

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

Case No.01/2016

Date of Grievance : 08.02.2016

Date of Order : 15.03.2016

In the matter of recovery of arrears after reclassification of tariff category.

M/s. Sameer Enterprises,
S.No.119/13, Ramnagar,
Chinchwad, Pune-411019.

Complainant
(Herein after referred to as Consumer)

Versus

The Executive Engineer,
M.S.E.D.C.L.,
Bhosari Division,
Pune.

Respondent
(Herein after referred to as Licensee)

Quorum

Chairperson
Member Secretary
Member

Mr. S.N.Shelke
Mr. D.H.Agrawal
Mr. S.S.Pathak

Appearance

For Consumer

Mr. Sameer Dhumal.

For Respondent

**Mr. D.P.Pethkar, Ex. Engineer,
Bhosari Dn.
Mr. A.G.Shrigadiwar, Addl. Ex.Engr.
Akurdi Sub/dn.**

- 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 1st Feb.2016 passed by IGRC Ganeshkhind Urban Circle, Pune, thereby rejecting the grievance, 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 Executive Engineer, M.S.E.D.C.L., Bhosari Dn., Pune vide letter no. EE/CGRF/PZ/Notice/01 of 2016/29 dtd.10.02.2016. Accordingly the Distribution Licensee i.e. MSEDCL filed its reply on 23.02.2016.
- 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 Sameer Enterprises vide consumer No. 170147230039 connected on 18.08.2005 under industrial category and billed as per tariff category LT-V-A.
 - ii) The MSEDCL Flying Squad Unit, Parbhani visited the factory of the consumer on 06.10.2015.
 - iii) The Flying Squad submitted inspection report on 09.10.2015 stating that tariff category should be changed from LT-V A (Industrial) to LT-II (commercial) as per MERC Tariff Order in Case No.19/2012.
 - iv) The Licensee intimated to the consumer about difference amount by issuing supplementary bill of Rs.68,480/- towards difference between Industrial & Commercial tariff for the period from Aug.2012 to Sept.-2015.
 - v) Thereafter the Licensee issued notice of disconnection of power to the consumer under Section 56 (1) dated 9.12.2015.
 - vi) The consumer approached the IGRC with grievance dated 21.12.2015 in Form -X.
 - vii) The IGRC, GKUC, Pune rejected the grievance of the consumer vide impugned order dated 1.2.2016 stating that the Licensee has properly applied the tariff category & directed to pay the amount of supplementary bill for the period from Aug.2012 to Sept.2015.
- 5) The consumer representative Mr. Sameer Dhumal submitted that the Flying Squad of the Licensee visited his factory on 06.10.2015. Thereafter he received energy bill of Rs. 68,480/- for the period from Aug.2012 to Sept.-2015. Thereafter he received notice of disconnection of supply dated

09.12.2015. Thereafter he submitted grievance to the IGRC, GKUC Pune but the IGRC rejected the grievance. He further submitted that he is ready to pay bills as per commercial tariff from the date of spot inspection but the Licensee is punishing him for their own wrong by issuing supplementary bill from the date of tariff order dated 16.8.2012. The retrospective recovery of bill amount of Rs. 68,480/- is wrong and unjustified. He is not liable to pay past arrears, but arrears from the date of detection of error may be recovered. He placed the reliance to the decision of MERC dated 11th Feb.2003 in Case No.24 of 2001, order dated 7th Aug.2014 in Appeal No.131 of 2013 passed by the appellate tribunal for electricity (APTEL), orders dated 23rd Dec.2014 in a Representation No.124 of 2014 and 125 of 2014 before the Electricity Ombudsman (Mumbai). He lastly submitted the impugned order passed by IGRC, GKUC be set aside & Licensee be directed not to disconnect the supply,

- 6) On the other hand, Mr. Pethkar, the Ex. Engineer, Bhosari Dn. submitted on behalf of Licensee that the consumer is connected on 18.08.2005 under Industrial category and bills were issued as per Industrial tariff i.e. under tariff category LT-V-A. The Flying squad of Prabhani Unit visited the consumers factory 06.10.2015 and submitted spot inspection report on 09.10.2015 and recommended that the tariff category should be LT-II (Commercial) as per MERC Tariff order in case no. 19 of 2012. On the basis of the said report, the Licensee intimated and issued bill of Rs. 68,480/- to the consumer towards the difference between Industrial & Commercial tariff for the period from Aug.2012 to Sept.-2015. But the consumer failed to deposit the said arrears. Therefore, the disconnection notice under section 56(1) dated 09.12.2015 was sent to the consumer. The supplementary bill issued to the consumer is proper correct and legal as per tariff order dated 16.8.2012 He further submitted that consumer was wrongly billed under Industrial tariff due to clerical mistake. He placed reliance to the case of M/s. Rototex Polyester VS Administration of Dadra & Nagar Haveli (U.T.). He further submitted that in Representation No.86 of 2015, Garrison Engineering VS MSEDCL Hon'ble Ombudsman allowed

the recovery from the date of tariff order in case No.19 of 2012. He lastly submitted that therefore the said grievance may be dismissed with the cost.

- 7) The following points arise for our consideration. We give our findings thereon for the reasons stated below.

Points	Findings
1) Whether the Licensee is entitled to Retrospective recovery of arrears of Rs.68,480/- on the basis of spot inspection report dated 9.10.2015 as per MERC tariff order dated 16.8.2012 in Case No.19 of 2012 ?	In the negative
2) What Order?	As per final order.

8)

REASONS

Admittedly, the consumer was billed under Industrial category from the date of connection i.e. from 18.08.2005 under Tariff, Category LT-V-A. As per the tariff order dated 16.08.2012 in Case No.19 of 2012 of the MERC, the activity of the tyre retreating falls under category LT-II (Commercial).

The commission in tariff order dated 16.8.2012 under LT-II (Non residential or commercial) listed the said category as under :-

e) Automobile and any other type of repair centers, Retail Gas Filling stations, Petrol Pumps & Service Stations including Garages, Tyre Retreading/Vulcanizing units.

- 9) Regulation No.13 of MERC (Electricity of Supply Code & Other condition of supply) Regulations, 2005 reads as under:

13. Classification and Reclassifications of consumers into Tariff Categories : *The Distribution Licensee may classify or reclassify a consumer into various commission approved tariff categories based on the purpose of usage of supply by such consumer:*

Provided that, the Distribution Licensee shall not create any tariff category other than those approved by the commission.

10) The MERC vide order dated 11.2.2003 in case no.24 of 2001 regarding retrospective recovery on the basis of reclassification of tariff category has directed as under:

No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively.

11) The appellate tribunal for Electricity (APTEL) in the recent order dated 7.08.2014 in appeal No.131 of 2013 (in the matter of vinney enterprises versus Keral State Electricity Regulatory Commission) has held that -

"The arrears for difference in tariff would be recovered from the date of detection of the error" .

12) The Hon'ble Electricity Ombudsman, Mumbai in his order treated 23.12.2014 in the representation no. 124 of 2014 in the similar matter of recovery of arrears after change of tariff category in the case of Mr. Ram Chimanlal Kanojiya (Chiman Automobiles) Vs. MSEDCL has directed the respondent i.e. MSEDCL

to recover the arrears from the date of spot inspection without applying DPC & Interest on the said arrears. The arrears already paid by the appellant should be adjusted and balance should be recovered from the appellant.

13) Thereafter the Hon'ble Electricity Ombudsman,(Mumbai) in his order dated 23.12.2014 in another representation No.126 of 2014, in the case of Mr. Suhas, Kailash Gupta (J.S. Auto Garage) Vs. MSEDCL in the similar matter of recovery of arrears after change of tariff category has given the same decision denying the retrospective recovery.

14) Section 56 of the Electricity Act 2003 provides for disconnection of supply in default of payment. We are concerned in this case with Section 56(2). It is necessary to reproduce it.

56. *Disconnection of supply in default of payment.-*

(1) xxx xxx xxx

(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.*

15) Sub Section (2) of Section 56 provides for limitations of two years. It introduces the concept of, **“the date when such sum become first due”**. In short, a sum which is due can be recovered within a period of two years from the date it becomes first due. The only sum which is left out of this is the sum which is shown continuously as recoverable as arrears of charges of electricity.

16) In the case of *Awadesh S.Pandey Vs. Tata Power Co. Ltd. and Ors reported in AIR 2007 BOM 52. division Bench consisting of* Their Lordships Hon’ble justice Mr. F. Rebello and Hon’ble justice Mr.A.V.Mohota held that -

In our opinion, Sub-section (2) only provides limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee or the generating company can exercise its power of coercive process of recovery by cutting of electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues expeditiously. The Electricity Act has provided that mechanism for improvement of supply of electricity and to enable the licensee or Generating Company to recover its dues. Apart from the above mechanism, independently it can made recovery by way of a suit.

17) In the case of *M/s. Rototex Polyester & Anr. Vs. Administrator, Administration of Dadra & Nagar Haveli (U.T.) Electricity Department, Silvassa & Ors.* in W.P. No.7015 of 2008 division bench of Bombay High Court consisting of Hon’ble justice Smt.Ranjana Deasi & Hon’ble justice Mr.A.A.Sayed in respect of clerical mistake relying on the judgments of learned single judge of Bombay High Court in the Case of *U.A.Thadani & Anr. Vs. B E S T undertaking & Anr., reported in 2000 Vol. 102(2) Bom L.R.502* and in Case of *Brihanmumbai*

Municipal Corporation Vs. Yatish Sharma & Ors., 2007(3) Bom C.R. 659 has observed as under

14)The principle which can be deduced from the above judgments is that in case the consumer is under-billed on account of clerical mistake such as the present case, where the multiplication factor had changed from 500 to 1000, but due to oversight, the department issued bills with 500 as multiplication factor instead of 1000, the bar of limitation cannot be raised by the consumer. Though Section 26(6) of the Indian Electricity Act, 1910 is not in pari materia with Section 56(2) of the Electricity Act, 2003, in our opinion, the present case would be governed by the above principle and, hence, the challenge raised by the petitioners must fail.

While dealing with expression, “when such sum becomes first due” learned single judge of Delhi High Court in *H.D.Shourie Vs.Municipal Corporation of Delhi, AIR 1987 Delhi 219*, observed that -

If the word, “due” is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to be issued under Section 24, which could not have been the intention of the legislature.

The Delhi High Court observed that the word “due” in this context would mean due and payable after a valid bill has been sent to the consumer.

The division bench of Bombay High Court in the case of *M/s.Rototex Polyester (Supra)* followed the view taken by single judge of Delhi High court (*Supra*) and observed as under -

We are in respectful agreement with learned single judge. In this case, the demand notices with revised bill dated 3.10.2007 was according to the petitioners, served on them on 9.11.2007. Therefore, the revised bill amount 1st become due on 9.11.2007. Hence, Section 56 (2) of the Electricity Act 2003 would not come in the way of the respondents from recovering the said amount under the revised bills.

18) In the case of MSEDCL Vs. the Electricity Ombudsman (Mumbai) & Ors. in W.P.No.10764 of 2011 learned single judge of Bombay High Court Hon'ble justice Mr.G.S.Godbole vide order dated 24th Jan. 2012 observed that -

It is clear that the earlier Judgment of the Division Bench in the case of Mr.Awadesh Pandey (supra) was not brought to the notice of the division Bench which subsequently decided the case of Rototex (supra).

9 According to me there is a direct conflict between the observation made in paragraph 7 of the Judgment of the Division Bench in the case of Mr.Awadesh Pandey (supra) and paragraphs 14 and 17 of the Judgment in Rototex (supra). This conflict will have to be resolved by a Larger Bench, since the similar issue regarding interpretation of Section 56(2) is arising in several matters coming before this court.

10 Before making order of reference, I deem it necessary to indicate reasons for making reference, I am unable to agree with the view taken by the Division Bench in the case of Rototex (supra)as also the Judgment of the Learned Single Judge in the case of Yatish Sharma. Even if the argument of the petitioner is accepted, then even in the case where the Petitioner has committed an error in applying multiplier factor, the Petitioner can wake up after several years, without there being any limitation on the period within which said error can be noticed as is contended by the Petitioner. For example, a consumer may be charged only by applying multiplier factor "1", instead of "2". On this basis bills will be raised by the Distribution Licensee and consumer in good faith and being un-aware of the mistake made by the Licensee, will go on paying amount of the Electricity charges on that basis, the consumer may fix the sale price of its goods in case it is a manufacturing activity or commercial activity and accordingly, charge its normal customer for the goods or the services provided to the said consumer. If the Distribution Licensee is allowed to wake up after several years and serve bill for a differential amount and therefore, argues that the amount became due only after service of such bill for a differential amount, in my opinion, then this will not only be contrary to the legislative intent under Section 56(2) of the Electricity Act, 2003, but it will also result in the situation where an innocent consumer may be suddenly faced with a huge demand in respect of the bill even beyond two years of service e of bills and will be forced to any the same without

*any corresponding mechanism for recover of charges of difference of the said amount from his customer or consumer to whom said consumer of electricity may have provided goods or service. This will be clearly unjust and arbitrary. In my opinion, interpretation of Section 56(2) done by the Division Bench in the case of **Rototex Polyester (supra)** results in a situation where the Distribution License can wake up and issue a supplementary bill after any number of years without there being any limitation on the numbers of years after which said supplementary bill is issued and can thereafter, claim that the amount becomes due from the date on which it is sought to have been levied and demanded by presenting a bill by claiming that the amount becomes due only when the supplementary bill is issued. Such interpretation will lead to absurd results.*

11 *Therefore, both on account of the fact that I am unable to agree with the view taken by the Division Bench in the case of **Rototex Polyester(supra)** and particularly, the observations made in paragraphs 14 and 18 of the said Judgment and also on account of the fact that according to me, there is a direct conflict of opinion between the earlier Judgment of the Division Bench in the case of **Awadesh S,Pandey (supra)** and the subsequent Judgment of the Division Bench in the case of **Rototex Polyester (supra)**I deem it fit that the issue will have to be referred to the Larger Bench of this Court, consisting of at least 3 Judges.*

19) After the order of Commission dated 16.08.2012 in Case No.19 of 2012, the Licensee should have immediately reclassified tariff category of the consumer from LT-V-A (Industrial) - to LT-II (Commercial) and charged the consumer accordingly. However the consumer was continued to be charged under LT-V-A Industrial Tariff. The Flying squad of the Licensee while carrying out the inspection dated 6.10.2015 pointed out that tariff should be changed from LT V-A (Industrial) to LT-II (Commercial) w.e.f. 1st Aug.2012 as the consumer using the supply for tyre retreading. There is no dispute that the tariff category LT-II non residential/Commercial should be applied after detection of the error since the consumer is conducting the business of tyre retreading. But the consumer is not at fault for paying the bills under Industrial tariff category from Aug.2012 till the date of spot inspection as the said bills were raised by the Licensee under the same category.

20) In the case of MSEDCL Vs Electricity Ombudsman & Anr. in W.P.No.10764 of 2011 vide order dated 17th Jan.2012 His Lordship Hon'ble justice Mr. Girish Godbole has observed as under:

If the distribution Licensee is allowed to wake up after the several years and serve bill for a differential amount & thereafter, argues that the amount became due only after service of such bill for a differential amount, then this will not only be contrary to the legislative intent under section 56(2) of the Electricity Act, 2003 but it will also result in the situation where an innocent consumer may be suddenly faced with a huge demand in respect of the bill even beyond two years of service of bills and will be forced to pay the same without any corresponding mechanism for recovery of charges of difference of the said amount from his customer for consumer to whom said consumer of electricity may have provided goods or service. This will be clearly unjust and artistry. In my opinion interpretation of Section 56(2) done by the Division Bench in the case of Rototex Polyester(supra) results in a situation where the Distribution Licensee can wake up and issue a supplementary bill after any number of years without there being any limitation on the numbers of years after which said supplementary bill is issued and can thereafter, claim that the amounts become due from the date of on which it is sought to have being levied and demanded by presenting a bill by claiming that the amount becomes due only when the supplementary bill is issue. Such interpretation will lead to absurd results.

21) Therefore in view of the above mentioned circumstances and the observations of His Lordship in the W.P. No. 10764 of 2011 and the orders passed by MERC dated 11.2.2003 in case No.24 of 2001 and the order dated 7th Aug.2014 passed by the Appellate Tribunal for Electricity (APTEL) in Appeal No.131 of 2013 and the subsequent decisions of Electricity Ombudsman (M) in the Representations No. 124 of 2014 and 126 of 2014 dated 23.12.2014 in respect of retrospective recovery, the Distribution Licensee is entitled to change tariff category from Industrial (LT-V A) to Commercial (LT-II) from the date of spot inspection (detection of error) i.e. from 6.10.2015. Therefore the retrospective recovery as per supplementary bill issued by the Licensee from 1st Aug.2012 to Sept.2015 to the tune of Rs.68,480/- needs to be set aside.

In the case of M/s. Rototex Polyester (Supra) the consumer was under billed on account of clerical mistake since the multiplication factor had changed from 500 to 1000 but due to oversight licensee issued bills with 500. But in the present case "tyre Retreading activity" is reclassified by the licensee from Industrial to Commercial. Therefore with due respect, ratio in the case of Rototex (Supra) would not be applicable to the facts & circumstances of the present case. Similarly in the representation No.86 of 2015 Garrison Engineering the consumer was enjoying mix load i.e. residential and commercial since the beginning, therefore facts and circumstances of the said case are different from the facts and circumstance of present case.

Hence we answer point No.1 above in the negative.

Date : 15.03.2016

I agree,

S.S.Pathak
Member
CGRF:PZ:PUNE

S.N.Shelke
Chairperson
CGRF:PZ:PUNE.

Member Secretary, (Dinesh H.Agrawal)

I have gone through the above reasoning and my opinion in this matter is differ as :

In case of M/s. Rototex Polyester & another Vs. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvasa & Others, reported in 2010 (4) BCR 456, Hon'ble High Court Bombay held that

" A consumer is under billed due to a clerical mistake, bar of limitation cannot be raised. Hence challenge of petition is not tenable & Sec.56 (2) of E.A. is not a bar or recovery of due amount by Respondents. Hence the propose recovery is correct & recoverable from consumers, as this is only clerical mistake, installments for payment as per MSEDCL circular should be granted without interest & DPC"

Sd/-
D.H. Agrawal
Member/Secretary
CGRF: PZ: Pune

Hence the order by majority

ORDER

1. Grievance of the consumer stands allowed with cost.
2. Retrospective recovery during the period from Aug.2012 to Sept.-2015 is hereby set aside.
3. The impuned order dated 01.02.2016 passed by IGRC, GKUC, Pune is hereby set aside.
4. The Licensee is directed to issue revise bill of arrears from Oct. -2015 onwards as per tariff category LT-II (Commercial) without applying DPC & Interest.
5. The arrears if already paid by the consumer should be adjusted in the next energy bills.
6. The licensee to report compliance to this forum within one month from the date of this order.

Delivered on: - 15.03.2016

Sd/-
S.S.Pathak
Member
CGRF:PZ:PUNE

Sd/-
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.