MAHAVITARAN
Maharashtra State Electricity Distribution Co. Ltd.

CONSUMER GRIEVANCE REDRESSAL FORUM
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Case No.: 25/2018
Date of Grievance: 23/10/2018
Date of Order: 06/03/2019

M/s. GTN Engineering (India) Ltd.,
Unit-B, D-49, MIDC, Baramati.,
Dist-Pune.

Applicant
(Hereinafter referred to as consumer)

Versus

Superintending Engineer
M.S.E.D.C.L., O&M Circle,
Baramati.

Opponent
(Hereinafter referred to as Licensee)

Quorum

Chairperson	Mr. B. D. Gaikwad
Member	Mr. S. K. Jadhav
Member Secretary	Mr. M. A. Lawate

Appearance:-

For Consumer: - 1-Mr. Suresh Sanchiti (Representative of M/s. GTN Engineering (India) Ltd)

For Respondent: - 1- Mr. Keshav Kalumali, Executive Engineer, Circle office, Baramati.

ORDER
(Date:- 06/03/2019)

1. The Complainant above named has filed present Grievance under regulation 6.4 Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman)Regulations 2006, Hereinafter referred to as Regulation of 2006.
2. The consumer is 'High Tension' Consumer bearing **No.186849005533** to whom electricity supply of Industrial Category (HT IA) at its above mentioned premises was released on 9/3/1993. There is an agreement between the consumer and MSEDCL. At

the time of release of electricity the contract demand was 2900 KVA and sanctioned load was 4771 KW. The said contract demand and sanctioned load were revised from time to time as per the requirement of the consumer. At present contract demand is 3500 KVA and sanctioned load is 5348 KW. As per clause 13 of the agreement MSEDCL was to ensure continuity of supply of power to the consumer. As per clause 14 of the agreement consumer has agreed that licensee shall be permitted to curtail or cut-off the power supply in case of emergency or if power system warrants such course of action. As per clause 15 of the agreement licensee is entitled for testing or outages or maintenance or any other cause for efficient working of the undertaking to temporarily discontinue the supply for such period as may be necessary subject to adequate advance notice to the consumer.

3. The present consumer has established a Spinning Mill Manufacturing Unit at MIDC Baramati. The consumer required Continuous power supply to maintain quality of product as well as to avoid loss of raw material. The consumer has therefore opted for HT-1 Continuous Tariff understanding that respondent MSEDCL would provide Continuous power supply and accordingly paid higher energy charges. However consumer has suffered interruption in the power supply and also suffered variation in the voltage, which had caused substantial financial loss to the consumer. The grievance of the consumer is that though consumer has paid premium for quality power supply, the consumer has suffered interruption in power supply and therefore entitled for refund of excess premium paid. The consumer has firstly approached the Superintending Engineer MSEDCL, O & M Circle Baramati for refund of tariff differential amount and submitted application to that effect. However no relief was given to the consumer.

4. Then consumer has approached Internal Grievances Redressal Cell MSEDCL Baramati and submitted application dated 26/4/2018. The said grievance was heard and disposed off by IGRC Baramati vide its order dated 25/7/2018. The IGRC Baramati has not provided any relief to the consumer and has rejected the grievance. The consumer has therefore submitted grievance before this forum. According to the consumer, it shall be re-categorized into HT Non Continuous Industrial Category for the period June 2008 to May 2013 only during the months when the consumer has suffered interruptions / load-shedding/ Voltage fluctuation or dips. It is also submitted by the

consumer that the billing during such period should be revised at the rate as applicable to HT Non Continuous Industrial Category instead of HT Continuous Industrial Category. The consumer also claims refund of Rs.1,70,23,066 towards the difference between the tariff as applicable to HT Continuous Industrial Category and HT Non Continuous Industrial Category for the period June 2008 to May 2013. It also prays for any other relief as present forum may deem fit and proper in the facts and circumstances of the case. It is also submitted that the present grievance is submitted well within the period of limitation.

5. The respondent MSEDCL has resisted the grievance by filing its detailed say dated 22/1/2019. The consumer has also submitted detailed rejoinder dated 5/2/2019. The respondent has placed reliance on clause no 13,14 and 15 of the agreement between the parties. It is submitted that as per Sec 44 of Electricity Act, 2003 there is exemption from the duty to supply electricity in case of cyclone, floods, storms and other occurrences beyond the control of MSEDCL. It also placed reliance on MERC order dated 31/5/2008 and 20/7/2008 in Case No. 72/2007 and petition for clarification bearing Case No 44/2008. The consumer has not opted for the choice of the tariff. The consumer has not disputed the tariff category from June 2008 to December 2015. At present as per the prevailing tariff order HT (I-C) tariff is applicable to the consumer and same is accepted by the consumer. It is Continuous process industry and supplied power through an HV Express Feeder and consumer is billed as per the tariff HT Continuous Industrial Category and never subjected to load shedding. There is no additional unauthorized charge recovered from the consumer. The respondent has denied the claim of refund of the said amount. The MSEDCL has always tried to provide an uninterrupted power supply to the present consumer. It cannot be held responsible for interruptions in the power supply beyond its control and for unforeseen events and unavoidable technicalities. The public notice was duly published in the news paper whenever there was interruption in power supply.
6. The respondent MSEDCL submitted that the decision of MERC in Case No.88/2012 M/s Kalika Steel & Alloys Pvt. Ltd. VS MSEDCL is not applicable. There were no frequent interruptions in the power supply and interruptions were not without just cause. The facts in M/s Kalika's case are different. The present grievance is submitted after the period of limitation. The consumer cannot take the benefit of lack of due diligence. The

consumer is not approaching the forum with clean hands. The MSEDCL has issued guidelines Vide its letter dated 9/8/2018 to all its circle offices regarding implementation of MERC order dated 4th May 2018 in Case No.122/2017. As per the review order dated 4/5/2018 of MERC, the consumer is not entitled for any such refund. The IGRC has dismissed the grievance on merit and as same is out of the period of limitation. The consumer is not having valid certificate of Continuous process industry issued by Directorate of Industries Government Of Maharashra for the relevant period and so not entitled for any relief.

7. It is contended that the data of interruptions has been ascertained from MSETCL. The report showing interruption occurred due to reasons beyond the control of MSEDCL. Since the consumer has applied on HV Express Level there is no Load Shedding. The relief of refund cannot be given simply because there were insignificant random interruptions perhaps on account of transient faults or otherwise. The MSEDCL has also placed reliance on MERC order which can be referred at later stage in this order. The MSEDCL prays for dismissal of present grievance with cost. It also submitted rejoinder on record.

8. We have heard the representatives of both the parties and also perused documents on record. In view of rival contentions of the parties, following points arise for our consideration and we have recorded our findings thereon for the reasons stated hereinafter.

POINTS-	**FINDINGS**
I) Whether the present Grievance is within the period of limitation?	:- No
II) Whether the consumer is entitled for the reliefs claimed?	:- No
III) What Order?	:- As per final order

REASONS.

9. POINT **I)** – The MSEDCL has submitted that that present grievance is not submitted within the period of limitation and same is liable to be dismissed. The MSEDCL further submitted that as per Regulation No. 6.6 of The Maharashtra Electricity Regulatory

Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006; it is absolutely necessary to submit the grievance within the period of two years from the date on which cause of action has arisen. The MSEDCL has also placed reliance on the judgment in writ petition No. 1650/2012 wherein Hon'ble Bombay High Court Nagpur Bench by its order dated 10/7/2013 discussed every aspect of limitation under CGRF Regulation. The record indicates that IGRC Baramati received the grievance on 26/4/2018 and it was rejected on 25/7/2018. It may be noted that the applicant is claiming the refund of Rs. 1,70,23,066 towards the difference between the tariff as applicable to HT Continuous Industrial Consumer and HT Non-Continuous Industrial Consumer for the period June 2008 to May 2013. However present grievance is submitted before IGRC for the first time on 26/4/2018 as stated earlier. It means the grievance is not submitted within the period of limitation as laid down in Regulation No.6.6 of the said regulations. Even though it is accepted that the cause of action in the present case has arisen in the year May 2013, then also the grievance is submitted beyond the period of two years and same is out of the period of limitation.

10. The grievance of the applicant is in respect of applicability of appropriate tariff during which applicant has suffered interruption in power supply, but MSEDCL has applied HT Continuous Tariff and recovered additional charge from the applicant. In our view when there was alleged interruption during the period June 2008 to May 2013, the applicant could have submitted the grievance within the period of two years from June 2008. In our opinion, grievance is not submitted within the period of limitation and so the applicant is not entitled for the reliefs claimed. In respect of the limitation, it is submitted on behalf of the applicant that MERC has passed order dated 15-2-2017 in Case No. 86/2015 and for the first time passed clarification order dated 13-7-2013 in Case No. 88/2012 and held that the order has general application. It is further submitted that said order dated 15-2-2017 is passed by MERC needs to be considered as clarification to the order dated 13-7-2013 and said order is in rem and not order in personam. It is submitted that it was the duty of MSEDCL to implement such clarification by identifying all HT Industrial Continuous Sub Category consumers who were subjected to interruption from June 2008 onwards. It is therefore submitted that the cause of action for the first time arose on 15-2-2017. It is submitted that applicant

has initially approached MSEDCL with the request to extend the applicability of order dated 13-7-2013 to the present applicant, but the request was not considered. According to the applicant grievance was submitted within the period of two years from the date of cause of action and so it is well within the period of limitation. In view of above discussion and the specific provision under Regulation No.6.6 we are of the opinion that the claim is not submitted within the period of limitation.

11. The learned representative of the applicant placed reliance on the following cases on the issue of limitation.

1) Appellate Tribunal of Electricity, Appeal No. 197 of 2009, date of Judgment dated 11th March 2011.
2) Electricity Ombudsman, Mumbai, Representation No.185 of 2016, Order dated 28th September 2018
3) Maharashtra Electricity Regulatory Commission, Case No. 182, 188 and 190 of 2017, 1 to 26, 30 to 44, 54 to 58 of 2018 Order dated 12-10-2018.

It is held that any legal bar or remedy under the Electricity Act must exist in the Act. If no such remedy is prescribed under the code it would be improper to infer such bar under Limitation Act. In the case in hand there is clear provision of Regulation No. 6.6 which lays down the period of limitation. The regulations are also mandatory as those are framed under the provisions of the Electricity Act. There may not be period of limitation prescribed under the Act but the period of limitation is Prescribed under said regulation and same is binding on CGRF. If there is no such limitation the delayed claims would be filed before CGRF. There is no provision of condonation of delay. The learned representative has also placed reliance on the Case AIR 1976 SCC 177, AIR 1985 SCC 1279 and AIR 2000 SCC 2023. However detailed facts and the text of the judgment are not produced on record. It is difficult to know ratio laid down in above cases. There cannot be a dispute that if MSEDCL has charged bills exceeding the tariff, the excess amount can be recovered, but the claim must be submitted within the period on limitation. We therefore we come to the conclusion that the present grievance is time barred. The Point No. I is therefore answered in the negative.

12. Point No. **II)** According to the applicant he has paid higher tariff applicable to HT Continuous Industrial consumer from June 2008 to May 2013. The applicant has faced

interrupted power supply resulting in huge losses. It was the responsibility of MSEDCL to provide uninterrupted and load shading free electricity to the applicant. The applicant is therefore entitled for refund of additional charges with interest. The learned representative of the applicant relied on the order dated 4th May 2018 passed by MERC in case No 122/2017 wherein HT consumer can be considered as eligible for refund of charges for interruption in power supply faced by them. It is submitted that MSEDCL has approached MERC seeking review of the order dated 15-2-2017 in Case No. 86/2015. Earlier M/s Kalika Steel & Alloy Pvt. Ltd. And 16 others filed Case NO 88/2012 before MERC seeking clarification regarding additional electricity charges for HT Continuous supply. The commission has passed order dated 16th July 2013 and allowed the petition and held that MSEDCL should have not charged tariff applicable to continuous industry on express feeders for the consumers in the month which they have not supplied continuous supply and refund was directed. The MSEDCL has submitted review petition Case No. 105/2013 before commission seeking review of the order dated 16th July 2013 passed by commission in Case NO 88/2012 and even in review petition commission has reiterated earlier order dated 16th July 2013 and reaffirmed its earlier findings. Subsequently M/s Century Rayon Ltd submitted Case No. 86/2015 under Sec 142 and Sec 145 of Electricity Act 2003 alleging violation of commissions order date 17th July 2014. In the said case refund was allowed. It is also submitted that commission in its order dated 4th May 2018 in Case No. 122/2017 laid down condition of 60 hours interruption / non supply in the month. It is held that before granting relief of change in tariff from the category continuous to non-continuous on account of interruption, it is important to verify that such consumers suffered more than 60 hours of interruptions / Non-Supply in the month. In this way commission has added condition of minimum 60 hours of interruption to get the benefit of Non- continuous tariff to continuous category consumers. According to the learned representative of the applicant, the commission by adding the said condition of 60 hours of interruption have travelled much beyond the scope of review jurisdiction. According to the applicant, commission has violated principles of natural justice as opportunity of hearing was not given to the affected parties. It is submitted that Century Rayon Limited has already approached the Appellate Tribunal For Electricity New Delhi and filed an appeal and contested the said order dated 4th May 2018 in Case

No. 122/2017 and said appeal was fixed for hearing on 30th January 2019 and now it is fixed for hearing for 5th March 2019. There cannot be a dispute in respect of the factual position submitted on behalf of the applicant. It may be noted that said condition of 60 hour interruption in a month is to be considered in the present case. It appears that applicant has grievance in respect of said condition of 60 hours but CGRF is not the proper forum to challenge said condition.

13. It is rightly submitted on behalf of MSEDCL that scrutiny of interruptions faced by continuous category consumers must be carried. The applicant has to prove that there is such interruption of 60 hours in a month. The appeal filed by Century Rayon Ltd. before Appellate Tribunal is pending and unless the said condition of 60 hours of interruption in a month is set aside that would be in the force and has to be followed. Under these circumstances, we are of the view that the applicant is not entitled for the reliefs claimed even on merit. In the result Point No.**II** is answered in the negative and we pass following order.

ORDER

1- **The present grievance is rejected.**

2- **No order as to cost.**

M. A. Lawate	S.K. Jadhav	B.D.Gaikwad
Member/Secretary	Member	Chairperson
CGRF, BMTZ, BARAMATI	**CGRF, BMTZ, BARAMATI**	**CGRF, BMTZ, BARAMATI**

06/3/2019

Note:- 1) This representation could not be decided within the period of two months as MSEDCL and Consumer have requested for adjournments.

2) The Consumer if not satisfied may file representation against this order before Hon'ble Ombudsman within 60 days from date of this order at the following address.

Office of the Ombudsman,
Maharashtra Electricity Regulatory Commission,
606/608, Keshav Building, BandraKurla Complex,
Bandra (East), Mumabi-51.