

4BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO 84 OF 2024

In the matter of change of tariff category retrospectively and refund there of

KSS Pathology (User- Occupier)..... Appellant
Devinder Jarnail S. Charanjeet Kaur (Original Consumer)
(Cons. No. 000316852564)

V/s.

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

Appearances:

Appellant: 1. Vishal Shingan, Electrician (Employee), KSS Pathology
2. Suraj Chakraborty, Representative

Respondent: 1. S. D. Gaikwad, Executive Engineer, Nerul Dn.
2. J. R. Nanote, Addl. Ex. Engineer
3. Rajiv Waman, Asst. Law Officer

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

Date of hearing: 4th June 2024

Date of Order: 21st June 2024

ORDER

This Representation was filed on 14th May 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 18th April 2024 passed by the Consumer Grievance Redressal Forum, Bhandup Zone (the

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Forum). The Forum by its order dated 18/04/2024 partly allowed the grievance application. The operative part of the order is produced below:-

- “2. The claim of the Applicant for refund of tariff difference from 03.01.2022 is rejected.
3. The Respondent is directed to change the tariff from Commercial to Public Service (Others) and refund the tariff difference amount from the date of site inspection i.e. from 19.01.2023, subject to confirmation of relevant documents by following the Rules and Regulations of the Respondent utility.
4. The Applicant is not entitled to any interest on the tariff refund amount.
5. The excess amount paid if any, should be adjusted as a credit in the subsequent bills.”

2. Aggrieved with the above order of the Forum, the Appellant has filed this Representation. A physical as well as online hearing was held through video conference on 4th June 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 29/05/2024. Its submissions and arguments are stated first for easy understanding as follows: - [The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.]

- (i) Devinder Jarnail S. Charanjeet Kaur is the Original Consumer(No. 000316852564) of MSEDCL from 27/07/2009. The consumer is billed under the Commercial tariff category from the date of connection. The details of the electric connection are tabulated below:

Table 1

| Name of Consumer | Consumer No. | Address | Sanct. Load | Date of Supply | Purpose (initial) | Online Appl.for change of tariff category | Date of Inspection | Letter given to the Consumer for relevant documents | Remarks |
|-------------------------------------|--------------|--|-------------|----------------|-------------------|---|--------------------|---|---|
| Devinder Jarnail S. Charanjeet Kaur | 000316852564 | Shop No. 14, Sector 5, CBD Belapur, Navi Mumbai. | 2 KW | 27-07-2009 | Comme r-cial | 03-01-2022 for Public Services- Others | 19-01-2023 | 09-05-2023 | No change of tariff due to incomplete application |



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[Note: There was no intimation by the consumer to MSEDCL regarding change of activity, in view of the premises being leased to another party.]

Preliminary Submissions:

- (ii) The Appellant had filed a grievance before the Forum on 11.09.2023 requesting to change the tariff category from Commercial to Public Services –Others from the year 2009. The claim of the Appellant is time barred as per Regulation 6.6 / 7.9 of CGRF & EO Regulations 2006 / 2020, as the grievance was submitted beyond two years from the date on which the cause of action arose. The Appellant was not vigilant but was dormant for a long time. [Note: The sub-category ‘Public Services – Others’ came into existence only in 2015, hence the said tariff cannot be applied from 2009.]
- (iii) The Respondent referred to the Judgement dated 21.08.2018 of Aurangabad Bench of Bombay High Court in W.P.No.6859, 6860, 6861 & 6862 of 2017 in the matter of MSEDCL Vs. Jawahar Shetkari Soot Girni Ltd. wherein the High Court held that “cause of action” would mean an actual date of legal injury/grievance caused to the consumer, and the time limit of two years will start from there. The Electricity Ombudsman by its order dated 16.08.2019 upheld the above view and dismissed the Rep.No.68, 69 & 71 of 2019 in respect of M/s. G. M. Syntex. The Bombay High Court Nagpur Bench in its Judgment dated 08.01.2020 in W.P.No.1588 of 2019, MSEDCL Vs. Mahamaya Agro Industries has upheld the above view and held that the limitation to file a grievance before the CGRF is two years from the date of cause of action.

Main Submissions:


- (iv) The Owner, Devinder Jarnail S. Charanjeet Kaur had initially applied for electric connection under the Commercial category as shown in Table 1.
- (v) The Appellant - occupier (KSS Pathology Lab) is running a pathology lab in the premises at present, but MSEDCL was not intimated about the change in use from commercial to pathology laboratory. The commercial tariff was correctly applied


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as per the original application and the purpose of supply of the original consumer. Therefore, it is not a case of wrong application of tariff.

- (vi) This Appellant – occupier is not the registered consumer of MSEDCL. The electric connection is not in its name or of any hospital. Hence, the Appellant has no locus standi to file and agitate the present Representation.
- (vii) **The Appellant submitted an online application for change of tariff category from Commercial to Public Services- Others on 03.01.2022 contending that it is running Pathology Lab.** The Pathology Laboratory is working under a commercial atmosphere in general. Only officially recognized / registered Pathology Labs (which fulfil the condition of having the statutory permission of the Government) are considered for concessional tariff under Public Services- Others tariff category. (There are many allegedly unauthorized Pathology laboratories). The Appellant did not submit any statutory documents in hard copies along with the application for tariff change, specifically the License of Pathology Lab, Rent Agreement, NOC of owner etc. The premises were inspected on 19.01.2023 when a pathology lab was found working at the premises. *[Note: The Respondent has not explained why there was a delay of one year to conduct the inspection.]* At that time, the Appellant was requested to submit the statutory documents pertaining to the present lab. A proposal was then submitted to the Higher office vide letter dated 25.01.2023. However, on 17.04.2023 the higher office raised a query and directed them to submit the documents of Rent Agreement, NOC of the original consumer and other statutory relevant documents of government authorities. **Accordingly, through a letter dated 09.05.2023, the consumer was asked to submit the relevant documents, but these documents have not been submitted till date to MSEDCL.** Hence, the application dated 03.01.2022 is not a complete application unless and until hard copies of statutory documents are submitted for availing concessional tariff.
- (viii) The Respondent relies on Regulation 6 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply)


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Regulations, 2021 (Supply Code & SOP Regulations 2021) which is reproduced as below:

“6. Processing of Applications.

*6.1 After a Distribution Licensee receives a **duly completed application** containing all necessary information / documents in accordance with Regulation 5.4 above, the Distribution Licensee shall send its Authorized Representative to-*

- a. inspect the premises to which supply is to be given, with prior intimation to the Applicant; and*
- b. study the technical requirements of giving supply.”*

- (ix) The Appellant filed the grievance application in the Forum on 11/09/2023. The Forum by its order dated 18/04/2024 allowed the grievance application, subject to submission of the required documents. However, even after the Forum’s order, the Appellant did not bother to submit the relevant documents. As and when the Appellant submits the completed application along with the documents, from that date the tariff change will come into effect from the second billing cycle. In view of the above facts and circumstances, there is no deficiency in service.
- (x) The timely action of the Appellant (in submitting the documents) would grant an opportunity to MSEDCL to verify the usage of the Appellant and to apply the proper tariff. **At present, it is very difficult to ascertain as to what activity was carried out on the said premises in the past.**
- (xi) The Appellant, during the hearing before the Forum, submitted an unregistered / non-notarized Rent agreement dated 12.03.2021 (for a period of 11 months), and the subsequent Rent agreements dated 24.02.2022, 16.01.2023 and 16.12.2023. These agreements are doubtful and raise a suspicion of afterthought, as all these agreements are in the same handwriting and same style of writing, and all were neither registered nor notarized. Further, on perusal of the Rent agreement dated 24.02.2022, the agreement is shown as executed on 24.02.2022, but the date of sale / date of Stamp is 25.02.2022. It is not possible to execute the agreement before the the stamp was purchased. **Further, all these agreements are between Mr. Jarnail Singh and Dr.Harmeet Singh Sahni, then how are they connected with KSS**


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Lab is not shown. [Note: This argument is not valid, as Dr. Harmeet Singh Sahni is the proprietor of KSS Lab.] All these documents seem fabricated and an afterthought. In the agreement, the premises is shown as rented for Commercial purpose.

- (xii) A leave and licensee agreement, even for a period of 11 months, is compulsorily required to be registered, otherwise it has no evidentiary value in the eyes of the law.
- (xiii) The Appellant did not submit the license issued by the appropriate controlling Municipal /Govt. (Health) authority for running the pathology lab for the required period. The Appellant only submitted the Shop Act license for showing the Pathology Lab Activity, but this is not the statutory license which is required for running a Pathology Lab. [Note: The Respondent should clearly mention in its online application form and website as to which authority's license / certificate is required for path labs.]
- (xiv) It was the duty of the Appellant itself to apply to the Respondent in time for change of tariff with the documents showing the activity of Pathology Lab. The Appellant applied to the Respondent only on 03.01.2022 but was reluctant to submit the documents for change of tariff, therefore this application is not a duly completed application, hence the Appellant is not eligible for change of tariff from that date. The required documents have not still been submitted till date even after the letter dated 09.05.2023. Regulation 4.13 of MERC SOP Regulation, 2014 reads as under:

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“Change of name and change of tariff category

4.13 The Distribution Licensee shall intimate the charges to be borne by an applicant for change of name and change of tariff category within seven (7) days of receipt of an application in this regard and shall give effect to it within the following time limits :—

(a) change of name shall be effected within the second billing cycle on receipt of an application and payment of necessary charges.

(b) change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.”

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The Regulation 5.8 of Repealed Supply Code, 2005 states as under :-


“5.8 Notwithstanding anything contained in these Regulations, an application shall be deemed to be received on the date of receipt of the duly completed application containing all the necessary information / documents in accordance with Regulation 4 above, payment of all approved charges of the Distribution Licensee in accordance with Regulation 3 above, availability of suitable piece of land or room in accordance with Regulation 5.5 and Regulation 5.6 above and all consents / permissions as may be required by the applicant and the Distribution Licensee under any law for the time being in force.”

In view of the above, the MSEDCL is duty bound to change the tariff within the second billing cycle only on receipt of a **duly completed application**. In the present case MSEDCL did not receive duly completed application till date, therefore there is no deficiency or imperfection in the service of MSEDCL.

- (xv) The Forum has considered all the issues and accordingly passed the order dated 18.04.2024 and hence it needs no interference. The said order will be implemented when the required documents are submitted.
- (xvi) In view of the above, the Respondent requested that the present Representation be dismissed.


3. The Appellant’s submissions and arguments advanced in the hearing are stated as below:

- (i) The original consumer is Devinder Jarnail S. Charanjeet Kaur (No.000316852564) who entered into a Leave and License Agreement with Dr. Harmeet Singh Sahni (M.B.B.S, M.S.), the proprietor of KSS Pathology Lab., for the said premises of Shop No. 14, Sector 5, CBD Belapur, Navi Mumbai. Initially, the agreement was for 11 months from April 2021, and was renewed every year till date. The details of the connection are tabulated in Table 1.
- (ii) The Appellant started a pathology lab at the said premises from April 2021 onwards. The Appellant has all the required registrations and permissions from the State Govt., and is regular in the payment of electricity bills.


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- (iii) The original consumer was initially billed under the Commercial tariff category and continued with the same even after the pathology lab started functioning. A Pathology Lab comes under the tariff category of Public Services – Others, but the Respondent MSEDCL is charging Commercial tariff which is bad in law.
- (iv) The Appellant applied online for change in Tariff category from commercial to public services others on 03.01.2022. The Respondent inspected the premises of the Appellant on 19.01.2023 and confirmed that a pathology lab is functioning on this premise. However, the Respondent did not change the tariff category on the grounds that required documents were not attached.
- (v) During the hearing, the Appellant admitted that he had not submitted the documents. He argued that these documents were not needed, and a decision should be taken based only on the purpose or use.
- (vi) The Appellant filed a grievance application in the Forum on 11/09/2023. The Forum by its order dated 18/04/2024 partly allowed the grievance application. The operative part of its order is produced in the first para. The Appellant is a Govt. recognized dispensary / pathology. *[Note : No documents are produced in support of this statement]*
- (vii) In spite of frequent verbal follow-up, MSEDCL has not corrected its tariff till date, and has not refunded the excess amount collected from the Appellant *[Note: The Appellant did not put up any record of follow up.]* It is the duty of MSEDCL to change the tariff category suo moto and to refund the excess amount as per MERC guidelines.
- (viii) The Appellant prays that the Respondent be directed to apply Public Service- Others tariff category retrospectively from the date of application, i.e. 03/01/2022, and to refund the tariff difference between commercial and Public Services-Others tariff category retrospectively from 03/01/2022 onwards.


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4. During the course of the hearing, the Appellant was directed to submit statutory certificates issued by the concerned Government Authorities pertaining to the activity of pathology laboratory.

5. Post hearing, the Appellant produced documents as follows: -


- a) Certificate of Registration (Registration No.2011/09/2962) for MBBS of Maharashtra Medical Council, Mumbai in the name of Dr. Sahu Piyush Deviprasad. *[Note: He is M.D.(Pathology) hired by the Appellant to run the lab.]*
- b) Certificate of Maharashtra University of Health Sciences, Nashik conferring the degree of Doctor of Medicine (Pathology) to Dr. Sahu Piyush Deviprasad.
- c) Registration Certificate of Mumbai Waste Management Limited (a private organization) in the name of Dr. Harmeet Singh Sahni.
- d) Application for intimation dated 17/03/2021 of Maharashtra Shop & Establishment Rule 2018 – Form F on the said premises of the Appellant, Pathology Lab.

Analysis and Ruling

6. Heard the parties and perused the documents on record. Devinder Jarnail S. Charanjeet Kaur is the Commercial consumer (No. 000316852564) of MSEDCL of which the details are already tabulated in Table 1.

7. The Appellant contended that the tenant / proprietor Dr. Harmeet Singh Sahni and the owner, Devinder Jarnail S. Charanjeet Kaur entered into a Leave and License Agreement for the said premises from April 2021 which was renewed every year till date. A path lab is run in the said premises. The Appellant made an online application on 03/01/2022 for change of tariff category from Commercial to Public Services-Others from date of application i.e., 03/01/2022.

8. The Respondent contended that the Appellant is not the registered consumer of MSEDCL as the electric connection does not stand in its name; also the change in use as Pathology Lab


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was never intimated to them. Hence, the Appellant has no locus standi to file and agitate the present Representation. The Respondent came to know about the pathology lab use only on receipt of its application for change of tariff category on 03/01/2022. The premises were inspected on 19/01/2023 and the proposal for concessional tariff was submitted to the Higher office for approval vide letter dated 25/01/2023. However, the documentation of the Appellant was incomplete, so a letter dated 09/05/2023 was issued to him to submit the relevant documents i.e. License of Pathology Lab, Rent Agreement, NOC of owner etc. along with the application for tariff change, but the said documents were never submitted till date. The Respondent stated that they will comply with the Forum's order in toto once the required documents are submitted.


9. The Commission issued a Tariff Order in Case No. 121 of 2014 (effective from 01.06.2015) wherein, for the first time, it subdivided the category LT-X: LT- Public Services, into two subcategories which are as follows: -

LT X (A): LT - Public Services - Government Educational Institutes and Hospitals, and
LT X (B): LT - Public Services – Others.

The activities under the second sub- category i.e., LT X (B): LT - Public Services – Others are as follows: -

“Applicability : This Tariff shall be applicable to Educational Institutions such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms other than those of State or Central Government, Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat;”(Emphasis added)

The Commission subsequently issued similar Tariff Orders in Case No. 48 of 2016 dated 03.11.2016, in Case No. 195 of 2017 dated 01.09.2018, and in Case No. 322 of 2019 dated 31.03.2020 respectively.



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10. The main issue of contention is whether some certificates or documents are required, and if so, which specific documents of which public authorities are required in order to apply public services – others tariff category to path labs. This authority has taken pains to verify which documents are required by directly contacting various government authorities in the Municipal Corporation of Navi Mumbai, public health department, etc. Currently there seems to be a lack of clarity as to which documents are required. There is no mention of which documents are required on the MSEDCL website or on their online application form for change of tariff. In fact, in the online form, nowhere is it mentioned that attached documents must be submitted in the form of hard copies, much less exactly which documents are specifically required. Ideally, there should be a provision for online submission of attached documents along with the application form, but this provision has not been made. In these circumstances, there is lack of transparency and clarity for consumers who apply for concessional tariffs, leading to avoidable delays, harassment, and the possibility of wrong decisions being taken at the higher level.

11. We find that there have been mistakes on both sides. The Respondent does not have a clear and transparent policy as to which documents and from which authorities should be submitted for availing concessional tariff by path labs. Also, there was an unjustified delay of 1 year between the online application and site inspection.

12. At the same time, the Appellant was also at fault as he did not submit the required documents even after receiving the Respondent's letter dated 09.05.2023 nor after the Forum's order dated 18.04.2024. It was only after persistent questioning in the hearing before the Electricity Ombudsman that the Appellant finally submitted the documents as mentioned in para 5. Also, the Appellant has not taken this hearing seriously as is evident from the fact that he sent his electrician, (a junior employee) to attend the hearing. This employee was unable to provide much information on the questions raised by the Electricity Ombudsman, leading to unnecessary delay and wastage of time of this authority in trying to obtain necessary information, specifically relating to important documents of the Appellant such as various


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registration certificates etc. Due to these reasons, the Appellant does not deserve the benefit of concessional tariff from the date of his application dated 03.01.2022.


13. Based on the above discussions, we hold that these documents now submitted by the Appellant are sufficient as proof of running a path lab, when considered along with the site inspection report of the Respondent dated 19/01/2023. In these circumstances, there is no need to wait any further for confirmation of relevant documents as directed by the Forum. We hold that the relevant documents have been confirmed, and hence the Appellant should now be given the benefit of the Forum's order.

14. The Respondent is directed to:-

- (a) Change the tariff category to Public Services – Others retrospectively from the date of inspection i.e. 19.01.2023 in the next billing cycle.
- (b) The tariff difference between Commercial and Public Services – Others tariff category be credited to its Consumer No. 000316852564.
- (c) The other prayers of the Appellant are rejected.

15. The instant representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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