

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
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No. / CGRF /Nashik/NUC/N.U.Dn.1/809/62/2019-20/

Date:

(BY R.P.A.D.)

In the Matter of

Change Of Tariff Category From HT I Continuous to HT I Non-Continuous

Date of Receipt : 02/05/2019

Date of Decision : 09 /08/2019

To.

M/s. CEAT Tyres Limited
82, M.I.D.C. Industrial Area,
Satpur Nashik 422007.
(Consumer No. 049069002284)

Complainant

1. Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Urban Circle office, Shingada Talav,
Nashik
2. Executive Engineer (U-1)
Maharashtra State Electricity Distribution Com. Ltd.
Kharbanda Park Nashik .

Distribution Company

DECISION

M/s. CEAT Limited , Satpur Nashik hereafter referred as the (Complainant) is the HT consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for not allowing change of tariff category from HT-1 Continuous to HT-1 Non-Continuous The Complainant filed a complaint regarding this with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. Ltd. But not satisfied with the decision of the IGRC , the consumer has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.94 of 2019 on 02 /05/2019..

The Forum in its meeting on 10/05/2019, decided to admit this case for hearing on 21/06/2019 at 12.30 Pm in the office of the forum . A notice dated 10/05/2019 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Urban I Circle Office Nashik for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer. The hearing was later postponed to 05/07/2019 at the request of the complainant.

Sau. P.V. Bankar Nodal Officer/Ex. Engr. , Asstt. Auditor Shri. K.K. Tirsa represented the Distribution Company during the hearing. Shri . B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

1. We have approached to SE for change of tariff in the year 2012. SE told us that for the change of tariff, you have to approach to Chief Engineer.

2. We had given the letter to Chief Engineer on date 07/05/2012 regarding heavy power tripping on our express feeder and change of tariff code HT IC to HT IN.
3. MSEDCL informed that as per MERC condition for change of tariff, we have to apply within first month of tariff order.
4. MERC has issued the tariff order on date 26/06/2015 and changed the earlier restriction ruling for change of tariff HT IC to HT IN. MSEDCL has issued the commercial circular no. 246.
5. With reference to tariff order dated 26/06/2015 and circular no. 246, we have requested for conversion of express feeder in to non-express feeder by letter dated 25/02/2016 and our application has forwarded to H.O. for approval.
6. Meanwhile, MERC has issued the order on date 19/08/2016 for to consider the earlier applications which has submitted for change of tariff HT IC to HT IN with reference to SOP Regulation and submit the compliance report within 3 months to the commission.
7. With reference to MERC order dated 19/08/2016, Again, we have submitted our request application dated 14/11/2016 and 22/11/2016.
8. As MSEDCL has not taken any action on our pending application with reference to MERC order dated 19/08/2016, we have raised our grievance to CGRF Case No. 64 of 16-17 and when we know that proposal of change of tariff to all consumers whose application has pending is processed and kept for final approval of MD, case withdrawn request submitted to CGRF.
9. Due to delay for approval from MD, we have raised our grievance to CGRF Case No. 03 of 17-18 with reference to tariff order dated 26/06/2015 and our request letter dated 25/02/2016.
10. As per our relief claim in Schedule A, CGRF has allowed the tariff difference from April 2016 to Oct.2016 and MSEDCL has complied the same order.
11. MSEDCL Corporate office has issued the approval on date 10/07/2017 for refund the tariff difference to all consumers whose application has pending with reference to MERC order dated 19/08/2016.
12. Till date, MSEDCL has not taking any action on our application even though H.O. has given the guidelines.
13. MSEDCL has refunded the identical claims to more than 500 consumers in a state with consideration of earlier applications. MSEDCL is involved in discrimination which has not allowed in Electricity Act. [Section 45\(4\)](#) of the Electricity Act, 2003, prohibits any discrimination against any person or class of person.
14. As per MERC order, MSEDCL should consider the earlier application submitted by the consumer, without applying again for such refund. MSEDCL has duty to comply the MERC direction in right sprit. Most of the consumer's earlier application has considered and refunded the identical claim. But till date our earlier application has not considered. (Discriminated).
15. Again, we have applied on date 23/08/2018, 18/09/2018 to SE Nasik and 27/12/2018 to Corporate office of MSEDCL and Corporate office has forwarded our application for taking the action as per guidelines issued on date 11/03/2019. But till date Local office has not taken any action.
16. We have applied to IGRC on date 18/09/2018 with reference to our pending application dated 07/05/2012.
17. IGRC has not allowed the grievance as stating as "case no.64 of 2016-17 was previously withdrawn and again considered in CGRF case no. 3 of 2017-18. So same complaint cannot be considered in IGRC."
18. In view of IGRC order, we are submitting following points for clarification:
 - a. IGRC has wrongly considered as same claim has considered in CGRF Case No.3 of 17-18. We have not raised the claim as per our application dated 07/05/2012 which has pending with MSEDCL. So CGRF has not dealt the same claim.

- b. We have raised our claim to CGRF in Case No. 64 of 2016-17 with reference to MERC case no. 94 of 2015 dated 19/08/2016, with regard to disallowances relating to exercise of choice between Continuous and Non-Continuous supply and our nature of relief sought from forum as "Allow the change of tariff as per SoP regulation and as per order of MERC (19/08/2016), refund the excess collected with interest as per EA Act 2003."
- c. We have raised our claim to CGRF in Case no.3 of 2017-18 with reference to MERC tariff order dated 26/06/2015. We have requested to forum to decide our application dated 25/02/2016 as per tariff order and MSEDCL circular no.246 and refund the tariff diff from April 2016 to Oct.2016.

Both Case Claims has different with reference to MERC orders and in time period also.

- d. Salient features of Case no.3 of 2017-18:

Consumer Representation: To decide the application dated 25/02/2016 as per tariff order dated 26/06/2015 and MSEDCL circular no.246.

Relief Sought:

Change of tariff category and refund excess collected from April 16 to Oct.16.

MSEDCL submission: Consumer application dated 25/02/2016 has forwarded to Corporate office, Mumbai for guidance. After receipt of guidance, action will be taken.

IGRC: Not decided the case.

Observation by the forum:

- 1. Our supply details
- 2. Our application 25/02/2016 which has main subject.
- 3. Noted the actual facts for withdrawal of Case no. 64 of 2016.
- 4. Tariff order dated 26/06/2015.
- 5. MSEDCL circular no.246 w.r.t. tariff order 26/06/2015.
- 6. MERC tariff order dated 03/11/2016 merger of Continuous to non-continuous.
- 7. Issue of grievance application date 25/02/2016
- 8. Application date 25/02/2016, entitled from April 2016.
- 9. Misleading information by MSEDCL w.r.t. Circular no.247 and 246.
- 10. MERC SoP regulation 4.13.
- 11. Direction to refund the tariff difference for April 16 to Oct.16 considering application date 25/02/2016 as per Sr.No.2 and 8.
- 12. SoP not allowed.

Order:- Allowed the grievance fully as per our request to forum.

19. In Case No. 03/2017-18, We have not claimed our first application dated 07/05/2012 in schedule A. So, without our claim, CGRF cannot considered the same on merit. Pl refer our Schedule A of Case no. 03/2017-18, in which we never asked claim for our application dated 07/05/2012.

20. As per supreme court order, in the matter of State of Orissa and Anr vs MamataMohanty dated 09/02/2011, held that "It is settled legal proposition that "as a rule relief not founded on the pleadings should not be granted."Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties."

In case No. 03/3017-18, both parties Consumer and MSEDCL has not raised claim from first application dated 07/05/2012. So CGRF has not granted the same. CGRF has fully granted the relief as per Schedule A. CGRF has not rejected the claim from 07/05/2012 as this claim is not a part of relief.

21. Supreme court in the matter of Rajendra Prasad Gupta vs Prakash Chandra Mishra order dated 12/01/2011, allowed the appeal in the matter of withdrawal and held that

"Rules of procedure are handmaids of justice. Section 151 of the Code of Civil Procedure gives inherent powers to the court to do justice. That provision has to be interpreted to mean that every procedure is permitted to the court for doing justice unless expressly prohibited, and not that every procedure is prohibited unless expressly permitted. There is no express bar in filing an application for withdrawal of the withdrawal application.

In *Narsingh Das v. Mangal Dubey*, ILR 5 All 163 (FB) (1882), Mr. Justice Mahmood, the celebrated Judge of the Allahabad High Court, observed: -

"Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown to be prohibited by the law. As a matter of general principle prohibition cannot be presumed."

The above view was followed by a Full Bench of the Allahabad High Court in *Raj Narain Saxena Vs. Bhim Sen & others*, AIR 1966 Allahabad 84 FB, and we agree with this view.

22. High court Aurangabad bench in W.P.no. 4516 of 2018 in the interim order, when respondent consumer has raised the issue for identical claim has granted to hundreds of such consumers and these respondent have been discriminated against.

High court held that "I find it appropriate to call upon the learned Advocate for the petitioners to scrutinize these contentions on the basis of the material that may be available or that may be supplied by the respondents pursuant to the above stated directions. These aspects can be looked into by a responsible Authorized Officer of the petitioners and if the said issue can be resolved on the principle of parity, the cause of action in these petitions would then be reduced only to the extent of the contentious issues."

23. We have given the application for withdrawal the case no. 64/16-17 as matter is final approval with MD of MSEDCL, CGRF has allowed the same and again registered the same to CGRF case no.62/19-20 as IGRC has not decided on merit.

24. MSEDCL has refunded the same identical claim to more than 500 consumers, CGRF should decide it on discrimination under section 45(4) of EA 2003.

Our grievance is not in respect of the same claim matter that has been settled by the forum in Case No. 3/2017-18 or any previous proceedings on merits or not rejected the same claim in Case No. 3/2017-18 or any previous proceeding.

Forum shall follow the principles of natural justice to protect the interest of consumers with considering the MERC order dated 19/08/2016.

Arguments from the Distribution Company.

The Distribution Company submitted a letter dated 21/06/2019 from the Nodal Officer, MSEDCL, Urban Circle Office Nashik and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

As per **COMMERCIAL CIRCULAR No. 45 DATE: 09 Oct' 2006**

As per 4 HTP I (INDUSTRIES)

4.3 The erstwhile HTP – I & HTP – II High Tension Industrial consumers, who are at present exempted from Load shedding, shall henceforth be classified as "Continuous" Industries and shall be billed accordingly;

4.4 Similarly, the remaining HTP – I & HTP – II High Tension Industrial consumers, who are presently subjected to Load shedding, shall henceforth be classified as "Non - Continuous" Industries and shall be billed accordingly;

As per Comm COMMERCIAL CIRCULAR No 47. DATE: 04.11.2006

4. HTP- I (INDUSTRIES)

4.1 As per the pre-revised tariff, the HTP – I & HTP – II tariff was applicable for all High Tension Industries & Other High Tension consumers situated in Mumbai Metropolitan / Pune Metropolitan Area and other Area respectively;

4.2 The Hon'ble Commission has now combined these two categories (HTP – I & HTP – II) into one consumer category, viz. HT I – Industries & hence all the consumers in the erstwhile HTP-I & HTP-II will now be covered under HT-I tariff category. Further, this category has been reclassified into two sub – categories, viz. "Continuous" and "Non – Continuous" Industries.

4.3 In the absence of any authentic data regarding processing type of industry all the erstwhile HTP – I & HTP – II High Tension Industrial consumers, who are at present exempted from Load shedding, will be treated as being on an Express feeder, shall henceforth be classified as "Continuous" Industries and shall be billed accordingly;

4.4 All consumers of the erstwhile HTP-I and HTP-II categories, other than those covered in para 4.3 above, who are presently subjected to Load shedding, shall henceforth be classified as "Non - Continuous" Industries and shall be billed accordingly. Any continuous industry consumer who is subjected to load shedding and hence classified as non-continuous can opt for continuous tariff by submitting the proper documents;

Further, As per **COMMERCIAL CIRCULAR NO. 52 Date : 07.05.2007**

Categorization of HT I consumers in continuous and non-continuous is done MSEDCL vide its review / clarificatory petition dated 5th December 2006 referred the matter to the Commission, explaining the difficulties in implementing the provisions of the said order in respect of HT I category.

MERC issued the clarification in this regard and authorized the Development Commissioner (Industries) or similar authorities designated by State Government to certify this. The excerpts of the MERC order are as under:

QUOTE:-

"Development Commissioner of Industries (DCI) or similar authority designated by the State Government are the appropriate forum to certify whether an Industry is a Continuous Process Industry or Non-continuous Industry. Industries needs to submit required certifications from State Industrial Development Authority to avail the tariff allocated for Continuous Process Industry".

The matter was referred to the Industries Department and subsequent to this a Government Resolution was issued vide dated 4th April 2007 wherein the powers of the Development Commissioner (Industries) were delegated to the General Managers of these DICs to the extent of issuing certificates. Thus, vide this G.R. the General Managers of DIC are the Competent Authorities to decide the continuous / non-continuous nature of industries based on the general guidelines issued by the Development Commissioner (Industries).

1. All the HT I category consumers will have to produce the necessary certificates of continuous or non-continuous i.e. in case the consumer wants to avail the continuous industry tariff certificate will be necessary from the Competent Authority as per earlier provisions or as per G.R. dated 04.04.2007 (i.e. G.M., DIC and above).
2. MSEDCL will be following the provisions of Circular No. 47 only for a further period of **45 days** from the date of the issue of this circular (upto 15th June 2007).
3. These provisions will be followed only in respect of the billing period from 1st October 2006 to 31st March 2007 as stipulated in the tariff order.
4. After the period of 45 days in case of industries who have not submitted the continuous process industries certificate, the same will be treated as non-continuous industry and will be charged accordingly for the period from 1st October 2006 to 31st March 2007.

Consumer has applied on 07.05.2012 to the C.E, Nashik Zone Office. As per MERC order 12.09.2008 Case No. 44 of 2008 "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 from 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 categorisation will be continued" Consumer has not apply within first Month of Tariff order, so application has not processed.

Further, COMMERCIAL CIRCULAR No. 175 DATE: 5th September 2012

HIGH TENSION (HT) – TARIFF Note:

d) 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.

Also as per **Commercial Circular No.246 Date:-11.08.2015**

Procedure for change of consumer tariff category from HT-Continuous to HT-Non-continuous

The consumer availing supply on express feeder may exercise his option to choose between Continuous and non-continuous supply anytime during financial year but only once in such financial year with one month prior notices. Such consumer should be required to submit a written request to MSEDCL, giving one month's notice and the Tariff applicable to non-continuous supply shall apply, from the ensuing billing cycle.

Consumer has applied 25.02.2016 regarding Tariff change from Continuous to Non-Continuous, also consumer applied to Hon'ble CGRF and CGRF decision was ordered to refund the difference with interest for the period April-16 to Oct-16. As per the order this office has refunded the same through electricity bill for the month of July-2017

The clarification about express feeder came in existence from MERC SOP Regulation 2014, before 2014, there was clear no clear definition of express feeder, so uninterrupted & continues supply is taken as base for continuous tariff.

As per MERC regulation 6.6, the forum shall not admit any grievance unless it is filled within 2 years from the date on which the course of action arise.

So in view of the above facts, you are requested please to reject the appeal of this consumer.

Observations by the Forum:

Heard both the parties & gone through the documents / evidence put during hearing it is noticed that the Dist. Co. has acted inconsistently and discriminatory treatment given to different applications in the matter in the present case, which is inconsistent with Regulation 9.2 of SOP Regulation 2005.

From the documents filed by both parties it is observed that Dist. Co. has refunded extra amount recovered against tariff difference on account of continuous & non continuous tariff and rejected some application only on grounds that the Consumer did not applied within 30 days after issuance of tariff order, on which Hon'ble MERC clarifies as below :

" It is clear that the SOP regulation being in the nature of subordinate legislation, an order issued in contravention of these Regulation is not tenable. It will also be clear from the wording of Regulation 9.2 quoted above, it sets the period within which a licensee has to dispose of an application for change of tariff category, but places no restriction as when such an application can be made. The provision of subsequent SOP Regulation, 2014 are similar. The Commission notes that its Electricity Supply code Regulation, 2005 also does not circumscribe applications in this manner. Hence, the Commission is of the view that the restrictions stipulated by it earlier is in consistent with the SOP Regulation."

Also the Corporate office informed to all Superintending Engineer regarding approval received from Boards Resolution dt. 1/06/2017 for implementation of Hon. MERC order in case No. 94/2015.

The Dist. Co. also issued guidelines vide Lr. No. 16720 dt. 10/07/2017 for compliance of cases pending in ref. to MERC case No. 94/2015. In the matter of continuous to non continuous and also Dist. Co. accorded approval to withdraw such cases pending before Hon. Court/ Forum as follows ..

" The concerned Hon. Court/ Forum be informed about common stand to be taken by MSEDCL, to effect the tariff changes as per Regulation 9.2 of SOP Regulation, 2005, requesting for necessary and suitable action such as withdrawal/ disposed off the order and legal cases will be withdraw to that extent (As per mandate of MERC order in case No. 94/2015 dt. 19/08/2016)

From the above facts & evidence the Forum is of the opinion that the Dist. Co. should refund extra amount recovered towards continuous tariff from the date of application with interest as applicable.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company, all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. The application of applicant is allowed.
2. The Dist. Co. Should refund extra amount recovered towards continuous tariff applied from June 12 to March 2016 with an interest as applicable with RBI rate of interest till date of payment.
3. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .
4. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Smt. Vaishali V.Deole)
Member

(Prasad P. Bicchal)
Member Secretary

(Vivekkumar R.Agarwal)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. ,
Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. ,
Urban Circle office, Nashik .

