

**CONSUMER GRIEVANCE REDRESSAL FORUM****M.S.E.D.C.L., PUNE ZONE, PUNE****Case No.21/2016****Date of Grievance : 28.06.2016****Date of Order : 25.08.2016**

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

Smt.Thakkar Bharati K.,

Complainant

Akshay Apartment, 156-1-B,

(Herein after referred to as Consumer)

Mangalwarpeth, Pune - 411 011

(170016105646)

Versus

The Executive Engineer,

M.S.E.D.C.L.,

Respondent

Rastapeth Division,

(Herein after referred to as Licensee)

Pune.

Quorum

Chairperson	Mr. S.N.Shelke
Member Secretary	Smt.B.S.Savant

Appearance

For Consumer	Mr.Parag Bhopale, Representatives
For Respondent	Mr.G.T.Ekade, Ex. Engineer Rastapeth Division, Mr.D.R.Balgude, AEE Kasbapeth Sub/dn. Mrs.N.R.Mali, Asstt.Engr. Kasbapeth 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 16.06.2016 passed by IGRC, Rastapeth Urban Circle, Pune, thereby rejecting the grievance, the consumer above named prefers present 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., Rastapeth Division , Pune vide letter no. EE/CGRF/PZ/Notice/21 of 2016/141 dtd.28.06.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 21.07.2016.

- 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 Smt. Thakkar Bharatik having consumer No. 170016105646 was connected on 20.9.1993 in the tariff category LT-V B-1 (Industrial).
 - ii) Previously the consumer was engaged in Industrial activity and hence her tariff category was Industrial and accordingly her billing was done in the tariff category LT-V B-1 (Industrial) since the date of connection.
 - iii) Assistant Engineer, (MIS) Kasbapeth Sub/dn. has visited the said consumer for replacement of old 3 phase electro mechanical meter by electro static meter. As per arranged programme the meter was replaced on 10.12.2015 and the inspection is carried out on the same date and it is observed that there is no industrial activity going on in the said premises & it is noticed that the electricity is used for the office purpose only.
 - iv) Considering the facts stated as above, the Licensee have prepared the verification report on 10.12.2015 & all the observations have recorded in the same report but the consumer has not signed on them & refused to sign the report. Also the Licensee has noticed that Shop Act certificate with PAN 0073290 dtd.23.2.2009 is in the name of M/s. Atlas Chemicals.
 - v) Hence the assessment of tariff difference i.e. from Industrial to Commercial category for 24 months is done for the period Dec.2013 to Nov.2015 & the commercial billing was started from Dec.2015 onwards & the bill revision is finally debited in the month of April-2016. This bill revision is only the tariff difference on plain assessment basis & no interest & DPC is charged to the consumer.
 - vi) Addl. Ex. Engineer, Kasbapeth Sub-dn. has called the consumer for finalization of assessment bill but the consumer has not responded & also obstructed for the replacement of meter.

- vii) The consumer was shocked since the energy bill was received for the month of April-2016 & in this bill the debit bill adjustment is shown of Rs.51212.62/-.
- viii) Then the consumer enquired about the debit bill adjustment amounting to Rs. 51212.62/- to the concerned office on verbally. The Licensee replied that this amount is for tariff difference for 2 years. The consumer objected for the said bill & asked that bill is issued without any notice or without any details.
- ix) The consumer approached to IGRC, RPUC, Pune with complaint dated 30.4.2016 about cancellation of adjustment for tariff difference amounting to Rs. 51212.62/- without any notice.
- x) The IGRC Rastapeth Urban Circle has given a decision that, to re verify the consumption of the consumer and to reassess the impunged bill as to whether issued as per proper tariff. The impunged order dated 16.6.16 has not accepted by the consumer.

5. The consumer representative Mr. Parag Bhopale submitted that the prior notice was not issued by the Licensee & the adjustment for tariff difference is added directly in the energy bill for the month of April-2016 also consumer said that now there is no any manufacturing activity going on about last two & half years. M/s. Atlas Chemicals (Proprietorship) Co. is existing in the same premises & its activities are such as trading, godown & administrative office etc. The consumer has submitted the written notes during arguments as follows:

“MSEDCL cannot charge tariff difference for the period of 2 years & cannot make the recovery retrospectively & this tariff difference shall be charged from the date of detection of error i.e. from 15.6.2016”. He produced the Ombudsman order in representation no. 91 of 2015 & relied on APTEL Order in Appeal No.131 of 2013. He stated that the order passed by IGRC Rastapeth dated 16.6.2016 may please be set aside and bill adjustment amounting to Rs. 51,212.62 plus Int. & DPC

charged thereon may be declared as null & void. The supply shall not be disconnected up to the finalization of this matter & to accept the current energy bills.

6. On the other hand, Mr. Mr.G.T.Ekade, Ex. Engineer & Mr.D.R.Balgude, AEE

Kasbapeth Sub/dn. submitted on behalf of the Licensee that the consumer namely Smt. Thakkar Bharati having consumer No. 170016105646 was connected on 20.9.1993 in the tariff category LT-V B-1 (Industrial). Assistant Engineer, (MIS) Kasbapeth Sub/dn. has visited the said consumer for replacement of old 3 phase electro mechanical meter by electro static meter. As per arranged programme the meter was replaced on 10.12.2015 and the inspection is carried out on the same date, it is observed that there is no industrial activity going on in the said premises & it is noticed that the electricity is used for the office purpose only. Considering the facts stated as above, the Licensee prepared the verification report on 10.12.2015 & all the observations have recorded in the same report but the consumer did not sign on them & rejected to sign the report. The Licensee has noticed a Shop Act certificate with PAN 0073290 dtd.23.2.2009 in the name of M/s. Atlas Chemicals.

Considering the facts as stated above the Licensee called the consumer for finalization of assessment bill but the consumer did not respond & also obstructed for the replacement of meter & hence the Licensee has done debit bill adjustment in the energy bill for month of April-2016 for amounting to Rs.51,262.62 and this bill adjustment is for the period Dec.2013 to Nov.2015 due to tariff difference from Industrial to Commercial category and the Licensee requested that the said amount is plain tariff difference and no interest & DPC is charged on them. The consumer is liable to pay this amount due to commercial activity is going on about two & half years.

7. The Licensee further submitted that as per the directives of IGRC, the joint verification of consumer's premises was carried out on 15.06.2016. It was observed that the said consumer is using electricity for commercial purpose only. Hence the tariff difference bill amount shown in the bill of April 2016 is correct.
8. Initially the consumer was billed under industrial tariff category i.e. LT- V B-1. The licensee made spot inspection of the consumer's premises on 10.12.2015 for replacement of old 3 phase electro mechanical meter by electro static meter and observed that no any industrial activity was going on in the premises but electric energy is being used for office purpose only. The licensee also noticed that Shop Act Certificate is in the name M/s Atlas Chemicals and commercial activities are being running in the consumer's premises. Therefore the licensee made assessment of tariff difference from Industrial to commercial for 24 months i.e. for the period Dec 2013 to Nov 2015 amounting to Rs.51,212.62 and issued bill for the month of April 2016 showing debit adjustment of the above mentioned amount. The Consumer challenged the said bill on the ground that no any prior notice before issuing of said bill was issued nor given any details as to how said amount was arrived and that the said bill is not as per MERC regulations and orders and no retrospective recovery can be made but can be made from the date of detection of error.
9. *Regulations No.13 of the MERC(Electricity Supply code and other conditions of Supply)Regulations 2005 in short supply code regulations reads 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 purposed of usages of supply by such consumer.*

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

10. Therefore the supply code regulations allows the distributions licensee to classify or reclassify a consumer into various commission approved categories based on the purpose of supply. In other words, it is the responsibility of the licensee to apply proper tariff category to the consumer as per the order of the commission. The licensee was required to change tariff category as per the tariff order of the commission and charge accordingly but it failed to do so till Dec 2015

11. The consumer has relied upon the order dated 11th Feb 2003 in case No.24 of 2001 passed by the MERC wherein it is 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 competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively.

12. The consumer has also relied upon order dated 7th Aug 2014 passed by the APTEL in appeal No.131 of 2013 in the matter of Vinney Enterprises v/s Kerala State Electricity Regulatory Commission and others. **In the said case, the APTEL has held that the arrears for difference in tariff could be recovered from the date of detection of the error.** Thus the principle laid down by the APTEL is recovery should be prospective i.e. from the date of detection of error.

13. Hon'ble Electricity Ombudsman (M) ruling 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 in its order dated 23rd Dec 2014 in Representation No.124,125 and 126 of 2014 held that the recovery on account of reclassification can be prospective only.

14. The Consumer further relied upon the order dated 11th Jan 2016 in Representation No.91 of 2015 passed by Hon'ble Electricity Ombudsman (M) wherein it is observed that ;-
15. *The respondent has relied upon the order of the Forum allowing recovery of 24 Months .The Forum has referred to the provision of Section 56(2) of the Act as well the judgment of the High Court in the matter of M/s. Rototex Polyster.In view of the conflicting judgment of the High Court in the case of Mr.Awadesh Pandey Vs.Tata Power Company Ltd.reported in AIR 2007 BOM 52 and M/s.Rototex, a reference has been made to the Larger Bench by Order dtd.24.01.2012 of the High Court of Bombay {2012(III)AIC 822 (BOM)}regarding interpretation of Section 56(2) of the Act and to decide which judgment namely, Awadesh Pandey or M/s. Rototex have correctly interpreted Section 56(2) of the Electricity Act.The said reference is pending decision in the High Court.*
16. *The issue involved in the representation, as aforesaid ,is squarely covered by the order of the Commission as well as of the APTEL and it will not governed by the provision of Section 56(2) of the Act or the Judgment in the matter of Rototex. The view taken by the Forum based on Section 56(2) of the Act is ,not correct and hence it is set aside.*
17. In view of the orders passed by MERC,APTEL and Electricity Ombudsman (M) referred to above which are applicable to the present case.

Date:- 25.08.2016

Sd/-

S.N.Shelke
Chairperson CGRF:PUNE

Member Secretary,(B.S.Sawant)

I have gone through the above reasoning and my opinion in this matter is differing as below.

The appellant consumer had already accepted that there is no any manufacturing activity going on about last two and half years and presently the activities are such as Trading/Godown/Administrative Office etc.On this facts it is observed that, as the appellant consumer had themselves change the activity from Manufacturing to Trading/Godown/Administrative Office etc. i.e the tariff category changed from Industrial to Commercial.

Hence the assessment of plain tariff difference for 24 months w.e.f December 2013 to November 2015 shall be recovered from the consumer without interest and DPC as per the provision of Section 56(2) of Electricity Act,2003. The necessary installment shall be given as per MSEDCL's Rules and Regulations.

Sd/-

B.S.Savant

Chairperson CGRF:PUNE

Hence, the Order by casting additional vote.

Order.

1. Grievance of the Consumer stands allowed with Costs.
2. Impunged order dtd. 16th June 2016 pass by IGRC is hereby set aside.
- 3.The Licensee is directed not to recover the difference of arrears of Rs.51,212.62 shown as "Debit Bill Adjustment" in the bill for the month of April 2016.

4.The Licensee to report compliance within one month from the receipt of this order.

Date:- 25.08.2016

Sd/-

S.N.Shelke

Chairperson CGRF: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.