

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th Floor, Cuffe Parade, Mumbai – 400 005
Tel. 022 22163964/65/69 Fax 22163976
Email: mercindia@mercindia.org.in
Website: www.mercindia.org.in

Case No. 31 of 2008

In the matter of
Petition of Hotel & Restaurant Association seeking directives under Section 142
of the EA, 2003 for non-compliance and intentional misinterpretation of Tariff
Orders dated 18.5.2007 and 20.10.2006.

Shri A. Velayutham, Member
Shri S. B. Kulkarni, Member

Hotel & Restaurant Association
Western India Region
4, Candy House, Colaba
Mumbai – 400 001.

...Complainant

Versus

Maharashtra State Electricity Distribution Co. Ltd.
Plot No. G-9, “Prakashgad”
Bandra (East),
Mumbai – 400 051

...Opponent

ORDER

Dated: September 23, 2008

Hotel & Restaurant Association filed a complaint on 26.5.2008. It is averred in the complaint that the Complainant is an association of Hotel and Restaurants for the Western Region of India. The members of the Association, in the area of MSEDCL, should not be subjected to untimely tariff shock in terms of mid-term change of category. As the Hotels, Restaurants, Resorts and other similar installations are classified as Industry under tourism by the Government of Maharashtra, they should be retained under the HT Industrial category. The members of the Association are into various businesses like, Hotels, Restaurants, Resorts, Motels, Apartment Hotels, etc. The majority of the members of the Association, from Maharashtra State, are in the High Tension category of the MSEDCL. The Government of India identifies Tourism and related associations like Hotel and Restaurants as an Industrial avenue and



classifies Hotels and Restaurants as an Industry. The Home Department (Tourism), Government of Maharashtra, has issued a 'Government Resolution' dated 7th April 1999 (No.) MTC/0399/C.R.201/Tourism (GR). The above-referred GR is in concurrence with the Industry Department of Government of Maharashtra. The prevailing Electricity Tariff is governed by the Commission's order dated 18th May 2007, the first year of MYT Control Period. MSEDCL has a HT Tariff Booklet applicable to all the HT consumers in its area of licence.

2. The submission/grounds in support of the case are as follows:

(1) The Commission has issued a Clarificatory order dated 24th August 2007 in Case No. 26 of 2007 and 65 of 2006 and has, observed:

"16. Tariff applicable for religious places of worship supplied at HT voltages

The tariff schedule for LT category approved by the Commission as a part of the Tariff Order, on page 208 of the Order, specifies the applicability of LT tariff as follows:

"Power supply used for appliances like Light, fans, refrigerator, Air-Conditioners, heaters, small cookers, radios, T.C. sets, battery charger equipments, X'-ray machines, small motors up to 1 HP attached to appliances and water pump in following places:

- a) Residential places,*
- b) Religious places like temples, churches, mosques,*
- c) --- "*

In this context, a clarification has been sought regarding the applicability of the above tariff for consumers connected on HT voltages.

Commission's Clarification and Ruling

The Commission clarifies that the tariff applicable for religious places of worship supplied at HT voltages will be the same as that applicable for such consumers who are supplied at LT voltages.

*The Commission also observes that similar problems exist for other categories like hospitals, educational institutions, etc., supplied on HT voltages, but which are currently being charged industrial tariffs, due to the absence of any categorization for such consumers. **MSEDCL is directed to collect the data of all such consumer sub-categories that are supplied at HT voltages, and are currently being charged industrial tariffs, though they should not be strictly classified under industrial category, the segregated data on such consumer sub-categories such as number of consumers and consumption should be submitted at the time of submission of Annual Performance Review.***(emphasis added)



(ii) The Complainant has submitted that now MSEDCL has issued a Commercial Circular (No.72 dated 13th December 2007) based on the observations made by Commission in the above Clarificatory Order on the Ground, as stated in their Circular, as below:

“At present there is no separate categorization to the HT connections of Educational Institutions, Hotels & other similar type of connections. Hence in absence of this, the HT connections of Educational Institutions & Hotels are categorized as HT-I Industries.

And the directives issued by MSEDCL are as follows:

The data desired by Hon'ble Commission is called from field offices vide T.O.L.No.P-Com/MERC/MYT/Compliance/36713 dt.01.10.07. However, complete data is yet not received from field offices & hence till the receipt of this data & a decision thereon, the Competent Authority has decided as follows:-

1) The tariff of H.T. connections of Hotels are to be changed as HT VI – Commercial Complex.” (emphasis added)

(iii) The Complainant submitted that it is evident from the Clarificatory Order that the Commission's observations are limited to consumers falling under HT Industry, but are Religious places, Hospitals and Educational Institutions, etc., which are presently being charged under HT Industry in the absence of categorization. With respect to the observations, the Commission has given further directives to collect the data of all such consumers and present the same along with the Annual Performance Review (APR) Petition. MSEDCL has violated the directives in the context of providing data and instead has issued directives on their own. MSEDCL has misinterpreted the observations of the Commission and spirit of such observations in their own interest, and issued the directives to rearrange the categories of various consumers on their own. The re-categorization thus scheduled will increase the energy bills of the consumers without reason and logic. The issue of categorization of consumers under various categories does not solely fall under the purview of MSEDCL. MSEDCL is required to follow a procedure and seek approval of the Commission in this regard. MSEDCL has violated the Government of Maharashtra directives vide Government Resolution dated 7th April 1999), and not amplified the same in the tariff booklet or otherwise.

(iv) The Commission has given directives to the MSEDCL in the Tariff order dated 18th May 2007 regarding the Consumer Category HTP VI Commercial as below:

“Tariff for Group Housing Societies

The Commission reiterates that the HT-VI Residential would be applicable only to the Group Housing Societies. In the earlier Tariff Order, MSEDCL



had been directed to ensure metering arrangements so that consumers currently classified under HT-V Commercial Category, and requiring a single point supply, will have to either operate through a franchise route or take individual connections under relevant category. MSEDCL is directed to ensure compliance with this directive immediately.”

(v) Also, the Commission has given directives to MSEDCL in the earlier Tariff Order dated 20th October, 2006 regarding the Consumer Category HTP VI Commercial, then HT-V, as below:

“f) The Commission has removed the commercial category from HT V. If the consumers belonging to this category require a single point supply they will have to either operate through a franchisee route or take individual connections under relevant category. However, keeping in view the metering constraints and the task of identification of consumers, the Commission directs that the HT V-Commercial category shall continue to be under HT V for a period of six months from the date of the Operative Order.”

(vi) Complainant has submitted that it is evident from the Tariff Order dated 18th May 2007 and the earlier Tariff Order dated 20th October, 2006 that the tariff category HT-VI commercial shall be withdrawn and the existing consumers from the category should be treated as directed. Now, since the tariff category HT-VI is going to be abolished, there is no purpose in adding consumers to that category, without the permission of the Commission.

(vii) Complainant has submitted that the above listed various directives of the Commission have not been followed by MSEDCL, hence, the Commission has the power to try, entertain and dispose of the petition.

3. The Complainant has prayed as under:

1. *To direct MSEDCL to restore the unlawful categorization of the Association members, if already done.*
2. *To ensure the categorization of the ensuing consumers on the rational basis.*
3. *To amplify the Government Resolution in the Tariff Categorization as it is Statutory directives from the Government of Maharashtra.*
4. *To initiate necessary action u/s 142 of the Electricity Act 2003 against the MSEDCL for not implementing and intentional misinterpretation of the Commissions orders.*
5. *To retain the members of the Association in the HT Industrial category.*
6. *To pass any other Order in the interest of justice.*
7. *To pass any other relief as Hon'ble Commission may deem fit and proper, in the circumstances of the case, as may be.*
8. *To grant an opportunity of hearing in the interest of justice.*



4. The Complainant filed additional submission stating that MSEDCL had shifted the members of the complainant association to HT-II Commercial category, after the issue of the Tariff Order dated June 20, 2008 in Case No. 72 of 2007. Complainant submitted that these members fall under the industry category because study of the energy consumption pattern of the hotel industry shows that it has fairly constant load and consumption throughout the day (24 hours), which eventually helps MSEDCL to maintain their load curve flat.

5. A hearing was held on 15.07.2008. Shri. Mohan Borole appeared for the Complainant. Shri. Ricab Chand appeared for the Opponent. Shri Mohan Borole submitted at the outset that the present case has been instituted for invoking proceedings under Section 142 of the Electricity Act, 2003 (“EA 2003”). He explained that the Commission has issued a Clarificatory Order dated August 24, 2007 in which, the Commission has observed that problems exist for categories like hospitals, education institutions, etc., supplied on HT voltages but which are currently being charged industrial tariffs due to the absence of categorization for such consumers. In this Order, MSEDCL has been directed to collect the data of all such consumer categories that are supplied at HT voltages and are currently being charged industrial tariffs though they should not be strictly classified under industrial category. The Commission had directed therein that the segregated data of such consumer sub-categories such as number of consumers and consumption should be submitted by MSEDCL at the time of submission of Annual Performance Review. However, MSEDCL has issued a Commercial Circular No.72 dated December 13, 2007 essentially based on the aforesaid observations made by the Commission but had substantially, while implementing the Order of the Commission, deviated from the clear direction of the Commission. The deviation occurs because of the below mentioned stipulation in MSEDCL’s Circular No.72: *“The data desired by Hon’ble Commission is called from field offices vide T.O.L. No. P-Com/MERC/MYT/Compliance/36713 dt., 01.10.07. However, complete data is yet not received from filed offices & hence till the receipt of this data & a decision thereon, the Competent Authority has decided as follows:*

1) The tariff of H.T. connections of Hotels are to be changed as per HT VI – Commercial Complex.”

6. It is the submission of the Complainant that Hotels and Restaurants as such would also be those consumers that are supplied on HT voltages but have currently been charged industrial tariffs due to the absence of any categorization for such consumers and for whom MSEDCL was directed by the Commission to collect the data (such as number of consumers and consumption). Despite the said direction, MSEDCL has not submitted the segregated data or any data at the time of submission of its APR Petition. Without complying with the aforesaid direction of the Commission, MSEDCL has unilaterally (without the Commission’s approval) categorized HT connections of Education Institutions and Hotels under HT-VI



Commercial Complex by issuing Circular No.72 dated December 13, 2007. This is a clear non-compliance/contravention of the direction contained in the Commission's Order dated August 24, 2007 and which calls for invoking Section 142 proceedings. Furthermore, rearranging categories of various consumers on their own will result in additional revenue to MSEDCL, which is extraneous to the tariff determination process. Moreover, categorization of consumer is not within the purview of MSEDCL and MSEDCL requires prior permission of the Commission for such action. In doing so, MSEDCL has also violated the provisions of the Government of Maharashtra Resolution dated April 7, 1999. Furthermore, in the Commission's Order dated May 18, 2007, the Commission has clearly held that HT-VI Residential tariff would be applicable only to the Group Housing Societies. In the Commission's Tariff Order dated October 20, 2006, the Commission has removed the commercial category from HT-V.

7. On the issue of limitation, the Complainant submitted that several of its members have come to know of the aforesaid contravention of MSEDCL only after they received their bills. Thereafter, these consumers approached the Complainant Association. This process has taken time which may kindly be taken into account for condoning the delay, if any, in filing the present petition.

8. Shri Ricab Chand, Advocate appeared for MSEDCL and objected to the present petition on grounds of maintainability. His only contention is that the present case is a matter of interpretation and not contravention of any direction as contemplated under Section 142. He also submitted that if there is any other grievance, then the Commission is not the appropriate forum. He also requested that some time be given to him for filing his objection in writing.

9. MSEDCL filed its written submission in response to the complaint on 07.08.2008 stating thereunder that there is no violation by MSEDCL of the Commission's Orders. MSEDCL also submitted that there is a separate LT Commercial category under which hotels connected at LT level were categorised. Correspondingly, the category for HT consumers would be category HT-VI commercial and accordingly the complainant's members were classified under HT-VI. MSEDCL further submitted that in its Clarificatory Order dated 24.8.2007; the Commission has clarified that the tariff applicable for religious places of worship supplied at HT voltage will be the same as that applicable for such consumers who are supplied at LT voltages. The hotels that are connected at LT level are categorised under LT commercial category. The corresponding category would be HT-VI Commercial, and hence, the Petitioner was classified under HT-VI Commercial category. MSEDCL also submitted that under the Electricity Supply Code Regulations notified by the Commission "*the distribution licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer*".



10. MSEDCL also submitted that in its Order dated 20.06.2008 in Case No.72 of 2007, the Commission has created a new category namely HT-II Commercial to cater to certain category of consumers availing supply at HT voltages, which includes hotels, etc. Thus, there is no violation of Commission's Order and therefore, the present complaint ought to be rejected.

11. The complainant filed his rejoinder on 04.09.2008, wherein it has been contended that since the HT-VI Industrial (should be read as Commercial) category was withdrawn vide Tariff Orders dated 20.10.2006 and 18.05.2007, therefore, the action of classifying the members of the complainant association under HT-VI commercial category amounts to violation of the Orders of the Commission by MSEDCL. The Complainant has also contended that creation of HT-VI/HT-II commercial category is in violation of E.A. 2003 and rules and regulations thereunder.

12. Having heard the Parties and after considering the materials placed on record, the Commission is of the view as under:

13. The issue as to whether MSEDCL has the power to categorise hotels getting supply at HT voltage under HT VI Commercial Complexes, without the Commission's approval, has to be seen in the context of Regulation 13 of the MERC (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005, which specifies as under:

“13. Classification and Reclassification of Consumers into Tariff Categories

The Distribution Licensee may classify or reclassify a consumer into various Commission 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.”

The above Regulation clearly empowers MSEDCL, as the Distribution Licensee, to categorise hotels getting supply at HT voltage under HT VI Commercial Complexes, without the Commission's approval, based on the purpose of usage of electricity by the consumer. Thus, the Petitioner's submission that MSEDCL cannot categorise any consumer in any existing consumer category without the Commission's express approval has no merit.

14. The issue as to whether the classification of the Complainant's members under HT VI Commercial Complex in accordance with the Commission's Tariff Order for FY 2007-08, is appropriate or not, is a grievance related to billing dispute between the distribution licensee and the consumer. The Hon'ble Supreme Court has in its Judgment dated 14.08.2007 in Civil Appeal No 2846 of 2006 held that the



Commission will have no jurisdiction to decide on billing disputes between the consumers and licensees. As per the said Judgment of the Supreme Court, the Commission has jurisdiction to adjudicate on disputes between generating companies and licensees and as between licensees under Section 86(1)(f) of the EA 2003 but not between consumers and licensees because the EA 2003 has made specific provisions under Section 42(5),(6),(7) for the redressal of such disputes and grievances by the consumer grievance redressal forum with further representation to the Electricity Ombudsman. In case, as contended by the Petitioner, there is a grievance relating to wrong categorisation under HT VI Commercial Complex by MSEDCL, which culminates into an incorrect bill, it may be a fit case for the Petitioner to approach the concerned Consumer Grievance Redressal Forum of MSEDCL as the said Forum will have the jurisdiction to decide and redress a grievance in respect of any case involving non-compliance of any order of the Commission or any action to be taken in pursuance thereof within the jurisdiction of the said forum. The Commission will have no jurisdiction to entertain a case involving a billing dispute between a consumer and a distribution licensee.

15. In view of the above findings, the Commission finds no case in the Petitioner's request for imposition of penalty under Section 142 of the EA 2003, and the prayer is dismissed.

16. All other contentions and reliefs sought by the Petitioner including categorisation under HT Industrial category in accordance with Government of Maharashtra's GR have no merit. Classification under Industry for tax purposes and other purposes by the Government of Maharashtra shall apply to matters within its 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 the reliefs under other statutes. In case, this prayer is sought to be covered under review of the Commission's Order dated June 20, 2008, which incidentally has been issued after the Petitioner filed this Petition, the grounds for the maintainability of review have not been satisfied when tested with the requirements of Regulation 85 of the Maharashtra Electricity Regulatory Commission (Conduct of Business) Regulations, 2004.

With the above observations, the Petition filed in Case No. 31 of 2008 is hereby dismissed.

Sd/-
(S.B. Kulkarni)
Member

Sd/-
(A. Velayutham)
Member



(P.B. Patil)
Secretary, MERC