

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

Case No. 26/2018

Date of Grievance : 17.05.2018

Hearing Date : 18.06.2018

Date of Order : 12.07.2018

In the matter of complaint of change in the category of tariff of the consumer from "LT-II B – Commercial" to " LT X B - Public service."

Ashwin Medical Foundations, ---- Complainant

Morya Multispecility Hospital,

CTS -826, Chinchwad,

Pune - 411033

(Consumer No.170143590308)

VS

The Executive Engineer, ---- Respondent

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

Pimpri Division,

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. V.D.Vaidya, Consumer Representative.
- 2) Shri.V.R.Vaishampayan, Morya Hospital.

C] - On behalf of Respondent

- 1) Shri. S.R.Waiphalkar, Ex. Engr., Pimpri Dn.
- 2) Shri.A.M.Jadhav, AEE, Chinchwad Sub/dn.

M/s. Ashwin Medical Foundations, Morya Multispecility Hospital,

CTS -826, Chinchwad Gaon, Pune – 411033, Consumer No.170143590308

The present complaint is about change in the category for tariff of the consumer from LT-II B Commercial -to LT X B Public Service . The consumer has also further claimed exemptions in payment of electricity duty for the period since 2012 to 2016 on the grounds that it's a Charitable Trust and, therefore, is eligible for such exemptions, as applicable to the Public Charitable Trusts, as provided in the Bombay Act No. XL of 1958, the Bombay Electricity Duty Act, which clearly states that the Public Charitable Trust is exempted from payment of the Electricity Duty. The above named consumer has obtained supply of electricity consumption to the premises since 6.11.2004. Connecting load - 100 KW, Sanctioned Demand - 111KVA, Category LT XB. The above named consumer submitted that it has received bills for electricity consumption for the premises occupied, calculated as per the tariff applicable to the consumers of LT-II B category since the date of connection on 06.11.2004. According to the consumer, he has been occupying the said premises for running the activity for extending the medical services to the citizens at large, under name and style of "Morya Multispeciality Hospital" and was receiving the bills with wrong tariff when examined against the tariff order issued by the Utility vide its Circular and order dtd.16.8.12 in the Case No.19/2012. The consumer has demanded for refund on account of the tariff differential effective from Aug.2012 by applying tariff LT-X. In support of his claim, the Consumer has attached the copy of Circular of tariff order viz. Commercial Circular No. 175 of 5th September, 2012 issued by the Director of Operation of the Utility. The Consumer has prayed for application of appropriate tariff since August, 2012 to April, 2016 together with refund of amount of Rs. 8,78,405.60, being excess payment made by it to the Utility over the period, together with interest and compensation as per SOP. The Consumer also attached the copy of CPL and copy of circular No.175 dt. 5th Sept. 2012 issued by the Utility. Consumer also attached the copy of bill dtd.13.5.2016. Initially the consumer filed grievance before the IGRC in Form No. X. After filing the said dispute, the IGRC registered the case vide case No.T-6 of 2018. An opportunity was given to the consumer for hearing on 14.2.2018. On 20th March 2018, the IGRC passed the

orders stating that the tariff difference is adjusted by the Utility in consumer's bill for two years from date of application in tune with the orders of the Additional Pune District Consumer Dispute Redressal Forum, Pune in Consumer Case No. 17/275 dt. 03.02.2017, and therefore, the case stands disposed of.

Being aggrieved by the said order of the IGRC, the consumer filed the present grievance before this Forum in Form No. A and claimed grant of relief since 1st Aug.2012 and also claimed the refund on account of differential in tariff, with interest amount in Rs.8,78,405/- and compensation as per SOP. The Consumer further stated that of the aggregate amount of differential of Rs.8,78,405/-, the Utility had already adjusted part of the claim amount, i.e. amount of Rs.5,72,367/- and credited the same in the bill issued to him in Sept.-2017. The Consumer further submitted that in spite of his repeat representations to the Utility for application of appropriate tariff and refund of differential amount - the first such letter having been issued on 08/09/2014, followed by repeat reminders on dt. 11/02/2015, 23/05/2015, 05/04/2016, 29/04/2016, 01/10/2016 - none of these representations were considered by the utility. The consumer, therefore, prayed for action against the Respondent Utility as per Clause - 7 of MERC SOP Regulations since this prayer was not considered by the IGRC, and that the new tariff category introduced since Aug-2012 may kindly be given effect to. After filing the said dispute the Forum registered the case with distinctive number as 26 of 2018 and office of the CGRF issued notice to the Respondent utility on 17.5.2018. After service of the notice, the Respondent utility appeared and filed its reply on 02.06.2018. The Respondent utility submitted that the consumer had demanded the refund on account of difference in tariff since Aug.-2012 to April-2016 as per order of the Additional District Consumer Forum, Pune vide its order No.17/275 dtd. 03.02.2017. The Consumer had made an initial application for application of appropriate tariff in the year 2014. Consumer was, accordingly, given the benefit of differential for the period of two years from May-2014 to April-2016 amounting to Rs.5,73,545/- and the benefit for the same was effected in the bill issued for Sept.-2017, wherein the differential amount of Rs.5,73,545/- appeared as credit in the bill. The Respondent Utility further submitted that the

difference of tariff calculated by its office was as per the order of the Additional Consumer Forum, Pune, and accordingly, the Respondent utility prayed for dismissal of the grievance application of the consumer with cost.

After filing the reply by the Utility, I have minutely perused the contentions of the consumer in his application and the complaint before IGRC in Form No.-X. I have also perused the copy of establishment of the consumer and purpose of electricity the supply. Following points have emerged for my consideration to which I have recorded the reason given below:

1. Whether the consumer is entitled to apply appropriate tariff LT-X B since 1st Aug.2012?
2. Whether the consumer has received the benefit of calculation of two years from the date of his application properly?
3. Whether the consumer is entitled for any refund of amount with interest?
4. What Order?

Reasoning:-

I have given an opportunity to the consumer and his representative Shri. Vaidya who appeared at the time of hearing. I have also given an opportunity to the Ex. Engineer representing the Respondent utility who appeared before the Forum during the hearing. For his demand and application raised by the consumer for granting appropriate tariff since dtd. 1st Aug.2012 the consumer had filed copy of the Commercial Circular 175 dtd. 5th Sept.2012. Under 'Action Plan' at Sr.No.4, new tariff category 'Public Services' for both the categories - LT & HT level - the clarification is given. As stated in item No. (1) of the Action plan, the tariff order should be applied from 1st Aug.2012. The direction is also given to the filed officers of the Respondent utility to ensure that wherever the tariff category is redefined or newly created by Commission, the existing / prospective consumers should be properly categorized by actual field inspection immediately and the data also is required to be immediately updated in IT base. In this case the order follows case No.19/2012 it appears the consumer in spite of knowing this order did not follow his application at appropriate time and the first application of

details of establishment is filed by his own application on 8.9.2014. The complaint entertained by the IGRC is also minutely perused by me. It appears that IGRC considered the issues as per order on Additional Consumer Forum, Pune. In fact if the litigation is of similar nature entertained by and other equivalent Forum, the IGRC though referred the said judgment order and passed findings, to my view, this Forum has to consider the issue in proper existence of facts and circumstances and the Circular published after Aug.2012. Therefore I have perused the amended tariff order 1st June 2015, wherein the bifurcation of category LT X A and LT X B is clarified in tariff order on 1st June-2015. Public Charitable Institute is included in the tariff order of June-2015 which is a clarificatory order. The Circular which is published by the Utility as per direction of MERC, the effects of amended tariff bifurcation of category - i.e. the LT - XA and LT - X B shall be given effect from 26th Sept.2015. Therefore actual benefit allowed and given to the consumer should be assessed as per directions of MER, it being the competent authority to amend and establish the tariff category as per Rules & Regulations which is binding on utility, as well as the consumer is also entitled for the benefit to the effect. In the fact and established law, the benefit to the consumer shall be given from 26th Sept.2015, though the consumer had filed his application prior to that date. According to my views, the category for which the consumer has prayed for the tariff differentials and consequential benefits therefrom was not in existence. Under the circumstances IGRC, believing the orders passed by the Additional Consumer Forum, Pune, and with due respect, passed its order for the benefits to be reassessed and recalculated. Under the circumstances, I am inclined to allow the consumer complaint partly by modifying order. The appropriate category of tariff should be amended to LT - X B from 26th Sept.2015 as per Circular and effective date of implementation. The bill which is issued claiming difference of refund should be reassessed, and accordingly, if any additional amount remains to be refunded to the consumer, it should be adjusted / be refunded with interest and benefit shall be passed on to the consumer. Hence I proceed to pass the following order:-

ORDER

1. Consumer complaint No. 26 of 2018 is partly allowed.
2. The Respondent utility is directed to give the benefit of difference of category tariff from 26th Sept.2015 and refix the tariff category LT X effective from that date. The assessment of refund with interest shall be re-verified and re-calculated accordingly.
2. 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 12th 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~~—

I agree/~~Disagree~~

Sd/-
ANIL JOSHI
MEMBER
CGRF:PZ: PUNE

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

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