

A Govt. of Maharashtra Undertaking)

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Consumer Grievance Redressal Forum

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REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/183/113Date:11.06.2019

Case No. 183/2018

Hearing Dt. 26.02.2019

**In the matter of application of proper tariff and revision of bill as per industrial tariff rate**

**M/s. Aakash Cleaners (P).Ltd.,  
Plot No. 145/7,TTC.MIDC,Kairne,  
Navi Mumbai-400705.-  
Vs.**

**Applicant**

**M.S.E.D.C.L. Vashi circle  
Through its Nodal officer.**

**- Respondent**

Appearance :

For Consumer – Shri . S.A.Sodha Consumer representative

For Respondent:- Shri.D.B. Pawar Executive Engineer, MSEDCL,Vashi Circle,  
Vashi

[Coram- Dr. Satishkumar Jaiswal - Chairperson, Shri. R.S.Avhad -Member Secretary  
and Sharmila Ranade - Member (CPO)].

**Consumer No. 000119020301**

a. 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 subsection 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as ‘Regulation’. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Here in after referred as ‘Supply Code’ for the sake of brevity. Even, regulation has been made by MERC i.e. ‘Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.’ Hereinafter referred ‘SOP’ for the sake of convenience.

- b. The applicant submits that they are consumer of MSEDCL having consumer no 000119020301 contract Demand 160 KVA, connected Load 240 KW and billed under tariff Industrial and paying bills regularly. Further submit on 31/12/2017 MSEDCL conduct spot inspection, however no report was given to them and vide letter SE/VC/TECH/HT/CHG\_Tariff/V-KK sdn/054/2017-2018/002300 dated 27.03.2018 revised tariff from Industrial to commercial and issued supplementary bill of Rs 65,88,032/- towards plain recovery difference due to said tariff.
- c. The applicant further submits that they are in business of washing and cleaning clothes used for industrial purpose by using industrial washing machine and if MSEDCL contended vide its commercial circular 175 dated 05/09/2012 that purpose like washing and cleaning will attract commercial Tariff with effect from 01/08/2012 it was responsibility of MSEDCL to change tariff immediately. Further submits if MSEDCL need to change the tariff, it should be prospectively and retrospectively.

- d. The consumer initially filed his complaint before IGRC on receiving the said complaint IGRC registered case No. 37/2018 ,opportunity of hearing given on 30.06.2018 and on dated 25.07.2018 IGRC after hearing the consumer and utility gave the judgment saying classification of this consumer is rightly classified into commercial category by respondent utility as commission approved tariff activities cleaning and washing activities and laundries come under commercial and the application of applicant is dismissed.
- e. Being aggravated by the order of IGRC, Vashi Dated 25/07/2018 this consumer approach to the Forum on 25.09.2018 and filed his complaint which is registered as complaint No. 183/2018. After registration the notice issued to the respondent to appear and submit reply to the Forum. In reply received on 26/02/2019. The respondent submits that the M/s AKASH CLEANERS PVT LTD is 22 KV HT consumer bearing consumer No. 000119020301 located at Plot No. A-145/7, TTC MIDC Industrial Area, Pawane, Navi Mumbai, having Contact Demand & Connected Load up to extent of 160 KVA & 240 KW having date of connection as 25.03.1986 (as per energy bill).
- f. Further submit that the Executive Engineer, (O&M) Division Vashi, inspected consumer premises on 17.11.2017 & informed it's Inspection Report vide letter dtd. 13.12.2017, regarding checking of installation in r/o HT consumer M/s AKASH CLEANERS PVT LTD having HT consumer No. 000119020301.Observations Recorded on Inspection dtd. 17.11.2017 is, activity observed as Laundry. In line with MSEDCL Tariff Order & observation recorded

during Inspection 17.11.2017. Activity of washing / cleaning defined under Commercial category. Hence Tariff Applicable to consumer installation was revised to HT II : HT Commercial w.e.f. DEC 2017, subsequently Supplementary Bill of recovery of Tariff Difference from HT Industrial to HT Commercial for period DEC 2015 to NOV 2017 issued to consumer, amounting to Rs 65,88,032/- on 27.03.2018.

- g. The respondent submits as per Section 62 (3) of Electricity Act 2003, The Appropriate Commission shall not, while determining the Tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply & the purpose for which the supply is required. Hence, consumer's contentions based on location of it's facility under Non-Residential & Non-Industrial, are not maintainable for deciding applicable tariff.
- h. The respondent relied on Case No. 111 of 2009 hon'ble Commission vide order dtd. 12.09.2010 clarified as "classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorization under Industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorization of "Industry" is applicable to such activities, which entail "manufacture".
- i. Applicant consumer does not possess any certifications from Industries department against it's claim for carrying out Industrial activity. Other documentations including MPCB consent, Factory License ought not to categorization under

Industrial Tariff category. Under Section 56 (2) of Electricity Act 2003, Supplementary Bill of recovery of Tariff Difference from HT Industrial to HT Commercial for period DEC 2015 to NOV 2017 issued to consumer. The respondent prayed to dismiss the application

After perusing of rival contention of consumer and the respondent utility following point arose for our consideration to which I have recorded by findings to the point for the reason given below.

- i. Whether respondent utility entitled to recover the tariff difference of HT II Industrial to HT Commercial?
- ii. Whether applicant is entitle for industrial tariff?
- iii. What order?

### **Reasoning**

- j. I have given opportunity to the consumer and his representative and heard the dispute and objection raised point wise. The dispute arose when the respondent issued supplementary bill of tariff difference from industrial to commercial. From the record placed before the forum the Executive Engineer C.C. O & M Division, Vashi visited the premises on 17.11.2017 and carried out inspection and informed to the Superintending Engineer, Vashi that usage of electricity in the premises for Laundry purpose. On the receipt of letter the superintending Engineer, Vashi issued the Supplementary bill dated 27.03. 2018.
- k. Coming to the dispute, whether the activity found at the premises falls under commercial tariff as per the circular and definition as mention by circular and order of MERC?. I have access the contention of respondent utility minutely, it appears from Hon'ble MERC in case 19/2012 in the matter of Petition of Maharashtra State

Electricity Distribution Company Limited seeking Final True up for FY 2010-11, Aggregate Revenue Requirement of FY 2011-12 and FY 2012-13, Tariff Determination for FY 2012-13 and Revision in Schedule of Charges on page no 327 **HT II: HT- Commercial Applicability HT II (A): EXPRESS FEEDERS** Applicable for use of electricity / power supply at High Tension on Express Feeders in all non-residential, non-industrial premises and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as lighting, MERC Order for Tariff determination of FY 2012-13 Case No. 19 of 2012 Page 328 of 352 MERC, Mumbai heating, cooling, cooking, washing/cleaning, entertainment/leisure, pumping in following (but not limited to) places: a)\_\_\_\_\_ b)\_\_\_\_\_ f) Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries; The Consumers belonging to HT II requiring a single point supply for the purpose of downstream consumption by separately identifiable entities will have to either operate through a franchisee route or such entities will have to take individual connections under relevant category. These downstream entities will pay appropriate Tariff as applicable as per MSEDCL Tariff Schedule, i.e., LT II. **HT II (B): NON- EXPRESS FEEDERS** Applicability as per HT II (A). Also The MSEDCL vide its commercial circular No 175 informed to the Field officer for implementation of MERC Tariff order dated 16/08/2012 in the case no 19 of 2012. Also Hon'ble MERC in case 121 of 2014 order dated 26 June 2015 Laundry activity comes under commercial category.

1. In case no 111 of 2009 in the matter of Maharashtra State Electricity Distribution Company Ltd. (MSEDCL) Petition for Truing Up for FY 2008-09, Annual Performance Review for FY 2009-10 and Aggregate Revenue Requirement and Tariff Determination for FY 2010-11 it is clarified as “*classification under Industry*”

*for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorisation under Industry under other specific laws cannot be applied to seek relief under other statutes. Broadly, the categorisation of „Industry“ is applicable to such activities, which entail „manufacture“.*

Therefore the consumer contention his premises situated in MIDC area so entitle for Industrial tariff not justified.

- m. As per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 clause 13. Classification and Reclassification of Consumers into Tariff Categories *“The Distribution Licensee may classify or reclassify a consumer into various Commissions approved tariff categories based on the purpose of usage of supply by such consumer: Provided that the Distribution Licensee shall not create any tariff category other than those approved by the Commission”.*
- n. The MERC under order dated 11.2.2203 in case no.24 of 2001 regarding retrospective recovery on the basis of reclassification of tariff category has directed as under : No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though 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 as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. 11) The appellate tribunal for Electricity ( APTEL )in the recent order dated 7.08.2014 in appeal No.131 of 2013 ( in the

matter of vinney enterprises versus Keral State Electricity Regulatory Commission ) has held that - “The arrears for difference in tariff would be recovered from the date of detection of the error”

- o. The Hon’ble Electricity Ombudsman, Mumbai in his order treated 23.12.2014 in the representation no. 124 of 2014 in the similar matter of recovery of arrears after change of tariff category in the case of Mr.Ram Chimanlal Kanojiya ( Chiman Automobiles) Vs. MSEDCL has directed the respondent i.e. MSEDCL to recover the arrears from the date of spot inspection without applying DPC & Interest of the said arrears. The arrears already paid by the appellant should be adjusted and balance should be recovered from the appellant. The same matter MSEDCL has challenged the same in W.P No 6552 of 2015 MSEDCL Vs Mr.Ram Chimanlal Kanojiya and the Hon’ble High Court directed to maintain status quo in the said matters as per order dt 15.07.2015 as follows

*“By the impugned order, the Ombudsman by relying upon order passed by the APTEL, New Delhi, has held that the petitioners would be entitled to recover only from the date of discovery of error relating to categorization , In the View of the entitlement of the petitioner is in question, the court has directed to maintain status-quo in respect of recovery”* Therefore the applicant argument that the recovery should be prospective no maintainable in view of above order.

- p. Here we come to the provision in Electricity act 2003 clause 56(2) on which respondent relied which reproduced as below

*“56(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum become first due unless such*



*sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.*

In the light of provision the supplementary bill issued by the respondent charged the tariff difference from industrial to commercial for the period December 2015 to November 2017 of Rs 65,88,032 /- is legal and valid .

- q. In the corrigendum order by Hon’ble MERC in case no 195 of 2017 issued on 1 November 2018 declared as “ In the tariff applicability of HT I (A)- Industry-General Category for FY 2018-19 in Tariff Schedule for FY 2018-19 and for FY 2019-20 in Tariff Schedule for FY 2019-20, following should be added: **p. dhobi/laundry**” and as per MSEDCL circular 311 issued vide letter P-Comm/Tariff/ 23347 dated 1 October 2018 directed the field officers to ensure that where ever the tariff category is redefined or newly created by the Commission, the existing / prospective consumers should be properly categorized by actual field inspection immediately and the data to be immediately updated in the IT data base and informed that the revised tariffs are applicable from 1 st September 2018 and will continue to be in force till further orders.
- r. It is duty of the Respondent to issue correct billing to the applicant/Consumer .Every employee of the Company, therefore, is expected to be diligent in performing his duty of issuing electricity bill so that neither Company should be put to any loss nor the consumer be put to any inconvenience or suffer an agony. Therefore it is justified for granting the installment to applicant for the payment of tariff difference amount. Hence, I proceed to pass following order.

### **ORDER**

1. The applicant application 183/2018 is hereby partly allowed.

2. The respondent is entitled to tariff difference from industrial to commercial in six installment without interest and Delay Payment charges along with current bill.
3. Respondent Utility may take action on all concerned officers responsible for not taken corrective measures within time and not issuing correct tariff monthly bill for such long period.
4. No order as to the cost.
5. Both parties should be informed accordingly

Respondent Utility to report compliance within 60 days from the receipt of this order.

**I Agree/Disagree**

**I Agree/Disagree**

**MRS. SHARMILA RANADE,  
MEMBER  
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL  
CHAIRPERSON  
CGRF, BHANDUP**

**RAVINDRA S. 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, and 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) 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, 13<sup>th</sup> 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.