

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

Case No. 39/2018

Date of Grievance : 04.07.2018

Hearing Date : 06.08.2018

Date of Order : 11.09.2018

In the matter of excess and illegal arrears difference tariff.

M/s.Bashirbhai Fruit Company, ----- Complainant
Shri.Bashir Papalal Shake,
S.No.39/8/5, Laxmannagar,
Thergaon, Pune- 411033.

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.Kamlesh Mutha, Consumer

C] - On behalf of Respondent

- 1) Shri.M.K.Suryawanshi, Addl. Ex. Engr., Sangvi Sub/dn.
- 2) Shri.R.T.Lohakare, A.A. Sangvi Sub/dn.

M/s.Bashirbhai Fruit Company, Consumer No.172050029048, Date of connection - 17.04.2011, Category of supply – 37 LT IV (C), Sanctioned load – 5 HP

Complaint about excess and illegal arrears difference tariff wrongly applied, bill issued to the consumer in the month of Oct. 2017. Above named consumer using the said supply for initially applied as Industrial purpose for Cold Storage. In the year 2013 consumer made application to Respondent utility informing that change of tariff from LT V (Industrial) to LT IV

(Agricultural). As activity is precooling and cold storage Agricultural produce. The consumer attached faulty of bill issued Sept.2013. After filing the said application Respondent Utility visited the premises on 4.2.2014 and made inspection. As per inspection report the use of the supply is for Cold Storage of banana and Banana processing unit. Sanctioned load and connecting load verifying. Observation report indicates that consumer applied for tariff change from LT V Industrial to LT IV Agri. And accordingly verification report is submitted. Thereafter consumer was given benefit and Credit B-80 was issued for amounting Rs. 65739/- and revised bill was issued. Thereafter Respondent Utility issued bill to the consumer in the month of Oct.2017 claiming arrears difference. Debit bill for amounting Rs.578250/- bill was issued along with demand notice. After receiving the said bill consumer filed representation to the Respondent Utility offices by application dt.28.11.2017. Consumer pray that date of supply is from 2011 and he is regularly paying the bill in the year 2013 consumer apply for agricultural subsidy and he made application to respondent Utility for change of tariff. At that time he received benefit of 6 months. Benefit in the year 2014 but again in the year 2017 Respondent Utility exorbitant and wrong recovery mentioning that given as per complaint of consumer. Wrong tariff bill was issued to the consumer applying difference rate and therefore consumer was issued bill in the month of Oct.2017 for claiming difference of 4 years. According to consumer he claimed difference arrears can be claimed only for 6 months. Consumer requested to give benefits by issuing revised correct bill. After filing the said application the consumer was not given proper response. Therefore consumer raised these grievance to IGRC and claimed for relief wrong recovery bill is issued claiming difference of 464824/- in the month of Oct.2017. After filing the said compliant IGRC register the case vide No.T-4/2018. IGRC give opportunity of hearing on 9.2.2018 on 7.3.2018 IGRC passed order directing Ex.Engineer, Pimpri Sub/dn. to investigate the premises and verify the use and allow the proper tariff and bill issued the revised bill. But the said order was not complied being aggrieved by the said order consumer approach to the Forum by filing Application Form – A on 4.7.2018. Consumer requested to apply the proper tariff since 2012 and ask for the relief to revised and issue the Agri. activity bill as per applying proper

tariff. And also claimed for revised bill should be claiming 6 months period only. Consumer pray for compensation of Rs.5,00,000/- for delay in MSEDCL after filing the said complaint before this Forum notice was issued to the Respondent Utility on 4.7.2018. After service of the said notice Respondent Utility appeared and filed reply on 19.7.2018. Respondent Utility submitted that the date of supply 17.4.2011. The supply was given under the Industrial tariff and bill was issued in the month of June-13 to Dec.2013. The tariff was changed from Industrial to Agri. tariff and B-80 for amounting Rs.65739.74 was credited and thereafter for the month of Jan.2014 to Oct.2016, the tariff applied for Agricultural to Cold Storage and Debit B-80 for amounting Rs.464824.69 was claimed against the consumer. As per report of flying squad Report No.1128 dtd.23.2.2017. Therefore the consumer was charged for the period of 23.2.2017, Nov.2016 to Sept.2017 and Debit B-80 was prepared for amounting Rs.103116.43. The Respondent utility claimed for recovery of difference of tariff from the consumer. Respondent Utility also filed final calculation of amount Oct.2017 to Agu.2018. Total bill amount Rs.358500/-

After perusing the contention of consumer and reply of utility following points arose for my consideration to which I have given my finding to the points for the reason given below:

- 1) Whether Respondent Utility entitled to recover difference of tariff amount 578000/- and final bill assessment value 103116.43 from consumer.
- 2) Whether consumer entitled for relief of calculating only 6 months period difference only.
- 3) What order?

Reasoning :-

I have given opportunity to the consumer and Respondent Utility for hearing of this complaint on 6.8.2018. It appears from the record that date of connection is as defines 17.4.2011 admitted by both the parties. Initially the supply was given under LT V Tariff but in the year 2013 consumer approached to the authority for claiming subsidy under Agri. Activity. Therefore he made application for change of tariff to the Respondent Utility and benefit was given to the consumer. The tariff category was already

changed from LT V (Industrial) to LT IV(Agricultural) and the effect was carried out in the further period of issuing bill by Respondent Utility.

Coming to the dispute in the month of Sept. and Oct.2017 Respondent Utility issued tariff difference arrears for amounting Rs.578250/- and claimed the wrong tariff rate applied in the bill which was required to be recovered from the consumer from the period of last benefit given Oct.2016 onwards. The bill issued by Respondent Utility to the consumer was challenged before IGRC. It appears from the order of IGRC re verification of uses of supply and inspection of premises direction was given and the inspection was carried out. The record indicates that consumer himself applied for proper tariff in the year 2013 and benefit was given to the consumer of adjustment of difference excess billing from year 2014 to 2016. Therefore subsequently issuing of bill claiming difference of arrears under the head of wrong tariff rate below calculation was bill generated and issued to the consumer apparently. It is not the failure of consumer. The Flying Squad inspection report positively as claimed by the Respondent Utility dated 23.2.2017 and B-80 was prepared claiming difference of arrears for the period Nov.2016 to Sept.2017 which is seriously objected and challenged by the consumer. Coming to the dispute the contention of the consumer is perused by this Forum minutely as per Regulations, arrears of difference of tariff amount for earlier period cannot be retrospective as defined and decided by the Competent Authority in various judgment like of APTEL No.131 of 2013 and as per my view the claiming of back recovery of arrears prior to the date of detection of error cannot be allowed. In this circumstances the tariff difference when it was brought to the notice of utility i.e. verification report dated 04.2.2014. Already relied and filed by the Respondent Utility in result the bill generated in the month of Oct.2017 is exorbitant claiming retrospective period is wrong and illegal liable to the set aside. In answer the Respondent Utility can claim the difference of arrears from the date of inspection i.e. 04.2.2014 onwards and recovery can be made by issuing revised bill amount which bill can be recovered in 6 monthly installments or adjustment in the future bills next generated in billing cycle in equal month till the entire recovery amount received from the consumer. I come to conclusion that there is substance in the contention of consumer even if he agrees to pay 6 months arrears to utility in my view the

retrospective recovery is prohibited as per reported judgments and view adopted by Competent Authority at this stage. Hence I am inclined to allow the complaint of consumer and proceed to passed following order.

Every opportunity was given to the Appellant as well as Respondent for filing the relevant documents during the hearing and hence the period of 60 days could not be maintained for disposal of the grievance.

Hence the order by majority

ORDER

1. The consumer complaint of 39 of 2018 is allowed.
2. Bill issued to the consumer for retrospective period recovery in Oct. 2017 is hereby set aside.
3. Respondent utility directed to make recovery only from the date of detection of error i.e. 04.2.2014. For further period of tariff difference shall be calculated without charging any Interest, DPC and penalty.
4. The consumer is further directed to submit his undertaking/Indemnity Bond to repay the said amount subject to the decision of Hon'ble High Court in the pending writ petition. The Respondent utility shall follow the directions of Hon'ble High Court Status quo in pending writ petition which scrupulously.
5. The amount of recovery or refund shall be paid to consumer/Licensee or adjustments in equal 6 monthly installments. Refund/Credit should be given accordingly.
6. 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 11th September - 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