

CONSUMER GRIEVANCE REDRESSAL FORUM
AMRAVATI ZONE, AMRAVATI
'Vidyut Bhavan', Shivaji Nagar, Amravati: 444603, Tel. No. 0721 2551158

Dt:17.12.2018.

ORDER

Case No. 27/2018

In the matter of grievance pertaining to refund of tariff difference arising out of change from continuous to non continuous category .

Quorum

Dr. Vishram Nilkanth Bapat
Miss.M.H.Ade, Member Secretary
Sau. Sushama Joshi, Member (CPO)

Complainant

M/s Raymond UCO Denim Pvt Ltd,
Plot No C-1, MIDC, Lohara
Yavatmal.

Consumer 370019006820

Versus

Respondent

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

Appearances:-

Complainant Representative :- Shri. Ashok Nagaji Patil.

Respondent Representative :- Shri R.V Bommi, Jr.Law Officer,
O&M Circle , Yavatmal.

Being aggrieved by IGRC, Yavatmal's Order Dt.26.09.2018, applicant complainant approached to CGRF, Amravati for redressal of his grievance on Dt 29.10.2018 and filed his complaint as Case No 27/2018.

The complainant submits his grievance as under :-

- 1) The complainant M/S Raymond UCO Denim Pvt Ltd, C-1, MIDC, Lohara, Yavatmal is an HT industrial connection connected on 33KV level, Consumer no 370019006820, Contract Demand- 6800KVA.
- 2) The applicant complainant has applied for change of category from continuous to non-continuous by giving consent for changing category on 22/03/2014 vide letter no RUDPL/YTL/0124/2014 to the Superintending Engineer, MSEDCL, Yavatmal Circle received by MSEDCL on 24/03/2014. MSEDCL has not changed billing category to non-continuous from April 2014 as per regulation 9.2.
With regards to change in tariff , Regulation 9.2 of SOP regulations stipulates as follows:
“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.”
- 3) The complainant vide letter no RUDPL/YTL/ 0142/2014 dt 09/07/2014 addressed to the Superintending Engineer MSEDCL Yavatmal for change of category to non-continuous, which was followed by second reminder for changing billing category to non-continuous vide letter no RUDPL/YTL/ 0170/ 2014 Dated- 13/12/2014.
- 4) In absence of no response from NA MSEDCL, in reference to the first application and subsequent reminders, the complainant again submitted reminders vide letters dated RUDPL/YTL/ 0182/ 2015 Dated 02/03/2015, RUDPL/YTL/ 0206/ 2015 Dated- 28/05/2015, RUDPL/ YTL/ 0216/2015 Dated 01/07/2015 for changing billing category from continuous to non continuous for unit at C-1, MIDC, Lohara, Yavatmal.
- 5) The complainant was consistently giving request letters to MSEDCL. In absence of response from N.A.MSEDCL, reminder letter no. RUDPL/YTL / 0216 dated 01.07.2015 was withdrawn by letter no RUDPL/YTL/ 220 Dated 01/08/2015. MSEDCL committee has conveniently considered only this letter dated 01/08/2015 to justify their stand for not changing category from continuous to non- continuous. Head Office of MSEDCL vide letter dated 10.07.2017 has considered the application date as 02/03/2015 whereas the option for change in category from continuous to non-continuous was exercised vide application dated 22.03.2014

6) N.A. MSEDCL changed billing category to non-continuous from continuous from **February 2016** vide letter no SE/YTL/ Tech/HT/ 302 dated 21/01/2016 considering the sixth reminder dated 03.12.2015 from the complainant. MSEDCL should have changed category before end of second billing cycle **April 2014** as per 9.2 of SOP regulation, 2005.

7) The Hon'ble Maharashtra Electricity Regulatory Commission issued Order in Case No. 94 of 2015 for pending dispute cases of changing billing categories from continuous to non-continuous & refunding tariff differences which states,

“From the above Judgements, it is clear that the SOP Regulations being in the nature of subordinate legislation, an Order issued in contravention of these Regulations 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. The provisions of the subsequent SOP Regulations, 2014 are similar. The Commission notes that its Electricity Supply Code Regulations, 2005 also do not circumscribe applications in this manner. Hence, the Commission is of the view that the restriction stipulated by it earlier is inconsistent with the SOP Regulations.”

8) NA. MSEDCL has not changed billing category to non-continuous from April 2014. As per,

- a) Regulation 9.2 of the SOP Regulations, 2005
- b) As reaffirmed by the Hon'ble Commission's Order in Case No. of 94 of 2015 dated 19 Aug 2016,
- c) MSEDCL Chief Engineer, Commercial Letter No. PR-3/Tariff/no 16403 dated 5 Jul 2017 &
- d) PR-3/Tariff/no 16720 dated 10 Jul 2017,

The tariff difference between continuous & non-continuous should have been refunded from April 2014 to January 2016 to the complainant.

9) N.A.MSEDCL has not officially conveyed the reason for not giving tariff difference refund from April 2014 to January 2016 but instead has given decision vide committee report dated 28/09/2017 that date of application for change of category is letter RUDPL/YTL/ 0318 Dated 03/12/2015 which was the applicant complainant's sixth reminder.

10) N.A.MSEDCL's Committee has accepted that the complainant's first option for change of category from continuous to non-continuous was on 24/03/2014 & not specified any reason for rejection. It is very clear that category should have been changed from April 2015 as per SOP 9.2 of regulations 2005.

In case no 44 of 2008 in order dated 12 Sept 2008 Hon MERC stated:

“The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-I continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non –continuous type of supply, and there is no justification for removing the clause “demanding continuous supply” from the definition of HT-I continuous category. However, it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period”.

In the present instance, the complainant be given one month time from the date of issue of this Order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorisation will be continued.

- 11) NA.MSEDCL has conveniently not considered first original option letter, neglected five reminders & picked up sixth reminder as first option letter & illegally refused the tariff difference. As stated above option is to be exercised only once in year. cordingly complainant’s first option letter dated 22/03/2014 is to be considered.
- 12) Hon’ble Commission in Case no 44 of 2017 has already stipulated the principle of providing the interest amount applicable for the delay in paying the amount from the due date till the actual date of its payment. In view of the above settled law by the Hon’ble Commission, MSEDCL is liable to provide interest on respective monthly tariff difference amounts since April 2014 to January 2016 upto actual month of payment to us. Hence, interest for such difference for the above period shall be allowed at the same rate, the Hon’ble Commission has allowed carrying cost to MSEDCL in various Tariff Orders as per regulation 60 (6),

Moreover, there also has been delay in providing such interest cost, MSEDCL is also liable to **pay interest** on such **delayed payment of interest costs** from April 2014 to January 2016 till actual date of payment of such interest at the rate of Delayed Payment Surcharge in accordance with principle laid in Case No. 44 of 2017 (interest on the delayed payment from due date till the actual date of payment).

Prayer of the complainant before the Forum :

1. Tariff difference between continuous & non-continuous has not been given from April 2014 to January 2016 by MSEDCL. Hence please order MSEDCL to give tariff difference for the months from April 2014 to January 2016 between continuous & non-continuous.

2. To provide interest on respective monthly tariff difference of amounts since April 2014 to January 2016 up to actual date of payment at the same rate, the Hon'ble Commission has allowed carrying cost to MSEDCL in various Tariff Orders.
3. To provide interest on such interest costs mentioned in above point no 2 since April 2014 to January 2016 till actual payment at the rate of Delayed Payment Surcharge.
4. All above amounts to be credited in bill of November 2018 billed in Dec 2018.
5. Allow additional submission if any.

Reply filed by N.A.MSEDCL before the Forum :

The reply was submitted by N.A.MSEDCL at the time of scheduled hearing. The N.A. submits as under :

- 1) The complainant Consumer had applied for changing of tariff category from continuous to non-continuous for the first time on 22/03/2014. Thereafter on 15/05/2014, 09/07/2014, 13/12/2014, 02/03/2015, 28/05/2015 and 01/07/2015. On 01/08/2015 the complainant consumer withdrew the earlier application and demanded continuous supply. Finally on 03/12/2015 again there was a request for change from continuous to Non-continuous tariff and the same was effected within time from Feb 2016.
- 2) As per MERC Order in case no 94 of 2015 dt 19.08.16 , Board of Directors by Resolution dated 01/06/2017 gave the mechanism and method of approval for effecting the tariff change from continuous to Non-continuous and the same was conveyed vide Letter No. Lr.No.PR-3/Tariff/No.16720 dtd 10/07/2017 issued by MSEDCL's Corporate Office. Accordingly committees at various zones perused the applications of consumers and gave report of each and every consumer throughout. Now it was the decision of the committee that the date of application of consumer for change in tariff from Continuous to Non-continuous is to be considered as 03.12.2015 as per application received at Yavatmal Circle Office.
- 3) It is important to note that the complainant's application was made prior to the decision in MERC Case No.94 of 2015 and the matter was filed by MSEDCL for clarification as regards to the applicability of non-continuous tariff. MSEDCL had filed the same in order to retain its HT consumers and considering the anomaly in the matter.

4) N.A.MSEDCL cited example of the HT Consumer M/s Balaji Electroselters who had not applied for Non-continuous tariff but also sought refund and this issue reached finality after Hon'ble MERC passed the order in MERC Case No.122 of 2017 dtd 04/05/2018. 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.

In this regard, the Commission observes that the formula for Load Factor Incentive specified in the Tariff Order factored in 60 hours of interruption/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 provisions 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 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.

Interruptions faced by the present complainant consumer are well within range and the condition prescribed by the above order is also not beneficial to the present complainant Consumer

5) N.A .MSEDCL contended each and every matter is to be decided according to the merits of the same. The present matter is not a routine one and just because MSEDCL has filed the Case No.94 of 2015 considering the genuine problems faced by the consumers at large on the issue of continuous and non-continuous tariff which is in the interest of the consumers and finally in the interest of MSEDCL because HT consumers were opting for Open Access but had faith in MSEDCL and they didn't wanted to move out. The point noted by Hon'ble MERC while passing the order is quoted here " That being the case, there can also be no questioning the principle that there cannot be any estoppel against law, as contended by MSEDCL. However, that does not mean that a Licencee, MSEDCL in this case, can take upon

itself the prerogative of deciding which Order of the Commission it shall follow and which it will disregard. While, as the Commission has held above, its earlier Orders of 2008 and 2012 put fetters on the right given to consumers in the SOP Regulations to apply for change in tariff category at any time, MSEDCL was not entitled, in law, to take upon itself to ignore or violate such Orders. Even if these Orders were invalid, being contrary to the Regulations, it is well settled that any such Order has to be obeyed.

- 6) One basic point which is specifically submitted herewith by this answering respondent that consumer has availed Continuous supply for the period April 2014 to January 2016 and he has paid as per continuous tariff and has enjoyed continuous tariff and therefore there should be no grievance whatsoever.
- 7) As regards to interest sought by the complainant consumer this answering respondent specifically submits that the consumer has availed continuous supply and paid according to the Continuous Tariff and therefore the question of awarding interest does not arise at all.

Submission during the hearing:

By the Applicant :

Nil.

By N.A. MSEDCL:

Nil

Having heard both the parties and examining record placed before this forum, the Forum holds the following opinion.

- 1) It is admitted position by both the parties that the N.A. MSEDCL released the supply to the complainant M/S Raymond UCO Denim Pvt Ltd on 33KV express feeder and the same was billed as per continuous tariff category.
- 2) Regarding the application of non continuous tariff from second billing cycle from the date of applicant's application dt 22.03.2014 received by N.A.MSEDCL on 24.03.2014, it is to mention here that N.A.MSEDCL applied the change of category from continuous to non continuous with effect from month of Feb 16 giving reference to the applicant's letter dated 03.12.15 as the earlier application and subsequent reminders stand null and void in view of its withdrawal letter dated

01.08.2015 and demanding continuous supply for its unit at C-1, MIDC,Lohara, Yavatmal.

3) With above fact on record about withdrawal of original application for change from continuous to Non-Continuous category by the applicant himself, the Forum finds no ground for any demand for refund of tariff difference and interest thereof by the applicant.

In view of the proceedings before the Forum and on the basis of the records placed before, the Forum unanimously passes the following order.

Order

The complaint number 27/2018 is disallowed.

Sd/-

M.H.Ade)
Member Secretary

Sd/-

(Smt. S.P.Joshi)
Member (CPO)

Sd/-

(Dr.V.N.Bapat)
Chairman

Contact details of Electricity Ombudsman appointed under regulation 10 of MERC(CGRF & EO) REGULATIONS 2006:

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