
REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/1083 Date: 06.03.2019

Hearing Date: 18/12/2018

**In matter of tariff difference recovery from HTIX (B): HT Public Service –Others
(11KV) to HT-II: Commercial and New connection**

CASE NO.200/2018

M/s. Sai Snehdeep Medical Pvt. Ltd.,
Plot No.12&13, Sector-20,
Koperkhairne,Navi Mumbai. (Hereinafter referred as Applicant

Vs

Maharashtra state Electricity Distribution Company Ltd
Through it's Nodal Officer,
Vashi Circle,Vashi (Hereinafter referred as Respondent)

Appearance

For Consumer: - Shri .Suraj Chakraborty Consumer Representative

Representative For Respondent :- Shri. D.B. Pawar Executive Engineer, Vashi
Circle.

[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 consumer has filed application to this Forum stating that they are high Tension consumer of MSEDCL since from 2011. On dated 20/7/2018 suddenly they received supplementary bill of Rs 6,19,325/- behalf tariff difference of HTIX(B): HT Public Service –Others (11KV) to HT-II: Commercial for the period December 2011 to April 2018 is illegal.
3. The applicant further submits that he has fully well equipped Hospital and paying energy bill regularly within time. The Applicant also claim that he has informed MSEDCL that he is giving some part of his premises to Bank use. Also written letter on dated 11/1/2012 regarding separate meter for different purpose also given remainder 06/02/2013 & 11/02/2013 but no action has been taken by Respondent.
4. The applicant protested wrong ,exorbitant and illegal bill issued for period 77 months therefore prayed to set aside the supplementary bill of Rs6,19,325/-

5. The notice issued to the Respondent to appear before Forum and to submit parawise reply. The Respondent MESDCL filed reply stating that M/s Sai Snehdeep Medical Pvt. Ltd. is 11 KV HT consumer bearing consumer No. 000439036100 at Plot No. 12 & 13, Sector-20, Koparkhairane , Navi Mumbai, having Contract Demand & Connected Load up to extent of 500 KVA & 700 KW having date of connection as 29.01.2010 (as per energy bill). The tariff is HT IX (B): HT Public Service-Others
6. The Respondent, further submit that Addl. Executive Engineer Koparkhairane Subdivision vide letter no. ADEE/KK/Tech/HT App/2333; Dtd. 16/10/2017 addressed to the Executive Engineer Vashi Division and copy to the Circle office, requested for guideline regarding new application for LT power supply for 20 KW/ 25 KVA by M/s Sai Snehdeep Hospital, Online application no. 10869118, Dtd. 30/08/2017. Also the Executive Engineer vide letter no. EE/Vashi/Tech/HT/6025; Dtd. 22/11/2017 requested for guideline regarding (i) tariff applicability of tenant who are using HTPS for other than hospital activity in the same premises and also (ii) new connection in r/o M/s Sai Snehdeep Hospital. Consumer had contemplated MERC decisions in case No. 24 of 2001 & Ombudsman decision in case of 124 of 2014, against Supplementary Bill of recovery of Tariff Difference from HT IX (B): HT Public Service- Others (11 KV) to HT-II: HT Commercial (11 KV) for period DEC 2011 to APR 2018. However it is to say that, in present case, there is no reclassification / classification / categorisation of Tariff applicable to consumer.
7. The Respondent submit that, The appropriate tariff was made applicable to consumer after verification of the purpose of utilisation of Power Supply & Supplementary Bill of recovery of Tariff Difference from HT IX (B): HT Public Service- Others (11 KV) to HT-II: HT Commercial (11 KV) for period DEC 2011 to APR 2018 issued against the Tariff benefit availed by consumer for which, the

consumer was not at all entitled for. Hence a limitation for recovery of Supplementary Bill of recovery of Tariff Difference does not prevail in present grievance application

8. The applicant there is one HT Public Service –Others (11KV) Plot No.12&13,Sector-20,Koperkhairne,Navi Mumbai and applied for new connection for the purpose of Bank use .The premises was given on the rent and Applicant cannot held responsible for any tariff difference recovery .However the Respondent did not consider to provide another meter for different use .The applicant referred commission order dated 11 Feb 2003 in the case no 24 of 2001 , the commission has held 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.”

9. The consumer has also relied upon order dated 7th Aug 2014 passed by the APTEL in appeal No.131 of 2013 in the matter of Vinney Enterprises v/s Kerala State Electricity Regulatory Commission and others. In the said case, the APTEL has held that the arrears for difference in tariff could be recovered from the date of detection of the error. Thus the principle laid down by the APTEL is recovery should be prospective i.e. from the date of detection of error. It has been held by Electricity ombudsman Mumbai in the order dated 23 December 2014 in representation no 124,125 and 126 of 2014 that the recovery on account of reclassification can be prospective only.

10. Heard the parties and I have gone through the arguments and documentary evidence it is found that the applicant has applied for separate new connection for bank which comes under commercial category but the Respondent did not communicate or given any reply to consumer. The flying squad of the Respondent inspected the premises found some of the load of HT Public Service –Others (11KV) connected to Bank and ATM .The Respondent issued supplementary bill of 6,19,325/- towards recovery of tariff difference HTIX(B): HT Public Service –Others (11KV) to HT-II: Commercial for the period December 2011 to April 2018 for the total connected load of 35KW for Bank and ATM centre, issued to the consumer vide letter no SE/VC/T/HT/-ASSMET/VASHI/KK-390/2018-2019/4453 dtd 20/07/2018.Also previously Executive Engineer (Adm) vashi circle inspected the premises dated 06/02/2013 and mention unauthorised use of electricity that supply issued for SBI Bank and ATM at ground floor but Respondent did not applied under section 126 of Indian Electricity Act 2003 due to consumer had applied for separate connection for Bank on date 09/01/2012, the copy of said letter shows acknowledgement of from MESDCL Vashi circle Office. I have gone through the notice of disconnection wherein the Respondent has demanded arrears of 77 months from December 2011 to April 2018. The Applicant relied on commission order dated 11 Feb 2003 in the case no 24 of 2001, 7th Aug 2014 passed by the APTEL in appeal No.131 of 2013 in the matter of *Vinney Enterprises v/s Kerala State Electricity Regulatory Commission* and others .Here, in this case there is no any classification/reclassification of tariff category so it is different case . In this consumer use electricity to other activity from HT connection the Respondent also not booked under section Indian Electricity Act 2003 It seems that before from 2012 applicant demanded new connection but on submitted various application and communication utility never responded on application or communicate with the applicant. The flying

squad of the Respondent inspected the premises found some of the load of HT Public Service –Others to Bank and ATM(34KW). The supplementary bill of 6,19,325/- towards recovery of tariff difference HTIX(B): HT Public Service – Others (11KV) to HT-II: Commercial for the period December 2011 to April 2018 for the total connected load of 35KW for Bank and ATM centre, issued to the consumer . From above said there is any fault on the consumer side.

11. I gone through the legal provision of 56(2) on which applicant relied which read as 56(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 become 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."
12. There is also conflict of Judgements of two division benches of Hon'ble High court of Bombay in the *matter Rototex Polyster V/s Administration Dadra Nagar Haveli and Awadesh Pandey Vs Tata power Co. Ltd* regarding interpretation of 56(2) of the electricity Act 2003. The matter is pending before larger bench of High court. In several Judgements by Hon'ble ombudsmen that past arrears for period more than two years preceding the date of demand or supplementary bill are not allowed in terms of section 56(2) of the Act. The period of recovery was restricted for 24 months considering the provision of section 56(2) of EA 2003.
13. The words "first due" may be read to mean when the sum was first billed However, there is another exception which is for the protection of the distribution company which comes from the following words "unless such sum

has been shown continuously as recoverable as arrears of charges for electricity supplied” But in this case first Demand became due when demand rise by Distribution Licences’. The Respondent issued supplementary bill of 6,19,325/- towards recovery of tariff difference HTIX(B): HT Public Service –Others (11KV) to HT-II: Commercial for the period December 2011 to April 2018 for the total connected load of 35KW for Bank and ATM centre. In the light of above the Respondent entitle to recovery arrears only for 24 months instead of 77 months prior to date of inspection i.e. April 2018 calculated on 34 KW Hence , I proceed to pass following order.

ORDER

1. The application no 200/2018 partly allowed.
2. The Respondent is directed to revise the bill only for 24 months prior to date of inspection i.e April 2018
3. The Respondent shall provide separate connection as per MSEDCL rules after receipt of application.

**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:

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) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon'ble Maharashtra electricity Regulatory Commission for non- compliance, part compliance or

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"

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.