

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., PUNE ZONE, PUNE**

Case No. 49/2018	Date of Grievance	:	12.11.18
	Hearing Date	:	12.12.18
	Date of Order	:	01.02.19

In the matter of Change of Tariff Category.

The Director, Indian Institute of Science Education and Research (IISR) Pune, Main Bldg., Dr.Homi Bhabha Road, Pashan, Pune- 411008. (Consumer No. 170019071180)	----	APPELLANT
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VS

The Supdt. Engineer, M.S.E.D.C.Ltd., Ganeshkhind Urban Circle, Pune.	----	RESPONDENT
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Present during the hearing:-

A] - On behalf of CGRF, Pune Zone, Pune.

- 1) Shri. A.P. Bhavathankar, Chairman, CGRF,PZ, Pune
- 2) Mrs. B.S. Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr. Anil Joshi, Member, CGRF, PZ. Pune.

B] - On behalf of Appellant

- 1) Mr.Nilesh Kulkarni, EE IISER Pune
- 2) Mr.S.M.Mane, SE IISER Pune
- 3) Mr. Col.G.Raja Sekuar (Retd.) Registrar,IISER, Pune.

C] - On behalf of Respondent

- 1) Mr.Kishor B.Patil, EE, Ganeshkhind Urban Circle.
- 2) Mrs.Sujata R.Karande, Dy.E.E., GKUC, Pune
- 3) Mr.Ganesh M.Dangat, Dy.Manager.

Consumer - No.170019071180, Connecting load 910 KW, Contract Demand
- 740 KVA, Date of supply - 23.04.2010.

The present Appeal is against the Order of IGRC, Ganeshkhind, Urban Circle Pune dt. 30.10.2018 the IGRC has disallowed the grievance of the consumer and ruled that retrospective recovery from June- 2015 from the consumer under the revised category LT-I (Residential) is in order. The brief details of the grievance of the consumer leading to the present appeal are as under –

a) The Appellant consumer is HT consumer and the supply was being used for students' hostels. The consumer stated that it need to have been categorized under 'HT IX A' (i.e. Govt. Public Services) as against LT - I (Residential). The Appellant was, therefore, not in agreement with the Utility for its recategorization of HT consumer into LT Residential and, accordingly, requested the Utility for appropriate categorization to HT IX A (i.e. Govt. Public Services) as against 'LT-I (Residential)' with retrospective effect from June - 2015.

b) To substantiate its claim, the Appellant Consumer had submitted that under LT-I B category, i.e. LT Residential Tariff Category, it is not specified that it is applicable to Govt. Institute Hostels and that the said category is primarily applicable to Private Hostels. The Appellant also further stated about the objections recorded in CAG Audit Report for the year 2016-17 and prayed for refund of excess bill charges paid by it due to improper categorization from HT.

c) The Appellant Consumer, therefore, submitted its application to the Respondent Utility during March, 2018 requesting the Utility to apply proper tariff for the connection supplied to the premises of the consumer which was earlier billed under (HT-IX A) category, which had been unilaterally changed to LT- IB (LT Residential tariff) . This has resulted in steep rise in the bill amount of the consumer, the average rate per unit being @ Rs.16.10 corresponding to monthly bill for Rs.43.00 lacs as compared to average rate per unit being @ Rs.7.77.

d) The Appellant Consumer further stated that other connection provided to the premises was categorized properly and was also billed separately.

e) The representation of the consumer was, however, not considered by the Respondent Utility – i.e. the Supdt. Engineer, who advised the consumer that

the category of the consumer is HT and as the supply was for the purpose of Student Hostels, the request of the consumer to categorize it under HT – IX A cannot be accepted to and, therefore, the consumer was being charged as HT-II Non-Express Tariff up to July, 2012. However, after introduction of the new category as 'Public Services', since Aug. 2012 the tariff category of the consumer had been changed to HT IXA from August, 2012. The Respondent Utility further advised the consumer that recategorization of the consumer into revised category was also in tune with the provisions of the Commercial Circular No. 175 dt. 05.9.2012, and, therefore, there was no reason to consider the requisition of the consumer to recategorize its categorization from HT- IXA (Govt. Educational Institute) to LT-1 Residential.

f) Towards this end, the Respondent Utility had also informed the consumer that as per Circular of MERC Tariff order Sept. 2012, all the Hostels and Student affiliated Educational Institutions premises were covered under 'LT- I Residential Tariff' and therefore, the correct tariff applicable to the consumer was 'LT - Residential Tariff' since the power supply to the consumer was under 'High Holtage' category for the purpose mentioned above.

2. Eventually, the Utility had carried out spot inspection at the main campus premises of the Consumer as a routine matter on 13.3.2018 and the authorities found that the supply provided to the consumer was being used for student hostels and their Guest Houses, the building Annex Hostel I & Hostel-II, Dining Hall, Gust House which necessitated for change in the recategorization of tariff afresh from HT – IX to LT- I effective from March-2018. As a policy matter, the proposed change in the tariff category of the consumer was not considered at the local level / at the level of the Utility itself, but the Forum has directed that such type of cases shall be referred to Hon'ble MERC for their consideration and decision in the matter on top priority. The category of the consumer, was accordingly, changed only after approval from MERC for the changed tariff category specifically for the purpose of Hostel. The consumer was, therefore, advised accordingly.

3. Subsequently, however, on 24.5.2018 the consumer approached the Supdt. Engineer and conveyed that the change in the category leading to revised tariff under 'LT- I Residential' was not appropriate and proper. The

consumer pleaded that since beginning the said premises were being used for the students' Hostel since the year 2012 and that about 2000 students had stayed, studied and utilized the Hostel premises during the said period since 2012 till 2018 when the premises / the consumer was provided power supply under 'High Tension' category only, as was being applied to the consumer. The Appellant consumer also further pleaded that the basic intent of the Respondent Utility, vide its Commercial Circular No. 88 dt. 26.09.2008, as provided in Para 5, wherein it is specified that "LT-I (Residential) tariff is to be levied for the residential consumers availing supply at HT voltage is primarily to provide concessional electricity to individual 'LT Residential' consumers of housing societies etc. since their average monthly consumption of the electricity is contained to 300 units which, in other words, provide them electricity at average rate @ Rs.5.50 / unit as per the tariff structure. As against this, the issues of the consumer, Pune with single HT connection is being used for more than 1800 student hostel rooms with collectively electricity consumption being more than 2,66,930 per month units. On this background, the consumer, therefore, contended that the revised assessment of the consumer on 19.05.2018 for 'Supplementary Bill' representing the tariff difference from 'HT-IX B' to 'LT - I (Public Services Residential)' for its reclassification under 'LT-I Residential' for the period from June, 2015 to February, 2018 for amounting to Rs.3,67,89,640.00 is erroneous one and, therefore, not acceptable. Towards this end, the consumer pleaded that following the unilateral reclassification in the tariff category, their liability for the same power consumption has shoot up to an unprecedented level. To supplement their representation, the Appellants have placed on record their Bill of Supply for the month of August, 2018 and pleaded that average rate per unit for their consumption comes to Rs.16.10 per unit subsequent to their reclassification under tariff applicability. The Appellant consumer further states that for the month of August, 2018, they had to pay total bill of Rs.43,35,000/- for power usage of 2,66,930 units, and in the process, their monthly obligation towards power bill has shoot up by Rs.20.00 lakhs. The Consumer accordingly filed the grievance in Form No. X on dated 28.9.2018 before IGRC. After receiving the said application under Form X IGRC registered the case vide Case No.T-25 of 2018 and an

opportunity of hearing was given to the consumer and the utility representative on 16.10.2018. The IGRC, accordingly, concluded that the supplementary bill issued to the consumer was in order and, therefore, passed an order on 30.10.2018 directing the consumer to pay the tariff difference retrospectively since June-2015 for change of the category from HT IX B to 'LT I Residential' as per the supplementary bill generated & issued to the consumer.

4. Aggrieved by the order of the IGRC, the Appellant consumer had filed the present Appeal to this Forum which is registered with the distinctive number as Case No. 49/2018 dt. 12.11.2018, in which the Consumer has prayed for application of appropriate tariff and set aside the exorbitant and accumulated bill since June-2015. The consumer also prayed that revised bill following recategorization under tariff, which is revised and generated as per change in category to 'LT-I Residential' should not be assessed retrospectively, but prospectively from the date of detection of error. The consumer also further claimed that the arrears in lump sum may also not be charged to it along with other benefits claimed by the consumer to refund the excess payment if made earlier due to change of tariff. Accordingly, as required under Regulation No. 6.12 of MERC (Consumer Grievances Redressal Forum & Electricity Ombudsman), Regulation, 2006, a Notice bearing No. 350 dt. 15.11.2018 was served on the Respondents – i.e. the Supdt. Engineer, Ganeshkhind Urban Circle, Pune, forwarding with it a copy of the Appeal filed by the Appellant, directing the Respondents to file their say to the Appeal, on or before 29.11.2018 providing therein issue-wise and point-wise comments on the Appeal, together with status report on the order of the IGRC together with relevant documents in support thereof for their defense. The Respondents, however, failed to keep the timeline specified by the Forum and also did not seek extension in time from the Office of the CGRF for their submission. As against, the Respondents filed their say bearing No.6396 dt. 30.11.2018 which was, however, received at the Office of the CGRF on 6th December, 2018. However, one day prior to receipt of the said reply from the Respondent (i.e. on 05.12.2018), the Office of the CGRF had already issued Notice for final disposal of the Appeal of the Consumer

vide its Notice No. 365 dt. 05.12.2018 presuming that the Respondents have nothing to submit. Accordingly, the personal hearing in the matter was slated for hearing on 12th December, 2018.

5. In its submission the Respondent Utility stated that the consumer being categorized earlier by IT Section from HT-II to HT IX but thereafter consumer made application for change of tariff. In view of Circular No.175 dated 5.9.2012 the tariff category was changed to HT IX. Government Auditor objected the application of HT IX tariff instead of LT I residential hence the tariff was changed. The premises are being used as a campus and for student hostel and guest house. This consumer is HT consumer. According to utility the judgment referred *Awdesh S. Pandey Vs. Tata Power Co. Ltd.* (AIR 2007 BOM 52) and writ petition No.7615 of 2008. In view of Section 56(2) utility can recover wrong tariff recovery difference of the period of supply is being used. In view of the Circular 2012 the LT I Residential tariff applied and supplementary bill is generated, after calculation of difference of tariff applicable of relevant period charged against the consumer, copy of the said calculation and assessment bill, copy of CPL, copy of spot verification report and approval received from higher Office is attached. Respondent Utility submitted that as a consumer wanted except the bill which was inadvertently issued to the consumer taking advantage of APTEL Court judgment. In this case it is not retrospective classification of consumer but it is wrong tariff recovery arrears difference claimed as the supply is being continued September-2012 and its date of connection is 23.04.2010. Therefore consumer is liable to pay the said bill and action taken by the Respondent Utility is legal valid and proper.

6. After perusing the rival contentions of the consumer and the Respondent Utility, following issues arose for my consideration to which I have recorded my findings to the point for the reason given below :

- a) Whether Respondent Utility is entitled to recover tariff difference from the consumer for recategorization from earlier 'HT IX' to 'LT 1 Residential' since June, 2015 to February, 2018 for Rs. 3,67,89,640/-

- b) Whether the notice issued to the consumer for disconnection of supply under Section 56 (2) is legal valid and proper? (?)
- c) Whether consumer is entitled for application of appropriate / revised tariff since the date of detection of error?
- d) Whether consumer is entitled for any relief?
- e) What order?

REASONING :-

(a) (i) On dated 12.11.2018 I have given an opportunity to the consumer and his representative, as also to the representatives of the Respondent Utility - Ex. Engineer, who were present during the hearing. The grievance of the consumer was verified and the relevant documents were also perused by this Forum minutely. It appears that the premises being used for 'Boys Hostel - Educational Institute' are admittedly of the consumer who is a consumer of the Respondent Utility under HT category. During the course of hearing, it has been brought to the notice of this Forum by the Consumer that for the purpose of application of appropriate tariff for HT consumers under the category for 'Boys and Educational Institute Hostel' purposes, no specific category has been provided in the tariff order issued by the MERC. Obviously this fact was brought to the notice of Utility at the time of their spot inspection and finalization of the report there under. I have perused the relevant Spot Inspection Report dt. 08.03.2018 place before this Forum. It is to be worth mentioning that there is no dispute that the supply under the consumer No. under reference is being used for Boys Hostel, dining block and guest house of the consumer and the consumer, therefore, comes under the category of 'HT'. As per the MERC Tariff Order dt. 16.08.2012 in the Case No. 19 of 2012, as also Utility's Commercial Circular No. 175 of dt. 05.09.2012 and as per subsequent all tariff circulars issued by the Utility from time to time, and relied upon by the Respondent Utility, it is provided that if no specific category is provided under HT consumers and the supply is used taking into consideration the purpose of use, the supply and activity, the appropriate tariff for 'LT' Residential category shall be

applied. In the instant case, the supply is being used by the Appellant for Boys Hostels and the Gust House at consumer's Education Institute level. Therefore the appropriate tariff under LT Residential since 2012 applies since the fact was brought to the notice of Respondent Utility.

(ii) It appears that the action for recategorization of the consumer for the purpose of tariff application has been taken by the Respondent Utility only after verification of report on the request of consumer. The difference of tariff, which was applied earlier up to 2012 i.e. under the category 'HT IXB', when the proceedings were initiated by consumer, though the supply is being used for the same purpose the appropriate tariff category was not considered and tariff applicable to the category 'HT IXA' was being applied till the present dispute had been raised. Considering the load pattern, the has taken the HT supply & accordingly its consumption is on higher side. The Hostel category is not mentioned in the tariff order for HT consumer and hence LT-I Residential category is applicable as per tariff order for billing purposes. Therefore exorbitant bill was generated and issued bill to the consumer as per LT-1 tariff.

(iii) Coming to the aspect of preparation and generation of the disputed bill and calculations provided, it is to be noted that the tariff difference adjustments at the relevant time are calculated by the utility in the supplementary bill issued to the consumer. According to Section 56 (2) of the Electricity Act, 2003, the period of assessment of arrears of tariff difference should not be beyond the period of two (2) years from the date when such sum became first due. In the instant case, obviously the error is detected only after qualifying observations from the Auditors and the liability of the consumer to pay arrears of the bill under recategorization for tariff would, therefore, be restricted to the period of twenty four (24) months payable in twenty four (24) equal monthly installments. The calculations for arriving out the bill amount in arrears as provided by the Respondent Utility for the period since June-2015 apparently is not permitted under Section 56 (2) of Indian Electricity Act- 2003. The Respondent Utility submitted that the writ petitions on the identical issues are pending before the Hon'ble High Court of Mumbai and that the Competent Authority has been awaiting for decision on the said point till the petitions are finally disposed off. Pending

decision of the Hon'ble High Court of Bombay in the writ petitions under its consideration, recovery of arrears for the period exceeding twenty four (24) months from the date of detection, therefore, cannot be permitted. In these circumstance the grievance raised by the consumer is found justified and the decision of the Respondent Utility, as also the order of the IGRC for recovery of arrears of as accumulated bill beyond the period of twenty four (24) months from the consumer is required and liable to be set aside. To my view in existence of recently legal provision and the judgment pronounced on this issue, this Forum permits to recover the arrears of the bills only for twenty four (24) preceding from the date of detection. For rest of the arrears, the Respondent Utility may claim the same subject to the decisions in pending in the writ petitions as referred to by the utility. Under the given circumstances the grievance raised by the consumer is found justified and hence the consumer is bound to get relief.

The time limit of 60 days prescribed for disposal of the grievance could not be adhered to due to member/secretary was on leave. Hence I am inclined to allow the complaint and proceed to pass the following order:

ORDER

1. Consumer Complaint of Case No.49 of 2018 is partly allowed.
2. The Respondent Utility is directed to reassess and revised the bill of the consumer for change in tariff category from LT IXB to LT-I Residential, for 24 months only from the date of earlier of detection of error, and for rest of the period the arrears may be claimed subject to decision in the Writ Petition pending before Hon'ble High Court. The Utility shall not charge any interest, DPC and penalty to the consumer. Other benefits claimed by the consumer are subject to assessment of the bill permissible under the statute.
3. Such Type of cases regarding change in tariff category from HT-IX to LT-1 Residential of all HT consumers was not considered at local level being a policy matter decision. Hence this Forum has directed that, such type of cases shall be referred to CE, (Commercial) or Hon'ble

MERC on top priority & follow up it so that avoidable grievances of the consumer are contained.

4. The earlier supplementary bill issued to the consumer and the order of IGRC stand set aside.
5. No order as to the cost.
6. The Licensee to report compliance within one month from the date of this order.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 1st Feb. - 2019.

Note:-

- 1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman

The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051.

- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I agree / ~~Disagree~~

I agree / ~~Disagree~~

Sd/-

ANIL JOSHI
MEMBER
CGRF:PZ:PUNE

Sd/-

A.P.BHAVTHANKAR
CHAIRPERSON
CGRF: PZ:PUNE

Sd/-

BEENA SAVANT
MEMBER- SECRETARY
CGRF:PZ:PUNE