

**GUJARAT ELECTRICITY REGULATORY COMMISSION
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE
Polytechnic Compound, Barrack No.3, Ambawadi,
Ahmedabad-380015**

CASE NO. 62/2018

Appellant: M/s. Salon Ceramic Pvt. Limited,
Old Ghuntu Road
Morbi-363642.

Represented by: Shri Vikram Shah, Authorized representative.
Shri V.V.Patel, Partner

V/s.

Respondent: Executive Engineer,
Paschim Gujarat Vij Company Limited
Division Office, Morbi-363642.

Represented by: Shri N.D.Panara, EE, PGVCL, Morbi.

:::PROCEEDINGS:::

- 1.0.** The Appellant had submitted representation aggrieving with the order No. 3360(11) dated 02.05.2018 in case No. 51/Q.03/2017-18 and review order No. 4735(1) dated 28.05.2018 in case No. No.47/Q.01/2018-19 passed by the Consumer Grievances Redressal Forum, Paschim Gujarat Vij Company Limited, Rajkot. The representation was registered at this office as Case No.62/2018. The hearing of this case was kept on 09.08.18. As per e-mail dated 08.08.2018 Respondent had requested to keep the hearing on some another date as he had to attend the Civil Court at Jamnagar, and accordingly the next hearing was kept on 23.08.18. For further submission the next hearing was kept on 06.09.18.
- 2.0.** Appellant has represented the case as under.
- 2.1. Appellant is having HT connection in the name of M/s. Salon Ceramics Pvt. Limited, having contracted demand of 600 KVA, bearing connection No.26106 under HTP-I tariff in the jurisdiction of

Morbi Division of PGVCL. The connection was released on 08.06.2004. The electricity is used for manufacturing of ceramics.

- 2.2. The relevant tariff schedule at the time of release of said connection and as per consecutive tariff order, concession for use of electricity during night hours is eligible to all HT consumers. Accordingly, Appellant should also be granted the concession as the same is applicable to all HT consumers irrespective of contract demand.
- 2.3. It is submitted that during audit of bills of Appellant, it is found that the said night hours concession is applicable and is granted effective from July,2012 but same is not granted for previous period. So Appellant has asked for refund of the amount towards night hours concession, but it was denied by Respondent vide letter dated 21.03.2017. Executive Engineer, Morbi had granted refund from September,2010 to June,2012, but refund is not granted for the previous period i.e. date of release 08.06.2004 to August,2010.
- 2.4. Aggrieved by action of Respondent, Appellant had filed grievance before CGRF, PGVCL, Rajkot. CGRF had denied the plea of Appellant without reasons. Review appeal before CGRF was filed against CGRF order, but appeal was rejected by CGRF without hearing. Considering the contemporary tariff provisions and Ombudsman order in case No.128 of 2017, Appellant has filed present appeal.
- 2.5. Appellant has mentioned various grounds as under:
 - (a) Clause 2.21(1) of Notification No.2 of 2011, Forum should protect the interest of consumers. Forum had failed in protecting interest of the consumer by not giving clear verdict on the issue raised before CGRF. Forum has erred by not giving order in line with similar case which was decided by Ombudsman in case No.128 of 2017.
 - (b) Forum had erroneously concluded that sheet (documents) presented by Appellant is not available with Respondent so the same cannot be considered genuine. All the readings

(parameters) in sheet printed by Appellant are signed by the officer of Respondent.

The conclusion of Forum in Point No.3 that reading sheet produced by the Appellant is not an authentic proof is erroneous without going into details or confirming authority of the documents produced by the Appellant. The data produced after many years cannot be considered genuine observed by Forum is against legal procedure and regulations. The documents presented by Appellant are not challenged by the Respondent and the same are now authenticated by the competent authority of Respondent.

- (c) Forum has concluded that if the data available with Respondent then it can be considered as indisputable. The data available with Appellant cannot be treated as genuine. This clearly shows the bias towards Respondent by Forum.
- (d) Forum had said that it is a moral duty of the consumers to study notification and order of the GERC and take necessary action, if any, while as per Clause 2.21 of Notification No.2 of 2011, Forum had ignored the issue of protection of interest of consumers. The rules regarding not granting night hours concession to the consumer having contracted demand less than 500KVA and at the same time grant of the same if consumer requests for benefit of night hours concession is gross violation of acts and regulations.
- (e) As per Clause 2.30(iii) of Notification No.2 of 2011, Forum has not taken any action in the subject matter.

Clause 2.30(iii) is related with limitation on application.

“In cases where the complaint/grievance has been registered two years after the date on which the cause of action arisen.”

Respondent had confirmed that he had already paid the night tariff rebate from September,2010 in the month of July,2017. At

the same time the night tariff concession for earlier year is not granted under disguises of non-availability of data. Against this decision of Respondent, Appellant had filed complaint before CGRF in March,2018 for the matter of billing in July,2017 and afterwards made correspondence up to September,2017. Therefore, there is no question of time bar as the course of action is well within a period of two years from the date of filing the application before CGRF. Appellant has argued the subject issue and put the relevant order of Ombudsman in case of 128 of 2017, which may not look by CGRF while deciding the present issue.

- (f) The connection of Appellant was released in April,2004, but Respondent had not explained under which circumstances/ regulations appellant was allowed night hours rebate w.e.f. September,2010. Many of connections are enjoying benefit of night hours rebate since release of connections in the area of Respondent.
- (g) The connection of Appellant was granted with contract demand of more than 500KVA and as per tariff order night hours rebate was applicable since release of connection. The other area of Respondent was granted night hours rebate to concern eligible connections as per tariff order, irrespective of contract demand. The consumers of Morbi area, having contract demand of less than 500 KVA, who had applied for benefit of night hours concession, were granted night hours rebate.

This is a clear case of favour of some special consumers. The whole procedure of denying night hours rebate to consumers having contract demand less than 500 KVA and allowing the same after receiving application is dubious. Appellant has requested for punitive action against the Respondent.

- (h) In case No.57/Q.1/2017-18 of M/s. Sadbhav Ceramics V/s Executive Engineer, PGVCL, Morbi, Forum had ordered that Respondent PGVCL should revise all bills which are eligible for night hour rebate within 10 days. Now same Forum had concluded that case of Appellant cannot be entertained as per Clause 2.30(iii) of Notification No.2 of 2011.

2.6. Appellant has submitted rejoinder dated 06.09.2018 and stated as under:

- (1) Respondent has supplied some data regarding meter checking and installation from different departments of offices of Respondent but Respondent is refrained from providing affidavit regarding available data in his office.
- (2) On going through the records of consumption of connection of Appellant a definite pattern @4115 unit per month average benefit is available considering the same machinery and utilization of power. So, it can be safely concluded that refund can be granted for 4115 units per month.
- (3) It is submitted that as per tariff order published by GERC night hours rebate is bonafide rights and Respondent cannot violate the same. Non-availability of data should not be a reason for non-granting of benefit to the Appellant. The innocent consumer cannot be punished for mislead of Respondent.

2.7. Appellant has prayed as under:

- (1) To quash and set aside the CGRF order.
- (2) To direct Respondent to grant night hours rebate from the date of release of connection in line with tariff order of respective period.
- (3) Where data is not available the night hours rebate should be granted considering the average units.
- (4) Interest as per prevailing Bank rate should be provided on refund amount.

- 3.0. સુનવણી દરમ્યાન સામાવાળાએ નીચે મુજબ રજૂઆત કરી.
- 3.1. અરજદાર, મે. સલોન સિરામિક પ્રા. લિમિટેડ, ગ્રાહક નં.૨૬૧૦૬ થી 475 KVA નું એચ.ટી. વીજ જોડાણ મોરબી વિભાગીય કચેરી હેઠળ ધરાવે છે. વીજ જોડાણ ચાલુ થયા તા.૦૮.૦૬.૨૦૦૪ થી અરજદાર દ્વારા night hours rebate મેળવવા અંગે રજૂઆત કરવામાં આવેલ છે.
- 3.2. અરજદાર દ્વારા ફોરમ સમક્ષ તા.૦૬.૦૩.૨૦૧૮ ના રોજ સદર બાબતે ફરિયાદ દાખલ કરવામાં આવેલ. અરજદારની રજૂઆત મુજબ સામાવાળા વીજ કચેરી પાસે ઉપલબ્ધ દસ્તાવેજોની ચકાસણી કર્યા બાદ સપ્ટેમ્બર, ૨૦૧૦ થી જુન, ૨૦૧૨ સુધીના ચુકવવાપાત્ર રાત્રી વીજ વપરાશના વળતર પેટેની રકમ રૂ. ૨૮૬૮૫.૧૮ જુલાઈ, ૨૦૧૭ ના વીજબિલમાં જમા કરવામાં આવેલ છે.
- 3.3. સામાવાળા વીજ કચેરી ખાતે સપ્ટેમ્બર, ૨૦૧૦ પહેલાંના એચ.ટી. વીજ ગ્રાહકોની બિલીંગ અંગેની માહિતી ઉપલબ્ધ ન હોઈ, અરજદારનું વીજ જોડાણ, જે ૦૮.૦૬.૨૦૦૪ના રોજ કાર્યાન્વિત કરવામાં આવેલ ત્યારથી ઓગસ્ટ, ૨૦૧૦ સુધીના રાત્રી વીજ વપરાશમાં night hours rebate નો લાભ અરજદારને આપવો શક્ય નથી. સદર બાબત અંગે ફોરમ સમક્ષ પણ સદર રજૂઆત કરવામાં આવેલ.
- 3.4. જે એચ.ટી. ગ્રાહકોનો કરારીત વીજભાર ૫૦૦ KVA થી વધારે હોય તેઓની night hours rebate નો લાભ આપવામાં આવતો હતો, અને જે એચ.ટી. ગ્રાહકોનો વીજભાર ૫૦૦ KVA થી ઓછો હોય તેવા વીજ જોડાણ ધરાવતા ગ્રાહકોને તેઓ દ્વારા night hour rebate અંગેની અરજી કરવામાં આવેલ ન હોઈ night hours rebate અરજદારના વીજ જોડાણમાં આપવામાં આવેલ નહીં.
- 3.૫. ટેરીફ ઓર્ડર વર્ષ ૨૦૧૨ અને તે પહેલાંના ટેરીફ ઓર્ડરમાં પોઈન્ટ નં.૧૩.૧૦ માં જણાવેલ છે કે રાત્રીના યુનિટની નોંધણી કરતાં પોલિફેઝ મીટર અને ટાઈમ સ્વિચ ગ્રાહકો દ્વારા પોતાના ખર્ચે લગાવવાના હતા, જે પોલિફેઝ મીટરમાં નોંધાયેલ રાત્રી યુનિટ પર night hours rebate નો લાભ આવા એચ.ટી. ગ્રાહકોને આપવાનો હતો.
- 3.૬. અરજદારનું સદર વીજ જોડાણ તા.૦૮.૦૬.૨૦૦૪ ના રોજ કાર્યાન્વિત કરવામાં આવેલ, જ્યારે અરજદારે night hours rebate મેળવવા અંગેની અરજી તા.૦૩.૦૩.૨૦૧૮ના રોજ, એટલે કે ૧૩ વર્ષ પછી કરેલ છે. અરજદાર દ્વારા ગુજરાત વિદ્યુત નિયંત્રક આયોગના વખતો વખત રજૂ થતા જાહેરનામા અને વિનિયમોની દરકાર લેવામાં આવેલ નથી.
- 3.૭. અરજદારની રજૂઆત અન્વયે સામાવાળા દ્વારા વીજ કચેરી મોરબી ખાતે ઉપલબ્ધ દસ્તાવેજોના આધારે સપ્ટેમ્બર, ૨૦૧૦ થી જુન, ૨૦૧૨ સુધીના આપવાપાત્ર night

hours rebate નો લાભ અરજદારને આપવામાં આવેલ છે, તેમજ જુલાઈ, ૨૦૧૨ થી અરજદારનો કરારીત વીજભાર ૫૦૦ KVA થી વધુ હોઈ, અરજદારને દર માસે વીજબિલમાં night hours rebate નો લાભ આપવામાં આવે છે.

૩.૮. દસ્તાવેજી પુરાવા ઉપલબ્ધ ન હોવાના કારણે અરજદારની રજૂઆત મુજબ વીજ જોડાણ ચાલુ થયા તા.૦૮.૦૬.૨૦૦૪ થી ઓગસ્ટ, ૨૦૧૦ સુધીના વીજબિલમાં night hours rebate નો લાભ આપી શકાય તેમ નથી.

૩.૯. અરજદારની સદર રજૂઆત અંગે ફોરમ દ્વારા આપવામાં આવેલ હુકમ નિયમોનુસાર હોઈ, સદર હુકમને યથાવત રાખવા સામાવાળાએ વિનંતી કરી.

::: ORDER :::

4.0. I have considered the contentions of the Appellant and the contentions of Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.

4.1. As per Para 2.1, Appellant is a consumer of Respondent since 08.06.2004. From the submission made by parties it reveals that this is a case of billing of HT connection of Appellant as per schedule of tariff published by GERC. As per say of Appellant, night hours concession is a part of tariff published by GERC and Respondent had not issued proper and correct billing since release of connection.

4.2. The static meter was installed since release of HT connection at the premises of Appellant. The previous tariff of GERC for the year 2004 to 2007 was also having conditions for concession for use of electricity during night hours. From the various tariff orders published by GERC from 2007 to 2012, the concession on use of electricity during night hours is as under:

CONCESSION FOR USE OF ELECTRICITY DURING NIGHT HOURS:

“For the consumer eligible for using supply at any time during 24 hours, entire consumption shall be billed at the energy charges specified above. However, the energy consumed during night hours of 10.00 p.m. to 06.00 a.m. next morning (recorded by polyphase meter operated through time switch) as is in excess of one third of the total energy consumed during the month, shall be eligible for concession at

the rate of 75 paise per unit. The polyphase meter and time switch shall be procured and installed by the consumer at his cost and sealed by the Distribution licensee.”

Subsequent tariff order of GERC for the period from 2013 to 2016 relevant portion of tariff for concession in night hours utilization of electricity is as under:

CONCESSION FOR USE OF ELECTRICITY DURING NIGHT HOURS:

“For the consumer eligible for using supply at any time during 24 hours, entire consumption shall be billed at the energy charges specified above. However, the energy consumed during night hours of 10.00 p.m. to 06.00 a.m. next day morning as is in excess of one third of the total energy consumed during the month, shall be eligible for concession at the rate of 75 paise per unit.

From the above, looking to the tariff order from the year 2007 to 2016, it seems that Appellant has not installed poly-phase meter or time switch and Respondent has not made sealing on the meter.

- 4.3. Appellant is demanding night consumption rebate from the date of release of connection i.e. 08.06.2004 to August,2010. Appellant has filed his application for getting night rebate first time on 03.03.2018.
- 4.4. As per Para No.3.2, Respondent has granted night rebate to Appellant from September,2010 to June,2012. Respondent has submitted that billing data is not available for the period June,2004 to August,2010 and therefore refund for night hours rebate was not granted to Appellant. The said contention was filed before CGRF and CGRF has passed an order in the subject matter as per Clause No.2.30(iii) of Notification No.2 of 2011. Review appeal of Appellant was also not considered by CGRF and upheld the original decision of CGRF.
- 4.5. Appellant has referred the order dated 16.02.2018 passed by Ombudsman in case No.128/2017 and mentioned that CGRF has not rightly followed the directives of Ombudsman and decided the present grievance of Appellant. Here, the issue is regarding non-availability of

records for the period June,2004 to August,2010. During hearing on 23.08.2018, Respondent has been directed to search and submit the relevant records pertaining to disputed period of billing of said connection.

- 4.6. Respondent, vide letter dated 05.09.2018, has submitted the data of the meter No.03174541 and meter No. 03174490 of L&T make as under (checking sheet/meter reading sheet):

Meter No.03174541:

1. Checking sheet No.1757 dated 08.06.2004.
2. Checking sheet No.2154 dated 06.07.2005.
3. Checking sheet dated 19.12.2006.
4. Checking sheet dated 16.08.2007.
5. Checking sheet No.2990 dated 17.12.2007.
6. Checking sheet No.2880 dated 06.05.2008.
7. Checking sheet No.0531 dated 06.02.2009.
8. Checking sheet No.5014 dated 08.09.2009.
9. Checking sheet dated 04.07.2010.
10. Checking sheet dated 30.06.2011.
11. Checking sheet dated 25.08.2011.

Meter No.03174490:

1. Checking sheet dated 27.02.2012.
2. Checking sheet No.133 dated 27.02.2013.
3. Checking sheet dated 07.08.2013.

From the above records, L&T meter Sr.No.03174541 was installed at the place of Appellant since the date of release of connection and remained till replacement of said meter. Meter No. 03174490 was installed thereafter as per checking sheet dated 27.02.2012 remained at the place of Appellant till checking date 07.08.2013 as per checking sheet. Meter reading data is available with Respondent as per above records.

- 4.7. The plea of Appellant before CGRF was to grant night hours rebate for the period 08.06.2004 to August,2010 which was not granted by Respondent on the ground of non-availability of billing data of Appellant, and CGRF has rejected the plea of Appellant on limitation ground i.e. Clause No. 2.30(iii) of Notification No.2 of 2011.

Here grievance of Appellant was developed on the ground of giving night hours rebate for the period September,2010 to June,2012 in the billing month of July,2017, and on receipt of refund amount against night hours concession for the said period, Appellant has raised the present grievance and asked night hours rebate from the date of release of connection i.e. 08.06.2004. Appellant has filed appeal before CGRF on 03.03.2018 well within the knowledge of present issue vide bill of July,2017. Hence on the said ground, Appeal of Appellant is maintainable in reference to Clause 2.30(iii) of Notification No. 2 of 2011.

- 4.8. As per Para No.4.6, records of billing of Appellant is available with Respondent since release of connection. Respondent has already installed poly-phase meter at the time of release of said connection. Therefore, concession for use of electricity during night hours can be given to the Appellant as per the tariff orders. Respondent is directed to grant night hours rebate from the date of release of connection to August,2010 on the basis of consumption data of Appellant as per meter checking sheet and meter reading sheet produced.

Compliance may be reported within 30 days.

- 4.9. I order accordingly.
4.10. No order as to costs.
4.11. With this order, representation/Application stands disposed of.

(Dilip Raval)
Electricity Ombudsman
Gujarat State

Ahmedabad.
Date: 15.09.2018.