BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 225 OF 2019

In the matter of change of tariff category

M/s. Hard Glass Industries, Taloja. ……….………………………….………… Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Vashi (MSEDCL)………….. Respondent

Appearances

For Appellant : 1. G. N. Bansode, Representative
2. T. Y. Mane, Representative

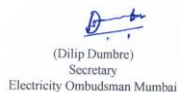
For Respondent : 1. Ajay Chafle, Executive Engineer
2. Pranay Chakraborty, Dy. Executive Engineer
3. G. A. Mali, Assistant Law Officer

Coram: Deepak Lad

Date of Order: - 31st January, 2020

ORDER

This Representation is filed on 26th December 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 31st October 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).



2. The Forum, by its Order dated 31.10.2019 has dismissed the grievance application in Case No. 284 of 2019.

3. Aggrieved by the order of the Forum, the Appellant in its representation has stated in brief as below: -

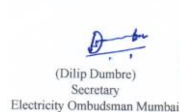
(i) The Appellant is a 22 KV HT consumer (No. 028619034350) having Contract Demand (CD) of 900 KVA and sanctioned load of 1250 KW from 01.04.2008 at Plot No.M-37, MIDC Taloja, Taluka-Panvel, Dist.-Raigad.

(ii) Tariff Order in Case No. 116 of 2008 dated 17.08.2009 has introduced concept of different tariff for consumers on Express feeder and Non-Express feeder. The Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period of Giving Supply and Determination of Compensation) Regulations 2014 (SOP Regulations) has defined the Express feeder and Non-Express feeder. As per this definition, if supply is emanated from substation and feeding to a single consumer then only that feeder can be termed as Express feeder. The Appellant is connected on Non-Express feeder.

(iii) The Appellant was levied continuous Industrial tariff on Express feeder from December 2008 to August 2016 though it is connected on Non-Express feeder. The change of tariff from non-continuous to continuous was without knowledge of the Appellant as it had never applied for continuous supply to the Respondent.

(iv) The Appellant made a complaint of wrong tariff category and requested the Respondent for change of tariff category from continuous to non-continuous by its letter dated 31.08.2016. Accordingly, the Respondent has started billing on Non-Continuous Industrial Tariff Category from September 2016, however, did not refund tariff difference for retrospective period of wrong tariff category. The Appellant has taken this issue with the Respondent by its letter dated 16.11.2016 and 14.12.2016.

(v) The Superintending Engineer (SE), Vashi vide his letter dated 11.01.2017 directed the Executive Engineer (EE), Panvel to verify the facts. Accordingly, the EE, Panvel has carried out the inspection of the electrical installation and intimated the SE Vashi vide its letter dated 27.02.2017.



(vi) However, SE Vashi approved the tariff difference for two years (September 2014 to August 2016) and the amount was credited in September 2017/ October 2017 bill. The wrongly charged tariff difference from December 2008 to August 2014 was not given. Hence, letter dated 27.02.2018 was issued to Vashi circle. However, it did not give any response till September 2018.

(vii) The Appellant filed the grievance with the Internal Grievance Redressal Cell (IGRC) on 10.09.2018 which is registered on 05.10.2018 requesting to refund the tariff difference for the period December 2008 to August 2014. The IGRC, by its order dated 27.12.2018 has dismissed the grievance.

(viii) The Appellant approached the Forum on 12.02.2019. The Forum, by its order dated 31.10.2019 has dismissed the grievance.

(ix) The Appellant has cited followings citations

- (a) Order of EO Mumbai in Representation No.1 of 2016
- (b) Forum's order in Case No. 599 of 2015.
- (c) Forum's order in Case No. 219 of 2018 (Shri. Shailendra M. Jaiswal Prem Industries v/s MSEDCL Thane circle)
- (d) Order of EO Mumbai in Representation No. 188 of 2018, M/s. Allana Investing & Trading Co. Pvt. Ltd. V/s MSEDCL Vashi Circle.

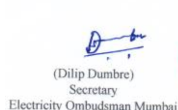
(x) The Appellant, therefore, prays that the Respondent be directed to pay

- (a) Tariff difference from December 2008 to August 2014 with RBI Interest rate.
- (b) Compensation Rs.5 Lakhs towards mental harassment and torture.

4. The Respondent has filed its reply by letter dated 22.01.2020 stating as under: -

(i) The Appellant is a 22 KV HT consumer (No. 028619034350) at Plot No. M-37, MIDC Taloja, from 01.04.2008. The Appellant is currently billed on Tariff HT-1A Non-Express Feeder with Connected Load as 1250 KW and Contract Demand as 900 KVA. The Express feeder tag was inadvertently shown as 'Yes' in billing system for the period December 2008 to September 2016.

(ii) Due to the wrong feeding of Express feeder tag as 'Yes', the billing to this Appellant is done under the HT-1A Express Feeder tariff category instead of HT-



1A Non-Express Feeder category. The Appellant was also paying the bills as per this express feeder tariff category without raising any objection for about 8 years.

(iii) The Appellant has first time submitted its application on 31.08.2016 for correct billing under non-continuous tariff category.

(iv) Thereafter, the Appellant vide its letter dated 16.11.2016 requested the Respondent for refund of tariff difference for continuous to non-continuous tariff category for the period December 2008 to August 2016.

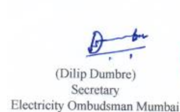
(v) Accordingly, the Respondent changed the tariff category as HT–I Non-Continuous from September 2016 and revised the bills only of last two years prior to the effect given as continuous to non-continuous i.e. for the period September 2014 to August 2016 and credit of Rs.1359688/- is given in the bill of September 2017 / October 2017 and the request of refund for the balance earlier period is rejected being time barred.

(vi) The Appellant filed grievance application with IGRC on 05.10.2018 for refund of tariff difference for the period from December 2008 to August 2014. The IGRC, by its order dated 27.12.2018 dismissed the grievance stating that the Appellant's` claim is time barred as per the Regulation No. 6.6 of CGRF Regulations.

(vii) Thereafter, the Appellant approached the Forum on 12.02.2019. The Forum, by its order dated 31.10.2019 dismissed the grievance. Hence, the Appellant filed this representation before this Authority.

(viii) The Appellant filed the grievance on 12.02.2019 with prayer to grant relief for refund of tariff difference for the period from December 2008 to August 2014**.** It means that the Appellant had filed the grievance with the Forum nearly after 10 years from the date of cause of action arisen. The Appellant has not followed the procedure by filing the grievance to the Forum within two years from the date on which the cause of action has arisen. As per Regulation 6.6 of CGRF Regulations, the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action has arisen. Therefore, as per this regulation alone, this Representation is not maintainable, being time barred.

(ix) The Respondent has already considered the reasonable claim of the Appellant for two years and refund to that effect is also given.



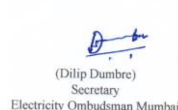
(x) The Appellant submits that, this Hon'ble Authority has in various Representations pleased to allow the refund of tariff difference as per the fitment in accordance with Regulation 6.6 of CGRF Regulation i.e. by granting the refund only for 24 months prior to the date the Appellant approached the Forum. But in the present representation the Appellant has already got the refund of tariff difference for 24 months prior to the date of application for refund.

(xi) The Respondent submits that, the instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations as the period of relief is not within two years prior to date of filing the application with the Forum i.e. 12.02.2019.

(xii) The Respondent prays that the representation of the Appellant be rejected.

5. During the hearing on 24.01.2020, the Appellant reiterated its say in the written submissions and admitted that the Respondent has refunded the amount for the period September 2014 to August 2016, however, it did not get the interest on it which may be awarded. Refund for earlier period from December 2008 till August 2014 is not yet given.

6. The Respondent argued that as per limitation provided under the Regulation 6.6 of the CGRF Regulations, refund for the period September 2014 to August 2016 has already been given on the application dated 31.08.2016 submitted by the Appellant. The demand of the Appellant for refund prior to August 2014 till December 2008 cannot be given as it has for the first time filed the application on 31.08.2016 i.e. much after the period of two years from the cause of action. Notwithstanding this, the Appellant has enjoyed the benefit accrued to him of continuous power supply and now demanding relief is nothing but afterthought. Similarly, the Appellant has made a new prayer in the hearing, claiming interest on the amount of tariff difference already refunded to it for the period from September 2014 to August 2016 is not maintainable. The said prayer was not taken in IGRC as well as the Forum, and is also time barred.



Analysis and Ruling

7. After perusing the documents on record, it is seen that it is an admitted position that the Appellant has for the first time filed its application for refund of tariff difference on 31.08.2016 for the period December 2008 to August 2014. The cause of action has started in December 2008. The Appellant paid the regular bills at the applied tariff without any objection for 8 years. I noted that the Appellant approached the Forum on 12.02.2019 whereas it has prayed for refund of tariff difference for continuous to non-continuous tariff category for the period starting from December 2008 to August 2014. This does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations. The Regulation 6.6 of CGRF Regulations is quoted below: -

> *"The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen."*

8. The judgment of the Bombay High Court at Aurangabad Bench dated 21.08.2018 in W.P. No.6859, 6860, 6861 and 6862 of 2017 has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations. The relevant portion of the judgment is quoted below:-

> *"37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.*
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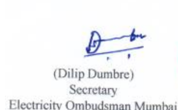
> *38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.*



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

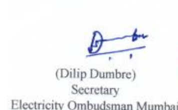
43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period."

9. In a recent judgment, the Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 has laid down that the plaint can be rejected if suit is clearly barred by limitation.



10. In view of these judgments, Regulation 6.6 remains valid. Therefore, the provision of Regulation 6.6 has become a settled position in law. I, therefore, do not find it necessary to delve into the other aspects of the case because if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. If the issues are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time elapsed, no decision can be made in this Regulatory Framework. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

11. The prayer of the Appellant made during the argument for interest on the already refunded amount for the period September 2014 to August 2016 cannot be granted as it was not initially prayed before IGRC and the Forum. The same cannot be entertained at the Appellate stage.

12. In view of the above, the representation is time barred and therefore rejected with no order as to cost.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)