BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 80 OF 2020

In the matter of change of tariff category

Rohit Madhav Sane …… . Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Pen (MSEDCL) …… ……. Respondent

Appearances:-

For Appellant : Jayant P. Biwalkar, Representative

For Respondent : 1. S.G. Kamble, Executive Engineer, Pen
2. V.V Gaikwad, Dy Executive Engineer

Coram: Deepak Lad

Date of Hearing: 4th November 2020

Date of Order : 10th November 2020

ORDER

This Representation is filed on 14th October 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the order dated 18th August 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The Forum, by its order dated 18.08.2020 has partly allowed the grievance application in Case No. 34 of 2020 and the operative part of the order is as below:-

"2. The respondent utility hereby directed to pay the refund of amount of bill which was recovered from the applicant consumer as per sub judies tariff difference be refunded to the

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applicant for a period of 24 month from the date of the public service tariff was allowed prior to it i.e. from July 2017 onwards as the case filed before the Forum on 20.07.2019.

3. The Respondent shall given refund by way of adjustment of future bills."

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

(i) The Appellant is a LT Consumer (No.031630249476) from 07.02.2006 having Sanctioned Load (SL) of 75 KW and Contract Demand (CD) of 75 KVA at Kalote, Tal. Khalapur, Dist Raigad. M/s. Vaidya Sane Ayurvedic Education & Agriculture Research Trust runs a hospital named as a 'Madhav Baug' which renders medical service to the patients (both outdoor and indoor) since the year 2006. The Appellant is a Managing Trustee and is also a qualified medical professional. Initially, the Appellant is billed under commercial tariff category. The Appellant has paid all the bills raised by the Respondent from time to time.

(ii) The Maharashtra Electricity Regulatory Commission (the Commission) created new tariff category as per its Tariff Order dated 16.08.2012 in Case No. 19 of 2012 (MSEDCL Circular 175 dated 05.09.2012) called as Public Services for Educational Institutes, Hospitals and Dispensaries, etc. The Appellant was therefore entitled to be billed under LT – X Public Services tariff category from 1.08.2012. Thereafter, Tariff Orders were issued by the Commission

(a) Case No. 121 of 2014 dated 26.06.2015,

(b) Case No. 48 of 2016 dated 03.11.2016

(c) Case No. 195 of 2018 dated 01.09. 2018

Accordingly, the Respondent issued Commercial Circulars No. 243 dated 03.07.2015, No. 275 dated 18.11.2016, No. 284 dated 11.04.2017, No.311 dated 01.10.2018 respectively. Hence, the Appellant was accordingly entitled to be billed under LT – X (B) Public Services-Others tariff category.

(iii) The Appellant filed the grievance application dated 12.04.2019 in Internal Grievance Redressal Cell (IGRC) on 18.04.2019 for change of tariff category from Commercial to Public Services with retrospective effect from 01.08.2012. The IGRC heard his

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grievance on 14.05.2019. The IGRC, in its order has directed to apply appropriate tariff applicable to hospital with effect from 12.04.2019 i.e. from date of application. The order of IGRC was not a reasoned and speaking order and the relief granted was prospective instead of retrospective effect from 01.08.2012. Accordingly, MSEDCL refunded Rs.2,97,513.49 by crediting in the bill for the month of July 2019 as per order of the IGRC.

(iv) Not satisfied with the IGRC order, the Appellant approached the Forum on 20.07.2019. The Forum heard the appeal on 27.08.2019. After passage of over 12 months, the Forum, by its Order dated 18.08.2020 has partly allowed the tariff difference from Commercial to Public Service- Others tariff category with retrospective effect for a period of 24 months from July 2017 onwards as the case filed before the Forum was on 20.07.2019.

(v) The Forum failed to issue a reasoned and speaking order. The Forum has not properly applied its mind while passing the order and has not considered its entire oral and written submission. The Forum ignored that the Respondent is duty bound to reclassify the consumers as per tariff order. There is no stipulation by the Commission regarding application by the consumer for change of classification of tariff as per their purpose. The Forum erred in applying the provisions of Section 56(2) of the Electricity Act, 2003 (the Act). This Section is relating to recovery of arrears and not to refund of excess recovery. The Forum did not refund tariff difference from 01.08.2012 as well as interest thereon as per Section 62 (6) of the Act. The Forum failed to appreciate the Regulation No.15.6.3 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations), and Clause No. 23.9.1 and 23.9.2 of MSEDCL's own notified Conditions of Supply requiring to pay interest on advance payment by consumers.

(vi) The representative of the Respondent did not remain present nor filed reply and did not raise any dispute about the claim. This fact was ignored by the Forum.

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(vii) The Appellant is forced to prefer this appeal before the Electricity Ombudsman (Mumbai).

(viii) There is no enabling provision in the Act to restrict the refund only for past 24 months. The bill at commercial tariff, as in the past, was continued till April 2019 when for the first time it came to the notice that hospital has been categorized by the Commission as Public Service attracting lower tariff. Therefore, cause of action started continuously from April 2019. Even if it is presumed, without admitting, that it started from 01.08.2012 there is a continuous cause of action as the wrongful act is of such a character that the injury, caused by it, itself continued till the matter was referred to IGRC.

(ix) The Appellant referred the following Judgements / Orders in support of its claim:-

- Supreme Court in Civil Appeal No. 3699 of 2006 Judgment dated 12.02.2019.
- Supreme Court in Civil Appeal No.4582 of 2019 dated 03.05.2019.
- Appellate Tribunal for Electricity (ATE) in Appeal No. 197 of 2009.
- Electricity Ombudsman, Mumbai order in Rep. No 210 of 2018.
- Electricity Ombudsman, Nagpur order in Rep. No. 54 of 2015.

(x) The Appellant, therefore, prays that the Respondent be directed

(a) to refund tariff difference from Commercial to Public Services tariff category from 1.08.2012 along with interest.

(b) to refund the excess recovery in one lump sum by NEFT.

(c) to provide calculation sheet for working about correctness of calculations.

4. The Respondent filed its reply by letter dated 04.02.2020 stating in brief as under: -

i) The Appellant is a LT Consumer (No.031630249476) from 07.02.2006 having SL of 75 KW and CD of 75 KVA at Kalote, Tal. Khalapur, Dist Raigad.

ii) This supply was initially sanctioned under commercial tariff category and now it is changed to LT-X (B) Public Services-Others tariff category. It is to mention here that the name of the consumer in its record is Mr. Rohit Mahadev Sane and not name of any hospital.

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iii) The Appellant filed an application letter dated 12.04.2019 with the IGRC with a request to change the tariff as LT – Public Services from 01.04.2019 onwards and do the billing retrospectively from 01.08.2012 as per LT Public Services tariff category and refund the tariff difference from Commercial to Public Services. The Appellant also submitted that it is using the supply for hospital purpose and as per the tariff order of the Commission dated 16.08.2012 in Case No. 19/2012, hospitals are classified under LT Public Services tariff category.

iv) The IGRC, by its order dated 14.05.2019 has directed to change the tariff category from 12.04.2019, however, rejected the claim of refund of tariff difference.

v) As per this IGRC order, the tariff category was changed from LT-II Commercial to LT-X (B): LT – Public Service category from 12.04.2019.

vi) The Appellant approached the Forum on 20.07.2019 and the Forum issued order on 18.08.2020 wherein it partly allowed retrospective refund for 24 months from July 2017 onwards without interest.

Reply on merits

vii) The Respondent submits that the cause of action of this grievance arose in August 2012. The litigation journey begins from this cause of action and law mandates that the consumer should reach the Forum within two years from the cause of action. The Appellant has filed its grievance before the Forum on 20.07.2019 i.e. after the lapse of around 8 years. As per Regulation 6.6 of CGRF Regulations, the Forum shall not admit any grievance unless it is filed within two years from the date on which the cause of action has arisen. Therefore, this Representation is time barred and hence liable to be rejected.

viii) The Appellant has prayed for refund of tariff difference amount from 01.08.2012 along with interest, but the Forum has decided by holding the period of refund of tariff difference amount of 24 months prior to the date of filling the application to the Forum i.e. 20.07.2019.

ix) It is most respectfully submitted that the Appellant should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This

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need to be harmoniously read with Regulation 6.6 of CGRF Regulation 2006, which ultimately puts two years limitation period for the Forum to admit the case. This principle and logic is upheld in W.P. 6859,6860,6861 and 6862 of 2017 decided on 21.08.2018 by the Hon'ble Bombay High Court, Bench at Aurangabad which is very much relevant in the instant Representation. Therefore, the grievance filed before the Forum was time barred and ultimately this Representation is also time barred and hence required to be rejected.

x) It is most respectfully submitted that this supply was initially sanctioned under commercial tariff and now it is changed to LT-X (B) Public Service tariff category. It is to mention here that the name of this consumer in the record and therefore on bill is Mr. Rohit Mahadev Sane and there is no mention of the name of hospital. Hence, the name of this consumer on electricity bill does not give any clue that this consumer is using electricity for running hospital, unless and until he intimates in writing to the Respondent.

xi) It is most respectfully submitted that after passing the tariff order in Case No. 19 of 2012, the Appellant failed to intimate his activity of hospital to MSEDCL within reasonable time. He applied for the first time on 12.04.2019 and immediately changed the tariff as LT- Public Services from the date of his application. Therefore, allowing the consumer the refund retrospectively along with interest on that amount is not justifiable.

xii) The Respondent prays that the representation of the Appellant be rejected.

5. The Appellant has filed rejoinder by email on 03.11.2020 at 20.59 hrs in response to the reply filed by the Respondent. Most of the issues in this rejoinder is repetition of the representation, however, important issues are captured below to avoid repetition: -

a) The Judgment dated 21.08.2018 of Bombay High Court in W.P.No..6859, 6860, 6861, and 6862 of 2017:-

(i) The said Judgment relied upon by the Respondent, is not at all relevant in this case as the circumstances are totally different. In the said W.P. the consumers

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were having knowledge of the FAC bills under dispute as the bills were received and paid by the consumers. Hence the cause of action began from the date of the bills. The grievance was however, filed after passage of 2 years from the date of bills. The consumers were unable to say that they had no knowledge of the injury. In this case, the change in categorization by the Commission was not known to it till April 2019 and the bills received were at commercial tariff as in the past and did not suggest any change by the Commission nor was any intimation received from MSEDCL. The Appellant's application with the Forum in July 2019 was well within limitation. The Forum did not, rightly, invoke the Regulation 6.6.

(ii) After admitting the grievance, the Forum has to adjudicate as per law as there is no bar of limitation for the Forum to adjudicate after 2 years from cause of action. The words Admit and Adjudicate are not synonymous and not interchangeable. The Forum (not the consumer) is under obligation to set right the wrong by the MSEDCL since inception. In the instant case, the wrong happened every month from August 2012 onwards as correct tariff was not applied. Thus, the injury caused to the consumer continued.

(iii) Even, otherwise, it is necessary to take into consideration the principle laid down by Supreme Court to the effect that cause of action arises when real dispute starts i.e. when one party asserts and the other party denies any right. The grievance was submitted with IGRC, the first authority to be approached by the consumer, on 18.04.2019 and then approached the Forum on 20.07.2019 as the decision of IGRC was not acceptable. Thus, there was no delay.

b) The connection is in the name of Mr. Rohit M. Sane:-

(i) Initially, the connection was in the name of Smt. Kanchan Sane who was then the Managing Trustee. After her death, connection was transferred in the name of Dr. Rohit M. Sane. A copy of Audited Income and Expenditure A/c of the Trust for the year ended on 31.3.2012 is kept on record to prove existence of the hospital.

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(ii) The initial load was enhanced on two occasions, i.e. 2014 and 2016. The spot inspection was carried by the officials of the Respondent on each occasion besides their routine visits. It is therefore factually incorrect to say that the Respondent was not aware of the hospital. The hospital is widely known as Madhav Baug.

c) The Forum Pune had allowed refund of excess recovery from 01.08.2012 in the case of Garrison Engineer V/s. MSEDCL. The amount involved was over Rs. One Crore. This order was not challenged by MSEDCL in High Court. CGRF Kalyan, Nashik and even Electricity Ombudsman had upheld the claim of Consumer and ordered to refund the excess recovery from 01.08.2012.

d) The Electricity Ombudsman, Nagpur upheld on 04.09.2015 the claim of consumer, in similar matter, for refund of recovery from 01.08.2012 (Ref. Representation No. 54/2015).

e) The Appellant had claimed interest in terms of Section 62 (6) of the Act. In a case of MSEDCL V/s. Shilpa Steel & Power Ltd. Nagpur, the demand for interest was upheld by Supreme Court. (Ref. W.P. 3997 of 2016 decided on 18.08.2017).

6. The hearing was conducted on 04.11.2020 on e-platform through video conferencing due to the Covid-19 epidemic.

7. During the hearing, the Appellant not only reiterated its written submission but further argued that the Commission in its Tariff Order dated 16.08.2012 created new tariff category called Public Services for hospital and dispensaries, etc. Subsequently, the Commission issued Tariff Orders in Case No. 121 of 2014, Case No. 48 of 2016 and 195 of 2017. After the tariff orders of the Commission, the Respondent is duty bound to inspect the premises and recategorize the appropriate tariff. The field officers, however, failed to carry out their duty. As per Section 62(6) of the Act, if a licensee recovers a price or charge exceeding tariff determined under this Section, the excess amount is recoverable from the licensee alongwith interest by the person who has paid it. The Appellant was accordingly liable to be charged LT – X Public Services tariff

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category from 01.08.2012 onwards as per the tariff orders of the Commission. This was, however, not done by the licensee. The Appellant therefore made an application for change of tariff category on 12.04.2019. The Forum did not understand the basic issue and has partly allowed the grievance of retrospective refund for 24 months, however, rejected the refund from 01.08.2012. The Appellant cited the Judgement in Appeal No. 197 of 2009 of ATE in support of its claim for continuous cause of action. The Respondent failed to inspect the premises and apply appropriate tariff from 01.08.2012. This failure of the Respondent should not take the right of the Appellant regarding refund of tariff difference continuously from 2012 as the Appellant's activity of the hospital remained the same, prior and after 2012. The Appellant prays to refund tariff difference from 1.08. 2012 along with the interest and to refund the excess recovery in one lump sum by NEFT.

8. The Respondent argued that the application for change of tariff category was received on 18.04.2019 in IGRC and immediately the tariff category was changed as per Regulation 4.13 (b) of the SOP Regulations, 2014 i.e. within two billing cycles and there was no lapse on the part of the licensee. There is no specific mention of hospital activity as such in the name of the consumer. It is simply in the individual name of Mr. Rohit M. Sane. Hence, the Respondent cannot be blamed for change of tariff category since the name does not give any information of purpose. Considering the documents on record, the Forum has rightly decided the grievance of the Appellant and hence the representation be rejected.

Analysis and Ruling

9. Heard the parties and perused the documents on record. The Appellant is a consumer of the Respondent from 07.02.2006 and billed as per Commercial tariff category as per the record. Subsequently, in the Tariff Order dated 16thAugust, 2012 in Case No. 19 of 2012, the Commission created a new Tariff category for Public Services effective from 1st August 2012. The relevant portion of the said tariff order is as below:

"LT X: LT-Public Services: Applicability

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This Tariff shall be applicable to education institutes, hospitals, dispensaries, primary health care centres, pathology laboratories, Police Stations, Post Offices, Defence establishments (army, navy and airforce), Public libraries and Reading rooms, Railway except traction (shops on the platforms/railway station/bus stands will be billed under Commercial category as per the respective slab), State transport establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to aeronautical operations)

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 exclusively meant for the students / patients of such Educational Institutions & Hospitals."

The Commission, thereafter, issued Tariff Orders in Case No. 121 of 2014 dated 26.06.2015, in Case No. 48 of 2016 dated 03.11. 2016, and in Case No. 195 of 2017 dated 01.09.2018.

10. I noted that the Appellant made first application dated 12.04.2019 registered by IGRC on 18.04.2019 for change of tariff category and the Respondent has changed tariff category from LT II Commercial to LT – X B Public Services-Others from 12.04.2019 as per order of the IGRC. The Appellant approached the Forum on 20.07.2019, wherein it has prayed for refund of tariff difference from Commercial to Public Services-Others, for the period starting from 01.08.2012 to 12.04.2019. Basically, the Appellant is trying to derive the advantage of the tariff LT – X (B) Public Services-Others tariff Category from 01.08.2012 however, this tariff category came into being on 26.06.2015 and made effective from 01.06.2015 as per the Commission's order in Case No.121 of 2014. The logic advanced by the Appellant is that its activity is hospital. However, the Appellant has not properly appreciated the order of the Commission in operation prior to 01.06.2015 which provided tariff under LT – X: LT- Public Services tariff Category. On plain reading of the entire text of the applicability of this specific tariff category, it is seen that it is meant to be applied only for public services. The incumbent Appellant may be running a hospital but by no yardstick, it can be termed as a *Public Service* in the true meaning of the word. It is further seen that in the applicability clause the activities such as State transport establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports are included. The activity of the Appellant nowhere stands in line with these

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activities. The clause of applicability needs to be harmoniously read and the fruitful meaning needs to be drawn from the wordings to give justice while applying the tariff. Therefore, this tariff in all probabilities cannot be applied to the Appellant in terms of the Commission's order dated 16.08.2012 in Case No. 19 of 2012. Therefore, refund from 2012 does not arise at all.

11. The Commission then issued Tariff Order in Case No. 121 of 2014 effective from 01.06.2015 wherein for the first time, it has subdivided LT–X: LT- Public Services into two subcategories. These are as follows: -

LT X: LT - Public Services

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

LT X (B): LT - Public Services – Others

The activities under the second 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." (Emphasis added)***

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From the plain reading of this applicability clause, it is crystal clear that LT X (B): LT - Public Services – Others is the appropriate category under which the Appellant's activity falls. If this category is to be applied to the Appellant, then needs to be applied from 01.06.2015.

12. It is the argument of the Appellant that applicability of the appropriate tariff to various consumers is the duty of the Respondent. The Respondent failed in its duty to apply the appropriate tariff category to the Appellant. It is also the argument of the Appellant that the Respondent cannot take advantage of its own wrong. While examining this argument, I noticed that the bill is in the name of Mr. Sane and nowhere activity of hospital has been expressly written / seen / notified. In such circumstances, it becomes difficult to identify the activity and apply appropriate tariff. Secondly, the tariff fixation by the Commission is an elaborate long drawn process wherein public hearings are conducted, and tariff orders are issued which are available in public domain. Therefore, ignorance on this account cannot be a ground to claim refund from 01.06.2015 leave apart 01.08.2012. The Appellant conveniently forgot the fact that ignorance of law is no excuse in legal parlance. While the injury has been done to the Appellant, as an abundant precaution, the Appellant could have timely approached the grievance redressal mechanism formed under the Electricity Act, 2003 and the Regulations made thereunder, to remedy the injury.

13. The Appellant, as could be seen from the record, has approached the Forum on 20.07.2019. Therefore, it is necessary to examine as to whether the Appellant's case is within limitation period as prescribed under the Regulations or otherwise because the Appellant claimed that it has filed a petition within limitation, the injury being continuous.

The Regulation 6 of CGRF Regulations 2006 speaks about procedure for grievance redressal. The relevant portion of Regulation 6 is reproduced as below: -

"6. Procedure for Grievance Redressal

6.1…….

6.2……

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6.3……

6.4 *Unless a shorter period is provided in the Act, in the event that a consumer is not satisfied with the remedy provided by the IGR Cell to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the consumer may submit the Grievance to the Forum. The Distribution Licensee shall, within the said period of two (2) months, send a written reply to the consumer stating the action it has taken or proposes to take for redressing the Grievance.*

6.5 Notwithstanding Regulation 6.4, a Grievance maybe entertained before the expiry of the period specified therein, if the consumer satisfies the Forum that prima facie the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that, the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters. Provided further that no such Grievance shall be entertained, before the expiry of the period specified in Regulation 6.4, unless the Forum records its reasons for the same.

6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen."

Regulation 6.6 restrict the Forum to entertain and act on the grievance of a consumer if the same is not filed with it within a period of two years from the date on which the cause of action has arisen. It inter-alia means that the period for filing grievance with IGRC, decision by IGRC and approaching the Forum is also subsumed in the period from cause of action till filing the grievance with the Forum. The Regulations provides specific time limits for approaching various authorities in the process of redressal of grievance. It is unquestionably evident that the cause of action is the tariff declared by the Commission which needs to be applied to the Appellants which is the origin of legal injury caused to it. The litigation journey begins from this

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cause of action and the law mandates that if this grievance is not redressed by the Cell, the Appellant should reach the Forum within two years from the cause of action.

14. In view of the above, the Appellants' request to consider retrospective effect from 01.08.2012 is totally out of question as explained in paragraph 10 above. Not only this, but it also cannot even be applied retrospectively from 01.06.2015, the effective date of tariff order in Case No. 121 of 2014 dated 26.06.2015 because the Appellant has filed the grievance with the Forum on 20.07.2019. Therefore, in order to remedy the injury, the tariff LT-X(B) Public Services – Others can be applied from 20.07.2017. The Forum has rightly settled the grievance and has ordered application of tariff from July 2017 onwards and further ordered refund for 24 months commencing from July 2017.

15. The Appellant has referred the following Judgments of the Supreme Court:-

- In Civil Appeal No. 3699 of 2006 Judgment dated 12.02.2019.
- In Civil Appeal No.4582 of 2019 dated 03.05.2019.

The ratio of the Judgments passed in above Civil Appeals is not applicable here as the Regulations are framed by the Commission under the Electricity Act, 2003 which itself is a complete code as stipulated in ATE Judgment in Appeal No. 197 of 2009 referred by the Appellant itself.

The Appellant also argued that his case being a tariff case, the law of limitation does not apply. In support of this argument, he cited ATE judgment dated 11.03.2011 in Appeal No. 197 of 2009.

"Hon. ATE has clearly stated that "The tariff fixation is a continuous process and is to be adjusted from time to time."

The above ATE case is with respect to tariff fixation under the provision of the Act. Obviously, there is no question of any limitation in this regard. The Hon. ATE on the facts therein held that Limitation Act is not applicable to the State Commission in their regular activities of fixation of tariff. This judgment cited by the Appellant is not relevant to the instant

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representation because once the tariff / order of the Commission such as Schedule of Charges, etc. is issued and distribution licensee applies the order to the respective consumers across the board. Once it is applied and if consumer has any grievance about its application, then it falls under the individual case of the consumer. At this stage, the mechanism for grievance redressal needs to be invoked by the consumer suffered.

Even the judgment of the Bombay High Court, Nagpur Bench in W.P. No. 1650 of 2012 dated 10th July 2013, and Bombay High Court, Bench at Aurangabad judgment in W.P. No. 6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 has explicitly upheld the provision under Regulation 6.6 of the CGRF Regulations. In view of these judgments, provision under Regulation 6.6 is a settled position of law.

In a recent judgment, the Hon. Supreme Court in Civil Appeal No. 2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.

Therefore, this provision of Regulation 6.6 is a settled position in law. I, therefore, do not find it necessary to delve into the other citations referred by the Appellant because if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

It is settled position in law that if the matter is decided on limitation, there is no need to go into the merits of the case.

16. The Appellants have referred orders of the Electricity Ombudsman, Mumbai and Nagpur as quoted above, however, there is no need to examine it in view of the above explanation. I am of the opinion, the instant representations squarely fall in line with the judgment in W. P. No. 6859, 6860, 6861 and 6862 of 2017 of Bombay High Court, Bench at Aurangabad. The relevant portion of the judgment is quoted below: -

> *"37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such*

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that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer

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filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period."

17. In view of the above discussions, I am of the considered view that the Appellant does not have any case as it does not fit into the regulatory framework of Regulation 6.6 of the CGRF Regulations and the ratio of the case cited by the Appellant is not applicable here.

18. The other prayers of the Appellant are rejected.

19. In view of the above observations, I do not find it necessary to interfere with the order of the Forum. The Forum has not granted interest on the amount of refund. The Respondent is therefore directed to refund the amount with interest. The rate of interest shall be in accordance with the Practice Direction issued by the Commission on 22.07.2019. The order of the Forum is modified to the extent above.

20. Compliance to be submitted by the Respondent within 2 months from the date of this order.

21. The representation is disposed of accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

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