

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

Phone: 0253-2591031
Fax: 0253-2591031
E.Mail: cgrfnsk@rediffmail.com

Office of the
Consumer Grievance Redressal Forum
Kharbanda Park, 1st Floor,
Room N. 115-118
Dwarka, NASHIK 422011

No. / CGRF /Nashik/NUC/N.R.Dn./679/11/2018-19/

Date:

(BY R.P.A.D.)

Date of Submission of the case :25/05/2018

Date of Decision

:

To.

M/s. Swastik Pulp & Paper Pvt. Ltd.
Plot No. A-65, MIDC Malegaon
Sinnar Dist. Nashik 422113
(Consumer No. 075949018580)

Complainant

- 1 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Vidyut Bhawan ,
Nashik Road
- 2 Executive Engineer (Rural)
Maharashtra State Electricity Distribution Com. Ltd.
Nashik .

Distribution Company

DECISION

M/s. Swastik Pulp & Paper Pvt. Ltd. , (hereafter referred as the Complainant). Sinnar Nashik is the HT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL regarding change of category & refund of tariff difference HT Ind to HT Ind NC .The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. Ltd. But not satisfied with the decision of the Respondent , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.51 of 2018 on 25 /05/2018.

The Forum in its meeting on 08/06/2018, decided to admit this case for hearing on 22/06/2018 at 3.00 am in the office of the forum . A notice dated 08/06/2018 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Urban I Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Smt. P. V. Bankar , Nodal Officer/Ex. Engr., Shri. A. R. Tiwari, Dy. Ex. Engineer represented the Distribution Company during the hearing. Shri . Manish Mishra appeared on behalf of the consumer.

Consumers Representation in brief :

The applicant is a Private Limited company which is engaged in activities related to Craft papers etc. The HT connection was released by MSEDCL to the factory in the name of M/s Swastik Pulp & Papers Pvt. Ltd., bearing Consumer number 075949018580, with Contract Demand of 2400 KVA.

In the month of April 2011, as per our request (due to load extension from 1600 KVA to 2400KVA) load extension from 1600 KVA to 2400 KVA was done, we were connected on 33KV non-express Brookebond Feeder. After shifting from 11KV to 33KV in April 2011, our billing was being done on HT1N.

A. Regarding refund of supplementary bill paid

The Superintending Engineer Nashik Rural Circle vide his letter No. 5842 dated 21st June 2012 (Copy enclosed as Annexure: 1) has informed us that our consumer category has been changed to HT I C from April 2011. This was the first such letter issued to us for change in tariff category on 21 June 2012.

Further, the SE Nashik Rural Circle along with his letter dated 21st June 2012, has issued the supplementary bill for the past period (Retrospectively charging the differential in tariff), for tariff differentiation of Rs. 52,94,010/-. A copy of the supplementary bill is also enclosed as Annexure 2. Because of this change, per unit tariff for us went up from Rs. 4.80 to Rs. 5.27.

Since all the processes being carried out at our works are important, in order that we should not face disconnection of supply, we immediately, submitted a letter to SE (R) Nashik & unwillingly requested MSEDCL to give us installments for payment of arrears (tariff differential from HT 1 N to HT 1 C). Incidentally, we have paid all the installments, under protest.

Our letter dated 08/07/2013 to the SE (R) Nashik is enclosed as Annexure 3. It is clearly mentioned in our letter that we have never demanded for HT Continuous supply which is the primary requirement to be categorized under HT1 C. Due to the rise in Contract Demand from 1600 KVA to 2400 KVA, our feeder shifted from 11KV feeder to 33KV Brookebond Feeder (which is a non-express feeder).

As per our understanding & legal precedence, the applicability of the modified tariff should only be prospective, after the consumer is informed and under any circumstances, retrospective charging of tariff is unlawful.

Further, vide our letters dated 25/07/2012, 08/07/2013, 27/06/2015, 11/06/2017 we have also requested SE (Rural) Nashik & CE (O&M) Nashik Zone, to kindly look into the matter and refund us the illegal extra amount charged as unlawful tariff category differentiation from April 2011 to May 2012 along with interest, as per Section 62 (6) of the Electricity Act 2003. Our letter dated 11/06/2017 is enclosed as Annexure: 4.

Aggrieved by the actions of MSEDCL, we approached Internal Grievance Redressal Cell, Nashik Urban Circle, Nashik and filed a complaint, on 1st Dec 2017, requesting for giving justice to us, in the matter of MSEDCL's unlawful tariff category differentiation from April 2011 to May 2012 along with interest, as per Section 62 (6) of the Electricity Act 2003.

To our surprise, IGRC Nashik Urban Circle, ordered in favor of MSEDCL. The IGRC Order in our case, dated 26th March 2018 is enclosed herewith as Annexure: 1.

Aggrieved by the high handed action of IGRC Nashik, we are approaching your esteemed Bench and submitting our grievance application with a request for giving us the justice, in the matter of unlawful supplementary bills issued by MSEDCL for retrospective change in Tariff for past period & to direct SE MSEDCL Nashik Rural Circle to withdraw the unlawful Supplementary bill, refund us the unlawfully levied supplementary bill along with interest as per Section 62 (6) of the Electricity Act 2003.

We sincerely request Hon. CGRF Nashik Urban circle to kindly consider the urgency in this matter and admit our application. We will be highly obliged, in case an early hearing in this matter is given & we are given justice at the earliest.

We strongly feel that the supplementary bill issued by the MSEDCL, for the retrospective period of 13 months, is not tenable, as arrears of difference in tariff categories, can be recovered only from the date of information to consumer. No retrospective recovery is allowed as per the present Rules & Regulations.

We have relied on the Order issued by the Hon. Electricity Ombudsman Mumbai, in Representation No. 124 of 2014 (Annexure: 5) in the matter of Ram Chimanlal Kanojia verses MSEDCL. In the said case Hon. Electricity Ombudsman Mumbai has held as under:

"Even it is assumed that the facts of said Case No. 24 are different, yet the principle laid down by the Commission, that recovery should be prospective applies to the case of this applicant. Moreover, the judgment dated 7th August 2014 of APTEL in Appeal No. 134 of 2013, is squarely applicable in the present case. APTEL has held that arrears of difference in tariff category would be recovered only from the date of detection of error. In this case, the error was detected on 20th March 2014. Therefore, the change in tariff from category LT-V-A Industrial to LT-II Commercial should be made applicable from March 2014 and arrears should be recovered accordingly."

We have relied on the Order issued by Hon. MERC in the Case No. 24 of 2001, dated 11th Feb 2003 (Annexure 6) , in the matter of MIDC Vs MSEDCL, in which the Hon. Commission has held that no retrospective recovery of arrears is allowed on the basis of reclassification of consumer & any reclassification must follow a definite process under natural justice & recovery if any would be prospective only. The relevant portion of Order is reproduced below. Hon. MERC has directed in the Order as under:

"No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer, even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing, in strict sense of the term to be recovered retrospectively."

We therefore state that the retrospective recovery of arrears towards change in tariff category is not tenable & hence the supplementary bills, issued to us by MSEDCL, may please be set aside.

Hence we sincerely urge the Hon. CGRF to quash the supplementary Bill issued to us on 21 Jun 2012, in view of Hon. Electricity Ombudsman, Mumbai's Order in Representation 124 of 2014 and Hon. MERC's Order dated 11th Feb 2003.

B.Regaring Change of Tariif

As per various MERC Order

" Only HT Industries connected on express feeders and demanding continuous supply will be deemed as HT Continuous Industry and given continuous supply, while all other HT industrial consumers will be deemed as HT Non Continuous Industry"

Further, we had never requested the SE MSEDCL Nashik Circle to re-categorize us under HT IND C consumer and as we are connected on a non-Express 33KV feeder, we cannot be categorized under HT1 C . However, we were charged under HT IND C category from June 2012 to May 2015, which is according to us is illegal. Hence we sincerely request Hon. CGRF Nashik be pleased, to direct MSEDCL Nashik Circle to re-categorize us under HT IND NC during June 2012 to May 2015.

We also request Hon CGRF Nashik to direct MSEDCL to refund the tariff differentiation to us (HT IND C- HT IND NC) due to wrongly categorizing us under HT IND C from June 2012 to May 2015, along with interest as per Section 62 (6) of the Electricity Act 2003.

Prayers:

- (1) We sincerely pray Hon. CGRF Nashik, to kindly admit our application. Considering the financial impact on us for paying the installments of the unlawful supplementary Bills, charged retrospectively, we sincerely request Hon. IGRC for early hearing in this matter.
- (2) Referring to the above mentioned the Judgment/ Order, issued by Hon Electricity Ombudsman Mumbai and Hon. MERC, Mumbai, we sincerely pray the Hon. CGRF Nashik to kindly direct the concerned officials to charge us only prospectively and withdraw the unlawful supplementary Bill (for retrospectively charging the tariff differential), issued

along with SE Nashik's letter dated 21 June 2012. (For the period from April 2011 to May 2012). The difference due to tariff category should be only charged prospectively, as no retrospective recovery has been allowed by Hon. Electricity Ombudsman, Mumbai and Hon. MERC, Mumbai.

- (3)** Hon. CGRF, Nashik be pleased, to direct MSEDCL Nashik Urban Circle to recategorize us under HT IND NC, during June 2012 to May 2015 as we never requested MSEDCL to categorize us as HT IND C Consumer and feeder was also non express feeder as 8 other consumers were connected on brookebond feeder and their tariff was also Non Continuous . We also request Hon CGRF Nasik to direct MSEDCL to refund the tariff differentiation to us (HT IND C- HT IND NC) due to wrongly categorizing us under HT IND C from June 2012 to May 2015, along with interest as per Section 62 (6) of the Electricity Act 2003.

Arguments from the Distribution Company:

The Distribution Company submitted a letter dated 21/06/2018 from the Nodal officer Urban Circle Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. The consumer is connected on group express feeder (33 KV Brook-Bond)
2. This consumer was receiving continuous supply on 24x7 basis without load shedding & no staggering day.
3. Also NOC are taken by the consumer before any shut down considering the continuous consumer. So the change of tariff from non continuous to continuous from April 11 to May 15 is correct.
4. Also the consumer is paying regular bill & there is no any complaint from 8.7.13 to 27.06.15.
5. If consumer was not getting response, then why he wait for more than 5 years to go in IGRC?
6. So the refund required by consumer is not correct.

Action by IGRC :

1. Internal Grievance Redressal Cell Nashik Urban Circle conducted hearing on 02/02/2018 for the complaint submitted on 01/12/2017 .
2. After hearing both the parties IGRC gave decision as per letter dated 26/03/2018 as under..

"The consumer connected on group express 33KV Brook Bond feeder was receiving continuous supply on 24x7 basis without load shedding & no staggering day. So the change of tariff from non continuous to continuous from Aor. 11 to May 15 was correct.

However, as per commercial circular No. 246 ref. no.PR-3/Tariff/30803 dtd. 11/08/2015 & consumer request letter received to circule office on dt. 29/06/2015, consumer tariff from continuous to non continuous changed from Aug. 2015 billing. "

Observations by the Forum:

1. The consumer had increased the load from 1600 KVA to 2400 KVA in the month of April 2011. The consumer was connected from 11KV to 33 KV for non excess Brookebond feeder. The billing of the consumer was done in HTIN category.
2. The Superintending Engineer, Nashik Rural Circle vide his letter No. 5842 dated 21st June 2012 has informed the consumer that consumer category has been changed to HTIC from April 2011. The Superintending Engineer alongwith letter dated 21st June 2012 issued a supplementary bill for the past period (Retrospectively) charging the differential in tariff, for tariff differentiation of Rs. 52,94,010/0. The tariff for this consumer has increased from Rs. 4.8 to Rs. 5.27 per unit.

3. The applicability of the modified tariff should only be prospective, after the consumer is informed and retrospective charging of tariff is not legal.
4. The consumer has unwillingly paid this supplementary bill in six installments to avoid disconnection of power supply.
5. In representation NO. 124 of 2014 in the matter of Ram Chimanlal Kanojia V/s. MSEDCL, the Hon Electricity ombudsman, Mumbai has ordered that the recovery should be prospective.
6. The Judgment dated 7th Aug. 2014 of APTEL in appeal No. 134 of 2013 is applicable in the present case APTEL has held that arrears of difference in tariff category would be recovered only from the date of detection of error.
7. Hon. MERC in the case No. 24 of 2001 dated 11th Feb.2003, in the matter of MIDC V/s. MSEDCL in which the Hon. Commission has held that no retrospective recovery of arrears is allowed on the basis of reclassification of consumer & only reclassification must follow a definite process under natural justice & recovery if any if any would be prospective only.
8. We therefore state that the retrospective recovery of arrears towards change in tariff category is not tenable & hence the supplementary bills, issued to us by MSEDCL may please be set aside. In view of the submissions made by the applicant respondent in writing as well as during hearing this forum passes the following order.
9. The consumer requested to re-categories the tariff from continuous to non continuous as the same feeder was also supplying power supply to other eight consumers also , & also requested to refund whatever extra charges recovered on account of change in tariff from HT-1NC to HT-1C from Jan.12 to Dec.15 as per the orders passed by The Hon'ble Bombay High Court (Nagpur Bench) in respect of M/s. Ruhatiya Spinners Pvt. Ltd. (C.No. 5437 of 2013) and the order passed by the Hon'ble Bombay High Court (Aurangabad Bench) in respect of M/s. Katara Spinning Mills Pvt. Ltd. (Case. 1015 of 2014) .

After considering the representation submitted by the consumer, comments and arguments by the Distribution Licensee, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The supplementary bill issued by MSEDCL for charging retrospectively the tariff differentiation from April 2011 to May 2012 is set aside.
2. MSEDCL is entitled to charge new tariff category from 21st June 2012.
3. MSEDCL shall refund the amount of the supplementary bill paid by the consumer for the period April 2011 to May 2012 alongwith the interest as per section 62(6) of the electricity.
4. The Dist. Co. also refund the excess charges recovered on account of change in tariff from Jan.12 to Dec.15 with interest as applicable.
5. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within the time frame stipulated and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum within one month from the date of this order.
6. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.

7. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Smt. Vaishali V.Deole)
Member

(Prasad P. Bicchal)
Member Secretary

(Dr. Bhaskar G. Palwe)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex. Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Urban Circle office, Nashik .