

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

Case No. 21/2018

Date of Grievance : 08.05.2018

Hearing Date : 05.06.2018

Date of Order : 07.07.2018

**In the matter of complaint of recovery of previous arrears of the differential tariff bill.**

M/s. Mahavir Jain Vidyalaya, ---- Complainant

S.No.844/A, Bhamburda,

Pune - 411004.

(Consumer No.170019063490)

VS

The Supdt. Engineer, ---- Respondent

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

GKUC,Pune.

Present during the hearing:

A] - On behalf of CGRF, Pune Zone,Pune.

- 1) Shri. A.P.Bhavathankar, Chairman, CGRF,PZ,Pune
- 2) Mrs.B.S.Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr.Anil Joshi, Member, CGRF, PZ. Pune.

B] - On behalf of Appellant

- 1) Shri.Suresh Sancheti, Consumer Representative

C] - On behalf of Respondent

- 1) Mr.Parag G.Bapat, Ex. Engr., GKUC, Pune
- 2) Mr.Sameet R.Chavan,Asstt.Law Officer, GKUC, Pune

M/s. Mahavir Jain Vidyalaya, Consumer No. - 170019063490, Connecting load - 112.50 KW, **date of connection** - 17.08.2006. Contract demand load - 102 KVA - Category LT-I Residential at level of HT.

The above named consumer received the supplementary bill in the month of March- 2018 amounting of Rs. 44,30,300/- representing the arrears of difference payable by the consumer on account of revised tariff schedule applicable to these premises as stated by the by Govt. Auditor in Para No.1 of its Audit Report for the year 2015-2016 as per CAG para, together with the official note of the technical section dated 20/2/2018 in support thereof. The Consumer received the said demand bill for Rs.44,30,300/- along with the normal notice, directing the consumer to deposit the amount of arrears of the bill covering the period from Sept. 2012 to January, 2018 and amounting to Rs.44,30,300/-within 15 days. Copy of the disputed bill assessed by the Utility to the consumer on 19.3.18 for to Rs.44,30,300/- was attached along with the complaint. After receiving the said bill, the Consumer initially approached to IGRC by filing an complaint in Form No. X on 5.5.2018. Consumers prayed and submitted that the premises is being used for M/s. Mahavir Jain Vidyalaya being the HT consumer since 17.8.2006 with Contract demand of 102 KVA. Initially, the bill received by the consumer on monthly basis was under the tariff category of HT - IX B on monthly basis and the consumer was paying the said bill regularly from time to time, claiming that there were no arrears. On 19.3.2018 to be paid by the consumer, being the arrears for the given period from Sept. 2012 to January, 2018 as claimed by the Utility. The Consumer received the said supplementary bill for Rs. 44,30,300/- for the period Sept.2012 to Jan.2018 representing the tariff difference for change of the category of the said consumer from the then HT - IX B to the changed LT-I-C. The supplementary bill issued to the consumer was primarily on the basis of observations recorded by the Govt. Auditor for the year 2015-16. Following receipt of the supplementary bill, the consumer requested the Utility to provide it detailed calculation of the bill for RS.44,30,300/- for the above said period from September, 2012 to January, 2018. It is to be noted that the consumer has not disputed the change category for tariff category from Feb.2018 onwards, but has exercised his right to contest the supplementary bill being the claim of recovery for Rs. 44,30,300/-, being the

past recovery of the bill for the period from September-2012 to Jan.2018. The consumer further stated that as per the orders dt. 11.02.2003 passed by the Regulatory Authority Commission in Case No.24 of 2001, together with the judgment of the Electricity Ombudsman, Mumbai, in Case No. 124 of 2014 dtd. 23.12.2014 and Order of Appellate Tribunal for Electricity (APTEL) in Appeal No.131 of 2013 claim / demand of the Utility for the past period arrears from September-2012 to Jan.2018 is illegal and, therefore, liable to be set aside in view of these orders / judgments. The Consumer also further prayed that since he has been regularly paying all the bills issued by the Utility from time to time, there are no arrears on his part on this count and, therefore, supply of the consumer should not be disconnected, as perceived by it. The consumer had also filed the identical grievance with the IGRC on **05.05.2018** which too have registered the case / grievance of the consumer. The Consumer had produced all the relevant documents, along with a copy of the supplementary assessment bill dt. 19<sup>th</sup> March, 2018 for Rs.44,30,300/- and also a copy of the regular bill dt. 05.02.2018 for Rs.3,14,510/-, together with a copy of notice dated 20.3.2018 advising the consumer about change in his tariff category from the then existing HT-IXA to the revised category to LT-I (Public Services to Residential) as also calling upon the consumer to arrange for payment of the said supplementary bill for the period from Sept. 2012 to January, 2018 for Rs.44,30,300/- within the period of 15 days from the issue of the bill. After the consumer filed his grievance, the IGRC registered the same under distinctive number 17/2018 on .5.6.2018. The IGRC gave an opportunity to the consumer for personal hearing on 8.6.2018. While disposing of the grievance the IGRC passed an order stating that in tune with the "MERC Tariff Order", as incorporated in the relevant Circular of MSEDCL of Aug. 2012, the tariff was changed from HT - IX B to LT-I (residential category) in March-2018 with retrospective effect from Aug.2012. According to the IGRC order the consumer was obliged to pay the supplementary bill arising out of the tariff difference as applied and

accordingly rejected the claim of the aggrieved consumer vide its order dt. 08.06.2018.

Being aggrieved by the said order of IGRC the consumer approached this Forum and filed his grievance in form No. A with the prayer to the Forum that the demand for retrospective recovery of the supplementary for Rs.44 ,30,300/- for the period from Sept. 2012 to Jan.2018 and also notice dt. 20/03/2018 are bad in law, and therefore, liable to be set aside. The consumer further prayed that his electricity supply should not be disconnected pending disposal of his appeal before the Forum and that the Respondent utility be directed to withdraw the said bill and all other reliefs claimed as per deemed date. Subsequent to filing of the complaint with the Forum, the consumer filed a copy of the IGRC order dt. 08.06.2018 and all other all relevant associated with the said dispute. The office of the CGRF issued notice to the Respondent utility on 31.5.2018 and scheduled the hearing on 5.6.2018. In the meantime the Respondent utility filed its reply on 23.5.2018. wherein, along with relevant details of the consumer viz. consumer number, address of the consumer, connecting load and date of connection, submitted that the consumer was being charged since date of connection as per **Commercial Circular No.80 dtd.10.5.2008** and fixed the category for tariff was also fixed accordingly. However, following introduction of separate category vide **Commercial Circular No.175 dtd. 5.9.2012**, category of the consumer was classified under the category of HT (Public Services) and, therefore, the bills were being issued as per the revised category "HT-IX", and thereafter following sub- classification of Public services as per tariff order and Commercial Circular No.243 dtd.30.7.2015. The said consumer was billed as per HT Public Service HT - IX B category.

The Respondent utility further submitted that as observed in Audit Report of the CAG para 2015-2016, the Government Auditors had observed that the Utility had suffered the loss of Rs.89.81 Lakh due to incorrect application of tariff to Hostels and Dharmshalas and that the HT power supply provided for "Student Hostels of Educational Institute and

Dharmashalas" was billed at lower tariff "HT - IX" category applicable to "Public services" instead of LT-1, being the appropriate tariff category, since Aug. 2012. According to the auditors it was incorrect application of tariff which had resulted in under billing of the consumer leading to revenue loss of Rs.89.81 Lakh to the company since Sept.2012 to Jan. 2018.

The Respondent utility also further submitted that the tariff was accordingly changed from HT-IX B category to LT1 residential category from March-2018 with retrospective effect from Aug-2012 and supplementary bill for the said period was issued to the consumer for Rs.44.30,300/- on 20.3.2018. Consumer raised the grievance for claiming the HT consumer and for having billed as LT-1 tariff, as also recovery for the period beyond two years being raised by MSEDCL. As per submission of the Respondent Utility, in terms of Circular No.175 dt. 5<sup>th</sup> September, 2012, effective Aug.2012 under all the tariff circulars issued from time to time, "Consumers who have taken power supply of higher tension for any mentioned period / purpose of LT Residential shall be billed as per tariff applicable for power supply on low tension". Therefor LT1 Residential Tariff has been applied to the consumer. The Respondent utility further submitted that in series of cases are filed in the Hon'ble High Court on the identical issues final order on which is awaited yet. To quote few such cases, it includes Writ Petitions No. 7615 of 2008 in respect of Rototex Polyester and AIR 2007 BOM 52 which empowered the Utility to recover bill amount from the consumers on account of faulty bills having been issued to the consumer. However in view of the conflicting judgments on Section 56 (2) of the Electricity Act, 2003 empowering the Utility to demand and recover bills beyond the period of two years, the issue was placed for consideration before the larger bench of the Bombay High Court to decide the issues raised in **the writ petition** No.10764 of 2011, **which** is still under consideration of the Hon'ble Bombay High Court for their orders. In an another decision of Nagpur Bench of Bombay High Court, report in 2016 (I) Mh.L.J.382 it has been held that when the superior court is seized of matter, all courts subordinate thereto must wait for decision and

outcome of the superior court. Therefore, in addition the Respondent utility submitted that the Writ petition Nos. .6552 of 2015, 6553 of 2015 and 6545 of 2015 are pending before the Hon'ble High Court and in view of these issues being under litigation, the Respondent utility prayed that this Forum may not be pleased to order the Respondent utility in the matter and prayed that since the tariff applied to the consumer is as per the orders issued by MERC LT-1 recovery of difference of arrears, though disputed by the consumer, is correct and in order and, therefore, prayed for dismissal of the grievance application of the consumer with cost. The Respondent utility also submitted copy of Index and copy of writ petitions pending before Hon'ble High Court and copy of Circulars referred to above for perusal of this Forum. I have carefully gone through the consumer complaint, documents filed by the consumer and also reply and contention of utility carefully. The following points arose for my consideration to which I have recorded my findings to the reason given below:-

1. Whether bill issued to the consumer on 19<sup>th</sup> March 2018 claiming arrears with retrospective period from Aug.2012 to Feb.2018 amounting to Rs.44,30,300/- is legal, valid and proper?
2. Whether the Respondent utility is entitled to claim retrospective recovery since Sept.-2012?
3. Whether categorization of the consumer for tariff order had been done appropriately for the consumer?
4. What order?

**Reasons :-**

I have given an opportunity to the consumer and his Representative on 5<sup>th</sup> June 2018. It appears that the grievance raised by the consumer against the Respondent utility is against the claim of retrospective recovery by the utility for the period since Sept.-2012 to Jan. 2018. In the grievance itself that the consumer has submitted he is separately challenging on category of difference to in appropriate authority. In this Forum consumer only prayed that recovery of retrospective period from Sept.-2012 is bad in law. Towards this end, the Consumer relied on the

order passed by Commission in case No. 240/2001 dated 11.02.2003, order in Case No.124 of 2014 order dated 23.12.2014, APTEL Tribunal Authority Appeal No.131 of 2013. So far as the legal status of the cases are concerned, the view expressed by the Higher Authority are still in force and operative and that the Respondent utility should not claim retrospective recovery prior to date of detection of error. In my view the decision of APTEL Authority in Appeal 131 of 2013 is binding and liable to be followed by all the authorities working under inherent jurisdiction of this Forum. It further appears to the Forum that as per owned contention of the Respondent utility, the Writ Petition No. 6545 to 6552 are still pending before the Hon'ble High Court after verifying the status of those authorities. Hon'ble High Court has granted status quo orders in all these Writ Petitions directing the Respondent utility not to take coercive action for recovery for the retrospective period prior to the date of detection of error. In this present case the detection of error according to consumer, his audit report communicated to the Respondent utility in the year 2014-15. However, the consumer was issued the utility bill for the past period from Sept.-2012 which is absolutely incorrect and not in view of existing similar facts and circumstances reported. Taking coercive actions and insistence to pay the past amount of Rs.44,30,300/- is liable to be quashed and set aside. However consumer agrees to change of tariff category as per present tariff directions as is supply is at HT level and though billed as per tariff order under LT- IXB category. The separate category is not created in HT level supply tariff order and the earlier direction amending the LT-IXB category should be billed as LT Residential and therefore the appropriate category should be fixed by the Respondent utility. following resent directions & Circulars of MERC and MSEDCL authority time to time to the extent of granting relief. No coercive steps should be taken for recovery of past dated arrears Sept.2012. The consumer is directed to pay and assess the bill from the date of detection of errors under the prescribed category of LT1- Residential as defined by the utility and revised the bill accordingly. The question of recovery of back dated, past dated since Sept.2012 to Jan.2018, the consumer shall give the under taking to the effect of repayment of the said amount to decision of Writ Petition pending before Hon'ble High Court. Hence I am

inclined to allow the claim and complaint of consumer partly, and proceed to pass the following order:

### **ORDER**

1. Consumer complaint No. 21 of 2018 is allowed. The bill issued on 19<sup>th</sup> March 2018 claiming past recovery from Sept.2012 to Jan.2018 amounting to Rs.44,30,300/- stands set aside. Respondent utility is hereby directed to assess and revise the bill of the consumer in the category of LT-1 residential as per the approved tariff order issued by the MERC, copy of Circular by MSEDCL. The consumer is further directed to submit his undertaking to repay the said amount of Rs.44,30,300/- subject to the decision of Hon'ble Bombay High Court in the pending Writ Petitions. No coercive measures for recovery shall be undertaken by the Respondent utility. The Respondent utility shall follow the directions of Hon'ble High Court status quo in pending writ petition which scrupulously.
3. No order as to the cost.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 7<sup>th</sup> July - 2018.

Note:

- 1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

#### **Address of the Ombudsman**

The Electricity Ombudsman,  
Maharashtra Electricity Regulatory Commission,  
606, Keshav Building,  
Bandra - Kurla Complex, Bandra (E),  
Mumbai - 400 051.



- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I agree/~~Disagree~~

Sd/-  
**ANIL JOSHI**  
MEMBER  
CGRF:PZ:PUNE

Sd/-  
**A.P.BHAVTHANKAR**  
CHAIRPERSON  
CGRF: PZ:PUNE

I agree/~~Disagree~~

Sd/-  
**BEENA SAVANT**  
MEMBER- SECRETARY  
CGRF:PZ:PUNE