

1) On being aggrieved by the decision of IGRC Buldana issued vide IGRC/BLD/3938 dated 17/12/2018 Shri Rajesh Prabhakar Tipare from Raigad colony Khamgaon approached this Forum under section 6.4 of MERC (CGRF and OMBUDSMAN) Regulation 2006 for resolving the grievance.

2) The Complaint in brief is that complainant is industrial consumer of N.A .M.S.E.D.C.L from 21/01/2013. According to complainant since the date of connection on 21/01/2013 complainant is using electric supply for the purpose of Aqua mineral water R.O. plant as per the purpose mentioned in the A1 application form and N.A .M.S.E.D.C.L applied 'Industrial tariff' under LT V category and energy bills were issued by N.A .M.S.E.D.C.L. According to complainant energy bills issued by N.A .M.S.E.D.C.L were paid regularly under LT V category. According to complainant the premises is registered in the name of Balaji water purifier with District Industries Centre Buldana at part 1 form no. 03297 on 21/01/2013. According to complainant the Flying squad of N.A .M.S.E.D.C.L from Buldana visited the premises of R.O. Filter Plant on 13/04/2018 and inspected the Industrial place but did not give the copy of Inspection report dated 13/04/2018 to the complainant. According to complainant Additional Executive Engineer Flying Squad on 13/04/2018 informed complainant orally that N.A .M.S.E.D.C.L is reclassifying the unit under commercial tariff category and replaced the meter on 13/04/2018 without any reason. According to complainant N.A .M.S.E.D.C.L under the signature of Additional Executive Engineer Urban MSEDCL Khamgaon issued Assessment bill, termed as Demand Note (Provisional/ Final) No. 9484 for Rs. 2,71,430/- vide letter No. 1144 dated 21/06/2018. According to complainant the reason of assessment bill mentioned on demand note was "Wrong tariff" [LT-VB to LT II (com)]. According to complainant Additional Executive Engineer Khamgaon with copy to Executive Engineer, Superintending Engineer, and E.D Mumbai of MSEDCL were intimated about registration of unit with DIC Buldhana under certificate No. 3297 and withdrawal of assessment and sought natural justice by letter dated 26/06/2018 which is acknowledged by all the authorities of N.A .M.S.E.D.C.L . According to complainant as no cognizance of letter dated 26/06/2018 is taken by any of the N.A .M.S.E.D.C.L authorities the complaint was lodged with IGRC Buldana on 28/11/2018. According to complainant the action on the part of N.A .M.S.E.D.C.L. to issue assessment bill of Rs. 2,71,430/- by reclassifying under commercial tariff

is illegal and violates clause 13 of supply code regulation 2005 as powers to classify or reclassify are with MERC and commission in its tariff orders after date of connection have not reclassified the R.O water plant in commercial tariff. According to complainant retrospective recovery due to abrupt reclassification is not permitted as per clause 56(2) of E.A. 2003 and cited precedent orders issued by APTEL in appeal No. 131 of 2013 in the matter between Winery Enterprises Vs Kevola regulatory commission issued on 07/08/2014 and MERC order in Case No. 24 of 2001 issued on 11/02/2003. Complainant prays to set aside the assessment bill amounting to Rs. 2,71,430/- issued to complainant vide letter No. 1144 dated 21/06/2018 towards tariff difference and restore the Industrial tariff for future billing. Complainant Annexed copy of IGRC complaint with order dated 17/12/2018, letter AEE/MSEDCL/2179 dated 15/11/2018, complainant's letter dated 01/11/2018, CGRF Akola order in 37 of 2018, dated 12/10/2018, energy bill for April 2018, Additional Executive Engineer letter dated 21/09/2018, complainant's letter dated 25/09/2018, B-80 revision dated 14/06/2018, copy of assessment sheet by Additional Executive Engineer flying squad dated 12/06/2018 copy of letter AEE/1144 dated 21/06/2018, complainant letter dated 26/06/2018, copy of load sanction dated 03/11/2012, NOC dated 31/08/2012 of Municipal Council Khamgaon, Udyog aadhar, statement of Additional Executive Engineer flying squad before IGRC Buldana and circular no. 302 dated 31/03/2018, issued by N.A .M.S.E.D.C.L with the complaint.

3) Reply came to be filed by N.A .M.S.E.D.C.L on 18/01/2019. According to N.A .M.S.E.D.C.L Additional Executive Engineer of flying squad from Buldana inspected the premises of complainant on 12/06/2018 and found that LT V industrial tariff is made applicable instead of LT II commercial category and assessed the energy bill for 24 month preceding the inspection for Rs. 2,71,430/- and assessment bill issued to complainant. According to N.A .M.S.E.D.C.L electric connection to RO Water plant of complainant was released on 21/01/2013 and billed as per industrial tariff but as per statement of Additional Executive Engineer flying squad recorded before IGRC, complainant failed to produce the DIC certificate on demand to flying squad. According to N.A .M.S.E.D.C.L complainant submitted "Udyog Aadhar" registration on 27/11/2018 which proves the fact that complainant's unit was not registered with DIC on 21/03/2013. According to N.A .M.S.E.D.C.L assessment bill and change of tariff to commercial category is correct as per commercial circular no. 302 dated 31/03/2018. According to N.A .M.S.E.D.C.L the reply to the letter of complainant

dated 26/06/2018 is given as per ref (4) with copy to Superintending Engineer of corporate office and complainant was requested to pay the tariff difference. According to N.A .M.S.E.D.C.L the allegations of threatening are denied. According to N.A .M.S.E.D.C.L complainant was directed to take up the matter of applicability of CGRF Akola order no. 37 of 2018 to this complaint as precedent, with corporate office of MSEDCL as not within the purview of Nodal officer MSEDCL Khamgaon. N.A .M.S.E.D.C.L annexed "Udyog Aadhar" registration, statement of Additional Executive Engineer flying squad dated 13/12/2018, Additional Executive Engineer, MSEDCL letter dated 15/11/2018 and 21/09/2018 and Additional Executive Engineer flying squad letter no. 130 dated 12/06/2018 with the reply.

4) Shri Pramod N. Khandagale learned representative for complainant and Shri R. R. Mahulkar, Additional Executive Engineer MSEDCL along with Shri S. S. Kute, Additional Executive Engineer Flying Squad MSEDCL for respondent were present for the hearing held on 01/02/2019. Shri Pramod N. Khandagale complainant's representative filed on record at the time of hearing written note of argument, registration certificate with DIC Buldana no. 3297 dated 30/08/2012, flow chart of RO plant, copies of MSEDCL commercial circular no. 311 and 302 of 2018, copies of national industrial code 2008, MERC case no. 24 of 2001, APTEL order no. 131 of 2013 Apex court order in the matter between P. C. Cheriyan and Burfi Devi dated 16/10/1979 and High court Patna Judgment in civil writ Jurisdiction case no. 9309 of 2008.

5) Shri Pramod N. Khandagale learned representative of complainant re-iterated the grievance on record and brought the provisions of clause 13 of supply code regulation 2005 to the notice of Forum and urged that N.A .M.S.E.D.C.L may classify or reclassify consumers into various commissioned approved tariff categories based on the purpose of usage of supply of such consumer. Shri Pramod N. Khandagale urged that in present grievance industrial category of complaint was changed to commercial category without the approval of MERC. Shri Pramod N. Khandagale urged that N.A .M.S.E.D.C.L classified consumer as industrial at the time of connection on 21/01/2013 considering purpose as "Aqua R.O Mineral plant" with supporting document of DIC registration dated 30/08/2012 submitted with A1 application. Shri Pramod N. Khandagale referred tariff order at the time of connection on 21/01/2013 and

tariff order at the time inspection by flying squad on 13/04/2018 and brought to the notice of Forum that there is no change in categorisation of Aqua Mineral water plant in both the tariff order. Shri Pramod N. Khandagale brought on record that MERC in there tariff order in 2012 and 2016 have never made SSI certificate mandatory for determination of industrial tariff. Shri Pramod N. Khandagale explained the “Reverse Osmosis” process of Aqua mineral plant involving pumping, filtration and cooling process by machine. Shri Pramod N. Khandagale further brought to the notice of Forum that according to standard industrial classification data issued by central statistical organization in 2008 water treatment plant is classified as industry. Shri Pramod N. Khandagale filed on record MERC case no. 24 of 2001 in support of his plea that classification or reclassification of consumer is the prerogative of MERC. Shri Pramod N. Khandagale complainants representative urged that classification of complainant changed as commercial by flying squad of MSEDCL is illegal and requested Forum to set aside the assessment bill as per commercial tariff amounting Rs. 2,71,430/- issued by N.A .M.S.E.D.C.L on 21/06/2018 and restore the original industrial tariff.

6) Shri S. S. Kute, Additional Executive Engineer of flying squad urged that at the time of inspection of premises on 13/04/2018 complainant failed to submit DIC registration certificate on demand hence as per commercial circular no. 302 issued on 31/03/2018 by MSEDCL category of aqua mineral water plant is changed to commercial and assessment bill for difference of last 24 month preceding April 2018 was issued on 12/06/2018 for Rs. 2,71,430/-. Shri S. S. Kute urged that since purpose of “cooling” is in commercial category LT II as per commercial circular no. 302 dated 31/03/2018 the assessment bill issued to complainant is correct. Shri R. R. Mahulkar, Additional Executive Engineer MSEDCL urged that assessment bill for Rs. 2,71,430/- was issued to complainant on 21/06/2018 as per assessment bill raised by Flying Squad MSEDCL Buldana.

7) Having heard the parties and after considering material placed on record Forum is of the view that following issues need consideration for resolving the present grievance.

1) Whether N.A .M.S.E.D.C.L is correct in holding that complainant’s ‘Aqua mineral R. O. water plant would fall under LT-II commercial category for applicability of tariff as per relevant tariff order issued by MERC ?

- ii) Whether MERC in any of the tariff orders from 2012 to 2018 classified or reclassified 'Aqua mineral R.O water plant' in commercial category and included in the list under commercial category ?
- iii) Whether N.A .M.S.E.D.C.L has erred in applying industrial tariff LT V to Aqua mineral water plant at the time of connection on 21/01/2013 ?
- iv) Whether SSI certificate or registration with District industries centre is made mandatory by MERC for applying industrial tariff to 'Aqua mineral R.O. water plant in tariff order ?
- v) Whether Flying squad of MSEDCL is authorised to reclassify the tariff as per supply code regulation 2005 without approval of MERC ?

All the above issues are considered together by the Forum and examined tariff order 19 of 2012 issued on 16/08/2012 applicable from 01/08/2012, 121 of 2014 issued on 26/06/2015 applicable from 01/06/2015; 48 of 2016 issued on 03/11/2016 applicable from 01/04/2018 and 195 of 2017 issued on 12/09/2018 applicable from 01/09/2018 and found that Aqua mineral R.O. water plant is not included in list appended below LT II commercial category or LT V industrial category. Forum is of the view that Aqua mineral R.O. water plant engaged in processing the hard water and converting it to soft water by removing impurities and hardness satisfies the criteria of manufacturing for applicability of industrial tariff as "Reverse Osmosis" process is involved as per flow chart of process filed on record and is industrial activity and held that N.A .M.S.E.D.C.L and Flying squad of MSEDCL erred in reclassifying Aqua mineral R.O water plant to commercial category of the complainant. Forum is also of the view that N.A .M.S.E.D.C.L were correct in applying industrial tariff to the Aqua water plant of complainant on 21/01/2013 and should continue to apply industrial tariff in future till reclassification by MERC in any other category and held that Flying squad of MSEDCL is not the authority to reclassify the tariff. Forum is of the view that SSI certificate or registration under D.I.C is not made mandatory by MERC in applying industrial tariff though the complainant's unit was registered with D.I.C. Buldana on 30/08/2012. Forum is of the view that Additional Executive Engineer of flying squad MSEDCL has exceeded his powers and committed many irregularities such as not issuing inspection report to complainant on 13/04/2018, issuing assessment bill on 12/06/2018 after two months and not verifying record of connection before assessing which needs to be investigated in line with MERC directives and circulars issued by MSEDCL to avoid unnecessary litigations and harassment to consumers. Forum is of the view that demand note

(provisional bill) issued to complainant vide AEE/Kham/1144 dated 21/06/2018 for Rs. 2,71,430/- needs to be set aside and N.A .M.S.E.D.C.L is directed to restore the industrial tariff and all future bills should be issued with industrial tariff.

With these observations, Forum proceeds to pass following unanimous order.

ORDER

1. That the Complaint No. 02/2019 Dated 02/01/2019 is hereby partly allowed.
2. That the N.A .M.S.E.D.C.L is directed to set aside the assessment bill amounting Rs. 2,71,430/- dated 21/06/2018 towards tariff difference of industrial to commercial and directed to restore the original applied industrial tariff and continue to issue all future energy bills as per industrial tariff to complainant.
3. The parties to bear their own cost.
4. That the N.A .M.S.E.D.C.L is directed to submit compliance report to this Forum within one month of this order.

S/d/-
Member Secretary

S/d/-
Member (CPO)

S/d/-
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, Shrikrupa, Vijaynagar,
Chhaoni, Nagpur-440 013. Phone:- 0712-2596670

No. CGRF/AKZ/Akola/48

Dt:- 20.02.2019

To,
The Nodal Officers
Executive Engineer,
MSEDCL, O&M
Khamgaon Division,

The order passed on **20.02.2019** in the Complaint No. **02/2019** is enclosed herewith for further compliance and necessary action.

Secretary,
Consumer Grievance Redressal Forum,
MSEDCL, Akola Zone, Akola.

Copy s.w.r.to :-

- 1) Chief Engineer MSEDCL, Akola Zone, Akola.
- 2) Superintending Engineer MSEDCL, O&M Circle, Buldana.

Copy to :-

- 1) Shri Rajesh Prabhakar Tipare, At-Post Raighad Colony Khamgaon, Tq Khamgaon dist. Buldana.