

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

Case No.27/2016

Date of Grievance : 25.07.2016

Date of Order : 17.09.2016

In the matter of change of tariff category from continuous to non continuous from Nov.2012 & refund of tariff difference amount with interest.

M/s. Shrinivas Engg.
Auto Comp.Pvt.Ltd.,
Village Navalakh Umbre,
Tal.Maval, Pune-410507
(HT Consumer No.181029042400)

Complainant
(Hereinafter referred to as Consumer)

Versus

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

Respondent
(Hereinafter referred to as Licensee)

Quorum

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

Appearance

For Consumer	Mr.B.R.Mantri (Representatives)
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For Respondent	Mr.D.N.Bhole,E.E., PRC, Pune Mr.S.J.Patil, Dy.Manager, (F&A) PRC
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1. The Consumer has filed present Grievance application under regulation no. 6.4 of the MERC (CGRF & E.O.) Regulations 2006.

2. The consumer did not approach to IGRC with complaint but directly approach to the Forum with complaint in Schedule 'A' as contended by Licensee.
3. The papers containing the above grievance were sent by the Forum to the Superintending Engineer, M.S.E.D.C.L., PRC, Pune vide letter no. EE/CGRF/PZ/Notice/27 of 2016/167 dtd.28.07.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 16.08.2016.
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) M/s. Shriniwas Engg. Auto Components Pvt.Ltd.is an HT consumer having consumer no. 181029042400 at Navlakh Umbre, Tal. Maval & its sanctioned load is 14.625 MW /24 MVA on 22KV Line.
 - ii) The consumer was applied for change in tariff from continuous to non continuous on 21.10.2012,13.03.2015,30.6.2015 & 08.02.2016. The said proposal was submitted to the competent authority for permission for change in tariff from continuous to non continuous & it is granted vide Commercial Circular No.246 dated 11.8.15 with the condition precedent of paying the arrears in full before changing the tariff.
 - iii) However, the consumer did not fulfill the condition & hence it was not effected the change of tariff due to default in paying the full arrears along with the current bill amounting to Rs.9,29,29,460/-.
 - iv) All the arrears were paid by the consumer then the immediate effect was given to them in the month of Jan.2016 for change of tariff category i.e. from continuous to non continuous.
 - v) In the Commercial Circular no.246 dtd. 11.8.15 as per point no.2 under the head new provision for change of tariff, it is mentioned that *"The circle office shall be competent only to permit prospective implementation & shall ensure that no retrospective effect is given to any consumer without prior approval of Head Office"*. The CE (Comm.) issued directions to all circle offices that the terms & conditions mentioned in the above Commercial Circular is to be followed strictly". Also CE, Comm. has issued the letter no.31167 dtd.13.08.15 to this effect.
 - vi) The SE, MSEDCL, PRC, Pune vide letters dtd. 21.8.2015,3.9.2015, 7.11.2015, 4.12.2015,& 07.01.2016 informed the consumer to fulfill above mentioned conditions as per circular no.246 issued by CE, Commercial
 - vii) The consumer did not approached to IGRC with complaint & directly approached to the Forum with complaint in Schedule 'A' as per the report of the Licensee.

5. The consumer representative Mr. Mantri submitted that the consumer has two grievances. The first grievance is in respect of change of tariff category from continuous to non-continuous from billing month of Nov.2012 & refund of excess amount collected by the Licensee in respect of tariff difference from Nov.2012 to Jan.2016. He further submitted that the consumer applied to the Licensee vide applications dated 21.10.2012, 20.07.2014 & 13.3.2015 for change of tariff category. However the Licensee did not give any reply to the said applications. He further submits that as per Clause No. 9.2 of MERC SOP Regulations the change of tariff category shall be effected by the distribution Licensee before the expiry of the second billing cycle after the date of receipt of application.
6. Mr.Mantri further submits that as regards the second grievance, the MERC has issued tariff order dated 26.6.2015 w.e.f. billing month of June-2015 in the case No.121 of 2014 and clarified that the consumer getting supply on express feeder may exercise his choice between continuous to non-continuous supply any time during the financial year but only once in the financial year with one month prior notice. Therefore the consumer has again applied for change of tariff from continuous to non-continuous on 30.6.2015. However the Licensee informed us that the tariff will be changed after full payment of arrears. Therefore the consumer had to pay full arrears till Feb.2016 & thereafter change tariff has been implemented from. He pointed out that there is no such conditions in the above mentioned tariff order that change of tariff shall be effected only after payment of arrears. Therefore Commercial Circular No.246 dated 11th Aug. 2015 is not in accordance with the said tariff order. Mr.Mantri lastly submitted that the change tariff be effected from billing month of July-2015 & tariff difference be refunded to the consumer with interest.
7. On the other hand, it is submitted by Mr.D.N.Bhole, Ex. Engineer, PRC, Pune on behalf of the Licensee that the said consumer has applied for change in tariff from continuous to non-continuous. The said case was submitted to CE, (Comm.) for seeking guidance. Accordingly the CE (Comm.) issued commercial circular no.246 dated 11.8.2015 that the circle office shall be competent only to permit prospective implementation & that the Superintending Engineers, shall verify whether consumer is in arrears or otherwise and such permission will be given only on recovery of arrears. Therefore payment of arrears before change in tariff category was condition precedent. The consumer was in arrears including current bill amounting to Rs.9,29,29,460/- & therefore change of tariff category could not be effected on the application of the consumer. He further submitted that the consumer paid full arrears amounting to Rs.3,56,00,000/- i.e. Rs.50,00,000/- on 11.2.2016

& Rs.3,06,00,000/- on 12.2.2016. Therefore consumers tariff was changed from contiguous to non-continuous (HT-1C to HT-1NC) from the month of Jan.2016 & same was intimated to the consumer vide letter dated 17.2.2016.

8. Mr. Bhole , further submitted that since the consumer did not fulfill the conditions as mentioned in Commercial Circular No.246 dtd.11.8.2016 immediately the delay was on the part of consumer. He further submits that the refund claimed by the consumer in respect of tariff difference from Nov.2012 to Jan.2016 is misleading and illegal & moreover the said claim has become time barred. He pointed out that as per MERC CGRF Regulations the consumer did not avail the remedy at the first instance before IGRC for redressal of his grievance & has directly approached to the Forum. Therefore on all these grounds grievance of the consumer is not maintainable and be dismissed with cost.

9. Now, as regards the first grievance of the consumer that the consumer has applied for change of tariff from continuous to non-continuous on 21.10.2012 & thereafter time to time but the Licensee did not effect the change of tariff in the second billing cycle after the date of receipt of applications as per Clause No.9.2 of MERC SOP Regulations 2014, but kept the said applications pending. Therefore consumer claims change of tariff from Nov.2012 and refund of tariff difference amount from Nov.2012 to Jan.2016. Thus consumer is claiming both the reliefs together i.e. change of tariff from Nov.2012 and refund of difference amount from Nov.2012 as per his application dated 21.10.2012. Since the Licensee did not effect the change of tariff category in the month of Nov.2012, cause of action arose in this case arose in the month of Nov.2012. As per Regulation No. 6.6 of MERC, CGRF Regulations, 2006 the Forum shall not admit any grievance unless it is filed within two years from the date of cause of action. The Bombay High Court in WP No.1650/2012 vide order dated 10th July 2013 has held that-

The consumer ought to have approached the forum within two years from the date of cause of action. Since this period is of two years, he has to make representation to the Cell within these two years. The cell is an internal arrangement and cannot be said to be a judicial forum. The first judicial forum available to the respondent no. 2 thus the Forum. Therefore within two years from the causes of action, a complaint must come to the forum.

10. Therefore in view of the above mentioned ratio laid down by the Hon'ble High Court consumer should have approached the Forum within two years from the date of cause of action. The consumer did not file grievance within

the period of 2 years from the date of cause of action & moreover he directly approached to the Forum without availing remedy for redressal of grievance before IGRC, the said grievance is not tenable according to law.

11. As regards, the second grievance of the consumer that after tariff order dated 26.6.2015 in case No.121 of 2014 he applied to the Licensee for change of tariff from continuous to non-continuous on 30.6.2015 but the Licensee did not effect the change of tariff in the next billing cycle but later on in the month of Jan.2016. Therefore the consumers claims change of tariff from July-2015 & tariff difference with interest and compensation as per SOP Regulations.

12. In the tariff order dated 26.6.2015 the commission has clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply anytime during the financial year but only once in the financial year with one month prior notice. Subsequent to the said tariff order, Licensee has issued Commercial Circular No.246 dated 11.8.2015 in respect of permission for change of consumer tariff category from HT-continuous to HT-Non-continuous & procedure thereof. It is necessary to reproduced points no.2,4 & 5 in the said circular which read as under :

2. The Circle office shall be competent only to permit prospective implementation & shall ensure that no retrospective effect is given to any consumer without prior approval of Head office.

4. Before the actual benefit is passed to the consumers the concern Superintending Engineer shall verify whether the consumer is in arrears or otherwise & such permission will be given only on recovery of arrears from consumers.

5. The consumers connected on Express Feeder having continuous supply, if demands Non-continuous option, shall submit an undertaking thereby agreeing to not to utilize power supply during the period as may be informed by MSEDCL, so as to cope up the situation of Load Shedding /staggering Day if the situation arise.

In case such consumer defaults in his undertaking of not utilizing of power during specified hours will automatically mean the consumer is utilizing continuous supply and will be treated as a HT Continuous consumer & will be billed accordingly w.e.f. such change has been implemented.

All field officers are requested to take necessary action accordingly.

Accordingly the Chief Engineer, Comm. by letter dated 13th Aug.2015 directed all Superintending Engineers, to follow the terms & conditions strictly in view of Comm. Circular No.246 dated 11.8.2015.

13. In view of the above mentioned directions of the Head Office the concerned Superintending Engineer, vide letters dated 21.8.2015, 03.9.2015, 07.11.2015 ,4.12.2015, 7.01.2016 directed the consumer to clear the outstanding

arrears for implementing change of tariff category as requested. However the consumer did not comply with the above mentioned directions of the Licensee immediately but cleared the arrears of Rs.50,00,000/- on 11.2.2016 & Rs.3,06,00,000/- on 12.2.2016. Thereafter the Licensee change the tariff category of the consumer from continuous to non-continuous (HT-1C to HT-1NC) from the month of Jan.2016. According to the consumer there was no such directions in the tariff order dated 26.6.2015 & therefore Circular No.246 dated 11.8.2015 is not in accordance with the tariff order. If that was so, the consumer should have been challenged the said circular before MERC within stipulated time. It is clear that the consumer was in arrears of bills on the date of application i.e. 30.6.2015. Similarly the tariff order dated 26.6.2015 does not talk about change of tariff category should be effected even though the consumer is in arrears of bills. Therefore the consumer cannot take benefit of change of tariff category keeping arrears outstanding. It is the legal duty & liability of the consumer to pay arrears of energy charges consumed by it.

14. For the reasons stated above grievance of the consumer is liable to be dismissed. Hence we pass following order.

ORDER

1. Grievance of the consumer stands dismissed with cost.

Delivered on: - 17.09.2016

Sd/-	Sd/-	Sd/-
S.S.Pathak	B.S.Savant	S.N.Shelke
Member	Member/Secretary	Chairperson
CGRF:PZ:PUNE	CGRF:PZ:PUNE	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.

