

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 106 OF 2024

In the matter of Contract Demand Penalty and billing

Sandeep V. Sankhe.....Appellant
(Cons. No. 001849032 470)

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
Electricity Ombudsman Mumbai



“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 Feb. 2019 to Dec. 2020. The said data is as below:



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Table 1:


Rep.No. 106 of 2022 : Sandeep V. Sankhe					
Month	Sanctioned Contract Demand (KVA)	Actual Con.Demand Recorded (KVA)	Month	Sanctioned Contract Demand (KVA)	Actual Con.Demand Recorded (KVA)
Feb-19	186	218	Nov-19	186	218
Mar-19	186	231	Dec-19	186	192
Apr-19	186	215	Jan-20	186	225
May-19	186	212	Feb-20	186	226
Jun-19	186	198	Mar-20	186	214
Jul-19	186	215	Apr-20	186	214
Aug-19	186	198	Oct-20	186	217
Sep-19	186	249	Nov-20	186	212
Oct-19	186	226	Dec-20	186	245

III. On 25/05/2021, the Respondent issued a supplementary bill of Rs.13.49 /- lakhs towards tariff difference between LT and HT- Industrial Tariff Category for the above period. *[Note: It is not clear why the bill was not raised till April 2021, if the CD was exceeded in this period.]*

Subsequently this bill of Rs.13.49 lakhs came up before the Forum and the Electricity Ombudsman. The Electricity Ombudsman vide its common order dated 07.10.2022 quashed the bill for the period up to April 2019, 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 2022.”


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It is notable that the Appellant did not challenge this common order in review at this stage, and specifically did not challenge the recovery period mentioned in it (May 2019 to April 2021).

The Representation 106 of 2022 was of Sandeep Sankhe (the present Appellant). Accordingly, the Respondent issued a revised supplementary bill on 26.04.2023 of Rs.8.2 lakhs.

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 Suppl. Bill (Rs.) as per Govt. Audit Para	First Prov. Bill issued as per Ombudsman order dated 07/10/2022
Sandeep V. Sankhe	001849032470	150 KW/ 186 KVA	02.06.2018	13,49,030/- dated 25.05.2021	Rs.8,20,317.50 dated 26/04/2023

The detailed breakup of the revised bill dated 26.04.2023 is as below:-

Table 3

Monthwise Suppl.Bill (Rs.) demanded as per compliance of E.O. Order (First Compliance)			
Month	Amount	Month	Amount
May-19	63438.05	Apr-20	
Jun-19	65118.55	May-20	
Jul-19	63568.30	Jun-20	
Aug-19	69467.30	Jul-20	
Sep-19	63756.00	Aug-20	
Oct-19	64354.30	Sep-20	
Nov-19	61659.25	Oct-20	33689.32
Dec-19	71127.95	Nov-20	34951.20
Jan-20	67524.50	Dec-20	27149.73
Feb-20	67124.45		
Mar-20	67388.60	Total	820317.50


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- IV. The original bill of Rs.13.49 lakhs was never paid by the Appellant, being under challenge. The first provisional bill of Rs. 8.20 Lakhs was issued on 26.04.2023, and was paid in June 2023.
- V. A second provisional bill of Rs.12.66 lakhs was then issued as the corrected bill for the period from May 2019 to April 2021 when CD exceeded 187 KVA, as allowed by the Electricity Ombudsman. The details of this second provisional bill are as below:-

Table 4 :

Suppl.Bill (Rs.) demanded & date as per compliance of E.O. Order (Second Compliance)					
Sandeep Sankhe					
Month	CD Recorded (KVA)	Amount (Rs.)	Month	CD Recorded (KVA)	Amount (Rs.)
May-19	212	81739	May-20	186	Nil
Jun-19	198	76762	Jun-20	186	Nil
Jul-19	216	84204	Jul-20	150	Nil
Aug-19	199	82424.6	Aug-20	158	Nil
Sep-19	249	99953.8	Sep-20	182	Nil
Oct-19	226	89554.2	Oct-20	217	51396.63
Nov-19	219	83530.6	Nov-20	212	50140.36
Dec-19	192	80503.8	Dec-20	244	57252.17
Jan-20	225	92766.7	Jan-21	221	52250.61
Feb-20	226	92582	Feb-21	190	44980.49
Mar-20	214	87217.7	Mar-21	185	Nil
Apr-20	214	Nil	Apr-21	188	58269.75
Total					12,65,528.18

This bill was challenged before the Forum, which rejected the grievance vide its order dated 28.05.2024.

The Appellant has now come in appeal against this order on the grounds that recovery cannot be made for the broader period (May 2019 to April 2021) since this period was purportedly never in consideration or under challenge before the Hon'ble Electricity Ombudsman.


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The Appellant contended that the (first) supplementary bill of Rs. 8,20,317.50 was correct, but that the second **supplementary bill of Rs. 12,65,528.18 issued on 18/03/2024 was not as per the order of the Electricity Ombudsman dated 07/10/2022** 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 Hon'ble Electricity Ombudsman was fully aware that while the billed period of Feb. to April 2019 was barred by limitation, nothing stopped the Respondent from issuing a supplementary bill for the subsequent period up to April 2021 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 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.12.66 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, specifically allowing recovery from May 2019 to April 2021, he should have come in review of this order within one month. But he did not do so. In effect he is challenging the Electricity Ombudsman's original order now.

2. Aggrieved by the above order of the Forum, the Appellant has filed this representation. A 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 Rs.8,20,317.50 was


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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.'19 to Dec. '20. The Ombudsman was really not concerned with any period thereafter. The Appellant has basically challenged the additional bill period from Jan 2021 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.*
- 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*



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and Sanctioned Load/Contract Demand not exceeding 160 kW/ 200 kVA.”

(iii) The Applicant prays that the baseless and illegal second bill of Rs. 12.66 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.13,49,030/-was issued to the consumer on 25/05/2021 for the period Feb. 2019 to Dec.2020 which was partly incorrect.
- (ii) After the Electricity Ombudsman’s order dated 07.10.2022, a first revised supplementary bill of Rs. 8,20,317.50 was issued on 26/04/2023, as given in Table 3.
- (iii) A second revised bill was issued on 18/03/2024 for the extended period May 2019 to April 2021 (only for the months in which the MD exceeded 187 KVA) amounting to Rs. **12,65,528.18** 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 first revised supplementary bill of Rs. 8,20,320/- was issued on 26.04.2023, which the consumer paid on 12.06.2023 and the same was adjusted against the energy bill as follows:

Table 5


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Month	Bill Amount (Rs.)	Bill adjusted (Rs.)	Amount payable (Rs.)	Payment (Rs.)
Jul-23	4,47,710 /-	4,40,660 /- (prompt payment discount applied)	0	0
Aug-23	5,00,040 /-	3,79,195 /- (prompt payment discount applied))	1,20,840 /-	1,16,160 /-


The above table clearly shows that Rs. 8,20,320/- paid by the consumer is adjusted fully against the bill of July 2023 and partly against the bill of August 2023.

- (vi) The Respondent prays that Representation No. 106 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 of Rs. 13.49 lakhs on 25.05.2021 of tariff difference between LT and HT Tariff Category, but only for the period from Feb.2019 to Dec.2020 when actual recorded Contract Demand exceeded the sanctioned Contract Demand. The details of this supplementary bill are tabulated in Table 2. This bill should actually have been issued for the period May 2019 to April 2021, considering a period of two years retrospectively from the date of issue of the bill.


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6. When this bill came before the Electricity Ombudsman, the Electricity Ombudsman issued its order curtailing the period prior to May 2019 as time barred. Recovery from May 2019 to Dec. 2020 was upheld. At the same time, the Electricity Ombudsman allowed recovery for the later period (Jan.2021 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. 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. 12.66 lakhs as per the Electricity Ombudsman's order, **hence it is held to be valid subject to the following modification.**

8. 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 with effect from 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 185 and 188 KVA respectively. Hence, CD did not exceed 200 KVA in both these months. However, the Respondent mistakenly issued a supplementary bill for April 2021. The Appellant is entitled to get the benefit of LT tariff for this month of April 2021. The supplementary bill of Rs.12.66



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lakhs included an amount of Rs. 58,269.75 for April 2021 which needs to be deleted. Thus, the net recoverable amount comes to Rs.12, 65,528.18- 58,269.75 = Rs.12, 07, 258.43, or approx. Rs.12.07 lakhs.

9. In view of the above, the Respondent is directed
- a) to revise the supplementary bill of Rs.12.66 lakhs to Rs.12.07 lakhs, by deleting the tariff difference bill of April 2021.
 - b) to waive of 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 10 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 a 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.
10. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

