

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO 67 OF 2024

In the matter of billing

Vicky Fashion Ltd. ....Appellant  
(Cons. No. 000431361990)

V/s.

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

Appearances:

Appellant: 1. Kiran Dave, Accountant  
2. Suraj Chakraborty, Representative

Respondent: 1. Sanjay Vithal Pol, Addl. Ex. Engineer, Koparkhairane Sub.-Dn.  
3. Rajiv Waman, Asst. Law Officer

**Coram: Vandana Krishna [I.A.S. (Retd.)]**

Date of hearing: 2<sup>nd</sup> July 2024

Date of Order: 19<sup>th</sup> August 2024

## ORDER

This Representation was filed on 1<sup>st</sup> April 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 dated 30<sup>th</sup> June 2023 passed by the Consumer Grievance Redressal Forum, Bhandup Zone (the Forum).



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The Forum basically rejected the grievance application in Case No.06 of 2022-23. The operative part of the order is as below: -

- “2. *The Respondent is entitled to recover the bill issued in the period from January 2019 to December 2020.*
3. *The Respondent Utility is directed to allow the Appellant consumer to pay the revised supplementary bill in instalments, if Appellant so desires. ”*

**PREAMBLE:**


2. The Appellant was initially sanctioned power under powerloom category with its subsidized tariff. The MSEDCL inspected the premises of the Appellant on **12.12.2020**, when it observed that the Appellant was using power supply for garment industry instead of for power loom.

- a) MSEDCL issued a provisional assessment bill of Rs.13,95,400/- to the Appellant on 22/12/2020 under Section 126 of the Electricity Act, 2003 ( the Act ) for the period Jan. 2020 to Dec. 2020 towards unauthorized use of electricity, and a Final Assessment Order dated 16/05/2021 of Rs. 66,83,000/- . *[Note: Its seems that the amount increased substantially from Rs.13.95 lakh to Rs.66.83 lakh, because the recovery period was probably from around 2014. The Respondent has not provided exact information about this recovery period.]*
- b) The Appellant challenged this final assessment bill in Bombay High Court vide Writ Petition (W. P. No. 962 of 2022 in case of Vicky Fashion Limited V/s MSEDCL). In the High Court, the Advocate of MSEDCL stated that:-

*“the Respondent no. 1 is ready and willing to give a hearing to the petitioner and to pass afresh assessment order in accordance with the law.”*

- c) In view of the above statement the Hon’ble Court passed the following order on 11.02.2022 :-

*“(i) Final Assessment order dated 16<sup>th</sup> April 2021; letter dated 3<sup>rd</sup> November 2021 from the respondent no. 1 to the Assistant Law Officer and notice dated 18<sup>th</sup>*

  
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*January issued under Section 56(1) of the Electricity Act, 2003 calling upon the Licensor of the petitioner to pay an amount of Rs. 69,18,560/- are quashed and set aside.*

*(ii) The proceedings are before Assessing Authority for passing a fresh final assessment under Section 126 of the Electricity Act, 2003 in accordance with the law and after complying the principles of natural justice without being influenced by the observations made and the conclusion drawn in the final assessment order dated 16<sup>th</sup> April 2021.*

*(iii) The petitioner is directed to remain present before the Assessing Authority on 25<sup>th</sup> February 2022 at 11.00 a.m. without fail and will not seek any unnecessary adjournment.*

*(iv) The Assessing Authority will decide the matter within four weeks from the date of giving a personal hearing to the petitioner.*


*(v) The final assessment order that may be passed shall be conveyed to the petitioner within one week from the date of passing order.*

*(vi) If the final assessment order is adverse against the petitioner, the petitioner would be at liberty to file appropriate proceedings.”*

*[Note: Thus the High Court upheld the proceedings to be held u/s 126 before the Assessing Authority]*

Accordingly, a hearing was held, and the Assessing Authority issued a revised assessment bill of Rs.6.27 lakhs on 16.3.2022. The Appellant challenged this in the Forum, but the Forum upheld the recovery which was for 24 months prior to the inspection.

3. Aggrieved with the order of the Forum, the Appellant has filed this Representation. A physical as well as online hearing was held through video conference on 2<sup>nd</sup> July 2024. The Appellant was physically present, while the Respondent attended the hearing through video conference. Parties were heard at length. The Respondent MSEDCL filed its reply on 21/06/2024. Its submissions and arguments are stated first for easy understanding as follows: -

  
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[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]

- (i) The Appellant is an Industrial Consumer (No. 000431361990) of MSEDCL from 28/02/1994. The present sanctioned load, contract demand, address etc., of the Appellant is as below:


Table 1:

Name of Consumer	Consumer No.	Address	San.Load & Con. Demand from 2017	Date of Supply	Purpose from 2017	Date of filing grievance in Forum	Date of Forum's Order
Vicky Fashion Ltd.	000431361990	Plot No A-412, TTC MIDC, Kopar Khairane, Navi Mumbai	SL of 200 HP & CD of 150 KVA	28/02/1994	Garment Manufacturing	19/04/2022	30/06/2023

The Appellant is in the business of garment manufacturing from 2017. Prior to that, the consumer was being billed under powerloom tariff.

**Preliminary Submissions regarding admissibility:-**

- (ii) The Appellant had filed a grievance before the Electricity Ombudsman (Mumbai) on 01/04/2024 against the order of the Forum dated 30/06/2023 after a period of about 9 months. The Appellant was supposed to file the representation within 60 days (2 months) from the date of the Forum's order, as per Regulation 19.1 of CGRF & EO Regulations 2020. Hence, this representation is time barred and not maintainable. The Appellant claimed that he received the Forum's order in March 2024; however the order was sent by email on 30/06/2023 to the Appellant as well as Respondent on the same day when the order of the Forum was issued. [Note: This was confirmed with the office of the Forum and the said order dated 30/06/2023 was sent by email on 30/06/2023 successfully] Further, it was also confirmed that as per the Forum's policy, no hard copy was sent to the consumer,

  
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hence there is no question of the Appellant receiving the hard copy of the order in March 2024 as he claimed. Hence, the Appellant's claim that the order was not received does not stand on merit.

- (iii) The grievance and consequently Representation is not maintainable, in view of Regulation 6.6 / 7.9 of CGRF & EO Regulations 2006 / 2020, being filed in respect of action taken under Section 126 of the Electricity Act, 2003 (the Act) against the Appellant for unauthorized use of electricity.
- (iv) The Respondent pointed out that a revised supplementary bill of Rs.6,27,240/- was issued for the period January 2019 to December 2020 in the first week of April 2022 as **Final Assessment Order under Section 126 of the Act** as per direction of the Bombay High Court in its order dated 11.02.2022 in W.P. No. 962 of 2022. Before issuing this order an opportunity of hearing was given to the Appellant, and he remained present before the Assessing Authority in March 2022 and was heard. If aggrieved by this **Final Assessment Order** as per Section 126, the Appellant had an opportunity to file an appeal before the Electrical Inspector by paying 50% amount of the **Final Assessment Order** within thirty days of the said order. The Appellant has chosen the wrong path of Consumer Grievance Redressal Mechanism established under CGRF & EO Regulations 2020. The grievance is not maintainable as per Regulation 7.9 of CGRF & EO Regulations 2020.

**Main Submissions:**


- (v) Initially, LT -V Industrial (Power Loom) tariff was applied to the Appellant before 12/12/2020. The Respondent inspected the premises of the Appellant on 12.12.2020 when it was observed that though the power supply was authorized for power loom, a subsidized tariff, the Appellant was using supply for stitching of garments, finishing of garments, embroidery etc., which is an industrial activity (after the cloth has been woven by the power loom) for which industrial tariff is applicable without any subsidy. The copy of the spot verification Report is kept on record.
- (vi) The Appellant, without intimation to MSEDCL, had changed the usage of supply from power loom to industrial activity. Therefore, a Provisional Assessment of

  
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Rs.13,95,400/- was initially issued to the Appellant on 22/12/2020 under Section 126 of the Act (period Jan. 2020 to Dec. 2020) towards unauthorized use of electricity. Thereafter, an opportunity of hearing was given to the Appellant in March 2021 and final assessment order of Rs. 66,83,000/- was passed on 16.04.2021. *[Note: The Respondent did not submit the period of the final assessment of Rs.66.83 lakh till date, as a new team is working on this case at present; however no old data is available].*

- (vii) The consumer being aggrieved with the Final Assessment Order filed a W.P. No. 962 of 2022 before the Hon'ble Bombay High Court. The High Court passed the final order on 11.02.2022 which is quoted in Para 2. The High Court set aside the final assessment order and restored the proceedings before the Assessing Officer for passing a fresh final assessment order under Section 126 of the Act.
- (viii) Pursuant to the High Court order, a fresh hearing was conducted in the first week of April 2022 wherein the Appellant was present and heard, and Final Assessment Order was issued to the Appellant on 16<sup>th</sup> May 2022 for Rs.6,27,236.44 (Rs.6,18,130.33+ 9106.11 for the period Jan.2019 to Apr.2020 and May.2020 to Dec.2020 respectively). *[Note: The garment subsidy was started by the Respondent from May 2020].*
- (ix) Being aggrieved with the revised Final Assessment Order, a grievance was filed before the Forum on 19.04.2022 i.e. after more than one year. The Forum in its order dated 30.06.2023 has rejected the grievance. It is necessary to examine who is the competent authority for deciding the alleged grievance. *[Note: The grievance was not in the jurisdiction of the Forum; however the Forum entertained the grievance on a wrongful interpretation.]*
- (x) The erstwhile MSEB through its various circulars introduced subsidized tariff for the power loom activity which is continued till date by the Maharashtra Electricity Regulatory Commission (MERC).
- (xi) All preparatory activities leading to weaving of yarn into a cloth though power loom machine and allied activities like Warping, Doubling, Twisting, etc. along with


  
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power loom under same roof can only be considered as power loom activity for the sake of enjoying subsidy under power loom activity. Any preparatory activity in the absence of power loom will be considered under a general tariff. Pertinently, any activity done on the cloth after being manufactured from power loom, does not fall under the work associated with power loom activity.


- (xii) Power loom activity is an activity which does not fall under the general definition of textile mills and thus covers a very restricted activity i.e. to weave cloth from the yarn through an electric motor. However, in the present case admittedly there was no power loom machine and the only activity that the Appellant was conducting was that of the stitching of garments, finishing of garments, embroidery etc. which is an industrial activity after the cloth has been woven by the power loom, and thus falls completely beyond the scope of power loom activity.
- (xiii) The present case of final assessment is a clear case of escaped billing and restricted to 24 months only. The MSEDCL would like to rely upon the Judgment dated 5<sup>th</sup> October 2021 of Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. It has clearly differentiated between application of Section 56 for "escaped assessment" versus "deficiency in service". The Hon'ble Supreme Court has allowed past recovery which is an escaped assessment due to a bona-fide mistake of the licensee. The Court further held that limitation provided under Section 56(2) will not be applicable for "escaped billing" due to a bona-fide mistake.
- (xiv) In the present case the period of assessment is restricted to 24 months from date of detection, therefore recovery of unbilled consumption is well within limitation as provided under Section 56(2) of the Act and as such recoverable.
- (xv) In view of the above, the Respondent requested that the present Representation be rejected which is not maintainable and filed without any merit.

4. 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 running a Garment Industry including sewing/embroidery thread, buttons, buckles, zippers, metal plates, cardboard sheets, plastic butterflies and packaging material. The details of electric connection are tabulated in Table 1.
- (ii) The Appellant's activity was purely Textiles as per GOM G.R. No.2011/C.R.335/TEX-2 dated 02.01.2012 for the period from 2011 to 2017. The Appellant is submitting the concrete evidence of GOM G.R. No. Policy/C.R.6/TXT/5/ dated 17.02.2018 from 2018 to 2023. There has been no change of activity till date.
- (iii) As per the above G.R., the Appellant is registered with Textile Industry and has taken the factory license from Competent Authority. The officials from this department visit every year to their premises to verify the activity of textiles. Hence their subsidy stands till the year 2022 as per GOM policy.
- (iv) The activity of the Textile Industry comes under subsidy presently. *[Note : The subsidy on textiles started from around 01.04.2020 as per circular of MSEDCL]* Previously the subsidy was given by MSEDCL as per GR dated 15.02.2018.
- (v) As per MERC tariff order in Case No. 322 effective from 1<sup>st</sup> April 2020 and MSEDCL own circular No. 323, the Power Loom and the Garmenting Industries are covered under subsidized tariff.
- (vi) In MERC tariff order of 2020, the Power Loom was sub- categorized under LT Industry but after deducting the subsidy, the rates are defined.
- (vii) As per the agreement with MSEDCL and at the time of load extension, it is clearly mentioned that the activity of the Appellant is Garment Industry in the year 2017.
- (viii) The Appellant took the possession in the year 2017, and the load agreement was carried out with MSEDCL for extension of load. The Appellant is in the Textile business and hence they have enhanced their load for Garment activity. At the time of load extension, the Respondent inspected the premises and pointed out that the Appellant was not into Power Loom business but billed in Power Loom tariff. But

  
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the Appellant had not changed the activity since the agreement of 2017, and they were getting Industrial bill.

- (ix) As per tariff orders and MSEDCL circulars in force, there were no irregularities in the premises. If there is any revenue loss due to a change in tariff, they are ready to pay plain tariff difference.
- (x) The assessment of plain tariff difference is calculated wrongly by MSEDCL. MSEDCL has given the normal Industrial bill, which is wrong and not as per their own circular. A supplementary bill of Rs.6,27,240 /- towards the tariff difference between LT-V (Power Loom) and LT-V (garments - Industrial) for period from Jan-2019 to Dec-2020 (24 months) was issued to the Appellant in the month of April 2021. [Note: Actually, in April 2022.]
- (xi) MSEDCL is asking to pay Rs.6,27,240/- **which is already credited by GoM to MSEDCL as subsidy**. Hence no dues are recoverable from the Appellant. [Note : Actually govt. subsidy was started only from April 2020.]
- (xii) As per the billing record and tariff order No. 311 and 323, the Respondent should refund Rs.3,90,739.96/- to the Appellant.
- (xiii) In view of the above, the Appellant prays
- i. to quash the assessment of Rs.6,27,240/- and set aside.
  - ii. to refund Rs.3, 90,739.96 /- as the higher tariff attracted (for garments / industry) which is not as per MERC guidelines.

### Analysis and Ruling

5. Heard the parties and perused the documents on record. The details of the electric connection are already tabulated in Table 1. The Appellant runs a garment industry. However, the Appellant was billed under power loom tariff category from the year 2017. [Note: No data was given by the Appellant as well as Respondent as to when the company had started working as garment factory]. The Appellant enhanced the load in the year 2017 for extension of its garment factory. The Appellant has nowhere claimed that its activity be covered under

  
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‘powerloom’ for the purpose of subsidized tariff. In fact the Appellant claims that its activity, right from the beginning, is that of garments (textiles / manufacturing) which is also claimed to carry subsidized tariff independently of powerloom activity from 2018.

6. The said GR dated 15.02.2018 quoted by the Appellant and issued by the Cooperative, Marketing & Textile department under No. शासन निर्णय, क्रमांक: २०१७/प्र.क्र.६/टेक्स-५ was downloaded by this office wherein it states as under: -

“१३. सदर धोरणांतर्गत योजनांच्या अंमलबजावणी साठी शासन निर्णय, मार्गदर्शक सूचना स्वतंत्रपणे संबधित विभागाकडून निर्गमित करण्यात येतील.”


Translated as: “The concerned department will independently issue guidelines for implementation of the said policy.” This implies that the department was expected to issue separate detailed guidelines to start the subsidy.

#### 7. **Maintainability of Representation :**

The Forum by its order dated 30<sup>th</sup> June 2023 has basically rejected the grievance of the Appellant (except allowing instalments). The operative part of the order is already quoted in First Para. As per Regulation 19.1 of CGRF & EO Regulations 2020, the Appellant was supposed to file a representation to the Electricity Ombudsman within 60 days from the date of the order of the Forum if not satisfied with it. The Regulation 19.1 is quoted as below:

*“19.1 Any Complainant, who is aggrieved by the non-redressal of his Grievance by the Forum, may, either directly or through his duly authorised representative, make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the Order of the Forum:*

*Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he/she is satisfied that there was sufficient cause for not filing it within the said period.”*

  
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However, the Appellant filed representation on 01/04/2024 after a period of about 9 months. The reason given by the Appellant [that the order (hard copy) was received late on 27<sup>th</sup> March 2024] cannot be considered, as an email was already sent by the office of the Forum on 30/06/2023 to the Appellant as well as Respondent on the same day when the order of the Forum was issued. **The Forum has adopted the practice of sending orders to the respective parties only by email instead of by post. So, how was a hard copy of the order received by the Appellant on 27.03.2024?** This kind of falsehood / misrepresentation of facts is not expected by a reputable company like the Appellant. Considering the entire sequence of events, the 7 months' (9-2) delay in filing this representation is not condoned, and we hold that the representation is not maintainable.

8. The Section 127 of the Electricity Act, 2003 states as below:

*“Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.”*

This is the provision of appeal in Section 126 of the Act, and the Appellate Authority is the Electrical Inspector. For making this appeal, the consumer must pay 50% amount of the Final Assessment Order towards deposit. The Appellant seems to have tried to avoid paying the required 50% amount before the Electrical Inspector by approaching the Electricity Ombudsman.

9. **Advisory Note for Settlement:** Though this representation is not maintainable, in the interest of avoiding further litigation, both the parties are advised to try to reach an agreement on the following lines.

  
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The Respondent inspected the premises of the Appellant on 12.12.2020, when it was observed that initially the power supply was sanctioned under 'power loom', a subsidized tariff category; however, the Appellant was using supply for 'garment' purpose which is not eligible for an equal subsidized tariff. Both the parties agree that the Appellant is/was using power supply for garment manufacturing, at least after load extension in the year 2017. Where the parties disagree is that the Appellant claims that even garments / manufacturing is eligible for subsidized tariff, and the date of such eligibility.

The Appellant, without intimation to MSEDCL, was using power supply for garment industry. Pursuant to the High Court order dated 11/02/2022, a fresh hearing was conducted, and the Final Assessment Order was issued to the Appellant on 16/04/2021. A supplementary bill of Rs.6,27,240 /- towards the tariff difference between LT-V (Power Loom) and LT-V (Industrial) for the period from Jan-2019 to Dec-2020 (24 months) was issued to the Appellant immediately in the month of April 2022.

The final assessment period is 24 months which fulfils the statutory requirement of 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 High Court has allowed 24 months' recovery retrospectively in cases of mistake or oversight. The recovery of tariff difference between power loom and industrial tariff for the

  
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period from Jan.2019 to Dec. 2020 is in line with Section 56 (2) of the Act as the inspection was carried out on 12/12/2020.

Regarding the issue of subsidized tariff for the garments industry, this office checked the facts and the Govt GR / Circular. There is no subsidized tariff for manufacturing of Garments prior to April 2020 as claimed by the Appellant. The subsidized tariff for garment industry was introduced for the first time from April 2020 onwards. The relevant portion of Commercial Circular No.323 vide CE/COMM/Tariff/MYT20-25/9061 dated 03/04/2020 ( in reference to **MERC Order in Case No. 322 of 2019 dated 30 March 2020**) is reproduced as below:


“ANNEXURE- II  
AG & POWERLOOM TARIFF APPLICABLE FOR FY 2020-21

A) Agricultural Category

B) Subsidy for Power loom and textiles :-

Apr. 20 to Mar.21						
	MERC Rate (total)		Tariff payable by consumers		GoM subsidy (to MSEDCL)	
	DC	EC + WC	DC	EC + WC	DC	EC + WC
LT Powerloom	Rs./KVA/Month	Rs./Unit	Rs./KVA/Month	Rs./Unit	Rs./KVA/Month	Rs./Unit
Upto 20 KW	Rs.454/Connection	6.53	304	2.76	150	3.77
Above 20 KW	303	7.41	203	4.01	100	3.40
LT Knitting, Hosiery & Garments	Rs./KVA/Month	Rs./Unit	Rs./KVA/Month	Rs./Unit	Rs./KVA/Month	Rs./Unit
Upto 20 KW	Rs.454/Connection	6.66	304	2.89	150	3.77
Above 20 KW	303	7.56	203	4.16	100	3.40
Note :	DC: Direct Charges, EC: Electric Charges & WC : Wheeling Charges					

This table shows that there is a very small difference in the subsidized tariff payable by a consumer, if one compares tariff for powerlooms and garments. For example, for garment units

  
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with a load above 20 KW, the consumer pays Rs.4.16 per unit, while for powerlooms above 20 kW, the consumer pays Rs.4.01 per unit, from April 2020 onwards.

The Appellant has been charged with (the higher) industrial tariff from June 2019 to December 2020. This period consists of 2 parts.

- |      |                         |   |
|------|-------------------------|---|
| (i)  | Jan 2019 to Mar 2020    | When the subsidized tariff on garments was not available. |
| (ii) | April 2020 to Dec. 2020 | When the subsidized tariff on garments was available.     |


The supplementary bill of Rs.6,27,240 /- issued by the Respondent towards the tariff difference between LT-V (Power Loom) and LT-V (Industrial) for the period from Jan-2019 to Dec-2020 (24 months) is found in order in principle.

It is suggested that, as a part of the settlement, the parties can consider the above analysis, and the Respondent can offer a waiver of interest and delayed payment charges from the date of supplementary bill to the date of settlement.

10. The representation of the Appellant is rejected with the above comments and disposed of accordingly with advice to both the parties.

11. A cost of Rs. 4000/- is imposed on the Appellant for not following the proper procedure of the grievance mechanism as mentioned in para 8. The Respondent is directed to recover this cost from the Appellant's ensuing bill and send it to this office in coordination with the secretariat of this office.

Sd/  
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Electricity Ombudsman (Mumbai)

  
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