

**CONSUMER GRIEVANCE REDRESSAL FORUM  
AMRAVATI ZONE, AMRAVATI**

'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

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Dt. 24.05.2018

**ORDER**

**Case No. 16/2018**

**In the matter of grievance pertaining to refund of excess amount recovered with wrong application of tariff as HT-Continuous in place of HT- Non-Continuous**

**Quorum**

**Dr. Vishram Nilkanth Bapat, Chairman  
Shri. R. A. Ramteke, Member Secretary  
Smt. S.P.Joshi, Member (CPO)**

**In the matter of**

**M/S Sara Spintex India Pvt.Ltd.  
AFTAB, Dhamangaon Road, Yavatmal  
Consumer No. HT 370019006550**

**Complainant**

.....Vs.....

**The Superintending Engineer  
MSEDCL, O&M Circle, Yavatmal.**

**Respondent**

**Appearances:-**

**Complainant Representative:-** Shri Sumit S. Goenka

**Respondent Representative:-** Shri R.V.Bommi Jr.Law Officer, Yavatmal Circle.  
Shri N.B.Golhar AA, Yavatmal Circle.

Being aggrieved by non resolution of grievance pertaining to refund of excess amount collected by NA MSEDCL (hereinafter referred as NA) due to application of HT-1 Continuous (HT 1C) tariff in place of HT-1 Non-Continuous (HT 1NC) tariff limited to the billing months, when the Applicant had suffered interruption in power supply, by Internal Grievance Redressal Cell, Yavatmal, Complainant approached to the Consumer Grievance Redressal Forum (CGRF) and filed his complaint on 26.03.2018, which is registered as Case No 16/2018.

As per complainant's complaint with documents attached, Complainant representative submitted that :-

- 1) Applicant M/S Sara Spintex (I) Pvt.Ltd. is having spinning mill and is a consumer of NA MSEDCL with present contract demand of 1210 KVA connected at 33 KV level. Supply of applicant was released on 21.01.2013 for 1700 KVA contract demand with applicable tariff as HT 1C (Express feeder tariff). Though applicant has paid higher tariff as HT 1C since date of connection, he has received interrupted power supply, though the supply was connected on Express feeder resulting in huge financial loss. Power tripping and interruption data which applicant faced for the period Feb 2013 to Feb.2017 has been enclosed ( Ex.1) and confirmation of said data for period Jan 2015 to Jan.2017 from NA side is also enclosed (Ex.2).
- 2) Applicant got his contract demand reduced to 1210 KVA applicable from Aug.2014. Applicant submitted application to NA MSEDCL for change of tariff from continuous to non-continuous tariff for his connection on 30.11.2015 vide his letter Dt 16.11.2015 and reminded the same on Dt 05.05.2016. In response to this NA MSEDCL replied vide its letter Dt 26.05.2016 that approval for change of tariff from continuous to non-continuous tariff for his connection will be effected from 01.05.2016 and all correspondence are on record ( Ex.3,4,5).
- 3) Applicant submitted letter to NA MSEDCL on 20.02.2017 regarding frequent power failure problem to his industry .(Ex.6).

With this facts and circumstances, applicant pointing out some remedial orders and judgements by different judicial forums and is reproducing here with .

- 4) Hon'ble Commission MERC passed the order on dt 16 July 2013 in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners Vs MSEDCL,( Case No.88 of 2012) and para no 35,36 is self explanatory and clearly stating that *NA MSEDCL should have not charged tariff applicable to Continuous Industry on Express Feeder for consumers in the month in which they have not supplied continuous supply* in addition to other finding and is on record (Ex.7).
- 5) Hon'ble Commission MERC passed another order on Dt 19.08.2016 in Case No. 94 of 2015 and the operating part of the said order is as under :-

26.6 Regulation 9.2 of the SoP Regulations,2005 read as follows:-

9.2 “ *Any change of name or change of tariff category shall be effected by the Distribution Licensee before the expiry of the second billing cycle after the date of receipt of application*”.

The subsequent SoP Regulations,2014 also specify the maximum period following receipt of an application within which a desired change has to be effected.

Also para 26.9 mentioning the Judgement Dt 09.10.2012 passed by The Appellate Tribunal for Electricity (ATE), in Appeal No. 114/2012 clearly states that the SoP regulations being in the nature of subordinate legislation, an Order issued in contravention of these Regulation is not tenable. It will also be clear from the wording of Regulation 9.2, quoted above, that it sets the period within which a Licensee has to dispose of an application for change of tariff category, but places no restriction on when such an application can be made. Other observations in said order is as per record (Ex.8).

- 6) In light of above facts and above referred order of Commission, applicant registered his grievance to IGRC, Yavatmal on Dt 10.10.2017 but IGRC rejected the grievance application vide its order Dt 15.01.2018 as per provision of Departmental Circular No 246 Dt 11.08.2015 and 1.3% DDF Works norms, which is not in line with SoP Regulations as laid down by

Commission and is annexed.(Ex.9) Then applicant registered his grievance to CGRF, Nagpur on Dt 14.03.2018 and after telephonic information from Nagpur CGRF on Dt 23.03.2018 regarding its jurisdiction, applicant submitted grievance to this Forum for redressal under clause 6.4 of MERC (CGRF & EO) Regulations,2006 on 26.03.2018.

With this facts and circumstances, applicant prayed for

## **PRAYER**

### **Interim Prayer**

i) Forum may direct MSEDCL to apply non continuous tariff from second billing cycle from the date of applicant's application Dt 16.10.2015 and refund excess amount of differential tariff along with an interest.

### **Final Prayer**

ii) Applicant has to request this forum to direct MSEDCL to apply non continuous tariff to the applicant from January 2013 and refund the differential amount till date to the applicant.

In response to present complaint and notice of CGRF, Amravati Zone dt.28.03.2018 to NA MSEDCL to file their reply, Non-Applicant MSEDCL in its written statement dt.13.04.2018 submitted that :-

1) It is true that Applicant M/S Sara Spintex (I) Pvt.Ltd. is having spinning mill and is a consumer of NA MSEDCL with present contract demand of 1210 KVA connected at 33 KV level. Supply of applicant was released on 21.01.2013 for 1700 KVA contract demand with applicable tariff as HT 1C (Express feeder tariff) and that applicant got his contract demand reduced to 1210 KVA applicable from Aug.2014

2) Regarding financial loss to the complainant due to interrupted power supply are denied in toto for want of direct knowledge and complainant has to prove it. For HT Continuous tariff applicability, NA MSEDCL reproduced para no 37 of MYT Order 2008-09 vide MERC case No 72 of 2007 DT 20.06.2008 at page no. 25 as "*When the ASC was being charged earlier, a lower base energy charge was applicable for the HT Continuous industry as compared to HT Non -continuous industry, which was set off by the higher ASC percentage charged to HT Continuous industry . However the ASC has now been removed. Since the Continuous process industries are getting supply on continuous basis, and are not subjected to load shedding, including staggering day, the tariff for HT continuous industry has been specified slightly higher than that applicable for HT Non continuous industry.*" It is crystal clear from the above fact that the very intention of Hon. MERC was to provide supply to consumers who opt for a continuous tariff without observing load shedding including staggering day at a slightly higher rate than that of applicable for HT Non continuous industry. There was a load shedding of more than 2000 hrs effected in the whole Maharashtra at the time of MYT Order 2008-09 and therefore considering the factual position, continuous tariff was a win win situation for consumers who opted for it irrespective of the need of Continuous process for their industry.

3) It is admitted that the interruptions on Sara feeder are the interruptions faced by applicant and is annexed as **Ex.J**. Further it is submitted that trippings/breakdowns on MSEDCL side were beyond control of MSEDCL and the interruptions occurred were never on the account of negligence of any person etc.

4) It is true that applicant submitted application to NA MSEDCL for change of tariff from continuous to non-continuous tariff for his connection on 30.11.2015 vide his letter Dt 16.11.2015. But reminded the same on Dt 05.05.2016 is false and it is specifically submitted that the consumer was informed that his application for change of tariff from continuous to non-continuous tariff for his connection cannot be processed as arrears of Rs 23,65,000/- against Additional Security Deposit was outstanding towards the consumer and as per provisions of Commercial Circular 246, consumer has to pay the entire dues towards MSEDCL prior to effecting of change of tariff. The entire correspondence in this regard are annexed as **Ex. A to H** and hence order passed by IGRC was correct. After compliance of above, tariff change from continuous to non-continuous tariff has been effected as per rules.

5) It is submitted that contents in complaint specifying discussion and order details in the orders passed by Hon'ble Commission (MERC) dt 16 July 2013 in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners,( Case No.88 of 2012) are not related to present complaint as present case is totally different from those who have approached to Hon.ble MERC and it was specific one and the issue raised there before Hon. Commission was of continuous supply since their process was continuous one and they had given their respective certificates at the time of initiation of Continuous tariff. The present complainant has not submitted any Continuous Process Industry Certificate at the time of seeking connection. Reference of M/S Kalika Steel Case is made without any sufficient cause and therefore respondent specifically reproduced para no. 37 of MYT Order 2008-09 vide MERC case No 72 of 2007 DT 20.06.2008 where in industries with Continuous tariff were free from load shedding hours including staggering day only and word interruption in present matter had been added by afterthought to benefit complainant. The word interruption added merely because somebody has been given relief in a matter by Hon.ble MERC, this complainant consumer will not automatically qualify for receiving the so called tariff difference as each and every case is to be dealt with specific facts and circumstances relating to the case.

6) It is submitted that handing over of line erected by applicant under 1.3% DDF work for his connection is not effected by the consumer and also guarantee period of the line is to be considered.

7) It is submitted that order passed by IGRC is correct one and with provisions of circular. Whereas the present complaint is liable to be dismissed in view of first proviso to regulation 12.2 of SoP Regulations, and annexed as **Ex.I**

Finally in view of above submission it is submitted that the present complaint is an after thought and hence liable for dismissed off along with cost of Rs 10000/- for unnecessarily vexing the Respondent to this complaint without any cause.

In response to the reply submitted by NA MSEDCL, applicant submitted his Rejoinder to the reply of respondent vide his letter Dt 25.04.2018 clearing some additional points covered in the reply of NA MSEDCL as:-

1) It is submitted by applicant that the respondent is trying to misguide the Forum by diverting the matter to ASC charges which were collected from the consumers who wanted uninterrupted supply without load shedding for which MSEDCL has to purchase high cost power from the

market and supposed to supply it to the continuous process consumers during load shedding hours. Hence it is not understood what is the relevance of ASC issue in MSEDCL's reply against the grievance of regular power interruptions for which data is submitted by applicant.

2) In response to reply of NA MSEDCL regarding tripping / breakdowns, it is submitted that this issue has been dealt in detail during hearing before Hon. MERC in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners,( Case No.88 of 2012) and Hon. Commission in its order in said case on para no. 27 & 28 with other contents clearly states that :-

*It is MSEDCL's duty to provide an interruption free supply to the continuous supply consumers. It cannot hide its responsibility of maintaining a fault free and breakdown free network under the pretext that breakdowns and faults are beyond its control. It is MSEDCL's duty to maintain its network in such a fashion that breakdowns and faults do not occur. Though it is understandable that breakdowns can still happen under unforeseen circumstances, it cannot happen at an unreasonable frequency.*

3) Applicant has not made any false statement and evidences are submitted in each reference.

4) It is submitted that Commission in its tariff order in case No.121 of 2014 said at para 6.10.7 that:-

*" 6.10.7 The Commission clarifies that the consumer availing supply on Express feeder may exercise his option to choose between Continuous and Non- Continuous supply anytime during a financial year but only once in such financial year with one month prior notice. Such consumer shall be required to submit a written request to MSEDCL, giving one month's notice and the tariff applicable to Non-Continuous supply shall apply, from the ensuing billing cycle."*

That is as per Commission's order the tariff category of consumers has to be changed from second billing cycle without any condition of clearing the arrears. MSEDCL by its own put the condition that *before the actual benefit is passed to the consumers, the concerned Superintending Engineer shall verify whether the consumer in arrears or otherwise and such permission will be given only on recovery of arrears from consumers.*

MSEDCL cannot issue any circular and guideline which violates Commission order. Commission has never said that tariff category cannot be changed in case consumer in arrears. The Commercial circular referred does not say that the category of tariff cannot be changed from Continuous to Non Continuous but it simply say that the actual benefits should not be passed to the consumers till the arrears are recovered. This means that arrears should be adjusted in the refundable amount.

5) It is submitted that MERC Order in the case of M/s Kalika Steel & Alloys Pvt.Ltd.and 16 Co-petitioners,( Case No.88 of 2012) is squarely applied to the present case because of similar grievance. If MSEDCL raising the issue of Continuous Process Industry certification now then Continuous tariff should not have been applied to the applicant since beginning. Similar cases cannot be dealt differently in light of section 61(3) of EA 2003 which clearly specifies that appropriate Commission shall not while determining the tariff under this act, show undue preference to any consumer of Electricity but may differentiate according to load factor, power factor, voltage, total consumption of Electricity during any specified period or the time at which the supply is required or geographical position of any area, nature of supply and purpose for the supply is required. Hence MSEDCL contention that *" because somebody has given relief in a*

*matter by Hon'ble Commission this complainant consumer will not automatically qualify for so called tariff difference".*

6) It is submitted that reply of NA MSEDCL on non handing over line by consumer to MSEDCL and hence no responsibility of maintenance of it during guarantee period violates provision of section 42 of Electricity Act and SOP Regulations wherein the Licensee has to develop and maintain efficient and economical distribution system. The SOP Regulations binds the Licensee for restoration of supply within specified time limit and to give good quality supply.

7) NA MSEDCL every time saying that applicant has made false statement even though applicant never asked for compensation anywhere in his application. Applicant is requesting to follow the Commission's Order in Case No 88 of 2012 as it squarely apply to applicant grievance. Applicants grievance is as per Regulations of Commission and reply of NA MSEDCL in this regard is showing threat to the consumer. There is no provision in MERC (CGRF & EO) Regulations to penalise the applicant. Hence with above applicant once again requested to Hon'ble Forum:-

### **PRAYER**

#### **Interim Prayer**

i) Forum may direct MSEDCL to apply non continuous tariff from second billing cycle from the date of applicant,s application Dt 16.10.2015 and refund excess amount of differential tariff along with an interest.

#### **Final Prayer**

ii) Applicant has to request this forum to direct MSEDCL to apply non continuous tariff to the applicant from January 2013 and refund the differential amount till date to the applicant.

With submission from both the parties as above, hearing scheduled on 09.05.2018 and both parties argued before Forum.

During hearing both parties argued in line with written submission as above. Additionally NA MSEDCL presented Judgement in Writ Petition No 1650/2012 of High Court, Bombay-Nagpur Bench regarding limitation period of filing of Grievance. NA MSEDCL in respect of DDF work presented MERC Order Dt.04.03.2016 in Case No.31 of 2015 in which Hon'ble Commission analyse in point No. 8, that " Under the Agreement, AURPL has given a guarantee for the work and electrical material used by PEC, which would finally be taken over by MSEDCL as its assets. Future maintenance would be MSEDCL responsibility ." NA MSEDCL also submitted recent order of MERC Dt.04.05.2018 in Case No 122 of 2017 in r/o MSEDCL Vs. M/s Century Rayon Limited in the matter of petition of MSEDCL for review of the Commission's Order dated 15.02.2017 in Case No.86 of 2015 in which general applicability of MERC's order on dt 16 July 2013 in the case of M/s Kalika Steel & Alloys Pvt.Ltd. and 16 Co-petitioners Vs MSEDCL, ( Case No.88 of 2012) was decided. But MERC vide its order Dt..04.05.2018 in Case No 122 of 2017 clarified in operating para 15 as

*" 15 At para. 15 of the impugned Order, the Commission has clarified that its earlier Order dated 16 July, 2013 was a clarification to the Tariff Order and was hence applicable to other similarly placed consumers. However, such relief needs to be granted only after detailed scrutiny of the interruptions faced by continuous category consumers. To that extent, it is incorrect to say that para. 15 is of general applicability. Each and every case has to be examined on its own merit. It*

*therefore follows that relief cannot be automatically passed on simply because there were insignificant random interruptions, perhaps on account of transient faults or otherwise.”*

Further Commission ruled in para.16 of its order Dt .04.05.2018 in Case No 122 of 2017 that:-

*“16 In this regard, the Commission observes that the formula for Load Factor Incentive specified in the Tariff Order factored in 60 hours of interruptions/no supply in a month. Load Factor Incentive was applicable to continuous category consumers also. Thus in the Tariff Order, 60 hours/month interruptions/no supply was considered as permissible for continuous category consumers. Further, such continuous category consumer was entitled to seek compensation as per the provision of the SoP Regulations for delay in restoration of supply. Hence before granting relief of change of tariff category from continuous to non continuous on account of interruptions in supply, it is important to verify that such consumer suffered more than 60 hours of interruptions/no supply in a month. Further, as mentioned in the Order dated 16 July,2013, continuous category consumers were not supposed to undergo any planned Load Shedding. Hence, if a continuous category consumer was subjected to planned Load Shedding, such consumer should pay the the non continuous tariff for that month and not the continuous category tariff. All these details need to be verified before granting the benefit of non continuous tariff to continuous category consumers. MSEDCL should verify these details before granting any relief in future.”*

After going through the documents placed on record, arguments advanced by both the parties in present case, verifying and analysing the facts, the Forum is of the view that

1. In the present case, the applicant does not appear to be eligible for consideration for the refund of differential amount from Jan-2013 between continuous and non-continuous tariff as per clause no. 12.2 of Hon. MERC order dated 17 July, 2014 in case No. 105/2013, which is the review petition of MERC order dated 16-7-2013 in case no. 88/2012. This is so, because the mandatory condition for the consumer to be eligible for such a consideration as stipulated in the above order is that the consumer should have valid certificate of being a Continuous Process Industry from the Directorate of Industries, Government of Maharashtra. In the present case, the applicant has admitted before this forum that he never obtained such a certificate, and at present also do not have valid certificate of being a Continuous Process Industry from the Directorate of Industries,hence Forum is of the opinion that the complainant is not eligible for consideration for the refund of differential amount between continuous and non-continuous tariff, from Jan-2013
2. Regarding the application of non continuous tariff from second billing cycle from the date of applicant's application dt 16.10.2015 received by N.A.MSEDCL on 30.11.2015, it is to mention here that N.A.MSEDCL applied the change of category from continuous to noncontinuous with effect from 01.05.2016 giving reference of commercial circular no 246 dt 11.08.2015 after receipt of extra SD amount of Rs 23,65,000/- on 04.05.2016 from complainant, But in the tariff order in case no.121/2014 dt 26 Jun 2015, no where it is precondition by Hon'ble MERC that, verify whether the consumer is in arrears or otherwise before application of change of category from continuous to noncontinuous,

neither it is mentioned in the order of Hon'ble MERC in case no 94 of 2015 and Miscellaneous Application Nos. 5,6 and 7 of 2015, dt 19 Aug 2016. So Forum is of the opinion that applicant consumer is eligible for application of tariff of noncontinuous category from second billing cycle, that is from 1 Jan 2016. With these observations Forum proceeds to pass following unanimous order.

### **ORDER**

- 1) The Complaint No.16/2018 is partly allowed.
- 2) N.A.MSEDCL is instructed to apply noncontinuous tariff to the applicant from 1 Jan 2016, and the difference of amount between continuous and noncontinuous tariff to be adjusted in the forthcoming bill of the consumer.
- 3) No order as to cost.

Sd/-  
(R.A.Ramteke)  
Member Secretary

Sd/-  
(Smt. S.P.Joshi)  
Member (CPO)

Sd/-  
(Dr.V.N.Bapat)  
Chairman

**Contact details of Electricity Ombudsman appointed by MERC(CGRF & EO)**  
**REGULATIONS 2006 under regulation 10:**  
**THE ELECTRICITY OMBUDSMAN,**  
**Office of Electricity Ombudsman (Nagpur)**  
**Plot No.12, Shrikripa, Vijay Nagar, Chhaoni,**  
**Nagpur-440013.**  
**Phone:-0712-25966**

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**NO. EE / CGRF/AMZ/ Amravati/ No./ 66**

**Dt. 24 .05.2018**

**To,  
The Nodal Officer,  
The Superintending Engineer  
MSEDCL, O&M Circle, Yavatmal.**

**The order passed on in the Complaint No.16/2018 is enclosed herewith for further compliance and necessary action.**

**Secretary  
Consumer Grievance Redressal Forum,  
MSEDCL, Amravati Zone, Amravati.**

**Copy to:-  
M/S Sara Spintex India Pvt.Ltd.  
AFTAB, Dhamangaon Road,Yavatmal  
Consumer No. HT 370019006550**

**Copy f.w.c.to:-  
The Chief Engineer, MSEDCL, Amravati Zone, Amravati.**