

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

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

Dt: 28.12.2018

ORDER

Case No. 28/2018

In the matter of grievance pertaining to interest on amount 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 370019002626

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.31.08.2018 applicant complainant approached to CGRF, Amravati for redressal of his grievance on Dt 29.10.2018 and filed his complaint as Case No 28/2018.

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 33 KV level, Consumer no 370019002626, Contract Demand-5000 KVA.
- 2) Raymond UCO Denim Pvt. Ltd. had applied for change of category from continuous to non-continuous by giving consent for changing billing category on 31st July, 2013 to the Superintending Engineer, MSEDCL, Yavatmal Circle received by MSEDCL on 1st August 2013 . MSEDCL has not changed billing category to non-continuous from September 2013 to August 2015 as per Regulation 9.2, which reads as,

“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 Hon'ble Maharashtra Electricity Regulatory Commission (hereinafter referred as the Commission) issued Order in Case No. 94 of 2015 regarding finalizing dispute cases for changing of billing category from continuous to non-continuous & gave guidelines for refunding tariff differences to consumers whose applications were kept pending by MSEDCL.
- 4) MSEDCL has not changed billing category to non-continuous from September 2013 to August 2015. 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 Aug 2016,
 - c) MSEDCL Chief Engineer, Commercial Letter No. PR-3/Tariff/no 16403 dated 5th Jul 2017
 - d) Letter PR-3/Tariff/no 16720 dated 10 Jul 2017, tariff difference between continuous & non-continuous should have been given from September 2013 to August 2015.
- 5) MSEDCL first gave tariff difference between continuous & non-continuous from October 2013 to August 2015 instead of September 2013 to August 2015 in the bill issued in October 2017.

- 6) The complainant approached IGRC Yavatmal on date 23-07-2018 for
- a) For pending tariff difference for one month September 2013,
 - b) To provide interest on respective monthly tariff difference of amounts since September 2013 to September 2015 upto October 2017 as per regulation 60(6) and also interest on the delayed payment of such interest amount from October 2017 till the actual date of payment of such interest at the rate of delayed payment surcharge
- 7) IGRC Yavamal vide order in case no 9/18 Dated 31 Aug 2018 granted one month tariff difference of September 2013. This tariff difference has been credited in bill of complainant consumer no 3700019002626 of August 2018 but has not given interest on tariff difference amounts. The amount of tariff difference refund from October 2013 to August 2015 has been credited in our bill of October 2017. One month tariff difference has been granted in the bill of August 2018. But the amount is credited after a very long delay and actually it is done in October 2017 & August 2018. Hence, MSEDCL is liable to **provide interest** on respective monthly tariff difference amounts since October 2013 to September 2015 till October 2017 as per regulation 60 (6). Also interest on September 2013 tariff difference amount till August 2018.
- 8) The Hon'ble Commission 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. The relevant extract of the Order of the Hon'ble Commission in **Case No. 44 of 2017** reproduced as under:
- The connection has now been provided, though belatedly. However, MSEDCL did not pay the amount of penalty to the Petitioner as directed by the EO. The Commission directs MSEDCL
- (1) To pay to the Petitioner the amount of Rs. 500 per day accruing from 1st April, 2016 to 27 April, 2017 (the date of the connection);
 - (2) To pay to the Petitioner the interest applicable for the delay in paying that amount from 27 April, 2017 till the date of its payment;
 - (3) To pay these amounts directly to the Petitioner within one month, or through adjustment in his electricity bill for the ensuing billing cycle, if not already paid by the time of this Order; and

- (4) To recover the interest paid from the official(s) responsible for the delay in payment (it appears that the field officers had sought sanction from the MSEDCL HO, but there was no timely response), and report such recovery to the Commission within 3 months.”
- 9) 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 October 2013 to August 2015 up to October 2017 & on tariff difference amount of September 2013 since September 2013 upto August 2018. 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.
- 10) There also has been over delay in providing such interest cost to the complainant. MSEDCL is also liable to pay interest on such delayed payment of interest cost from September 2013 to August 2015 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.
- 11) The complainant further requested that a specific timeline should be stipulated as required by Regulation 17.18 of the MERC (CGRF and EO) Regulations, 2006
“ An order passed or direction issued by the Electricity Ombudsman shall be binding on the parties so named in the order or direction and such order or direction shall be implemented or complied with by the Distribution Licensee or the person required by the order or direction to do so and within the time frame stipulated therein and further intimation of such compliance shall also be made to the Electricity Ombudsman within the time frame stipulated in that regard therein.”

Prayer of the complainant before the Forum:

M/s Raymond Uco Denim Pvt. Ltd. prays to the Forum to;

- 1) Provide interest on respective monthly tariff difference of amounts since October 2013 to August 2015 upto October 2017 & on monthly tariff difference amount of September 2013 since September 2013 to August 2018 at the rate the Hon’ble Commission has allowed carrying cost to MSEDCL in various Tariff Orders,

- 2) Also interest on the delayed payment of such interest amounts from September 2013 to August 2015 till the actual date of payment at the rate of Delayed Payment Surcharge,
- 3) All above amounts to be credited in monthly electric bill of November 2018 billed in Dec 2018,
- 4) Allow additional submission if any.

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

The respondent submits its Reply as under;

1) It is important to note that as soon as the application is given by the consumer it doesn't become eligible directly since the option was made available only once after the tariff order and that too within one month of the tariff order. The reason and the base for filing of MERC Case No.94 of 2015 on behalf of MSEDCL was the same that since consumers were not allowed to switch to non-continuous tariff in between and the same rule was inconsistent with Regulation 9.2 of SOP Regulations. Again it is clarified that MERC case No.94 of 2015 was filed in order to allow consumers to change the tariff from continuous to non-continuous and vice versa since at that time MSEDCL was facing the problem of consumers switching to Open Access. The details mentioned in the MERC case No. 94 of 2015 are to be read in the present matter and therefore this respondent is annexing the order dated 19/08/2016 in MERC Case No.94 of 2015.

2) This answering respondent specifically submits that after the passage of order by MERC in Case No.94 of 2015 dtd 19/08/2016 there was a thorough and detail analysis of the same and the Board of Directors of MSEDCL was pleased to pass a resolution on 01/06/17 wherein it was decided to comply the order of Hon'ble MERC in Case No.94 of 2015 and a mechanism was devised as per Board Resolution and instructions were given vide Lr.No.PR-3/Tariff/No.16720 dtd 10/07/2017 issued by Corporate Office

3) The complainant consumer is not eligible for any interest in the present matter. 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. . The point noted by Hon'ble MERC while passing the order is quoted here for kind perusal of the forum.

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 notwithstanding that it may be wrong in law or may even be void. In its Judgment in the Case of *Krishnadevi Malchand Kamathia vs. Bombay Environmental Action Group & Ors.* ((2011) 3 SCC 363), the Supreme Court held as follows.

“It is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil* [(1996) 1 SCC 435 : AIR 1996 SC 906] , *Tayabhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.* [(1997) 3 SCC 443 : AIR 1997 SC 1240] , *M. Meenakshi v. Metadin Agarwal* [(2006) 7 SCC 470] and *Sneh Gupta v. Devi Sarup* [(2009) 6 SCC 194] , this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum”.

In *State of Punjab v. Gurdev Singh* [(1991) 4 SCC 1 : 1991 SCC (L&S) 1082 (1991) 17 ATC 287 : AIR 1991 SC 2219] this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe RDC* [1956 AC 736 : (1956) 2 WLR 888 : (1956) 1 All ER 855] , wherein Lord Radcliffe observed (AC pp. 769-70)

“An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity [on] its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders.”

In *Sultan Sadik v. Sanjay Raj Subba* [(2004) 2 SCC 377 : AIR 2004 SC 1377] , this Court took a similar view observing that once an order is declared non est by the court only then the judgment of nullity would operate erga omnes i.e. for and against everyone concerned. Such a declaration is permissible if the court comes to the conclusion that the author of the order lacks inherent jurisdiction/competence and therefore, it comes to the conclusion that the order suffers from patent and latent invalidity. Thus, from the above it emerges that even if the order/notification is void /voidable, the party aggrieved by the same cannot decide that the said order/notification is not binding upon it.

4) Here it is important to note that this case was an exception to all other cases because the issue was taken up by the commission and clarified that MSEDCL cannot randomly allow consumers to switch from Continuous to non-continuous and therefore present Complainant Consumer is not eligible for any kind of interest on the amount refunded to him. The refund was eligible only after the order passed by Hon'ble MERC.

It is specifically submitted herewith by this answering respondent that though consumer has availed Continuous supply for the period September 2013 to August 2015 he has now paid as per non continuous tariff and has enjoyed continuous tariff and therefore interest cannot be awarded to the complainant consumer as already we have refunded the whole amount by applying non-continuous tariff. The basic principles of natural justice don't allow double benefit in like matters.

5) In the present case since this complaint is totally different and refund of tariff difference is given after the clarifications and interpretations given by Hon'ble MERC in Case No 94 of 2015

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 complainant's claim of tariff difference from Sep-13 to Aug -15 the Non Applicant MSEDCL has already passed the credit of differential amount from Continuous to Non continuous from Oct 13 to Aug 15 in the energy bill for the month of Oct 17. As per IGRC Yavamal's order in case no 9/18 Dated 31 Aug 2018 granted one month tariff difference of September 2013. This tariff difference has been credited in bill of complainant consumer no 3700019002626 of August 2018 but has not given interest on tariff difference amounts. Hence there is no dispute left on the question of refund of differential amount.

- 3) The complainant's claim for interest on delayed payment of differential amount is found valid. The carrying cost relates to determination of tariff and has no relevance in the present case. The Forum feels that the interest to be paid on the delayed payment of tariff differential amount should be 12% p.a in the light of order by Hon'ble MERC in case no 23 of 2004.
- 4) The Forum finds no merit in the claim of the complainant for interest on delayed payment of interest as it would amount to paying compound interest on the amount of tariff difference.

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

- 1) The complaint number 28/2018 is partly allowed.
- 2) N.A MSEDCL is directed to pay interest to the applicant as follows:
 - a) On tariff difference amount for the period Oct 13 to Aug 15 @ 12% per annum from Oct-13 to Oct 17 when this principal amount was actually refunded.
 - b) On the amount of tariff difference for Sep 13 @ 12% per annum from Sep-13 to Aug 18 when this principal amount was actually refunded.
- 3) The compliance of this order shall be done within 30 days from the date of receipt of the said order.

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:

THE ELECTRICITY OMBUDSMAN,
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