

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/1092

Date: 06.03.2019

Hearing Date: 18/12/2018

CASE NO.189/2018

In the matter of retrospective recovery and LT new connection

M/s. Panexcell Clinical Lab Private Ltd.
Plot No.R-374, TTC, Industrial Area,
MIDC, Rabale,
Navi Mumbai-400701. **(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 :- Suraj Chakraboty

Representative For Respondent :- A.L. Mathenkar Assistant Engineer ,Rable
Section,Airli Sub-Divison

[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 filed grievance directly in schedule ‘A’ under the threat of disconnection as per clause 6.5 Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006.
3. This application is filed by the consumer for grievances against the Respondent company MSEDCL to set aside retrospective supplementary bill against tariff difference LT-II-C to LTX(B) amounting Rs 47,84,726/-. Applicant is a LT Consumer of MSEDCL having Consumer No000011030670/PC-0, BU; 4641 Connected Load is 150KW, Contract Demand (KVA) 150.
4. The Applicant submits that they have received MSEDCL Oct 2018 energy bill adjustment of plain tariff difference public services to commercial and the amount of assessment bill of Rs.47,84,726/-. And already requested the Respondent staff personally to inspect the premises vide our letter 20/04/17 regarding the Change in tariff into public services and the premises was checked and tariff duly change by the Respondent (MSEDCL).

5. The Applicant further submits that after One year, the kalyan flying squad visited on 04/05/2018 and attracted u/s.126 Of E.A.2003 due to wrong tariff applicable to us. The applicant submits that the tariff had been change by Respondent and also categorized by the executive engineer vashi division office duly agreement sign by Respondent and applicant. Then there is no matter of u/s.126 of E.A.2003 arises. After verifying the facts and papers on record MSEDCL flying Squad has squashed the final order K-2 and set aside.
6. The applicant further submit, he has taken additional objection that as per section -126 and tariff difference, the assessment should be made for the purpose, for which the connection is sanctioned though the MSEDCL have made the assessment wrongly. Please refer case law ‘S.K Jafar Ali & Anr V/s. West Bengal state Electricity, Dist. Co.Ltd AIR -2-10. Cal-84.Our certificates for R&D, Health care including pathology lab purpose issued by the competent Govt. Authority. The Applicant refereed relevant paras of decision of Hon’ble Supreme court ,High Court MERC, Ombudsman, CGRF
7. The applicant submits that Panexcell Clinical Lab Pvt Ltd is a registered company. Memorandum and Articles of Association state object of the Company as: “to manufacture, formulate, process, develop and refine all kind of pharmaceuticals, antibiotics and medicines”. The Company is to carry on business of establishing , conducting providing and maintaining a research centre , facilities and institute, laboratories engaged in conducting various medical and clinical trials to test the efficacy and tolerability of drugs, medicines and conducting training programmes in the research fields and to undertake drug development and designing new formulating and to provide, establish, fund or takeover and conduct research institutions, research facilities in all systems and disciplines of drugs medicines and in medical sciences , therapies of medical treatment, surgical knowledge or otherwise and to carry on analytical , experimental , surgical knowledge or undertaking in relation to the works and general objects of the of the company.

8. The applicant submits that CE Commercial guideline (PR-3/Tariff) dtd. 05/08/2010 given in reference to letter nos. P-Com/GKUC/211957, dtd. 26/06/2009, P-com/Thane/26894, dtd.17/08/2009 and P-Com/Kalyan-1/Tariff category 32504 dtd. 17/10/20 has stated as : When any industrial consumer is having testing and R&D laboratory as its ancillary unit, it is duty of the concerned in charge of MSEDCL to check the purpose and usage of the supply. If in such case industrial load is predominant as compared to the R&D load and also if the R&D is being carried on by the industry exclusively for its own product development, then it's but natural to apply "Industrial Tariff" to such consumer. In other cases, if the consumer is having only R&D and testing load, then such consumer should be billed as per Commercial tariff.
9. Notice issued to the Respondent to submit parawise reply to this Forum with Copy to the applicant. The Respondent submit the reply on dated 17/12/2018 stating that application from consumer dtd 20.04.2017 was submitted in CFC Vashi for change of tariff vides inward no 46 dtd 21.04.2017 Airoli subdivision office. The inspection report from Assistant Engineer, Rable Section Office vides i/w 2327 dtd 27.04.2017. Accordingly tariff changed from LT-II-C to LT-X-B in the month of May -2017 on the basis of documents submitted by consumer.
10. The Respondent further submits that applicant applied for load extension for 100KW to 158 KW. Technical report received from Assistant Engineer, Rable Section office on dtd 24.05.2017 and same was forwarded to Vashi division office and load sanction from Vashi Division office vide EE/Vashi/T/S No 4436/LS/002911 dtd 25.05.2017. The firm Quotation was issued by Vashi division on 25.05.2017 and release order issued by Vashi division on date 03.07.2017. Thereafter, Vashi Testing division carried out pre- commissioning on dtd 07/07/2017.

11. The Respondent further submit that the Additional Executive Engineer flying squad Kalyan had visited the premises and carried out spot inspection report Reno 13463 dtd 04.05.2018 with remarks supply is being utilized for Research and development of Pharmaceutical product by testing them on human body in consumer premises .The Additional Executive Engineer Flying Squad Kalyan has informed provisional assessment under section 126 of Electricity Act 2003 and with intimation to Flying Squad Kalyan the bill of Rs 1,34,97,310/- was serve to consumer but consumer is not accept the bill . The consumer submit additional documents via Email to Additional Executive Engineer Flying Squad after that the Additional Executive Engineer Flying Squad sent letter for plane recovery bill amounting 12,12,770/- from date of inspection i.e 04.05.2018. The Respondent lastly submits that LT-X (B) to LT-II-C from May 2017 to APR-18 as per Flying Squad report.

12. During the hearing, the applicant argued that Flying Squad did not inspect the premises. They never saw the actual usage, but inspected the documents only; based on which the utility has changed. Initially the Respondent had issued the supplementary bill against the authorized use of electricity under section 126 of Electricity Act 2003. The applicant also strongly objected to the application of section 126 of IEA and supported by the Respondent themselves. The applicant also state that LT X B tariff category is applicable for electricity supply at Low /medium voltage for

- a. a). Educational Institution, such as school and colleges; Health care facilities, such as Hospitals, Dispensaries , Clinics, Primary health care centres, Diagnostic Centres and pathology laboratories, Libraries and public reading rooms – other than those of the state or Central Government or Local self Government bodies such as Municipalities, Zila parishads, Panchayat samitis, Gram Panchayats, etc.**

PANEXCELL Clinical Lab Pvt. Limited situated at R 374, Rabale MIDC, Thane Belapur road, Rabale, Navi Mumbai 400701. And our basement, ground and second floor team/facility is used for Hospital activity having the different department in our company such as medical expert department includes Medical doctors, phlebotomist,

Nurses, Medical subject screening with evaluation of pathological fitness and drug of Abuse, alcohol testing to find the physically fit. We have been approved at present with Directorate general of Health services. The facility is approved for 82 Beds to accommodate the subject for Clinical activity. We have also been approved under Maharashtra Pollution control Board, Sion for Hospital activity and also under Bio-waste management for the same. Based on our evaluation of subject, the sponsor has to pay for the evaluation and they can proceed with their further activity to conduct the study on subjects and the Blood samples to be analyzed.

13. The applicant also argued that they are also having the Bio-analytical department for evaluation of drug contains based on the client requirement at our Bio-analytical facility based on first floor of the building. This department is equipped with High end testing machines like LC MS/MS and HPLC.

14. The applicant also state that consumption of load for both the activity i.e. Hospital and Research is approximately 50 % each. We are ready to take a two different meter for both the activity to differentiate the hospital and research activity. The applicant also state that the Respondent changed our category after verification activity in LTX B-III and also second time when load extension application submitted to the Respondent they executed MOU and Kept tariff as LT X B-III . The applicants also produce the copy of MOU between the Executive Engineer Vashi and managing director M/s Panexcell Clinical Lab Pvt Ltd on 28/06/2017. The applicant also objected to the retrospective recovery of arrears and submitted that as per the order of commission in case no 24 of 2001 and of the APTEL in appeal No 131 of 2013, recovery cannot be made retrospectively. The applicant also argued that they are not into hard core research, but its primary activity is Public services and also they are ready for new connection for different usage which is not major activity.

15. On the other hand, The Respondent states that on the application of the applicant we changed the tariff from of applicant connection to LTX B-III but when the Flying

squad visited the premises and found the supply is used unauthorized so action under section 126 initiated against applicant. During hearing the Respondent also admitted that action under section 126 of IEA is not uncalled for so the bill is withdrawn since it is out of ambit of section 126. The bill of tariff difference only rose from the date when wrong tariff applied. Therefore the bill issued and tariff changed is proper and legal. The Respondent pray for disallow consumer application.

16. We heard both sides at length and gone through the contentions of the applicant and the reply of the Respondent and documents placed on the record by the parties. Admittedly, the applicant namely M/s Panexcell Clinical Lab Pvt Ltd is low tension consumer of MSEDCL bearing consumer no 000011030670 was connected on 21/07/2016. The Applicant had submitted application for change of Tariff on 20.04.2017 to CFC Vashi. Accordingly the Assistant Engineer, Rable section office of the Respondent carried out on 26/04/2017 and submitted the Spot inspection report to subdivision with remarks, Activity shows i) health care facilities including diagnostic ii) Pathology lab 3) Clinical ward, ICU Room with 58 beds under supervision of qualified Doctors. The Respondent changed tariff from LT-C to LTX (B) in the month of May 2017 on the basis of spot inspection reports and documents submitted by the applicant.

17. From the record it is observed that the applicant has submitted application for load extension from 100KW to 158KW on the receipt of technical feasibility report sanctioned additional load by the Executive Engineer on 25/07/2017 directing the Additional Executive Engineer Airoli to verify the activity at consumer premises for verification and ensure consumer is billed with correct tariff. The MoU signed between the Executive Engineer Vashi and managing director M/s Panexcell Clinical Lab Pvt Ltd on 28/06/2017 and accordingly released order issued by the Executive Engineer for giving additional LT power supply for existing 100KW, additional 50KW for public services.

18. The additional Executive Engineer flying squad of Vashi visited the premises and carried out inspection alleged that the power supply used for research and development of pharmaceutical product by testing them on human body and initiated action under section 126 of Indian Electricity Act 2003. The Respondent issued the supplementary bill on 20/06/2018 of Rs 1,34,97,310/- along with Annexure – K1 (ORDER OF provisional Assessment section 126) for payment within 7 days and if disagree with this order giving opportunity for personnel hearing. The applicant filed objection to the said provisional Assessment order on date 23.06.2018 and hearing conducted by assessing officer on 5.07.2018 passed order of final assessment (Section 126) mentioning that evidences does not give clarification regarding Panaxcell Clinical lab as public service activity. It is found from the record that Additional executive Engineer flying Squad Kalyan -I again inform to Additional executive Engineer it has come to notice that the tariff from LT-IIC to LT-XB-III has been changed by O & M Division office as per MOU signed between Executive Engineer Vashi & M/s Pinaxcell Clinical Lab and copy of MoU not available with him if it the case then consumer cannot booked under section 126 of IEA 2003 and proposed plane tariff recovery. It is not denied by the consumer that they have R&D centre at this place, but there contention is that, said R&D is carried on for their very own purpose i.e public services.

19. It is also observed that initially consumer was categorized as commercial and at the instance of application of consumer and verification thereof the consumer is recatrgorized to LTX B-III public tariff. Subsequently, consumer applied for load extension the Respondent has sanctioned and released it. It is duty of the Respondent to appreciate the proper tariff applicable to the consumer which Respondent failed to do so. The consumer is not at fault for paying the bills under LT X B-III category from May 2017 as they were raised by the Respondent under LTXB-III.

20. It is found from the record submitted by the Respondent that the Additional Executive Engineer Flying Squad Kalyan informed Additional Executive Engineer Airoli vide letter Add EE/FS/Kalyan-I/199 Date 13/01/2018 to prepare bill only for plain tariff difference LTXB-III to LT-II C from May 2017 send copy of bill on email to his office. When they realized the fault is not in the part of applicant then again vide letter Add EE/FS/Kalyan-I/200 dated 13/01/2018 the Additional Executive Engineer Flying Squad Kalyan change his stand and informed to the Additional Executive Engineer Airoli billing officer that it has come to notice, the tariff LT-IIC to LT-X-B has been changed by the Vashi O & M Division office, as per MOU Signed between Executive Engineer Vashi & M/s Panaxcell Lab. The copy of MoU is not readily available with him. If it is the case the consumer cannot be booked under section 126 of EA2003 but certainly applicable tariff for current activity should be LT-IIC and proposed to change tariff from the date of inspection i.e 04.05.2018 and recover plain tariff difference from the date of inspection .From the record, it is found that billing officer not acted correctly upon the instruction of assessing officer and he has prepared supplementary from May 2017 and debited in the account of applicant and also from the date of inspection i.e 04.05.2018 ,It is duty of the Respondent to act correctly on their own Flying squad and issue correct bill to the applicant, I proceed to pass following order

ORDER

1. The applicant application hereby partly allowed.
2. The Supplementary bill issued by the Respondent for the period from May 2017 to the date inspection by Flying squad i.e April 2018 is hereby set aside.
3. The Respondent entitle for recovery with commercial rate from the date of inspection by Flying Squad without DPC and interest.

4. The applicant is hereby directed to avail separate and independent connection for Hospital activity after furnishing the relevant documents.
5. 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, and 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.

