

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 7 OF 2023

In the matter of change of Tariff Category and refund thereof

Dr. Vrushali's Nursing Home  
(Original consumer: Soham Estates)

.....Appellant

Vs.

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

Appearances:

Appellant : Pranab Shende, Representative

Respondent : 1. Anil Patil, Executive Engineer  
2. Anil Mhaske, Dy. Executive Engineer

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


Date of hearing : 6<sup>th</sup> March 2023

Date of Order : 31<sup>st</sup> March 2023

## ORDER

This Representation was filed on 23<sup>rd</sup> January 2023 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 23<sup>rd</sup> November 2022 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum).

2. The Forum, by its order dated 23<sup>rd</sup> November 2022 has dismissed the grievance application in Case No. 07/2022.

  
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3. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 06.03.2023 through Video Conference. Both the parties were heard at length. The Appellant's written submission and arguments in brief are stated as below: -

- (i) The Appellant is the consumer (No. 000383074282) from 27.11.2017 having sanctioned load of 20 KW at Shop No. 1, First Floor, Tropical Lagoon, Morning Glory, near Anand Nagar, Thane (W). It is a Hospital / Nursing Home operated by Dr. Vrushali Pillai who is a registered Medical Practitioner. The Appellant has been given necessary permission by the Competent Authority to operate the Hospital / Nursing Home from June 2021.
- (ii) The Nursing Home Certificate under Section 5 of the Bombay Nursing Home Registration Act 1949 was issued by the competent Authority (The Medical Officer of Health, the Municipal Corporation of Thane) on 08.06.2021 and is valid up to 31.03.2024.
- (iii) The Respondent MSEDCL is a public undertaking and is bound to function as per law. It is duty bound to follow the rules mentioned in the provisions of the Electricity Act 2003 (the Act), and the various conditions therein.
- (iv) The Commission created a new tariff category as per its Tariff Order dated 16.08.2012 in Case No. 19 of 2012, called "Public Services" for Educational Institutes, Hospitals and Dispensaries, etc. Subsequently, the Commission further sub-categorized the "Public Services" tariff category into two sub-categories as per Tariff Order dated 26.06.2015 in Case No. 121 of 2014 which are as below:

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

This classification was continued in the following subsequent Tariff Orders of the Commission:

- Case No. 48 of 2016 dated 03.11.2016
- Case No. 195 of 2017 dated 01.09. 2018
- Case No. 322 of 2019 dated 31.03.2020

  
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- (v) Hence, the Appellant was entitled to be billed under “Public Services-Others” tariff category from June 2021 onwards. However, the Appellant was billed with Commercial tariff category up to May 2022.
- (vi) The Appellant referred the Regulation 8.2, 8.2.1, 8.2.2 and 8.3.4 of MERC - General Conditions of Distribution Licence Regulations, 2006 which clearly states as follows:-

*"8.2. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.*

*8.2.1 The Distribution Licensee shall comply with the provisions of the Act, Rules, Regulations, Orders and Directions issued by the Commission from time to time and the provisions of all other applicable laws.*


*8.2.2 The Distribution Licensee shall duly comply with the regulations, orders and directions of the Central and State Transmission Utilities, National Load Despatch Centre, Regional Load Despatch Centre and the State Load Despatch Centre, Central Electricity Authority and other statutory authorities under the Act.*

*8.3.4. The Distribution Licensee shall sell or supply electricity in accordance with the terms of his Licence and shall be entitled to recover tariffs, charges, and fees and require security deposit to be made for supply of electricity or for provision of services, in accordance with the provisions of the Act, the Rules and Regulations made thereunder, and orders passed by the Commission from time to time."*

- (vii) The Appellant referred Regulation 13 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulation 2005) which is reproduced below:

*"13. Classification and Reclassification of Consumers into Tariff Categories:- The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:"*


At present Regulation 14 of Supply Code & Standard of Performance 2020 mandates “Classification and Reclassification of Consumers into Tariff Categories” from 25.02.2021. However, the Respondent failed to apply the “Public Services-Others” tariff category from June 2021, and continued to bill the Appellant with a higher tariff of “Commercial” Category. This is in spite of the Respondent and their representatives visiting the consumer premises periodically to inspect and record the readings of energy consumption for raising bills.

  
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- (viii) The Appellant made an online application on 28.02.2022 for change of tariff category from Commercial to Public Services-Others with retrospective effect from June 2021. The Respondent did not take any action for change in the tariff category. The Appellant submitted a hard copy of the request letter on 02.03.2022 along with requisite documents.
- (ix) It was the duty of the Respondent to apply the proper and correct tariff category, which it failed to do. The Appellant was unaware about the procedure of the Respondent and its internal circulars. The Respondent continued to bill the Appellant with a higher “Commercial” tariff category.
- (x) The Respondent inspected the premises of the Appellant on 09.06.2022. The tariff category of the Appellant was changed from LT II to LT VII (B) Public Services- Others from June 2022 onwards.
- (xi) Not satisfied with the remedy provided by the Respondent, the Appellant filed a grievance application before the Forum on 19.04.2022. The Forum, by its order dated 23.11.2022 dismissed the Grievance Application. The Forum failed to understand the basic issue that the hospital is running from June 2021 and the Respondent is duty bound to change the tariff category as Public Services –Others from June 2021.
- (xii) The Appellant cited the Judgment of Hon’ble High Court of Bombay, Nagpur Bench in Writ Petition No. 3997 of 2016 in the matter of MSEDCL V/s. Shilpa Steel & Power Ltd. The principle laid down by the High Court should be considered for refund of tariff difference.
- (xiii) The Appellant referred the various orders (38 of 2017, 39 of 2017, 271 of 2018 & 42 of 2019) of the Electricity Ombudsman (Mumbai) on the same subject matter in support of its submission.
- (xiv) The Appellant filed a rejoinder by email on 05.03.2023 in response to the reply filed by the Respondent. Most of the issues in this rejoinder are a repetition of the representation; however, the important issues are briefly captured below: -

- a) Practice Directions of the Commission dated 22.07.2019 for allowing Uniform Interest Rate on the Refunded Amount to Consumers.

  
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- b) The Judgment of Appellate Tribunal for Electricity (ATE) dated 12.02.2020 in Appeal No. 337 of 2016 & others.
- c) The MSEDCL circular No. 323, dated 03.04.2020 in MERC Order in Case No. 322 of 2019 dated 30.03.2020.
- d) The MSEDCL circular No. 0319 vide Ref. No. 18076 dated 28.06.2019.
- e) The order of Hon'ble Electricity Ombudsman (Mumbai) dated 04.02.2018 in Representation No. 271 of 2018.
- f) The order of Hon'ble Electricity Ombudsman (Mumbai) dated 01.02.2018 in Representation No. 269 of 2018.
- g) The Judgment dated 10.02.2020 of the Hon'ble Bombay High Court, in Writ Petition No. 8712 of 2018 in Case of Maharashtra State Electricity Distribution Co. Ltd. V/s. Dr. Shri. Girish Dadasaheb Dadwad & Anr.
- h) The Respondent, while answering the questions raised in the Maharashtra Assembly (the Maharashtra Vidhan Parishad, and the Maharashtra Legislative Council) and as per the information provided by the information officer from the O/o the SE, Thane circle under the RTI Act, has replied as follows: - Consumers which are not identified by their name or address on the energy bill have still been categorized from commercial to public services tariff Suo moto. The Appellant has relied on the information received by the consumer representative under the RTI Act. The same procedure should have been applied to the Appellant. Being unable to identify the hospital activity is a mere excuse of the Respondent, and its inability should not be passed on to the Appellant.
- (xv) The claim for interest on tariff difference amount is valid, and therefore deserves to be allowed. It is evident that the amount towards the difference of tariff between Commercial tariff and LT- Public Service-Others was utilized by the Respondent for its business; therefore, it ought to have been refunded with interest as contemplated in Section 62(6) of the Act.
- (xvi) In view of the above, the Appellant prays that the tariff category of the Appellant be changed to "Public Services-Others" from June 2021 to May 2022, and to refund the tariff difference along with interest.

  
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4. The Respondent, by letter dated 17.02.2023 has submitted its written reply. Its written submissions along with its arguments are stated in brief as below: -


- (i) The Appellant is the consumer (No. 000383074282) having sanctioned load of 20 KW at Shop No. 1, First Floor, Tropical Lagoon, Morning Glory, Thane.
- (ii) The original Applicant, Soham Estates, had applied through an online application (No. 10593882)) for a new connection of 20 KW commercial load under Commercial tariff category. The connection of the Applicant was accordingly released on 27.11.2017 under Commercial category.
- (iii) According to this application, the Applicant had not mentioned the purpose as hospital/ nursing home indicating usage for public services - others.
- (iv) The Appellant applied for tariff change for the first time through the web portal (application no. 40463172) on 28.02.2022. The Respondent inspected the premises of the Appellant on 09.06.2022. During the inspection, it was found that the purpose of the connection was to run a hospital. Accordingly, the tariff category of the Appellant was changed from LT II to LT VII (B) Public Services-Others from June 2022 onwards.
- (v) Further, the tariff difference of Rs.22048.28 from Feb. 2022 (date of application) to May 2022 from Commercial to Public Services- Others was also refunded and credited to the consumer vide bill revision ID-13266498 dated 17.05.2022. This is a concessional tariff, and the competent authority needs all concerned documents for sanctioning the change of tariff to Public Services-Others. Hence, in the present case, the refund of tariff difference from June 2021 to May 2022 is not justifiable.
- (vi) The Commission in its tariff order dated 16.08.2012 in case no. 19 of 2012, which was effective from 01.08.2012, introduced a new tariff category for public services. As per the Tariff Order dated 26.06.2015 in Case No. 121 of 2014, Public Services were sub-divided into two parts as below:
  - a) LT X (A): LT - Public Services - Government Educational Institutes & Hospitals,
  - b) LT X (B): LT – Public Services – Others.

  
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The same tariff categories are in force as per various tariff orders of the Commission from time to time.

- (vii) In this case, the initial connection was requested by the original consumer on 27.07.2017 for commercial activity in the name of Soham Estates. This was many years after the Commission's above – mentioned orders. Accordingly, the connection was released under "Commercial" tariff category. At that time the "Public Services- Others" tariff category was already in force. However, the Appellant took the connection for Commercial purpose. After that the consumer changed the purpose of his activity without knowledge of the Respondent. In this case, neither is the original connection in the name of any hospital, nor does the address provide any idea as to the exact activity being carried out over there. Therefore, it is difficult to identify such individual cases suo moto and apply the appropriate tariff. Hence suo-moto action for change in tariff is not possible in such cases.
- (viii) The Appellant has raised an issue, in the context of a Maharashtra Legislative Assembly question regarding classification of hostel tariff category, that consumers whose use is not identified by their name or address on the energy bill, have still been categorized from Residential to Public Services suo moto by the Respondent. This is denied by the Respondent in toto. A perusal of the Legislative Assembly question clearly shows that there is no mention of any suo moto action in the question raised.
- (ix) The Respondent clarifies that previously all such hostels on its record were covered under Residential tariff category as per the tariff order in force. The Respondent already had information in its database as which were the hostels running under Residential category. The Respondent already had information in its database as to which were the hostels running under Residential category. The Commission, by its order dated 30.03.2020 in Case No. 322 of 2019 reclassified these hostels under Public Services – Others tariff category. The Respondent was duty bound to obey the order of the Commission. This is a totally different situation than the current case. The hostels were running for years or even decades prior to the Commission's orders. Further, the

  
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Respondent's database already had information about these hostels. However, in the current case, the hospital started running a few years after the Commission's order. The Respondent cannot be expected to know suo moto when this happened, unless informed by the consumer. The Respondent's database did not have any information regarding hospitals including the current Appellant's connection.


- (x) As requested by the Appellant's representative, the papers available on record of meter replacement report and feasibility report for enhancement of load were already forwarded to him as per directions.
- (xi) In view of the above, the Respondent requested to reject the Representation of the Appellant with cost.

### Analysis and Ruling

5. Heard the parties and perused the documents on record. The connection of the consumer (No. 000383074282) is in the name of "Soham Estate" from 27.11.2017 till date for sanctioned load of 20 KW at Shop No. 1, First Floor, Tropical Lagoon, Morning Glory, near Anand Nagar, Thane (W).

6. 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; 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*

  
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*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.” (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.

7. The Appellant made an online application on 28.02.2022 for change of tariff category from Commercial to Public Services-Others with retrospective effect from June 2021. The Appellant submitted a request letter and a hard copy of the application on 02.03.2022 along with requisite documents. The Respondent inspected the premises of the Appellant on 09.06.2022. The tariff category of the Appellant was changed from LT II Commercial to LT VII (B) Public Services-Others from June 2022 onwards as per the subsequent tariff order in force. The Respondent has also refunded the tariff difference of Rs.22048.28 from Commercial to Public Services –Others for the period from Feb. 2022 to May 2022 in the bill of May 2022. Thus, effectively, the Respondent has applied the new tariff category from February 2022 onwards.

8. The main contention of the Appellant is that it is the responsibility of the Respondent to obtain information regarding change in use from Commercial to Public Services – Others. This typically applies to cases where the “public services – others” use is already in existence, or has been going on for years. In the particular circumstances of this case, we find that though the Commission had created the subcategory of Public Services – Others in June 2015 as per Case No. 121 of 2014, the application for electric connection for commercial purpose was made by Soham Estates in 2017. Even by the Appellant’s own admission, the hospital started only from June 2021, much after the Commission’s order. At that point of time, the public services – others tariff category was in existence for a few years, yet the application was made for commercial purpose. The Respondent informed that a formal inspection was carried out and the activity was found commercial till that point of time. The applicant subsequently changed

  
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the purpose unilaterally to “hospital” without any intimation to the Respondent. Further, there was no information available in the existing database of the Respondent regarding hospitals in general, and the Appellant’s hospital, in particular. So, the question of applying the “public services – others” tariff category suo moto does not arise. Hence, we do not find any weightage in the argument of the Appellant that it was the responsibility of the Respondent to reclassify the tariff category on its own.

9. In brief, the main argument of the Appellant is that it is the duty of the Respondent to apply the appropriate tariff to various consumers. On the other hand, the Respondent argues that Public Services-Others is a concessional tariff, and the beneficiary has to apply for the same as per the activity. 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 tariff category, and /or change in tariff category, specific cases which come in this domain need to be physically checked for application of the revised tariff category. The Respondent had no information or intimation prior to 28.02.2022 that the Appellant was running a hospital, as the original connection does not mention the word ‘hospital’ anywhere. We find substance in this argument. The Respondent inspected the premises on 09.06.2022 after receiving the application dated 28.02.2022, and it was only then for the first time confirmed that the supply is for hospital use. However, the benefit of the revised tariff category has already been given from February 2022 to May 2022.

10. The Forum has rightly analyzed the case and hence no interference in the order of the Forum is needed. The ratio of various orders referred to by the representative of the Appellant are not applicable in the instant case. Other prayers of the Appellant are rejected.

11. The Forum’s order is upheld, and the Representation is rejected and disposed of accordingly.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
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