

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 70 OF 2024

In the matter of Change of tariff category and refund thereof

Rajgobind Nursing Home (User and Tenant)..... Appellant
(Ashokkumar Chaurasiya and Three Others – original landlords)
(Consumer No. 029471112443)

V/s.

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

Appearances:

Appellant: 1. Vishal Shingan
2. Suraj Chakraborty, Representative

Respondent: 1. Satish Sarode, Executive Engineer
2. C.U. Dahiphale, Addl. Ex. Engr, Kharghar


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


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Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 27th February 2024 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum). The Forum by its order partly allowed the grievance in Case No. 87 of 2023/24. The operative part of the order is as below:

“The claim of the Applicant for refund of tariff difference from 23.11.2021 is rejected.

The Respondent is directed to change the tariff from Commercial to Public Services (Others) from the date of inspection i.e. 19.07.2023 by following the Rules and Regulations of the Respondent utility.”

2. The Appellant (Dr. Harmeet Singh Sahni, Proprietor, Rajgobind Nursing Home) has filed this Representation against the above order. A hearing was 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: - *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ in brackets where needed.]*


- (i) The Appellant has entered into a Leave & Licence Agreement with the owners Ashokkumar Chaurasiya and three others on 20.07.2021 for the premises consisting of ground plus three upper floors with terrace at Plot No. 96, Sector- 20, Kharghar, Panvel, Dist. Raigad for a period of five years from 10.05.2021 to 09.05.2026.
- (ii) Medical Officer of Health, Panvel City Municipal Corporation has issued a Certificate of Registration under Bombay Nursing Home Registration (Amendment) Act 2005 in the name of Harmeet Singh Sahni, MBBS, MS at the said address of Plot No. 96 on 07.05.2021.
- (iii) On the same day, i.e. 07.05.2021, the Appellant secured power supply (No. 029471112443) from the Respondent MSEDCL for the purpose of “Hospital & Diagnostic Centre cum Pathology Lab”, and since then has been regularly paying


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the electricity bills. The supply was initially for construction purpose. The original owner, Ashokkumar Chaurasiya and Others had applied for permanent supply and the supply of the Appellant was released under Commercial Tariff Category on 16.08.2021. Thereafter the tenant started running the hospital. The Appellant is eligible for “Public Service-Others” as supply is being used for hospital purpose, but the Respondent is charging the Appellant under Commercial Tariff Category from the date of connection, i.e. 16.08.2021.

- (iv) **The Appellant applied online for change of tariff category to the Respondent on 23.11.2021 (CFC 36417258 dated 21.11.2021, and after that it was applied online on 23.11.2021).**
- (v) In spite of the frequent follow up verbally, the Respondent has not changed the tariff from Commercial to Public Services-Others from 16.08.2021 till date. It is the duty of the Respondent to change the tariff to Public Services-Others suo-moto as per MERC Tariff Orders in force.
- (vi) The intension of MSEDCL to charge commercial tariff is only to generate revenue, which is a violation of law.
- (vii) The Appellant filed a grievance application in the Forum on 11.09.2023. The Forum by its order partly allowed the grievance. The operative part of the order is already produced in the First Para of this order.
- (viii) Points against the Forum’s order: -
The Appellant’s online application date for change of tariff was 23.11.2021. The Respondent wrongly claimed that it is the duty of the consumer to upload the required documents in the Respondent’s portal; however, **there is no provision or option for uploading documents in their Web Portal.** However, the Forum neglected this issue. The Respondent never intimated the consumer to submit the statutory documents of Hospital registration. The Respondent contended before the Forum that the tenant is not its consumer; however, did not request to submit the rent agreement.


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(ix) In view of the above, the Appellant prays that the Respondent be directed to change the tariff category from Commercial to Public Services-Others from 16.08.2021 onwards and to refund the tariff difference retrospectively in the ensuing bill of the Appellant.

3. The Respondent's submissions and arguments are stated as below:

(i) The Appellant is a LT Consumer (No. 028652899996) from 16.08.2021 for commercial purpose. The connection details of the Appellant are tabulated as below:


Table 1:

Name of Consumer	Consumer No.	Address	Date of Application	Sanctioned Load (KW)	Contract Demand (KVA)	Purpose	Date of supply	Date of Application for change of tariff category
Ashokkumar Chaurasiya and Others Three	029471112443	Plot No. 96, Sector- 20, Kharghar, Panvel, Dist. Raigad	16.07.2021	40	50	Commercial	16.08.2021	23.11.2021

(ii) The Appellant had initially applied for commercial purpose as per A1 Form on record, and the connection was accordingly released under commercial tariff category.

(iii) The present complainant Dr. Harmeet Singh Sahni (Rajgobind Nursing Home) is the user and as such not the consumer of the Respondent, therefore it is irrelevant to take his complaint on record. The Respondent has no concern with the rental documents executed between Ashokkumar Chaurasiya and Dr. Harmeet Singh Sahani (Rajgobind Nursing Home), unless and until it was produced to the Respondent at relevant time. It was never produced before the Respondent till the case was heard in the Forum.


(iv) On 23.11.2021 vide Application ID-36417258, Ashok Kumar Chaurasiya and others applied for tariff change from LT-II (Commercial) to LT-X B (Public


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Services -Others), but on verification of the application it was found that the relevant required documents were not uploaded/submitted, hence the application was rejected on 14.08.2023. *[Note: During the hearing the Respondent was specifically asked if there was a provision in their portal to submit documents online. There was no reply. On verification of the portal it is seen that there was no such provision. Nor was there any intimation to Applicant regarding submission of hospital registration documents.]*


- (v) On 03.07.2023, for first time Dr. Harmeet Singh Sahani (Rajgobind Nursing Home) came forward and intimated to the Respondent by his letter (dated 15.06.2023) which was received by the Respondent on 03.07.2023, about the running of a Nursing Home in the said premises. Further with reference to his online application dated 23.11.2021 for change of tariff from commercial to public serves—others, **he produced the relevant documents of hospital certificate only on 03.07.2023.**
- (vi) After scrutiny of the application, a spot Verification Report (SVR) was called from the Section Officer. The Section officer submitted the spot verification Report on 19.07.2023. **Thereafter the proposal for change of tariff category was submitted to the Competent Authority- i.e. office of Superintending Engineer, on 13.09.2023. As and when the approval is granted, the tariff change will be effected.**
- (vii) Though the present Appellant submitted the certificate of registration of his Nursing Home having date of registration as 07.05.2021, and lease agreement dated 12.07.2021 having commencement date as 10.05.2021, however these documents were not submitted at the time of applying for new supply. Rather the supply was not applied for Nursing Home based on the above documents.
- (viii) The Present complainant being the tenant was not the registered consumer of the Respondent. The electric connection does not stand in the name of the present complainant. The applicant for the first time intimated regarding running the nursing home on 03.07.2023, and applied with relevant documents for change of


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tariff. Therefore, retrospective application of tariff from the date of supply is not legally tenable.


- (ix) Retrospective application of tariff and refund would be justified in cases where the Respondent was at fault in applying the proper tariff, but in the present case the tariff was applied as per the application of the consumer, without there being any fault of the Respondent. Therefore, there should be prospective application of tariff from the date of submission of completed application, and it would be effective from second billing cycle. It cannot be expected that, the Respondent shall find out from among lakhs of its consumers which consumers are running hospitals, even if the applied category was Commercial. The argument is that the Respondent failed to apply the appropriate tariff to the Applicant, which is stated in MERC MYT order applicable to Hospitals/Nursing Homes/Clinics/Diagnostic Centres/Pathology Laboratories and Healthcare Centres. However, this typically applies to cases where the Hospital use is already in existence or has been going on for years. Confusingly, in the present case, the name of the consumer on the electricity bill is Ashok Kumar Chaurasiya and 3 others (presumably landlords) i.e. the connection was released for Commercial purpose as per the request of the consumer.
- (x) Public Services-Others is a concessional tariff, and the consumer has to apply for the same as per the activity carried out in the premises along with relevant documents, if the previous activity tariff activity was changed by the consumer. The Respondent's guidelines have used the general term "to check the installations for appropriate tariff after issue of the Tariff Order'. The main intention behind this was that, whenever there is an introduction of a new concessional tariff category, the specific cases which come in this domain need to be physically checked for application of the revised tariff category. Hence, in the present case, the refund of tariff difference from 23.11.2021 is not justifiable. The Forum, by its order dated 27.02.2024 has partly allowed the Grievance Application to refund the tariff


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difference amount from the date of application along with documents i.e., 19.07.2023.

- (xi) The Commission vide its Tariff Order dated 26.06.2015 in Case No. 121 of 2014, which was effective from 01.06.2015, subdivided the category LT-X: LT- Public Services, into two sub-categories, which are LT X (A): LT Public Services- Government Educational Institutes and Hospitals and LT X (B): LT Public Services-Others. Subsequently on the same basis, the Commission issued various 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 wherein the above tariff category's applicability remained unchanged, which is in force till date.
- (xii) Though the Commission had created the sub-category of "Public Services – Others" in June 2015 the application for change of tariff was made by the Applicant for the first time on 03.07.2023 along with the relevant (hospital) documents in support of the claim for change of tariff. *[Note: The Respondent has not denied that an online application was submitted on 23.11.2021, albeit without the hospital registration documents.]* It is the responsibility of the Appellant to inform the Respondent about any change of purpose along with relevant documents. If the connection is sanctioned for one particular purpose, the consumer cannot suo-moto convert it to any other category and change the purpose without informing the Distribution Licensee, and this will amount to an irregularity. Any such change of use can attract Section 126 of the Electricity Act 2003; however, no such action was taken by the Respondent, in this case.
- (xiii) In the present case, the Appellant is the tenant of the original consumer. He did not follow-up with the Respondent till 03.07.2023. The Appellant changed the purpose unilaterally to hospital without any intimation to the Respondent along with relevant documents. Further, there was no information available in the existing database of the Respondent regarding the Appellant's hospital. So, the question of applying the Public Services - Others tariff category Suo-moto does not arise. *[Note: During the hearing, a photo of the premises was shown. The entire G+3*


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building consists of the Hospital. There is no other activity (such as other residential / shops) in the building. The sign board of the hospital is prominent and visible.]

- (xiv) As the connection stands in an individual's name, (Chorasiya) and not in the name of the Hospital, it does not provide any idea as to the exact activity being carried out over there, and therefore it is difficult to identify such individual cases and apply the appropriate tariff.
- (xv) It is also the duty of individual consumers to come forward for proper categorization of tariff along with all relevant documents in support of their say, if the initial connection was not released in the name of the Hospital/ Laboratory. However, the Appellant changed the activity suo-moto to 'Hospital' without informing the Respondent. The Tariff orders are in public domain, and the Commission issues tariff orders after a due process of wide public consultation. The Appellant therefore cannot afford to be negligent about their rights and responsibilities.
- (xvi) In the recent Judgments in Representation No 185 of 2022, 189 of 2022, 4 of 2023, 70 of 2023, 8 of 2003, 28 of 2023 (Rep. 185 of 2023), 29 of 2023 (Rep. 189 of 2023), 06 of 2023 decided by the Hon'ble Electricity Ombudsman (Mumbai), the Representations filed by the Appellants were rejected, and it upheld the orders of the Forum.
- (xvii) The Forum has considered all facts and law points; therefore its order needs no interference. In view of the above, it is prayed that the Representation of the Appellant be rejected being filed without any locus standi and without any merit.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The Original consumer / owner (Ashokkumar Chaurasiya and Three Others) is a LT consumer (No. 029471112443) since 16.08.2021. The connection details are already tabulated in Table 1. Apparently the electric


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connection was initially applied for commercial (construction) purpose on 16.07.2021 and sanctioned under Commercial Tariff category on 16.08.2021.


5. The premises is a separate building consisting of ground and three upper floors. A Leave and Licence agreement was executed between the owners Ashokkumar Chaurasiya & others and Dr. Harmeet Singh Sahni on 20.07.2021 for the entire premises (ground plus three upper floors with terrace) for a period of five years from 10.05.2021 to 09.05.2026. It is mentioned in the second Clause of the said agreement that,

“The Licensee shall use and occupy the licensed premises for personal use. As this licensee is personal in nature, the Licensee should not let, alienate, and transfer, any part thereof.”

This rental agreement did not specify that the premises was given on rent for hospital purpose.

6. Ashokkumar Chaurasiya & others, the consumers on record, made an **online** application on 23.11.2021 for change of Tariff category from Commercial to Public Services –Others. The Respondent has not taken cognizance of this online application on the ground that the Appellant did not submit a hard copy of the said application to the Respondent along with relevant documents like Leave and Licence Agreement, permission of Panvel Municipal Corporation for operation of the hospital, registration Certificate etc. The tenant Dr. Harmeet Singh Sahni submitted these documents for first time on 03.07.2023.

7. Thus, the main point of contention between the parties is the actual date of the relevant application for change of tariff. The Appellant contends that an online application was submitted on 23.11.2021, but there was simply no provision in the portal for uploading documents. This is a serious lapse. The online format should at least inform the applicant that the relevant documents (specifically hospital registration certificate) should be submitted in the form of hard copies, if they cannot be submitted online. On the one hand the Respondent insists on only online applications, and on the other hand, there was no provision for online submission of documents. The Respondent has not been able to explain this anomaly, nor has denied it.


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

LT X (A): LT - Public Services - Government Educational Institutes and Hospitals


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; all offices of Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad, and Gram Panchayat; Police Stations, Police Chowkies, Post Offices, Defence establishments (army, navy and air-force), Spiritual Organisations which are service oriented, Railway/Monorail/Metro except traction, State transport establishments,; and State Transport Workshops, Transport Workshops operated by Local Authority, Fire Service Stations, Jails, Prisons, Courts, Airports (only activity related to aeronautical operations), Ports, Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students /faculty/ employees / patients of such Educational Institutions and Hospitals.”*

9. The Commission, thereafter, reiterated these Tariff Orders in other cases.

10. It is the argument of the Appellant that applying the appropriate tariff to various consumers, specifically hospitals, is the duty of the Respondent. On the other hand, the Respondent argues that Public Services-Others is a concessional tariff, and the beneficiary has to apply as per their activity. The Respondent’s guidelines used the generalised term “to check


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the installations for appropriate tariff’ after issue of the Tariff Order. The main intention behind this was that whenever there is an introduction of a new tariff and/or change of tariff category, specific cases need to be checked for application of tariff category. At the same time, the Respondent MSEDCL cannot sit back, be passive and inactive even in obvious and visible cases of hospitals. In this case a whole G+3 building was a hospital with a visible sign-board since 2021.

11. Perusing the online application of the Appellant on the Web Portal and its follow up at the Respondents end, we find that the change of tariff application was rejected on the following grounds :-

<i>Date of application for change of Tariff</i>	<i>23-Nov-21</i>	<i>Consumer No.</i>	<i>029471112443</i>
<i>Inspection Date</i>	<i>31-Mar-22</i>	<i>Spot Inpsection Remarks</i>	<i>No Documents received so rejected</i>
<i>Approval/Rejection Remarks</i>	<i>Rejected as per remark (Letter no. Addl. Khr, Billing 1470 dated 14.08.2023</i>		

A spot inspection report is expected to be just that, i.e. to report the physical activity on the site, and not be bound by the documentary evidence. That is the precise purpose of a spot inspection, in order to supplement or verify the facts as submitted in an application. In this case the spot inspection report is strangely silent on what activity was found to be going on in the said premises. Had the spot inspection reported “no hospital activity is found on the site” or “commercial activity is found on the site”, the Respondent’s stand would have been justified.

12. Also, there is no documentary proof that the Respondent demanded the statutory documents like the Certificate of Registration under Bombay Nursing Home Registration (Amendment) Act 2005 in the name of Dr. Harmeet Singh Sahni, MBBS, MS at the said address. The Respondent failed to submit any correspondence which might have been made with the Appellant for requirement of documents. **Inexcusably, there is no provision in the Respondent’s portal to submit online documents in respect of concessional tariff.**


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13. As per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021, the Respondent is duty bound to perform Standards of Performance as below:


<i>Annexure - II: Level of Compensation Payable to Consumer for failure to meet Standards of Performance</i>			
<i>7. Other Services</i>			
<i>Supply Activity/Event</i>	<i>Standard</i>	<i>Compensation Payable</i>	<i>Automatic/ Manual</i>
<i>ii. change of tariff Category</i>	<i>Second billing cycle</i>	<i>Rs 100 per week or part thereof of delay subject to maximum of Rs 500</i>	<i>Automatic</i>

14. The Respondent was aware that every week of delay in applying the correct tariff category was subject to compensation. Yet the Respondent inspected the premises on 31.03.2022 against the application dated 23.11.2021. i.e. with a delay of more than 4 months. The inspection report is also not submitted to this office for perusal.

15. For all the reasons recorded above, we hold that it was the Respondent's duty to consider the Appellant's online application dated 23.11.2021. In fact, it should have carried out its spot inspection right after receiving this online application. Even its rejection decision seems to have not been communicated to the Appellant with reasons for rejection, as expected for transparent functioning. Hence, we hereby pass the benefit of doubt to the Appellant for change of tariff category from Commercial to Public Services –Others from the date of his application i.e. from 23.11.2021.

16. The Forum has not gone into the depth of the case. Hence its order dated 11.09.2023 is modified to the extent below, and the Respondent is directed as under: -

- a) To change the tariff category with immediate effect from Commercial to Public Services –Others, and to refund the tariff difference retrospectively between


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Commercial and to Public Services –Others tariff category from 23.11.2021 to the date of change of tariff category.

b) Compliance to be submitted within two months from the date of issue of this order.

17. The instant Representation is disposed of accordingly.

18. While parting with this order, the Respondent is advised to check the sanctioned load on the bill, as it was mentioned as 20 KW instead of 50 KW. The Tariff category was mentioned as LT II- A instead of LT II- B under Commercial Tariff Category. This type of basic mistake in billing is not expected from the Respondent.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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