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Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg,Bhandup (W),
Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/ 175/ 1057 Date: 26.02.2019

Hearing Date: 18.12.2018

CASE NO.175/2018

In the matter of billing

M/s. B.G. Shirke Construction Technology (P) Ltd.,
CTPL, Sector-36,CIDO,
Tal. Panvel.,Dist. Raigad.

(CONSUMER NO.028659039080)

. . . . (Herein after referred as Applicant/Consumer)

Maharashtra state Electricity Distribution Company Ltd
Through it's Nodal Officer,
Vashi Circle,Vashi

..... (Herein after referred as Respondent)

Appearance:-
For Consumer – Shri. H.P Kapadia – Consumer Representative
For Licensee:- Shri. D.B Pawar Executive Engineer (Adm) ,MSEDCL Vashi Circle
Vashi

[Coram- Dr. Santoshkumar Jaiswal- Chairperson, Shri. R.S.Avhad -Member Secretary
and Sharmila Ranade - Member (CPO)].

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of
Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as

‘MERC’. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. “Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006” to redress the grievances of consumers vide powers conferred on it by Section 181 read with subsection 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Here in after referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience.

2. The applicant has filed application directly to CGRF under threat of disconnection and the CGRF passed interim order on 25th September 2018 directing the Respondent MSEDCL Vashi from restraining the disconnection of electricity supply of the applicant if applicant pays amount of 30 lacs before 3 October 2018.
3. During further course of hearing the applicant state that present dispute arises due to transfer of arrears, prior to period of 2 years in the bill of con no 028659039080. The applicant further submit that the report submitted by CAG is

for F.Y 2013-2014, However The Respondent MEDCL ,after 4 years , issued a bill for payment towards tariff difference .The demand raised by the Respondent is incorrect, illegal and time barred as per the provision of Electricity ACT 2003.

4. The applicant further submit that 11kv HT connection at sector 15 Khargar (con no 028659038890) was released in March 2012 and then permanently disconnected in the month of Feb 2016.The respondent first time vide letter dated asked the applicant to pay Rs 82, 58,603/- towards tariff difference amount 17, 93,843/- and The demand raised after period of two years is against the provision of Electricity Acct 2003 and therefore needs to be quashed.
5. The applicant further submit that 11kv HT connection at sector16, Khargar (con no 028659035790) was released in the month of August 2009 and was later permanently disconnected in the month July. The Respondent first time vide letter dated 04.05.2018 ask applicant to pay amount Rs 43, 17,906/-. Since the demand for payment rose after period of two years the same is required to be quashed,
6. The applicant has submitted copies of various orders passed by Hon'ble authorities wherein it is held that as per provision of Electricity Act 2003, Distribution licensee cannot recover any amount with retrospective effect. Moreover Section 56 of Electricity Act 2003 provides no amount can be

recovered unless the same is shown continuously in the bill as payable placed. The applicant various orders of Hon'ble APTEL in appeal no 131/2013, Hon'ble commission in case 24/2001 and Hon'ble Ombudsman in representation 16/2016, 45/2018, 73/3013/4/2014. Hon'ble High-court Mumbai W.P 6783/2019.

7. The notice issued to the Respondent on date 25/09/2018 to appear before forum.

The Respondent MSEDCL has submitted the reply to the notice stating that the recovery levied to consumer is based on Government Auditors report, conducted by office of Comptroller and Auditor General or the CAG, which is constitutional body for audit of Government and Government companies and corporations and bodies and authorities in accordance with the laws made by the legislature and rules made there under. The Observations of C&AG pointed out, undue benefit extracted by consumer, finding loophole in system and observed that consumer was benefited by the same. The observations of C&AG, cannot be challenged in this forum and hence the grievances need to be dismissed by Hon'ble Authority.

8. The Respondent further submit that the Consumer is Registered company under Companies Act and is in the field of Civil Construction and is carrying out turn key projects of Civil Construction in Maharashtra for CIDCO, MADHA and others. Applicant is exclusively in construction business and is not carrying out any other business. Applicant bagged turnkey project of construction of Mass Housing project at Sector 16, Kharghar in 2008, and at Sector 35/36 in 2012. In

order to execute the construction work of tenements, as specified by CIDCO, Applicant applied for HT connection in respective period at sector 16 bearing consumer no 028659035790 and sector 15 bearing consumer no 028659038890. Applicant while submission of application submitted the purpose for Batching and Casting plant and maintained impression that Batching and Casting are separate Activities and has no relation with construction. Connection was released to consumer based on its application and tariff was applied based on documents submitted by him.

9. However, while conducting audit by CAG, in 2013-14 it was revealed that consumer is not in business of batching and casting, and was carrying out this Activity as allied Activity of construction for his entire project. By the time deliberation at highest level continued on the issue as of application of appropriate tariff to allied Activity, consumer completed its projects and applied for Permanent Disconnection of said connections. Based on application of consumer, both connections were permanently disconnected but were never issued final bill, as issue of applicability of appropriate tariff to allied Activity was yet to be finalised.

10. The Respondent further submits that CAG upheld that, consumer was unjustly benefitted by application of Industrial tariff and ordered recovery of tariff difference along with interest from the consumer. Accordingly, supplementary bill of tariff difference recovery for consumer no 028659035790, amounting Rs.

4317906/- and for consumer no 028659039080 amounting Rs. 8258603/- was conveyed to applicant. Vide letter Dt. 04.05.2018. Consumer ignored the same and hence consumer was reminded for payment of amount again on date 02.07.2018. The applicant still preferred to ignore these reminders and hence was again reminded vide letter Dt. 26.07.2018.

11. The respondent further submit, that the applicant still remained silent, observing that consumer is not responding for payment of bills, and because consumer no 028659035790 and 028659039080 were disconnected on request of consumers, utility was left with no other option to divert this amount on consumers existing connection at Kharghar. Accordingly Utility diverted amount of Rs 12576509/- on applicants live consumer no 028659039080. This diversion of arrears was conveyed to consumer vide letter issued on Dt. 26.07.18

12. The Respondent further state that Determination of Tariff as per the provision of section 62(3). The provisions of section 62 of Electricity Act are reproduced to apprise Hon Forum as “The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.” The Act

specifically insists on purpose for which the supply is required, and hence the tariff application to consumer is liable to be applied on purpose for which the supply is utilised.

13. The Respondent further submit that the applicant further equivocal in presenting that as per the provisions of section 56(2) of IE ct 2003 there is no liability to pay amount beyond two years. Section 56(2) of IE Act 2003 is reproduced here as “Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.” The Act clearly suggests that amount is recoverable after the period of two years from the date when such sum became first due. The amount became first due only after issuance of first bill to consumer in May-2018. As per the provisions of section 23.1 and 23.2 of conditions of supply, due date shall not be less than 21 days from bill date in case of residential and agricultural consumers and not less than 15 days for other consumers. Here again the due date of consumer is defined from date of issuance of bill, and hence respondent is well within its right to recover charges within provisions of section 56(2) of Act. The Respondent prayed that dismiss the present grievance application filed by the applicant and direct consumer for payment of entire amount.

14. Heard both sides, I have gone through written notes of arguments filed by the consumer on date 18.12.2018 in which he has submitted that the present dispute arises due to transfer of arrears prior to the period of 2 yrs in the bill of connection number 028659039080 of the applicant . He further submits that this bill is given as per the report of CAG but the respondent has deliberately avoided to provide the report to the applicant. The applicant has obtained the copy CAG report from electronic media and filed along with this written argument.

15. As per the CAG report it is for financial years 2013-2014 but the respondent after the period of 4 years issued the bill towards tariff difference. The demand raised by the Respondent is illegal and time barred as per the provision of Electricity ACT 2003. He further submit that the applicant has taken H.T connection of 11kv level at sector 15 was released in the march 2012 and then permanently disconnected in the month of Feb 2016. He further submit that the Respondent for the first time vide letter dated 04.05.2018 asked applicant to pay 82, 58,603/- towards the tariff difference.

16. The Respondent file their say dated 09/10/2018 and submitted that the application is not maintainable and same is contrary and inconsistent with what is stated there in the case is denied by the Respondent. It is submitted by the Respondent that the Consumer is Registered Company under Companies Act and is in the field of Civil Construction and is carrying out turn key projects of Civil

Construction in Maharashtra for CIDCO, MADHA and others. Applicant bagged turnkey project of construction of Mass Housing project at sector 16, Kharghar in 2008, and at sector 35/36 in 2012.

17. In order to execute the construction work of tenements, as specified by CIDCO, Applicant applied for HT connection in respective period at sector 16 bearing consumer no 028659035790 and sector 15 bearing consumer no 028659038890. Applicant while submission of application submitted the purpose for Batching and Casting plant and maintained impression that Batching and Casting are separate Activities and has no relation with construction. Connection was released to consumer based on its application and tariff was applied based on documents submitted by him. However, while conducting audit by CAG, in 2013-14 it was revealed that consumer is not in business of batching and casting, and was carrying out this Activity as allied Activity of construction for his entire project.

18. By the time deliberation at highest level continued on the issue as of application of appropriate tariff to allied Activity, consumer completed its projects and applied for Permanent Disconnection of said connections. Based on application of consumer, both connections were permanently disconnected but were never issued final bill, as issue of applicability of appropriate tariff to allied Activity was yet to be finalised. Finally CAG upheld that, consumer was unjustly benefitted by application of Industrial tariff and ordered recovery of tariff difference along with interest from the consumer. Consumer motive was to

deceive the licensee in respect of his purpose of use of electricity and to get undue benefit of tariff rate. Based on the application both consumers permanently disconnected but never issue final bill as the issue of applicability of tariff yet to be finalized and final CAG upheld that the consumer was unjustly benefitted by the application of industrial tariff and ordered recovery of tariff along with interest from consumer. And accordingly bill of tariff difference recovery for consumer no 028659035970 amounting Rs. 4317906/- and for consumer no 028659039080 amounting Rs 8258603/- was convey to consumer as per letter annexure a B And C also issued remainder vide letter date 2.7.2018, 4.5.2018 and 26.7.2018.

19.Consumer still remained silent, observing that consumer is not responding for payment of bills, and because consumer no 028659035790 and 028659039080 were disconnected on request of consumers, utility was left with no other option to divert this amount on consumers existing connection at Kharghar. Accordingly Utility diverted amount of Rs 12576509/- on applicants live consumer no 028659039080. This diversion of arrears was conveyed to consumer vide letter no.SE/VC/T/HT/2018-19/004637 Dt. 26.07.18 and SE/VC/T/HT/2018-19/004636 Dt. 26.07.18.Accordingly, supplementary bill of tariff difference recovery for consumer no 028659035790, amounting Rs. 4317906/- and for consumer no 028659039080 amounting Rs. 8258603/- was conveyed to applicant. Vide letter no SE/VC/HTB/003116 Dt 04.05.2018 and SE/VC/HTB/003117 Dt 04.05.2018. Consumer ignored the same and hence

consumer was reminded for payment of amount vides SE/VC/HTB/004258 Dt 02.07.2018 and SE/VC/HTB/004259 Dt 02.07.2018. Consumer still preferred to ignore these reminders and hence was again reminded vide SE/VC/T/HT/2018-19/004636 Dt. 26.07.2018 and SE/VC/T/HT/2018-19/004639 Dt. 26.07.2018. Consumer still remained silent, observing that consumer is not responding for payment of bills, and because consumer no 028659035790 and 028659039080 were disconnected on request of consumers, utility was left with no other option to divert this amount on consumers existing connection at Kharghar. Accordingly, Utility diverted amount of Rs 1,25,76,509/- on applicants live consumer no 028659039080. This diversion of arrears was conveyed to consumer vide SE/VC/T/HT/2018-19/004637 Dt. 26.07.18 and SE/VC/T/HT/2018-19/004636 Dt. 26.07.18.

The Learned Executive Engineer of the respondent submit that the issue before Forum are

- I. Whether the applicant consumer was engaged in any “Manufacturing Activity “and whether category of billing has to be fixed on the basis of “Intent and “purpose of use of Electricity’?
- II. Who creates tariff categories and who classifies categories of billing provided that the distribution Licensee shall not create any tariff category other than those approved by the commission?

20.The Respondent further submit that the applicant was not engaged in manufacturing Activity and all the casting and batching product of cement

blocks done by him for business of construction and not for the purpose of selling in open market. He further submit that the tariff category and classifying consumer is different aspect which under preview different authority while former comes about jurisdiction of MERC and latter distribution licensee. The Respondent further submit that the distribution licensee may classify /reclassify a consumer into various commission approved tariff categories based on the purpose of usage of supply by such consumer.

21. He further submit that as per section 56((2) clearly gives right to recover uncovered dues from consumer section 56(2) of Electricity Act 2003 read as Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer: Provided

that the supply of electricity shall not be cut off if such person deposits, under protest, - (a) an amount equal to the sum claimed from him, or b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee. (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

22. On hearing both sides and from that documentary evidence on record the provision clearly interprets in favour of distribution licensee. A copy of order dated 24.01.2012 passed by this Hon'ble that High court referring three issues to be decided by the Hon'ble larger bench of The High court, but there is no reply stay, therefore we have to go as per provision only. It is revealed by the report of CAG this misuse of tariff which was allotted industrial tariff and rightly held that it is require commercial tariff from all this description it is admitted fact that the business of manufacturing of baching and casting plant is a industrial tariff whereas baching and casting for our own construction it is not industrial tariff it is a commercial tariff. It attracts golden rule of interpretation of statute that the unlawful Act by lawful means is to be protected by law in the hands of

wrongdoer. Therefore, the applicant is not at all comes under industrial tariff therefore and therefore this application liable to be is dismissed. Hence the Outstanding of Rs 1,25,76509/- is required to be recover as per due provision under taken by the utility. I found no wrong or unlawful Act of recovery by the Respondent in any manner. Hence, proceed to pass following order.

ORDER

This application 175/2018 is hereby dismissed.

No order as to be cost.

I Agree/Disagree

I Agree/Disagree

**MRS. SHARMILA RANADE,
MEMBER
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL
CHAIRPERSON
CGRF, BHANDUP**

**RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, Bhandup.

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address. " Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051"
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon'ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or
- c) Delay in compliance of this decision issued under" Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003" at the following address:-

"Maharashtra Electricity Regulatory Commission, 13th floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05"

- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.