

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 104 OF 2024

In the matter of Contract Demand Penalty and billing

Modern Engineering & Spring Co..... Appellant
(Cons. No. 001590013672)

V/s.

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

Appearances:

Appellant : 1. Nhanu N. Rawool
2. Harshad Sheth, Representative
3. Vinit H. Sheth, Representative

Respondent : 1. Girish Bhagat, Addl. Executive Engineer, Vasai Road (E) S/Dn.
2. G. Jyothi, UDC, Vasai Road (E) S/Dn.

Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 10th July 2024

Date of Order : 8th October 2024

ORDER

This Representation was filed on 11th 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



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dated 28th May 2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum). The Forum rejected this grievance application with the following observation.

“17. g) The Hon’ble Electricity Ombudsman had given directives to revise the supplementary bill towards tariff difference from LT to HT industrial Tariff category only for the period from May 2019 to April 2021 in Rep. No 104, 105, 106 and 107 of 2022, and to withdraw the supplementary bill of tariff difference from LT to HT industrial Tariff category in Rep. 108 of 2022. (Mahendra Ratanshi Sangoi)

The Appellant and Respondent had to comply with the above directives of the Hon’ble Electricity Ombudsman.”

PREAMBLE:

- I. The Appellant is a LT Industrial consumer of the Respondent. The Respondent contended that the Government Auditor II, Mumbai Branch, Maharashtra, in Audit para dated 05/02/2021 raised the important issue that the Appellant, being a LT industrial consumer, has exceeded the upper limit of 187 KVA Contract Demand from Dec.2016 to Dec.2020. The consumer has enjoyed the power supply which is normally sanctioned for HT consumer at the lower LT tariff. Hence this consumer has to be charged for tariff difference between LT- Industrial and HT- Industrial Tariff Category. Here we would like to observe that though the audit para covered the period of Dec.2016 to Dec.2020, its observations in principle were valid and meant to be acted upon even later, whenever the actual CD exceeded sanctioned CD beyond 187 KVA. Accordingly, the Respondent was expected to charge for the tariff difference between HT and LT even for the period after December 2020, on the merit of the matter, based on CD exceeding the sanctioned limit.
- II. The Respondent submitted the basic data of particular months for exceeding CD beyond 187 KVA for raising the demand for retrospective recovery of tariff difference between LT- Industrial and HT- Industrial Tariff Category for the period from Dec. 2016 to Nov. 2018. The said data is as below:



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Table 1:

Rep.104 of 2024 (Modern Engineering & Spring Co.)					
Months/ years	Sanctioned CD (KVA)	Actual CD Recorded(KVA)	Months/ years	Sanctioned CD (KVA)	Actual CD Recorded(KVA)
Dec-16	186	188	Oct-17	186	192
Jan-17	186	188	Nov-17	186	192
Feb-17	186	188	Dec-17	186	192
Mar-17	186	188	Jan-18	186	192
Apr-17	186	192	Jun-18	186	205
May-17	186	192	Jul-18	186	205
Jun-17	186	192	Sep-18	186	205
Jul-17	186	192	Oct-18	186	205
Aug-17	186	192	Nov-18	186	205
Sep-17	186	192			

- III. On 25/05/2021, the Respondent issued a supplementary bill of Rs.12.82/- lakhs towards tariff difference between LT- Industrial and HT- Industrial Tariff Category for the period from Dec. 2016 to Nov. 2018 when actual recorded Contract Demand exceeded the sanctioned Contract Demand, 187 KVA. *[Note: It is not clear why the bill was not raised up to Dec.2020 and further up to the date of the bill 25/05/2021, if the CD was also exceeded in some months in this period.]*

Subsequently this bill of Rs.12.82 lakhs came up before the Forum and the Electricity Ombudsman. The Electricity Ombudsman vide its order dated 07.10.2022 quashed this bill for the period Dec.2016 to Nov. 2018, being time barred, but at the same time allowed recovery for the later period from May 2019 to April 2021. *The operative part of the order in Para 17 is reproduced below:*

“17. In view of the above, the Respondent is directed as under: -

to revise the supplementary bills towards tariff difference from LT to HT industrial Tariff category only for the period from May 2019 to April 2021 in Rep. No 104, 105,106 and 107 of 2022, and to withdraw the supplementary bill of tariff difference from LT to HT industrial Tariff category in Rep. 108 of

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2022.” The details of Sanctioned Load, Contract Demand and Supplementary Bills issued by the Respondent are tabulated below:-

Table 2:

Appellant	Consumer No.	Sanct.Load /Contract Demand	Date of Supply	Original Supplementary bill (Rs.)	First Prov. Bill issued as per Ombudsman order dated 07/10/2022	Second Prov. Bill issued as per Ombudsman order dated 07/10/2022
Modern Engineering & Spring Co.	001590013672	200 HP/ 186 KVA	16.09.2010	12,82,070 dated 25.05.2021 for the period Dec.2016 to Dec.2018	NIL dated 08/05/2023	12,56,274 dated 18/03/2024 covering the period from May 2019 to April 2021

IV. These 2 provisional bills are clarified here. (The original bill of Rs.12.82 lakhs was never paid by the Appellant, being under challenge.) The first provisional bill ‘NIL’ dated 08.05.2023 was meant to cancel the original bill of Rs. 12.82 lakhs, as it was held to be time barred by the Electricity Ombudsman. The second provisional bill of Rs.12.56 lakhs was then issued as the corrected bill for the subsequent period May 2019 to April 2021, as allowed by the Electricity Ombudsman. Hence there was nothing wrong with this bill.

It is notable that the Appellant in Rep. 104 did not challenge this order in review at this stage, and specifically did not challenge the recovery period mentioned in it (May 2019 to April 2021). After this order, the Respondent issued revised supplementary bills as mentioned in Table 2. In these bills, the period before May 2019 was deleted, and the later period from May 2019 to April 2021 was added. The Appellant has now come in appeal against this order on the grounds that recovery cannot be made for the later period (May 2019 to April 2021 since this period was never in consideration or under challenge before the Electricity Ombudsman. Also, because this bill did not cover the limitation period of 2 years prior to issuing the bill.

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It is notable that the Appellant accepted that part of the Electricity Ombudsman's order which benefitted him, i.e.

- accepted disallowing recovery prior to May 2019, but
- did not accept the Respondent's new supplementary bill for the months where the CD was exceeded for the period from May 2019 to April 2021 **as this period was purportedly not in appeal before the Forum. The Respondent for the first time considered this period in its supplementary bill dated 18.03.2024** which was (allegedly) never a part of the Electricity Ombudsman (Mumbai) Order dated 7th Oct. 2022. The additional supplementary bill for this period (May 2019 to April 2021) is also claimed to be time barred as per Section 56(2) of the Electricity Act, 2003 (the Act). The Appellant contended that the (first) supplementary bill of Rs. Nil was correctly issued by the Respondent on 08/05/2023, but that the second **additional supplementary bill of Rs.12,56,274.21 issued on 18/03/2024 was not as per the order of the Electricity Ombudsman dated 07/10/2022 in Rep. No. 104 of 2022** because the Electricity Ombudsman could consider only the period up to Nov.2018.

- V. Here we would like to clarify the reasoning behind the Electricity Ombudsman's order. The Electricity Ombudsman was fully aware that while the billed period of Dec.2016 to Nov. 2018 was barred by limitation, nothing stopped the Respondent from issuing a supplementary bill for the subsequent period which was not barred by limitation. It was not only likely, but expected, that such a supplementary bill would be issued by the Respondent soon; it was anticipated that such a bill would again come under litigation before the Forum and the Electricity Ombudsman. It was precisely in order to avoid such repeated future litigation that the Electricity Ombudsman clarified, in advance, that recovery for the later period (May 2019 to April 2021) would be allowed and valid. In fact this is precisely what happened. Such a recovery bill was issued for Rs.12.56 lakhs, and it has again (unnecessarily) come in challenge before the Electricity Ombudsman. Actually, if the Appellant

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was not satisfied with the Electricity Ombudsman's order, specifically allowing recovery from May 2019 to April 2021, he should have come in review of the order within one month. But he did not do so. In effect he is challenging the Electricity Ombudsman's original order now.

VI. The details of the second provisional bill issued on 18/03/2024 are tabulated below:

Table 5

Suppl.Bill (Rs.) demanded & date as per compliance of E.O. Order (Second Compliance)					
Month	CD recorded (KVA)	Amount	Month	CD recorded (KVA)	Amount
May-19	196	76732.04	May-20	186	0
Jun-19	189	79959.13	Jun-20	186	0
Jul-19	188	77671.69	Jul-20	0	0
Aug-19	188	80432.83	Aug-20	200	49711.63
Sep-19	197	73440.53	Sep-20	180	0
Oct-19	190	73362.98	Oct-20	205	48475.62
Nov-19	204	70073.27	Nov-20	189	44751.29
Dec-19	195	80946.21	Dec-20	202	47538.72
Jan-20	188	86262.62	Jan-21	203	47872.22
Feb-20	195	84192.31	Feb-21	191	45464.05
Mar-20	191	80726.63	Mar-21	194	46074.83
Apr-20	191	0	Apr-21	204	62585.61
				Total	12,56,274.21

This second supplementary bill of Rs. 12.56 lakh was issued to the Appellant on 18/03/2024, which was not accepted by the Appellant. The Appellant filed a fresh grievance application in the Forum on 27/03/2024 against this bill. The Forum, by its order dated 28/05/2024, rejected the grievance application as per the observation given in the First Para above.

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2. Aggrieved by the above order of the Forum, the Appellant has filed this representation. The physical hearing was held on 10th July 2024 where the parties was heard at length. The main submissions and arguments of the Appellant are as below: -

- (i) The Respondent misunderstood the observations of the Ombudsman in its order dated 07/10/2022. The 1st supplementary bill of nil was issued correctly, as per the order of Ombudsman. The issue involved before the Ombudsman was only with respect to the period for which the challenged bill was issued i.e. for the period from Dec. 2016 to Nov.2018. The Ombudsman was really not concerned with any period thereafter. The Appellant has basically challenged the additional bill period from May 2019 to April 2021, which was not a part of the first appeal before the Forum, on the ground that this period could not be covered in the Electricity Ombudsman order, as it was not covered in the original bill under challenge. This aspect has been discussed in detail in the preamble Para-V. In fact the Electricity Ombudsman's order does cover this period for the reasons mentioned earlier.
- (ii) The Appellant argued that the Commission issued the “Maharashtra Electricity Regulatory Commission (**Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality**) Regulations, 2021” with effect from 25/02/2021. The upper limit of 187 KVA CD was enhanced to 200 KVA with effect from 25/02/2021. Naturally, the penalty for March & April 2021 be reviewed considering upper limit of 200 KVA. The Regulation 3.1 & 3.2 is reproduced as below:

“3. System of Supply and Classification of Consumers

3.1. Except where otherwise previously approved by the Authority, the Distribution Licensee shall give supply of energy on the following systems, namely—



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- a. *Low voltage – Alternating current single phase or Alternating current three phase-Four Wire, 50 cycles.*
- b. *High voltage – Alternating current three phases, 50 cycles.*
- c. *Extra High voltage – Alternating current three phases, 50 cycles.*

3.2 *Except where otherwise previously approved by the Authority, the classification of installations shall be as follows: -*

- a. *Two wires, single phase, 230 / 240 volts- General supply not exceeding 40 amperes.*
 - b. *Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415 volts between the phases / lines and **Sanctioned Load/Contract Demand not exceeding 160 kW/ 200 kVA.***
- (iii) The Applicant prays that the baseless and illegal 2nd bill of Rs. 12.56 lakhs dated 18/03/2024 be quashed and set aside.

3. The Respondent submitted its reply by email dated 28/06/2024. Its submissions and arguments are as below:

- (i) The Government Auditor II Maharashtra, Mumbai Branch in its Audit Para dated 05/02/2021 stated that the consumer had exceeded its Contract Demand i.e., more than 187 KVA for the period from December 2016 to December 2020. Based on this audit para, a supplementary bill for tariff difference between LT and HT of Rs.12,82,070/-was issued to the consumer on 25/05/2021 mistakenly for the lesser and older period Dec. 2016 to Nov. 2018 which was incorrect. *[Note: The higher authorities in MSEDCL have already directed to take action against the concerned for this lapse, specifically for not covering the entire valid period. Collusion in this regard cannot be ruled out.]*
- (ii) After the Electricity Ombudsman's order dated 07.10.2022, the first revised supplementary bill of Rs. Nil was issued on 08/05/2023 which amounted to


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cancelling the original bill of Rs.12.82 lakhs.

- (iii) A fresh second revised bill was issued on 18/03/2024 for tariff difference between LT and HT for the period May 2019 to April 2021 (only for the months in which the MD exceeded 187 KVA) amounting to Rs.12,56,274.21 as allowed by the Electricity Ombudsman, along with a letter and calculation sheet, and the same was debited in the consumer's bill of May 2024.
 - (iv) Meanwhile, the consumer approached the Forum for withdrawal of the above supplementary bill. The Forum in its final order dated 28/05/2024 has disposed of the grievance.
 - (v) The Respondent prays that Representation No. 104 of 2024 be rejected.
4. During the hearing, the Respondent was directed to submit the following information:-
- (i) Period of Govt. Audit Para dated 05/02/2021. The period was Dec. 2016 to Dec. 2020.
 - (ii) Actual period (month-wise) of the original bill issued on 25/05/2021, in compliance of the audit para.
 - (iii) Month-wise details of the second provisional bill issued in Table 5. This period was from May 2019 to April 2021.

The Respondent submitted the required information by email dated 23/07/2024.

Analysis & Ruling

5. Heard the parties and perused the documents on record. The Respondent contended that the Government Auditor II, Mumbai Branch, Maharashtra, in Audit para dated 05/02/2021 raised the important issue that the Appellant exceeded the upper limit of 187 KVA Contract Demand allowed to LT industrial consumers from Dec. 2016 onwards. This consumer has enjoyed power supply, which is normally sanctioned for HT consumer, and


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hence this consumer has to pay for tariff difference between LT and HT Tariff category. The audit para mentioned the period Dec.2016 to Dec.2020.

6. Accordingly, the Respondent issued a supplementary bill on 25.05.2021 of Rs. 12.82 lakhs of tariff difference between LT and HT Tariff Category but only for the period from Dec. 2016 to Nov. 2018 when actual recorded Contract Demand exceeded the sanctioned Contract Demand. The details of this supplementary bill are tabulated in Table 2. We note that issuing this bill for the time barred period was a serious mistake of the Respondent. This bill should have been issued for the period June 2019 to May 2021 at that time.

7. The year-wise events up to Nov.2018 when the recorded CD exceeded the sanctioned CD by the Appellant is captured in Table 1. This table shows that the Appellant was exceeding sanctioned CD for most of the months as shown. (The same situation might have occurred after Nov. 2018 also.)

8. When this bill came before the Electricity Ombudsman, the Electricity Ombudsman issued its order curtailing this period (Dec. 2016 to Nov. 2018) being time barred. At the same time, the Electricity Ombudsman allowed recovery for the later period (May 2019 to April 2021), even though this period was not covered in the bill. Here we would like to mention that this period was knowingly allowed in the interest of avoiding repeated representations / appeals, and on the merit of the matter. It is notable that the Appellant never came to the Electricity Ombudsman in review of this order at that time. If he was not satisfied with the Electricity Ombudsman's order (specifically allowing recovery from May 2019 to April 2021), he should have come in review of this order. He did not do so. It was only when the second supplementary bill was issued on 18.03.2024, i.e. after about one and a half years of the Electricity Ombudsman's order, that he woke up and in effect challenged this order.



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9. The Electricity Ombudsman had curtailed the time – barred period of recovery, but allowed the period of two years retrospectively from the date of the supplementary bill i.e. May 2019 to April 2021. The Appellant contends that the 1st supplementary bill of Rs. Nil was correctly issued by Vasai Sub Dn. as per the Electricity Ombudsman’s order dated 07/10/2022. This bill should not have been revised again to Rs.12.56 lakhs dated 18/03/2024.

10. The Respondent contended that the second provisional bill of Rs.12.56 lakhs dated 18/03/2024 was correctly issued for the period from May 2019 to April 2021 as per Ombudsman order dated 07/10/2022, and by taking care of escaped billing which is charted in Table 5.

11. We have already examined in detail why the above contention of the Appellant is not acceptable. The original order of the Electricity Ombudsman, and the recovery period allowed therein, stands. The Respondent issued its second supplementary bill of Rs.12.56 lakhs as per the Electricity Ombudsman’s order, **hence it is held to be valid and correct, subject to the following modification.**

12. The Appellant has also raised an issue in para 2 (ii)) that the upper limit for LT consumers was enhanced from 187 kVA to 200 kVA w.e.f. 25.02.2021. The Supply Code Regulations 2005 and Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 of the Commission were replaced by Supply Code & SOP Regulations 2021 from 25/02/2021. The upper limit of 187 KVA of recorded contract demand was enhanced to 200 KVA. Thus, he claims that he should get the benefit of LT tariff for March and April 2021. However, the Contract Demand recorded in March and April 2021 was 194 and 204 KVA respectively. Thus, the CD exceeded 200 KVA in April 2021, for which he has been correctly issued the supplementary bill. However, the CD was under this limit in March 2021, hence the Appellant is entitled to get the benefit of LT tariff for this month. The supplementary bill of Rs.12.56 lakh included an amount of

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Rs.46,074/- for March 2021, which needs to be deleted. Thus, the net recoverable amount comes to Rs.12,56,274.21 – 46,074.83 = Rs.12,10,199.38, or approx.. Rs.12.10 lakhs.

13. In view of the above, the Respondent is directed

- a) To revise the supplementary bill of Rs.12.56 lakh to Rs.12.10 lakhs, by deleting the bill of March 2021.
- b) to waive off the interest and DPC from April 2023 onwards if any, till the date of this order.
- c) to allow the Appellant to pay the revised bill in 12 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) Other prayers of the Appellant are rejected.

14. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary

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