

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 66 OF 2024

In the matter of Change of tariff category from industrial to commercial

Shyam Industries..... Appellant
(Consumer No. 001961066863)

V/s.

Maharashtra State Electricity Distribution Co, Ltd. Virar (MSEDCL)Respondent

Appearances:

Appellant : 1. Bansilal Trivedi, Owner
2. Ramchandra Pandey, Representative

Respondent : 1. Mukund Deshmukh, Addl. Ex. Engineer
2. Devendra D. Nalawade, Addl. Ex. Engr, Flying Squad, Kalyan


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 3rd May 2024

Date of Order :17th May 2024

ORDER

This Representation was filed on 20th March 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order


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dated 14th February 2024 passed by the Consumer Grievance Redressal Forum, Vasai (the Forum). The Forum by its order partly allowed the grievance in Case No. 82 of 2023. The operative part of the order is as below:

“2. Respondent is directed to set aside the bill raised in December 2023 and issue revised bill making it limited to 24 months instead of 51 months prior to date of detection excluding DPC & Interest and after adjusting payment made by consumer during that period.

3. Respondent shall grant six equal monthly installments for payment of corrected bill and bill shall be payable by consumer along with current monthly bill subject to condition that a single default on the part of consumer will authorize Respondent to recover the dues in lump-sum with applicable future interest.”


2. The Appellant has filed this Representation against the above order. An e-hearing was held through video conference on 3rd May 2024. Parties were heard at length. The Respondent filed its reply dated 2nd May 2024. Its submissions and arguments are stated first for easy understanding as follows: - *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.]*

- (i) The Appellant is an Industrial consumer (No.001961066863) from 1999. The connection details of the Appellant are tabulated below:

Table 1:

Name of Consumer	Consumer No.	Address	Sanctioned Load (KW)	Contract Demand (KVA)	Date of Supply	Date of Inspection	Assessment Amount (Rs.)	Period of Assessment
Shyam Industries	1961066863	Gala No. 2, H. No. 32, Near Shimla – dairy, Vrajeshwari Road, Mandvi, Tal. Vasai	48.49	54	11.07.1999	07.11.2023	2,40,800/-	Sep. 2019 to Nov. 2023

- (ii) The Flying Squad of the Respondent inspected the premises of the Appellant on 07.11.2023, when it was observed that Shyam Industries is in the business of name


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punching on small plastic food containers manually. All the machines of the Appellant are old and rusted and are not in use for the last 6-7 years. No industrial activity was observed. The entire electric supply was being used for office and godown purpose. Photos of the site are kept on record. This activity of the Appellant is commercial in nature. However, the Appellant was being billed under industrial tariff category. Therefore, the tariff of the Appellant was changed from Industrial to Commercial in Dec. 2023, and recovery of tariff difference between LT-V Industrial and LT-II Commercial of Rs.2,40,795/- (B-80 ID 15514462) was issued on 17.01.2024 for the period of Sep. 2019 to Nov. 2023 (51 months) based on the Flying Squad Report. *[Note: This recovery of tariff difference is the basic grievance].*

- (iii) The energy bill was issued as per the Flying Squad's Inspection report and assessment sheet, but the Appellant has not accepted the bill. The Appellant filed a case with the Forum vide Case No. 82 / 2023 against this recovery bill.
- (iv) The Respondent cited the Judgment dated 16.10.1979 of the Hon'ble Supreme Court in Case of C. Cherian V/s. Barfi Devi in support of its submissions. The Supreme Court held that manufacture implies a change, but every change is not manufacture. Something more is necessary. There must be transformation. A new and different article must emerge having a distinctive name, character or use. The broad test for determining whether a process is a manufacturing process, is whether it brings out a complete transformation of the old component so as to produce a commercially different article or commodity.

In this case, screen printing, punching names on plastic food containers was being done manually, especially for hotels & restaurants, dairy industry, food industry like jams, pickles, spices, sweet meat & mithai, etc. The consumption of electricity is negligible and most of the electricity is used for office purpose. The main load of the consumer is of its office which includes big fans, LED: 7, water

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pump, Air Conditioning, etc. Hence, this office activity comes under commercial tariff category and not industrial. There is no manufacturing activity.

- (v) The Appellant filed its grievance application in the Forum on 19.12.2023 for quashing the said supplementary bill. The Forum directed to revise the supplementary bill from industrial to commercial, and to recover tariff difference for 24 months instead of 51 months (Sep. 2019 to Nov. 2023) by waiving of interest and delayed payment charges. The final bill was raised in Jan. 2024.
- (vi) As per the order of the Forum, the bill is revised to Rs.1,56,710/- vide B-80 ID – 1589371 dated 22.02.2024 and was issued to the Appellant which was to be paid in six equal instalments. However, the Appellant failed to pay the same.
- (vii) The Electricity Ombudsman (Mumbai) office issued a hearing notice on 25.04.2024. The parties were advised to carry out a fresh joint inspection of the premises for submission in the hearing. Accordingly, the Respondent carried out a second inspection on 30.04.2024. As per this spot inspection report by the Addl. Ex. Engineer, Section Officer, Subdivision Virar and Pankaj Singh, Manager of Shyam Industries, it is observed that:

“There is no manufacturing process and no production activity. All machineries are not in use. Power supply is using only office and lighting load of premises. The actual work of printing on readymade plastic food box is going on in the premises which is totally operated manually. Only manual packing and dispatch activity is going on. No industrial activity is observed.”

The connected load was found for lighting, inverter, and air conditioning purpose. The recorded Maximum Demand on the meter was found to be 4.7 KVA.

- (viii) The supply of the Appellant is on LT side on 22kV Khanivade Feeder emanating from 22kV Parol Switching station. The Appellant alleged that he is unable to run



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the industry as there are frequent power interruptions. The Respondent clarified that the load of 22 KV Khanivade Feeder is used mainly for 400-500 industrial units, HT Consumers and about 15000 residential consumers. The said 22 KV Feeder is overhead Feeder. There are minor interruptions on this 22 KV Feeder as compared to other overhead Feeders. Other consumers on the said Feeder have not raised any major complaints regarding their manufacturing activity being majorly affected by constant power interruptions. The MRI Reports of the other consumers of the same Transformer and same Feeder is kept on record. The supply interruptions are very limited. The Respondent pointed out that the Appellant has a second electricity connection adjacent to the existing premises which works satisfactorily without any high interruptions, and is billed under industrial tariff category.


- (ix) The Respondent argued that the Appellant had never used a generator in the factory as per records of the Respondent. He had installed an inverter in his office for power backup, which is working for the A.C. supply of the Respondent. His statement that he had to rely on a generator due to constant power supply interruptions is nothing but an untrue story.
- (x) Maharashtra Electricity Regulatory Commission by its various Tariff Orders decided that Tariff categorization is to be done on the basis of nature and purpose of usage of electricity. It is observed that the use of electricity is for Office Work and Godown, which is covered under Commercial tariff category. The name punching by hand is a minor activity. Godown & office is the major activity.
- (xi) The allegations made by the Appellant against the Respondent are not correct, and are an afterthought as part of a fabricated postscript.
- (xii) In view of the above, the Respondent prays that the representation of the Appellant be rejected.

3. The Appellant's submissions and arguments advanced in the hearing are stated as below:


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- (i) The Appellant is in the business of manufacturing multiple types of plastic boxes by using of raw materials, machinery, etc. In addition, the Appellant is also a manufacturer of cloth dryer stands. This industry was set up in 1995.
- (ii) Initially, the Appellant was receiving continuous and reliable power supply including Fridays, but for the last 10 / 12 years, the Appellant has been facing frequent power interruptions resulting into heavy losses during the process of the plastic being heated and remoulded as per requirements. Hence, it was decided to work using a smaller generator for manufacturing purpose.
- (iii) The Flying Squad of the Respondent inspected the premises of the Appellant on 07.11.2023. The Respondent, on the basis of an incomplete inspection report and low consumption pattern, has changed the tariff category from Industrial to Commercial without giving any opportunity of hearing. This is against the principle of natural justice and the rights of the consumer. A provisional bill of Rs.2,40,800/-dated 13.11.2023 towards tariff difference was issued to the Appellant. The supplementary bill was objected to by a request dated 28.11.2023 with demand for the following documents:
- a) Panchnama
 - b) Photos or Video shooting of premises
 - c) Bill revision report
 - d) Connected load sheet machinery or equipment at the time of inspection.
- (iv) However, the Respondent did not cooperate and started the recovery process by threatening disconnection.
- (v) The Appellant filed its grievance in the Forum on 19.12.2023 mainly for withdrawing the said supplementary bill. The Appellant also applied online for tariff change from Commercial to Industrial (ID No. 52464167 dated 21.12.2023) which is still pending. The Forum by its order partly allowed the grievance. However, the Forum failed to understand the core issue of the case.


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- (vi) The Appellant referred to the Commission's Tariff Order dated 31.03.2023 in Case No. 226 of 2022. The relevant portion of the order is as below.

“LT V: LT- Industry:

Applicability:

This tariff category is applicable for electricity for Industrial use, at Low/Medium Voltage, for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.”

According to the Appellant, this is an industrial unit, and is to be billed under industrial tariff category.

- (vii) The Appellant reiterated that the Respondent's claim that all machineries are out of order is totally incorrect. The machineries are connected by a switch. The main problem is frequent power breakdown. The production of plastic boxes by hand operated machine is a part and parcel of industrial activity. The Respondent's submission is a fabricated untrue story for harassing the consumer.
- (viii) In view of the above, the Appellant prays that the Respondent be directed
- not to disconnect supply for the disputed bill till finalisation of this case.
 - to quash the tariff difference bill of Rs. 2,40,800/- in toto.
 - to revert the tariff category from Commercial to Industrial.
 - to award compensation of Rs.5000/- towards mental & physical harassment.

4. During the hearing, the Respondent was directed to visit the said premises immediately on the very day of the hearing and to submit its inspection report. It was also directed to submit the copies of the MRI Report and CPL of the Appellant, and electricity data of other nearby industries, to see if there was any breakdown in the power supply in that area.

5. The Respondent by its email dated 14.05.2024 has submitted the additional information as per directions of the Hon'ble Ombudsman. Junior Engineer, Kaner Section has carried out a



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spot inspection on 03.05.2024 and confirmed that there was no industrial activity in Gala No.2. No generator was found on the premises The spot inspection report is kept on record. Further, it is stated that in the same area, there is another consumer Shri. Damodarlal Hrinarayan Mandhana having Consumer No. 001960001261 on the same DTC 4706401 and the same 22kV Khanivade Feeder. His data is placed for comparison purpose, to show that units such as his are running despite alleged power cuts. The electricity bill of Shri Mandhana is kept on record. The MRI reports for the last 6 months of both the consumers (Damodarlal Mandhana & Shyam Industries) are also kept on record. There are comparatively fewer interruptions on this 22 KV Feeder. The supply interruptions are the same for both these consumers.

Analysis and Ruling

6. Heard the parties and perused the documents on record. The connection details of the consumer are tabulated in Table 1 of Para 2 (i).

7. The Appellant contended that he was a manufacturer of plastic food containers previously. The Appellant was earlier receiving continuous and reliable supply, but for the last 10 / 12 years, he was facing frequent power interruptions, resulting in heavy losses during the process of plastic goods manufacturing. Plastic moulding requires uninterrupted supply. Hence, the Appellant started to use a generator for manufacturing purpose. The activity of the Appellant is still manufacturing. This is an industrial unit, and the office of the Appellant is a part and parcel of the industrial activity, and is not covered under the commercial tariff category.

8. The Respondent contended that during various inspections dated 07.11.2023, 30.04.2024 and 03.05.2024 respectively, it was observed that the Appellant is in “trading” business as the activity of manually name punching on small plastic food containers is not covered under ‘industrial’ activity. All the machines of the Appellant are old and rusted and are not in use for the last 6-7 years. Only punching names on plastic food containers was being done manually,


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and no industrial activity (using machinery running on electricity) was observed for the last 6-7 years. The entire supply was being used for office and godown purpose. This activity of the Appellant is commercial in nature. However, the Appellant was wrongly billed under industrial tariff category. Therefore, the tariff of the Appellant was changed from Industrial to Commercial from Dec. 2023 onwards. The recovery bill of tariff difference between LT-V Industrial and LT-II Commercial of Rs.2,40,780/- was issued on 17.01.2024 for the period of Sep. 2019 to Nov. 2023 (51 months). The main load of the consumer is of its office and godown. The activity of the Appellant of screen printing, punching does not qualify under industrial tariff category, as there is no manufacturing. It is an allied work of value addition in trading business.


9. Regarding the issue of constant power cuts, the Respondent submitted comparative data of other industrial units in the area, which are running quite satisfactorily. The load of 22 KV Khanivade Feeder is used mainly for 400-500 industrial units, HT Consumers and about 15000 residential consumers. There are very few interruptions on this 22 KV Feeder, and it is well maintained. The Appellant had never used a generator in his factory, as he had installed an inverter in his office for backup.

10. Further, the Respondent contended that there is another industrial unit of the Appellant running in an adjacent premises, which is billed as under 'industrial' tariff category. This unit seems to be working satisfactorily despite alleged 'power interruptions'. The Appellant was silent on this point.

11. We have formulated the following issue for consideration of this case:

Issue : Whether the Appellant is entitled for industrial tariff category instead of commercial tariff category?

The Issue is answered as **NEGATIVE**.


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The Commission, through its various tariff orders has incorporated provisions regarding applicability of Industrial tariff. The relevant extract of the Tariff Order of the Commission dated 31.03.2023 in Case No. 226 of 2022 is as follows:

“LT V: LT- Industry:

Applicability:

This tariff category is applicable for electricity for Industrial use, at Low/Medium Voltage, for purposes of manufacturing and processing, including electricity used within such premises for general lighting, heating/cooling, etc.”

The intention of this Tariff Order is that if (and only if) the main load is used for industrial purpose i.e for manufacturing and processing, then the load for its other allied activities within the premises, e.g. general lighting, heating/cooling, etc. is also to be considered as industrial load. This may also include canteen, site office, security, storeroom etc. This secondary load is supposed to be comparatively less, and need not be billed by a separate meter. *[Note: Previously, there were sub meters for the secondary load in addition to the main meter.]*

However, in the present case, as per the inspection report, the main load itself is found to be for office purpose, and hence cannot be considered for industrial purpose. The Appellant argues that even if his activity is that of manual punching or printing on ready-made plastic boxes, it is still a manufacturing activity, and the office use is merely an allied activity. However, this argument holds no merit. What is crucial for determining whether industrial tariff is applicable, is the main use of the load. If power is mainly used for running industrial machinery, industrial tariff would be applicable. This is not the situation in the present case. The Appellant argued that this is the fault of the Respondent; had it not been for frequent power cuts, he would still be running the machinery. This argument cannot be proven or disproven in this forum. We do not know and cannot presume to know the real intention of the Appellant. He seems to be running another industrial unit in an adjacent premises, while the office runs



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from the current premises. Other 400 to 500 industrial units are also running in the area, despite so-called frequent power cuts. The Respondent contends that no doubt there are power cuts, but they are not so severe or significant as to make it impossible to run an industrial unit. In any case, we shall not go into “what if’s” and hypothetical scenarios. We shall only examine the hard facts placed before us, and the Commission’s regulations regarding applicability of tariff. Hence, we must look at the current main use or main load, which is no doubt that of an office, even if allied manufacturing activity goes on manually.


Considering the facts altogether, this authority has come to the conclusion that the Appellant’s activity is covered under Commercial tariff category. The Issue is answered as NEGATIVE.

12. As per the provisions of Section 56(2) of the Act, the limitation period of two years prescribed therein is mandatory in nature. The Forum has already considered this aspect as per Judgement dated 12th March 2019 of the Larger Bench of Bombay High Court in Writ Petition No. 10764 of 2011 with other Writ Petitions. The Forum has given a reasoned and speaking order, and hence no interference is required in the Forum’s order. The Representation is rejected and disposed of accordingly.

13. It is also observed that the Appellant has taken sanctioned maximum demand of 54 KVA. However, the recorded Maximum Demand on the meter was found to be only 4.7 KVA. Hence the Appellant is advised to take a call for reducing his maximum sanctioned demand, to avoid higher billing of MD charges.

14. The secretariat of this office is directed to refund Rs.25000/- taken as deposit to the Respondent for adjusting in the Appellant’s ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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