



BEFORE THE OMBUDSMAN

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

606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051
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REPRESENTATION NO. 47 OF 2005

In the matter of Wrong Bills and Tariff for Power
Looms Consumer

M/s. Quality Sizing Works Ltd., Malegaon.....

Appellant

Versus

Maharashtra State Electricity Distribution Co. Ltd., Malegaon....

Respondent

Present:

1. Shri W.G. Gorde, Ombudsman
2. Shri S.N. Yadwad, Secretary

On behalf of the Appellant:

1. Shri Saleem Ahmed Abdul Aziz
2. Shri Ansari Mohd. Salim Mohd. Akbar

On behalf of the Respondent:

1. Shri A.V. Sugathan, Dy. Executive Engineer, UCR, Malegaon
2. Shri Ashok Shamrao Jadhav, Divnl. Accountant (Revenue)
3. Shri D. L. Wani, Assistant Accountant.

Date: 24th January, 2006

1. Shri Javed Ahmed Khalil Ahmed, proprietor of Quality Sizing Works, resident of Malegaon, district Nashik has filed the representation on 19th December, 2005 against the order of Consumer Grievance Redressal Forum, Nashik cancelling the letter dated 26th August, 2005 issued by the Dy. Executive Engineer approving the change in code for levy of tariff. M/s. Quality Sizing Works is a consumer supplied with electricity by Maharashtra State Electricity Distribution Co. Ltd, Malegaon (hereinafter referred to as the Respondent). The Consumer Grievance Redressal Forum, Nashik by its order dated 25th October, 2005, cancelled the order no. 882 of 26th August, 2005 issued by the Respondent retrospectively approving the tariff for power loom in favour of the consumer (herewith referred to as the Appellant). Apart from cancelling the Respondent's order of 26th August, 2005, the Forum directed the Respondent to work out the energy bills

assuming the average consumption of 2364 units per month for industrial use. The said order also directed that the revision of bills should be carried out by the Chief Engineer, Nashik zone on behalf of the Respondent and that he should take the help of the Chief Accounts Officer and Joint Director (Information Technology) for this purpose. Further, the Forum directed the Chief Engineer, Nashik zone to conduct departmental enquiry against the officers and staff who were responsible for carrying the change of code in tariff through the order dated 26th August, 2005.

2. The Appellant, aggrieved with the order of the Forum, filed this Representation, which is registered at Serial No. 47 of 2005. The Appellant, in the Representation, briefly states his case as under:

3. The Appellant is a consumer of electricity having sanctioned load of 18 H.P. with a 3-phase connection supplied by the Respondent. Electricity is used for working of power loom in the factory called as 'Quality Sizing Works' at Malegaon. Initially, in the year 1998, the Appellant was using sizing machines and the electricity connection was sanctioned for the industrial use, charged on industrial tariff. The Appellant, on 16th May, 2001 applied to the Respondent for change of tariff code from industrial to power loom which was approved by the Respondent and the electricity bills were issued with effect from 12th June, 2001, at the rates applicable to power loom units.

4. The Respondent continued to issue the electricity bills at the tariff applicable to power looms. In the meantime, Vigilance Officer of the Respondent visited the factory unit of the Appellant on 7th October, 2004 and made a report that the Appellant does not have proper permission to use power looms and therefore, he should be charged tariff at the industrial rates, retrospectively from June, 2001. Accordingly, the Respondent started raising the electricity bills at industrial rate without any notice. From 15th January, 2005, the Respondent revised the bills retrospectively on the basis of industrial rates without affording any opportunity to the Appellant to explain his side.

5. The Appellant, further, states that the Respondent charged the abnormal bills in the month of January, 2001 and continued to send the bills which were abnormal without any reference to meter readings. The Respondent replaced the meter in October, 2002. Thereafter, the Respondent continued to send the bills at the average consumption of 3600 units per month from October, 2002 to October, 2003 instead of charging on the basis of actual consumption recorded by the new meter, replaced in October, 2002. This resulted in over charging the Appellant on several occasions without reference to actual meter readings.

6. The Appellant approached the Consumer Grievance Redressal Forum at Nashik in the month of March, 2005 with a request to sort out the issue. The Forum, in turn, wrote to the Superintending Engineer, Nashik to look into the matter. Apparently, there was no action taken by the Respondent's officials. The Appellant, finally approached the Forum on 27th July, 2005 with a prayer to direct the Respondent for changing the tariff code from industrial to power loom and to correct the anomaly crept in the bill.

7. While the grievance was under consideration of the Forum, the Respondent examined the issue at their level and decided to correct the category of use retrospectively from industrial to power loom and communicated its approval to the Appellant vide letter dated 26th August, 2005. The issue of this letter took place during the pendency of the matter with the Forum. The Forum subsequently ordered cancellation of this letter.

8. The Forum, while deciding the grievance observed that the Respondent wrongly issued the letter dated 26th August, 2005 approving the change of code from industry to power loom retrospectively as it was not approved by the competent authority of the Respondent. The Forum relied on the letter dated 7th October, 2004 issued by the Vigilance Officer to the Dy. Executive Engineer, Malegaon to effect a change of code for billing purpose from power loom to industry retrospectively from the month of May, 2001 as it felt, it was not as per the Board's Rules. The Forum upheld the view that the issue of letter dated 26th August, 2005 by the Dy. Executive Engineer was not proper and directed to cancel the said letter.

9. The Appellant states that it had applied to the Respondent in the month of April - May, 2001 for change of category from industry to power loom and the said change was approved although no specific letter was issued in this behalf. The Respondent, however, started issuing the bills on the basis of power loom tariff and continued to do so until January, 2005. It had completed all the formalities required for the change of category and reiterated that the electricity was and is being used for power loom as is confirmed by spot verifications as well as in the Vigilance Officer's report. The order of the Forum cancelling the letter dated 26th August, 2005 issued by the Dy. Executive Engineer approving the change of category was therefore improper. The Appellant also pointed out several anomalies in the issue of bills, which are not in consonance with the actual meter readings.

10. Notice was issued to both the parties to furnish their say in the matter. The Executive Engineer, Maharashtra State Electricity Distribution Co. Ltd. and the Superintending Engineer, Nashik Circle by their letters dated 31st December, 2005 and 7th January, 2006 respectively, concurred with the action of the Dy. Executive Engineer for change of billing code from industrial to power loom in the month of May, 2001 which was perfectly in order and in accordance with the rules of the Board (now MSEDCL). Test report and other documents required for the purpose were submitted by the consumer, giving the details of power looms and other machinery to be used in the factory unit. It is confirmed by both the officials of the Respondent that the billing incharge officer i.e. Dy. Executive Engineer has the full authority to effect such change in the code of user and therefore there is no irregularity whatsoever in the action taken by the officials of the Board. In view of this, the Respondent requested to reconsider the order of the Forum cancelling the Respondent's letter No. 882 dated 26th August, 2005 which was issued according to the Rules. The Appellant used and is still using the electricity for the purpose of power loom and as such there is no loss in anyway to the Board by applying the power loom tariff to the consumer.

11. The matter was heard on 18th January, 2006. Shri Saleem Ahmed Aziz and Shri Ansari Mohammed Salim were present on behalf of the Appellant. Shri A.V. Sugathan, Dy. Executive Engineer, Malegaon, Shri Ashok Shamrao Jadhav, Divisional Accountant (Revenue) and Shri D.L. Wani, Assistant Accountant were present on behalf of the Respondent.

12. The Appellant during the hearing explained the entire sequence of events from the year 1998 till date. He reaffirmed that a proper application with necessary documents was made to the Respondent in the month of April – May, 2001 for changing the code of user from industrial to power loom. The change was effected by the officials of the Board by issuing the bills at the appropriate power loom tariff. When queried, on the report of Vigilance Officer, he stated that he was not very sure about the observations made by the Vigilance Officer during his visit on 7th October, 2004, since copy of that report was not given to him. However, he obtained the copy of the said report by invoking the provisions under the Right to Information Act. The report of 7th October, 2004 of the Vigilance Officer which is on record, also confirms that there are 16 power looms and 2 kandi machines in the factory and therefore there is no reason why the Respondent should change the tariff code from power loom to industry. He confirmed that the Board approved the change of tariff code to power loom since May, 2001 and so the bills were issued accordingly. But no formal letter to this effect was issued. He did not think it necessary to request and procure such formal letter of approving the change of code since the bills were already being issued at the appropriate rates / tariff.

13. On the issue of abnormal billing, the Appellant stated that the bill for the month of January, 2001 was issued showing the consumption of 10605 units which was not correct and not tallying with the meter readings. Subsequent bills were also issued incorrect without any reference to the actual meter readings. He cited that the bills for February to April, 2002 and August to September, 2002 were issued on the assumption of 3600 units although the actual readings were available. The Respondent changed the meter of the consumer in October, 2002 but still continued to bill on the average consumption of 3600 units per month without taking any cognizance of the actual meter readings of the new meter. It was continued till October, 2003. It was only in the month of November, 2003 that the correct meter readings of 32830 was shown in the CPL which was clearly the total consumption of units recorded by the new meter from October, 2002 to Oct, 2003. The Respondent never corrected this anomaly inspite of his request.

14. The Respondent during the hearing reaffirmed its stand that the Dy. Executive Engineer in charge of the billing division approved the change of code from industry to power loom, as the consumer was using the electricity for power loom. As such, there was nothing wrong in the action taken by the billing unit to change the code of tariff to the power loom and issue the bills as per tariff. The Respondent conceded that it was indeed a lapse on the part of the Dy. Executive Engineer of the billing unit, not to issue a letter to the consumer approving the change of code, in the month of May June, 2001.

15. Upon query, the Respondent conceded that the Vigilance Officer in his letter dated 7th October, 2004 had instructed to change the tariff category from power loom to

industry merely because the Dy. Executive Engineer had not issued a formal letter of approving the change of code in the month of May, 2001. He, further, agreed that the Vigilance Officer's report clearly mentions existence of 16-power looms in the factory unit. It was at the insistence of the Vigilance Officer that the Respondent subsequently changed the code of consumer from power loom to industry and that too retrospectively from May, 2001. The Respondent agreed that this action on their behalf was not in accordance with the rules but was merely carried out due to the letter of the Vigilance Officer. Both the officers of the Respondent categorically confirmed that it was the Dy. Executive Engineer in this case who is fully authorized and competent to approve the change of code at the appropriate tariff and no permission from any higher officer is required. Since, however, in this case, the action was taken at the insistence of the Vigilance Officer, subsequent decision to correct the earlier mistake, was taken with the consent of the Superintendent Engineer before issue of the letter dated 26th August, 2005. It is in this background that the Respondent feels that the order of the Forum is not proper and fair.

16. On the issue of abnormal bills, the Respondent conceded that there have been some anomaly in issue of bills, which are not in accordance with the meter readings. He agreed that this anomaly would be corrected in course of time.

17. Documents on record and pleadings during the hearing, make it very clear that the consumer had indeed completed the required formalities for change of code from industry to power loom, way back in the month of May, 2001. The officials at the billing unit, rightly raised the bills at the tariff applicable to the power loom category in accordance with the decision taken by the appropriate authority. Only lacuna noticed in the whole process is that the Dy. Executive Engineer of the billing unit did not issue a formal letter to the consumer approving the change of code. This can be, at best, treated as a minor lapse on the behalf of the then Dy. Executive Engineer. It can be concluded that the action of issuing the bills at the rate applicable to power loom from June, 2001 to December, 2004 was very much correct. The Forum's view in this respect clearly appears to be erroneous and is based merely on the letter of the Vigilance Officer. On perusal of the said letter dated 7th October, 2004 to the Dy. Executive Engineer, it is confirmed that there are 16 power looms in the factory unit. Therefore, by any stretch of imagination, it cannot be concluded that the Dy. Executive Engineer was issuing the bills at power loom rates wrongly. The Forum apparently over emphasized the importance of 'non issue' of the formal letter changing the code from industry to power loom by the so called competent authority in the month of May, 2001.

18. The second issue that needs to be addressed relates to the corrective action taken by the Respondent while issuing the letter dated 26th August, 2005 approving the change of category from industry to power loom. Perusal of the documents on record show that this approval is preceded by consultation with the Superintending Engineer before arriving at the decision. There is nothing to fault in this decision making process. The letter dated 26th August, 2005 approves the change of category retrospectively from January, 2001 (it should have been correctly put as June, 2001) as the consumer has been using the power loom from the month of May – June, 2001, the fact which is undisputed.

It is in this background that order of the Forum cancelling the letter 26th August, 2005 cannot be justified as it is unfair to both the Respondent and the Appellant.

19. On the issue of abnormal bills, the Respondent has already conceded the mistake and has agreed to take corrective measures. It is logical and reasonable to revise the bills based on the meter readings, which are available on record. The Respondent has clearly over charged the consumer by raising bills on high average and ignoring the readings of the new meter replaced in October, 2002. In this background, the Respondent must go through the records and CPL from January, 2001 and make necessary corrections by considering actual readings, consumption recorded and the payments made by the consumer.

20. While deliberating on the issue, the Forum has observed that the Respondent should revise the bills at the level of Chief Engineer and that the Chief Engineer should take the help of the Chief Accounts Officer and Joint Director (Information Technology). According to me, it is neither relevant nor correct to direct the Respondent to revise the bills only by the Chief Engineer. There are systems and procedures set within the organization and the delegation of authority in every respect. The Respondent has confirmed in unambiguous terms that it is the Dy. Executive Engineer of the billing division who is fully authorized to carry out the functions of changing of code and billing. Therefore, I am unable to agree with the views of the Forum in this behalf, which I find inappropriate. The Forum has also directed to take departmental action against the officers responsible for making change of code. For the same reasons stated above, I do not appreciate this view of the Forum, also. The National Consumer Disputes Redressal Commission in the Revision Petition No. 70 of 1993 between MSEB versus K.L. Ramani has observed that it is beyond the competence of the District Forum to direct an enquiry to be held against the officers of the State Electricity Board. Therefore, I am not inclined to concur with the order of the Forum directing departmental enquiry against the officers and staff for the so-called lapse. In the first place, there appears to be no lapse on the part of the officers in granting change of code both in the year 2001 and subsequently in August, 2005. The order of the Forum in this behalf is, therefore, liable to be set aside.

ORDER

1. The Respondent's action for the change of tariff code from industry to power loom from June, 2001 is in accordance with the relevant rules. The Forum's order cancelling the Respondent's letter dated 26th August, 2001 in this respect is not based on correct appreciation of facts of the case. The said order is, therefore, liable to be and is hereby set aside for the reasons elaborated in the preceding paragraphs.
2. On the facts and circumstances of this case, there is no justification for the Consumer Grievance Redressal Forum to interfere in the decision taken by the Respondent and also directing the Respondent to revise the bills on the basis of industrial tariff. Moreover, it is not appropriate for the Forum to direct the

Respondent to make revision of the bills at the level of the Chief Engineer by taking help of some officials mentioned in the order. It is also beyond the jurisdiction of the Forum to order department enquiry against certain officers. The whole order of the Forum in this behalf is liable to be and is hereby set aside.

3. The Respondent's letter dated 26th August, 200 change the tariff code to power loom with effect from June, 2001 is upheld. The Respondent is now directed to revise the bills accordingly and also to rectify the average / wrong bills and report compliance within a period of two months from the date of this order.

Sd/
(W.G.Gorde)
Ombudsman

Sd/
(S.N.Yadwad)
Secretary