

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

**REPRESENTATION NO. 110 OF 2024**

(REVIEW OF THE ORDER IN REPRESENTATION NO. 66 OF 2024)

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

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

V/s.

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

Appearances:

Applicant : 1. Rakesh Trivedi, Son of 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: 2<sup>nd</sup> August 2024

Date of Order : 26<sup>th</sup> August 2024

**ORDER**

This Review Application was filed on 18<sup>th</sup> June 2024 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the

  
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Order dated 17<sup>th</sup> May 2024 in Representation 66 of 2024 passed by the Electricity Ombudsman (Mumbai). The Electricity Ombudsman (Mumbai), by its order (impugned order) had rejected the grievance of the Applicant by observing that the Forum's order is a reasoned and speaking order. *[The Forum had restricted retrospective tariff difference recovery to 24 months (instead of 51 months) prior to date of detection of the case.]*

2. Aggrieved by this order of the Electricity Ombudsman (Mumbai), the Applicant has filed this Review Application. The e-hearing was held on 2<sup>nd</sup> August 2024 through Video Conference. Both the parties were heard at length. The Respondent filed its reply dated 18th July 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 Applicant is an Industrial consumer (No.001961066863) from 11.07.1999. The connection, assessment etc., details of the Applicant are tabulated below:

Name of Consumer	Consumer No.	Address	Sanct. Load/ Contact Demand	Date of supply	Date of Inspection	Assessment Amount & period as per Flying Squad Report	Revised Assess. Amount & period as per Forum's order
Shyam Industries	1961066863	Gala No. 2, H. No. 32, Near Shimla – dairy, Vrajeshwari Road, Mandvi, Tal. Vasai	48.49 KW/ 54 KVA	11.07.1999	07.11.2023	Rs. 2,40,800/- for the period from Sep. 2019 to Nov. 2023 (51 months)	Rs. 1,56,71 0/- for the period from Dec. 2021 to Nov. 2023 (24 months)


(ii) The Flying Squad of the Respondent inspected the premises of the Applicant on 07.11.2023, when it was observed that Shyam Industries is in the business of name punching on small plastic food containers manually. All the machines of the Applicant 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. Therefore, the tariff of the Applicant was changed from Industrial to Commercial in Dec. 2023, and recovery of tariff difference between

  
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LT-V Industrial and LT-II Commercial of Rs.2,40,795/- was issued on 17.01.2024 for the period of Sep. 2019 to Nov. 2023 (51 months) based on the Flying Squad Report.

- (iii) 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. 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 pump, Air Conditioning, etc. Hence, this office activity comes under commercial tariff category and not industrial. Name punching by hand cannot be considered as an industrial activity.
- (iv) The consumer is on 22kV Khanivade Feeder emanating from 22kV Parol Switching Station. The Applicant alleged that he is unable to run 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. There are minor interruptions on this 22 KV Feeder as compared to other overhead Feeders. Prompt services are given for any breakdown, this being an important Feeder. Other consumers on the said Feeder have not raised any major complaints regarding their manufacturing activity being majorly affected by constant power interruptions. The Respondent pointed out that the Applicant has a second electricity connection adjacent to the existing premises which works satisfactorily without any high interruptions, and is billed under industrial tariff category. MRI Reports for the last 6 months of both consumers Shri.Damodar Lal Hrinarayan Mandhana & Shyam Industries are kept on record. The interruptions are negligible and are the same for both the consumers.

  
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- (v) As per order of the Forum dated 14<sup>th</sup> Feb. 2021, the supplementary bill is revised for 24 months (From Dec. 21 to Nov.23) and **revised supplementary bill of Rs.1,56,710/- was divided in six equal monthly instalments to the consumer.**
- (vi) Further, Hon. Electricity Ombudsman had conducted hearing through VC on 03.05.2024 at 11:30 hrs. and directed MSEDCL to again visit the consumer premises and submit a detailed report.
- (vii) Accordingly, the Junior Engineer, Kaner Section carried out a spot inspection again on 03/05/2024 in the presence of the Applicant. Each and every report and document were handed over to the Applicant.
- (viii) The Electricity Ombudsman (Mumbai), by its order dated 17<sup>th</sup> May 2024 (impugned order) had rightly rejected the grievance of the Applicant.
- (ix) The Applicant in his Review Application has failed to establish a mistake or error apparent on the face of the record to review the impugned order. Hence, this review application needs to be dismissed. The Applicant has not raised any new grounds nor produced any new relevant evidence, documents to support his claim.
- (x) The Applicant has taken sanctioned maximum demand of 54 KVA. However, the recorded Maximum Demand on the meter was found to be only 4.7 KVA. The Hon'ble Electricity Ombudsman had advised the Applicant for reducing his maximum sanctioned demand, to avoid higher billing of MD charges. But the Applicant, instead of reducing KVA demand is wasting time of the grievance redressal mechanism. The Respondent assures that whenever the Applicant needs industrial supply, the change of tariff category from commercial to industrial will be done on top priority after nominal formalities of change in tariff application in WSS Portal of MSEDCL and site inspection thereof. The change will be prospective in nature. There is no pending application in the system
- (xi) The Respondent stated that Ramchandra Pandey, Consumer Representative was out of town, and attended the hearing from his native place in Uttar Pradesh, and was trying to misguide the Ombudsman. The Respondent is unable to understand the role of Ramchandra Pandey in most of the cases and there are serious complaints against him.


  
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(xii) It is requested to dismiss this Review Application and to direct the Applicant to comply with the order with immediate effect.


3. The Applicant's submissions and arguments are as below:

- (i) The connection and assessment details of the Applicant are tabulated in Table 1. The Applicant is in the business of manufacturing multiple types of plastic boxes by using raw materials, machinery, etc. This industry was set up in 1995.
- (ii) The Flying Squad inspected the premises of the Applicant 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. A provisional bill of Rs.2,40,800/-dated 13.11.2023 towards tariff difference was issued to the Applicant.
- (iii) The Applicant filed its grievance with the Forum on 19.12.2023 mainly for withdrawing the said supplementary bill. The Forum by its order partly allowed the grievance, restricting recovery to 24 months as tabulated in Table 1. Aggrieved by the order of the Forum, the Applicant filed a representation to Ombudsman on 20.03.2024. However, the Ombudsman by its order dated 17.05.2024 rejected the said representation. There is new evidence which will establish that there was a mistake or error apparent on the face of the record.
- (iv) In the first instance, the Applicant argued that the hearing in the original representation was only partly completed. The Applicant's representative had requested for adjournment but at that time he was told that first let the case be heard and after receipt of any additional information, if necessary, the case will be heard again. However, the case was not heard again.
- (v) At the same time, the Respondent was directed to submit the following documents at EO office with a copy to the Applicant: -
  - (a) Fresh Spot Verification Report (SVR) made by Kaner Section Engineer on 03.05.2024.
  - (b) Photo taken by Flying Squad Kalyan – 2 on 07.11.2023.

  
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- (c) Running other (plastic moulding machine) industry details in the same area of the Applicant or same feeder.
- (d) MRI and CPL of disputed period
- (vi) The Respondent put unfair and fabricated inspection report and site photos beyond the facts and manipulated SVR by hiding the facts, so additional information was not provided to the Applicant. Applicant was waiting for the above documents to submit his rejoinder, but got an ex-parte order dated 17.05.2024 in Rep. 66 of 2024.
- (vii) In the impugned order at para 5, the Respondent by its email dated 14.05.2024 has submitted the additional information as per directions of the Hon'ble Ombudsman. In spite of the direction, the Respondent did not provide site's photos shot by the Flying Squad on 07.11.2023, SVR dated 03.05.2024 and additional information dated 14.05.2024. This review application is made on the following grounds:
- A. Respondent's inspection report dated 07.11.2023, 30.04.2024 and 03.05.2024 mismatched with each other which is impermissible in law.
  - B. Since day one of the dispute, Applicant tried to get joint survey with his Representative by submitting commercial to IP tariff change application.
  - C. Respondent did not provide alleged site photos, SVR dated 07.11.2023, and 03.05.2024 and additional submission dated 14.05.2024.
  - D. The Applicant has no awareness of technical ground, so the Respondent always made SVR beyond the facts. The Kaner Section Engineer made SVR on 03.05.2024 with unwanted comments and refused to give to the Applicant.
- (viii) The load detail chart, Shyam Industry diagram and raw materials invoices proves the fact of industry and machinery uses on site, that could be verified at any time by third party inspection under Regulation 23.3.
- (ix) It is not true that all connected load on the meter is only for office activity. The Office is situated on the 1<sup>st</sup> floor and the industry works on the ground floor. Comparatively office load is (1.3 KW is optional when required for office use) less than production load of machinery installed at Room No. 1 & 6.

  
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(x) In view of the above submission of review, Regulation 22.1 (a, b & c) is applicable to modify the order dated 17.05.2024 on the grounds below: -

1. The Respondent misleads by hiding the fact of the Applicant's site / premises, and ex parte order was passed on account of mistakes or error apparent from the face of the record.

2. Applicant did not get the mandatory documents, due to which a rejoinder could not be produced by him at the time when the order was passed.

(xi) **Written Arguments:**

a) The Applicant's two automatic moulding machines (25HP load for each with other allied) were not in use due to interrupted power situation.

b) Raw material's invoices were submitted.

c) The connected industry load (56.282 KW) is more than office load (1.38 KW), and the Load has been used as per work demand of Industry or office from time to time.

d) Respondent's vague and fabricated site inspection reports.

e) Hand moulding machine itself have 1 KW internal heater to heat Raw materials to mould plastic box or plastic base of cloth drying stands etc.

f) Other machineries on site used for finishing of end products.

g) Consumer (Mr. Damodarlal Mandhana) no. 00196000126 used power supply for cutting of steel pipe to assembling cloth drying stands with support of PVC base etc., as those are not affected by power interruption or breakdowns.


h) The Respondent's SVR dated 07.11.23, 30.04.24 & 03.05.24 itself are contrary to each other. Instead of submitting industry related photos, only those photos were submitted by the Respondent which prove the commercial tariff.

(xii) In view of the above, the Applicant prays that the Respondent be directed

a) to quash the tariff difference bill of Rs. 2,40,800/- in toto.

b) to revert the tariff category from Commercial to Industrial.

## Analysis and Ruling


  
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4. Heard the parties and perused the documents on record. The Applicant contended that he was a manufacturer of plastic food containers previously. The Applicant 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 Applicant started to use a generator for manufacturing purpose. The activity of the Applicant is still manufacturing. This is an industrial unit, and the office of the Applicant is a part and parcel of the industrial activity, and is not covered under the commercial tariff category.

5. The Respondent contended that during various inspections dated 07.11.2023, 30.04.2024 and 03.05.2024 respectively, it was observed that the Applicant is in “trading” business as the activity of manually punching name on small plastic food containers is not covered under ‘industrial’ activity. All the machines of the Applicant 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, 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 Applicant is commercial in nature. However, the Applicant was wrongly billed under industrial tariff category. Therefore, the tariff of the Applicant was changed from Industrial to Commercial from Dec. 2023 onwards. The main load of the consumer is of its office and godown. The activity of the Applicant 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.

6. We have already formulated the issue for consideration of this case whether the Applicant is entitled for industrial tariff category instead of commercial tariff category in the original order dated 17.05.2024. It is observed that the Applicant has taken sanctioned maximum demand of 54 KVA. However, the recorded Maximum Demand on the meter was found to be only 4.7 KVA. No third-party inspection is required in this case as three inspections were already carried out in the presence of the Applicant.

  
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7. We are of the opinion that all important issues in sum and substance have already been covered in detail with reasoning in the original order dated 17.05.2024 in Representation 66 of 2024 of the Electricity Ombudsman (Mumbai). The review application is nothing but a mere repetition of the original representation.

8. The provisions with respect to review of orders passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below:

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*“22 Review of Order of Electricity Ombudsman*

*22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:*

- (a) Where no appeal has been preferred;*
- (b) On account of some mistake or error apparent from the face of the record;*
- (c) Upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.*


*22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.*

*22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.*

*22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the Applicant has been given an opportunity of being heard. 22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same*

*provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”*

9. The Judgement of the Supreme court in Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, which held as: -

  
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*"8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."*

10. In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

*"11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases."*

11. The Review Applicant has not brought out any new issue which has not been dealt with in the impugned order, which is the primary requirement for a review of this order under Regulation 22 of the CGRF & EO Regulations 2020.

12. In view of the above, the Review Application of the Applicant is principally rejected with a cost of Rs. 2000/-, however modified to the extent below:

  
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“The Respondent is directed to waive of the interest and delayed payment charges levied if any till the date of this review order.”

13. The Review Application is disposed of accordingly.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)  
Secretary  
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