

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 121 OF 2024

In the matter of retrospective recovery of tariff difference

Vaskar S.M..... Appellant  
(Con. No. 000071435423)

V/s.

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

Appearances:

Appellant: 1. Suresh Mahadu Vaskar  
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: 1<sup>st</sup> August 2024

Date of Order : 23<sup>rd</sup> September 2024

## ORDER

This Representation was filed on 27<sup>th</sup> June 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 18<sup>th</sup> April 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL,

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Bhandup Zone (the Forum). The Forum by its order partly allowed the grievance application of the Appellant in Case No. 140 of 2023-24. The operative part of the order is as below:

*“2 The disputed bill issued for the period from May 2018 to December 2023 is hereby quashed and set aside.*

*3. The Respondent is directed to issue the revised bill for the period of 24 months from January 2022 to December 2023.*

*4. The Respondent is directed that, not to recover any Interest, DPC and Penalty from the Applicant for the revised bill amount.*

*5. The Respondent is directed to refund excess amount paid if any, by the way of credit in the subsequent billing cycles.*

*6. The Respondent may grant suitable installments for payment of the pending dues if the Applicant so desires.*

*7. If Applicant fails to pay any installment along with current bill, then facility of installment along with concession of waiver of interest and DPC will stands cancel forthwith and the Respondent has the liberty to take action as per law.”*

2. The Appellant has filed this representation against the order of the Forum. A physical hearing/ e-hearing was held on 1<sup>st</sup> 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 26/07/2024. 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 an industrial consumer from 21/02/1997. The connection details like consumer number, address, sanctioned load, period, amount of assessment etc. is tabulated as below:



  
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Table 1:

Name of Consumer	Consumer No.	Address	Sanc. Load KW)	Date of Supply	Purpose	Date of inspection	Suppl. bill towards tariff difference (Rs.)	Period
Vaskar S.M	00007143542	PAP, Plot no. D-47, TTC MIDC, Turbhe	19	21/02/1997	Supply was sanctioned for Industrial purpose ,however, used for commercial purpose (Milk Dairy)	25/12/2023	Rs. 5,77,610/- dt. 03/01/2024	May 2018 to Dec. 2023

- (ii) The Flying Squad, Vashi of the Respondent inspected the electric installation of the Appellant on 26.12.2023. During inspection, it was observed that though the supply was sanctioned for industrial purpose, the Appellant changed the activity to collection and refrigeration of Milk by name VIMAL DAIRY (without any activity of manufacturing or processing). Mr. Subhash Shripati Mahekar (tenant) is running the said milk dairy. This activity of the Appellant is commercial and is eligible to be billed under commercial tariff category. However, the Appellant was enjoying lower industrial tariff. In fact, this was a case of Section 126 of the Electricity Act, 2003 (the Act) being unauthorized use of electricity. However, MSEDCL had taken a soft view in this case. The copy of Spot inspection Report dated 26.12.2023 is kept on record.
- (iii) On 27.12.2023, the Flying Squad submitted the report with the assessment sheet for plain recovery of tariff difference from LT-V Industrial to LT-II Commercial for the period of May 2018 to Dec.2023.
- (iv) The Respondent issued a plain retrospective recovery of Rs. 5,77,610/- on 05/01/2023 towards tariff difference from LT-V Industrial to LT-II Commercial for the above period.
- (v) Mr. Subhash Shripati Mahekar is not the MSEDCL registered consumer. The leave and license agreement dated 08/09/2023 between Suresh Madhu Vaskar and Subhash Shripati Mahekar on Rs.100/- Stamp paper is not registered with the concerned Registration Authority of Govt. of Maharashtra nor properly notarized on Stamp paper. The details of receipt of rent i.e. cheque/DD No. etc., were not provided in agreement. Apart from this, there is no notary stamp on every page. There is different

  
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letter found on different pages. This document seems to be fraudulent and fabricated and therefore should not be read in evidence.

- (vi) On a perusal of the pattern of consumption of the Appellant, there was no change in the consumption pattern during the period of alleged leave and license agreement.
- (vii) As per Tariff Order dated 30.03.2020 of MERC in Case No.322 of 2019, Milk Collection Centres are covered under LT-II Commercial tariff. The relevant portion is produced 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 lighting, heating, cooling, cooking, washing/cleaning, entertainment/ leisure and water pumping in, but not limited to, the following premises:*

.....


*k. Milk Collection Centres;*

.....”

This is not a chilling plant or milk processing industry; hence it is not classified under industrial tariff which the Appellant claimed.

- (viii) The Forum by its order partly allowed the grievance application and restricted recovery to 24 months. The operative part of the order is already produced in First Para. The Forum has rightly addressed all issues and passed a reasoned order, therefore needs no interference.
- (ix) The Respondent pointed out that as per the directives of the Forum, the Respondent re-inspected the premises and has produced the Spot Inspection Report dated 29.04.2024, wherein it was again found that,

*“The electricity is used for cooling of the milk in 3000 litres tank and 2 x 1000 litres tanks. On the ground floor, there is storage, and on the first floor there is Office. No production activity observed.”*

  
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- (x) The Spot Inspection Report is signed by the Consumer/ Consumer's representative, Mr. Sachin Jather. Thus it is clear that the activity of the Appellant is milk collection centre, and the Appellant is to be billed under commercial tariff category as per use.
- (xi) The Respondent cited the Judgment of the Supreme Court dated 05/10/2021 in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. **where the retrospective recovery is allowed beyond two years in case of escaped billing.** The Section 56(2) of the Act of two year limitation would not arise to case in hand and MSEDCL is entitled to recover entire assessment of Rs.5,77,610/-
- (xii) The Judgement of High Court Bombay in Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune is not applicable in this case.
- (xiii) The Respondent has pointed out that the prescribed Schedule A1 was signed by S. S. Mahekar and the prayer with the Forum was **"Time Barred Assessment"** and prayed for **"Set Aside the Assessment"**. However, in this office, the "Schedule B" was signed by Shri S. M. Vaskar (Owner). The prayers in Schedule B are as below:

**1. Set Aside the Assessment**

**2. Convert the Commercial tariff into industrial tariff**

A different prayer in Appellate Court of Hon'ble Electricity Ombudsman is not allowed. The representation is not maintainable for the second prayer of tariff conversion from commercial to industrial.


- (xiv) The Respondent stated that whenever Shri Suraj Chakraborty, Consumer Representative entered as the consumer representative, there are many cases where the documents are found to be fraudulent and there are irrelevant arguments. The Respondent is unable to understand the role of Suraj Chakraborty, Representative in most of the cases. There are serious complaints against him.
- (xv) 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. 5,77,610/- towards tariff difference from LT-V Industrial to LT-II Commercial for the period of May 2018 to Dec. 2023.

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

- (i) The Appellant is an industrial consumer from 21/10/2009. The statistical data and tariff difference assessment details etc. is tabulated in Table 1. *[Note: The Appellant did not specify what industrial activity he was carrying out prior to renting out the premises for milk dairy industry.]*
- (ii) The supply of the Appellant is used for industrial purpose of milk processing plant. The Appellant is regular in payment of the bills.
- (iii) The Appellant has rented this premise for running a Milk Centre to Subhash Shripati Mahekar (Tenant). Accordingly, the rental leave & license agreement was executed between Suresh Madhu Vaskar and Subhash Shripati Mahekar for the period of 01/11/2023 to 31/07/2026.
- (iv) On 27.12.2023, MSEDCL Flying Squad Team visited the premises of the Appellant and inspected the premises. Thereafter, the Respondent issued a plain retrospective recovery of Rs. 5,77,610/- dated 03/01/2024 towards tariff difference from LT-V Industrial to LT-II Commercial for the period of May 2018 to Dec. 2023 (68 months). This supplementary bill is baseless and is based on wrong interpretation of tariff.
- (v) The Appellant is in the business of dairy which involves the process of milk chilling plant, pasteurization of milk. The Appellant is not in the business of milk collection centre, but in milk process industry.
- (vi) The Appellant filed a grievance application with the Forum on 24/01/2024. The Forum failed to understand that the activity of the Appellant is industrial.
- (vii) The Respondent referred to the orders of the Electricity Ombudsman (Nagpur) in case of 78, 80, 84 & 85 of 2023 in support of its grievance.
- (viii) The Appellant cited the Judgement of High Court Bombay in Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune in support of its arguments. This Judgment is in respect of retrospective recovery for tariff difference. The High Court by its judgement has allowed a change to a higher tariff category prospectively.
- (ix) In view of the above, the Appellant prays that the Respondent be directed

  
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- a) to set aside the assessment of Rs. 5,77,610/- dated 03/01/2024.
- b) to convert the Commercial tariff into industrial tariff.

4. The Respondent by its letter dated 02/08/2024 informed that they have visited the premises of the Appellant on 02/08/2024. After doing enquiry with the workers, it was found that the electricity is used for milk refrigeration (Dairy) from 2021, but these people refused to give a written reply, considering it a case of theft. Also looking at the consumer's electricity consumption, electricity use is broadly the same from April 2021 till date.

5. The Respondent was directed to carry out a detailed joint inspection of the premises of the Appellant on 23/08/2024. The Respondent re-inspected the premises of the Appellant on 02/09/2024 in the presence of the Appellant. During the inspection, it was found that the total shed area was about 8000 Sq. feet. There were two milk storage tanks having capacity of 5000 Litres and 2000 litres with two compressors and one compressor connected respectively. In addition, there was 1 HP motor, 2 Tubes lights for lighting purpose. There was an office made with partition having 1 computer, 3 tubes lights, and 3 fans. The milk was received from other towns by vehicle, which was shifted into the storing tanks. The Milk is kept at about 2 to 4 degrees centigrade in the storing tank to avoid spoiling. The stored milk was also sold to Sub Dealer of Vimal Dairy Milk Brand early in the morning from 06.00 hrs. to about 10.00 hrs.

### **Analysis and Ruling**

6. Heard the parties and perused the documents on record. The Appellant is a LT consumer of the Respondent from 21/02/1997. The details of electric connection, sanctioned load, retrospective recovery towards tariff difference etc. are tabulated in Table 1.

7. The important abstracts of the Consumer Personal Ledger of the Consumer are charted as below (as prepared by the Ombudsman office). This shows that the consumption pattern before Nov. 2023 (from 2021-22) was the same as after Nov.2023 when the supposed milk dairy industry started.


  
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Table 2:

Abstract of CPL of Cons. 000071435423 : Vaskar S.M						
Year	2018-19	2019-20	2020-21	2021 -22	2022-23	2023-24
Month	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)
Apr	557	699	242	877	1123	1520
May	632	699	35	1248	1436	1587
Jun	639	699	35	1468	1465	1690
Jul	653	713	0	1181	1103	1579
Aug	601	704	0	1041	1219	1458
Sep	673	705	0	975	1326	1517
Oct	602	0	0	1150	1374	1211
Nov	694	1235	0	1088	1179	1749
Dec	700	320	379	962	1300	1966
Jan	700	340	0	1136	1166	2198
Feb	698	357	10	1332	1185	1649
Mar	699	345	168	1036	1191	1731
Total	7848	6816	869	13494	15067	19855
Avg/Month	654	568	72	1125	1256	1655

8. The Appellant contended that he has rented out his premises for running a Milk Centre to Subhash Shripati Mahekar (Tenant). Accordingly, the rental leave & license agreement was executed between Suresh Madhu Vaskar and Subhash Shripati Mahekar for the period of 01/11/2023 to 31/07/2026. The Respondent inspected the premises of the Appellant on 26.12.2023. The Appellant was issued a supplementary bill of Rs. 5,77,610/- towards tariff difference from LT-V Industrial to LT-II Commercial for the period of May 2018 to Dec. 2023. The Appellant is in the business of running a milk dairy which involves the process of milk chilling plant, and pasteurization of milk. The Appellant is not in the business of running a milk collection centre, but in the milk process industry, and the activity of the Appellant is industrial.

9. On the other hand, the Respondent contended that the Leave and License rental agreement dated 08/09/2023 between Suresh Madhu Vaskar and Subhash Shripati Mahekar on Rs. 100/- Stamp paper is not registered with the concerned Registration Authority of Govt. of Maharashtra. There is a different letter found on different pages. This document is nothing but fraudulent and fabricated and therefore cannot be read in evidence.

10. The Respondent re-inspected the premises of the Appellant on 02/09/2024 in the presence of the Appellant when it was found that the total shed area was about 8000 Sq. feet.

  
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There were two milk storage tanks having capacity of 5000 Litres and 2000 litres with two compressors and one compressor connected respectively. The Milk is kept in the storing tank at about 2 to 4 degrees centigrade at storing tank to avoid spoiling. The stored milk was also sold to Sub Dealer of Vimal Dairy Milk Brand early in the morning from 06.00 hrs. to about 10.00 hrs. Considering the evidence and various angles, we come to the conclusion that the activity of the Appellant is commercial in nature, i.e. a milk collection centre. The Appellant is rightly classified under commercial tariff category. When we analysed the CPL abstract as shown in Table 2, the average monthly consumption from the year 2020-21 to 2023-24 was found as below:


2020-21	2021 -22	2022-23	2023-24
<b>Cons. (Units)</b>	<b>Cons. (Units)</b>	<b>Cons. (Units)</b>	<b>Cons. (Units)</b>
72	1125	1256	1655

It is possible that the milk collection centre might have started from April/ May 2021.

11. 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

  
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Petitions. The Court has allowed 24 months' recovery retrospectively in cases of mistake or oversight.


12. There is no merit in the case. The Forum has given a reasoned order. Hence, it is not necessary to interfere in the order of the Forum principally. 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 Jan. 2022 to Dec.2023.
- (b) to waive off the interest and DPC from Jan. 2024 onwards if any, till the date of this order.
- (c) to allow the Appellant to pay the revised bill in 6 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.

13. The Representation is disposed of accordingly.

14. The secretariat of this office is directed to refund the amount of Rs.25,000/- taken as deposit to the Respondent to adjust in the Appellant's ensuing bill.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

