



CONSUMER GRIEVANCE REDRESSAL FORUM
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Case No.: 23/2018

Date of Grievance: 22 /10/2018

Date of Order: 16/01/2019

M/s Swaraj Industries Ltd.,
 Somanthali, Tal- Khandala,
 Dist- Satara.

Applicant
 (Hereinafter referred to as consumer)

Versus

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

Opponent
 (Hereinafter 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. Javed Momin (Representative of M/s Swaraj Industries Ltd.)

For Respondent: - 1- Mr. N. B. Kale, Add. Executive Engineer, Sub-Division, Phaltan U.

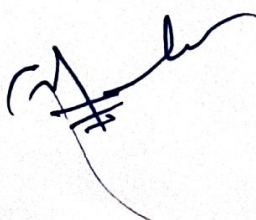
ORDER

(Date:- 16/01/2019)

1. The Complainant above named has filed present Grievance under regulation 6.4 Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations 2006, Hereinafter referred to as Regulation of 2006.
2. The consumer is LT Industrial but presently charged as per commercial tariff. The sanctioned load is 60 KW/HP, connected load is 60 KW/HP, and contract demand is

28KVA. The date of connection is 05/4/2004. The Electricity is being used by M/s. Swaraj Industries Limited at Gat no. 21 at Somanthali Tal- Phlatan, Dist- Satara. The consumer number is 202680360709.

3. It is the case of consumer that the flying squad has visited consumer premises on 8.12.2017 and observed that presently consumer is billed as per commercial tariff but from the date of connection (05.4.2004) billed as per Industrial tariff. The use of electricity is for milk collection centre. As per commercial tariff order of MERC dated 26.6.2015, milk collection centers are shifted to commercial category. The assessment is proposed from June 2015 to Dec 2017.
4. On the basis of report of flying squad, MSEDCL has issued plain difference bill for the month of June 2015 to Dec 2017 and Jan 2018 onwards bill as per commercial tariff. According to the consumer said bills are illegal and against the tariff orders passed by MERC. The bills should be charged as per Industrial tariff. The bills issued as per commercial tariff may be set-aside and the excess amount paid may be refunded with interest
5. According to consumer Industrial tariff is applicable in the present case. The consumer has submitted his grievance before Internal Grievance Redressal cell (IGRC) satara, on 25.4.2018. The said Grievance was rejected on 23.8.2018 on the ground that there is milk collection centre and there is no processing on the milk and so commercial tariff is applicable. The consumer being aggrieved with order of IGRC, has filed his grievance before this forum. The notice of this grievance is served to MSEDCL. On appearance, it resisted the present Grievance.
6. The MSEDCL has resisted the Grievance, contending that flying squad satara has inspected the connection on 08.12.2017. It was found that usage of electricity is only for collection of milk and there is no any processing activity. The milk collected is cooled to 3 to 4(C) and transported elsewhere for further processing. As it is milk collection centre, the bills as per commercial tariff are issued to consumer. The plain difference bills are issued. The consumer is directed to pay the said bills. The consumer may be directed to pay said bills. The grievance is devoid of merits and may be rejected.
7. We have heard the representatives of both parties. We have also perused documents filed by both parties on record. The only question before us is which tariff is applicable



in the present case. If industrial tariff is applicable, the action taken by MSEDCL will be wrong and against the regulations. Naturally consumer will be entitled for the appropriate reliefs in such case.

8. The learned representative of consumer has placed reliance on MERC tariff order dated 26.6.2015 in case No. 121/2014 wherein milk processing/chilling plants (Dairy) is in the category of LT V (B) LT Industry-General. It is clear that for milk processing/chilling plants (Dairy) the Industrial tariff is applicable. It cannot be said that consumer is merely running milk collection centre. It is an admitted fact that milk is collected, but for the said activity hardly 300 wats of bulbs, tubes and fans are required. The connected load of consumer is 60 KV/H.P. and electricity is mostly used for chilling milk and machineries used for the said purpose. The Dominant or main use of electricity is for chilling plant. The learned representative of consumer rightly submitted the details of machinery required for chilling milk. It is needless to say that if there is no chilling of milk, there will be bacterial growth in the milk and it will not be fit for human consumption. If there is chilling plant of milk, the tariff applicable shall be Industrial and not the commercial tariff. In the present case collection of milk is merely ancillary activity and it cannot be milk collection centre only to which commercial tariff is applicable.
9. Even for the sake of arguments, it is accepted that commercial tariff is applicable, there cannot be retrospective recovery of difference bills as claimed by MSEDCL. It can be from the date of detection of error. The learned representative of consumer has rightly relied on the MERC case no. 24/2001 dated 11/2/2003 wherein Para 23 reads as under.

"No retrospective recovery of arrear 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 sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the commission will have to be sought as any reclassification of consumer directly affects the revenue collection etc. as projected in its





Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective. "

10. The consumer further placed reliance on the judgment dated 7/8/2014 in Appeal No. 131/2013 of Appellate Tribunal for Electricity in the matter of Vianney Enterprises V/s Kerala State Electricity Regulatory Commission. It is held by Appellate Tribunal that the arrears for difference in tariff could be recovered from the date of detection of the error. We are also of the view that MSEDCL cannot recover difference bills retrospectively if there is reclassification of applicable tariff. In the case in hand applicable tariff is Industrial which was the tariff from the date of connection. The commercial tariff is not applicable in the present case and so there is no question to issue supplementary difference bills and recover the same.
11. It is submitted on behalf of consumer that MSEDCL has imposed bills as per commercial tariff and excess amount of bill paid may be refunded or adjusted in future bills with interest. The learned representative of consumer has placed reliance on section 62 (6) of Electricity Act 2003 wherein consumer is entitled to recover excess amount with interest equivalent to bank rate from the licensee. There cannot be any dispute that the licensee shall pay bank interest on the excess amount paid by consumer. Having considered, the arguments and documents on record, We pass following order.

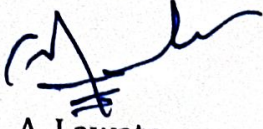
ORDER

- 1- **The Grievance is partly allowed.**
- 2- **It is held that LT Industrial tariff is applicable in the present case.**
- 3- **The excess amount paid if any by consumer shall be refunded or adjusted towards future bills with interest from the date of payment u/s 62 (6) of the Electricity Act 2003**
- 4- **No order as to cost.**





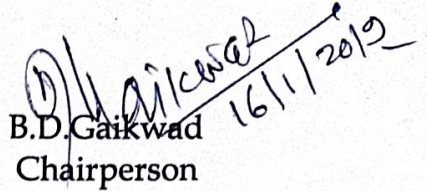
5- The licensee to report compliance within one month from the date of receipt of this order.



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



S.K. Jadhav
Member
CGRE, BMTZ, BARAMATI



B.D. Gaikwad
Chairperson
CGRE, BMTZ, BARAMATI

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, Bandra Kurla Complex,
Bandra (East), Mumbai-51.**