

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

Case No. 03 of 2010

In the matter of
Complaint filed by M/s. Paul Strips & Tubes Pvt. Ltd., against Maharashtra State Electricity Distribution Company Ltd., alleging non-compliance of the Electricity Ombudsman's Order dated 03.02.2010, and seeking refund of Tariff difference.

Shri V. P. Raja, Chairman
Shri V. L. Sonavane, Member

M/s. Paul Strips & Tubes Pvt. Ltd.

..... Complainant

Vs.

Maharashtra State Electricity Distribution Co.Ltd.

..... Opponent

ORDER

Date: August 03, 2010

M/s. Paul Strips & Tubes Pvt. Ltd., filed a complaint on 12th March, 2010, under Sections 142 and 149 of the Electricity Act, 2003 against Maharashtra State Electricity Distribution Company Ltd. ("MSEDCL"), alleging non-compliance by MSEDCL of an Order dated 3rd February, 2010 passed by the Electricity Ombudsman.

2. The Complainant has prayed as under:



“MSEDCL should be directed to give credit/refund of tariff difference from June, 2008 onwards as per Order of the Ombudsman.”

3. Key points and facts of the matter, as stated in the Ombudsman’s Order dated 03 Feb., 2010, are as follows:
- a) The Complainant is an industrial unit, situated in Additional Jejuri industrial area having high tension supply from the Opponent since March 26, 2008, and was being charged at an Industrial tariff till the month of December, 2008. In the bill of January, 2009, the Opponent changed the tariff category for the Complainant as applicable to an Express feeder consumer and charged tariff at Rs.4.30 per kWh instead of Rs.3.95 per kWh. Further, the Opponent also debited an amount of Rs.18,22,400.10 towards recovery of tariff difference from June, 2008 to December, 2008.
 - b) Aggrieved with the action of Opponent, after making the payments as billed, the Complainant filed a complaint with the Consumer Grievance Redressal Forum, Pune Zone. The Forum decided the matter by Order (Case No. 18 of 2009) on October 30, 2009, dismissing the present Complainant’s application.
 - c) Being aggrieved and not satisfied with the Order of the Forum, the Complainant filed a Representation before the Ombudsman (No. 146 of 2009).
 - d) The submissions and the representations, made to Ombudsman, are as follows:
 - i. The Complainant submitted that it never asked for the express feeder connection, and, therefore, the Opponent cannot force him to take supply on express feeder and charge at that Tariff. Terming the action of the Opponent as arbitrary and illegal, the Complainant appealed for it to be withdrawn and the excess amount charged to be refunded with 18% interest.
 - ii. The Opponent’s Superintending Engineer, MSEDCL (BRC) Baramati, submitted (to Ombudsman) his written reply (on 15th Jan. 2010) contending that the Complainant has not raised any legal issue or any factual merit because he is availing supply from an express feeder. On execution of 33kV line, based on the estimates prepared by MSEDCL, extending the existing 33kV MIDC feeder (which is an express feeder), supply was released on March 26, 2008. The consumer never demanded supply on non-express feeder in its application. The present complainant’s undertaking for 33kV line work (and having been connected to an Express feeder) was deemed to be for continuous supply on express feeder. No load shedding was carried out on this feeder, being an express feeder. MRI data also showed that the Complainant enjoyed benefit of continuous supply from that feeder, including on weekly staggering off i.e., Thursday till August, 2009. Therefore, Opponent is entitled to recover charges at Rs.4.30 per Unit, meant for continuous industries on express feeders.



- iii. The Opponent had submitted that, according to the Commission's Clarificatory Order dated September 12, 2008, the high tension industries connected on express feeder may exercise choice between continuous and non-continuous supply, only once in a year in the first month after issuing of Tariff Order.
 - iv. Referring to MSEDCL's Commercial Circular (no.88) dated 26th Sept. 2008 about high tension industries connected on express feeders to be deemed as high tension continuous industry and consumer to exercise choice between continuous and non-continuous supply, MSEDCL had submitted that the Complainant did not give any choice, and therefore, the existing category was continued and thus the bill for continuous tariff was issued for January 2009. Bill towards differential amount was issued in May 2009. It was also explained that the delay was due to not feeding of proper software (new tariff details) to the computer system.
 - e) The Electricity Ombudsman by its Order dated February 03, 2010, based on the fact that the Complainant had not given any choice within one month of the Circular dated September 26, 2008, concluded that Complainant's existing tariff which was HT non-continuous tariff until June 2008, was bound to be continued. The Ombudsman directed the Opponent to refund the excess amount recovered alongwith the interest at the bank rate, as stipulated in the Section 62(6) of the EA 2003 within 30 days of the Electricity Ombudsman's order. The compliance was to be intimated within 30 days of the order.
4. With reference to the above order of the Electricity Ombudsman, the Complainant has filed a complaint with this Commission alleging non-compliance of the Ombudsman's order by the Opponent.
 5. From the documents submitted with the Complaint, it is seen that vide letter dated 19th Feb., 2010, the Complainant had reminded the Opponent that the credit was to be given to him within 30 days of the Ombudsman's Order, in reply to which the Opponent vide letter dated 24th Feb., 2010, conveyed to the Complainant that the Opponent was in the process of filing a writ petition in the High Court, challenging the Ombudsman's order, and also conveyed that they were waiting for a stay on the Ombudsman's order.
 6. A letter dated 22nd March, 2010 was issued by the Commission to the Opponent asking them about the steps taken to comply with the said order of the Ombudsman. The Opponent submitted vide its letter dated 31st Mar., 2010, that they had filed a writ petition (5520/2010 on 02nd Mar. 2010) with the Bombay High Court challenging the order passed by the Ombudsman, and, that they awaited a Stay Order on the Ombudsman's order.
 7. The Commission scheduled a hearing in the matter, for 6th July, 2010.
 8. Subsequently, the Opponent by its legal representative's letter dated 28th June, 2010, submitted that the Writ Petition filed by the Opponent before the Hon'ble High Court was heard on June 23, 2010, and, that the High Court had declined to grant interim order of stay of the impugned order of the Ombudsman. It was also submitted that the



Opponent was considering filing a Special Leave Petition against the Hon'ble High Court's order dated June 23, 2010, and that therefore the hearing in the matter should be postponed.

As the Commission did not accede to the said request for postponement, a hearing was held on 6th July, 2010. Shri Suresh Sancheti appeared on behalf of the Complainant and Shri Karthik Somasundram appeared on behalf of Opponent. Both the parties reiterated their case.

9. Having heard the parties, the Commission observes that the present case is similar to Case No. 04 of 2010 filed by M/s. Mundra Steel & Alloy Pvt. Ltd., before the Commission, and thus the present case is covered by the Order dated 3rd August, 2010 passed by the Commission in Case No. 04 of 2010. The Commission is accordingly of the view that since the High Court has not granted interim order of stay on implementation of the Ombudsman's order, compliance of the Ombudsman's order becomes mandatory under law. Accordingly, the Commission directs the Opponent to comply with the Ombudsman's Order, within one month from the date of the hearing (i.e. 6th July, 2010) and give credit/ refund of tariff difference as per order of the Ombudsman along-with the due interest, failing which the Commission may consider taking appropriate action under Section 142 of the Electricity Act 2003.

With above Case 03 of 2010 stands disposed of.

Sd/-
(V. L. Sonavane)
Member

Sd/-
(V. P. Raja)
Chairman



(K. N. Khawarey)
Secretary, MERC