

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

Case No. 3 of 2008

Date: 26/05/2008

In the matter of M/s.Hasina Resort

- Complainant

V/S

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

- Opponent

Corum

Chair Person

Mr. A.V.Bhalerao

Member/Secretary,

Mrs. N.D.Joshi,

Member,

Mr. T.D. Pore

- 1) **M/s.Hasina Resort Pvt.Ltd.** (Complainant for short) runs a resort at Tungarli ,Lonawala for which it obtained supply of H.T. electricity from Maharashtra State Electricity Distribution Co. Ltd. (Opponent for short) on 13/12/05. The opponent was recovering charges for electricity consumed by the complainant up to Oct/Nov. 2007 in accordance with the tariff HT-I industrial, however from the month of Nov/Dec. 2007 the opponent changed the tariff from HT-I Industrial to HT-VI commercial complex due to which complainant was required to pay Rs.46,575.66 more than which it would have had to pay if HT-I industrial tariff had been applied. The subsequent bill dt. 04/02/08 was also raised applying tariff HT-VI. The complainant paid the amounts claimed in the bills under protest and raised the dispute before the Internal Grievance Redressal Cell (IGRC).
- 2) The IGRC did not give any relief to complainant and held that the impugned bill dt. 03/01/2008 for the consumption of the electricity in the month of Nov/Dec-2007 was correctly claimed applying tariff HT-VI commercial complex in view of the commercial circular No. 72 issued by Head Office Mumbai

- 3) The complainant not being satisfied with the order passed by IGRC has made a grievance to this forum contending that the opponent has wrongly and arbitrarily changed the tariff from HT-I to HT-VI due to which it has been heavily taxed to pay more amount. The opponent gave a comparative table for the bill dt. 09/01/08 to show how it was required to pay Rs. 46,575.66 more as the bill was raised applying tariff HT-VI. It contended that the opponent be directed to raise the bill applying tariff HT-I industrial as was being done right from the date of connection instead of changing over to the tariff HT-VI commercial complex. It claimed the consequent relief of refund and also contended that the time schedule as originally followed for billing be continued.
- 4) The opponent put in its written statement dt. 12/05/08 and admitted that the bills up to the month of Nov-07 were issued as per HT-I tariff and the bills from the month of December-07 onwards are being issued as per tariff HT-VI in view of commercial circular No.72 dt. 13/12/07 on verifying that the opponent was/is using electricity for running the hotel. It further contended that the change in categorization of the complainant's under taking from Industrial to commercial complex is made on the basis of observations made by Maharashtra Electricity Regulatory Commission(MERC) on page 29 of the clarificatory order dtd.24/08/2007 in case No. 26 of 2007 and 65 of 2006. The opponent filed additional written statement dt.15/05/08 contending that on taking review, it was noticed that some of the consumers were wrongly applied industrial tariff though they clearly fall into another category commercial complex taking in to consideration the purpose for which they were using electricity of HT voltage. The opponent gave details based upon the use of electricity by the complainant and stated that predominant use of the electricity by the complainant is for commercial purpose, and therefore a correction was made and bills are now being issued as per tariff HT-VI commercial complex . It contended that the Hotel and Resort is not an

industry but a commercial complex and therefore the perfect tariff that should be applied for raising bill is HT-VI

- 5) On behalf of the complainant, its Chief Engineer Shri.Bhinge argued the case contending that the activity carried on by the complainant is industrial. Upto Dec-07 the bills were raised for the electricity consumed as per HT-I tariff, however, the opponent without assigning any reason changed the tariff to HT-VI from Jan-08 and continued to raise the bills as per tariff HT-VI. The Chief Engineer Shri.Bhinge on behalf of the complainant explained how the complainant was required to pay Rs. 46,575.66 more as the tariff was changed from HT-I to HT-VI. He further argued that the opponent ought to have continued the tariff, HT-I till clear finding was recorded by MERC about the categorization of Hotel and Resort activity.
- 6) On behalf of the opponent it's Executive Engineer argued the case and contended that the opponent did not arbitrarily applied tariff HT-VI from the bill dtd.Jan-08 onwards but opponent only corrected its mistake of putting the opponent in the category industry when in fact opponent ought to have been put in the category commercial complex. He further argued that the complainant runs Hotel/Resort where the visitor frequently visit especially on holidays for recreation. The service rendered by the complaint by running resort can appropriately be put in the special category of commercial complex for which a separate tariff HT-VI is provided for in the tariff order dt. 01/05/07. He submitted that the opponent did not arbitrarily apply altogether different tariff not provided by MERC in it's tariff order dt. 01/05/07. From the facts brought on record and on the arguments advanced by both parties, on rival contentions, raised, following points arise for consideration.
 - 1- Has the opponent rightly put the Hotel/Resort run by the complainant in the category commercial complex as opposed to industry for raising the bills applying tariff HT-VI.

2- Is it necessary for the opponent to get confirmation from the MERC for such change in tariff.

The above points are answered in the affirmative for the reasons given below.

Reasons

- 7) **Point No. 1:** On behalf of the complainant it's Chief Engineer Shri.Bhinge fairly admitted that the activity run under the name and style, Hasina Resort is purely in the nature of Hotel and entertainment and contended that such activity is an industry covered by definition of industry as given under Sec.2 (J)of Industrial dispute Act and therefore the opponent ought to have continued raising bill as per tariff HT-I instead of HT-VI which is applicable for commercial complex. He explained how because of change in tariff the bill for the month of Jan-08 was inflated by the amount of Rs.46,575.66. When he was asked whether other undertakings which carry on the same activity are being billed for energy consumed by them as per tariff HT-VI, he conceded that the other undertakings which carry on similar activities are being billed like complainant as per tariff HT-VI from the month of Jan-2008. The opponent was asked to prepare the bill dt. Jan-2008 applying tariff HT-I. The opponent prepared the bill as was directed. When bill was prepared as per tariff HT-VI for the consumption during the period 19/11/07 to 19/12/07 under the bill dt. Jan-2008 it was for the amount of Rs. 4,07,990.70 while for the same consumption when bill was prepared by the opponent applying tariff HT-I, the final figure arrived at is Rs. 3,64,174.56. It is therefore clear because of change in tariff so far as complainant is concerned it has to pay more sizeable amount.
- 8) On behalf of the opponent, it is argued that opponent did not arbitrarily change the tariff but it corrected its mistake of putting complainant wrongly under category industrial when there was a

correct specific category commercial complex for it . In the tariff order dt. 01/05/07 so far as complainant under taking is concerned there are two relevant categories 1) HT-I industry 2) HT VI commercial complex. The question to be decided is whether the complainant has been correctly categorised as commercial complex for applying tariff HT VI.

- 9) The word industries or commercial complex have not been defined under Elect. Act -2003 or under any regulation or in any tariff order. Neither the complainant nor the opponent brought to our notice any definition of industry or commercial complex under Elect. Act-2003 or under any regulation or any tariff order. The dictionary meaning of word industry is economic activity concerned with processing of raw material and manufacture of goods in a factory. As per definition of the word 'industry' contained in section 2 (J) of industrial dispute Act is " any systematic activity carried on by co-operation between and employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes(not being wants or wishes which are merely spiritual or religious in nature), whether or not, - (i) any capital has been invested for the purpose of carrying on such activity."
- 10) The dictionary meaning of the word commercial is "concerned with or engaged in commerce, making or intended to make profit." The meaning of the word commerce is "the activity of buying and selling especially on large scale." From the above definition it can be said the word industry is large one while word commercial complex is specific. In order to find out whether the activity run by the complainant falls in the category of industry or commercial it is advisable to make reference to L.T. tariff order dt. 01/05/07in which there being a category LT-V industrial. Hostels, other than those mention as LT-I

combine lighting and power services , Cinema theatre, Drama theatre, Video Parlor and public meeting Halls recreation places have been put under separate category non domestic LT-II. Hotel and Resort undertaking is mainly for recreation purpose. If the MERC wanted to interpret recreation activity as industrial it would not have made a separate category for it as non domestic in the L.T. tariff order dt. 01/05/07. It is therefore clear that the nature of activity of running Hotel and Resort which is visited by customers for recreation can not be categorised as industrial under H.T. tariff 01/05/07. If Hotel and Resort is not to be put under the category industries then nearer relevant category for it is H.T.-VI commercial complex. In case No. 26 of 2007 & 65 of 2006, when problem arose before MERC as to what should be the proper category for Hospitals, Education Institution etc. supplied on H.T. voltages but which are currently being charged industrial tariff due to the absence of any categorization for such consumer. The MERC directed the opponent to collect data of all such consumers sub categories that are supplied at H.T. voltages, and are currently being charged industrial tariff though they should not be strictly classified under industrial category meaning there by MERC also came to the conclusion that Hotel and Resort which is like Hospital, Educational Institute etc. are not strictly speaking activities falling under the category industry.

- 11) As observed above the opponent for the purpose of levy of charges for the electricity consumed has rightly put the opponent in the category commercial complex to apply tariff HT-VI
- 12) The complainant claimed that the opponent while raising bill applying tariff HT-VI ought to have given the benefit of TOD scheme. The said prayer made by the complainant is without any basis, the benefit of TOD tariff is applicable only when tariff H.T.-I industries is applied. The said benefit is not available when tariff HT-VI is applied.

- 13) The MERC while determining tariff does not fix tariff undertaking wise i.e. for each consumer. It fixes tariff category wise. Taking into consideration the purpose for which energy is being used it is for the distribution licensee to put particular undertaking in a given category fixed by MERC for levying price for the energy supplied. In the tariff dt.01/05/2007, there were both category HT-I industry & HT-VI commercial. The undertaking/activity carried out by the complainant for which electricity is supplied is a resort the predominant purpose of which is to render service for recreation enjoyment & luxury. The opponent ought to have put such undertaking under the category HT VI commercial as it is quite different from industry where goods are manufactured on large scale rendering valuable service to the nation & the society as such but it wrongly put the complainants activity in the category HT-I industry. However it has corrected its mistake from Jan-2008 putting it in the category HT-VI especially after the MERC expressed on page No. 29 of the clarificatory order dt. 24/08/2007 that the problem exists for other categories like hospitals educational institutions etc. supplied on HT voltages but which are currently being charged industrial tariff due to absence of any categorization for such consumers.
- 14) For the reasons discussed above the opponent should not have any difficulty in levying tariff HT-VI for the complainants activity of running Resort but it must have been confused as the complainant's activity on wide terms can be termed as service industry under other Acts. Like industrial dispute though for the purpose of imposing tariff it strictly comes under HT-VI commercial.
- 15) **Point No.2:-** Now the question is whether sanction for such change from MERC is required. It is not in dispute that since Jan-2008. The opponent has been raising bills for all the undertakings like complainant who are running Hotel & Resorts in accordance with tariff HT-VI commercial. All other such consumers have not raised any

objection for such change as even applying tariff HT-VI there is no much difference in the billing amount.

So far as present complainant is concerned it was getting incentive under Time of Day (TOD) scheme. For ASC while making bill applying tariff HT-I industry as during the period which has been taken for bench mark consumption the complainant exceptionally used large number of units which he never used either pre or post that period due to which bench mark consumption in his case is fixed exceptionally high rendering ASC non applicable and therefore so far its case is concerned there is considerable rise in the bill amount when tariff is changed.

In the past whenever problem arose as to which tariff should be made applicable references were made to MERC and clarifications from it were sought which is clear from the clarificatory order dated 24/08/2007. For example when question arose before the opponent as to which tariff should be made applicable in case where HT supply is given to the religious places the clarification was sought from MERC and MERC recorded a finding that tariff applicable for religious places of worship supplied at HT voltages shall be the same as that applicable for such consumers who are supplied at L.T. voltages

As regards the cases like present one the opponent has already made a reference to MERC and MERC has making observation that the consumers who can't be strictly classified under industrial category but are currently being charged industrial tariff directed the opponent to collect data necessary for determination of tariff in such cases (see page No. 29 of clarificatory order dtd.24/08/2007 in case No. 26 of 2007 and 65 of 2006.) Further Sec. 45(5) of electricity Act-2003 lays down that the charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulation made in this behalf by the concerned state commission.

In view of the above provision though the opponent has correctly applied tariff HT-VI for the opponent it is necessary to get approval for it from the MERC. The forum therefore passes the order.

ORDER

The opponent is allowed to recover charges for the electricity supplied to the complainant putting it in the category HT-VI till the MERC decide, the said issue

pending before it.

In case the MERC approves the action taken by the opponent as per its commercial circular No. 72 dt. 13/12/07 it may continue to recover the charges in accordance with tariff HT-VI

If the MERC quashes the said circular the opponent to apply the tariff which MERC approves and refund the amount if recovered in excess with interest as per bank rate to the opponent

Sign:

Mrs. N.D.Joshi,
Member/Secretary

Mr. T.D.Pore,
Member

Mr. A.V. Bhalerao
Chair Person

Date: 26/05/2008