

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/AZ/ARC/739/2019/24
Registration No. 2019050054**

Date of Admission : 21.05.2019

Date of Decision : 23.09.2019

M/s. Nath Pulp & Paper Mills Pvt. Ltd., : COMPLAINANT
S.No.72, Wahegaon Paithan Tq.Paithan
(Consumer No. 490019001625)

VERSUS

Maharashtra State Electricity Dist. Co. Ltd., : RESPONDENT
through it's Nodal Officer, EE(Admn),
Rural Circle, Aurangabad.

The Executive Engineer,
Rural Circle, Aurangabad

For Consumer : Shri. H. A. Kapadia
For Licensee : Shri. Y. B. Nikam
EE, Rural Circle, Aurangabad

CORAM

Smt. Shobha B. Varma Chairperson
Shri. Makarand P Kulkarni Tech. Member/Secretary
Shri. Vilaschandra S. Kabra Member

CONSUMER GRIEVANCE REDRESSAL FORUM DECISION

- 1) The applicant M/s. Nath Pulp & Paper Mills Pvt.Ltd., S.No.72, Wahegaon Paithan Tq. Paithan is a consumer of Mahavitaran having Consumer No. 490019001625. The applicant has filed a complaint against the respondent through the Executive Engineer i.e. Nodal Officer, MSEDCL Rural Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 21.05.2019.

The brief facts of the dispute are as under:-

- 2) The petitioner is authorized signatory of M/s Nath Pulp & Paper Mill Ltd. situated at Gut No.72, Village Vahegaon Tq. Paithan Dist. Aurangabad. The petitioner is engaged in manufacturing of various types of Papers and bears Consumer No. 490019001625. The petitioner has taken 33 Kv HT connection having contract demand and connected load of 3000 KVA and 6000 kW respectively for his paper mill. The tariff levied is HT (Industry).
- 3) The petitioner has submitted that Hon'ble Commission has passed tariff order dt.31.05.2008 in case No.72/2007. The said order was made effective from 01.06.2008. As regards to issue of applicability of tariff for HT-I Continuous and Non continuous category, Hon'ble Commission ruled that:
"Only HT industries connected on express feeders and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry".

- 4) It is submitted by the petitioner that he was being supplied electricity under HT-I Continuous category and issued bills as per HT Continuous tariff. However, since there were interruptions in electricity supply, the petitioner contacted Chief Engineer, of Respondent Company for providing uninterrupted supply. It is submitted that the Chief Engineer, after making necessary enquiry, confirmed vide his letter Dt.20.02.2006 that the 33 Kv feeder from which supply has been provided to petitioner's factory is not an Express Feeder.
- 5) The petitioner has stated that, as the supply provided was not from express feeder, he submitted application for change in tariff from Continuous to Non continuous in the office of Respondent on 18.06.2008 & it was within stipulated time limit of one month from the date of passing tariff order i.e. 31.05.2008. However, in spite of follow up, no action was taken by Respondent nor any communication was received by the petitioner.
- 6) The petitioner has submitted that, Hon'ble Commission thereafter passed another order on dt. 12.09.2008 (Case No.44/2008) on the petition filed by Respondent for providing clarification regarding order dt. 31.05.2008 passed in case No.72/2007. Hon'ble Commission in the issue related to change of tariff from Continuous to Non continuous, ruled as under:

Applicability of HT-1 (Continuous Industry) Commission's Ruling and Clarification:

"The commission is of the view that MSEDCL should not ignore the benefit of load relief that could be achieved in case certain HT-1 continuous industries, who are presently not subjected to load shedding,

voluntarily agree to one day staggering like other industries located in MIDC areas. The HT industrial consumers connected on express feeder should be given option to select between Continuous and Non-continuous type of supply and there is no justification for removing the clause “demanding continuous supply” from the definition of HT-1 continuous category. It is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and Non continuous supply only once in the year, within the first month after issue of the tariff order for the relevant tariff period. In the present instance, the consumer may be given one month time form the date of issue of this order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued.”

- 7) It is submitted that, Hon’ble Commission, thereafter passed tariff order dt.10.09.2010 in case No.111/2009 and continued that same provision as stipulated in previous tariff order dt.12.09.2008 (Case No.44/2008) in respect of exercising powers of shifting from continuous to Non continuous category.
- 8) That, as per directives issued in the order dt. 10.09.2010, the petitioner once again submitted application for change of his tariff category from Continuous to Non-continuous in the office of Respondent on 23.09.2010. However, no cognizance of the application was taken by Respondent and Respondent failed to refund the tariff difference amount to the petitioner.
- 9) The petitioner submits that as Respondent changed the tariff of few consumers from Continuous to Non continuous and refunded the tariff

difference amount to some consumers situated in other region of state of Maharashtra, conflict was developed due to dual methodology adopted by MSEDCL. A writ petition (W.P.No.5434/2013) was also filed before Hon'ble High Court , Nagpur by a consumer on the same issue.

- 10) It is submitted that, Respondent MSEDCL company, thereafter filed miscellaneous application (M.A. 5,6 &7 of 2015) before Hon'ble Commission which was registered in case No.94/2015.
- 11) That, Hon'ble Commission after going in details of conflicts passed its order on 19.08.2016 (case No.94/2015) and directed Respondent to consider all such pending application and submit compliance regarding refund and its impact within three months.
- 12) The petitioner has submitted that it is only after Hon'ble Commission's order, Chief Engineer of MSEDCL issued letter bearing No.16720 dt. 10.07.2017 to Superintending Engineers of all circles in state of Maharashtra and provided methodology for refund of tariff difference amount to respective consumers.
- 13) The petitioner has submitted that, in spite of receipt of all three applications dtd. 18.06.2008 , 22.09.2010 and 20.08.2012, Respondent while refunding the amount considered the period of refund from 01.08.2012 onwards and refunded/adjusted amount of Rs. 1,84,13,653/- through monthly electricity bills.
- 14) It is submitted that, in view to get refund of tariff difference amount form date of application i.e. from 18.06.2008, the petitioner submitted application on 09.04.2018 to Respondent and requested to refund the total amount from June 2008 onwards along with interest. Cognizance of the said letter was not taken by Respondent. Another letter on

20.08.2018 was issued and once again requested to refund tariff difference amount for period June 2008 onwards along with interest.

- 15) That, the Respondent vide letter No.3739 dt.01.09.2018 conveyed his inability to pay interest amount. The petitioner is therefore left with no other alternative but to file the present grievance before your Hon'ble Forum for payment of interest amount.
- 16) That, the Respondent is under obligation to provide interest under section 62(6) of Indian Electricity Act, 2003.
- 17) That, separate grievance for refund of balance amount along with interest towards tariff difference for period June 2008 to July 2012 is filed and hence the said amount is not claimed in this petition.
- 18) **It is prayed that,**
 - 1) Respondent may be directed to pay interest as per provision of section 62(6) of Electricity Act, 2003 on the refunded amount.
 - 2) Respondent may be directed to pay suitable compensation towards intentional delay in settling claim of petitioner.

The Respondent has submitted say (P.No 27) as under:

- 19) As per the complainants' information and documents, the first application date was 18.06.2008 and subsequent application date was 22.09.2010. However, as per the Manager (HR) Rural Circle, Aurangabad letter of date 13.01.2017, it is mentioned that the letter of dated 18.06.2008 is not in warded in the inward register of Circle Office, also the signature is not of the employee who was on duty for that particular date.
- 20) Similarly, the letter of dated 22.09.2010 is also not in warded in the inward register of Circle office record; this has been confirmed through

Manager (HR) Rural Circle, Aurangabad letter No.01642 of date 17.04.2018.

- 21) As per the letter of Superintending Engineer (Commercial) No. 3076 dt.30.01.2019, vide letter PR-3/Tariff/5990/ dt.21.03.2018 Corporate Office has requested to Hon'ble MERC about guidance for passing of refund of interest in order in case no.94/2015 dt.19.08.2016. Hence, interest on tariff difference amount could not be considered on the amount of tariff difference.
- 22) The period of refund of tariff difference from June 2008 to July 2012 as demanded by the consumer is not established from the record of rural circle Aurangabad. Hence, there is no question of refund of tariff difference for the period from June 2008 to July 2012. Also there is no detail guideline from Head Office regarding payment of interest and Tariff difference amount.
- 23) It is prayed to dismiss the complaint.
- 24) We have perused the pleadings & documents submitted by both the parties. Heard arguments advanced by Consumer Representative Shri. Kapadia & Respondent's Nodal officer, Shri. Y.B. Nikam, Executive Engineer, Rural Circle, Aurangabad.
- 25) Following points arise for our determination & we have recorded our finding on it for the reasons to follow: -

Sr. No.	POINTS	ANSWER
1	Whether the petitioner is entitle for interest on the tariff difference refunded amount for the period 01.08.2012 up to July 2015?	No
2	Whether the petitioner is entitled for compensation for delay in settlement of the claim by the Respondent?	No
3	What order & cost?	As per final order

REASONS**PONIT NO. 1:-**

26) On 19th August 2016, Hon'ble MERC has passed order in case No. 94/2015 & Misc. application Nos. 5,6 & 7 of 2015, in the matter of petition of MSEDCL for review of tariff order dtd. 26.06.2015 in case no.121/2014 with regard to disallowances relating to exercise of choice between Continuous & Non-continuous supply. At para 29 & 30 of the order following observations are made:

"In these proceedings, Shri. Ashish Chandarana has cited several specific instances of irregularities committed by MSEDCL while deciding applications for change of category from Continuous to Non-Continuous. While these alleged irregularities cannot be a ground for rejection of MSEDCL's claim for review and the Commission has already held that its earlier stipulation is inconsistent with the SoP Regulations, MSEDCL has admitted during these proceedings that it had taken an ad hoc and inconsistent approach not only on such applications but also in different judicial forums with regard to individual cases, and that it had revised its stand in these forums after filing this Petition. The commission directs MSEDCL to examine and take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applications.

In view of the foregoing, the review Petition is allowed. The Commission directs MSEDCL to assess the impact of this Order after examining all the applications received by it which merit revision, based on the principles settled in this Order, including the impact on account of any selective,

inconsistent or discriminatory treatment given to different applications, and submit it to the Commission within three months.”

- 27) That, on the basis of the order passed in case No. 94/2015, MSEDCL has issued circular No.16720 dt. 10th July 2017 and directed to examine & take appropriate action with regard to treatment given to different applications. Directions were issued for disposal of applications for change of category from Continuous to Non continuous & method of approval was also guided.
- 28) Section 62(6) of Indian Electricity Act, provides as under:-
“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee”.
- 29) That in the Judgment passed by Hon’ble Bombay High Court in W.P.No.5437 of 2013 MSEDCL, through Superintending Engineer, Akola V/s M/s. Ruhatia Spinners Pvt. & other decided on September 10, 2014, is brought to the notice of Consumer Representative Shri. Kapadia.
In that case, there were identical facts, wherein the original petitioner has requested for change in category from Continuous to Non continuous on 04.10.2012. Approval was received on 27.02.2013. Hence change was effected as per Circular No. 175, from 01.03.2013. Hence, original petitioner submitted complaint before CGRF claiming change of tariff HT-IC to HT IN from 01.08.2012 instead of 27.02.2013. CGRF, Amravati Zone, granted the claim & also awarded interest at the rate of 9% p.a. on the difference amount with costs of Rs. 2000 &

compensation of Rs. 1000. The said order was under challenge before Hon'ble High Court.

The Hon'ble Bombay High Court on the point of interest has made following observations at para 7 of the judgment:-

"In so far as grant of interest at the rate of 9% p.a. is concerned, the same has been granted by relying upon the provision of Section 62(6) of the said Act. Under sub Section (6) of Section 62 it is only if any licensee or a generating company recovers a price or charge exceeding the tariff determined under said section, then the excess amount can be recovered by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee. It is not in dispute that in present case no such price or charge exceeding that tariff determined under Section 62 was sought to be recovered. Hence, award of interest at the rate of 9% is therefore not in accordance with law. Said part of the order will therefore have to be set aside. In so far as the award of compensation and costs are concerned said part of the order does not deserve to be interfered."

Considering the ratio laid down in the aforesaid case, in the present case similar facts are forthcoming, so claim of interest of the petitioner is held as not maintainable.

- 30) It is important to note that although order in WP No. 5437/2014 was passed on 10th September 2014, i.e. earlier to order dt. 19.08.2016 in case No.94/2015, the basic concept as to whether interest has to be awarded or not in case of change of category from HT-IC to HT-IN is once decided by Hon'ble High Court, it would prevail. Fact remains that,

there were no directions issued by MERC in order of case No. 94/2015 to grant interest. We hold that the ratio laid down in WP No. 5437/2013 is binding & hence claim of interest in similar situated facts can't be awarded.

- 31) It is also to be noted that in case No. 94/2015 at para 12.4 there is reference that SLP No.1911/2015 in which order dt. 10 September 2014 i.e. WP No. 5437/2013 is challenged before Hon'ble Apex Court. That the said SLP is pending before Hon'ble Apex Court.
- 32) It is important to note that what is prohibited is recovery of price or charge exceeding the tariff determined under section 62 (6) & then only the licensee or generating company will have to pay the interest on the difference. It is only when a licensee or generating company deliberately recovers or extracts from a person price or charge in excess of the price determined u/s 62 (6), that person can claim the excess price or charge paid by him alongwith interest. So for this purpose also we are unable to accept the claim of interest of the petitioner.
- 33) Considering the ratio laid down in WP No. 5437/2013, interest can't be granted. As the petitioner is not entitled for interest, we answer point No.1 in the negative.

Point No. 2: -

- 34) On 19/08/2016, order in case No.94/2015 was passed & accordingly circulars were issued, actions were finalized by MSEDCL as per directions issued in case No. 94/15 & ultimately refund of difference amount of all the eligible consumers were credited in the future energy bills, so delay caused in settling the claim is not deliberate. Hence, we answer point No.2 in the negative.

35) We proceed to pass following order in reply to point No.3. :-

ORDER

- 1) Complaint stands dismissed.
- 2) Parties to bear their own cost.

Sd/-
Shobha B. Varma
Chairperson

Sd/-
Makarand P. Kulkarni
Member / Secretary

Sd/-
Vilaschandra S.Kabra
Member