



CONSUMER GRIEVANCE REDRESSAL FORUM
 UrjaBhavan, 3rd Floor, Bhigwan Road, Baramati -413102
 Tel. No. 02112-244772, 74 (O), Fax No. 02112- 244773
 E-mail: cebaramati@mahadiscom.in/ cgrfbaramati1@gmail.com

Case No.: 16/2018

Date of Grievance: 07 /09/2018

Date of Order: 13/12/2018

M/s. Tata Communication Ltd.,
At-Modi Khana, Kasba,,
Solapur-413001.

Applicant

(Herein after Referred to as consumer)

Versus

Executive Engineer (Nodal Officer)
 M.S.E.D.C.L., Circle,
 Solapur, ?

Opponent

(Herein after referred to as Licensee)

Quorum

Chairperson	Mr. B. D. Gaikwad
Member	Mr. S. K. Jadhav
Member Secretary	Mr. M. A. Lawate

Appearance:-

For Consumer: - 1-Mr. Subhash Pawar (Representative of M/s. Tata Communication Ltd)

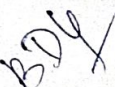
For Respondent: - 1- Mr. C.J. Dighe, Executive Engineer, Division office, Solapur (U).
 2- Mr. R. D. Magar, Add. Executive Engineer, Flying Squad, Solapur.
 3- Mr. G. V. Devkar, Add. Executive Engineer, Flying Squad, Solapur (C).

ORDER

(Date:-13/12/2018)

- 1- The Consumer above named has filed present Grievance under Regulation No. 6.4 of MERC (CGRF & E.O.) Regulations 2006.
- 2- The Consumer M/s. Tata communications Ltd was previously known as M/s. Videsh Sanchar Nigam Ltd (VSNL). The consumer has established, maintained and operated Internet service throughout Maharashtra state as well as through of India and world with the help of fiber optical cables. The consumer has installed telecom Equipments for signal busting and data conversation at various locations. There is IT registration

- certificate issued by Joint Director of Industries, state of Maharashtra, Mumbai for providing IT and ITES (Information Technology Enabling services) There is also License issued by department of Telecommunication Government of India to provide said services. The consumer is legally entitled for electric supply as per industrial tariff.
- 3- The IT registration certificate of the consumer issued by Director of Industries Mumbai, bears the address of Tower A&B plot C 36, 4 Bloc, Bandra-Kurnla complex, Mumbai 400098 and said Registration is valid upto 30.3.2020. The main server of the consumer is located on above address at Mumbai.
 - 4- The flying squad Solapur has inspected the premises of consumer having consumer No. 330241622193 on 21.6.2017. The consumer was informed that Electricity bills shall be charged as per commercial tariff. The consumer was directed to produce Registration certificate of competent Authority having address of Solapur.
 - 5- The consumer has applied to Department of Industries for Registration certificate at Solapur address and the decision is in the process. The consumer is ready to produce such certificate as soon as it is obtained from the concern department .The consumer submits that the bills may be charged as per Industrial tariff as same tariff was charged previously. The consumer is providing services to state and central Govt. offices and Electric supply may not disconnected for non-payment of difference bill of Rs. 40,73,340/- The consumer has submitted request letter to MSEDCL but no relief was given by MSEDCL.
 - 6- The consumer has submitted his grievance before Internal Grievance Redressal forum (IGRC) Solapur. The IGRC rejected the grievance on the ground that there is no registration certificate of consumer having Solapur address to provide said IT and ITES services.
 - 7- The consumer has therefore submitted present grievance before this forum. The notice was issued to MSEDCL. It filed say on record. It contented that during Inspection on 21.6.2017, it was found that there is no any mobile tower in the premises of consumer. The usage of Electricity is for Amplification of OFC signal and National Long Distance (NLD) charging center. Therefore, MSEDCL has informed change in the tariff category from Industrial to commercial and issued difference bill. It was also informed to the consumer to submit IT/ITES permanent Registration issued by compliant Authority having address of Solapur. The consumer did not submit such certificate till this date.



- 8- There was site visit of consumer's premises afresh on the request of consumer on 22.2.2017. There was mobile tower but it was of M/s. Birla AT&T communication Ltd. and there is separate connection having consumer No. 330249051050. According to MSEDCL the change in the tariff is legal and proper. The consumer is liable to pay difference bill.
- 9- Heard representatives of both parties and also perused documentary evidence on record. The following points arise for our consideration and we have recorded findings thereon for the reasons stated hereinafter.

POINTS

- I) whether change in tariff from Industrial to commercial is proper as per rules?
II) What order?

FINDINGS

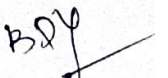
- Yes.

- As per final order?

REASONS

- 10- **POINT No:-** 1) There is no dispute that the bills were being charged as per Industrial tariff. There was spot inspection of said consumers premises and MSEDCL has issued difference bill of Rs. 40,73,340/- The record indicates that for IT/ITES, the tariff applicable is Industrial. It is submitted by MSEDCL that the registration certificate of IT and ITES of the consumer is issued by Joint Director of Industries (Mumbai Metropolitan Region) Mumbai. The Registration certificate should be issued from competent Authority having address of consumer of Solapur where such services are rendered. It may be noted that such certificate having address of Solapur was never demanded by MSEDCL previously. The bills were charged as per Industrial tariff since the date of connection.
- 11- There was inspection by flying squad Solapur on 21.6.2017 and on the basis of Inspection tariff is changed from Industrial to commercial and difference bill of huge amount of Rs. 40,73,340/- is issued by MSEDCL. The MSEDCL was demanding Registration certificate of Solapur address form the date of Inspection, but no such certificate is produced. As the certificate is not produced, MSEDCL has changed the tariff and demanded difference bill retrospectively. Now the question is whether such difference bill can be claimed and recovered retrospectively. In our view tariff difference bill cannot be claimed retrospectively. It can be recovered only from the date of detection of the error which is 21.6.2017.





12- Classification and Reclassification of Consumers into Tariff category: - The distribution Licensee may classify or reclassify a consumer into various Commission-approved tariff categories based on the purpose of usage of supply by such consumer.

Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission.


13- In the order dated 11th February, 2003 in Case No. 124 of 2001, the commission has held as under:

"No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the 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 the strict senses of the term to be recovered retrospectively"

14- Similarly, in the order dated 7th August 2014 passed by the Appellate Tribunal for Electricity (APTEL) in Appeal No. 131 of 2013 in the matter of Vianney Enterprises versus Kerala State Electricity Regulatory Commission and an, it is held that the arrears for difference in tariff could be recovered only from the date of detection of error.


15- Based on the order of the commission dated 11th February, 2003 in case No. 24 of 2001 and the order of APTEL dated 7th August 2014, it has been held by Electricity Ombudsman (Mumbai) in its orders dated 23rd December, 2014 in Representation No. 124, 125 and 126 of 2014 that the recovery on account of reclassification can be prospective only.


16- In view of above settled position of law, we are of the view that the MSEDCL cannot recover difference bill retrospectively. However, MSEDCL can recover difference bill from 21.6.2017 which is the date of detection of error. As consumer did not produce required Registration Certificate the change in tariff from Industrial to commercial is legal and proper. We therefore answer above point I in the affirmative and pass following order.

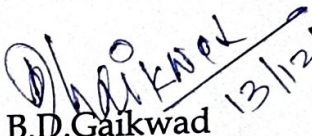


ORDER

- 1- The Grievance is partly allowed as under.
- 2- The difference bill of Rs. 40,73,340/- is hereby quashed and set aside.
- 3- The Respondent MSEDCL is at liberty to issue plain difference bill from 21.6.2017.
- 4- The respondent MSEDCL is at liberty to change tariff form commercial to Industrial on production or registration certificate as required.
- 5- No order as to cost.


M. A. Lawate
Member/Secretary
CGRE, BMTZ, BARAMATI


S.K. Jadhav
Member
CGRE, BMTZ, BARAMATI


B.D. Gaikwad
Chairperson
CGRE, BMTZ, BARAMATI
13/12/2018

- Note:-** 1) This representation could not be decided within the period of two months as MSEDCL and Consumer have requested for adjournments.
- 2) The Consumer if not satisfied may file representation against this order before Hon'ble Ombudsman within 60 days from date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, BandraKurla Complex,
Bandra (East), Mumbai-51.