

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 17 OF 2023

In the matter of change of tariff category and retrospective recovery

Manoj Gajanan Morye ..... Appellant  
(Consumer No. 202-030-661)

V/s.

Brihanmumbai Electric Supply & Transport Undertaking (G/N Ward) ..... Respondent  
(BEST Undertaking)

Appearances:

Appellant : Manoj Gajanan Morye

Respondent : S.S. Gawade, Divisional Engineer (G/North)

**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 21<sup>st</sup> April 2023

Date of Order : 19<sup>th</sup> June 2023

### ORDER

This Representation was filed on 20<sup>th</sup> February 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 21<sup>st</sup> October 2022 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum).

2. The Forum, by its order dated 21<sup>st</sup> October 2022 has dismissed the grievance application in Case No GN- 013-2022.



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3. Preamble :

- (i) The Appellant had purchased an Industrial factory unit from M/s. Shade Arts (Consumer No. 202-030-661) on 25<sup>th</sup> February 2010 at 108, Allied Industrial Estate, Prof. Ram Panjwani Road, Mahim (West), Mumbai. Initially, there were two meters, one for commercial (lighting) purpose and other for industrial purpose (24 KW). The commercial meter having less sanctioned load than required was surrendered by the Appellant in Dec. 2012.
- (ii) The Appellant had applied for change in name to the Respondent on 21<sup>st</sup> Sept. 2012. **In the application, he mentioned the connected load as 9.608 KW.** However, he did not specifically request to reduce the load from 24 KW to 9.608 KW. On the other hand, the Appellant contended that there was no clear or specific provision in the application format to request for reduction of load. The sanctioned load was not reduced by the Respondent, and it continued to be 24 KW.
- (iii) The change of name was carried out immediately and a new Consumer No. 202-030-036 was allotted by the Respondent.
- (iv) **Also, there was a request for change of tariff from Industrial to Commercial (I.D. No. 1607982) on 12.11.2013** as per the Respondent OLCCS records. The commercial tariff was approved on 09.01.2014. The Appellant was billed as per commercial tariff category from 12.11.2013 onwards.
- (v) The Appellant was mistakenly billed under industrial tariff category from the date of purchase of the property, i.e. 25.02.2010 up to 12.11.2013, which was supposed to be billed under commercial tariff category.
- (vi) The commercial tariff category was further subdivided into  
LT II A: less than or equal to 20 KW  
LT II B: more than 20 KW or equal to 50 KW
- (vii) The Appellant was billed under “less than or equal to 20 KW” under commercial tariff category.
- (viii) The Municipal Chief Auditor (MCA) had raised a query by its letter dated 20.03.2020, that the applicable tariff should be LT II B (more than 20 KW) instead of LT II A (less



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than or equal to 20 KW), as per sanctioned load of 24 KW. The Appellant was being wrongly billed under commercial tariff category less than 20 KW.

(ix) **Accordingly, Divisional Engineer (HVC) prepared an amendment claim of Rs.3,40,273.29 including the tariff difference of**

- **Rs. 35,387.77 as tariff difference between industrial and commercial, for the period from 01.01.2013 to 12.11.2013**
- **Rs. 3,04,885.52 as the tariff difference between commercial tariff category (less than or equal to 20 KW) and (more than 20 KW) for the period from 13.11.2013 to 01.01.2021.**
- **The total claim : Rs. 35,387.77 + Rs. 3,04,885.52= Rs. 3,40,273.29.**

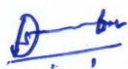
(x) The Appellant is being billed under “less than or equal to 20 KW” from 02.01.2021 onwards till date.

(xi) The Appellant has raised the grievance against the amendment claim of Rs.3,40,273.29. **The Respondent has already withdrawn its claim of Rs. 3,04,885.52, and only the balance claim of Rs. 35,387.77 remains.** The Appellant has agitated on this remaining claim with a prayer to withdraw this also.

4. The Appellant filed this Representation against the order dated 21.10.2022 passed by the Forum. The e-hearing was held through video conference on 21.04.2023. Parties were heard at length. The important points are already highlighted in the preamble above. The prayer of the Appellant is to waive off the supplementary bill of Rs. 35,387.77 (current outstanding amount of Rs. 40,777/- at the time of filing the case) along with levied interest and delayed payment charges being time barred as per Section 56(2) of the Act. The claim of Rs.3,04,885/- which arose due to the difference between the tariff for  $\geq$  and  $<$  20 KW, has already been withdrawn. A major part of the Representation focussed on this supplementary claim which is resolved now, and is therefore irrelevant and redundant.

5. The Respondent, BEST Undertaking filed its reply on 14.03.2023.

1. History of the case:

  
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- 1.1 M/s. Shade Arts (Consumer No. 202-030-661) at 1<sup>st</sup> Floor, R. No. 108, Allied Industrial Estate, Near Khelnani School, Prof. Ram Panjwani Marg, Mahim, Mumbai - 400 016 was the original consumer under category LT IV A (Industrial Tariff). It had sold the said premises to the Appellant (Shri. Manoj Gajanan Morye) on 25.02.2010.
- 1.2 The Respondent received an application dated 18.09.2012 from the Appellant for change of name. Accordingly, the change of name was carried out and a fresh Consumer No. 202-030-036 was allotted.
- 1.3 Further, as per Respondent system (OLCCS) records, **there was a request for a change of tariff from Industrial to Commercial vide I.D. No. 1607982 dated 12.11.2013.** The same was approved on 09.01.2014. The Appellant was billed as per commercial tariff category from 12.11.2013 onwards.
- 1.4 The Respondent received Municipal Chief Auditor (MCA) Query letter dated 20.03.2020, saying that the applicable tariff should be LT II B instead of LT II A as per sanctioned load which was above 20 KW. The Appellant was mistakenly billed with commercial tariff category which was less than 20 KW. In view of the Audit Query, OLCCS I.D. No. 6982007 dated 22.01.2021 was created for change of tariff from LT II A to LT II B, and the same was approved on 27.01.2021. A direction was also given to Divisional Engineer (HVC) of the Respondent through E-mail dated 25.08.2021 to prepare an amendment claim. Accordingly, Divisional Engineer (HVC) prepared an amendment claim of Rs. 3,40,273.29 for the period from 01.01.2013 to 01.01.2021 as detailed in para 3 (ix), and debited the claim in consumer's A/c. No.202-030-036. The major part of this amount is a supplementary bill of tariff difference between "above 20 KW" and "less than 20 KW" Commercial tariff category.
- 1.5 Later, the then Divisional Engineer, CC(G/N) took cognizance of the Appellant's grievances, and took into consideration the date of application for change of tariff category to commercial, which was 12.11.2013.



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Accordingly, vide note reference no. DECC(G/N)/AAMCC(G/N)/161/2022 dated 11.03.2022, he informed Divisional Engineer (HVC) to correct the Amendment period as **01.01.2013 to 12.11.2013** instead of **01.01.2013 to 01.01.2021**. The Divisional Engineer (HVC) reworked the amendment claim to Rs. **35,387.77** for the said revised period.


2. Comments on Consumer's Letters and arguments:

1.1 The Respondent received an application from the Appellant on 21.09.2012 basically for change of name and the same was processed. However, as per system requirement, the consumer had not specifically applied for reduction in sanctioned load, so the sanctioned load remained the same i.e. 24 KW as that of the previous consumer. [This point is disputed by the Appellant, as mentioned in para 3 (ii)].

1.2 The requirement of an application for revision in sanctioned load has been specified under Maharashtra Electricity Regulatory Commission, Mumbai (Electric Supply code and Other Conditions of Supply) Regulations 2005, Clause 6.8 and Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 Clause 7.6. The content of the Cluse is reproduced as below:-

*“The distribution licensee shall revise (increase or decrease) the contract demand / Sanctioned Load of the Consumer upon receipt of an application for the same from the Consumer.”*


1.3 The Enquiry Inspector of the Respondent visited the site on 14.01.2021 and load particulars were obtained. **The connected load was found to be 12.98 KW.** Thus the actual load was < 20 KW. However the Respondent contended

  
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that the connected load may vary as per uses of electric gadgets. But the sanctioned load remained same and can only be changed through a specific prescribed request format. In this case, the Appellant had (disputably) not applied for a reduction in sanctioned load. In other words, the Respondent has not taken cognizance of the mention of 9.608 KW as the connected load, mentioned in the application.

- 1.4 The Respondent contended that the Appellant had not applied for a reduction in sanctioned load since he took over the premises from the previous industrial consumer M/s. Shade Arts. However, the effective tariff has been changed to LT II A (Commercial Tariff) according to his application for change of tariff dated 12.11.2013 vide ID No. 1607982. Had he clearly applied for a reduction in the sanctioned load along with change of tariff application, the dispute would not have arisen. Later when the case was scrutinized by the MCA in the year 2019, they pointed out that if sanctioned load is above 20 KW, he must be charged with LT II B tariff. By implication, the Audit query indicated that higher tariff should be recovered, even if it pertained to a period 7 years ago. The Respondent accepted this. Accordingly, the changes were carried out and the amendment claim was issued.
- 1.5 **The Appellant applied for reduction in load on 23.10.2019.** The Appellant set right his tariff accordingly from LT II B to LT II A.
- 1.6 The Appellant approached the Forum on 25.08.2022. The Forum, by its order dated 21<sup>st</sup> October 2022 dismissed the grievance application. The Forum accepted the contention of the Respondent that the Appellant was enjoying the tariff applicable to Industrial tariff category. The Respondent subsequently found that the said tariff was not changed in time to commercial due to some clerical error. The Forum upheld that the Respondent is entitled to rectify the error and carry out revised amendment in the bill for change of tariff category from industrial to commercial for the period from 01.01.2013 to 12.11.2013 by demanding supplementary bill of Rs. 35,387.77.

  
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- 1.7 In view of the above facts and findings, the Appellant be directed to pay the amendment claim of Rs. 35,387.77 for change of tariff from industrial to commercial for the period of 01.01.2013 to 12.11.2013.


### **Analysis and Ruling**

6. Heard the parties and perused the documents on record. The Appellant's request for condonation is granted. The Appellant had purchased an Industrial Unit on 25<sup>th</sup> February 2010 from M/s Shade Arts having Consumer No. 202-030-661 at 108, Allied Industrial Estate, Prof. Ram Panjwani Road, Mahim (West), Mumbai. However, the Appellant was using the premises for running its office.

7. There were two meters, one for commercial purpose and the other for industrial purpose. The commercial meter was surrendered by the Appellant in Dec. 2012, as it had very low sanctioned load.

8. As per the Respondent's system (OLCCS) records, the Appellant requested for change of tariff from Industrial to Commercial vide I.D. No. 1607982 dated 12.11.2013. The same was approved on 09.01.2014. The Appellant was billed as per commercial tariff category from 12.11.2013 onwards. In fact, at that point of time, if the Respondent was convinced that the commercial tariff should have been applied for the earlier period also, it should have issued its supplementary bill right then in 2013 or 2014, when it would not have been delayed excessively. However, the Respondent did not do so. It issued the bill only around 2021.

9. The Respondent received Municipal Chief Auditor Query letter dated 20.03.2020 pointing out that the applicable tariff should be LT II B instead of LT II A as per sanctioned load which was above 20 KW. The Appellant had been wrongly billed with commercial tariff category which was less than or equal to 20 KW. Accordingly, Divisional Engineer (HVC) prepared an amendment claim of Rs. 3,40,273.29 as detailed in para 3 (ix).

  
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The Appellant is billed under “less than or equal to 20 KW” from 02.01.2021 onwards till date.

10. The Appellant has raised the grievance against this amendment claim of Rs. 3,40,273.29. The Respondent has withdrawn the major part of its claim of Rs. 3,04,885.52 and only the balance claim of Rs. 35,387.77 remained for the period of **01.01.2013 to 12.11.2013**. Since the withdrawn claim of Rs.3.04 lakhs pertained to the difference on account of sanctioned load, we need not go into the detailed merits on this issue, as to whether the sanctioned load was <20 or >20 KW, or whether the applied load of 9.608 KW was valid or not. The only issue which remains is the claim of Rs.35,387. The Appellant has agitated on the remaining claim also, with a prayer to withdraw this also.

11. The following issue is framed to determine the validity of the remaining claim.

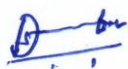
Issue: Whether the amendment claim of Rs. 35,387.77 towards tariff difference for the period of 01.01.2013 to 12.11.2013 which was issued to the Appellant by letter dated 11.06.2022 is legal and valid?

Finding: NEGATIVE

Section 56(2) of the Electricity Act, 2003 is reproduced below, which is required for determination of this issue.

*“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

The Judgment dated 12.03.2019 of the Hon’ble Bombay High Court Larger Bench in W.P. No.10764 of 2011 with other Writ Petitions has interpreted the Section 56 (2) of the Act. The Judgement is quoted as below:

  
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*“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.*

*77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious*

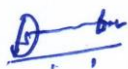
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*because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.*

*78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but*

  
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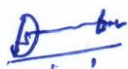
*the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.*

*As a result of the above discussion, the issues referred for our opinion are answered as under:*

- (A) The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.*
- (B) As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*
- (C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment. “*

The ratio of the Judgment is that the licensee company can recover energy bill by way of additional supplementary demand for a period of two years for a bona-fide error. The amendment claim of the Respondent of Rs. 35,387.77 towards tariff difference for the period of 01.01.2013 to 12.11.2013, issued to the Appellant on 11.06.2022 after nearly nine years is time barred, and not recoverable. Hence, the claim is not legal and needs to be withdrawn.


12. Had the Respondent BEST Undertaking correctly applied commercial tariff category from the date of purchase i.e. 25.02.2010, it would not have suffered such a huge revenue loss. The tariff of the Appellant was changed to commercial tariff category from 13.11.2013 onwards. It was the duty of the Respondent to issue amendment bill towards tariff difference from industrial to commercial within the stipulated period, which the Respondent failed to do.

  
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13. In view of the above, the Respondent is directed :
- to withdraw the amended claim of Rs. 35,387.77 towards tariff difference for the period of 01.01.2013 to 12.11.2013 along with waiver of interest and DPC accrued in the bill.
  - to submit Compliance within two months from the date of this order.
  - Other prayers of the Appellant are rejected.
14. The Forum's order is therefore modified to the above extent.
15. The secretariat of this office is directed to refund the amount of Rs. 19000/- taken as deposit to the Respondent to adjust in his ensuing bill.
16. The Representation is disposed of as above.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
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