

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 164 OF 2023

In the matter of refund of tariff difference between commercial and
industrial tariff category

Barbeque Nation Hospitality Ltd. (Occupier).... Appellant
(Astha Radiators Pvt. Ltd. Original Consumer)
(Consumer No. 000079030730)

V/s.

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

Appearances:

Appellant : 1. Suraj Chakraborty, Representative
2. Ganesh Waydande, Elect. Deptt.

Respondent: 1. D.K. Mohod, Executive Engineer, Vashi Dn.
2. Rajiv Vaman, Asst. Law Officer, Vashi


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

Date of hearing: 18th January 2024

Date of Order : 1st February 2024

ORDER

This Representation was filed on 2nd November 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 Original Order dated 7th February 2023 in Case No. 35 of 2022-23 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


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2. The Forum by its original order dated 7th February 2023 partly allowed the grievance in Case No. 35 of 2022-23. The operative part of the order is as below:

“2. The Respondent is directed to change the tariff of the Applicant from Commercial to Industrial with immediate effect.”

However, the tariff category was not changed with retrospective effect, as demanded by the Appellant as below:


- i. To change the tariff from Commercial to Industrial from Feb. 2021 i.e. from the date of application.
- ii. To refund of the tariff difference from the date of application as per Section 56 (2) of the Electricity Act, 2003.

Aggrieved by the order of the Forum, the Respondent MSEDCL filed a review application in the Forum which was dismissed by its Review Order dated 30th August 2023 in Case No. 28 of 2022-23.

3. Aggrieved by the original order of the Forum, the Appellant has filed this representation. A physical hearing was held on 18th January 2023. Parties were heard at length. For easy understanding, the submissions and arguments of the Respondent are stated first as below. The comments and observations of the Electricity Ombudsman are recorded in brackets where necessary.

I) The Appellant has no locus standi to file the present Representation:

The present Representation is filed by the Appellant (tenant) in its own capacity in respect of electric connection Consumer No. 000079030730 which stands in the name of M/s Astha Radiators Pvt. Ltd., who is the original landlord and the registered consumer of the MSEDCL since 14.08.2006. This Appellant is not the registered consumer of MSEDCL, therefore the present Representation filed by it is not maintainable, and it has no locus standi to file the present Representation.



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II) “Grievance” is Time Barred:

The grievance is not maintainable in view of Regulation 6.6 / 7.9 of CGRF and EO Regulations, 2006 / 2020, being filed beyond the period of limitation of two years. The Appellant filed a complaint with the Forum on 16.06.2022 in respect of refund of tariff difference from commercial to industrial from the month of Sept.2018 onwards. If the Appellant was aggrieved with the non-application of proper tariff, he should have protested to MSEDCL, and in case MSEDCL did not redress it, should have applied to the Forum within two years from the original cause of action. The Appellant was not vigilant, but dormant and chose to sit on the fence till the long lapse of time.

- (i) The Respondent referred to the Judgment dated 21.08.2018 passed by Aurangabad Bench of Bombay High Court in W.P. No. 6859, 6860, 6861 and 6862 of 2017 in the matter of MSEDCL Vs. Jawahar Shetkari Soot Girni Ltd. wherein it has held that “cause of action” would mean the actual date of legal injury/grievance caused to the consumer, and the time limit of two years will start from there. The journey of the grievance through Internal Grievance Redressal Cell (IGRC) should reach the Forum within a period of 2 years from the cause of action.
- (ii) The Respondent also referred to the order dated 16.08.2019 of the Electricity Ombudsman (Mumbai) in Rep.No.68, 69 & 71 of 2019 in Case of M/s. G. M. Syntex. The Hon’ble Ombudsman upheld the above view. Similarly, the Nagpur Bench, Bombay High Court in its Judgment dated 08.01.2020 in W.P.No.1588 of 2019 of MSEDCL Vs. Mahamaya Agro Industries has also upheld the above view.
- (iii) In view of the above, the claim of the Appellant is time barred and therefore not maintainable and liable to be rejected.


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III) Subsequent and new pleading is not allowed in Appeal.

- (iv) The Appellant filed a grievance in the Forum on 16.06.2022 with a prayer to change the tariff category from commercial to industrial and to refund the tariff difference as per Section 56(2) of the Electricity Act, 2003. The prayer of refund of tariff difference from Sept.2018 was not made before the Forum, and it was made for the first time before this Electricity Ombudsman. Therefore, the Appellant's request of retrospective application of tariff from Sept.2018 cannot be considered.

IV) Reply on merit.

- (v) Astha Radiators Pvt. Ltd. is a LT consumer (No. 000079030730) from 14.08.2006 at Plot No. D-302, TTC, MIDC, Turbhe, Vashi, Navi Mumbai. This connection was released for commercial purpose and billed under commercial tariff category. *[Note: The Connection was actually originally sanctioned for industrial purpose and subsequently the tariff was changed to commercial sometime before 2018. During the hearing it was informed that originally Astha Radiators was running an industrial / manufacturing unit from 2006 to about 2016, when it shut down. Subsequently it decided to rent out its premises to the Appellant. In the interim period, the industrial / manufacturing activity was stopped, and hence Commercial tariff was applied. In 2018 when the current Appellant entered the picture, Commercial tariff was being applied.]* The Appellant applied for load extension in Sept. 2018. The details of consumer number, address, sanctioned load, contract demand, etc. are tabulated below: -



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Table 1

Appellant	Consumer No.	Address	Sanctioned load (KW)	Contract Demand (KVA)	Date of Supply	Activity	Application date for Change of Tariff category	Remarks
Astha Radiators Pvt. Ltd.	000079030730	Plot No.D-304, MIDC TTC, Tube, Navi Mumbai	75	36	14.08.2006	Commercial	on 10.02.2021 from commercial to industrial	The Appellant was initially industrial consumer, Subsequently changed to commercial tariff category as per use.
			135	135	Additional load of 60 KW in the name of Astha Radiators Pvt. Ltd., dated 18.09.2018			


The name of the consumer is Astha Radiators Pvt. Ltd. as on today also.

- (vi) The Original Consumer, Astha Radiators Pvt. Ltd. had made an application on 14.09.2018 for additional load in its own name. In the said letter, the consumer did not utter any information regarding renting of the said premises to the current Appellant. The Respondent was unaware of any leave and licensee agreement between Astha Radiators Pvt. Ltd. and Barbeque Nation Hospitality Ltd. dated 20.07.2018. During the hearing, the Respondent argued that this is an MIDC plot, and if the lessee wants to sublet the premises, it has to take permission of MIDC.
- (vii) Pursuant to the application of load extension of 60 KW on 18.09.2018 for industrial purpose, the Respondent sanctioned the additional load of 60 KW under Commercial Tariff Category, as the main load of 75 KW was for Commercial purpose at that time. Though the application of extension of load was for industrial purpose, the dominating load of 75 KW was commercial hence the extension of load was also sanctioned for commercial purpose. The Appellant is being billed under commercial tariff category till date.
- (viii) **Astha Radiators Pvt. Ltd. applied for change of tariff category for the first time on 10.02.2021 from Commercial to Industrial** as per Regulation 4.13 of the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014), and submitted the papers regarding the activity of the Appellant who were there on rental basis.


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- (ix) The Respondent, Vashi Subdivision office carried out a Spot inspection on 17.02.2021, when it was found that the activity of the Appellant (tenant) was food processing. The subdivision office forwarded the said application to its Circle office for approval of the Competent Authority of the Respondent. While scrutinizing the documents in the Circle office, it was observed that, the tariff change application was made by Astha Radiators Pvt. Ltd. (the landlord) but the supporting documents attached along with the application were in the name of the tenant / Appellant (Barbeque Nation Hospitality Ltd.). A spot inspection was again carried out on 06.08.2021 and 30.09.2021 during which it was observed that the activity carried out in the premises is that of marination of vegetables as well as non-vegetable products, packed as snacks and supplied to different outlets of the Appellant.
- (x) MSEDCL Vashi Circle office vide letters dated 01.10.2021, 14.12.2021, 24.12.2021 & 29.12.2021 requested the consumer, Astha Radiators Pvt. Ltd. to submit MIDC sublet permission, and to apply for change of name from Astha Radiators to Barbeque Nation Hospitality Ltd., as the activity found in the spot verification was not that of the existing consumer Astha Radiators Pvt. Ltd.
- (xi) Astha Radiators Pvt. Ltd. filed an application in the year 2022 for change of name but failed to submit the required documents (i.e. the MIDC sublet permission); hence this application was rejected by MSEDCL on 27.09.2022 with a remark as 'incomplete documents.'
- (xii) The Appellant, being aggrieved with the above decision, filed a grievance before the Forum on 16.06.2022, wherein the Forum by its order dated 07.02.2023 directed the MSEDCL to change the tariff category from LT Commercial to LT Industrial. The Respondent has not complied with this order and is still applying the Commercial tariff category. [Note: This is a serious irregularity, and the Respondent was supposed to comply with the Forum's order, as there was no stay from this authority.]


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- (xiii) The Respondent being aggrieved and dissatisfied by this order, filed a review application in the Forum, which was dismissed.
- (xiv) The Appellant applied for change of tariff category for the first time on 10.02.2021. **The Factory license of the Appellant bears the issuing date as 22.01.2021; the MIDC subletting permission was applied on 27.01.2022 and was issued on 07.04.2022. Therefore, his request for retrospective application of tariff cannot be considered.**
- (xv) The leave and license agreement was executed for the period of 01.09.2018 to 31.08.2023. This period expired on 31.08.2023. The validity of the Food and Drug license also expired on 26.09.2023. Therefore, the present Appellant / tenant is not authorised to carry out any activities on the said premises, consequently, is not entitled to ask for change of tariff / concessional tariff.
- (xvi) The Respondent referred to the definition of “consumer” given in the Electricity Act 2003 Section 2 (15),
“consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”


From the above definition it is clear that a consumer is a person who is supplied with electricity for his own use. In the present case, Astha Radiators Pvt. Ltd. is the consumer of the Respondent who can release the electricity at a concessional industrial rate only for the use of this consumer and not for the use of any tenant or other user i.e. Barbeque Nation Hospitality Ltd. Hence in the eyes of law, Barbeque Nation Hospitality Ltd. is not the consumer of MSEDCL.


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- (xvii) The consumer, Astha Radiators Pvt. Ltd. cannot get the tariff changed on the basis of the activity of the tenant in his premises, even though he has entered into a leave and licence agreement with Barbeque Nation Hospitality Ltd. The tenant, Barbeque Nation Hospitality Ltd. is not the consumer of MSEDCL as per the definition of 'consumer' given in the Act. Hence the consumer Astha Radiators Pvt. Ltd. is not entitled for concessional LT Industrial Tariff, unless and until he transfers the electric connection from his name to Barbeque Nation Hospitality Ltd.
- (xviii) The Appellant has concealed the fact from the Forum and Electricity Ombudsman that his change of name application was rejected by the MSEDCL due to his own mistake i.e. non-uploading of the required documents (of sub-lease permission) on the NC Portal of MSEDCL.
- (xix) In brief, the flow of arguments is as below:
- The application for an additional load of 60 KW was granted, but in the name of the original consumer.
 - The application for applying industrial tariff was rejected, as the connection was still in the name of the original consumer.
 - The application for change of name was rejected, as MIDC permission was not granted for subletting the premises.
 - The subletting permission was finally granted by MIDC on 07.04.2022. The Forum allowed industrial tariff from the date of its order i.e. 07.02.2023.
 - The leave and license agreement of 5 years expired on 31.08.2023 (renewed subsequently).
- (xx) In view of the above, the Respondent prays that the representation of the Appellant be dismissed, being without any merit and locus standi.

4. The Appellant's submissions and arguments are as below.


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- (i) The Appellant is the tenant of the original LT consumer, Astha Radiators of the Respondent from 14.08.2006. The statistical details of the consumer are tabulated in Table 1. The Appellant, Barbeque Nation Hospitality Ltd. (Occupier) entered into a Leave & License Agreement with Astha Radiators Pvt. Ltd. (Original Consumer) on 20.07.2018 for a period of five years from 01.09.2018 to 31.08.2023. The period was further renewed for five years. The Original Consumer was being billed under Commercial tariff Category before entering the agreement, as his Radiators unit had been closed. The consumer is regular in the payment of bills without any default.
- (ii) The said premise is currently used for food processing activity like cleaning vegetables and chicken, mutton etc. with cutting, processing, packaging etc., to deliver at various outlets of the Appellant. The activity of the Appellant is industrial in nature which falls under Industrial tariff category as per MERC Tariff Order of Maharashtra Electricity Regulatory Commission (the Commission) in effect.
- (iii) The Appellant had applied for enhancement of load of 60 KW from 75 to 135 KW on 19.08.2018 in the name of the Original Consumer (Astha Radiators Pvt. Ltd.) for “Industrial” purpose, as the bill was in the name of Astha Radiators Pvt. Ltd. However, the Respondent sanctioned the enhancement of load, but forgot to apply (or did not apply) industrial tariff category.
- (iv) Then, the Applicant applied for change of tariff category from Commercial to Industrial on 10.02.2021. But the Respondent did not take any action which led to financial loss for the Appellant.
- (v) The Appellant filed a grievance application in the Forum on 16.06.2022. The Forum by its order dated 07.02.2023 partly allowed the grievance by directing to change the tariff from Commercial to Industrial with immediate effect. However, the Forum failed to apply industrial tariff retrospectively from the


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year 2018 onwards. The Respondent filed a review application in the Forum which was rejected.

- (vi) The Appellant referred to the order of the Electricity Ombudsman Mumbai dated 05.03.2010 in Rep. 10 of 2010 in Case of M/s. Envirocare Labs Pvt. Ltd.. The Electricity Ombudsman observed that:

*“close reading of the above, would clearly show that the distribution licensee is authorized to classify or reclassify consumers into various tariff categories approved by the Commission based on **the purpose of usage of supply**. This is, however, subject to a rider that the Respondent cannot create any tariff category other than those approved by the Commission.”*


The Appellant also referred to the orders of the Electricity Ombudsman Mumbai in Rep. No. 108 of 2009 and 389 of 2011 in support of his arguments.

- (vii) In view of the above, the Appellant prays that the Respondent be directed to refund the tariff difference between commercial and industrial tariff category from 2018 onwards.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The details of the Appellant's connection are tabulated in Table 1. The Appellant contended that he applied for additional load of 60 KW (from 75 to 135 KW) on 19.08.2018 in the name of the Original Consumer (Astha Radiators Pvt. Ltd.) but for industrial purpose. The additional load was released immediately in Sep. 2018 but under commercial tariff category, and the Respondent failed to apply industrial tariff. The Appellant is entitled to get industrial tariff even if the connection is in the original consumer's name.

6. On the other hand, the Respondent contended that the major load of the Appellant was commercial at the time when he applied for additional load. The original commercial load


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was 75 KW, which was enhanced by 60 KW, hence the activity remained commercial as the majority load was commercial. The Appellant never prayed for tariff difference from 2018 in the Forum. This prayer is introduced for the first time before the Electricity Ombudsman and hence not maintainable before this authority.

7. The following issue is framed for determination of this representation:-


- **Issue 1:** Whether the Appellant is entitled for retrospective application of industrial tariff category from 2018 onwards?

Issue 1 is answered as NEGATIVE.

Firstly, the Appellant's main prayer before the Forum was for application of industrial tariff category from 10.02.2021 i.e. date of application for change of tariff category, and not from 2018. Hence, at this stage this prayer cannot be entertained.

At the same time, we find that there was no justification on the part of the Respondent to raise unnecessary queries while rejecting the application dated 10.02.2021 for applying industrial tariff, even though the Appellant was a tenant and not the original consumer. In general, change of name is not expected to be carried out in the name of the tenant, as tenants can change over time. The applied tariff is supposed to be based on the actual activity being carried out in the premises. The Respondent on 17.02.2021 verified the activity as that of food processing which falls under industrial tariff category. There is nothing wrong in the fact that the original consumer himself applied for change of tariff category even though the premises were sublet. There is no regulation which prohibits the original consumer from applying for change of tariff based on his tenant's activity.

The Respondent raised mainly three queries vide its letters dated 01.10.2021 etc. while refusing the application for industrial category, i.e. MIDC sublet permission,


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new lease agreement and change of name. All these queries have now been settled. As discussed, change of name is not required. The MIDC sublet permission was issued vide MIDC/RO/ MHP/ TTC/ D-302/ B 03887 dated 07.04.2022 for the period from 01.09.2021 to 31.08.2024. The lease agreement which expired on 31.08.2023 has been extended for 5 years.

The Respondent has verified the activity as industrial on 17.02.2021. The Respondent was duty bound to change the tariff category in the **second billing cycle** after the application; as per Regulation 4.13 of SOP Regulations 2014. **Thus, the Appellant is entitled to get tariff difference from commercial to industrial from the second billing cycle, i.e., from April 2021 onwards. The Issue 1 is answered accordingly.**


8. The Forum's order is set aside. The Forum should have considered that the consumer applied for industrial tariff on 10.02.2021. The Spot Inspection verified the activity as industrial. Hence, there was no reason to delay applying industrial tariff from the date of the Forum's order dated 07.02.2023.

9. The Respondent is directed as under: -

- a. to change the tariff category to industrial from April 2021 and to refund the tariff difference between commercial and industrial from April 2021 to the actual month of change of tariff when effected.
- b. Compliance to be submitted within two months from the date of issue of this order.
- c. The other prayers of the appellant are rejected.

10. The present Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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