

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

Case No. 17 of 2007

Date: 26/12/2007

In the matter of P.D. Shaha

- Complainant

V/S

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

- Opponent

| | | |
|--------------|-------------------|------------------|
| Corum | Chair Person | Mr. A.V.Bhalerao |
| | Member/Secretary, | Mrs. N.D.Joshi, |
| | Member, | Mr. T.D. Pore |

- 1) Shri.P.D.Shah (Complainant for short) is a low-tension consumer having con. No. 170145022072 who gets supply of electricity from Maharashtra State Electricity Distribution Co. Ltd.(MSEDCL) (Opponent for short) for his activity carried on at 71, Kasarwadi, Nashik Phata Pune. The complainant first approached the Internal Grievance Redressal Cell (IGRC) of Ganeshkhind Urban Circle, which refused to give him any relief on the ground that his claim was barred by time.
- 2) Not being satisfied with the order passed by IGRC the complainant approached this forum by filling an application on 16/11/07 for the relief of change of tariff from commercial to Industrial and refund of the excess amount. Complainant's case in brief is that he obtained a certificate of Small Scale Industries for his unit for the activity of manufacturing of Ice cream on 20/01/1996. According to him as he possessed a certificate for Small Scale Industries namely for manufacturing of Ice Cream, the opponent ought to have assessed the bill applying tariff for industries. However the opponent for some period applied tariff for Industries

and for rest of the period applied tariff for commercial (non domestic). He contended that Executive Engineer, Pimpri on 19/06/04 made an incorrect report stating that only one phase was burned however remarked, that meter was burned 100%. On that basis showing excess unit the bill was prepared.

- 3) Notice was issued to the opponent. The opponent through his DY.E.E. MSEDCL Dapodi S/Dn. filed it's say contending that the complainant had first made an application for supply of electricity for the commercial purpose and therefore supply of electricity was sanctioned to the complainant for commercial purpose and accordingly bills were raised applying commercial tariff (Non domestic). In the month of June-2001, the complainant produced small scale industries certificate and therefore since then industrial tariff with it's code No.08 was applied and bills were raised. He further contended that on 05/07/03 when complainant connection was checked it was found that one terminal was fused and the complainant connected "Y" phase terminal to in coming wire and therefore meter was changed. Similarly it was found that the complainant instead using electricity for manufacturing Ice cream was using electricity for storing Ice Cream brought from outside for sale as distributor of Amul Ice Cream. It was found that the complainant was using the electricity for the purpose other than for which usage of electricity was authorised and therefore tariff was changed from Industrial (tariff No.08) to Commercial (tariff No.04). The flying squad on 20/04/07 inspected the complainant's unit and found that the commercial tariff was correctly applied for raising bills according to the actual use of the electricity by the complainant.

The opponent produced the following documents:

- a. Xerox copy of the report made by DY.E.E. MSEDCL Dapodi S/Dn. dt.13/12/07.
- b. Inspection reports dt. 05/07/03.
- c. Verification report dt. 27/10/03 assessment report for unauthorised use dt. 04/11/03 and Spot Inspection report made by flying squad Pimpri dt. 20/04/07
- d. CPL of the complainant.

4) On the date of the hearing the complainant and his representative both remained present and they argued their case. On behalf of the Opponent the Executive Engineer (Pimpri Division) argued the case. The complainant and his representative submitted that on the basis of registration certificate issued by Govt. of Maharashtra, director of Industries as the complainant unit is registered as small scale industries for manufacturing of Ice cream, the opponent instead of using commercial tariff ought to have used industrial tariff for raising bill. However, the opponent is raising bill applying commercial tariff, which is apparently wrong. On behalf the opponent it was argued that commercial tariff is correctly applied for raising bill according to the actual use of electricity by complainant, which is for storage purpose. It was further argued on behalf of the opponent that initially the complainant had obtained electricity connection for commercial use, however as he produced small scale industry certificate showing that the unit was a small scale industries for manufacturing of Ice cream the bills were raised applying industrial tariff for the period June-2001 to May-04. On 27/10/03 A.E. MSEDCL complaint center Dapodi on spot inspection found that the complainant was not using electricity for manufacturing Ice cream but he was using the electricity only for the purpose of storage of Ice cream for sale and therefore for unauthorized use the assessment was made for the amount of Rs. 69,646.76 and the same was paid by the complainant in the month of March-04 and therefrom the tariff was changed from industrial to commercial. Recently on 20/04/07 again spot inspection was carried out by the flying squad and it was found that the complainant was using electricity for storage of Ice cream brought from out side for sale, which was a commercial use.

5) Both parties were given a patient hearing and the document produced by them, were keenly perused. On rival contention raised following point arises for consideration.

1- Is complainant entitled to get the relief claimed by him for change of tariff from commercial to industrial and refund of excess amount recovered?

The above point is answered in the negative for reason given below.

REASON

- 6) Besides claiming relief of change of tariff from commercial to industrial, the complainant in his complaint averred that on 19/06/2004. Executive Engineer, Pimpri Division made a report that only a single phase was fused and meter was burned 100% on the basis of that report excess units were showed as consumed and the bill for inflated amount was recovered. The complainant contended that excess amount recovered from him on the basis of that bill should be refunded. If the bill showing excess unit consumed was recovered from the complainant on 19/06/04, then the complainant had a cause of action on 19/06/04 or thereafter approx. within two months when the amount was recovered from him. The said date of cause of action for the complaint(Claim) is not within two years next preceding the date of filling of complaint which is 16/11/07 and therefore the said claim is barred by time. In view of Regulation 6.6 of Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 (CGRF Regulation) the forum shall not admit any grievance unless it is filed within two (2) years from the date on which the cause of action has arisen. Similarly the claim by the complainant that tariff from commercial to industrial be changed for the period beyond two years from the date of the filling of the complainant can not be entertained as it is barred by time.
- 7) The complainant contended that he has been using electricity for manufacturing of Ice cream. In support of this contention he has produced a certificate of registration dt. 19/1/96. The opponent contended that though the complainant had obtained Registration certificate showing that his unit is a small scale industry where Ice Cream is manufactured, on actual verification of site, it was found that no activity of manufacturing process was carried out but the electricity was being used to run refrigerator to store Ice Cream brought from out side for sale and therefore since it's detection the tariff used for raising bill is commercial
- 8) The complainant except producing Registration certificate did not adduce any evidence to prove that at the site, activity of manufacturing Ice cream is/was being carried out. In the Registration certificate, Raw material required are

shown as Milk, Sugar, Essence, Custard Powder etc. and fruits. It was possible for the complainant to produce documents and record to prove the purchase and utilization of Milk, Sugar, Custard powder and fruits for making Ice cream. However, the complainant did not adduce any such evidence. From the Consumer Personal Ledger of the complainant it is seen that from date of connection till April-2001, the tariff applied was commercial from 2001 to May-04 the tariff applied was industrial. The industrial tariff was applied as the complainant produced the registration certificate. On actual inspection of the site it was found that no industrial activity of manufacturing Ice Cream was carried out but electricity was used only for storage of Ice Cream brought from out side for sale and therefore from July-04 till today the tariff applied is commercial. The Opponent has produced verification report dt. 27/10/03 wherein it is mentioned that bill was prepared using industrial tariff, however, the actual tariff should have been commercial. At Sr.No. 12 of that report it is mentioned that assessment as per Jr.Engr. be changed in current bill the opponent has also produce a revision of bill dt. 4/11/03 showing recovery as assessment Rs. 69,646.76. In the CPL of the complainant the said amount of assessment is debited in the month of Nov-2003. and it is carried forward as net bill in the month of Jan-2004 the said amount was paid by the complainant in the month of March-2004. Unauthorised use as defined under Sec. 126 (6) (b) (iv) is "unauthorised use of electricity means the usage of electricity for the purpose other than for which the usage of electricity was authorised". In the tariff non domestic means commercial use is described as "power supply used for appliances lights, fans, refrigerator, heater, small cookers, radios, T.V. set, Battery charger equipments, X-ray machines, small motors upto 1 HP attach to appliances and domestic water pump in following places.

1- Non domestic, commercial and business premises". In the instant case according to the report made by Asstt.Engineer dt. 27/10/03 it was found that the electricity was being used not for industrial purpose for which it was sanctioned but for commercial purpose, which was an unauthorized use. For such un authorized use an assessment was made and the recovery of Rs. 69,646.76

was ordered. The complainant paid the amount of assessment in the month of March-04. The complainant had right to file objection for such assessment under clause-3 of Sect. 126 of electricity Act-2003. Under section 126 (4) of the Elect Act-2003 the complainant had option to pay the assessment & on making payment of assessment amount complainant was entitled to have not being subjected to any further liability or any action by any authority whatsoever. The complainant exercised the option of making payment of assessment. The complainant under Sect. 127(1) of Elect.Act-2003 had right to refer an appeal against the order of assessment. However the complainant did not exercise the right to prefer an appeal. The complainant now cannot raise any dispute about it before this forum. The tariff commercial presently used for raising bills in case of complainant is as per actual use and requires no change. The opponent rightly charged the tariff from industrial to commercial when it was noticed that the complainant was not using the electricity for manufacture of ice cream but was using it only for refrigeration to store ice cream brought from out side for sale.

- 9) The present case is a case of unauthorized use covered by the provision of Sec-126 of the Electricity Act 2003, which is excluded from the jurisdiction of this forum under Regulation 6.8 (a) of MERC, CGRF Regulation 2006.

ORDER

The complaint is dismissed.

Sign:

Mrs. N.D.Joshi,
Member/Secretary

Mr. T.D.Pore,
Member

Mr. A.V. Bhalerao
Chair Person

Date: 26/12/2007