

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

**Case No. 3 of 2006
Date: 18/10/2006**

In the matter of

Pudumjee Pulp and Paper Mills Ltd.

- Complainant

V/S

M.S.E.D.C.L. Pimpri Division, Ganeshkhind Urban Circle - Opponent

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

Pudumjee Pulp and Paper Mills Pvt. Ltd. (Hereinafter referred to as Complainant) made grievance to this Forum for recovery of the amount of interest of Rs. 91,040.00 accrued on the sum which was recovered from him without being due from the date of respective payments till the date of refund @ 12 % p.a. from Maharashtra State Electricity Distribution Co. Ltd. (Hereinafter referred to as Opponent)

The brief facts as averred by the complainant in his representation are that in view of order dated 1-12-03 passed in case No. 2003 of Maharashtra State Regulatory Commission new tariff order was made applicable w.e.f. 1-12-03 The Complainant was to be billed according to HTP I category contained in tariff dtd. 1/12/03. For the said category there was note:

1. High Tension Industries and other general High Tension Consumers having captive generation facility synchronized with the grid, will pay additional demand charges of Rs. 20/ KVA / Month only on the extent of standby demand component and not on the entire Contract Demand.
2. Standby Charges will be levied on such consumers on the standby component, only if the consumer's demand exceeds the Contract Demand.
3. This additional Demand Charges will not be applicable, if there is no standby demand and the Captive Unit is synchronized with the Grid only for the export of power.

In view of the said note the complainant never exceeded Contract Demand and therefore charges of Rs. 20 / KVA / Month were not to be levied on him. However, the Opponent issued in all 8 bills from Dec. 2003 to July 2004 with Rs. 20 / KVA / Month extra. The Complainant had to pay extra amount as shown in the following table by Complainant in his letter dated 28-02-2006.

Sr. No	Month/ Billing Date	Diff. for Demand charges	Diff. for Electricity duty	TOTAL	Paid Amount & Date	Days for Int.	Interest Amount
1	Dec.03/ 05-01- 04	104120.00	6247.20	110367.20	5752516/- 10.01.04	212	11538.66
				110367.20			
2	Jan.04/ 4.3.04	104120.00	6247.20	110367.20	6353975/- 10.02.04	181	19702.81
				220734.40			
3	Feb.04 4.3.04	104120.00	6247.20	110367.20	6600437/- 10-03-04	152	24819.01
				331101.60			

4	Mar.04 6.04.04	104120.00	6247.20	110367.20	6541123/- 12.04.04	119	25907.50
				441468.80			
5	Apr 04 7-5-04	104120.00	6247.20	110367.20	7078225/- 13-05-04	88	23948.17
				551836.00			
6	May 04 4.6.04	104120.00	6247.20	110367.20	6322834/- 09-06-04	61	19920.52
				662203.20			
7	June 04 3-7-04	104120.00	6247.20	110367.20	6936784/- 09.07.04	31	11810.80
				772570.40			
8	July 04 3.8.04	104120.00	6247.20	110367.20	6126429/- 09-08-04	00	00.00
				882937.60	Interest @ 12% p.a.		137647.4 7
	TOTAL	832960.00	49977.60	882937.60			
					Interest @ 12% p.a. claimed by consumer		91040.0 0

The extra amounts were paid by the Complainant to the Opponent every month under protest. He claimed back the excess amount that was recovered from him along with interest @ 12 % p.a. for the period shown in the above table amounting to Rs. 91,040.00. The Opponent did not pay the excess amount that was recovered from the Complainant. The Opponent also did not pay the interest claimed by the Complainant. The Complainant therefore made a grievance to Internal Grievance Redressal Cell of Ganeshkhind Urban Circle dtd. 31-01-06. As IGRC did not decide the case within two months period the complainant made an application to this Forum on 5.07.06. In the mean time the Superintending Engineer, GKUC, Pune vide his letter dated 1.03.06 informed the Complainant that

the credit towards the additional M.D. charges Rs. 8,32,960.00 and difference towards electricity duty amounting to Rs. 49,978/- was credited through HT bill of February 05. As per MERC order dated 7-02-05, (Case No. 17/2004) regarding the credit towards the interest amount Rs. 91,040.00, the Complainant was informed by the same letter that the matter was being referred to H.O. of MSEDCL for decision.

As the total amount of Rs. 8,82,937.60 was adjusted in the bill of February 05 the Complainant now claimed only amount of Interest Rs. 91040,00.

The Opponent filed its written statement dated 11.09.06 contending that in the Govt. Audit which was made in the month of May 01 it was noticed that extra additional demand charges Rs. 20 / KVA/ Month was not levied in case of Complainant and billing was made levying Rs. 180 / KVA/Month instead of Rs. 200 / KVA / Month for the period Dec. 1998 upto May 2001, therefore by making a supplementary bill for the difference Rs 60,52,330/-, the demand was made. The Complainant paid the said amount, however went in writ for the refund of the said amount. The Hon'ble High Court referred the said matter to Maharashtra Electricity Regulatory Commission (MERC). The MERC from time to time issued tariff orders. The MERC vide its order, which came into force w.e.f. 1.12.03 added a note for HTP -I consumers.

1. High Tension Industries and other general High Tension Consumers having captive generation facility synchronized with the grid, will pay additional demand charges of Rs. 20/ KVA / Month only on the extent of standby demand component and not on the entire Contract Demand.
2. Standby Charges will be levied on such consumers on the standby component, only if the consumer's demand exceeds the Contract Demand.

3. This additional Demand Charges will not be applicable, if there is no standby demand and the Captive Unit is synchronized with the Grid only for the export of power.

The matter referred by High Court was decided by the MERC on dt. 7/02/05.

It further contended that in view of the new tariff and the order passed by MERC dt. 7.2.05, the Opponent refunded the extra amount recovered from the month of January 04 to July 04 Rs. 8,82,937.60 by adjusting it in the HT bill of February 05.

It submitted that the interest as claimed by the Complainant was not paid for want of a provision in the Electricity Act empowering the Company to repay the excess amount with interest thereon.

It contended that provision of Section 62 of Electricity Act empowers only MERC to pay interest on the undue amount recovered. It also contended that ruling in Niramaya Medical Foundation, V/S Maharashtra State Electricity Board case No. 21/04 dt. 22-03-05 passed by MERC has no relevance to the facts involved in the present case. On the date of hearing arguments were advanced by both the parties. They were given patient hearing.

On behalf of the Complainant it is argued that the Opponent unnecessarily mixed up the facts of this case with the decision in case No. 17/2004 dt. 7/2/05 which pertains to the amount claimed for the period prior to new tariff which came in force w.e.f. 1.12.03. The additional Demand Charge was not to be made applicable for billing the energy consumed by the Complainant under new tariff dated 1/12/03 as the Complainant never exceeded the Contract Demand. On behalf of the Complainant it is submitted that a case in respect of bill dated 16-06-01 amounting to Rs. 60,52,330.00 Hon. High Court did not refer the matter

to MERC. The tariff order, which came into force w.e.f. 1.12.03 was intimated to the opponent much earlier to the dt. 7.02.05 on which order in Case No. 17 / 2004 was passed by MERC.

The Opponent was fully aware that additional demand charges of Rs 20 / KVA / Month was not to be levied when it prepared bills for period from January 04 to July 04. The Opponent showed utter negligence in levying extra component and therefore for the amount recovered extra though, it was not due the Opponent be directed to pay the interest on the said sum from the date on which Complainant made payment till the date on which it was refunded by the Opponent.

On behalf of the Opponent it was argued that various tariff orders were passed by MERC from time to time. Earlier extra component was to be levied irrespective of the fact whether the consumer had exceeded stand by demand or Contract Demand. For the first time in the tariff order which came into force w.e.f. 1.12.03 the levy of extra component Rs. 20 / KVA / Month was dispensed with irrespective of the fact whether consumer has exceeded the standby demand or contract demand. It was also submitted that in case No. 17/2004 which was pending before MERC, question of making refund of the undue amount recovered by the Licensee especially with interest was under consideration and therefore the Opponent waited till the decision of that case. The Opponent refunded the extra amount recovered from the Complainant when it realised that such extra amount at the Rs. 20 / KVA / Month is not applicable in case of the Complainant who has not exceeded Contract Demand.

On rival contention raised by the parties following points arise for consideration.

1. Is the Complainant entitled to the interest of Rs. 91,040.00 @ 12 % p.a. on the extra amount recovered from him for the period shown in a table referred to above?

2. Whether CGRF has authority to pay interest on undue charges recovered from consumer under Maharashtra Electricity Regulatory Commission (CGRF) and Electricity Ombudsman Regulations 2006 (hereinafter referred to a CGRF Regulations)?

Both points are answer of in the negative for the reasons given below.

REASONS

1. As the Opponent has refunded the extra amount Rs.8,82,930.60 to the complainant the dispute only now is in respect of interest of Rs. 91,040.00 accrued on the said sum, recovered by the Opponent for the period shown in the table referred to above. On behalf of the Opponent it was argued that the MERC order which came into force w.e.f. 1.12.03 came to its knowledge when decision in case No. 17/2004 was given on 7.02.05. However, there is no substance in this contention raised on behalf of the Opponent as, the Opponent had knowledge about the tariff order which came into force w.e.f. 1-12-03 prior to the bills for the Month of Dec. 03 to July 04 were prepared. Before the decision in case No. 17/2004 was delivered on 7-02-05 the Opponent stopped making recovery of extra component from August 04 onwards which shows that the opponent had knowledge about the new tariff order before the decision in case of 17/2004 was delivered on 7/02/05.

It seems that Opponent might have given effect to the new tariff order, which came into force w.e.f. 1.12.03 dispensing with extra demand of extra charges Rs. 20 / KVA / Month only if consumer exceeds contract demand as it was introduced for the first time. Prior to that various tariff orders were issued under which Licensee was entitled to charge additional demand charges Rs. 20 / KVA / Month irrespective of the fact whether the consumer has or has not exceeded stand by demand or contract demand. Previously as in the Govt. Audit it was noticed that the Opponent did not

charge extra demand of Rs. 20 / KVA / Month, it had to recover the said sum by issuing the supplementary bill dated 16th June-2001. When matter was once and for all settled so far as demand of interest is concerned in case No, 17/2004 on 7.02.05, it refunded the extra amount recovered from the Complainant by adjusting it in the bill of February 05.

When the opponent realized that in case of a consumer who does not exceed contract demand licensee is not entitled to levy the additional charges Rs. 20 / KVA / month in view of the tariff which came in to force with effect from 1/12/03 it immediately stopped the recovery of additional charges from the complainant as he did not exceeded the contract demand without waiting for the decision of the case No. 17/04

The Complainant has relied upon the order passed in case No. 21/04 to which Niramaya Medical Foundation was a party. In that case the amount recovered by the Distribution Licensee was refunded with interest thereon. However, that case differs on the facts involved in the present case.

In case of Niramaya Medical Foundation, the Distribution Licensee had recovered the amount of SCC and SLC in addition to the supervision charges in respect of the infrastructure which Niramaya Medical foundation at it's cost undertaken and completed. The Distribution licensee wrongly levied charges applying tariff HTP IV noted of HTP II There was utter negligence on the part of Distribution Licensee and therefore undue amount recovered by the Distribution Licensee was ordered to be paid with interest.

The MERC made observation " Commission appreciates that there may some times be cases in which complexities, in the nature of operation and interpretation result in wrong tariff category being applied."

It is no doubt true that case No. 17 /04 has no concern with the present case so far as levy of additional demand charges are concerned as under new tariff the rate as regards it, was changed, however in that case the question of paying interest on the undue sum recovered from the consumer was very much in question therefore there was justification for the opponent to wait till the decision of that case to refund the undue amount recovered from the complainant.

The instant case involved the application of various tariff orders earlier to tariff order dated 1/12/03 additional demand charges were to be levied though the contract demand was not exceeded. For the first time a change was made and additional demand charges Rs. 20 / KVA / month was to be levied only if contract demand was exceeded. Earlier the supplementary bill was required to be issued to recover the extra demand charges, the opponent therefore was justified in being slow in giving immediate effect to the new tariff,

The Opponent in this case refunded the entire amount, which was undue in lump sum by adjusting it in the bill of February 05 and therefore Complainant is not entitled to the amount of interest on it.

Clause 6 of Section 62 of Electricity Act 2003 provides that "If any Licensee or Generating Company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the Bank rate without prejudice to any other liability incurred by the licensee.

The relief provided under Section 62 (Clause 6) of Electricity Act 2003 can be given by the appropriate commission while exercising its authority under the Electricity Act. What type of relief's the CGRF can give are enumerated in regulation 8.2 of MERC Regulation 2006.

The relief's relevant for the purpose of this case are

1. Remove the cause of grievance in question.
2. to return to the consumer the undue charges paid by the consumer.
3. To pay such amount as may be awaited by it as compensation to the consumer for loss or damage suffered by the consumer.

Provided, however that in no case shall any consumer be entitled to indirect, consequential, incidental punitive exemplary or damages, loss of profits or opportunity.

In the instant case, the undue charges recovered from the consumer have already been refunded. The complainant has claimed interest on the undue amount recovered, however such claim of interest is indirect or Consequential loss. Therefore in view of the above-referred regulations this Forum cannot grant the said relief

ORDER

The representation made by the Complainant is hereby dismissed.

Chair Person ,

Mr. A.V. Bhalerao

Member/Secretary,

Mrs. N.D.Joshi,

Member

Mr. T.D.Pore

