

CONSUMER GRIEVANCE REDRESSAL FORUM  
M.S.E.D.C.L., PUNE ZONE, PUNE

Case No. 28/2019	Date of Grievance	: 24.04.19
	Hearing Date	: 24.05.19
		12.06.19
	Date of Order	: 19.08.19

In the matter of refund of tariff difference in respect of change of category from continuous to non-continuous.

M/s. Ascent Hotels Pvt. Ltd.,  
S.No.32/1, A+B, Wadgaonsheri,  
Pune - 411014.  
(Consumer No. 170019035320)

---- APPELLANT

VS

The Supdt. Engineer,  
M.S.E.D.C.Ltd.,  
Rastapeth Urban Circle,  
Pune - 411011.

---- RESPONDENT

Present during the hearing:-

**A] - On behalf of CGRF, Pune Zone, Pune.**

- 1) Shri. A.P. Bhavathankar, Chairman, CGRF,PZ, Pune
- 2) Mrs. B.S. Savant, Member Secretary, CGRF, PZ, Pune
- 3) Mr. Anil Joshi, Member, CGRF, PZ. Pune.

**B] - On behalf of Appellant**

- 1) Mr. Ashok N.Patil, Consumer Representative.
- 2) Mr. Karan S.Singh, Consumer Representative

**C] - On behalf of Respondent**

- 1) Mr. Girish M.Bhave, Ex.Engr., Rastapeth Urban Circle
- 2) Mrs.Anju Fuke, Jr.Law Officer

The consumer complaint about refund of tariff difference in r/o continuous to non-continuous from May-2012 to Oct.-2016 including open access units. The

above named consumer filed grievance against the response given by Utility on his application for granting category from continuous to non-continuous. According to his application consumer was filed an application on 17.4.2012 to the Supdt. Engineer, Rastapeth Urban Circle for change in category from continuous to non-continuous. According to letter No.3099 dated 29.4.2013 submitted to Competent Authority for approval & as per 9.2 SOP Regulations 2005 - the billing category should have been changed from May-2012 MERC has given the order No.94 of 2015 on dated 19.8.2016 regarding the above pending cases for change of category from continuous to non-continuous should be finalize and there is no any retriction to submit application within a month. Thereafter Commercial Section of Corporate Office Mumbai, has gave letter No. 16403 dtd.5.7.2017 for finalizing cases as per MERC order in Case No.94 of 2015. The tariff difference between continuous to non-continuous should be granted to Ascent Hotel May–2012 to Oct. 2016 including open access units. It is also mentioned as per refund of tariff amount was delayed without any fault of consumer and monthly tariff difference should be given as per section 56 ( 2 ) of Indian Electricity Act 2003 mentioned in the point whether the consumer is on open access or not. All concerned offices had change of category from continuous to non-continuous & MSEDCL has not gave any proof of Regulations regarding this matter. The consumer was applied on 17.4.2012 at concern Circle & after follow up with MSEDCL Rastapeth Urban Circle & then the circle office was submitted the letter to C.E.Comm. vide his L.No.3099 dtd. 29.4.2013 which is attached by consumer seeking clarification from Corporate Office in the year 2014-2015. The similar approach was shown by CE, Commercial Corporate Office.

It is submitted that, in the meantime MSEDCL has filed the review petition in Case No.94/2015 at MERC and the decision order of Writ Petition was given on 19.8.2016. The MSEDCL has taken action as per MERC order and wrote letter on 10.07.2017 & 05.07.2017 to the Circle offices to initiate the action as per the guidelines of MERC Order No.94/2015 & implement immediately. There was no condition mentioned that, whether the consumer was an open access or not as per this guidelines in the year of 2017. As such

this consumer was not received the tariff difference benefit alongwith other consumers hence being aggrieved by us, the consumer was filed the complaint due to no any action was taken by the Utility. According to consumer this is continuous cause of action as such consumer prays in similar cases in CGRF Amravati in Case No.28 of 2018 as benefit was granted and relief to the consumer and allowed tariff difference for change of category from continuous to non-continuous alongwith interest. The copies of various orders were attached by the consumer regarding this matter. Accordingly consumer prays for granting of tariff difference relief since day of application 2012 alongwith interest.

Initially consumer was filed his grievance before IGRC. After filing the said dispute, IGRC registered the case at RPUC and serving the notice to the Respondent Utility. The Respondent Utility was appeared and filed the reply. The consumer has made an application for changing of category from continuous to non-continuous for the period of May-2012 to Oct.-2016. The consumer was using open access supply & used this facility & hence the said continuous open access facility was utilized through express feeder without any complaint by the consumer for a continuous long period. However the consumer was filed the grievance in IGRC as cause of action was not falls within the period of 2 years from the date of actual relief entitled by him. In fact, the consumer was filed his grievance on 31.12.2018 in form No. X. Thereafter since 2012 MSEDCL stated that not raised any objection nor filed any grievance by the consumer and continues to use open access facility and take benefit of the same as per open access Regulations. In view of the consumer, it was not filed the dispute or not raised the complaint within 2 years from the actual date of cause of action arose to him. The utility was prays for dismissal of complaint as no cause of action arise to him. Thereafter the grievance was heard by IGRC after giving opportunity to both the side. The IGRC have gave their finding and observations and passed the order against the consumer on the ground that, the dispute was filed in IGRC beyond the period of 2 years from the cause of action actually arose. The MSEDCL stated that, for change of billing category from continuous to non-

continuous the objection was not made by the consumer from 2012 upto lodging of the complaint at IGRC. Therefore IGRC please to dismiss the said complaint.

After deciding the said case by IGRC, the consumers was approached to this Forum and file his grievance in Form No. A on dtd. 24.04.2019. The consumer were attached the copies of bills since 2012 to March- 2015, copy of IGRC order, copy of various judgment of CGRF & Ombudsman & MERC, copy of order reviewed petition No.94 of 2015 dtd. 19.8.2016 alongwith his grievance. After filing the grievance at this office, the case has registered in Case No. 28 of 2019 and serving the notice to the Respondent Utility for filling the detailed reply as on before 8.5.2019.

Thereafter the Respondent Utility was appeared and filed the reply on 12.06.2019 in response to the grievance of the consumer. The Respondent Utility has filed the copy of CPL, copy of correspondence of the Supdt. Engineer with the consumer from time to time, copy of resolution of proposals whether the consumer has entitled to receive the tariff difference from continuous to non-continuous and all the other correspondence related to this issues. The Respondent Utility has submitted that, the approach of consumer is beyond the period of 2 years, since 2012 to 2016, the consumer remain silent and not agitated the claim as since Dec.- 2017 consumer till the period was not received any benefit of tariff difference and refund entitled by him. In view of direction and review petition similar relief is received to other consumer. The grievance is filed before IGRC on the given date which is beyond the period of limitation however the proposal was sent to Corporate Office but no any reply is received from the Head Office. This is a policy matter, the respondent Utility was informed on 29.6.2019 that, the policy matter decision was issued under consideration of Head Office and not decided therefore they are yet to receive guidelines from Competent Authority and necessary order may be passed.

After perusing rival contention of consumer and Respondent Utility the following points arose for my consideration to which I have recorded my findings to the issue referred hearing.

- 1) Whether consumer is entitled to tariff difference in respect of category of continuous to-non continuous alongwith interest since May-2012 to Dec. 2017?
- 2) Whether consumer is entitled for change of tariff category from continuous to non-continuous since 2012 ?
- 3) Whether this Forum enable to pass order when similar issue is pending before Hon'ble High Court, Competent Authority issue subjudice ?
- 4) What order ?

On dated 12.6.2019 I have given an opportunity to the consumer and his representative for hearing and also for representative of the Respondent Utility. The issue was minutely heard by me I have perused all the documents filed by consumer as well as the Respondent Utility. It appears that the consumer was made grievance to apply the category for billing purpose for change of category from continuous to non-continuous since 17.4.2012. It is appear from the face of record that the Utility was informed to the consumer in writing that, the issues are not finalize and refer to Higher Authority for guidelines. It is further admitted that the W.P. No.94 2015 was pending before MERC according to the consumer the said relief petition was decided on 19.8.2016 and the guidelines was issued to the Respondent Utility in compliance of the said order. The Utility submitted that copy of resolution in implementation of order of MERC 94/2015. The list was prepared but in the said list name of the consumer was missing. After grievance is made by this consumer the issue was referred to legal department and then he forwarded to Head Office but no any guidelines was issued. Therefore benefit and relief of tariff difference from continuous to non-continuous of this consumer is pending. In the mean time I have perused the judgment passed by CGRF Aurangabad, CGRF Nagpur & I have also perused copy of order & judgment passed by Hon'ble Ombudsman in two given cases while searching on Internet those copies are taken out and referred in this issue.

Thereafter when the matter is pending for consideration I have gone through the site of Bombay High Court Bench at Nagpur and found Demantex Pvt. Ltd. Vs. MSEDCL at Hingan ghat . The Writ Petition is filed before Nagpur bench high court and Hon'ble Justice has passed the order considering the similar issue is involved in this case the Hon'ble Ombudsman and the Respondent Utility of granting relief to some of the consumer and rejecting the benefit to other consumer considering category on HT consumers connected to express feeder. The action was suspected to be violation of contribute article of 2014, therefore the present consumer is also feeding of rejection of benefit of continuous and non-continuous tariff difference alongwith interest not granted to him due to the action of Utility to my view if the similar issue is being victim of this litigation of similar in nature the issue is subjudice in higher authority. Therefore in view of provision of regulation of Ombudsman 2006 if the issue is pending before Competent Higher Court. The Forum should not express any opinion or entertain such dispute. Hence it is inability of the Forum to decide the issues when it is pending before Higher Competent Authority. Therefore I am not inclined to exercise my right and to grant any such billing however in the fair interest this consumer may join the litigation of Bombay High Court Bench at Nagpur referring this M/s. Demantex Vs. MSEDCL Hinganghat and subject to weightage of this decision on this issue. The consumer has please at liberty to file the grievance subject to the decision of this proceeding before Hon'ble High Court Bench at Nagpur.

The time limit of 60 days prescribed for disposal of the grievance could not be adhered due to both the parties have submitted the documentary evidences as per the instructions passed during the Forum.

Hence I proceed to pass the following order:

### **ORDER**

1. The consumer dispute of Case No.28 of 2019 is shall be disposed off accordingly.

2. The consumer is at liberty to file the fresh issue in this regard subject to decision of dispute pending before High Court.
3. No order as to the cost.
4. The Licensee is directed to report the compliance within one month from the date of this order.

The order is issued under the seal of Consumer Grievance Redressal Forum M.S.E.D.C. Ltd., Pune Urban Zone, Pune on 19<sup>th</sup> Aug. - 2019.

**Note:-**

- 1) If Consumer is not satisfied with the decision, he may file representative within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman  
The Electricity Ombudsman,  
Maharashtra Electricity Regulatory Commission,  
606, Keshav Building,  
Bandra - Kurla Complex, Bandra (E), Mumbai - 400 051.

- 2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I agree / Disagree

I agree / ~~Disagree~~

Sd/-

ANIL JOSHI  
MEMBER  
CGRF:PZ:PUNE

Sd/-

A.P.BHAVTHANKAR  
CHAIRPERSON  
CGRF: PZ:PUNE

Sd/-

BEENA SAVANT  
MEMBER- SECRETARY  
CGRF:PZ:PUNE