

Before Maharashtra State Electricity Distribution Co. Limited Consumer Grievances Redressal Forum, Pune Zone, 925, Kasabapeth Building, IInd flr. Pune-11

Case No. 15/2010

Date: 02/06/2010

**In the matter of D.S.Kulkarni
Developers Pvt.Ltd.
represented by its Director
Mr. Pachora Dhananjay,**

- Complainant

V/S

M.S.E.D.C.L. Parvati Division

- Opponent

Quorum

Chair Person	Mr. A.V.Bhalerao
Member/Secretary	Mr. L.G.Sagajkar
Member	Mr. Suryakant Pathak

- 1) The D. S. Kulkarni Developers Pvt.Ltd. (Complainant for short) obtained supply of low tension (LT) power from Maharashtra State Distribution Company Limited (Opponent for short) for running sewage water treatment plant and water supply scheme by way of 2 separate connections bearing Con.No. 170488805161 and 170488804203 now changed to new con. No. 170488875526 and 170488875500 respectively. The complainant was receiving bills for both connections applying tariff LT-5. The opponent by bill dt. 16/04/09 for connection No. 5526 demanded Rs. 5,14,756/- and for connection 5500 demanded Rs.13,55,313/- by issuing supplementary bills dt. 15/06/09 as differential amounts in consequence of spot inspection carried out by Pune region flying squad on 27/11/08 suggesting that instead of raising bills applying tariff LT-5 the bills

should be raised by applying tariff LT-I . The said amounts were subsequently reduced to Rs. 4,36,500/- and Rs. 12,83,990/- but actually 9,65,338/- respectively curtailing the period from August-2005 to 01/10/2006 on advice given by legal department. The complainant challenged the supplementary bills by which the amounts Rs. 4,36,500/-and Rs. 12,83,990/- actually 9,65,338/- were demanded as differential amounts between tariff charged LT-5 and tariff chargeable LT-I over a period from 01/10/06 till January-09 by making a grievance to Internal Grievance Redressal Cell (IGRC). The IGRC did not give any relief to the complainant and informed that the differential amounts claimed by the opponent were correctly calculated as per tariffs applicable from time to time. The complainant has made a grievance to this forum contending that to prevent disconnection it paid the amount of Rs.2,07,300/- for connection No.5500 and Rs. 1,23,010/- for No. 5526. The complainant further contended that it had to pay Rs. 1.00 lakh for restoration of supply. The complainant prayed that the user of Electricity by it of 30 KW for running water pumps for water supply scheme and sewage water treatment plant should be charged applying tariff LT-5 general motive and LT-5 Industrial as provided in tariff order 2006 and 2008 respectively. The complainant further contended that the opponent is not entitled to recover the amount for the period beyond 2 years from the date of demand which in this case is 15/04/2009. The complainant eventually claimed payment of differential amounts if any due applying correct tariff that too in 15 equal installments.

- 2) The opponent filed its say giving factual data of differential amounts claimed first and revised subsequently. It alleged that as the complainant had disputed the differential amounts it was allowed to

pay the differential amounts for the period from June-2008 to November-2008 and the current bills as per tariff LT-I (Domestic). In spite of waiting for payment of differential amount even after the decision given by IGRC when the complainant did not clear them its supply was cut off and it was resumed only after payment of Rs.1 Lakh as partial payment . The opponent alleged that earlier the differential amounts in respect of both connection were assessed applying tariff LT-I right from the date of connection which was in the month of Aug-2005 however, from August-2005 till the said tariff was replaced on 01/10/2006 as the electric motors above 1 HP were excluded from tariff LT-I and for such electric motors the nearest category was LTPG general motive the differential amounts claimed were corrected excluding the period from Aug-2005 to October-2006 . The opponent contended that the differential amounts are rightly claimed applying the correct tariffs using appropriate category as per user mentioned in the tariffs applicable from time to time.

- 3) On the date of the hearing Mr. S.S.Bhave, Chairman of the complainant and its representative Mr.Desai both argued contending that the residential tariff LT-I applied by the opponent to claim the differential amounts and amounts of bills thereafter in future is totally wrong and the opponent ought not to have discontinued the tariff LT-5 general motive power & LT-5 industrial. It was also argued that the differential amounts in any case could not be claimed beyond two years from the date of the demand which was made by bill dt. 16/04/09.
- 4) On behalf of the opponent Mrs.Bokil,D.A. & Mr.Chutake,U.D.C. submitted that earlier the differential amounts for two connections Con.No. 5526 and 5500 claimed were Rs. 514756/- and Rs. 13,55,313/- respectively , The said amounts were arrived at covering

the period from the date of connection 02/05/05 till January-2009, however, after obtaining the opinion from legal department the differential amounts have been claimed from 01/10/06 till January-2009 reducing the amount to Rs.4,36,500/- in respect of connection No. 5526 and to Rs.12,83,990/-(965338) in respect of connection No. No.5500 by bills dt. 15/06/09 . It was argued that under earlier tariff which was effective from 1st. Jan-2002 till the tariff dt. 01/10/2006 the water pumps below 1 HP were only covered by category LT-1 domestic while for the water pump above 1HP the nearest category in the said tariff was LTPG general motive and after the tariff 01/10/06 all water pump irrespective of their capacity were brought under the LT-1 category and therefore differential amounts claimed by bills dt. 15/06/09 are correct. It is argued that user of the electricity by the complainant for lighting parking area, stair case and lifts in the Residential premises can never be put in the category either general motive or industrial after the tariff dt. 01/10/06. It was further argued that the differential amounts claimed from 01/10/06 are not barred by time under the provision of Sect.56(2) of Elect.At-2003 (Act)

- 5) Both the parties produced the documents in support of their cases which will be referred to at the appropriate places in the course of the judgment.
- 6) On rival contentions raised following points arise for consideration.
 - 1- Is the opponent right in applying tariff LT-I domestic for the use of the electricity for sewage water treatment plant and water supply scheme in Co-Op.Hsg.Society which is used as residential premises ?

2- Is the recovery of the differential amount between the charges of the tariff charged and chargeable from Oct.2006 to January-2009 by bills dt. 15/06/09 barred by time ?

The point No.1 is answered in the affirmative and the point No.2 in the negative reasons given below.

REASONS

7) POINT NO.1 :- Following facts are not in dispute. The opponent is a co-op-Hos.Society of which members are using the premises for residence. The electricity supplied through two connections have been used for water pumps of sewage treatment plant and water supply scheme in residential premises. From the date of supply 20/05/2005 till differential amounts were claimed by bill dt. 16/04/09 the bills were raised supplying tariff general motive power (LTPG) from date of connection August-2005 till 30/09/06 and from 01/10/06 till the differential amount was claimed by bill dt. 15/04/09 by applying tariff LT-5 general motive till 31/05/2007 and from 1st June-2008 by applying tariff LT-5 industrial . The squad of vigilance carried spot inspection on 27/11/2008 and brought to the notice of the opponent that the bills were raised wrongly applying the tariff LT-5 general motive and LT-5 industrial and the bills ought to have been raised applying tariff LT-1 domestic. The opponent initially calculated the differential amounts from the date of connection August-2005 till Jan-2009 applying tariff domestic instead of general motive or industry as was done before. By bills dt. 15/04/09 Rs. 5,14,756/- for connection No. 545526 and Rs. 13,55,313/- for connection No. 5500 but those amounts were reduced to Rs. 4,36,500/- and Rs. 12,83,900/- (965338) respectively. The amounts were reduced by the opponent holding that under the tariff dt. 1st. Jan-2002 residential tariff was applicable only to the motors upto 1HP and for

all other motors above 1 HP. the appropriate tariff was general motive power (LTPG) . The differential amount are now claimed from 01/10/2006 onwards. The differential amount Rs. 4,36,500/- for connection Con.No.5526 and the differential amount Rs.9,65,338/- were debited to the complainant's accounts in the month of Sept-2009 and thereafter those amounts were carried forwards as arrears in the bills issued thereafter from time to time. For the convenience of complainant the complainant was allowed to pay the differential amounts from June-08 to Nov.08 in respect of both connections and thereafter the complainant has been paying the electricity charges as per tariff LT-1 domestic.

- 8) At the time of arguments Shri. Bhave Chairman of the complainant and its representative Mr. Desai could not support their contention that tariff LT-5 general motive or industrial should be made applicable for the user of the electricity by the complainant for water pumps of sewage treatment plant and water supply scheme used in its residential premises but made feeble attempt that opponent should not be allowed to claim differential amounts and ultimately submitted that proper tariff should be made applicable for issuing the bills hereafter in future. On behalf of the opponent it is contended that from 01/10/06 onward the proper tariff applicable for the user of the electricity by the complainant is LT-1 domestic however, wrongly tariff applied was general motive power upto 1st. June-2008 and thereafter industrial. It was further argued that the opponent has right to claim arrears equal to the differential amounts between the tariff charged and the tariff chargeable. Now the question to be answered is which is the proper category for the user of the electricity viz. for water pumps of sewage treatment plant and water supply scheme with a motor of the capacity 30 HP.

9) In order to examine the issue in question it is necessary to know the provisions of tariff orders which were applicable from the date of the supply 20/05/05 onward till up to this date. The relevant portions of the said tariff orders read as follows.

1) Low Tension tariff order effective from 1st. December-2003

Applicability: Power supply used for appliances like light, fans, refrigerator, air conditioners, heaters, small cookers, radios, T.V.Sets, battery charger equipments, X-ray machines, small motors upto 1 HP attached to appliances which include domestic water pump in following places.

a) Residential places

2) The tariff order effective from 1st October-2006

" I LT-I Domestic :

Applicability : Power supply used for appliances like light, fans, refrigerator, air conditioners, heaters, small cookers, radios, T.V.Sets, battery charger equipments, X-ray machines, small motors upto 1 HP attached to appliances and water pumps in following places.

a) Residential places

3) The tariff order effective from 1st June-2008

"LT-I LT-Domestic :

Applicability : Power supply used for appliances like light, fans, refrigerator, air conditioners, heaters, small cookers, radios, T.V.Sets, battery charger equipments, X-ray machines, small motors upto 1 HP attached to appliances and water pumps in following places.

a) Residential places

on close reading the applicability clauses of the tariff orders 2003, 2006, 2008 it is clear that for the tariff order 2003

in the applicability clause it is mentioned that small motors up to 1HP attached to appliances which include domestic water pump in following places. The wording in the applicability clause of the tariff order-2003 was changed to small motors up to 1 HP attached to appliances and water pump in the following places. The applicability clause referred to above in the tariff order 2006 word to word is reproduced in the tariff order-2008. The applicability clause of tariff order 2003 appears to be some what confusing as to whether water pump of the capacity only below 1 HP at residential places was included in the category LT-I domestic but the said confusion is removed in the tariff order-2006, 2008 by using the words small motors up to 1 HP attached to appliances and water pump in residential places instead of the words which includes domestic water pump. Being under the impression that under the tariff order-2003 the motor used by the complainant which is 30 HP can not be covered by the category LD-I domestic the opponent revised the earlier bills and did not claim the differential amounts till the tariff order 2006 was made applicable from 01/10/2006. The opponent could have claimed even differential amounts under the tariff order 2003 as under the said order also the motors even more than 1 HP were covered by the tariff LD-I domestic which has been amply made clear in the representation No. 32/2007 Shri. Anagad Mamile VS MSEDCL decided on 8th June-2007 by Hon.ble Ombudsman. The issue arose in that case was about applicability of the tariff for electricity used for common services such as lighting, running of lifts and water pumps. While answering the issue the Hon. Ombudsman observed that harmonious reading of the provisions in both tariff orders for tariff 2003, 2006 would lead to demonstrate that it is the location of the premises where the domestic water

pump is used that governs the tariff and not HP of the pump and in consequence the licensee was directed to apply the domestic tariff to the said 3 connections used for lifts lighting and water pumps in residential places.

- 10 In the instant case the opponent could have claimed the differential amount even under the tariff-2003 in view of the above decisions by learned ombudsman however, the opponent did not claim differential amount applying tariff LT-I domestic for the period the tariff 2003 was in force. The opponent has correctly applied the tariff LT-I domestic for the user of the electricity used for water pumps of sewage treatment plant and water supply scheme in residential premises by the complainant in view of the above order passed by ombudsman. Since the motor of any capacity used at residential places have been included in the category LT-I domestic under the tariff 2006, 2008 the tariff general motive power or industry can not be applied for raising bills of the electricity used at residential places for water pumps of sewage treatment plant and water supply scheme. On behalf of the complainant it was argued that the appropriate category for the use of sewage treatment plant and water supply scheme owned by the complainant is public water supply scheme and therefore the electricity used must be charged applying the tariff LT-3 public water works and sewage treatment plants. It must first be noted that sewage treatment plant and water supply scheme of the complainant are not public. They are exclusively for the members of co-operative housing society and therefore private. The special tariff for the category public water works and sewage treatment the consumer must be local authority such as grampanchayat or municipal council or corporation. The complainant does not fall in any one of that category hence raising

bills for the electricity used by the complainant for its private sewage treatment plant and water supply scheme is completely ruled out.

11) POINT No. 2 :- The opponent has claimed the differential amount from 01/10/06 till Jan-2009 it has been argued on behalf of the complaint in view of Sect. 56(2) of the Act that the opponent can not recover the arrears of the period beyond 2 years. On behalf of the opponent it is submitted that the differential amount is claimed as the mistake was noticed for the first time when there was a spot inspection made by flying squad on 27/11/2008 and on realizing the mistake the differential amounts were claimed for the first time by bills dt. 15/04/2009 and therefore if at all period of limitation is to be counted it should be from the date of first demand of differential amounts on 15/04/09 or from the date when mistake was realize on 17/11/2008. Sect. 56(2) of the Act reads as follows

“ 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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

In view of the provision contended in Sect.56 (2) of the Act referred to above no sum due from any consumer under this section is to be recoverable after the period of 2 years from the date when such some becomes first due. The said question has been clearly answered in writ petition No. 264 /2006 Brihanmumbai Municipal Corporation VS Yatish Sharma & Ors decided by Hon. Justic Mr.D.Y.Chandrachud acting from the Bombay High Court on

18th Jan-2007. In that case supplementary bill was raised for the period between Jan-2000 to May-2000 and demand of differential amount was claimed by debiting it in to the consumer's account and including it in the bill for the month of April-2004. On these facts the learned ombudsman held that since the supplementary bill was raised after a period of 4 years from the date when it became first due the amount was not recoverable under the provision of Sect.56(2) of the Act. As against this when the matter went in writ the Hon. High Court relying upon the decision in H.D.Shourie VS Muncipal Corporation of Delhi (AIR 1987 Delhi 219 and Reg. 15.2 of MERC ESC 2005 Ruled

“Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purposes sub section (1) and sub section (2) of section 56 a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him”. and set aside the view express by the learned ombudsman stating that the Ombudsman was therefore clearly in error in postulating that the claim was barred on the ground that the arrears for the consumption became due immediately on the usage of energy. The finding is ex facie contrary to the provisions of sub section 2 of section 56 of the Act.

12) In writ petition No. 7015 of 2008 M/s. Rototex Polyester VS Administrator, Administration of Dadra & Nagar Havli (U.T.) Electricity Department, Silvassa decided by the Hon. Justice Smt. Ranjana Desai and A.A.Sayed on 20/08/2009 the facts were that the licensee informed the consumer by its notice dt. 11/07/03 that his C.T. ratio was changed from 25/5 to 50/5 raising multiplication factor from 500 to 1000 w.e.f. 11/07/2003. By the said notice the

differential amounts Rs. 2,60,17,001/- was demanded for the period July-2003 to July-2007 . As the differential amounts was not paid the energy bill dt. 11/01/2008 was raised inclusive of the differential amount. On behalf of the consumer it was argued that if at all the amount had become first due it was in the month of July-2003 and therefore under section 56(2) of the Electricity Act the claim raised by the licensee was barred by time .Relaying upon ruling in Brihanmumbai VS. Yatish Sharma referred to above it was held that the demand notice with revised bill dt. 03/10/07 was according to the petitioner served on them on 09/11/07 . Therefore the revised bill amount first became due on 09/11/07 hence Sec. 56 (2) would not come in the way of recovery of the said amount by the licensee.

- 13)The above two decisions are squarely applicable to the facts involved in the present case. The differential amount became first due when demand was made first time under bill dt. 15/04/2009 or under the correct bill dt. 15/06/09 . If at all any limitation is to be applied. It is from 15/04/09 or 15/06/09 .
- 14) As contended by the complainant no amount has been recovered forcibly. What ever the payments made from time to time by the complainant have been accounted for in its Consumer personal ledgers.

ORDER

The complaint stands dismissed.

The interim order dt. 21/04/2010 stands vacated.

Sign:

Mr.L.G.Sagajkar
Member/ Secretary
Date: 02/06/2010

Shri.Suryakant Pathak
Member

Mr. A.V. Bhalerao
Chair Person

