

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

Case No. 10/2017

Date of Grievance : 31.01.2017

Date of Order : 31.03.2017

In the matter of recovery of differentiation amount due to wrong application of tariff category.

M/s. Akshay Insulated Conductors,
752/A-1, KLhedshivapur,
Tal.Haveli, Dist.Pune-412205.

Complainant
(Herein after referred to as Consumer)

Versus

The Superintending Engineer,
M.S.E.D.C.L.,
Pune Rural Circle,
Pune-411011.

Respondent
(Herein after referred to as Licensee)

Quorum

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

Appearance

For Consumer	Mr. Aditya P.Joshi
	Mrs.K.P.Joshi

For Respondent	Mr. Manish Kadu, DyEE,PRC, Pune
	Mr.K.S.Sarode,DyEE, PRC, Pune
	Mr.Rahul A.Dere,DyEE, Nasarapur
	Mrs.Kamble, Jr.Law Officer

- 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 20th Jan.2017 passed by IGRC Pune Rural Circle, 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 Superintending Engineer, M.S.E.D.C.L., Pune Rural Circle, Pune vide letter no.EE/CGRF/PZ/Notice/10 of 2017/41 dtd.01.02.2017. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 10.02.2017.
- 4) We heard both sides at length and 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) Consumer namely M/s Akshay Insulated Conductors vide consumer No. 170319022221 connected on 3.4.1999.
 - ii) The MSEDCL Flying Squad Unit, Ratnagiri visited the factory of the consumer on 17.10.2016.
 - iii) The Flying Squad submitted inspection report on 19.10.2016 stating that the consumer was connected on star express feeder commissioned on 29.11.2011, however, consumer was billed with non express feeder tariff. Therefore the consumer to be billed with express tag tariff & to recover the tariff difference from Dec.2011.
 - iv) The Licensee calculated differential amount from Dec.2011 to Sept.2016 (for 4 years 10 months) amounting to Rs.20,00,693/- & made debit adjustment of said amount in the bill for the month of Nov.2016 issuing total bill of Rs.23,63,317/-.
 - v) Thereafter the Licensee issued notice of disconnection of power to the consumer under Section 56 (1) dated 03.01.2017 & 20.01.2017.
 - vi) The consumer challenged the said bill amount by making application to the Licensee dated 26th Dec.2016.
 - vii) The consumer approached the IGRC with grievance dated 30.12.2016 in Form -X.
 - viii) The IGRC, PRC, Pune rejected the grievance of the consumer vide impugned order dated 20.01.2017 stating that the under billing was happened due to wrong tariff applicability i.e. billed as per non

express tariff though consumer is using supply on express feeder, consumer has availed all the necessary benefits that of express feeder. Therefore the complaint of the consumer was rejected.

- 5) The consumer representative Mr. Aditya Joshi submitted that the Flying Squad of the Licensee visited factory of the consumer on 17.10.2016. Thereafter the consumer received energy bill of Rs. 23, 63,317/- in the month of Nov.2016. He challenged the said bill vide application dated 26th Dec.2016 But no any explanation about the bill amount was given by the licensee. In the said bill, debit bill adjustment was shown to be of Rs.20,00,693/- i.e. from Dec.2011 to Sept.2016 (for 4 years 10 months). He further submits that the consumer has regularly paid all the bills issued by the Licensee time to time.
- 6) Mr.Joshi further submits that the Licensee claimed arrears from Dec.2011 to Sept.2016 for 4 years & 10 months for Rs.20,00,693/- towards differential amount of tariff difference i.e. from HT 1-N to HT 1-C. He submits that the retrospective recovery of said bill amount is wrong & unjustified. The consumer is not liable to pay past arrears but such arrears can be recovered from the date of detection of error. He placed reliance to the decision of MERC dated 11th Feb.2003 in case no.24 of 2001 and the decision of Appellate tribunal for electricity (APTEL) vide order dated 7th Aug.2014 in appeal no. 131 of 2013. Mr.Joshi pointed out that the arrears of difference in tariff would be recovered from the date of detection of the error as per the ratio laid down in the above mentioned decisions of MERC & APTEL. He pointed out that this Forum has decided several cases of tariff difference on the same point. He referred to various cases decided by this Forum on the same point as under :
 - (i) Case No.12 of 2016 M/s.Lupin Ltd. Vs. MSEDCL decided on 22.06.2016
 - (ii) Case No.33 of 2015 Mr.Venugopal Vs. MSEDCL decided on 4.12.2015

- (iii) Case No.32 of 2015 Shri Ram Retreads Vs. MSEDCL decided on 4.12.2015
 - (iv) Case No.29 of 2015 M/s.Hindustan Tyres Retreading Works Vs. MSEDCL decided on 4.12.2015
 - (v) Case No.01 of 2016 M/s.Sameer Enterprises Vs. MSEDCL decided on 15.03.2016.
- 7) He further pointed out that Hon'ble Ombudsman in several representations has held that arrears of tariff difference can be recovered from the date of detection of error. On the said point he placed reliance to the following representations decided by Hon'ble Ombudsman :
- (i) Representation No.91 of 2015 decided on 11.11.2016
 - (ii) Representation No.41 of 2016 decided on 30.06.2016
 - (iii) Representation No.97 of 2016 decided on 25.10.2016
 - (iv) Representation No.94 of 2015 decided on 25.01.2016
- 8) Mr.Joshi further submitted that this Forum & other Forums in several cases have held that the past arrears for the period of more than 2 years preceding the date of demand are not recoverable as per Section 56 of the Electricity Act, 2003. He placed reliance to the following cases decided by the Forums.
- (i) Case No.20 of 2016 (CGRF Pune) decided on 20.06.2016
 - (ii) Case No.108 of 2012 (CGRF Nagpur) decided on 20.12.2012
 - (iii) Case No.466 of 2012 (CGRF Bhandup) decided on 04.10.2012
 - (iv) Case No.16 of 2016 (CGRF Bhandup) decided on 16.09.2016
 - (v) Case No.79 of 2011 (CGRF Nashik) decided on 01.02.2012
 - (vi) Case No.95 of 2007 (CGRF Kalyan) decided on 30.10.2007
 - (vii) Case No.14 of 2013 (CGRF Pune) decided on 29.03.2014
 - (viii) Case No.636 of 2015 (CGRF Bhandup) decided on 28.01.2016
- 9) Mr.Joshi further submitted that the past arrears for the period more than 2 years preceding to the date of demand are unjustifiable as per Section 56 of the Act, 2003. He pointed out various judgments decided by the Hon'ble Ombudsman on this point as order :

- (i) Representation No. 86 of 2015 decided on 11.12.2015
- (ii) Representation No.16 of 2016 decided on 02.05.2016
- (iii) Representation No.03 of 2003 decided on 15.02.2013

Therefore Mr.Joshi lastly submits that the Licensee cannot recover past arrears due to wrong application of tariff. It is the fault on the part of Licensee & therefore the Licensee cannot punish innocent consumer who have paid the bills regularly. The tariff should be revised from the date of detection of error and the claim of Licensee for recovery of retrospective arrears be set aside. The Debit bill adjustment in the bill for the month of Nov.2016 be set aside and the grievance be allowed.

- 10) On the other hand, Mr.Manish Kadu the Dy.Ex.Engineer, PRC Pune submitted that the present consumer is on the 'star' express feeder, commissioned on 29.11.2011. The consumer was not charged as per express feeder tag but wrongly charged as per non express feeder tag. The Flying Squad Ratnagiri carried spot inspection of the factory of the consumer on 17.10.2016 & found that the consumer was not charged as per express feeder tag. The Flying Squad observed irregularities and submitted its report to the Licensee on 29.10.2016 stating that the consumer was billed with non express feeder tariff. But it should have been billed with express feeder tag. Therefore to recover the tariff difference from Dec.2011 & that further bills be issued as per HT 1 - (E) with express feeder category.
- 11) Mr. Kadu further submitted that on the basis of report submitted by the flying squad, the consumer was charged from Non express feeder to Express feeder from Dec.2011 to Sept.2016 i.e. for 4 yrs. And 10 months by giving effect in Oct.2016 billing and accordingly the differential amount of Rs.20,00,693/- was debited in the bill of Nov.2016 to the consumer However, the consumer paid only current bill amount and disputed the differentiation amount.
- 12) Mr. Kadu further submitted that this is a case of wrong application of tariff and the licensee has only applied appropriate tariff as the consumer has

availed all the benefits of express feeder. It is not a case of requalifying or redefining of tariff. It was the duty of the consumer to inform the licensee about wrong application of tariff but he kept mum and enjoyed undue advantages. The consumer is legally liable for the statutory dues against the actual consumption of electricity as per section 56 of the Electricity Act, 2003. He cannot take benefit by escaping his liability against the actual consumption.

- 13) Mr.Kadu pointed out that in the case of **Rototex polyster & another v/s Administrator, Department of Dadra and Nagar Haveli (UT) Electricity Department Silvasa & Ors.** Reported in 2010 (4) BCR. Hon Bombay High Court held that.

“ A Consumer is under billed due to clerical mistake of calculation, bar of limitation cannot be raised. Hence, challenge of petitioner is not tenable and Section 56 (2) of E.A is not a bar for recovery of due amount by respondents”

- 14) Mr. Kadu lastly submitted that the complaint of the consumer be dismissed with cost.

- 15) Reg. NO 2.1 (m) of the MERC (Standards of performance of distribution licensees, period for giving supply and determination of compensation) Regulations, 2014 defines “ Express feeder” as under
“Express Feeder” is a feeder emanating from the Licensees substation to connection to a single point of supply, which also includes dedicated distribution facility(DDF)

- 16) As per Reg. No.2.1 of the said regulations point of supply is defined as under

“ Point of supply” means the point at the outgoing terminals of the meter / Distribution Licensee’s cut-outs/switchgear fixed in the premises of the consumer;

Provided that, in case of HT Consumers, the point of supply means the point at the outgoing terminals of the Distribution Licensee’s metering cubicle placed before such HT Consumer’s apparatus:

Provided further that, in the absence of any metering cubicle or, where the metering is on the LT side of the HT installation, the point of supply shall be the incoming terminals of such HT Consumer's main switchgear;

- 17) Reg. NO. 2.1(g) of MERC (Electricity supply code and other conditions of supply) Regulations, 2005 defines dedicated distribution facilities as under.
- (g)“ Dedicated distribution facilities” means such facilities, not including a service line, forming part of the distribution system of the Distribution Licensee which are clearly and solely dedicated to the supply of electricity to a single consumer or a group of consumers on the same premises or contiguous premises.*
- 18) The flying squad of the licensee visited the premises of the consumer on 17.10.2016 and observed irregularities and therefore submitted its report on 19.10.2016 stating that the said consumer has been connected on “star” express feeder which was commissioned on 29.11.2011. However the consumer was billed with Non express feeder tariff instead of express feeder tariff. Therefore the consumer to be billed as per express feeder tariff and directed to recover tariff difference from Dec 2011. Accordingly, the licensee calculated tariff difference bill from Dec-2011 to Sept-2016 i.e. for 4 year & 10 month amounting to Rs.20,00,693/- and shown debit adjustment in the bill for the month of Nov-2016. The consumer challenged the differentiation amount however he is paying current bills. According to consumer differentiation amount be charged only from the date of defection of error. At the same time it is the contention of licensee that the consumer has availed the benefits of express feeder. Therefore he is legally liable to pay charges of the electricity consumed by him.
- 19) In this context it is necessary to reproduce provisions of Section 56 of Electricity Act, 2003 which read as under :

56. Disconnection of supply in default of payment

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply

transmission or distribution or wheeling of electricity to him, the licensee or the generating company any, after giving not less than fifteen clear days notice in writing to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :

Provided that, the supply of electricity shall not be cut off if such person deposits, under protest -

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

- 20) On perusal of documents it is clear that the consumer is connected on express feeder from the date of its commission under DDF scheme. The consumer was wrongly billed as per Non express feeder tag. It is a case of wrong application of tariff. The consumer was charged as per Non Express feeder tag instead of Express feeder tag. It is not a case of requalifying or redefining of tariff. In this regard, it is worthwhile to consider the ratio of

the judgments and relevant provisions applicable to the present case. In the case of **Mr.Awadesh S. Pande v/s Tata power Co.Ltd** decided on 5th Oct-2006, reported in AIR 2007, Bombay, the division bench of Hon. Bom. H.C allowed the distribution Licensee to recover arrears Limited to two years preceding the date of demand, in terms of section 56 (2) of the electricity Act, 2003 and not for 26 months, preceding the date of demand. The ratio of this judgment was subsequently followed by the Hon. High Court in the cases **M.S.E.D.C.L v/s M/s. Green world magnum Enterprises in W.P.No. 2897 of 2007** decided on 7th Sept. 2007 and **M.S.E.D.C.L v/s Venco Breedings Farms Pvt. Ltd.** in W.P. No.6783 of 2009 on 5th Mar 2010. The judgment of division Bench in the case of **Awadesh S. Pande (Supra)** was not brought to the notice of the division Bench which subsequently decided the case of **Rototex Polyester (Supra)** Therefore, the view taken by Hon Ombudsman deciding the above referred to matters is the best possible view based on the ratio laid down in the case of **Awadesh S. Pandey (Supra)**.

- 21) Therefore respectfully agreeing with the above mentioned judgments, the past arrears for a period of more than two years, proceeding the demand/supplementary bill, are not recoverable by invoking the provisions of section 56 (1) and (2) of the Electricity Act, 2003.
- 22) Therefore the licensee can recover arrears of differentiation amount for a maximum period of 24 months i.e. from Oct-2014 to Oct-2016. The licensee to recover said arrears without levying of DPC and Interest and giving suitable installments as per Rules.

Hence we proceed to pass following order.

ORDER

1. Grievance of the consumer stands allowed with cost.
2. The Assessment bill issued by the licensee in the month of Nov-2016 showing debit adjustment of Rs.20,00,693/- is hereby set aside.
3. The licensee to issue revised bill making it limited only for 24 months for the period Oct-2014 to Oct-2016 excluding DPC and Interest.
4. The licensee to give suitable installments to the consumer as per rules.
5. The licensee to report compliance within are month & for the date of receipt of this order.

Delivered on: - 31.03.2017

S.S.Pathak
Member
CGRF:PZ: PUNE

B.S.Savant
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.