



Consumer Grievance Redressal Forum, Kalyan Zone

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No. K/E/1315/1559 of 2017-18

Date of Grievance : 09/04/2018

Date of order : 06/06/2018

Total days : 59

IN THE MATTER CASE OF GRIEVANCE NO. K/E/1315/1559 OF 2017-18 IN RESPECT OF M/S PROGRESSIVE EDUCATION SOCIETY, HAK (BK), S.N.316, KHOPOLI, KHALAPUR, RAIGAD, PIN CODE-410 204. REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING BILLING DISPUTE.

M/s Progressive Education Society,
HAK (BK), S.N.316, Khopoli,
Khalapur, Raigad,
Pin Code-410 204

(Consumer No. 031380207942) (Hereinafter referred as Consumer)

V/s.

Maharashtra State Electricity Distribution
Company Limited

Through its Nodal Officer,
MSEDCL, Pen Circle,

. . . . (Hereinafter referred as Licensee)

Appearance: - For Licensee : Shri.B.P. Chatre, Dy.EE, Khopoli

For Consumer : Shri. Pranab T.Shende (CR)

[Coram- Shri A.M.Garde-Chairperson, Shri A.P. Deshmukh-Member Secretary
Mrs.S.A.Jamdar- Member (CPO)].

1) Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressed Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005]. Hereinafter referred as 'Supply Code' for the sake of brevity.

Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2) Consumer herein is M/s Progressive Education Society having Consumer No. 031380207942, PC-6, BU-4140, Khopoli Sub Division.

3) Grievance is that :-

Facts giving rise to the grievance

- i) *The date of above mentioned consumer connection is in the year 2002 on 01/02/2002. The petitioner/Applicant is since then a consumer of MSEDCL under (SDO4140) Khopoli sub division office of MSEDCL.*
- ii) *The petitioner/Applicant is LT (Low Tension) consumer and the petitioner/Applicant OF M/S PROGRESSIVE EDUCATION SOCIETY, HAK (BK), S.N.316, Khopoli, Tal-Khalapur, Dist-Raigad, Maharashtra : registered under the Bombay Public Trust Act, 1950, u/s 29 having Registration No.E-2981, Thane dt.29/01/2003 is operating/running educational institute .*
- iii) *The tariff is made applicable as per tariff orders issued by the commission from time to time and as per section 62(3.) Electricity Act, 2003 Tariff is applied based on purpose of use. The commission in tariff order dtd.16th Aug, 2012 in case no.19 of 2012 as well as in successive tariff orders has categorized "Educational Institute" in public services.*
- iv) *The distribution Licensee (respondent company) has issued various circular after MERC tariff orders from time to time and it is duty of the concern officer's to implement change of tariff and categories applicable to the consumers.*
- v) *The Petitioners/Applicant has submitted request letter in the month of October 2016 with the sub division office for change of category and tariff along with refund of tariff difference amount from the date of connection with interest. Photo copy of the letter is annexed and marked as exhibit "H" in the petition. The Petitioner/Applicant has appointed and authorized consultant company M/s Strom Losungen Pvt.Ltd. to deal and do liason work with MSEDCL office for change of category and further to claim of tariff difference refund amount from MSEDCL office, Authority letter is annexed and marked as exhibit "G".*

- vi) *The MSEDCL office has corrected the tariff & Category in the energy bill generated in the month of February 2017.*
- vii) *Moreover, it is on record that the appellant representative the Addl. executive Engineer, Khopoli S/dn. & Executive Engineer, Panvel Rural Division of the Respondent and sought the refund of excess amount, by making communication through email on : 03/05/2017 & 27/09/2017. Photo Copy is annexed and marked at Exhibit "I(i)"& "I(II)"*
- viii) *The Executive Engineer (Panvel Rural Division), should have either refunded the tariff difference amount, or if he was somehow unsure of genuinity or correctness of the Applicant's request, he should have sent the same to Internal Grievance Redressal Cell. Refer provision under Regulation 6.2, the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulation, 2006 stipulates the procedure in this behalf. Intimation given to official who are not part of the cell, to whom consumers approaches due to lack of general awareness of the cell of the procedure for approaching it, it shall be deemed to be intimation for the purpose of this Regulation, unless such official forthwith directs the consumers to the cell. In this case, the Executive Engineer (Panvel Rural Division) neither refunded the tariff difference amount nor forwarded the grievance to the cell (IGRC). Refer order in representation No. 26 of 2010.*
- ix) *Therefore, Petitioner/Applicant's request /applicant letter dated 24/10/2016 has to be treated as the grievance filed before the cell.*
- x) *The Petitioner/Applicant after submission of applicant with the respondent on 24/10/2016 for change of tariff and category along with tariff difference amount. The representative of the Petitioner/Applicant approach to the Addl. Executive Engineer, Khopoli S/dn. & Executive Engineer (Panvel Rural Division) by email on dtd.03/05/2017 & 27/09/2017 for refund of tariff difference amount, but no response was given and aggrieved to this consumer/applicant is directly approaching is directly approaching the forum for redressal of his grievance.*
- xi) *Till date tariff difference is not refunded to consumer account therefore this petition/application.*

- xii) *Considering that the grievance of the Petitioner/Applicant is not resolved by respondent utility on approach to the Executive Engineer (Panvel Rural Division), this forum should registered his grievance.*

Ground on which relief's sought

- i) *The petitioner/Applicant is law abiding institution running, operating school/college having address as mentioned above and the trust registered under the Bombay Public Trust Act 1950, u/s 29 having Registration No. E-2981, Thane dtd.29/01/2003 is operating/running educational institute and is well conversant with the facts of the present case.*
- ii) *The respondent is a public sector undertaking controlled by the Maharashtra Government in short called as Mahavitran or Mahadiscom or MSEDCL and MSEDCL is bound by the provision of the electricity Act 2003 and conditions thereon, inclusive of the code of supply introduced by MERC.*
- iii) *The MSEDCL has corrected the tariff & category in the month of February 2017 and not refunded tariff difference amount charged during the intervening period and after submission of application with the respondent company (SDO4140) in October 2016 and neither refunded the tariff difference charged from the date of connection.*
- iv) *This grievance does not come under barred limitation as per the Electricity Act 2003. Being aggrieved and dissatisfied by the irresponsible act of respondent/MSEDCL, the petitioner/Applicant above named is constrained to file the present grievance.*
- v) *The Petitioner/Applicant is relying upon the various orders of the electricity ombudsman marked @ Exhibit "F" mentioned at Sr.no.10, 11, 12, 13, 14, 15, & 16. The grievance of the consumers who have filed their petitions in relevant IGRC, CGRF and finally the Electricity Ombudsman documents/orders marked @ Exhibit "F" mentioned at Sr.no.10, 11, 12, 13, 14, 15, & 16. The consumers have got relief for the period preceding two years the date of applications submitted with MSEDCL offices, towards tariff difference refund with interest and without interest.*
- vi) *The MSEDCL officer's has also complied the orders of Electricity Ombudsman without challenging the order's issued by the Electricity Ombudsman in High Court and we can*

view the credits of tariff difference amount which is refunded to consumers in their energy bills.

- vii) *The matters/grievance mentioned marked @ Exhibit "F" mentioned at Sr.no.10, 11, 12, 13, 14, 15, & 16 are identical cases and are self-explanatory therefore it not necessary for every consumer to approach and file petitions in IGRC, CGRF and the Electricity Ombudsman to get/claim relief on tariff difference refund amount for last/past 2 years (24 months) from the date of application with the respondent.*

It is therefore, prayed that

- i) *The Petitioner/Applicant cannot be held liable in any manner for technical fault or error carried out by its own system/officials of the respondent company, the petitioner/Applicant has a good case on merits and it at precious right of appeal is not granted, the petitioner/Applicant shall sustain grave irreparable loss & injury.*
- ii) *The Petitioner/Applicant request that the public Services tariff may be levied from Novemnber-2014 & refund the excess amount recovered by the respondent company with interest @ 18% per annum or as per laid down rules mentioned in section 62(6) of Electricity Act 2003. Claim of the petitioners /Applicant is annexed at Exhibit "B"*
- iii) *The act and/or inaction on the part of respondent in their official duties are contrary to law , equity, good conscience and principles of natural justice.*
- iv) *Penalty may kindly be imposed on the respondent as per laid down rules mentioned in the SOP for the delay toward changing of category and tariff applicable to the petitioners/Applicant.*
- v) *Ant other directions/Orders as the Hon'ble Chairman may deem fit and proper nay kindly be passed in favour of the Petitioners/Applicant*

4) Distribution Licensee in its reply submitted as follows :

- i) *M/s Progressive Education Society is consumer of MSEDCL under Khopoli sub division bearing consumer no. 031380207942. The above consumer is 3 phase consumer and date of connection is 01/02/2002.*
- ii) *From date of connection, we are levying commercial tariff to the consumer as per the application of consumer and load sanction documents. There is no any grievance of consumer or application of consumer for wrong application of tariff.*

- iii) On dated 16/10/2016 first time, the consumer has applied for change of tariff, this is first application of consumer for change in tariff. After receipt of above application, the section office inspected the premises. After receipt of inspection report stating education activity, we have changed the tariff of above consumer in the month of Jan-2017 from commercial to public service.
- iv) The Reg.No.4.14 (B) MERC (SOP) Regulation 2010 is as below.
“Change of category for use of supply in reference of tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges”.
- v) As per MERC (SOP) Regulations 2005, schedule 7(11) page no.16 the time period for change of tariff second billing cycle from the date of application.
- vi) Without any application for consumer, we have no any knowledge or information about the actual date of commencement of Education activity carried out In the said premises.
- vii) As per right of inspection, use of electrical energy for particular purpose can we know after inspection of premises before inspection we can't determine whether use of electrical energy is for commercial or educational purpose, also inspection carried out after receipt of application.
- viii) There are around 32000 no. of live L.T. consumer in Khopoli sub division and it is not possible us to inspect each and every consumer's premises and to check the usage of power supply and actual business activity.
- ix) Its is the of consumer to for change of tariff on the basis of its actual use of power supply. It is practically not possible to us to check the business activity of each and every consumer due to large numbers of consumers.
- x) The application of consumer dtd.20/11/2016 is first application of consumer we have not receive any application for change of tariff prior to this application.
- xi) The provision of MERC (SOP) Regulations quoted hereinabove are very clear and specific. It is specifically mentioned in Reg.4.14 (B) of MERC (SOP) regulations 2014 consumer must file application for change in tariff and MSEDCL shall do the same within second billing cycle.

- xii) The appellant unconditionally paid the electricity charges with COMMERCIAL rate without any protest.
- xiii) The charges of tariff can be done with prospective effect and it cannot be done with retrospective effect. Now at this stage we cannot determine the tariff of applicant for past period of year 2014 to Oct 2016. We are not having any record/evidence whether the applicant is using supply for education purpose or any other commercial purpose don't know the business activity of appellant in past years.
- xiv) HON APTEL 2013 case no.131 pass the order that retrospective recovery can not be claimed accordingly it is requested to dismiss request of appellant.
- xv) Consumer has not followed procedure i.e. He has not submitted his application in IGRF and directly submitted the application in CGRF.

5) We have heard both sides. It is borne out from the admitted facts that the Consumer was being charged under commercial tariff since the date of connection. On 24/10/2016 Consumer gave an application for change of tariff from commercial to public service. Thereafter Section Officer inspected the premises and submitted a report as regards activity of the Consumer & changed tariff in month of Jan-2017. As per MERC (SOP) Regulation 2014, Regulation 4.13 (B), the time period for change of tariff is second billing cycle from the date of application. This being so Consumer asks for refund of tariff difference for preceding two years. To this, a simple question is asked on behalf of the Distribution Licensee as to how would they be able to exercise their right of inspection retrospectively? Consumer Representative Mr.Shende was unable to satisfy this query. Tariff is always changed prospectively, even where the Distribution Licensee on inspection finds for any Consumer that, actual tariff applicable is on a higher side. No retrospective recovery is allowed to Distribution Licensee from the Consumer as well in such cases. This being so, no retrospective refund of difference in tariff can be granted to Consumer in this case, when the right to inspection of the Distribution Licensee for the retrospective period stands prejudiced.

6) In the above view of the matter other points of limitation etc. become redundant.

7) Consumer Representative Mr.Shende sought to rely on the ombudsman orders in Rep.No.36, 39 & 40. We have gone through the judgment cited. A question arose whether ombudsman's judgments fall in Art.141, 142 of the constitution of India in order to operate as precedent. We may not however strictly apply Art.141, 142 but may have proceeded to see those judgment as guidelines but then the judgments cited do not lay down a ratio on the question before us about prejudice caused to Distribution Licensee in their right of inspection.

It is for this reason there being no ratio in the judgments on the question raised we are unable to follow the same as guideline.

8) It is to be seen, however, whether there is any delay in giving effect to the change of tariff even after receipt of the application from consumer. In the present case application was given by consumer on 16-10-2016 where as effect was given from Jan 2017. Thus there is SOP violations of Regulation 4.13 (B) as the effect was not given in the second cycle but was delayed till Jan 2017. That being so, Consumer is entitled to meantime difference.

9) Now coming to SOP compensation, we have carefully gone through SOP Regulations viz 12.2 and 12.3. It is clear there from that, a consumer, in order to move CGRF for claiming SOP compensation, has to first claim it before Distribution Licensee within 60 days under regulation 12.3. No such claim was made before Distribution Licensee herein, as such no representation can be made to CGRF under SOP Regulation 2014.

10) In the above view of the entire matter, Grievance partly succeeds.

Hence the order.

ORDER

- 1) Grievance application of Consumer is partly allowed
- 2) Distribution Licensee to refund the tariff difference on account of not giving effect to change of tariff in the second cycle after receipt of application from the consumer.
- 3) Claim for retrospective refund of tariff difference prior to the application of the consumer is rejected.
- 4) Claim for SOP compensation is also rejected.
- 5) Compliance be made within 45 days and report be made within 60 days from the date of receipt of this order.

Date: 06/06/2018

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

(A.P.Deshmukh)
MemberSecretary
CGRF, Kalyan.

(A.M.Garde)
Chairperson
CGRF, Kalyan

NOTE :-

- a) *The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.*

“Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51”.

- b) *Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or*

- c) *delay in compliance of this decision issued under “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003” at the following address:-*

“Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05”

- d) *It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.*

