

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 101 OF 2024

In the matter of change of tariff category and retrospective recovery

Dilip Hanmantrao Chavan..... Appellant
(Con. No. 000440131158)

V/s.

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

Appearances:

Appellant: 1. Dilip Hanmantrao Chavan
2. Suraj Chakraborty, Representative

Respondent: 1. Siddharth Bansode, Executive Engineer
2. Rajiv Waman, Asst. Law Officer
3. Vijay Namdev, Asst. Engineer
4. Anjali Nigare, Asst. Accountant

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 1st August 2024

Date of Order: 12th August 2024

ORDER

This Representation was filed on 14th May 2024 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 18th April 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone



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Secretary

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(the Forum). The Appellant paid a deposit of Rs. 10,000/- on 30th May 2024 as per Regulation 19.22 (h). This Representation was registered on 30th May 2024.

2. The Forum by its order partly allowed the grievance application of the Appellant in Case No. 141 of 2023-24. The operative part of the order is as below:


- 2) *The bill issued for the period February 2020 to August 2023 amounting to Rs. 32,787/- against the tariff difference between Residential and Commercial is quashed and set aside.*
- 3) *The Respondent is directed to issue the fresh revised supplementary bill for the period from July 2021 to July 2023 without any interest and DPC or any other penalty etc.*
- 4) *The Respondent is directed to allow the Appellant to pay the revised bill in two installments. If the Appellant fail to pay any installment, proportionate interest will accrue and the Respondent has the liberty to take action as per Law.*
- 5) *Any excess amount paid by the consumer is to be refunded as a credit in the subsequent bills of the consumer.*

3. The Appellant has filed this representation against the order of the Forum. A physical hearing/ e-hearing was held on 1st August 2024. The Appellant was physically present while the Respondent attended the hearing through Video Conference. The parties were heard at length. The Respondent filed a reply on 27/06/2024. The Respondent's submissions and arguments are stated first as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*

- (i) The Appellant is a LT Residential Consumer (No. 000440131158) of the Respondent from 06/04/1994. The connection details are tabulated as below:

Table 1:

Name of Consumer	Consumer No.	Address	Sanct. Load	Date of Supply	Purpose	Online Application for change of tariff category	Date of Inspection	Assessment & Period of Assessment (Tariff Diff.)
Dilip Hanmantrao Chavan	000440131158	House No. 739, Juhugaon, Sector-11, Vashi	0.3 KW	06.04.1994	Initial purpose was Residential (presently used for ironing of clothes)	On 22.01.2020 from Resi. to Commercial	18.07.2023	Rs. 32,787/- from Feb. 20 to Aug. 23


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- (ii) On 22/01/2020, the Appellant submitted an online application (ID No.24922174) for change of tariff category from Residential to Commercial Tariff for running a tailor shop. However inadvertently, no action was taken on the said application till July 2023.
- (iii) The Respondent's Asst. Engineer inspected the premises of the Appellant on 18/07/2023, when it was observed that there was activity of "Clothes Ironing Shop" which does not fall under Residential Tariff Category. The load of the Appellant was found as below:

Table 2:

Sr. No.	Description	No.	Load (Watts)
1	Tubes	1	20
2	Fans	1	60
3	Pressing Iron	2	2000
4	Total Load		2080


The Appellant had also applied for commercial tariff by his application dated 22.01.2020, therefore the tariff of the Appellant was changed from Residential to LT-II Commercial in the month of Sep.2023. Retrospective recovery of Rs.32,787/- was charged in the energy bill of Oct.2023 towards tariff difference from LT-I Residential to LT- II Commercial for the period of Feb.2020 to Aug. 2023.

- (iv) As per Tariff Order dated 30/03/2020 of Maharashtra Electricity Regulatory Commission in Case No. 322 of 2019, LT-II Commercial tariff is applicable to the activity of "Laundry". The relevant extract of Tariff Order is as below: -

"LT II: LT – Non-Residential or Commercial

Applicability:

This tariff category is applicable for electricity used at Low/Medium voltage in non-residential, non-industrial and/or commercial premises for commercial consumption meant for operating various appliances used for purposes such as


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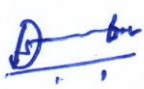


lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:

- a. Non-Residential, Commercial and Business premises, including Shopping Malls and Showrooms;*
- b.*
- c.*
- d. Tailoring Shops, Computer Training Institutes, Typing Institutes, Photo Laboratories, Laundries, Beauty Parlours and Saloons;*
- e. ”(Emphasis added)*


The literal meaning of word “Laundries” is to wash dirty clothes, towels, etc.

- (v) It was revealed that the supply is being used for ironing clothes i.e. steaming & pressing without any washing/dry cleaning activity by machines, etc. The service for dry cleaning is by collecting clothes and sending to some other place. Therefore LT-industrial tariff is not applicable to the Appellant.
- (vi) The usage of supply was found for a purpose other than the purpose for which supply was sanctioned. In this case the supply was sanctioned for residential purpose and the Appellant was billed under residential tariff category; however, the Appellant was enjoying the supply for commercial purpose of higher tariff. This is misuse of supply which attract irregularities/theft of electricity under Section 126/135 of the Electricity Act, 2003 (the Act). But the MSEDCL took a lenient view and levied only a supplementary bill towards plain tariff difference.
- (vii) The leave and license agreement dated 07.08.2023 submitted by the Appellant on record is not registered, therefore has no evidentiary value in the eyes of law. The details of the receipt of consideration i.e. cheque/DD no. etc., were not mentioned in the agreement. On perusal of the consumption pattern of the consumer, it is seen that there was no change in the consumption pattern before or after the alleged commencement of leave and license agreement. The copy of the leave licensee agreement is suspicious and doubtful, therefore may not be read in evidence.


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- (viii) The Appellant filed a grievance application with the Forum on 24/01/2024. The Forum by its order dated 18/04/2024 partly allowed grievance application. The recovery was restricted to 24 months from July 2021 to July 2023.
- (ix) The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in the case of M/s. Prem Cottex V/s. Uttar Haryana Bijli. This is a case of escaped billing as the consumer had consumed energy for commercial purpose which is recoverable as per tariff difference. The Section 56(2) of the Act of limitation would not apply to this case and MSEDCL is entitled to recover the entire assessment.
- (x) The argument of the Appellant is that the person who is doing the ironing work also stays in the shop. The load of the Appellant is a mixed load, and hence the shop should be considered under residential tariff category, in view of Commercial Circular No.323 dated 03/04/2020 of MSEDCL regarding Revision in Electricity Tariff with effect from 1st April 2020. (Ref: MERC Order in Case No. 322 of 2019 dated 30 March 2020) because the Appellant's consumption was less than 3600 units per year. This argument is totally misplaced. The above ruling of the Commission is applicable to consumers who are running their livelihood from their residential premises (main use is Residential and minor use is commercial), and having yearly consumption less than 3600 units. In the present case, the Appellant is running the main activity as commercial purpose, while living in the shop is a minor activity. Therefore, the said guidelines of applying residential tariff up to 3600 units in a year is not applicable in this case.
- (xi) Pursuant to the representation in EO (Mumbai) office, the premises of Appellant was again inspected on 26/06/2024. The load of the Appellant was found the same as is tabulated in Table 2. The activity the Appellant was found to be Iron Pressing. The SVR (Spot Verification Report) dated 26.06.2024 is kept on record.
- (xii) The Respondent argued that the Appellant applied for change of tariff category online on 22/01/2020 in WSS Portal of MSEDCL to avoid unauthorised change of purpose and action under Section 126 of the Act. The Appellant was aware that he was enjoying lower tariff of residential for commercial purpose. However,


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subsequently he preferred to remain silent on his application of 22/01/2020. This is a standard modus operandi, and some agents are doing this business of misguiding consumers as they take advantage of some weaknesses of working of MSEDCL.

- (xiii) In view of the above submissions, the Respondent prays that the representation of the Appellant be rejected and direct them to pay the supplementary bill of Rs. 32,787/- towards tariff difference from LT-I Residential to LT- II Commercial for the period of Feb.2020 to Aug. 2023.

4. The Appellant's submissions and arguments are stated as below:

- (i) The Appellant is a LT single phase residential consumer (No. 000440131158) of the Respondent from 06.04.1994. The details of the electric connection, sanctioned load, retrospective recovery towards tariff difference etc. are tabulated in Table 1. The supply of this consumer is chiefly used for residential purpose. The Appellant is regular in payment of the bills.
- (ii) The Appellant has given the said premise on rental basis for running a tailoring shop, and applied for Commercial Tariff Category online on 22/01/2020 in WSS Portal of MSEDCL vide application ID No.24922174 for change of tariff category from Residential to Commercial Tariff. The first tenant vacated the premises, and the premises were again given for rent in Aug. 2023 for ironing of clothes, laundry (dry cleaning). The tenant is also staying in the same premises.
- (iii) The Respondent inspected the premises of the Appellant on 18/07/2023. In October 2023, the Appellant received the adjustment bill of Rs. 32,787/-. On enquiry, it was informed that the said adjustment bill is the tariff difference between LT-I Residential and LT- II Commercial for the period of Feb.2020 to Aug. 2023.
- (iv) The Appellant referred to Commercial Circular of the Respondent.323 dated 03/04/2020 regarding Revision in Electricity Tariff with effect from 1st April 2020 which is based on MERC Tariff Order in Case No. 322 of 2019 dated 30


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March 2020. **The premises is used for combined Residential and Commercial purpose, and if the yearly consumption is less than 3600 units, then it should be treated as Residential tariff.**


- (v) The Appellant filed a grievance application with the Forum on 24/01/2024, which partly allowed the grievance application. However, the Forum failed to understand that there was a mixed load of residential and commercial use, and the Appellant should be billed under the revised tariff category prospectively from the date of inspection. As the old tenant had vacated the said premises, the burden of retrospective recovery is unfairly falling on the landlord / Appellant. The MSEDCL neglected to act on the online application for change of tariff category dated 22/01/2020. The load of the Appellant should be treated as industrial. The Appellant is not in a position to pay such a huge amount as the financial condition of the Appellant is critical. The change of tariff as commercial should be prospective.
- (vi) In view of the above, the Appellant prays that the Respondent be directed
- to quash the tariff difference adjustment bill of Rs. 32,787/- between residential and commercial tariff for the period of Feb.2020 to Aug. 2023.
 - to bill the consumer under commercial tariff category prospectively from the date of inspection i.e.18/07/2023.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is a LT residential consumer of the Respondent from 06.04.1994. The details of electric connection, sanctioned load, retrospective recovery towards tariff difference etc. are tabulated in Table 1.

6. The important abstracts of the Consumer Personal Ledger of the Consumer are charted as below (as prepared by the Ombudsman office): -


Table 3:


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Abstract of CPL of Cons. No.000440131158 : Dilip Chavan						
Year	2021 -22		2022-23		2023-24	
Month	Current Reading (KWH) in CPL	Cons. (Units)	Current Reading (KWH) in CPL	Cons. (Units)	Current Reading (KWH) in CPL	Cons. (Units)
Apr	7657	263	11029	341	15392	391
May	7668	11	11381	352	15789	397
Jun	8088	420	11754	373	16176	387
Jul	8353	265	12147	393	16562	386
Aug	8601	248	12489	342	16910	348
Sep	8872	271	12891	402	17283	373
Oct	9148	276	13226	335	17654	371
Nov	9467	319	13508	282	17992	338
Dec	9798	331	13892	384	18302	310
Jan	10141	343	14278	386	18657	355
Feb	10414	273	14651	373	19026	369
Mar	10688	274	15001	350	19385	359
	Total	3294	Total	4313	Total	4384
	Avg/Month	275	Avg/Month	359	Avg/Month	365

7. The Appellant contended that he has given the said premises on rent for running a tailoring shop and applied for change of tariff category from Residential to Commercial Tariff online on 22/01/2020 in WSS Portal of MSEDCL. However, the Respondent failed to change the tariff. The first tenant vacated the premises, and the premises was again given on rent in Aug. 2023 for ironing of clothes, collecting clothes for laundry (dry cleaning). The tenant is also staying in the same premises. The Respondent inspected the premises of the Appellant on 18/07/2023. The Appellant has received the adjustment bill of Rs. 32,787/- in the billing month of Oct. 2023 towards tariff difference between LT-I Residential to LT- II Commercial for the period of Feb.2020 to Aug. 2023. The premises is used for mixed Residential and Commercial purpose, and if the yearly consumption is less than 3600 units, then it should be treated as Residential tariff. The change of tariff as commercial should be prospective.


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8. The Leave and License rental agreement was prepared on a notary of Rs. 100/- stamp paper. The first agreement was between Shri Dilip Hanmantrao Chavan and Shri Shiyu Kotelal Nirmal for the period from 17/03/2022 to 17/02/2022 (*period is wrongly mentioned in the agreement*) and the second agreement is between Shri Dilip Hanmantrao Chavan and Shri Vinod Ashok Rajne for the period from 01/08/2023 to 31/07/2024. In both the agreements deposit was Rs. 15000/- and rent is mentioned as Rs.6500/- per month. There is no clarity regarding mode of payment. These documents are not registered with the concerned Registration Authority of Govt. of Maharashtra.

9. When we analysed the inspection report dated 18/07/2023 and 26/06/2024, the main load of the Appellant was found to consist mainly of ironing i.e. steaming and pressing of clothes as shown in Table 2, and a very negligible load was for the purpose of lighting. Considering the important abstracts of the Consumer Personal Ledger of the Consumer in Table 2, monthly consumption was found to be more than 300 units per month.

10. The Forum by its order has partly allowed the grievance application and restricted recovery to 24 months, considering the Respondent's deficiency in service as per Section 56(2) of the Act. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court has allowed 24 months' recovery retrospectively in cases of mistake or oversight.


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11. There is no merit in the case. The Forum has given a reasoned order (except that the Forum has mentioned the period of 24 months from July 2021 to July 2023 which actually comes to 25 months). Principally, it is not necessary to interfere in the order of the Forum. The Forum's order is modified to the extent below by directing the Respondent:

- (a) to issue the revised bill of 24 months retrospectively from August 2021 to July 2023.
- (b) to waive off the interest and DPC from Oct. 2023 onwards if any, till the date of this order.
- (c) to allow the Appellant to pay the revised bill in 4 equal monthly instalments without any interest and DPC. If the Appellant fails to pay any instalment, proportionate interest will accrue on defaulter portion, and the Respondent has the liberty to take action as per law.
- (d) Compliance to be submitted within two months from the date of issue of this order.
- (e) The other prayers of the Appellant are rejected.

12. The Representation is disposed of accordingly.

13. The secretariat of this office is directed to refund Rs.10,000/- taken as deposit to the Respondent for adjusting in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
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