

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 105 OF 2024

In the matter of Contract Demand Penalty and billing

Ramesh Rikhavdas ShahAppellant
(Cons. No. 002171794733)

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 dated 28/05/2024 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum). The Forum rejected this grievance application with the following observation.



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Secretary

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“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 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, and 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. 105 of 2024 (Ramesh Rikhavdas Shah)		
Months/ years	Sanctioned CD (KVA)	Actual CD Recorded (KVA)
Feb-20	186	223
Mar-20	187	204
Sep-20	188	210
Oct-20	189	204
Nov-20	190	196
Dec-20	191	208

Actual CD also exceeded 187 KVA from Oct.2019 to Dec.2019 and Jan., March & April 2021 respectively.

- III. On 25/05/2021, the Respondent issued a supplementary bill of Rs.6.02/- lakhs towards tariff difference between LT-Industrial and HT- Industrial Tariff Category for the period from Feb. 2020 to Dec. 2020 as described above. *[Note: It is not clear why the bill was not raised for the period from Oct. 2019 to Dec. 2019 and for Jan. March & Apr. 2021. This was a serious lapse on the part of the Respondent.]*

Subsequently this bill of Rs.6.02 lakhs came up before the Forum and the Electricity Ombudsman. The Electricity Ombudsman vide its order dated 07.10.2022 allowed recovery for the period from May 2019 to April 2021 which covers the actual recovery period of Feb.2020 to Dec. 2020. 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 2022.”

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The Representation No. 107 of 2022 was of Ramesh Rikhavdas Shah (the present Appellant). It is notable that the E.O.'s order allowed recovery for an even broader period than the one which was actually covered, considering the date of the supplementary bill, i.e. 25.05.2021. It is also notable that the Appellant did not challenge the common order of the E.O. in review at this stage, and specifically did not challenge the recovery period mentioned in it (May 2019 to April 2021).

The details of Sanctioned Load, Contract Demand and the first Supplementary Bill issued by the Respondent are tabulated below:-

Table 2:

Appellant	Consumer No.	Original Supplementary Bill dt.25.05.2021	First Prov. Bill issued as per Ombudsman order dated 07/10/2022
Ramesh Rikhavdas Shah	002171794733	6,01,870 for the period Feb.2020 to Dec.2020	3,05,121.93 dated 26/04/2023

IV. The monthwise details of the first provisional bill are shown below :

Table 3: Details of First Provisional Bill dated 26.04.2023, issued in compliance of E.O. order

Ramesh Shah			
Month	Amount	Month	Amount
May-19	Nil	Jun-20	Nil
Jun-19	Nil	Jul-20	Nil
Jul-19	Nil	Aug-20	Nil
Aug-19	Nil	Sep-20	35195.29
Sep-19	Nil	Oct-20	36849.55
Oct-19	Nil	Nov-20	38617.04
Nov-19	Nil	Dec-20	35550.65
Dec-19	Nil	Jan-21	Nil
Jan-20	Nil	Feb-21	Nil
Feb-20	94508.00	Mar-21	Nil
Mar-20	64401.40	Apr-21	Nil
Apr-20	Nil		
May-20	Nil	Total	3,05,121.93

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It is notable that though the E.O. had specifically allowed recovery from May 2019 to April 2021, the above bill was issued for only 6 months out of this period. This was again a lapse on the part of the Respondent.


V. (The original bill of Rs.6.02 lakhs was never paid by the Appellant, being under challenge.) The first provisional bill of Rs. 3.05 Lakhs was issued on 26.04.2023, and Rs. 3,04,650/- was paid in June 2023 against this first provisional bill.

A second provisional bill of Rs.7.83 lakhs was then issued as the corrected bill for the period from Oct. 2019 to Dec. 2019 and for Jan. March & Apr.2021 when CD exceeded 187 KVA. The details of this second provisional bill are as below:-

Table 4 :

Suppl.Bill (Rs.) dated 18.03.2024 as per compliance of E.O. Order (Second Compliance)					
Ramesh Shah					
Month	CD Recorded (KVA)	Amount	Month	CD Recorded (KVA)	Amount
May-19	163	Nil	May-20	83	Nil
Jun-19	153	Nil	Jun-20	145	Nil
Jul-19	158	Nil	Jul-20	162	Nil
Aug-19	167	Nil	Aug-20	184	Nil
Sep-19	177	Nil	Sep-20	210	49221.34
Oct-19	202	78213.4	Oct-20	204	48135.87
Nov-19	196	75109.9	Nov-20	196	46671.17
Dec-19	189	75539.6	Dec-20	208	49101.82
Jan-20	0	Nil	Jan-21	216	51270.08
Feb-20	223	121099	Feb-21	169	Nil
Mar-20	204	78803.6	Mar-21	203	48261.77
Apr-20	177	Nil	Apr-21	195	61536.29
				Total	7,82,963.75

It is notable that this bill not only covered extra months which were left out earlier (Oct. 2019 to Dec.2019, Jan. 2021 to April 2021) but also



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increased the amounts charged earlier by adding electricity duty. This bill was challenged before the Forum, which rejected the grievance.

The Appellant has now come in appeal against the Forum's order on the grounds that recovery cannot be made for the period (May 2019 to April 2021) since this period was purportedly never in consideration or under challenge before the Forum / Hon'ble Electricity Ombudsman. The Appellant contended that the (first) supplementary bill of Rs. 3,05,121.93 was correctly issued by the Respondent on 26/04//2023, but that the second **supplementary bill of Rs. 7,82,963.75 issued on 18/03/2024 was not as per the order of the Hon'ble Electricity Ombudsman dated 07/10/2022 in Rep. No. 107 of 2022** because the Electricity Ombudsman could consider only the period up to Dec. 2020.

- VI. Here we would like to clarify the reasoning behind the Electricity Ombudsman's order dated 07.10.2022. The Electricity Ombudsman was fully aware that nothing stopped the Respondent from issuing a supplementary bill for the period after Dec.2020 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 broader 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.7.83 lakhs, and it has again (unnecessarily) come in challenge before the Electricity Ombudsman. Actually, if the Appellant was not satisfied with the Electricity Ombudsman's order dated 07.10.2022 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.


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2. Aggrieved by the order of the Forum dated 28.05.2024, the Appellant has filed this representation. A physical hearing was held on 10th July 2024 where the parties were 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 Rs.3,05,121.93 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 Feb.'20 to Dec. '20. The Ombudsman was really not concerned with any period thereafter. The Appellant has basically challenged the additional bill period from Oct. 2019 to April 2021, 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-VI. 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—

- 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.***


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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. 7.83 lakhs dated 18/03/2024 be quashed and set aside.

3. The Respondent’s 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.6,01,870/-was issued to the consumer on 25/05/2021 mistakenly for the lesser period Feb.2020 to Dec.2020 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. 3,05,121.93 as per Table 3 was issued on 26/04/2023. However, there were mistakes in this bill.
- (iii) A 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. 7,82,963.75, as allowed by the Electricity Ombudsman, along with a letter and calculation sheet, and the same


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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 first revised supplementary bill of Rs. 3.05 lakhs was issued on 26.04.2023 out of which the consumer paid Rs.3,04,650/- in June 2023, and the same was adjusted against the energy bill as follows:

Table 5


Month	Bill amount (Rs.)	Bill adjusted (Rs.)	Amount payable (Rs.)	Payment (Rs.)
Jul-23	4,80,870/-	3,04,650/ (prompt payment discount applied)	1,71,750	1,71,580/-

- (vi) The Respondent prays that Representation No. 105 of 2024 be rejected.

Analysis & Ruling

4. 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 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.

5. Accordingly, the Respondent issued a supplementary bill on 25.05.2021 of Rs. 6.02 lakhs of tariff difference between LT and HT Tariff Category, but only for the period from Feb.2020 to Dec.2020 when actual recorded Contract Demand exceeded the sanctioned Contract Demand. The details of this supplementary bill are tabulated in Table 2. Considering


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the bill date of 25.05.2021, this bill should have been issued for the 2-year period May 2019 to April 2021 whenever CD exceeded 187 KVA in that period.

6. When this bill came before the Electricity Ombudsman, the Electricity Ombudsman issued its order allowing recovery for the broader 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.

7. The Electricity Ombudsman had 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. 3.05 lakhs 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.7.83 lakhs dated 18/03/2024.

On the other hand, the Respondent contended that the second provisional bill of Rs.7.83 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 4.

8. 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. 7.83 lakhs as per


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the Electricity Ombudsman's order, **hence it is held to be valid, subject to the following modification.**

9. The Appellant has 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.

The Contract Demand recorded in March and April 2021 was 203 and 195 KVA respectively. Hence CD exceeded 200 KVA in March; hence the supplementary bill for March 2021 is valid. However, CD was less than 200 KVA in April 2021. Hence the Appellant is entitled to get the benefit of LT tariff for this month April 2021. The supplementary bill of Rs.7.83 lakh included an amount of Rs. 61,536.29 for April 2021 which needs to be deleted. Thus, the net recoverable amount comes to Rs.7,82,963.75- 61,536.29= Rs.7,21,427.46 or approx. Rs.7.21 lakhs.

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

- a) To revise the supplementary bill of Rs.7.83 lakhs to Rs.7.21 lakhs, by deleting the bill of April 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.


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11. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
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