

28/2015



**CONSUMER GRIEVANCE REDRESSAL FORUM**

**M.S.E.D.C.L., Pune Zone , Pune**

Case No . 28/2015

**Date of Grievance : 05/10/2015**

**Date of Order : 28.12.2015**

In the matter tariff category for IT park

**M/s Devi Construction co,**

ICC Devi Gaurav Tech Park

S.No. 191/192, Pimpri

Dist- Pune- 411 018

(HT cons. No. 170149072480)

**Complaint**

(Herein after referred to  
as Consumer)

**Versus**

**The Superintending Eng.**

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

Ganeshkhind Urban Circle

Pune

**Respondent**

(Herein after referred to  
as Licensee)

**Quorum**

<b>Chair Person</b>	<b>:-</b>	<b>Mr. S.N. Shelke</b>
<b>Member Secretary</b>	<b>:-</b>	<b>Mr. D.H. Agrawal</b>
<b>Member</b>	<b>:-</b>	<b>Mr. S.S. Pathak</b>

**Appearance**

<b>For Consumer</b>	<b>:-</b>	<b>Mr. Vinod Baney</b>
	<b>:-</b>	<b>Mr. Satish Kulkarni</b>
<b>For Respondent</b>	<b>:-</b>	<b>Mr.s. R.Rinke, Ex. Engr, GKUC</b>
		<b>Mrs. Rana S.S. Jr. Manager</b>

- 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 07.08.2015 passed by IGRC Ganeshkhind Urban Circle, Pune thereby rejecting the grievance holding that commercial tariff to the consumer is legal & proper the consumer above named prefers this 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. , Ganeshkhind Urban Circle, Pune vide letter no EE/CGRE/PZ/ Notice /28 of 2015/284 dated. 07.10.2015. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 26.10.2015.
- 4) We heard both sides at length, 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) The H.T. Consumer M/s. Devi Gaurav Technology Park vide con. No. 170149072480 situated at Sr. No. 190195, Pimpri Pune connected on 26/08/2010 initially under tariff category HT-IC (Industrial).
  - (ii) The said consumer has developed the said property as per IT and ITES policy of state of Maharashtra as a private IT park.

- (iii) After completion of construction, consumer obtained completion certificate from Pimpri Chinchwad Municipal Corporation vide No. 135/2010 dated 25.10.2010.
- (iv) After completion of construction of building consumer submitted Record plan of 14 offices Premises in the building and completion of said work obtained another completion certificate from Pimpri Chinchwad Municipal Corporation vide no. 45/2011 dated 22/03/2011.
- (v) Consumer has not utilized electric energy but using Generator set constructed the said building.
- (vi) Consumer sold / leased out offices to the clients for use of IT and ITES industries.
- (vii) Consumer applied to licensee for release of energy for IT and ITES industries vide application dated 12/8/2008 & 05/09/2008
- (viii) The license sanctioned 4000 KVA contract demand on 6/11/2009 and thereafter released power supply an 26/08/2010.
- (ix) The directorate of Industries granted permission for IT park initially by letter of intent (LOI) dated 13/2/2007 upto 12/2/2010 extended up to 13/2/2011
- (x) The licensee asked the consumer to submit extended validity of the registration vide letter No. SE/GKUC/T/5047 dated 30/08/2012.

- (xi) The consumer failed to submit extended validity of registration therefore the license changed the tariff Category from industrial to commercial and issued tariff difference bill from Sept. 2010 to Feb. 2011 and further commercial tariff was continued from then onwards.
- (xii) CE commercial informed the superintending Engineer that the competent authority has decided to apply HT- II (Commercial) tariff to the consumer during the period of LOI till the occupancy as per provision of IT & ITES policy 2009 and till the receipt of permanent registration from respective authority on STPI.
- (xiii) In the meanwhile district industries centre (DIC) granted the registration up to 5.10.2015 vide letter dated 5.10.2012.
- (xiv) Consumer requested the licensee for changing tariff category from commercial to industrial from the date of supply vide letters dated 7.3.2013 and 25.3.2013.
- (xv) In the meanwhile consumer filed W.P. No. 6697/2013 in the Hon'ble High Court, Bombay against the licensee. On 29/8/2013 the Hon'ble High Court was pleased to pass on order directing the licensee to decide representations of the consumer within a period of six weeks from the date of order.
- (xvi) The consumer received permanent registration certificate from DIC vide letter dated 18.9.2015.
- (xvii) The consumer approached to IGRC ON 6/9/2013 and IGRC held that decision will be given as per the policy.

- (xviii) Thereafter again herein was held at the office of SE, Pune on 5.10.2013.
- (xix) IGRC finally decided the grievance vide impugned order dated 7.8.2015 thereby rejecting the grievance.
- 5) Consumer submits that IT and ITES policies of government of Maharashtra industry department issued time to time i.e. policy of 1998, 2003, 2009 and 2015 have been framed for the beneficial object of opening of large scale opportunities of employment and self employment facilitating growth of skilled and employable labor etc in order to promote business and enterprise in the IT industry and providing a large frame work for data protection and consumer privacy.
- 6) Consumer further submits that the licensee released supply on 26/8/2010 for its IT Park. It was billed at HT-I (Industry) tariff from the date of connection. However, the licensee suddenly changed the tariff from industrial to commercial and issued tariff difference bill from Sept. 2010 to Feb. 2011 and thereafter commercial tariff was continued till date. The licensee retrospectively recovered bill amount as per commercial rate.
- 7) The consumer further submits that they have obtained occupancy certificate from Pimpri Chinchwad Municipal Corporation vide dated 25.10.2010 and after completion of construction by submitting record plan of offices obtained another completion certificate from said Municipal Corporation vide dated 22.3.2011.

- 8) Consumer further submits that they had not obtained any construction meter from license for construction of the IT park building but by using Generator set and constructed the said building and therefore question does not arise to apply commercial tariff during the construction period.
- 9) Consumer further submits that the Government of Maharashtra, Director of Industries granted permission for entire "ICC Devi Gaurav technology Park" consisting of 14 premises / offices initially by letter of Intent (LOI) dated 13/2/2007 for the period up to 12.2.2010 the Consumer has made applications time to time to government of Maharashtra, director of industries for subsequent sanctions / registration of Pvt. IT park. Ultimately the govt. of Maharashtra, Director of industries granted the Registration for the period up to 5.10.2015 vide letter dated 5.11.2012. Thereafter consumer has received permanent Registration Certificate from Director of Industries vide letter dated 18.9.2015. There is no fault on the part of the consumer as the filing of the application for registration by time to time.
- 10) The consumer further submits that they have used power for IT / ITES industries and IT units are not different from IT park, the actual user of power are only for IT and ITES units situated in the IT park building. Therefore tariff category has to be industrial consumer lastly submits that the IGRC committed several errors by not passing on order of refund of excess amount recovered by MSEDCL as per commercial tariff and that not applying tariff as industrial . Therefore impugned order passed by IGRC be set aside and licensee be directed to refund the tariff difference amount with changing tariff from commercial to industrial.

- 11) On the other hand, Licensee ( Respondent) submits that the consumer had submitted the registration of Directorate of industries dated 13.2.2007 valid up to 13.2.2010 and the validity of the same was extended up to 13.2.2011 vide letter issued by DIC, Pune dated 19.5.2010. there after the consumer was asked to submit validity if available vide letter No. SE/GKUC/T/5047 dated 30.8.2012. But the said consumer failed to submit the same. Thereafter tariff of the consumer has been changed and tariff difference bill from industrial to commercial tariff was given to the consumer from Sept. 2010 to Feb. 2011 and further commercial tariff was continued from then onwards.
- 12) The licensee further submits that proposal of the consumer was referred to CE ( COMM) vide letter dated 14.2.2013 and the CE ( COMM) informed that the competent authority has decided to apply HT-II ( commercial ) tariff to the consumer during the period of LOI till the occupancy as per the provisions in the IT and ITES policy 2009 and till the receipt of permanent Registration from the respective authority or software technology park of India ( STPI). Thereafter the consumer sent letters dated 7.3.2013 and 25.3.2013 to the office of executive Director ( Comm) requesting to issue necessary guidelines to local office, Pune for remedial action for changing their categorization from commercial to industrial w.e.f. the date of release of supply.
- 13) The licensee further submits that in the meanwhile the consumer filed W.P. No. 6697/2013 in the Hon'ble High Court, Bombay. The Hon'ble High Court was pleased to pass order on 29.8.2013 directing MSEDCL to decide the representation of the consumer dated 7.3.2013 and

25.3.2013 within a period of six weeks from the date of the order. Consumer also approached to IGRC. The IGRC passed order on 19.9.2013 that the decision will be given as per policy. Thereafter hearing was again held at the office of S.E. Pune on 5.10.2013. and it was narrated to the consumer that as per IT & ITES policy benefit of industrial can be given only to the individual units.

- 14) The licensee further submits that S.E. Pune Sought guidelines from the executive director (Comm) vide letter dated 14.10.2013 regarding applicability of tariff for IT and ITES. Accordingly the corporate office vides commercial circular No. 212 dated 1.10.2013 issued guidelines. Again the guidance was received from the office of CE (Comm) vide letter dated 28.11.2013 that the guidelines under circular No. 212 dated 1.10.2013 are sufficient answer to all queries raised by the consumer.
- 15) The licensee further submits that IT and ITES policy 2009 is applicable to the IT and ITES units only. The MERC in representation No. 99 of 2011 decided on 5.8.2011 and Review Application No. 118/2011 decided on 25.10.2011 observed that.

Necessary precondition for operating the IT and ITES units in IT park are full occupancy certificate for IT and ITES units situated in IT park from local planning authority and registration certificate from DOI

The Hon'ble APTEL does not find any fault in the order of the commission in Appeal No. 155 of 2010 vide order dated 11.7.2011.



16) The license further submits that the consumer has already taken individual connections to their various units through multiparty route from 1.3.2013 and the tariff applied to these units is according to the usage and as per documents. It is further submitted that as per IGRC order licensee has already processed proposal to refund the tariff difference from commercial to industrial for the period from 5.10.2012 to 1.3.2013 and for the remaining past period the tariff will be commercial as no certificate from competent authority is available with the consumer.

17) Following points arise for our determination. We give our findings thereon for the reasons stated below

<b>Points</b>	<b>Findings</b>
1) Whether the consumer is entitled to get applied of tariff category HT-I industrial as claimed for?	In the negative
2) Whether the consumer is entitled to get tariff difference if yes for what period?	In the affirmative for the period from 5.10.2012 to March 2013.
3) What order?	As per final order

18) Reasons

Admittedly, supply was released to the consumer on 26/8/2010 and consumer was billed under HT-I (Industrial) Category initially. Clause No. 7.6 of IT and ITES policy, 2003 provides that IT and ITES units will be entitled for supply of power at industrial rates under the

MERC tariff orders. These units will be categorized as a separate group of consumers through the MERC clause No. 3.1.1 (4) of IT and ITES policy, 2009 states that IT/ ITES units will be supplied power at industrial rates applicable under the MERC Tariff order clause 5-A of IT and ITES policy, 2015 states that IT park has proved to be an effective tool to develop IT sector by providing adequate quality infrastructure to cluster of IT / ITES units government of Maharashtra encourages public as well as private IT parks throughout the state. Similarly clause 5-A (iii) of said policy provides that power consumed will be charged at industrial rate for the common facilities in the IT park ( such as lobbies central air conditioning, lifts, escalators, effluent treatment plant, wash rooms etc) which are used by units.

- 19) Tariff order dated 20<sup>th</sup> June 2008 shows that HT -I Industry tariff category includes consumers taking 3 phase supply at high voltage for industrial purpose. This tariff shall also be applicable to IT industry and IT enabled services ( as defined in the Govt of Maharashtra policy ).
- 20) Licensee issued commercial circular No. 243 dated 3.7.2015 subsequent to tariff order dated 26.6.2015 in case No. 121 of 2014 it gives guidelines for applicability of HI-I ( Industry ) tariff category. It states that.

This tariff shall also be applicable for use of electricity IT and IT enabled services (as beneficiary) in the policy of government of Maharashtra as may be prevailing time to time.

- 21) Present consumer is a construction company dealing in civil engineering, buildings and developments in the name and style as M/s. Devi Construction Co. Director of industries granted letter of Intent (LOI) to the said company for development of private information technology park named as “Devi Gaurav technology park “ thus IT and ITES units as defined in the govt of Maharashtra policies mentioned above are different from” IT park”. Therefore present consumer is not entitled to get HT –I (Industry) tariff category as provided to the IT and ITES units hence we answer point No. 1 in the negative.
- 22) As regards the claim of consumer for refund & difference amount recovered by the licensee time to time, It is seen from the record that directorate of industries, govt. of Maharashtra granted letter of Intent (LOI) to the consumer dated 13/2/2007 valid up to 13/2/2010. The validity of the same was extended up to 13/2/2011 vide letter No. DIC /Pune /LOI-77/IT/park/2010/2325 dated 19.5.2010. Thereafter the licensee asked the consumer to submit further extended validity if available vide letter No. SE/GKUC/T/5047 dated 30.8.2012. But the consumer failed to submit extended validity of LOI. Therefore licensee changed the tariff of category of the consumer from industrial to commercial and difference bill was given to the consumer from Sept. 2010 to Feb 2011 and further commercial tariff was continued from then onwards.
- 23) Concerned superintending Engineer received guidelines from the office of CE (Comm) vide letter dated 14/2/2013 that the competed authority has decided to apply HT-II (commercial) tariff to the said consumer during the period of

LOI till the occupancy as per provisions of IT and ITES policy, 2009 and till the receipt of permanent Registration certificate from respective authority or ST PI.

- 24) In the commercial circular of the licensee bearing No. 212 dated 1.10.2013 guidelines are given for applicability of tariff to IT and ITES units guideline no, 1(iv) states as under if the IT ITES consumer is using supply for IT/ ITES activity but not having the LOI/ registration certificate for IT/ ITES purpose issued by competent govt. Authority then commercial tariff should be applied to such consumer till the date of submission of valid LOI/ Registration certificate by consumer to MSGDCL.
- 25) The consumer submitted registration certificate from Directorate of Industries (DOI) dated 5.10.2012 valid upto 5.10.2015 and the amendment, from registration to permanent registration vide letter dated 18.9.2015. The consumer has taken individual connections to their various units through "Multi Party agreement" from 1.3.2013. Thereafter for said multiparty connections and individual connections tariff has been applied according to the documents supplied by them.

Therefore consumer is entitled to get refund from the date at registration i.e. from 5.10.2012 to march 2013 i.e. till multiparty routs. Hence we answer point No. 2 accordingly Licensee to issue revise bill to the consumer for the aforesaid period.

**Dispute could not be decided within stipulated time as hearing date was extended by consumer on personal ground and since the consumer sought adjournments for filling of documents.**

26) Lastly we pass following order

**ORDER**

- 1) Grievance is partly allowed with cost.
- 2) Impugned order passed by IGRC dated 7.8.2015 is hereby set aside.
- 3) Licensee to refund / adjust tariff difference to the consumer during the period from 5.10.2012 to march 2013.
- 4) Licensee to report compliance within one month from the date of this order.

**Mr. D. H. Agrawal**  
(Member Secretary)

**Mr. S.S. Pathak**  
(Member)

**Mr. Shahaji N. Shelke**  
(Chairperson )

Note : The Consumer if not satisfied may file representation against this order before the Hon'ble Ombudsman within 60 days from date of this order at the following address.

Office of the Ombudsman,  
Maharashtra Electricity Regulatory commission,  
606/608, Keshav Building, Bandrakurla Complex.  
Bandra (East) Mumbai – 400 051.