

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievances Redressal Forum
Nagpur Zone, Nagpur**

Case No. CGRF(NZ)/64/2019

Applicant : The Secretary,
M/s.Mehdi Bagh Intazamia Committee,
Mehdi Bagh Colony, Post Office,
Dr.Ambedkar Marg, Binaki Mangalwari,
Nagpur-440017.

V/s

Non-applicant : Nodal Officer,
The Superintending Engineer,
(D/F), NUC. M.S.E.D.C.L.,
Nagpur.

Applicant represented by : 1) Dr. I.H. Jeewaji, Secretary,
2) Shri Rashid Ahmed Vice President,
Mehdi Bagh Intazamia Committee.

Non-applicant represented by: 1) Shri S.S. Ishwarkar, Dy.Exe.Engr.,
MSEDCL, NUC, Nagpur.
2) Shri Dahasahatra, SNDL,Nagpur

Coram : 1) Shri Arvind Jayram Rohee,
Chairperson.
2) Mrs. V.N.Parihar,
Member Secretary
3) Mrs. Asmita Avinash Prabhune,
Member(CPO)

ORDER PASSED ON 22.07.2019

1. The applicant which is a 'Wakf' approached this Forum under clause 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievances Redressal Forum & Electricity Ombudsman) Regulations 2006, since its claim for applicability of

LT-III tariff for Public Water Works is disallowed by the Non-applicant and instead LT-I residential tariff is made applicable.

2. It is stated that the Applicant Mehdibagh Intazamia Committee is a Wakf created under the registered Wakf Deed dated 09.06.1894. The Wakf owns and possesses number of movable and immovable properties, vehicles, implements and cattles. There is a well in one of the premises of Wakf on which electric meter is installed on a well located therein sometimes in the year 1972, for lifting water for supply to the few community people who reside on the said premise by raising structure thereon. This meter bears Consumer No. 410011807741. It is stated that from the year 1972 the Non-applicant charged Industrial (LT V) tariff and bills were accordingly issued and paid by applicant. On 07.01.2019 the Applicant applied for change of tariff from LT V (Industrial) to LT III (Public Water Works). However, instead of accepting the said request, the Commercial Manager changed the tariff from LT V to LT I residential with effect from 01.04.2019. Dissatisfied with the aforesaid decision of change of tariff, the Applicant approached Internal Grievances Redressal Cell (IGRC) MSEDCL, Nagpur for necessary redress. However, by the order dated 31.05.2019 the grievance application is rejected and the action taken by the Non-applicant regarding change of tariff from Industrial to Residential is upheld on the ground that the water is lifted for supply to the Housing Colony and hence residential tariff alone can be charged.

3. Dissatisfied with the aforesaid order of IGRC, the present grievance application is filed raising the same ground by alleging that Wakf being the Local Self Government Body and well water is lifted for supply to the community people, the tariff for Public Water Works should have been charged, instead of residential tariff. It is also stated that the housing society is established and run by the Applicant Wakf and hence for this reason also the residential tariff is not applicable and it has been wrongly charged.

4. On 09.07.2019 and 16.07.2019 the Forum heard the submissions advanced by the Secretary Dr. I.H. Jeewaji and Vice-President Shri Rasheed Ahmed of the Applicant Wakf. Shri S.S. Ishwarkar, Deputy Executive Engineer, MSEDCL assisted by Shri Dahashashtra of SNDL represented the Non-applicant and supported the order passed by the Commercial Manager which is confirmed by the IGRC latter as stated above.

5. During the course of hearing the Applicant was called upon to produce photocopy of the Wakf Deed and also that of recent electric bills for our perusal, which documents are accordingly produced. Non-applicants have also produced on record copy of final bill assessment and copies of approved tariff schedule issued by MSEDCL.

6. We have given our thoughtful consideration to the submissions advanced before us and have carefully gone through the entire case record.

7. The only point that arises for our consideration is whether the action taken by the Non-applicant in making change of tariff from LT V (Industrial) to LT I(Residential) is legal, correct and proper and consequently the order passed by IGRC.

8. We record our finding in the affirmative for the reasons that follow:

REASONS

9. It is obvious from record that although the Wakf is created on 09.06.1894 it was indeed a Public Trust, registered under the provisions of the then India Public Trusts Act, although the Applicant has not produced on record Registration Certificate. After independence Bombay Public Trusts Act 1947 is enacted. Thus the Wakf was functioning under the supervision of Charity Organization. On re-organisation of States in 1960, the aforesaid Act of 1947 continued to be applicable to the entire State of Maharashtra, including Vidarbha Region, which was previously under CP & Berar. Subsequently by a decision taken by the State Government all the properties belonging to Wakf are transferred to and vested in the Wakf Board established for supervision and control on activities of all the Wakfs. Even the entire record pertaining to all the Wakfs which was initially in the custody of the Charity Organization were transferred to the Wakf Board including the contribution collected till then. Thus all the Wakfs were governed under the provisions of

Bombay Public Trusts Act, 1947, before they are taken over by the Wakf Board.

10. It is stated in the Wakf Deed dated 9.6.1894 that the four head principal persons Janab Sayedna Badruddin Gulam Hussain Miakhan Hakim Saheb, Janab Shaikh Musabhai Tyabji Saheb, Janab Shaikh Hasanally Ebrahimji Saheb and Janab Mulla Abdul Kader Ebrahimji Saheb, carrying on the management in the periphery of the Jamaat acknowledged on behalf of the Jamaat by execution and registration of this document that the funds herein are for appropriation appertaining to the cause of Religion.

11. As stated earlier Wakf owns and possesses number of movable and immovable properties including vehicles and cattles. It is pointed out on behalf of the Applicant that out of the land purchased from one Musamat Manyabai W/o Neelkanth Bangosai of Nagpur admeasuring 466 Ft. East-West and 353 South-North, few plots were allotted to the community people for raising structure thereon for residence. To facilitate supply of water to those residents, arrangement was made by the Wakf for lifting water from the nearby well located in the premises for the use and convenience of the community people. Thus according to Applicant it is obvious that few community persons were allotted portion of open land with permission to raise structure thereon for residence. Thus they were inducted as licensees. It is stated that no license fees or occupation

charges were recovered from them by the Applicant and on the contrary free water facility is extended to them since Applicant used to pay the monthly electricity bills. It appears that initially there was some structure for running small industry / factory on the said premises, when the electric meter was installed in the year 1972. This being so, the industrial tariff was correctly charged for electric consumption from the said meter which was installed on well. There are no arrears of electricity charges. After few years it appears that the industry / factory was closed and then plots were allotted for construction of small houses thereon. However, the Applicant continued to avail the facility of Industrial tariff under the guise of rendering services to the community persons in the form of free supply of well water to them.

12. The record further shows that Vigilance Cell visited the premises in question sometimes in October 2018 and on inspection found that there was no existence of any industry or factory and wrong tariff has been charged instead of residential tariff, since supply of well water was being given to residents. Report was, therefore, submitted to higher authority alongwith provisional assessment order under Section 126 of the Electricity Act, 2003 by the Vigilance Head carving the amount of Rs.2,32,500.67 as total assessed amount for consumption. Out of it since the amount of Rs.1,05,797.00 was already recovered/paid by the Applicant as per bills, it was deducted and balance amount to be recovered as

difference in tariff, was assessed to Rs.1,26,703.67 (rounded to Rs.1,26,710.00).

13. In pursuance of the Vigilance Report the Assessing Officer of SNDL Vigilance issued notice dated 05.12.2018 to the Applicant calling upon him to pay balance amount of Rs.1,26,710/- towards provisional assessment pending the final assessment. It appears that the arrears of provisional assessment was subsequently revised to Rs.17,160/- and the Applicant paid the said amount in May 2019.

14. In the background of above admitted facts, the Applicant subsequently submitted application for change of tariff from Residential to Public Water Works on the same ground that water is being lifted for the use of community people who reside in the houses constructed on the premises of Wakf. For the purposes of this submission, which is declined initially by the Commercial Manager and thereafter by the IGRC, the Applicant relied on the revised MSEB's approved tariff schedule with effect from 01.04.2017. According to it, the LT I (B) (Residential) is made applicable to the following premises. viz.

“Government / Private / Co-operative Housing Colonies / Complexes (where electricity is used exclusively for domestic purposes) only for common facilities such as Water Pumping / Street and other common area Lighting / Lifts / Parking Lots / Fire-fighting Pumps and other equipment, etc.”

15. Whereas LT III Public Water Works (PWW) Sewage Treatment Plant tariff is made applicable to the following premise. "This tariff category is applicable for electricity / power supply at Low / Medium Voltage for pumping of water, purification of water and allied activities relating to Public Water Supply Schemes and Sewage Treatment Plants, provided they are owned or operated or managed by Local Self Government Bodies (Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils and Corporations, etc.) or by Maharashtra Jeevan Pradhikaran (MJP), Maharashtra Industries Development Corporation (MIDC), Cantonment Boards and Housing Societies / Complexes."

16. According to the Applicant Wakf is a Local Self Government Body, since it manages its own affairs, the main object of it being appropriation of funds towards the cause of religion and since well water is being lifted for being supplied to the community persons residing in small houses constructed on Wakf property by them, hence tariff for public water works is applicable and not residential tariff. It is also stated that since the community persons reside in small houses constructed on the Wakf property for this reason also LT III tariff for Public Water Works will be applicable and not the residential tariff.

17. From the plain reading of both the provisions stated above it clearly reveals that although the Applicant is registered Wakf, it is not a Gram Panchayat, Panchayat Samiti, Zilla

Parishad, Municipal Council or Corporation or any other authority created and established by the Government. This being so it cannot be said that Applicant is Local Self Govt. Body and the LT-III Tariff is applicable to the Applicant Wakf. The words “and Housing Society / Complexes incorporated in the last line of applicability for LT-III tariff, cannot be read in isolation with the words “pumping of water, purification of water and allied activities relating to public water supplied and sewage treatment plant”. There is nothing on record to show that even if assuming for a moment that there is Housing Society of community persons residing in the premise owned by Wakf, they are doing any activity of Public Water Supply scheme or sewage treatment plant. Unless the Housing society / Complex undertakes the activities relating to public Water Supply Scheme or sewage treatment plant, it cannot take advantage of LT III tariff. There is nothing on record to show that the public at large beside the community persons who reside in the houses constructed by them on Wakf property, are the beneficiaries in the sense well water is also supplied to them or they are allowed to take it for domestic use. On the contrary, it is specifically stated on behalf of the Applicant in response to the query made that the water is being lifted from the well exclusively for the use of the community persons residing in those houses constructed by them on the wakf property and by no other. It is also stated that the community persons are not charged with any rent or occupation charges or license fee although they were allowed to get electric meters in their respective

Houses in their names. It is also stated that the Wakf does not recover any amount by way of contribution from those residents for making payment of the electricity bill pertaining to well water and the Applicant alone makes the payment per month as per electric bills. It is also stated that in case of breach of condition by the residents, they are liable to vacate the houses and to handover its possession to the Wakf.

18. From the above discussion, it is crystal clear that there is no intention of carrying out any activity relating to public water works by the Applicant to claim LT III tariff. On the contrary the LT I residential tariff is the only proper tariff which can be charged treating that the premise where the houses are constructed for the use by the community persons is the Housing Complex / Society and the electricity is used exclusively for pumping water from well and to supply it to them for domestic use. This being so the Commercial Manager and the IGRC both were right in holding that charging of LT I (residential) tariff is applicable which is correct and proper and they have rightly rejected LT III tariff for Public Water Works, as claimed by applicant.

19. This being the position, we do not find any force or justification in the contentions of the Applicant. At the close of the arguments it is submitted on behalf of applicant that on charge of tariff, the Non-applicant will not be justified in recovering the arrears

of difference in tariff for a period exceeding two years, prior to its detection when in fact they have recovered difference from the year 1972. However, this grievance is beyond the scope of the present grievance application which is limited to applicability of correct tariff for pumping well water to be supplied to the community persons residing in the premise owned by Wakf. The Applicant will, however, be at liberty to lay a fresh claim in this behalf before IGRC. In this grievance application no relief can be granted to the Applicant in this behalf.

20. In the result, the Grievance Application is dismissed, however without there being any order as to payment of costs of this proceeding.

Sd/-
(Mrs. Asmita A. Prabhune)
MEMBER(CPO)

Sd/-
(Mrs. V.N.Parihar)
MEMBER SECRETARY

Sd/-
(Arvind J. Rohee)
CHAIRPERSON