

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 127 OF 2024

In the matter of change of tariff category and retrospective refund

Rahul Madhusudan Gadre.....Appellant  
(Con. No. 266514032351)

V/s.

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

Appearances:

Appellant: 1. Rahul Madhusudan Gadre  
2. K.S. Burande, Representative

Respondent: 1. Sunilkumar Mane, Executive Engineer, Kolhapur (U)  
2. Sattapa Chougule, Additional Executive Engineer

**Coram: Vandana Krishna (Retd. IAS)**

Date of hearing: 13<sup>th</sup> August 2024

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

## ORDER

This Representation was filed on 15<sup>th</sup> July 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 13<sup>th</sup> May 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kolhapur Zone (the Forum). The Forum by its order rejected the grievance application.



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2. The Appellant has filed this representation against the order of the Forum. An e-hearing was held on 13<sup>th</sup> August 2024 through Video Conference. The parties were heard at length. The Respondent filed a reply on 07/08/2024. The Respondent's submissions and arguments are stated first for easy understanding as below. *[The Electricity Ombudsman's observations and comments are recorded under 'Notes' in brackets where needed.]*

- (i) The Appellant (Rahul Gadre) is a LT Consumer (No. 266514032351) of the Respondent from 02/11/2005 billed under "Commercial" tariff category till March 2023. The property consists of 2 wings, Part A Residential and Part B Commercial. There is another connection for common purpose billed under Residential tariff category. The details of both these connections are tabulated as below:

Table 1:

Sr. No.	Name of Consumer	Consumer No.	Address	San. Load (KW)	Date of Supply	Purpose	Consumption Pattern (Units)	Online Application for change of tariff category	Clubbing of meters
1	Rahul Madhusudan Gadre	266514032351	2150 A1 Atharv Vishwa Complex, Tarabai Park, Kolhapur Wing - A	3.7	02/11/2005	Common purpose. Billed under Commercial tariff category till Mar -23 and under Residential Category at present.	92 to 112 units per month	Commercial to Residential on 14/03/2023	04-11-2014, Residential
2	Ashok Ramchandra Shevade	266514031312	2150 AB1 Atharv Vishwa Apart, Common, Nr.Pitali Ganpati, Tarabai Park, Kolhapur Wing - A	2	25/10/2005	Common purpose billed under Residential tariff category	530 to 1255 units per month	NA	


- (ii) The Appellant approached MSEDCL for primary enquiry of Solar Roof Top Scheme somewhere in Jan. 2023 and subsequently the Appellant submitted an online application (ID No.47901871) for change of tariff category from Commercial to Residential on 14/03/2023 through WSS Portal of MSEDCL. The site verification was carried out immediately on 16/03/2023 when it was observed that the Appellant's connection (No. 266514032351) was used for common lift of the Atharv Vishwa Society (Part A: Residential). Accordingly, change of tariff category proposal from Commercial to Residential was sent to the Competent Authority of

  
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the Respondent on 20/03/2023, which was approved on 27/03/2023 and the effect of change of tariff category from Commercial to Residential was given in the System in April 2023 prospectively.

- (iii) Atharv Vishwa Society consists of: -  
Part A: Residential (18 Flats)  
Part B: Commercial Establishments (31):- (Lower Ground Floor Shops: 6 Godowns: 10, Ground Floor Shops: 5, Ground Floor Offices: 3, Common W. C. 2., First Floor Offices: 5) This is as per the property card of the Kolhapur Municipal Corporation.
- (iv) The electric installation of the Appellant was probably released for construction /commercial purpose on 02/11/2005 as per Appellant's request and site survey. Shri Nitin Jaykumar Patil and Shri Hemant Prabhakar Kulkarni were the Developers of this Atharv Project. As per Corporation Records, the project was started on 21/10/2003 and the Occupation Certificate was issued on 12/05/2006. Rahul Madhusudan Gadre, the Appellant, is one of the Flat Owners in this Society.
- (v) The Appellant by his letter dated 17/01/2024 requested for refund of tariff difference from commercial to residential tariff category between the period from Nov. 2005 to March 2023. He claims that this common purpose connection of the Residential Wing (Part A) was always used for lift / lighting, etc. for residential flats. However, there was no merit in this request, and hence the Respondent by its letter dated 26/01/2024 rejected his application.
- (vi) The Appellant filed a grievance application for refund of tariff difference in the Forum on 05/02/2024 which by its order dated 13/05/2024 rejected the grievance application. The Forum observed that the connection might have been released for construction purpose, and also observed that the grievance is time barred as per Regulation 7.9 of CGRF & EO Regulations 2020.

  
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- (vii) The Appellant was enjoying two connections for common purpose like water pump lift, staircase lighting etc, for Residential Wing A as charted in Table 1. Meanwhile the two connections were clubbed together, and Appellant's connection is kept live as requested. The second connection which was in name of Shevade was permanently disconnected on 11/04/2024. There is no record as to who was Shevade and why this common connection was released in his name. However, both these connections were paid regularly by the Flat Owners of the Society.
- (viii) It is an obligation on the consumer's part to contact the distribution licensee in case the consumer is receiving an incorrect bill under the wrong tariff category. They are also equally responsible for the said irregularity if any.
- (ix) The claim of the Appellant is time barred and beyond the limitation period of two years, as per Regulation 7.9 of CGRF & EO Regulations 2020.
- (x) The Respondent referred the Section 2.2.5 of MSEDCL's Conditions of Supply based on the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (MSEDCL Supply Code Regulations). The relevant portion is as below:
- “2.2.5: MSEDCL shall not permit any Applicant / Consumer to have two or more independent power supply connections for an identical purpose in one common premise. In case the Applicant / Consumer intends to use the power supply in a common premise for two different purposes, like Domestic along with Non – Domestic or General Motive Power along with Non – Domestic, etc.; the Applicant / Consumer may separately apply for independent power supply for each of such purposes, which the MSEDCL may permit provided release of such two connections to one common premise for different purposes is found technically feasible.”*
- (xi) Since the load of common connections in Wing A was distributed between 2 common connections, the society was unduly taking advantage of lower slab. It was

  
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necessary to club both these connections in 2010. However, the Respondent was unaware that the Society was distributing its load on 2 connections and taking benefit of lower slab. If clubbing had been done two years prior to 05/02/2024 when the Appellant filed the grievance in the Forum, the Respondent would have been able to earn more Revenue about of Rs. 1.20 lakhs due to higher applicable slab. On the contrary, tariff difference amount between commercial and residential in the same slab for the same period is about Rs. 50,000/-. **This is because the Residential tariff is higher for upper slab (which is also higher than the existing commercial tariff).**

- (xii) Solar Roof Top of the Society was commissioned in the year 2023/24 which is connected to the common connection (No. 266514032351) and is working satisfactorily.
- (xiii) In view of the above submissions, the Respondent prays that the representation of the Appellant be rejected.

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

- (i) The Appellant is a LT single phase residential consumer (No. 266514032351) of the Respondent from 02/11/2005. The details of the electric connection, sanctioned load, are tabulated in Table 1. The supply of this connection under dispute is used for common lift of the Society. The Appellant was wrongly billed under Commercial Tariff Category from the date of connection till March 2023. Actually the connection was used for residential purpose. The Appellant is billed under Residential Tariff Category from April 2023 onwards. The Appellant has paid excess tariff charges for about 18 years due to wrong classification. The Appellant is regular in payment of bills.
- (ii) The Appellant by his letter dated 17/01/2024 requested for refund of tariff difference from commercial to residential tariff category from Nov. 2005 to March 2023.


  
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- (iii) The Appellant submitted an online application (ID No.47901871) for change of tariff category from Commercial to Residential on 14/03/2023. The spot verification was carried out on 16/03/2023 and it was confirmed that the use is for Society lift. The copy of the Report is not given to the Appellant. Change of tariff category to Residential was effected in April 2023.
- (iv) The Appellant filed a grievance application for refund of tariff difference in the Forum on 05/02/2024. The Forum by its order dated 13/05/2024 has rejected the grievance application. The Forum failed to understand the basic issue that the grievance is not time barred as the cause of action happened in April 2023. *[Note: The Appellant has not explained how the cause of action arose in April 2023. It seems that the Appellant is looking at the change of tariff category to residential as the cause of action. Actually, the cause of action arose when commercial tariff category was applied.]*

**Ground for Appeal:**

- (v) The Appellant had applied for residential electricity connection on 02/11/2005, but MSEDCL had wrongly classified his connection under commercial category. The Appellant is a common man and hence does not understand the technical details mentioned on the energy bill. The Appellant requested to provide the copy of A1 Form of new connection in Jan.2023. However, the Respondent immediately intimated that it is not available on record.
- (vi) The use of electricity is for lift by the residents of the premises. The whole building Atharva Vishwa A is a residential building having 18 Flats. The electricity connections were released from 12/11/2006. This is the date of building completion report from municipal authority. The construction activity attracts commercial tariff during construction period, and after construction is over and completion certificate is produced, that tariff is changed as applicable to the purpose of the user. It is a settled principle that no one can take advantage of one's own wrong.
- (vii) As per property card extract of CTS No. 2150A/1, 'A' is a residential building mentioned as 'Atharva Vishwa A', and the commercial building is shown as

  
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‘Atharva Vishwa B’. The copy of its property card index is kept on record. Both are separate identities having separate common connections. The Respondent is trying to confuse this authority.

- (viii) The Appellant argued that when a consumer, through oversight, uses the electricity for a purpose other than the application, he is being treated as an offender for unauthorised use of electricity under Section 126 of the Electricity Act, 2003 and penalised at the double rate, or the notice of precaution and imprisonment is also sent to him. Actually, in this case, this is exactly the opposite position, as Appellant’s use is for the residential purpose, but he was paying commercial tariff due to wrong classification of tariff category. The Respondent was duty bound to classify the tariff correctly, however, they failed to do so. Hence, the Appellant is eligible for tariff difference refund from the date of connection i.e., 02/11/2005 to March 2023.
- (ix) Regulation 2.2.5 of MSEDCL Supply Code Conditions is not applicable in this case.
- (x) The Appellant referred the following orders in support of his arguments.
- Order of EO (Mumbai) dated 15/01/2024 in Rep. of 114, 115 & 116 of 2023.
  - Order of EO (Nagpur) dated 04/09/2015 in Rep. 54 of 2015.
  - Order of Pune Forum dated 15/03/2024 in Case 99/2023.
  - Order of Nagpur Forum dated 04/06/2021 in Case 07/2021.
- (xi) In view of the above, the Appellant prays that the Respondent be directed to refund the tariff difference from commercial to residential tariff category from Nov. 2005 to March 2023 along with interest on the excess amount paid as per bank rate applicable as per Section 62 (6) of the Electricity Act, 2003.

### **Analysis and Ruling**

4. The Atharv Vishwa Society consists of two parts having Part A: Residential (18 Flats) and Part B: Commercial Establishments (31 Nos.). The Appellant is a LT Consumer (No. 266514032351) from 02/11/2005. The supply of this connection is used for common purpose of the Society i.e. for common lift of the Society. However, this connection was wrongly billed

  
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under “Commercial” tariff category till March 2023. There is another connection in the same building, also for common purpose like water pump, staircase lighting, etc. which is billed under “Residential” tariff category. The details of both these connections are charted in Table 1. It is not clear why two separate common connections were given in the same building, as this led to distribution of load and lower slab being applied.

5. The Appellant submitted an online application for change of tariff category from Commercial to Residential on 14/03/2023 through WSS Portal of MSEDCL. The site verification was carried out on 16/03/2023 when it was observed that the Appellant’s connection (No.266514032351) was used for common lift of the said Society (Part A: Residential). Accordingly change of tariff category proposal was approved by the Respondent on 27/03/2023 and effected from April 2023 i.e. within the second billing cycle from the date of application as per the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021.

6. The Appellant contended that the Appellant had applied for residential connection on 02/11/2005, but MSEDCL had wrongly classified his connection in commercial tariff category from the date of connection. The connection is used for common lift of the Society. The Appellant is entitled for refund of tariff difference from commercial to residential tariff category from Nov. 2005 to March 2023.

7. The Respondent contended that the said electric installation of the Appellant was probably released for construction /commercial purpose on 02/11/2005 as per Appellant’s request and site survey. Then the Municipal Corporation issued an Occupation Certificate to the Society on 12/05/2006. The Appellant by its letter dated 17/01/2024 requested for refund of tariff difference from commercial to residential tariff category between the period from Nov. 2005 to March 2023. However, there is no merit in this request. The Respondent referred the Section 2.2.5 of MSEDCL Supply Code Regulations which states that MSEDCL shall not permit any Applicant / Consumer to have two or more independent power supply connections

  
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for an identical purpose in one common premise. It was obligatory to club both these connections. However, the Respondent was unaware that the Society was distributing its common load on 2 connections and taking benefit of lower slab. There was resultant loss of revenue in lakhs by MSEDCL, and undue benefit to the Appellant. In fact, this benefit of lower slab exceeds the loss due to commercial tariff. Thus, the net effect was gain to the society.

8. The following issues are framed for consideration:

- **Issue A:** Whether the claim of the Appellant for refund of tariff difference from commercial to residential tariff category from Nov. 2005 to March 2023 is time barred?


The Appellant filed a grievance application for refund of tariff difference in the Forum on 05/02/2024. The period of grievance is limited to two years prior to the date of filing the grievance in the Forum (i.e. from 05.02.2022 onwards). The previous portion of the grievance is time barred and beyond limitation as per Regulation 7.8 of CGRF and EO Regulations 2020, which provides that the Forum shall not admit any grievance unless it is filed within 2 years from the date on which the cause of action arose. Therefore, the claim of the Appellant of the refund of tariff difference beyond this period of 05/02/2022 is not maintainable at this stage. The said Regulation 7.8 of the CGRF and EO Regulations 2020 is quoted below:

*"The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen."*

**Issue A** is answered accordingly.

- **Issue B:** Whether the Appellant is entitled for refund of tariff difference from commercial to residential tariff category from 05/02/2022 to 05/02/2024 (two years)?

As elaborated in paras 2 (xi) and 7, there were two connections for common use of the Society like water pump, lift, staircase lighting etc, both for Residential Wing 'A' as charted in Table 1.

  
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The Society was distributing its common load on to both connections, thereby getting the benefit of lower slab, whether knowingly or unknowingly. In other words, if the 2 common connections had been clubbed earlier under residential tariff, the Appellant would have (i) benefitted by application of residential tariff instead of commercial tariff, but at the same time, (ii) would have faced losses due to application of higher residential slab, with tariff even higher than commercial. If it is assumed that clubbing was done two years prior to 05/02/2024, the Appellant would not have gained any net benefit; in fact, the Respondent would have benefitted. This is because the Residential tariff is higher for the upper slab, and even higher than the existing commercial tariff. This means the Appellant was actually enjoying lower tariff (though under commercial tariff category) as compared to higher slab of residential tariff category. Therefore, there is no question of refund of tariff difference from commercial to residential tariff category.

**Issue B** is answered as **NEGATIVE**.

9. 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.
10. The Representation is rejected and disposed of accordingly.

Sd/  
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Electricity Ombudsman (Mumbai)

  
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