

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Zone, Nagpur**

Case No. CGRF(NZ)/06/2018

Applicant : Chairman,
Nagpur Industrial Estate Co-op. Society Ltd.
Uppalwadi, Kamptee Road,
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer
(D/F), NUC, MSEDCL,
Nagpur.

Applicant represented by : 1) Shri Suhas Khandekar,

Non-applicant represented by: 1) Shri N. Vairagade, Exe.Engineer, MSEDCL.

2) Shri Navghare, Addl.E.E. Flying Squad.

3) Shri Dahasahastra, SNDL, Nagpur

Quorum Present : 1) Shri Vishnu S. Bute,
Chairman.

2) Shri N.V.Bansod,
Member

3) Mrs. V.N.Parihar,
Member Secretary

ORDER PASSED ON 07.05.2018

1) The applicant presented this grievance application feeling aggrieved by the order passed by IGRC, Nagpur Rural Circle in Case No. 0534/2017 on 27-12-2017. It is the contention of the applicant that the order of IGRC is without appreciation of facts. So he approached this Forum under the provisions in Regulation 6.4 of the MERC (CGRF & EO) Regulation 2006.

- 2) A notice was given to the respondent. The respondent submitted reply on 9-2-2018. Arguments were heard on 2-5-2018.
- 3) The grievance of the applicant is that he applied for power supply for 'Street light'. The supply was given on 18-1-2006. 1st bill was given in the month of March 2007. Tariff applied was, "Residential Category" instead of 'Street Light'.
- 4) Applicant wrote to Chief Engineer on 6-4-2007 and on 23-9-2007.
- 5) Applicant wrote letters to non applicant for correcting tariff category & refund of excess amount paid. The Chief Engineer (MSEDCL) advised S.E. vide letter dated 13-12-2007 to look in matter who in turn instructed Dy.E.E. (Lashkaribag). The Dy.E.E. confirm the utilization as street light & recommended vide letter dated 28-3-2008 for tariff change to street light. The E.E. instructed Dy.E.E. to change tariff vide letter dated 17-4-2008. Ultimately from June 2008 bills with tariff category as street light were received. Again the bills for Sept-2008 to Dec-2008 were issued in Residential Category and no refund was given. Applicant continued the followup.
- 6) Again street light tariff was categorized but the meter was faulty during July 2010 to April 2011 and the bills were assessed on average of 2271 Units per month. The meter was changed in July 2010. Without any specific reasons, bill of Rs.134445/- was issued for May 2011. Applicant was allowed to pay current bills. In month Nov. 2011 amount of Rs.165346.76 was added in bill.
- 7) Applicant stated, he came to know about the report of Flying Squad dated 15-4-2010 from the letters dt. 19.12.11 and 25.11.11. The Flying Squad recommended to effect recovery prior to August 2009 applying "Non domestic Tariff". The recovery was initiated. Applicant vide letter dated 20-12-2011 pointed out the

use for "Street Light". It was verified by them. Applicant requested the non applicant that reclassification and recovery was incorrect.

8) SE (MSEDCL), vide letter dated 7-8-2013, advised to the applicant to approach the Dy.E.E.(Flying Squad). The applicant submitted letter dated 24-12-2013 and reminder on 25-04-2014 but Dy.E.E.(Flying Squad) referred back the matter to Nodal Officer/SE as it pertains to SPANCO. The applicant had no relief.

9) By a letter dated 7-6-2017 the SNDL asked the applicant to pay the outstanding amount of Rs.2,54,973/- or to face legal action.

10) Applicant in Nov. 2017 received another notice from non applicant dated 20-11-2017 asking him to pay Rs.434798/-. The applicant filed grievance in CGRF. The CGRF advised him to approach IGRC. The IGRC SNDL dismissed the case vide order passed in case no. 534/2017 on 27.12.17. Hence this application.

11) Applicant sought relief (A) to withdraw entire disputed amount. (B) To review entire billing since the date of commencement of supply & to refund excess amount with interest at standard bank rate. (C) No coercive action during the pendency of case (D) Pay compensation of Rs.50000/- for harassment faced by applicant for more than 10 years.

12) Applicant filed 30 documents which include, correspondence, Tariff Booklet w.e.f. 1-10-2006 & MERC tariff orders in Case No. 65/2006 dated 28-5-2007, Case No. 72 of 2007 dated 20-6-2008.

13) Non applicant in reply stated that according to spot inspection of Flying Squad, the complaint is regarding Debit B-80 and Consumer No. is 410016210858. The power supply was given on 18-1-2006 but applicant was given bills from Feb.2007 to July 2009 as per residential tariff.

Non applicant said, as per spot inspection of Flying Squad, it was suggested to issue bills for the period March 2007 to July 2009 (29 months) amounting Rs.5,22,881/- assessment amount and after reducing paid amount as per Residential Tarriff. (522881 – 356677.94 Ps. = Rs.166203/-), SNDL was advised vide letter No. 5898 dated 25-11-2011 to raise recovery of Rs.166203.06. The amount of Rs.166203.06 was added in the bill of Nov.2011. Non applicant filed the documents, and the CPL of applicant.

14) We have heard the arguments of Mr. Suhas Khandekar (Consumer Representative) for the applicant and Mr. Vairagade (Representative of Nodal Officer), Mr. Navghare Addl. Executive Engineer (Flying Squad), Mr. Daharashtra for SNDL, for the Non applicant in detail.

Mr. Navghare agreed to submit a copy of circular showing that Commercial Tariff is applicable to the Street Lights in question. The respondent was also to produce the authority about recovery of arrears as per Flying Squad report for 29 months. However the non applicant failed to file authority about recovery of arrears & applicable tarrif from 1-10-2006. Street light is not included in non domestic category & the street light category exisis. Hence it can be inferred that Commercial Tariff in question is not applicable as separate LT vi street light category is applicable.

15) It is worthwhile to mention that non applicant did not file the para wise reply but submitted ½ page reply. Hence inference can be drawn that submission of the applicant is acceptable to the non applicant, as not denied specifically.

16) During arguments query was raised to non applicant that the supply of applicant is for "Street Light" Since 18-1-2006. Then why 1st bill was issued in the month of March 2007 after more than a year and that too in Residential Tariff

Category. The non applicant replied that it was a mistake on their part of issuing bill for residential category but failed to reply the specific reason for issuing the bill after 14 months. It is violation a Reg. 15 of MERC (ESC) Regulations 2005.

It is necessary to mention that in the month of June 2008, electricity bill with “Street Light” category was issued and again a bill for Sept 2008 to Dec 2008 was issued in “Residential Category”, without any explanation/clarification to the applicant.

17) The points for our consideration are –

(A) Whether applicant is covered in ‘Street Light’, Category ? Yes.

It is an undisputed fact that applicant applied for “street Light” in Nagpur Industrial Estate Co-op Society Ltd. Uppalwadi, on 8-11-2015 and after payment of demand note, completion of formalities, supply was given on 18-1-2006. The non applicant on his own issued bills in “Residential” Categories in March 2007.

As per MERC’s Tariff order in Case No. 65 of 2006 dated 28-5-2007, & Case No. 72 of 2007 dated 20-6-2008 the provisions are as under.

(A) LT VI – Street Light.

Applicability	Applicable for LT Street Light service.
---------------	-----------------------------------------

Base Tariff.

Consumer Category	Demand Charges (Rs/KVA/month) or (Rs/HP/months) or (Rs./Service connection per month)	Energy charges (Paise/Kwh)
LT VI – Street Light		
Grampanchayat, A,B & C Class Muncipal Council.	Rs. 30 per month	210
Muncipal Corporation Areas		250

(B) (6) LT VI – Street Light :

Applicability	Applicable for LT Street Light service.
---------------	-----------------------------------------

Base Tariff.

Consumer Category	Fixed Charges (Rs/KW/month)	Energy charges (Paise/kWH)
LT VI – Street Light		
Grampanchayat, A,B & C Class Muncipal Council.	Rs. 30 KW per month	230
Municipal Corporation Areas		270

During argument, applicant further stated that the roads where the street lights in question are installed are open for use by the general public.

MERC Tariff order dated 3-11-2016 in Case No. 48 of 2016 is as under. It is effective from 1-10-2016.

LT VI-LT. – Street Light i.e. as per Case no. 72 of 2007 for Financial year 2007-2008 & tariff determination for financial year 2008-2009, it clearly indicates change of energy charges & other things are depending upon areas in which street lights are installed i.e. Gram Panchayat, A,B,C, class M.C. or Municipal Corporation areas.

The order of MSEDCL for the period from financial year 2016-2017 to Fincial year 2019-2020 is as under,

LT VI: LT – Street Light.

Applicability :

This tariff category is applicable for the electricity used for lighting of public streets/ thoroughfares which are open for use by the general public, at Low/Medium Voltage, and also at High Voltage.

Street lights in residential complexes, commercial complexes, industrial premises, etc. will be billed at the tariff of the respective applicable categories.

The category is also applicable for use of electricity / power supply at Low / Medium Voltage or at High Voltage for (but not limited to) the following purposes, irrespective of who owns, operates or maintains these facilities:

- a) Lighting in Public Gardens (i.e. which are open to the general public free of charges),
- b) Traffic Signals and Traffic Islands,
- c) Public Sanitary Conveniences,
- d) Public Water Fountains and
- e) Such other public places open to the general public free of charge.

Rate Schedule

Consumer Category	Fixed/Demand Charge (Rs per kW per month)	Wheeling Charge (Rs/kWh)	Energy Charge (Rs./kWh)
LT VI: LT – Street Light			
(A) Gram Panchayat, A, B & C	55	1.18	4.15
Consumer Category	Fixed/Demand Charge (Rs per kW per month)	Wheeling Charge (Rs/kWh)	Energy Charge (Rs./kWh)
Class Municipal Councils			
(B) Municipal Corporation Areas	55	1.18	5.25

Note :

The above street and other lighting facilities having “Automatic Timers” for switching On/ Off would be levied Demand Charges on the lower of the following –

- i) 50 percent of “Contract Demand” or
- ii) Actual “Recorded Demand”.

In view of the above observations, the applicant consumer was in “Street Light” Category. The non applicant totally failed to prove that it does not come under “Street Light” Tariff category but comes under residential/Commercial Tariff Category.

During arguments as per order sheet opportunity was given to Mr. Nawghare (EE) to submit copy of circular showing that Commercial Tariff is applicable to the street light in question. Respondent was also to produce the authority about the recovery of arrears as per Flying Squad report for 29 months.

Non applicant failed to produce cogent evidence in support of his submission, on the contrary, besides directions by Forum Mr. U.M. Urkude (Dy.Executive Engineer) avoided to attend the hearing.

Para 23 of the order passed by the MERC in case no. 24 of 2001, reads as under,.

In light of the above observations the Commission directs the following:

No retrospective recovery of arrears 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. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.

In view of the above discussion, we are of the firm opinion that consumer comes under "Street Light' Tariff Category. So also the action of the non applicant to affect the recovery on the basis of a report of the Flying Squad can not be justified.

(B) It is an undisputed fact that meter was faulty during July 2010 to April 2011 (10 months) & average bills were assessed 2271 Units per month. Non applicant maintains the silence and inference can be drawn that period of faulty meter shall be dealt as per Reg. 15.4.1. However no relief can be given to the applicant in view of the provisions of Regulation 6.6 of the MERC (CGRF & EO) Regulations 2006, The claim is barsed by limitation.

(D) Applicant sought compensation of Rs.50000/- for harassment faced by the applicant consumer for more than 10 years due negative attitude of non applicant violating various tariff orders since 2006 besides legal & genuine demand of the applicant and voluminous correspondence of applicant. In absence of any cogent and reliable evidence, we are not inclined to award any compensation.

After the hearing of the case was over the case was discussed among the members of the Forum. The Chairperson and the Member (CPO) were of the opinion the amount of recovery raised on the basis of the report of the Flying Squad needs to set aside. The Member Secretary gave a dissenting note. It reads as under,

1) The applicant Chairman, Nagpur Industrial Estate, has been a consumer of Non-applicant since 18-1-2006, and their supply for 70KW load was released for the purpose of "street lights" of Industrial estate Co-operative society at Uppalwadi, Kamptee Road ,Nagpur. After connection was released to them, initially they were billed as per "Residential Category tariff". As per applicant's contention they were paying tax under Grampanchayat Mhassla.

2) After making various correspondence with Non-applicant from June 2008, they received bills with "street light tariff" category and bills for the period of Sept-2008 to Dec-2008 bills with "Residential tariff" Category.

3) The Flying Squad of Non-applicant ,as per their report dated 15-4-2010, stated that *“the applicant prior to Aug-2009 is billed as per residential and LT VI, whereas tariff for street light purpose is LT-VI from Aug 2009 Tariff. Hence applicant shall be billed as per Non-domestic tariff and tariff difference for the past period before Aug-2009 shall be recovered “*. Therefore, recommended recovery during the period March 2007 to July 2009 as per non domestic Tariff from them. Hence Energy Bill of Rs.134445/- was issued to them for May 2011. In the Energy bill of Oct 2011, amount of Rs.123105/- was deducted. Net bill of Rs.90230/- was paid by the them. Again amount of Rs.165346.76 was added in the month Energy bill of Nov. 2011. Aggrieved by this ,as per letter dated 20-12-2011, they made correspondence with Non-applicant stating that as the purpose of their supply is “Street Light” and therefore they should be billed as per street light category only and hence in their opinion proposed recovery by Non-applicant is incorrect.

5) On 7-6-2017, SNDL asked Applicant to pay outstanding amount of Rs.254973/- or to face legal action in return. In Nov. 2017 on 20-11-2017 applicant received another notice from non applicant to pay Rs.434798/- within 15 days or face disconnection,

6) Applicant filed grievance with CGRF NZ, on 24-11-2017. As per directives of CGRF,NZ, applicant filed grievance with IGRC. Aggrieved by the IGRC order, ,applicant requested this forum to quash their outstanding bill and review all Energy bills issued to them from the supply date & refund excess amount recovered with interest at standard bank rate, from the date of payments without Interest and DPC, also requested to withdraw 15 day notice dated 22.11.2017 with no coercive action during pendency of case. Applicant also asked compensation of Rs.50000/-

for harassment faced by them and amount is to be recovered from employees responsible as per directives of Hon. Supreme Court

7) Non applicant in their reply submitted that ,according to the spot inspection of Flying Squad, the power supply was given on 18-1-2006 to the applicant bearing Consumer No. 410016210858,for street light purpose but Energy bills during the period Feb.2007 to July 2009 were issued to them as per residential tariff . Flying Squad of Non-applicant as per their report dated 15-4-2010, proposed to recover and to revise Energy bills of applicant for period March 2007 to July 2009 (29 months) as per commercial tariff which amounts to Rs.522881/-.,stating the reason that as the purpose for which supply was sanctioned, is for street lights of Industrial estate of co-operative society, commercial Tariff is applicable to the Street Light being Non-public street lights, exclusively used for industrial estate of Co-operative society. Therefore after deducting the amount of Rs. 356677.94 already paid by applicant as per residential Tariff, final recovery of Rs.166203.06 was proposed in the Energy bill of the Nov.2011.

8. After perusal of record submitted and argument put forth by both the parties, It is clearly seen from various tariff orders of MERC such as Tariff order of MSEDCL for FY2006-2007 in case no. 54 of 2005, as per MERC's Tariff order in Case No. 65 of 2006 dated 28-5-2007, & Case No. 72 of 2007 dated 20-6-2008 that, the provisions for separate street light tariff category is applicable exclusively for street lights of Grampanchayat and Municipal council/corporation only. As the instant applicant is utilizing supply for MIDC premises streetlights which are not open for use by the general public, he cannot be billed under "Street Light" Tariff category.

Therefore street lights in Industrial premises are liable to be billed at the tariff of respective applicable category which in this case is commercial.

9. It is also seen that, it is only after tariff order of MERC for FY2010-11 in case no.111 of 2009, Street Light tariff category came into existence which is LT VI-Streetlight category and it was applicable irrespective of whether such streetlights are provided by Government or other private parties. Before this tariff order, separate Street Light category exists only for street lights of Grampanchayat and Municipal Corporation. Hence question of applicability of street light category before tariff order of MERC for FY2010-11 as in the instant matter does not arise,

10 Secondly, applicant contented that his premises being in Grampanchayat Mhassla, they should be charged as per street light category meant for Grampanchayat, But at para 22 of MERC order dated 11-03-2003 in Case No. 24 of 2001, It is clearly stated that “ *The commission does not see any merit in the applicant’s argument that he should be offered a tariff category based on his geographical location and therefore upholds the contention of the Board that the applicability of the tariff is based on the purpose for which the electricity is being used and not otherwise.*” Hence applicant’s contention that he should be charged as per street light category meant for Grampanchayat, his premises being in Grampanchayat Mhassla cannot be accepted as MERC has ruled that the applicability of the tariff is based on the purpose for which the electricity is being used and not otherwise i.e. geographical location etc.

11. In view of aforesaid analysis, being a society, non-applicant is justified in applying commercial tariff during the period from March-2007 to July-2009, as the purpose of supply was not residential. Therefore the applicant is liable to pay recovery Energy bills charged to them at commercial tariff by the Non- applicant for the period before MERC tariff order for FY2010-11 in case no.111 of 2009 .As such

applicant should make payment of outstanding bill. In the result, the grievance application deserved to be rejected and dismissed.

Mrs. V.N.Parihar
MEMBER SECRETARY

Comments on dissent Note -

As to para 1 it is incorrectly mentioned the load of 70 KW, actually it is 7 KW. As per applicant they were billed as per residential category tariff wrongly instead of street light after one year of connection i.e. in March 2007 (date of connection is 18-1-2006) and neither applicant nor non applicant uttered the word of payment of taxes to Grampanchayat in reply or in arguments.

As to para 7 non applicant neither in reply (spot inspection report of Flying Squad) nor in arguments, has said that street light being non public street lights, exclusively use for industrial estate of the co-operative society, on the contrary applicant said use of street light is for lighting of the public street are open for use by general public, but wrongly recorded that MIDC area is not for general public. In every industrial estate public street light are use by general public including employees residing in near by area, obviously street light,

As per tariff of 2006 LT (II) – Non domestic is as under

Power supply used for appliances like Light, fans, refrigerator, heaters, small cookers, radios, T.V. sets, battery charger equipments, X'-ray machines, small motors up to 1 HP attached to appliances and domestic water pump in following places:

- a) Non-domestic, Commercial & Business premises,
- b) Hospitals, other than those mentioned at LD-1,
- c) Hospitals, other than those mentioned at LD-1,

Combined lighting & power services for Cinema theatres, Drama theatres, Video Parlours, and public meeting halls, Recreation places.

As to para 8 – On perusal of tariff effective from 1-10-2006 LT ii non domestic tariff and in its applicability, street light category is not at all mentioned and hence it would have been better if non domestic category i.e. commercial would have been referred. Hence industrial estate if situated in the Grampanchayat area Muncipal Council area, and Muncipal Corporation area various charges made applicable and question of geographical area is out of context. In an identical case before Electricity Ombudsman Nagpur in rep. 13/2012 order dated 5-6-2012, issue of recovery was related to April 2007 to October 2011.

Para 7 of the order – It is as under,

The Representatives of the appellant as well as the respondent were fair enough to agree before us that the LT-VI (Street lights tariff) is applicable to the appellant as laid down in the tariff order dated 17-8-2009 in Case No. 116/2008 passed by MERC and which is applicable w.e.f. 1.8.2009. Street lights category was there even before the tariff order 2009 and there were two categories (A) Gram Panchayat and ABC Class Municipal Council and (B) Municipal Corporation Areas. However, in the tariff order dated 17-8-2009, applicability clause was inserted by the MERC for the first time which has clarified the position as under.

“Electricity used at Low/medium Voltage for purpose of public street lighting, lighting in public, gardens, traffic island, bus shelters, public sanitary, conveniences, police chowkies, traffic lights, public fountains, and other such common public places irrespective of whether such facilities are being provided by the Government or other private parties.”

In view of the above clause, both the parties agree that LT-VI (b) tariff can be made applicable to the appellant. Obviously this should be from 1.8.2009. It is thus clear that the appellant is liable to pay tariff as per LT/VI (B) (Street Lights) from 1-8-2009.

As to para 9 – In tariff order 2010-11 also non domestic does not included street light in industrial area which use by general public is also and hence applicant is to treated in street light category .

As to para 10 – It is not the contention of the non applicant that applicant needs tariff category based on geographically location but for street light in the industrial area and tariff of 1-10-2006 also does not include street light in non domestic and use of street light in the industrial area is also for passing the public on road and reference to para 22 of MERC order is not correctly interpreted and applicant did not ask for street light category for Gram Panchayat.

As to para 11 – Hence for March 2007 to July 2009, firstly non applicant can not do recovery of recilified category as demand raised in May 2011. In para 23 of case no. 24/2001 referred above clearly specify that no retrospective recovery can be allowed on basis of any abrupt classification. Hence recovery of outstanding bills charge to applicant at commercial rate is misconstrued and we do not agree with aforesaid note.

So we pass the following order by majority.

ORDER

1. Non applicant is directed to withdraw the disputed bill amount raised on the report of the Flying Squad. It is for the period from March 2007 to July 2009. The amount is Rs.1,66,203/- (after deducting the amount already paid).
2. Non applicant is directed to withdraw notice dated 20-11-2017 as proved arbitrary & illegal and no coercive action shall be initiated against the applicant.

Sd/-
N.V. Bansod
MEMBER

Sd/-
Mrs. V.N.Parihar
MEMBER SECRETARY

Sd/-
Vishnu S. Bute,
Chairman