

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 71 OF 2024

In the matter of Change of tariff category and recovery retrospectively

Dr. Venkatesh Hanchate (User / Occupier) Appellant
(Original Consumer - Sadasukhi Group)
(Consumer No. 000294593101)

V/s.

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

Appearances:

Appellant : 1. Mayank Jain, Jr. Admin
2. Suraj Chakraborty, Representative

Respondent : 1. S.D. Gaikwad, Executive Engineer, Nerul Dn.
2. Rajiv Waman, Asst. Law Officer, Vashi


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 14th May 2024

Date of Order : 28th May 2024

ORDER

This Representation was filed on 16th April 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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



dated 12th February 2024 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum). The Forum by its order partly allowed the grievance in Case No. 86 of 2023/24. The operative part of the order is as below:

“The recovery bill of Rs.4,25,024.91/- is hereby quashed and set aside. The Respondent is directed to issue the fresh bill for the period of 24 months i.e. from the October 2020 to October 2022 without DPC, Interest or any penalty. The excess amount if paid any, shall be adjusted as a credit in the subsequent bills of the consumer.”


2. PREAMBLE

- (i) The original consumer is Sadasukhi Group from 22.11.2013 for commercial purpose. The details of electric connection, and change in purpose, retrospective recovery etc. are tabulated below: *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.]*

Table 1:

Name of Consumer & Consumer No.	Address	Sanctioned Load (KW)	Contract Demand (KVA)	Date of Supply and purpose	Change in Purpose	Date of Inspection	Irregularities Observed	Retrospective Recovery (Rs.) & its Period
Sadasukhi Group having Consumer No. 000294593101	Shop No.6A, Plot No.1, Sector-10, Sanpada	25	31	22.11.2013 for commercial purpose	Hospital from Nov. 2018 [Dr. Venkatesh Hanchate (User)]	25.08.2022	Consumer was billed under the tariff of Public services: Govt. Hospitals instead of Public Services -Others from Nov. 2018 onwards.	Rs. 4,25,025/- for the period from Apr. 2020 to Oct. 2022 (31 months)

- (ii) This premises is being used for hospital purpose by the occupier from Nov. 2018 onwards. The Appellant’s tariff was mistakenly changed from Commercial to “Public Services: Govt. Hospitals” in the month of November 2018 instead of to “Public Services- Others.” *[Note: This was a mistake on the part of the Respondent.]*
- (iii) The Team of Assistant Director (S&E) of the Respondent inspected the premises of the Appellant on 25.08.2022. It was found that the supply was being used for running a private hospital, whereas the Appellant was billed under the lower


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai




tariff of “Public Services: Govt. Hospitals”. This being a private hospital, it should be billed under Public Services- Others tariff category.

- (iv) In view of the report of Assistant Director (S&E), a supplementary bill of Rs.4,25,025/-was issued for the tariff difference between **LT VII (A): LT - Government Educational Institutions & Hospitals and LT VII (B): LT - Public Services - Others** for 31 months for the period from April 2020 to October 2022. The tariff category was changed from Nov. 2022.
- (v) The Forum by its order has already directed to revise supplementary bill for 24 months (instead of 31 months) as per Section 56(2) of the Electricity Act, 2003 (the Act), i.e. Oct. 2020 to Oct. 2022.

3. The Appellant has filed this Representation against the above order. A hearing was scheduled and held on 14th May 2024 where the Appellant was physically present whereas the Respondent attended the hearing through video conferencing. Parties were heard at length. The Appellant’s submissions and arguments are as follows: -

- (i) The details of connection and change in purpose, retrospective recovery etc. are tabulated in Table 1 of Para 2.
- (ii) The consumer started running a hospital in the premises in the beginning of 2019. It was the duty of the Respondent to apply the proper tariff to the consumer, however the Respondent failed to do so. Therefore the consumer is not at fault for paying the bills under the lower tariff category of Public Services which is applicable for hospitals run by Government of Maharashtra.
- (iii) 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. Accordingly, the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Appellant submitted that the Respondent should bill prospectively (i.e. from November 2022) for change of tariff category to Public Services -Others.

- (iv) The Appellant prayed that the Respondent be directed to withdraw the supplementary bill of Rs. 4,25,025/- in toto towards tariff difference between Public Services & Public Services -Others for the period from April 2020 to October 2022 along with interest and delayed payment charges levied.


4. The Respondent filed its reply dated 07.05.2022. The Respondent's submissions and arguments are stated as below:

Maintainability of Representation:

- (i) The Respondent pointed out that
- (a) the Appellant had already filed a review application (Case No.160 of 2023-24) before the Forum challenging its order dated 12.02.2023 (the operative part of the order is referred in the first para). The MSEDCL had already filed its reply on 03.04.2024 on this review application, as per the notice of the Forum dated 22.03.2024. **The review is under process in the Forum and the grievance is sub-judice before the Forum at present.** The Appellant did not declare this fact in the prescribed Schedule B submitted to this office on 16th April 2024. The Appellant did not come with clean hands before this Appellate Authority. During the pendency of a review, the present Representation is not maintainable and is liable to be rejected.

Submissions on Merit:

- (ii) The Respondent submitted that the present case is not a case of Classification and Reclassification of Tariff, but a case of escaped billing. The Appellant has enjoyed and consumed the electricity under Public Services –Others lower tariff category from Nov. 2018. He is actually liable to pay this tariff retrospectively from Nov. 2018 to Oct. 2022. The tariff category of the consumer was changed from **LT VII (A): LT -**


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Government Educational Institutions and Hospitals to LT VII (B): LT - Public Services - Others from Nov. 2022 onwards. The Tariff Order of the Commission in Case of 322 of 2019 came in force from 01.04.2020. Hence, the retrospective recovery has been restricted from April 2020 to Oct. 2022.


- (iii) The Respondent cited the Judgment dated 18.02.2020 of the Hon'ble Supreme Court of India in Civil Appeal No.1672 of 2020 in the case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla.

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.” (Emphasis added)

It is held that in such cases, retrospective recovery can be done only for two years from the date of cause of action as per Section 56(2) of the Act. The Respondent also relied on the Judgment dated 12.03.2019 of the Larger Bench of Bombay High Court in W.P. 10764 of 2011 along with other Writ Petitions on Section 56 (2) of the Act, which also held that in such cases, retrospective recovery can be made for two years from the date of cause of action in case of deficiency in service.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (iv) The Respondent cited the Judgment of the Supreme Court 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.**
- (v) The Respondent also referred to various orders of the Electricity Ombudsman (Mumbai) as below:
- a) Rep. 32 o 2022 dated 09.10.2020.
 - b) 13 & 14 of 2021 dated 07.05.2021.
 - c) 66 of 2022 dated 07.07.2022.
- (vi) The ratio of 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 the present case.
- (vii) The Appellant is misusing the platform of the Grievance Redressal Mechanism wrongly. The Respondent prays that the Appeal filed by Appellant be dismissed with costs.

Analysis and Ruling

5. Heard the parties and perused the documents on record. Initially the electrical connection was released to “Sadasukhi Group” for Commercial purpose as per its request on 22.11.2013. The name of “Sadasukhi Group” continues till date. The connection details are tabulated in Table 1 of Para 2(i).

6. There is no dispute between the parties that the electric connection is in the name of “Sadasukhi Group” for the purpose of commercial tariff activity for the period from 22.11.2013 to Oct. 2018, and subsequently the purpose was mistakenly changed to Public Services – Govt. hospital from Nov. 2018 and it continues till date. The Respondent has issued a supplementary bill of Rs. 4,25,025/- towards retrospective recovery of tariff difference for the period from


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



April 2020 to Oct. 2022 as shown in Table 1. The issue under dispute is whether this retrospective recovery is valid and whether this period is valid.

7. However, in the instant representation, it has been pointed by the Respondent that the Appellant has already filed a review (R-160) before the Forum on 14.03.2024 to set aside the retrospective recovery. A notice was issued to the Respondent on 18.04.2024. Meanwhile, the Appellant has also filed this representation before the Appellate Authority on 16.04.2024 without any intimation that a review has been filed before the Forum. Schedule B declaration has been wrongly submitted by the Appellant, and he has hidden the fact that he has already moved a review application in the Forum against the same order which is in process at the Forum.


Regulation 19.22 of CGRF & EO Regulations 2020 states as follows:

“19.22 The Electricity Ombudsman shall entertain a representation only if all the following conditions are satisfied:

(a)

(g) The representation by the Complainant, in respect of the same Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not already been passed by any such court, tribunal, arbitrator or authority;”

8. We express our displeasure on the act of the Appellant for filing this representation and hiding the fact that a review application was already pending before the Forum. This is nothing but wastage of important time and resources of this authority. In view of the above, a cost of Rs. 4000/- is imposed on the Appellant.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



9. The Representation is rejected being not maintainable, and is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
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Electricity Ombudsman Mumbai

