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

Date of Grievance : 17.05.2018
Hearing Dates : 27.06.2018
11.07.2018
Date of Order : 30.08.2018

In the matter of complaint for change in category of tariff of the consumer from HT II (Commercial) to HT IX (B) (Public Services – Others) together with refund of excess bill recovery with interest.

M/s. Garrison Engineers ---- Appellant
C/O B/R R&D Engr. Dighi,
PUNE – 411 015
(Consumer No.170019002872)

VS

The Supdt. Engineer, ---- Respondent
M.S.E.D.C.L.
Rastapeth Urban Circle,
PUNE – 411 011.

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) Mr. B. Pradeep Kumar, A.E. / E.M.
2) Mr. Kiran Sakpal – J.E. / E.M.

C] - On behalf of Respondent

1) Shri. S.R.Patil, E.E. (Admin), RPUC, Pune
2) Ms. Anju Fuke – Jr. Law Officer, RPUC, Pune
3) Shri Ashish S. Gaikwad – A.E., RPUC, Pune.

1. The present complaint is about wrong classification in tariff category of the consumer leading to excessive billing for the period from August, 2012 to August-2017. The brief background of the complaint by the consumer is as under –

2. The end use of the supply by the consumer is for research and development of Defense establishment of the Govt. of India. The Military Engineer Services (MES) is a subordinate organization of the Govt. of India, Ministry of Defence and is considered as the 'deemed licensee' as per the third provision of Section 14 of the Electricity Act, 2003. It provides all types of engineering support to the Army, Navy, Air Force, Ordinance Factories, Defence R&D and Defence Hospitals during operational necessities and also during its day-to-day requirements. The consumer states that the MES organization receives electricity supply all over India from the State Electricity supply agencies as HT/LT take over points through single metering arrangements. The electricity supply received by it in bulk is exclusively utilized for defence operations, training, sports recreation, hospitals and for residential accommodation of Defence personnel. Thus, the total consumption of supply by the consumer is partly towards residential purposes and partly towards non-residential purposes. The consumer, therefore, claims that it comes under the category of "HT - IX (B) – Public Services (Others)" for determination of tariff as against "HT- II (Commercial)" classified by the Respondent Utility. The consumer further states that the purpose for which the supply is utilized by it has been categorize as "HT IX (B)" and accordingly, the Respondent Utility has changed its category from "HT II (Commercial)" to HT IX (B) (Public Services – Others)". However, the consumer states that no action for refund of excess amount recovered from it by the Respondent Utility had been taken by it. Following inaction on the part of the Respondent Utility the Consumer had filed its grievance with IGRC on 18.01.2018 and prayed for refund of refund of excess payment made to the Respondent Utility for the period of sixty one (61) months – i.e. from August, 2012 to August 2017 - with aggregate claim to the tune of Rs.2,23,80,320.16 (Rupees two crores twenty three lacs eighty thousand three hundred twenty and paise sixteen only). The IGRC registered the grievance of the consumer without any distinctive number for it. The Consumer claimed before the IGRC that the Respondent Utility had ignored the parameters of purpose for which the supply is required and mentioned in Section 62 (3) of the Electricity Act, 2003 read with Regulation of MERC (Electric Supply Codes – Other Conditions of Supply) Regulations, 2005. For the sake of ready reference, the Consumer has reproduced the same as under –

"*Classification and reclassification of the consumer 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 while classifying categories."*

3. During its submission before the IGRC, the Respondent Utility claimed that the M/s. Garrison Engineers was being billed under HT-II (Commercial) tariff category. The consumer placed its requisition to the Utility for change of its category to "HT-IX A" following the same having been pointed out by the Auditors in their Audit Report in July, 2016. Following this, the Consumer has followed up the issue for re-categorization / appropriate categorization together with refund of resultant excess bill amount paid by it.

4. The IGRC had examined submission by both the contending parties and passed the following order on 16th March, 2018. (The original order passed by the IGRC is in Regional Language – i.e. Marathi) which reads as under –

"**सदर ग्राहकास त्यांच्या दि. 23.08.2016 रोजीच्या विनंती अर्जानुसार v मा. वीज नियामक आयोग यांनी वेळोवेळी मंजूर केलेल्या Tariff नुसार व महावितरण कंपनीच्या प्रचलित अटी व शर्तीनुसार Tariff Difference चा Refund देण्यात यावा.**

5. The said order passed by the IGRC is placed below in English language for operational convenience –

1. *The consumer is entitled for refund as per its application dt. 23.08.2016 as per tariff orders issued by MERC from time to time as also in tune with the laid down terms and conditions / stipulations by the MSEDCL".*

6. Following the order of the IGRC, the consumer followed up the issue with the Utility for refund of excess bill amount paid to it, but without any proper resolution.

7. Aggrieved by the inaction on the part of the Respondent Utility for refund of the excess payment received by it, the consumer filed an application in prescribed form to the CGRF which was received in the office of the CGRF on 17.05.2018 and was allotted distinctive Case No. 27/2018. Following registration of the grievance of the consumer, the office of the CGRF also issued notice to the Respondent Utility, vide its letter No. 131 of 17th May, 2018 calling upon the Respondent Utility to file its point-wise say / issue-wise comments on the grievance of the consumer, together status reports and documents, in support of its defense, on or before 31st May, 2018. However, the Utility did not respond to the notice nor did it submit even its interim say in the matter within the time frame. The Respondent Utility, however, submitted its say to the office of the CGRF on 21-06-2018, Accordingly, the Appeal was posted for hearing on 27th June, 2018 to facilitate both the parties to make their submission in person before the CGRF.

8. It needs to be noted here that in an application submitted by the Consumer before IGRC, it had claimed only for refund of excess payment made to the Utility for the period from August 2012 to August 2017 amounting to Rs.2,23,80,320.16, as per their calculation sheet, without any claim for interest on such excess bill amount paid. However, in its Appeal before the office of the CGRF, it was for the first time the Appellant has claimed interest, along with refund of excess bill amount paid, effective from August, 2012. An opportunity was given to both the parties to make their submission in person before the CGRF. Though in their in person submission during the course of hearing the Utility objected to such an additional claim for interest by the Appellant before the CGRF, the contention of the Appellant was that inaction on the part of the Utility to act upon their representation to them, as also to implement the order of the IGRC, the Appellant were constrained to claim interest for the first time before the Forum.

9. In its submission before this Forum, vide its letter No. 6087 dt. 10th July, 2018 the Utility had dwelled upon the following points –

a) The Appellants have for the first time, raised the issue of payment of interest in their application before the Forum on 17.05.2018 on whole amount of

difference – i.e. Rs.1,99,06,663.00 for the period from August 2012 to August 2017. However, in view of Limitation Act, 1963, credit amount would have to be for the period limited up to 3 years. Therefore, credit is to be limited up to April, 2015. It is the settled principle that the recovery is legitimate if it is within the purview of "limitation' as per the Limitation Act.

b) The main dispute / issue is regarding change of tariff from HT-II (Commercial) to HT-IX (B) – Public Service, effective from August, 2012.

c) The Utility considered the request letter of the Complainant dt. 23.08.2016 for change of tariff and accordingly, the amount of Rs. 1,99.06,663.00 has been adjusted by way of credit in the bill of the complainant for the month of May, 2018.

d) The Utility has further submitted during the hearing before the Forum that the Complainant had claimed interest on excess amount of Rs.1,99,06,663.00 for the first time and being the Respondent, they had an objection to it as, according to the Respondent, the Complainant cannot plead for additional prayer before the Appellate Forum which has not been raised or mentioned or prayed in the original complaint before the lower authority, i.e. IGRC. In support of their claim, the Respondents have referred to certain precedents where Hon'ble Supreme Court clearly ruled and barred such pleadings in later stage as held in *Bachhaai Nahar Vs. Nilima Mandal &Ors. (2008) SCC 49 and (ii) Nandkishor Lalbhai Mehta Vs. New Era Fabrics Pvt. Ltd. & Ors. (2015) 9 SCC 755.* The Respondent Utility had also enclosed these two judgments as Annexures to the submission made.

10. I have perused the documents filed by the contending parties in support of their claims together with their written submissions before the Forum as also oral submission during the course of hearing. I have also perused the findings and order of IGRC on the grievance filed by the consumer with it. After careful perusal of all the relevant papers / documents, following issues have arisen for my consideration –

a) Whether the consumer is entitled to claim change in category for tariff effective from 1st August, 2012 onwards?

b) Whether the consumer is entitled only for interest on the excess bill amount paid by it to the Utility for the period from August 2012 to August 2017?

c) Whether the consumer is entitled for refund of Rs.1,99,06,663.00 representing the excess tariff paid by it to the Utility for the period from August, 2012 to August, 2007 together with interest thereon?

d) What is the order?

REASONING:

a) (i) At the outset, it is crystal clear to state that the consumer is entitled to claim change in the category for tariff effective from 1st August, 2012. The main dispute / issues are regarding change of tariff from HT-II (Commercial) to HT-IX (B) – Public Service, effective from August, 2012. Here, it is worth mentioning that the few other consumers of the Utility viz. M/s. Osho International Foundation, Pune, along with M/s. Neo Sanyas Foundation, Pune had filed Writ Petitions bearing Nos. 11764/2012 and 11765/2012 with the prayer that they are educational institution and/or spiritual institutions. Hence, they shall not be treated as "Commercial". Hon'ble High Court clubbed the aforesaid matters and observed that – "The State Commission may classify the Hospitals, Educational Institutions and spiritual organizations which are service oriented and put them in a separate category for the purpose of determination of tariff."

(ii) On 13.03.2013, Hon'ble High Court directed the Commission …."to include spiritual organizations which are service oriented as falling within the definition of the newly created category HT-LX-Public Services. Therefore, the Respondent No. 2 (MSEDCL) shall take necessary steps in the light of the amended definition of the public service. Hon'ble High Court further stated that since the tariff order creates the new category of HT-LX – Public Services with effect from 1st August, 2012, the amendment of the definition shall also be given effect from 01 August, 2012."

"Once the tariff is amended in compliance with the directions of the Appellate Tribunal for Electricity, thereafter the Respondent No. 2 (MSEDCL) will consider the applicability of the tariff to the case of each of the petitioners herein."

(iii) In tune with directives of the Hon'ble High Court, the MERC passed a Supplementary Order on 22 May 2013 in Case No. 19 of 2012. By this order, MERC created new Tariff category 'HT-IX-Public Services'. However, the said order of the MERC dt. 22.05.2013, which had been effective from August, 16 2012, is silent on refund of tariff difference. It is to be noted that no entity is entitled to keep surplus payments received by it from its consumers towards its dues liable to be paid to it. Applying this analogy, the Respondent Utility can hardly deny refund of excess bill amount received by it from the consumer due to delayed re-categorization of the consumer as per fresh Tariff Order issued by the Commission / Apex authority of the Respondent Utility.

(b) The Utility considered the request letter of the Complainant dt. 23.08.2016 for change of tariff and accordingly, the amount of Rs.1,99.06,663.00 has been adjusted by way of credit in the bill of the complainant for the month of May, 2018. This difference of Rs.1,99,06,663.00 covers the billing period from August, 2012 to August, 2017. In view of what has been stated against paragraph (iii) hereinabove, it is to be noted that without prejudice to the rights of the consumer, the Respondent Utility is obliged to give refund to the consumer for the wrong categorization for the entire period of such wrong re-classification, as also without limiting the claim for the period preceding to two years from the date of application, merely on the grounds of limitation. This is primarily for the reasons that there is a 'continuous cause of action' as and when the Respondent Utility had been issuing the energy bills to the consumer under old Tariff category. Since the Utility, vide its compliance confirmation letter No.5630 dt. 21.06.2018 confirmed that the tariff difference of Rs.1,99,06,663.00 for the period from August, 2012 to August 2017 has been credited / adjusted in the bill of the Appellant for the month of May, 2018, no claim of the Appellant for refund of excess amount recovered to the tune of the said amount, therefore, survives now.

(c) (i) The Utility has further submitted during the course of hearing before the this Forum that the Appellant had claimed the interest on the above said amount of Rs.1,99,06,663.00 for the first time and being the Respondent, they have objection since the Appellant cannot plead for additional prayer before the Appellate Forum which the Appellant has not raised or mentioned or prayed in the original complaint before the lower authority. In support, the Respondent

have made reference to two law suits decided by Hon'ble Supreme Court where Hon'ble Supreme Court had clearly barred such pleadings in later stage {(i) – *Bachhaai Nahar Vs. Nilima Mandal &Ors. (2008) SCC 49 and (ii) Nandkishor Lalbhai Mehta Vs. New Era Fabrics Pvt. Ltd. & Ors. (2015) 9 SCC 755. (Copies of both the judgment of the Hon'ble Supreme Court have also been enclosed by the Utility as Annexure 'E' and 'F' to the submission made by it* under the cover of their Letter No. 6087 dt. 10th July, 2018.

(ii) In the instant case, the Respondents have calculated the interest with effect from 01.09.2016 onwards under the plea that the Complainant had submitted its application on 23.08.2016. It is, however, to be noted that in its Commercial Circular No. 175 dt. 5th September, 2013 itself under 'Action Plan' the Utility had given directions to the field officers of the Respondent Utility to ensure that wherever the tariff category is redefined or newly created by the Commission, the existing / prospective consumers should be properly categorized by actual field inspection immediately and the data updated immediately in Respondent's IT base. The said Commercial circular issued by the Utility nowhere conditions applicability of the changed tariff subject to suitable application by the consumers to the Respondent Utility and further that the said change in category of tariff would be effective only on such an application having been made by the consumer and approved by the competent authority of the Respondent Utility. It, therefore, follows that the Utility was obliged to comply with the directions of not only its Higher Authorities, but also that of the MERC *mutadis mutandis* for *suo motu* change in the tariff category of all the consumers being served by it. The claim of the Respondent Utility, therefore, that the Consumer has submitted its application for correct tariff on 23.08.2016 can hardly be accepted. It needs to be remembered here that the captive consumers cannot be put to any financial / pecuniary losses for inaction on the part of the Respondent Utility, more particularly when examined on the backdrop of the directions given by its own higher authorities under 'Action Plan'. It is to be also noted further that the Commercial Circular of the Respondent Utility, referred to hereinabove, nowhere subjects the consumers to apply to the Utility for re-categorization of tariff and in the event of consumer's failure to do so and/or delayed application to do so would ultimately lead to restrict its claim for limitation period of two years preceding to its date of application for re-categorization. It was, therefore, mandatory obligation on

the part of the Respondent Utility to arrange for *suo motu* re-categorization of the Consumer under the revised category as "*HT-LX – Public* Services" with effect from 1st August, 2012, the amendment of the definition being effective from 01st August, 2012 as per order of Hon'ble High Court dt. 13.03.2013 to the Commission, which has not been done, thereby leading to continuous cause of action as stated hereinbefore. When examined on this backdrop, the claim for interest of the consumer is well within the limitation period, even under the Limitation Act, as against what has been represented by the Respondent Utility. The submission of the Respondent Utility that the Consumer had raised the issue for payment of interest for the first time before this Forum and that there was no such mention in its grievance before the IGRC, and therefore, the claim of the consumer for payment of interest effective from 1st August, 2012 stands barred by limitation is without any cogent merits and, therefore, not tenable. Secondly, it's a settled principle that unless expressly agreed upon by the parties to the transaction, the party receiving any sums in the forms of deposits, advance payments from the other party, the former is obliged to compensate the latter in the form of interest, bonus and/or dividend depending upon the nature of transaction between the two and purpose of such payments / advance payments / deposits etc. It is also to be noted here that in its directions to the Commission on 13.03.2013, Hon'ble High Court had in an unambiguous terms stated that the amendment of the definition shall also be given effect from 1st August, 2012. On this backdrop, it is also imperative to note that the MERC has also stated that the tariff applicable to education institutes, hospitals, dispensaries, Primary Health Care Centres etc. has effect from August, 16.2012. This is, notwithstanding the fact that the supplementary order is issued by the Apex Authority of the Utility on 23.05.2013.

(iii) Notwithstanding what has been stated in the foregoing paragraphs, as also without prejudice to either of the contending parties, the Forum is inclined to consider the claim of the Appellant for payment of interest for the period of two years, as against since August, 2012 prayed by it in its representation filed with this Forum. However, while deciding the period of two years for payment of interest buy the Utility to the Appellant, the issue needs to be considered further for the following circumstances –

a) The Appellants have filed their representation with this Forum on 17.05.2018 against the order of the IGRC and have claimed interest on the entire amount paid in excess by it to the Utility for the period from August, 2012,

b) The issue of excess payment to the Utility has been reported by the Auditors in their report of July, 2016

c) The Appellants have represented to the Utility first time on 23.08.2016

(iv) I am, therefore, inclined to consider the claim of the Appellant for interest for the period of two years prior to July, 2016 – i.e. from July, 2014 at the RBI interest rates prevailing from time to time during the intervening period.

(v) While considering the claim of the Appellant for interest claim for the period of two years, this Forum has perused the facts of the Case No. 29/12 before the MERC between M/s Ankur Seeds Pvt. Ltd. Vs. MSEDCL, decided by the Commission on 2nd February, 2018 dealing with the identical facts and circumstances, the matter is pending before the Full Bench of the Hon'ble High Court of Bombay. The period of interest liability of the Utility has, accordingly been restricted to the period of two years preceding the date of detection of the excess payment by the CAG in July, 2016.

The opportunity was given to both parties i.e. utility and consumer for submission of their relevant documents and if any say is required during the hearing and the hearing was taken twice. Accordingly, the time limit of 60 days prescribed for disposal of the grievance could not be adhered to.

11. In view of the foregoing, I am inclined to pass the following order -

ORDER

a) The claim of the Appellant is partly allowed,

b) Since the Respondent Utility have already credited the excess recovery from the Appellant to the tune of Rs.1,99,06,663.00 for the period from August, 2012 to August, 2017 in the bill for the month of May, 2018, no issue survives

c) The Respondent Utility is directed to pay interest on the excess amount recovered at prevailing RBI interest rates for the period of two years preceding July, 2016 – i.e. from July, 2014,

d) The amount of interest so arrived may be credited in the bill of the Appellant within the period of six months from the date of order,

e) No order as to Costs.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 30th Aug. - 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/-	Sd/-	Sd/-
ANIL JOSHI	A.P.BHAVTHANKAR	BEENA SAVANT
MEMBER	CHAIRPERSON	MEMBER- SECRETARY
CGRF:PZ:PUNE	CGRF: PZ:PUNE	CGRF:PZ:PUNE