

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

Case No. 34/2018	Date of Grievance : 28.05.2018
	Hearing Date : 25.07.2018 21.08.2018
	Date of Order : 12.09.2018

In the matter of Change of Tariff Difference together with recovery of past dues from the date of connection.

M/s. Chonde Warehousing Pvt. Ltd. Gat No149, Alandi Road, Vadhu Khurd, Tal. Haveli, Dist. Pune (Consumer No.17061005864)	---- Appellant
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VS

The Executive Engineer, M.S.E.D.C.L. Mulshi Division	---- Respondent
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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 Anil Chondhe, Appellant
- 2) Shri D.T.Walke, Consumer Representative

C] - On behalf of Respondent

- 1) Shri. R.S.Bundelesh, Mulshi Division,
- 2) Shri R.C.Patil, Asst. Engineer, Mulshi Division,
- 3) Shri G.M.Pawar, LDC, Hadapsar Sub-Division.

Consumer No. 17061005864, Sanctioned Load – 107.00 KW, Contract Demand – 75.00 KVA, Connected Load – 75.00 KW, Date of connection – 07.05.2014, Meter No. 055-MSP42378, Tariff – LT-II C

The present appeal is filed by the aggrieved consumer M/s. Chondhe Warehousing Pvt. Ltd. against the decision order of IGRC dt. 24.04.2018 in

Case No. 43 of 2017-18 wherein the IGRC has passed the order as under, I quote –

”As per the say submitted by the Applicant, the order is passed as below :

It is clear that the applicant has asked connection for industrial purpose and later started using it for commercial connection which is detected by the Flying Squad, Pune. Only plain tariff difference has been issued. Hence bill is correct and to be payable by Applicant. Hence consumer plea for making it null and void is dismissed.”
Unquote.

The brief facts of the case are as under -

2. The Appellant M/s. Chondhe Warehousing Pvt. Ltd. had applied for commercial connection to the Utility as per his application dt. Nil received by the Utility on 01.01.2014. As per load sanction letter No. 1220 dt, 26.02.2014 addressed by the Utility to the Appellant, the Utility had sanctioned connected load of 80 KW/107 HP, with contract demand of 79 KVA and with Tariff / Purpose recorded as “LT-II Commercial Purpose – Godown & Cooling. Under the said letter of the Utility, the Appellant was advised to aggregate payment of Rs.2.42,100.00 within the validity period of three months to ensure that the Appellant is ready to receive the power. As a part of the legal formality, the consumer had also entered into an agreement for the purpose with the Utility dated Nil, in which also the specific purpose for which the electric power is required has been mentioned as Godown cooling at the consumer’s premises situated at Gat No.149, Alandi Road, Vadhu Kh. Tal. Haveli, Dist. Pune. On this backdrop, it is evident that the observation of the IGRC that the consumer had asked connection for industrial purpose is not in order. It is also pertinent to observe that the Agreement supposedly executed between the Appellant and the Utility, none of the competent officials have subscribed their seal and signature to the said agreement at anywhere throughout the Agreement, including the last page of the Agreement where specific provision has been made for subscribing signature by the EE, MSEDCL, Mulshi Division. This regrettably

displays casual approach on the part of the Utility officials, even it comes to compliances with the legal formalities with the consumer even when the document / agreement forms integral part of the legal relationship between the two. Despite the agreement having not been executed by the Utility, the same has been witnessed by the two witnesses. The said connection was released to the Appellant on 07.05.2014.

3. In his written submission before the IGRC as per his application, the consumer has submitted that it had applied for commercial connection and the connection released to him on 07.05.2014 was also for commercial purposes. All the bills issued to the consumer have been paid by him and no bill had been in arrears. The consumer was, however, shocked when during February, 2018 when he received bill for Rs.24,03,578.00 with no details on the bill. The consumer claims having also represented to the Utility to accept current bills pending resolution of the grievance.

4. The Appellant rent out their warehouse to various different companies / traders for various periods from time to time as per their requirements and as such, the consumers seeking warehousing services from the Appellant keep changing. In his submission before the IGRC, the Appellant has also claimed that the bill for Rs.24,03,578.48 issued to it for the month of February 2018 is wrong, exorbitant, illegal and therefore, not acceptable. In support of what the Appellant has submitted before the IGRC, it had adduced following reasons for it, viz.

- i) There are no details on the bill about Debit Bill Adjustment viz. reasons thereof, how the amount of Rs.24,03,578.48 had been arrived at, tariff rate, the period for which the said bill is raised on it,
- ii) The said bill is not in accordance with the MERC Regulations 2005 and the Electricity Act, 2003,
- iii) The bill under reference is in contravention of the orders passed by various competent authorities,
- iv) MSEDCL has violated the MERC Regulations, 2005 regarding Access to Consumer's Premises.

v) The Principle of Natural Justice is not observed by the MSEDCL. When the Appellant did not get responses from the Utility to his letter dt. 21.02.2018 wherein it had raised the issues before the officials concerned of the Utility and when the issues raised by it remained unresolved, the Appellant approached IGRC on 06.03.2018 for resolution of its grievance.

5. In its submission before the IGRC the Utility had submitted that the Appellant M/s. Chondhe Warehousing Pvt. Ltd. have industrial connection. The Flying Squad Pune visited the site of the Appellant on 26.07.2017 and found that the connection of the Appellant was for commercial purposes. The Utility had also filed a copy of the Spot Inspection Report dt. 26.07.2017 which also bears signature of one, Shri Shajaji Bhandare in the place provided for signature of the consumer. In its report under "Discrepancies, if any found", the signatory to the report had stated as – '(1) No industrial activity found, (2) Supply using for warehouse. Wrong Tariff (Checked for Tariff)' and under "Recommended Action", the authority of the Utility has stated that the matter is taken up with SDO. Hence, the Utility was instructed to issue recovery note from the Appellant from the date of connection. Accordingly, the Utility had issued the bill to the Appellant during February, 2018 for Rs.24,03,578.00, for usage of the supply for commercial purposes as against the industrial purposes for which the Utility had sanctioned supply to the consumer. The Utility had further submitted before the IGRC that it had issued plain change of tariff bill to the Appellant and accordingly prayed that the bill issued to the Appellant is correct and the same should be paid by the Appellant. The Utility further submitted that the Appellant had demanded industrial connection as per his Form A1 submitted to it initially. After consideration of submission by the both, the IGRC had passed the order referred to hereinabove. This is how the present Appeal is before this Forum for consideration.

6. Aggrieved by the order of the IGRC, the Appellant filed his Appeal in 'Form A' to this Forum which has been received in the office of the CGRF on 14.06.2018 with distinctive Case No. 34/2018 having been allotted to it. The Respondent Utility was accordingly issued notice by the Office of the CGRF

on 18.06.2018 bearing number 34. The Utility was accordingly directed to submit its say / reply to the grievances of the Appellant by making point-wise submission as also providing issue-wise comments on the grievance together with status reports and documents in support of their defense within the period of 15 days – i.e. on or before 03.07.2018. It is pertinent to note that the Utility had neither submitted its reply to the CGRF on or before the stipulated date nor did it make any interim submission pending final submission in the matter. Further, the Office of CGRF did not receive reply to its notice dt.18.06.2018, but as is evident from record, it received on 16.07.2018 a copy of the reply bearing letter No. 3201 dt. 13.07.2018 addressed to CGRF, but endorsed to other offices of the Utility. In view of this, the Office of the CGRF issued notice to both – the Appellant and the Respondent – for final hearing on 25.07.2018 as per its letter No. 232 of 18.07.2018.

7. In its submission to this Forum along with its grievance in Schedule 'A', the Appellant has summarized his grievance as under –

a) The Appellant had applied to the Utility for LT connection having connected load of 75 KW for warehouse which was released by the Utility on 07.05.2014 and that the Appellant had paid all the bills issued by the Utility from time to time. As such, there are no arrears payable by the Appellant to the Respondent Utility.

b) The Appellant was shocked when it received the bill for the month of February, 2018 wherein 'Debit Bill Adjustment' of Rs.24,03,578.00 was shown by the Utility without any details for the same.

c) On enquiry, the Utility informed the Appellant that the said bill was for tariff difference between Commercial Tariff and Industrial Tariff since the date of connection in May, 2014 to September, 2017, since the Flying Squad of the Utility on its visit to the premises of the consumer on 26.07.2017 observed commercial activity as against the industrial activity for which the consumer had sought supply from the Utility. Accordingly, the consumer was charged with industrial tariff since beginning as against commercial tariff.

Hence the Utility had issued the bill representing tariff difference between industrial tariff paid and commercial tariff payable by the consumer.

d) The Appellant has further made identical submission to this Forum as has been made by it before IGRC and referred to hereinabove against (4) hereinabove.

e) In view of the foregoing, the Appellant submits that the order passed by the IGRC may be set aside and declared as null and void.

8. In his submission along with Appeal, the Appellant has further stated that the IGRC had fixed hearing in its case on 22.03.2018, but he had not received notice for the same. However, after perusal of the documents filed by the Utility, I have come across IGRC communication bearing No.1341 dt. 08.03.2018 addressed to the Appellant advising him to remain present at the office of the IGRC for scheduled hearing in the grievance of the Appellant on 22.03.2018 at 17.00 Hrs. However, it appears that the IGRC has forwarded the said notice of hearing by ordinary post. Notwithstanding the mode of communication – i.e. even by ordinary post – the claim of the Appellant that he had not received may be partly acceptable – i.e. to the extent that the Appellant had not received the notice, the latter part being that the Utility had issued notice to the Appellant, therefore, sustains.

9. In its submission, vide letter No. 3201 dt. 13th July, 2018, the Utility has stated that the consumer had applied for Industrial Connection from 07.05.2014. The consumer was getting bills regularly with normal status and with forward reading. The consumer had initially applied for Industrial connection and later started using it for commercial purpose. In support of their claim, the Utility had also enclosed the FQ and Online A1 form along with their submission. The Utility further submits that in routine checking on 26.07.2017, the Flying Squad carried out spot inspection of the consumer's premises and equipment and found that commercial activity was carried out at the premises – i.e. the supply was being used for warehouse and that no activity related to manufacturing / industry was observed. As a result of this, the Utility submits, plain change of tariff difference bill was issued to the Appellant from the date of connection i.e. May, 2014. The Utility had also

enclosed a copy of each of the documents along with their submission to this Forum – viz, (i) Online A1 Application Form dt. 1st January, 2014 – with Application No. 5196391, (ii) Firm Quotation / Demand Note issued to the Appellant for Rs.2,42,100.00, (iii) Flying Squad Report and (iv) IGRC order.

10. During the course of hearing on 25.07.2018, the Appellant submitted that it has applied commercial connection only as against the counter claim of the Utility that the Appellant had applied for Industrial connection. On this backdrop, the Utility was advised to submit relative documents having direct bearing on the claims made by the Utility. During the course of hearing, the CPO ascertained from the Appellant if it had registered its unit under SSI with the competent authorities of the State Govt. to which the Appellant responded in negative. The CPO, therefore, attempted to ascertain from the Utility as to whether in absence of required registration by the Appellant under SSI, whether the Utility would release supply to the Appellant as an Industrial Unit? To this the Respondent Utility also responded in negative. However, after perusal of the copy of online A1 form submitted by the Utility, copy of A1 form submitted by the Appellant along with its submission to the Forum during the course of hearing on 25.07.2018, it was observed from the copy of the manually filled in A1 Form that the purpose of the supply applied by the Appellant is not for Industrial purposes, but for commercial purposes. In view of this, the Utility was directed to verify its records and submit to the Forum copy of the A1 form on their record, copy of the agreement entered into by the Appellant with the Utility and other related documents to ascertain exact nature of supply applied for by the Appellant as also provided by the Utility. The Utility accordingly submitted copies of the related documents to the Forum under their cover of their letter No. 3748 dt. 14.08.2018. In its letter the Utility has accepted / acknowledged in an unambiguous terms that the initial sanction and Release Agreement of the Consumer was done in Commercial Category as per his demand whereas the 'Online Quotation' was generated in Industrial category through oversight. As such, the Utility had issued plan change of tariff difference bill to the Appellant from the date of connection. The Utility further submitted that it had also issued a notice to the Appellant on 05.05.2018_ under Section 56/1 as per the Electricity Act,

2003 to the Consumer, a copy of which is also enclosed to the said letter No. 3748 under reference. However, on plain perusal of the said notice issued by the Utility to the Appellant, it is observed that it has been issued in gross violation of the provisions of Section 56 (1) of the Electricity Act, 2003. The Section 56 (1) of the Electricity Act, 2003 reads as under, we **quote** –

"Disconnection of supply in default of payment - (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than 15 clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer :

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -

(a) An amount equal to the sum claimed from him, or

(b) The electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

*Whichever is less, pending disposal of any dispute between him and the licensee." **UNQUOTE***

11. Examined on this backdrop, the notice said to have been issued by the Utility under Section 56 (1) of the Electricity Act, 2003 is in violation of the basic tenets of Section 56 (1) of the Act as under –

a) The Utility had issued notice to the Appellant granting him only the period of seven (7) days to pay the bill, as against mandatory period of clear fifteen clear days notice,

b) The Utility had approached evasive approach by not incorporating clause (a) and (b) of the latter part of the Section which provides two

options to the Consumer with his discretion to choose any one of it, though under protest.

c) The Utility had issued the said notice to the Appellant and claimed payment of 24,02,650.08, as against its claim of Rs.24,03,578.00 before the IGRC as also this Forum,

d) The notice issued by the Utility lacks transparency when it has also again adopted evasive approach in communication to the Appellant that pending disposal of any dispute between him and the Utility, the Utility shall not cut off the supply of the electricity .

In view of the foregoing, the notice said to have been issued by the Utility under Section 56 (1) of the Electricity Act, 2003 is considered as bad in law.

12. In view of this, the Utility prayed for recovery of the bill from the date of connection – i.e. from 7th May, 2014.

13. I have heard the Appellant and the Utility in person on 25.07.2018, perused the documents / submission(s) made by the Appellant vide his grievance on 'Form – A' to the Forum, together with his written submission to the Forum on 25.07.2018 during the course of hearing, copy of Form A-1 dt. 16.02.2018 submitted by the Appellant to the Utility which is an application to the Utility for supply of the electricity for "Residential and other purposes (excluding Agri. and Industrial purposes), relative Agreement executed by the Appellant, various orders and of MERC etc. I have also perused the submission made by the Utility in response to the grievance of the Appellant, its submission in person on 25.07.2018 and subsequent documents / agreements in tune with the instructions of the CGRF during the personal hearing of 25.07.2018. After perusal of all the relevant documents, together with submissions made in person by the Appellant and the Utility, following issues arise for my consideration –

a) Whether the Utility had applied wrong tariff to the Appellant – i.e. tariff applicable to the Industrial consumer as against the commercial consumers?

b) Whether the Utility is eligible legally to recover and the Appellant obliged to pay the plain difference of tariff amounting to Rs.24,03,578.00 being the arrears of plain difference in tariff from 'Industrial' to 'Commercial' for the period from May, 2014 to February, 2018?

c) What Order?

REASONING

a) It is crystal clear that the Appellant had applied for Commercial Connection and the Utility too had released the said type of supply to the Appellant. This fact is evident also from the release order advice bearing communication No. 2763 dt. 06.05.2014 from the office of the EE, Mulshi Division to the Office of the AE, Hadapsar Division, with endorsement of the said communication to the Appellant. In the said communication, the Utility had categorically stated the nature of supply is LT-II – Commercial. Further in its initial communication bearing No.1220 dt. 26 February, 2014 also the "Tariff / Purpose" has been specifically and categorically stated as "LT-II Commercial Purpose - Godown & Cooling." On this backdrop, the remarks of the Flying Squad of the Utility, as also the submission by the Utility before the IGRC that the Appellant-consumer had industrial connection without any industrial activity being carried out at the premises is not true. It is, therefore, imperative for the authorities concerned of the Utility to understand, as also to ensure, that their submissions made before the quasi-judicial forums, whether written or oral ones, at least in disputed matters, are taken in all its seriousness it deserve. However, after perusal of the CPL of the consumer generated at the office of the CGRF, it had been observed that notwithstanding the fact that the consumer was released commercial connection, the billing for the same was being done on the basis of an Industrial unit. On this backdrop the answer to the first issue is in affirmative – i.e. the Utility had applied wrong tariff to the Appellant (i.e. tariff applicable to industrial units and not the commercial units). To this extent, the answer to this part of the issue is in affirmative.

b) It is crystal clear from the discussions hereinabove that the Appellant had never applied for industrial connection to the Utility and the Utility too

had acknowledged in an unambiguous terms that it was an error on their part, through oversight, that the Appellant was considered as an 'Industrial Consumer' subsequent to spot inspection by the Field Staff at the premises of the Appellant on 26.07.2017. However, on perusal of the online generation of CPL at the office of the CGRF, it is observed that the Appellant was being issued bills as per tariff applicable to the industrial units and not under commercial tariff. It is also crystal clear from the report of the Flying Squad that, before submitting its report in writing the Flying Squad failed to peruse the relevant documents associated with alleged dispute in classification of the Appellant and that for relevant observations on their part, the Flying Squad had jumped to the erroneous conclusions that no industrial activity was found at the premises of the Appellant and therefore, the consumer was being charged under wrong tariff – i.e. as an "Industrial" consumer and not as 'Commercial' consumer. While the latter part of the report submitted by the Flying Squad is in order, its observations that no industrial activity was carried out at the site of the Consumer and that the supply to the consumer was being wrongly used for commercial purposes as against the industrial purposes it had been sanctioned, are not true. The consumer was in fact sanctioned the supply as a commercial activity and it was an error on the part of the Utility to continue to issue bills to the consumer under wrong tariff as an industrial consumer. It's also unfortunate to observe that the Utility too had represented before the IGRC, the quasi-judicial Forum, that the supply to the Appellant was as an industrial consumer as against the activity being carried out at his premises, which is commercial one, leading to under-billing of the consumer due to wrong application of Tariff. It is, however, true that notwithstanding the application of the consumer for commercial purposes, as also notwithstanding release of the supply to the consumer under commercial head, the Utility continued to issue electricity bills to the consumer under industrial category. Accordingly, there is a gross error on the part of the Utility in issuing Debit Bill Adjustment in the bill dt. 14.02.2018 for Rs.24,03,578.00 to the Appellant covering the period from May, 2014 to February, 2018. Even in an otherwise situation, the Utility cannot claim its ignorance to the provisions of the Section 56 (1), as discussed herein above, as also sub-Section (2) of Section 56 of the

Electricity Act, 2003 and relevant orders of Ele. Ombudsman, MERC, Tribunals etc. under which it is the laid down law that no sum from any consumer, under Section 56 of the Act, shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied. On this backdrop, it's a matter of concern to notice that the Respondent Utility preferred to pray for the recovery of the arrears beyond the period of 24 months with total disregard to the law, which can hardly be appreciated. In view of this the answer to this part of the question is in negative – i.e. the Utility is not entitled to recover any arrears of electricity bill said to be under wrong tariff from the Appellant for any period beyond 24 months from the date of detection – i.e. 24 months preceding the date of detection 26.07.2017.

c) The Appeal is partly granted.

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.

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

ORDER

1. Consumer complaint No. 35 of 2018 is partly allowed.
2. The IGRC order No. 2346 dt. 24.04.2018 in respect of Case No. IGRC/43 of 2017-18n is upheld except its observations that the consumer was having industrial connection and not commercial one,
3. Respondent utility is entitled for retrospective recovery from the Appellant restricted to the period preceding 24 months from the date of detection – i.e. from July 2017 payable by the consumer in six equal monthly installments along with the current energy bill.

4. The Utility would not charge any Delayed Payment Charges, interest and/or penalty for payment of the said bill for the period of two years preceding 26.07.2017.
5. The Utility would accordingly work out the fresh liability of the Appellant and advise it accordingly,

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 12th Sept. - 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