

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

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Consumer Grievance Redressal Forum
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No. / CGRF /Nashik/NUC/N.U.Dn.2/673/05/2018-19/
(BY R.P.A.D.)

Date:

Date of Submission of the case : 19/04/2018

Date of Decision :

To.

Dr. Shri. Arun P. Behere ,
Indumati Hospital , 1st floor,
Nashik Pune Road, Nehru Nagar,
Nashik Road 422101
(Consumer No. 049085242023)

Complainant

1. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Shingada Talav,
Nashik
2. Executive Engineer (U-2)
Maharashtra State Electricity Distribution Com. Ltd.
Kharbanda Park Nashik .

Distribution Company
(Respondent)

DECISION

Dr. Shri. Arun P. Behere is the Commercial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Respondent). The Complainant has submitted grievance against MSEDCL for refund of difference amount due to change in tariff . 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 IGRC , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.45 of 2018 on 19 /04/2018.

The Forum in its meeting on 20/04/2018, decided to admit this case for hearing on 18/05/2018 at 1.00 Pm in the office of the forum . A notice dated 21/04/2018 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 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. , Addl. Executive Engineer Shri. Vinod D. viper, Jr. Law Officer Smt. Nital S. varpe represented the Distribution Company during the hearing. Shri . Arun P. Behere appeared on behalf of the consumer.

Consumers Representation in brief :

1. Appellant is owner of the hospital known as Indumati Hospital. The hospital is register with Nashik Municipal Corporation from the year 1990. The Hospital has been supplied electricity by respondents at Commercial rate.
2. The appellant has been paying electricity tariff as commercial rate since commencement.
3. on 05/09/2012 by Commercial Circular No. 175, it was decided by Maharashtra State Electricity Distribution Company to change the rate of tariff for the establishments which came under public service categories. The rate was changed from Commercial to new category i.e. public Service Category . Therefore, change in tariff was made for Hospitals from Feb.2016, which lowered the tariff substantially.
4. As the change was made at Maharashtra State Electricity Distribution Company Ltd. (hereinafter referred as MSEDCL/Company) level, it was incumbent for the company to automatically apply this rate to all the public service, establishment which were eligible to get this benefit.
5. However, company deliberately did not apply that rate to the eligible consumers. Moreover, they did not even publish the circular, therefore, most of the establishments remain unaware about difference in tariff and continued paying the electricity charges at the Commercial rates.
6. For some of the favored few it was intimated by the Company that there is the difference in Tariff and benefit was given to them, but most of the establishments were deprived of this benefit. These acts on part of the respondent Company are totally against the principle of Natural justice.
7. When appellant came to know about this special tariff for public service establishment from the third parties, appellant applied for change in tariff in January 2016. That application was allowed and tariff was changed from February 2016. It was learned that some of the establishments namely-
 1. Con.No. 049010243709 M/s. Mercury Hospital.
 2. Con.No. 049016100616 Shri. Sanjay Sampat Kadam.
 3. Con.No. 049019019750 Dr. Vinchurkar Digonistic &
 4. Con.No. 049015675909 Director/Hon.Co-ordinator, Symbiosis SchoolWere given the refund of excess amount recovered from them by respondent Company . ed that the registration was issued on 24/However , the difference in the tariff amount recovered from the appellant by respondent company was not refunded to him.
8. Being aggrieved by this act on the part of the respondent, appellant applied to respondent on 20/09/2017 seeking refund of the difference recovered illegally by respondent.
9. The matter was heard by Executive Engineer MSEDCL., who was pleased to reject the application. The reasons given by the said engineer are not at all lawful or logical. Several establishments had preferred such type of application but all the applications came to be rejected by assigning different reasons.
10. The Appellant's application was rejected by citing the reason "that consumer has not submitted any other proof which are showing existence of his hospital at said premises prior to year 2012"
11. This itself is totally wrong submission as appellant has produced certificate of Registration of hospital issued by Nashik Municipal Corporation which show 06/2011 i.e. the date before which MSEDCL has issued its circular about the special tariff for public service establishment.

12. Being aggrieved by this order, the appellant preferred this appeal on following amongst other ground.
- A. The order of the Executive Engineer is wrong and erroneous.
 - B. The order is against the principal of Law, Justice and equity.
 - C. The appellant has produced proof that the hospital is in existence prior to the date issuance of circular by MSEDCL about special tariff for public service establishments.
 - D. As the circular was in special knowledge of respondent, it is their duty to automatically apply the said tariff to establishments which are eligible for new concessional tariff.
 - E. In the alternative it was the responsibility of the respondent to inform all the establishments about change in tariff, the eligibility for claiming tariff at new reduced rate etc.
 - F. General Public is not expected to be informed or aware about the internal circular issued by the MSEDCL.
 - G. The respondent has taken different stand in similar complaints to reject the demand of refund.
 - H. The respondent has given refund to :
 1. Con.No. 049010243709 M/s. Mercurry Hospital.
 2. Con.No. 049016100616 Shri. Sanjay Sampat Kadam.
 3. Con.No. 049019019750 Dr. Vinchurkar Digonistic &
 4. Con.No. 049015675909 Director/Hon.Co-ordinator, Symbiosis School Establishment record of which as produced before Executive Engineer MSEDCL.
 - I. Giving the benefit to some of the establishment and denying the other by quoting different reasons is against the principal of Natural Justice.
 - J. The order of the Executive Engineer is perverse and against the principals of Natural Justice and needs to be set aside and reversed.
13. It is to point out that, in letter No. AEE/NSK(U)/Tech/2056 dtd. 05/10/2017, it has been mentioned that " as per consumer's application and spot verification report, tariff was changed from L.T. Commercial to LT Public Services others from February 2016"

Prayer:

1. The order of the Executive Engineer be set aside and reversed.
2. The appellant be awarded refund between commercial rate and rate applicable to public service establishment from 05/09/2012 to 31/01/2016..
3. The cost of this appeal be awarded to the appellant.
4. Any other just and equitable relief as the Hon'ble Court may be deem fit be granted in the favour of the appellant.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 16/05/2018 from the Nodal officer, Urban Circle Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

As per consumer's application in the month of Jan. 2016, spot verification was done & tariff was changed from LT Comm. To LT Public Services other in the month of Feb. 2016 as per commercial Circular No. 175 dtd. 05/09/2012.

● **MERC Tariff order....U,**

1. Comm. Circular o. 175 dtd. 05/09/2012, under subject revision in Electricity Tariff implementation thereof (MERC Tariff order dt. 16/08/2012 in case No. 19 of 2012). A new Tariff category inserted called 'Public Services' in both LT & HT level, circular clause No. 4. No any specification in regard of Government Hospital and Private Hospital categorization mentioned in Circular. (attachment – Commercial Circular No. 175).

3. Comm. Circular No. 243 dt. 03/07/2015 under subject Revision in Electricity Tariff - implementation thereof (MERC Tariff order dt. 26/06/2015 in case No. 121 of 2014). Clause No. 3 separate category for Govt. School & Hospitals – public Service Category has been divided in to two Sub-categories , Viz.(A) Govt. Educational Institutions, Hospitals & Primary Health Centers & (B Other Public Services. Implementation from these revise tariff from 1st June 2015 till further tariff order. (Attachment – Commercial Circular No. 243)

3. Comm. Circular No. 275 dt. 18/11/2016 under subject Revision in Electricity Tariff-implementation thereof (MERC Tariff order dt. 03/11/2016 in case No. 48 of 2016).
L.T. X: L.T. - Public Services.
L.T.X.(A): L.T. - Government Educational Institutions and Hospitals.
L.T.X.(B): L.T. Public Services – Others.
Implementation of order w.e.f. 1st Nov. 2016, till further tariff order.
(Attachment – Commercial Circular No. 275)

However, in view of the said revise tariff order as per Cir. No. 175, 243, 275 the Public Services Tariff Category inserted by Cir. No. 175, Bifurcation of Tariff category of Government & others i.e. L.T.X.(A) & (B) is done as per Cir. No. 243.

MERC Regulation 2006, Article No. 6.6 specific the criteria of time limit, i.e. a grievance have to be filed within a period of 2 years from the cause of action.

Some reference is hereby submitted in accordance of tariff difference refund of changing tariff category passed by Hon. Electricity Ombudsman, Mumbai for kind reference please.

Representation No. 38 of 2017, 40 of 2017 and 57 of 2017 in said representation Hon. Electricity Ombudsman Mumbai follow the criteria of 2 Years strictly.

In Writ Petition such as W.P. No. 6545/2015, W.P. No. 6552/2015, W. P. No. 6553/2015 filed by MSEDCL before Hon. High Court, Mumbai in regard of recovery of electricity charges from anterior date. Therefore Hon. Electricity Ombudsman is also a party such as respondent in said Writ Petition. Hon. High Court, Mumbai on dt . 15/07/2015 directed to maintain Status Quo in r/o recovery of the electricity charges in concern of change in the tariff category, recovery from anterior date etc. as of. The order copy of W.P.6545/2015 is enclosed h/w for your kind reference.

Action by IGRC :

1. Internal Grievance Redressal Cell Nashik Urban Circle conducted hearing on 05/10/2017 for the complaint submitted on 20/09/2017 .
2. After hearing both the parties IGRC gave decision as per letter dated 13/11/2017 as under .

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Observations by the Forum:

- A. Consumer Representative pointed out the
1. As per Commercial Circular No. 175 dtd. 05/09/2012 the distribution Co. should change the tariff by its own automatically without application by the consumer for the same and should give credit of tariff difference to the consumer, but distribution company has not given the effect of revised tariff nor published the theme of circular , hence the consumer in question was unaware of the facts, hence deprived from the benefit of revised tariff .
 2. Also representative pointed out that the said benefit of tariff difference & application of public service tariff was given to 2/3 consumers namely a) Mercury Hospital b) Vinchurkar Diagnostics (P) Ltd. Etc.
 3. On application by the consumers on 20/09/2017 in IGRC, the IGRC ordered to change the tariff from date of application & did not raised the issue of difference in tariff from date of issue of Circular, hence consumer requested to reverse the order of IGRC.

B) The Dist. Company representative cleared that....

On and average there are thousands of commercial connection which includes many types of business activities, so to apply LTX to applicable consumers automatically without any application by the consumer is not practically possible also pointed out that such liable consumers should voluntarily apply to get the benefit of LTX tariff. Also he pointed out that it will not be correct to say that said consumer is unaware, as the distribution Company conducts the public hearings in Regional Head quarters with wide publicity in newspapers before submitting any proposal of new tariff to MERC . MERC will also conduct Public hearings & then considering all objections from the public, MERC issues / passes new tariff orders.

The Distribution Company representative said that any wrong tariff if applied/ given to 2/3 consumers as mentioned will be revoked & necessary action will be taken.

The Distribution Company representative also said that the tariff is changed as per circular No.175 is the very month as applied by consumer for the same. He also pointed out that the application made by consumer is beyond time limit (i.e. beyond two years) as per MERC regulation 2006 Art. No. 6.6.

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 Distribution Company should apply the LT-X tariff category from August 2012 upto May 2015 and LT-X (B) tariff category from June 2015 till July 2016 and refund excess amount collected from the complainant during August 2012 to July 2016 along with interest at the bank rate under Section 62 (6) of the Electricity Act, 2003 on the amounts of refund till the date of refund.
2. 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 one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .
3. 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.

5. 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 .