

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

Case No.20/2015

Date of Grievance : 10.08.2015

Date of Order : 21.09.2015

In the matter of recovery of arrears due to reclassification of the tariff category.

The Military Engineer Services,
Garrison Engineer, Dehuroad,
MES Office,
Pune-412101.

Complainant
(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Ganeshkhind Urban Circle,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

**Chair person
Member Secretary**

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

Appearance

For Consumer

**Mr. S.D.Chavat, AE,
Mr.S.Y.Patil, JE
(AGE E/M Dehuroad).**

For Respondent

**Mr.S.R.Rinke, Ex.Engineer
Mr.S.N.Kamble, Addl.E.E.GKUC.
Mr.Sandeep Raut, Asstt.Acctt.**

- 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 25.06.2015 passed by IGRC Ganeshkhind Urban 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., Ganeshkhind Urban Circle, Pune vide letter no. EE/CGRF/PZ/Notice/20 of 2015/241 dtd.10.08.2015. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 24.08.2015.
- 4) We heard both sides at length, gone through the contentions of the consumer and reply of the respondent and the documents placed on record by the parties. On its basis following factual aspects were disclosed.
 - i) The Military Engineering Services (MES), HT consumer bearing consumer no.170149022270 had billed on HT - VI Tariff from 15.4.1981.
 - ii) The said consumer is fed at 22KV level with 2000 KVA demand contract.
 - iii) The consumer i.e. Military Engineering Service (MES), is a subordinate organization under the ministry of defense, Govt. of India.
 - iv) As per third proviso to Section 14 of the Electricity Act, 2003, the said consumer is considered as deemed licensee vide letter no.25/19/2004-R & R, Ministry of power Govt.of India dated 26th July-2004.
 - v) Flying Squad of Licensee headed by Dy.E.E., Pune Urban visited the premises of the consumer on 14.2.2013 & found that mixed load is fed from single point supply.
 - vi) After spot inspection, the Flying Squad recommended for change of tariff from the category - HT-VI to HT-IX to the extent of mixed load of defence establishments.
 - vii) The Licensee arranged grievance meeting with Competent Authority on 30.7.2013. In the said meeting it was decided to carry joint inspection of the said HT consumer with its representatives and Dy.E.E. Flying Squad, Dy.E.E. HT Billing, Dy.E.E. Pradhikaran & MSEDCL Officers to confirm usage of electricity.
 - viii) Accordingly the representatives of both the parties carried out joint inspection on 20.11.2013. Thereafter the written agreement was finalized

between consumer representatives & the MSEDCL officers. All the points were decided in the said agreement as per MSEDCL rules, regulations & policies.

- ix) It was decided between the parties to calculate the arrears on the past period as 35% electricity use for defence establishments to be categorized as HT-IX & 65% electricity use for group housing society to be categorized as HT-VI from Aug.2012 onwards.
- x) According to Licensee prior to tariff order 2012, HT-II tariff will be applied instead of HT-IX.
- xi) The Licensee calculated & issued supplementary bill of Rs.2,63,85,770/- to the consumer raising the arrears from Feb .2011 to Nov.2013.
- xii) The Licensee issued notices to a consumer dated 21st March 2014, 30th Oct.2014 & 25th Nov.2014 under section 56(1) of Electricity Act-2003 for disconnection of supply for nonpayment of supplementary bill of Rs.2,63,85,770/-.
- xiii) The consumer made a part payments of above mentioned arrears under protest i.e. Rs.60,00,000/- on 4.12.2014 and Rs.25,00,000/- on 30.4. 2015.

5. The consumer representative Mr.Chavat submitted that Military Engineering Services (MES) is a subordinate organization of Ministry of defence headed by Engineer -in-Chief with HQ located at MoD, New Delhi. It provides all types of Engineering support to Army, Navy, Air Force, Ordnance Factories and Defence R&D establishments during operational necessities and day to day requirements. The Electricity supply is one of the essential service requirements provided by MES to Defence establishments.

He further submitted that MES Organization all over India receives electricity from State supply agencies at HT/LT take over points through single metering arrangements. The electric supply received in bulk is further distributed through MES owned distribution supply net work. The cost of installation, distribution network and maintenance rests with MES, which is paid out of Defence estimates.

6. Mr. Chavat further submitted that electricity received by MES in bulk is totally utilized for defence operation, training, sports recreation and for family accommodations of defence personals. It is not utilized for any profit earning activity of Commercial nature. The electricity is distributed to only defence establishments on "NO profit - No loss" basis.

7. He further submitted that in view of the facts mentioned above placement of defence establishment under HT-IX (Public Services) category is in-correct and therefore the defence establishment may be allowed to continue under HT-VI (Residential) category as no any commercial activity is undertaken at the station. He lastly submitted that new tariff category is applicable from 1st of Aug.2012 but MSEDCL has claimed arrears from Jan.2011. Therefore said arrears amount is unjustified, non acceptable and consumer is not liable to pay it.

8. On the other hand, Mr. Rinke for licensee submitted that the Flying Squad Pune (U) visited the premises of the consumer on 14.2.2013 and found that mixed load is fed from single point supply. Therefore the Flying Squad recommended to change tariff from HT-VI category to HT-IX category. Thereafter in the grievance meeting with Competent Authority on 30.7.2013, it was decided to carry the joint inspection of the HT consumer with MSEDCL Officers consisting of Dy.E.E. Flying Squad, Dy.E.E. HT Billing, Dy.E.E., Pradhikaran to confirm usage of electricity. Accordingly joint inspection was carried on 20.11.2013. Thereafter agreement was entered into between the consumer & the MSEDCL Officers, as per the MSEDCL rules & regulations & policies. It was decided to calculate the arrears of the past period i.e. to the extent of 35% Electricity use, for defence establishment (HT-IX) and 65% use for group housing society (HT-VI), as per tariff order prevailing at that time. Since the Flying Squad visited the spot on 14.2.2013, past arrears are due for 24 months previous to the spot inspection. Mr.Rinke for past arrears relied on the decision of Hon'ble Electricity Ombudsman (M) in Representation No.30 of 2011 Shri.Nitin Uday Patil Vs. MSEDCL.

9. He further submitted that supplementary bill for the past period of 24 months i.e. from 1.2.2011 was calculated as under:

From 1.2.2011 to 31.7.2012 as per Tariff order 2008.

From 1.8.2012 to 14.2.2013 as per Tariff order 2012.

As per Tariff order 2008, tariff to be applied to the consumer to the extent of 35% for HT-II (Commercial category) and to the extent of 65% HT-VI (Residential category) for group housing society. And as per tariff order 2012 for electricity use to the extent of 35% tariff is applicable as per HT-IX & for 65% as per category HT-VI & further bill upto 30.11.2013 in the same ratio. Accordingly supplementary bill of Rs.2,63,85,770/- was issued to the consumer.

10. Mr.Rinke further submitted that for recovery of above mentioned arrears the Licensee issued notices under section 56(1) of the Act. Accordingly consumer deposited arrears of Rs. 25,00,000/- & Rs.60,00,000/- on 30.4.2014 & 5.12.2014 respectively. He lastly submitted that since the consumer has entered into agreement dated 20.11.2013 after having discussed all the points and mixed load categorized as 35% & 65% HT-IX and HT-VI as mentioned above. Therefore there should not be any grievance of the consumer at this stage and arrears bill issued to the consumer is correct and therefore the grievance application may be dismissed.

11. Following points arise for our determination. We give our findings thereon for the reasons stated below.

Points	Findings
1. Whether distribution licensee is entitled to change tariff category of the consumer from HT-VI to HT-IX ?	Yes.
2. Whether Licensee is entitled to recovery of as claimed for?	Yes.
3. What Order?	As per findings.

12.

Reasons

The consumer Military Engineering Service (MES) is a subordinate organization of Ministry of Defence and considered as deemed Licensee as per third proviso to Section 14 of the Electricity Act, 2003 vide letter no.25/19/2004-R & R Ministry of power Govt. of India dated 26th July 2004. Consumer is connected on 15.4.1981. The Licensee visited the premises of the consumer on 14.2.2013 and found that mixed load is fed from single point supply and therefore recommended to change tariff category from HT-VI (Residential) to HT-IX(Public Service). Thereafter in the grievance meeting with the competent authority on 30.7.2013 it was decided to carry joint inspection of HT consumer with officers of the Licensee. Accordingly joint inspection was carried on 20.11.2013. According to Licensee after having full discussion on all the points with the consumer the agreement was entered into between them as per rules & regulations & policies of the Licensee. It was decided to calculate the arrears to the extent of 35% Electricity use for defence establishment in the category of HT-IX & 65% Electricity use for group housing society in the category HT-IV.

13. IGRC vide its order dated 16.07.2015 held that the arrears bills issued to the consumer for the period as mentioned in the bill is correct and is in accordance with the MSEDCL Rules & Regulations and policies and the consumer should pay the said bill. Therefore IGRC rejected the grievance of the consumer.

14. Two mixed questions before the Forum are firstly whether the Distribution Licensee is entitled to change tariff category from HT-VI to HT-IX & secondly whether Licensee is entitled to retrospective recovery of arrears due to reclassification of tariff category. Admittedly the Licensee visited the premises of the consumer on 14.2.2013 and found mixed load is fed from single point supply. Therefore it was recommended to change tariff category from HT-VI to HT-IX. Thereafter joint meeting was held between the Licensee & the consumer and joint inspection was carried on 20.11.2013 and mixed load was found and as per the detailed discussion between them it was unanimously decided to apply the tariff category and to calculate mixed load as 35% for use of defence establishments in

the category HT-IX & to the extent of 65% for group housing society in the category HT-IV & necessary agreement was entertained between the parties. Previously as per tariff order dated 28th June 2008 had revised tariffs for various categories. In pursuant said a tariff order Licensee issued Commercial Circular No.81 dated 7.7.2008 for the guidelines of implementation of the said order. At that time there was no such category as HT-IX & therefore as per usage consumers were charged in the category HT-II (Commercial).

15. By the tariff order 2012 in the matter of Case No.19 of 2012 new category was introduced by the commission as HT-IX (Public Services).

It is applicable to Education Institutes, Hospitals, Dispensaries, Primary Health Care Centres, Pathology Laboratories, Police Stations, Post Offices. **Defence Establishments** (Army, Navy and Air Force), Public Libraries and Reading Rooms, Railway except Traction (Shops on the Platforms/ Railway Station/ Bus Stands will be billed under Commercial category as per the respective slab), State Transport Establishments, Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to Aeronautical Operations).

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 exclusively meant for the students/ patients of such Educational Institutions & Hospitals.

16. Hon'ble MERC has clarified in the tariff order in case No.19 of 2012, with reference to Regulation 13 of supply code classification or reclassification is the primary duty of Licensee. For mistakes/ faults of Licensee the consumer cannot be burdened. If wrong tariff category has been made applicable the Licensee is not empowered to recover arrears on account of difference of tariff, with reference to supply code 2005 and Section 50 of Electricity Act-2003. There is no provision for recovery in tariff difference; in any case classification/reclassification of the tariff is responsibility of the Licensee. Instead of taking an action against the erring officers, the Licensee is raising bill upon consumer in contravention to the statutory provision.

17. MERC under order dated 11.2.2003 in Case of 24/2001 regarding retrospective recovery on the basis of reclassification of tariff category has directed as under:

“ ...no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer...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.... In all those cases, recovery if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective...”

18. Regulation 13 of MERC (Electricity Supply code & other conditions of supply) Regulations, 2005 provides as under:

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.

19. The Appellate Tribunal for Electricity (APTEL) in the recent order dated 7th August 2014 in Appeal No.131 of 2013 (In the matter of Vianney Enterprises versus Keral State Electricity Regulatory Commission) has held that “the arrears for difference in tariff could be recovered from the date of detection of the error”.

20. The Hon’ble Electricity Ombudsman (M) in his order dated 23.12.2014 in the representation no. 124 of 2014 & 126 of 2014 in the similar matters of recovery of arrears after change of tariff category has held as under :

“...The Representation in thus allowed. The Respondent is directed to recover arrears from the Appellant from billing month of March-2014 without applying DPC and interest on the said arrears. The arrears already paid by the Appellant should be adjusted and balance amount be recovered from the Appellant”.

21. The Licensee on the point of recovery of past arrears has placed reliance to the decision of Electricity Ombudsman (M) in Representation No.30/2011. Shri.Nitin Uday Patil Versus MSEDCL, wherein it is observed that

It is clear from the above that the Hon'ble High Court allowed the Distribution Licensee to recover the arrears only for the two years preceding the date of demand and not for 26 months. The ratio of this judgment of honorable division bench of the High Court was also affirmed by the Honorable High Court, in the cases of MSEDCL versus M/s. Green World Maghum Enterprises (With Petition No.2894 of 2007 decided on 07.09.2007) and MSEDCL versus Venco Breeding Farms Pvt. Ltd. (Writ Petition No.6783 of 2009, decided on 05.03.2010.) The Respondent is therefore entitled to recover past arrears only to the extent of maximum two (2) years, preceding March 2010, in which the Respondent issued the impugned supplementary bill to the Appellant.

22. As discussed above joint meeting between the Licensee & the consumer about mixed load was held on 20.11.2013. Thereafter they have carried joint inspection report unanimously which is reproduced as under

: JOINT INSPECTION REPORT :

1. With ref.to Spot inspection report by Dy.Ex.Engineer, Flying Squad Pune (U) DDPR Sr.No.029 MSEDCL on 14.02.2013 and letter no. Dy.EE/FS(U)Pune/147 dt.01.03.2013.
2. Hearing at SE, GKUC Office on 03-07-2013.
3. Office Note for change of billing tariff from HT-VI to HT-IX N approved on 03.10.2013.
4. Letter from Garrison Engineer, Dehurorad-4001/WED/E4 Dt.60.11.2013.
5. The joint meeting and site inspection has been carried out on 20.11.2013 by the following officers to assess the electricity consumption on account of Defence Establishment and Group Housing Society tariff to M/s.Garrison Engineer MES Dehu Road, Tal.Maval, Dist.Pune. (Consumer No.170149022970)
 - (I) Mr.K.Ramkrishnaiah, AGE E/M Dehu Road (Rpr.of GE, Dehu Road)
 - (II) Mr.P.E.Devkate, Dy.EE Flying Squad Pune (U)
 - (III) Mr.S.G.Ghodke, Dy.EE Pradhikaran Sub/dn.
 - (IV) Mr.S.N.Kamble Asstt.Engr. (GKUC)
 - (V) Mr.S.R.Patni, Jr.Engr. FS Pune (U)
6. All the DTCs purely feeding to office accommodations, canteens, schools, pump houses, store rooms, are considered under Defence Establishment Category. The total connected capacity of said DTCs is 1750 KVA.

7. *All the DTCs purely feeding to Residential accommodations likes Family Quarter, single man accommodations are considered under Housing Society category. The total connected capacity of said DTCs is 3250 KVA.*
8. *As the total connected capacity of DTCs is 5000 KVA, hence from the above point no.6 & 7 the percentage of capacity connected is 35% for Defence Establishment and 65% for Group Housing Society.*
9. *Hence for assessment of consumption consider the percentage as 35% of total consumption for HT-II N tariff & 65% of total consumption for HT-VI tariff with effect from Feb.2011 to July 2012 for past recovery as per MSEDCL rules and regulations.*
10. *For the period Aug.2012 to Nov.2013 consider the percentage as 35% of total consumption for HT-IX N tariff & 65% of total consumption for HT-VI tariff as per tariff order Case No.19 of 2012 & Commercial Circular No.175 dt,05,09,2012 effective from Aug.2012.*

As the method of charging on 65-35% basis is an approximate one, hence the consumer has asked to segregate the residential and defence establishment load with correct metering to the maximum possible within six months period for correct billing as per utilization.

23. Therefore as per Item No.9 & 10 of the joint inspection report, the consumer has agreed to pay arrears w.e.f. Feb.2011 to the extent of 35% of total consumption as per tariff category HT-II & to the extent of 65% as per tariff category HT-VI as per MSEDCL rules and regulations and for the period from Aug.2012 to Nov.2013 to the extent of 35% as per tariff category HT-IX and to the extent of 65% as per tariff category HT-VI as per tariff order in Case No.19 of 2012 w.e.f. Aug.2012.

24. After spot inspection dtd.14.2.2013 since mixed load was found, the Licensee did not take any action abruptly against the consumer being the consumer is of special category i.e. deemed Licensee but held joint meeting with the consumer on 20.11.2013 & carried joint inspection with the consent of the consumer and thereafter they both carried joint inspection report as mentioned above. The consumer acknowledged the payment of past arrears in the joint inspection report. Prominent consumption of the consumer i.e. to the extent of 65% load has not been changed by the Licensee but only to the extent of 35% for defence establishment has been changed as per tariff category HT-II & HT-IX as per the rules and regulations prevailing at the relevant time. **“ the change of tariff for 35% load is only due to mix load used by consumer that too without**

any correspondence with utility." Therefore Licensee is entitled to change the said tariff category and also entitled to recover the arrears for the past period of 2 years from the date of spot inspection i.e. from Feb.2011. Hence we answer point no.1 & 2 in the affirmative.

25. Lastly we pass following order.

ORDER

Grievance application stands dismissed with no order as to Cost.

Delivered on: - 21.09.2015

D.H. Agrawal
Member/Secretary
CGRF:PZ: PUNE

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.