

**CONSUMER GRIEVANCE REDRESSAL FORUM
M.S.E.D.C.L., Bhandup Urban Zone, Bhandup**

CaseNo.274/2019 Date of Grievance: 15.01.2019
Date of Hearing: 16.04.2019
Date of order: **EE/CGRF/BUZ/00436dtd...14.11.2019**

In the matter of billing

M/s. Sub Divisional Engineer,
BSNL Telephone exchange,
warwathane (Nagothane-402106
(Consumer No. 036470001814)

VS

The Executive Engineer, ---- Respondent
M.S.E.D.C.Ltd.,
Panvel Rural
Division, Pen.

A] – Quorum

1. Dr. Santoshkumar Jaiswal, Chairman.
2. Shri. Mr. Ravindra Avhad, Member Secretary.
3. Mrs. Sharmila Ranade, Member.

Present during the hearing:-

B]- On behalf of Appellant

Mr. R.P.Ghatge - Consumer Representative

C] - On behalf of Respondent

Mr. R.B.Mane, Nodal Officer, Pen Circle.

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 sub-section 5 to 7 of section 42 of the Electricity

Act, (36/2003). Hereinafter it is referred as 'Regulation'.

1. The complaint filed by BSNL. The decision of IGRC is not acceptable to BSNL and is aggrieved with the decision, matter is put upto CGRF for Justice so that BSNL is not put to unlawful financial burden and hardship. Therefore he prays to CGRF to pass suitable order so that BSNL is not deprived of the justice.

It is bring to notice that BSNL has above electricity connection (LT-V Industrial) since 14.11.1995 and he regularly paying electrical bills. His company is Government of India undertaking and involved in providing public services in Telecom sector.

MSEDCL flying squad had issued inspection report and flying squad proposed to change tariff from LT-V BII (Industrial) to LT II-B commercial and also proposed for retrospective recovery from 01.08.2012.

2. Accordingly, Dy. Executive Engineer sub Division Pali vide this office letter dated 29.12.2017, has initiated Assessment for Rs. 22,73,484.4/- with interest of Rs. 1,57,180/- for the bill in the month of May as first provisional bill given in month of April 2018 of Rs. 23,51,180/- was not paid. (for the period commencing from 01.02.2015 to April 2018). The contentions of Dy. Executive Engineer, MSEDCL that as per MERC tariff order dt. 01.08.2012, all office and commercial establishments should be charged as commercial tariff.

He had brought to the notice of IGRC that " Hon. MERC in case No.24/2001, has passed an order dated 11.02.2003 as below, In para No.23 'no retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even through the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only."

The applicant has filed observations made by CGRF Nashik Circle in a recent similar case No.CGRF/Nashik/NUC/N.R.Dn/612/02-2017-18/date: 18.05.2017 in the matter of Retrospective Recovery because of change of tariff category date of receipt 12.04.2017 date of decision

18.05.2017.

Distribution Company has not gone through the intent of the provision of the section 56(2) of Electricity Act, 2003.

It has been held by this Electricity Ombudsman, in several other cases, that past arrears for a period of more than two (2) years, preceding the date of demand/ supplementary bill, are not recoverable, in terms of section 56(1) and 56(2) of the electricity Act, 2003.

Hence the Distribution Company is not entitled to recover the difference of amount between the charges of electricity supplied and the amounts paid by the complaint during the period of more than two years, preceding the impugned supplementary bill dated 25.03.2017. The complaint is liable to pay the difference amount between the charges of electricity supplied and the amounts paid by him during the period of 2 years from 25.03.2015 to 25.03.2017 only. The Distribution Company is therefore directed to revise the said supplementary bill accordingly.

From above points it is very much clear that it was very much improper on part of MSEDCL to collect arrears from 01.02.2015 to April 2018.

If MSEDCL's contention is that consumer has to pay as per industrial tariff then the recovery in the form of past arrears imposed is incorrect.

It is very much clear that MSEDCL used coercive powers with threat to disconnect the power if bill amount is not paid within prescribed period. To avoid closing of the exchange and to avoid hardship to public in general and due to threatening by MSEDCL, BSNL had made the payment under compulsion. It is clear that the payment was not on own will hence the observation of IGRC is not true in this regard.

The BSNL was paying at industrial rate and raised the objection against the wrong bill with arrears for the period commencing from 01.02.2015 at commercial rate and interest on the arrears thereof which has been clearly mentioned in his complaint. BSNL paid the arrear bill to avoid disconnection of power supply and disruption of the telecom services thereby inconvenience to consumer of BSNL. BSNL

has never expressed desire to pay at commercial rates. Hence the conclusion that BSNL has paid at commercial rate at own will is totally erroneous.

As per opinion of legal officer of MSEDCL BSNL has to pay at Industrial rates, we totally agree with it.

As per various decisions of MERC and CGRF claiming the arrears for prior period is in contravention to the section 56(2) of Indian Electricity Act 2003.

3. The Respondent utility submits that, Dy. Executive Engineer (Flying Squad) inspected the premises of complainant and found that industrial tariff levied to the Telephone Exchange offices. As per the MERC tariff order in case No. 19 of 2012, commercial tariff is applicable for Telephone Exchange offices. Hence assessment is carried out and tariff difference recovery is charged to the complainant for the period August 2012 to January 2018.

The Respondent utility submits that, in recent judgment of Hon'ble High Court larger bench in Writ Petition No.10764/2011 held that MSEDCL is entitled to recovery electricity charges up to two years preceding from the first demand of such charges. Hence grievance is liable to be rejected.

4. We have heard both sides, and gone through the submission made by both the parties. It appears prima-facie that the utility want to recover the arrears for a period 01.02.2015 to April 2018 with interest from BSNL. It is cleared from the provision of 56(2) of Electricity Act 2003 and the full bench judgment of Hon'ble High Court that the recovery of arrears is to be done only for 2 years i.e. 24 months and without interest. Hence, we accept the submission made by the applicant.

Hence, we proceed to pass the following order:

ORDER

1. This application is hereby partly allowed.
2. The Respondent utility shall recover the arrears only for a period of 24 months from the consumer/applicant without any interest and

P.T. charges.

3. The Licensee is directed to report the compliance within one month from the date of this order
4. No order as to the cost.

I Agree/Disagree

I Agree/Disagree

MRS. SHARMILA RANADE, Dr. SANTOSHKUMAR JAISWAL
MEMBER
CGRF, BHANDUP

CHAIRPERSON
CGRF, BHANDUP

MR. RAVINDRA 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, 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.