshi Dn. on dtd.15.6.2015. Wherein the use of electricity was found Research & Development activity in the same premises. Hence the supplementary bill issued by the Superintending Engineer, PRC, to M/s. Lupin Ltd. at Gat No.1156 Ghotawade, Tal. Mulshi, Dist.- Pune is found correct and appropriate and consumer is bound to pay.

Sd/-
D.M.Sonone
Member/Secretary
CGRF: PZ: Pune

Hence the order by majority

28)

ORDER

1. Grievance of the consumer stands allowed with cost.
2. The supplementary bill of tariff differentiation amount issued by the Licensee dated 11.8.2015 for Rs.6,86,61,400/- for past period of Aug.-2012 to May-2015 is hereby set aside.
3. Impugned order dated 04.11.2015 passed by IGRC (PRC) Pune is hereby set aside.
4. The Licensee is directed to refund the tariff differentiation amount of Rs.6,86,61,400/- along with interest equivalent to the bank rate vide section 62(6) of the Electricity Act,2003.
5. The Licensee to report compliance within one month from the receipt of this order.

Delivered on: - 20.06.2016

Sd/-

S.S.Pathak

Member

CGRF:PZ:PUNE

Sd/-

S.N.Shelke

Chairperson

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.