

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 5 OF 2020

In the matter of retrospective recovery of tariff difference

Sangam World Centre of World Association
of Girl Guides and Girl Scouts..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd.
Nagar Road Dn. Pune (MSEDCL) Respondent

Appearances

For Appellant : 1. Smt. Michelle Huges, Manager
2. Smt. Minakshi Jadhav, Deputy Manager
3. Smt. Uzma Khan, Operations Coordinator


For Respondent : 1. Dilip N. Bhole, Executive Engineer
2. Avinash Deshmukh, Deputy Manager.

Coram: Deepak Lad

Date of Order: - 19th March 2020

ORDER

This Representation is filed on 6th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity


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Secretary
Electricity Ombudsman Mumbai




Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 4th November 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum, by its order dated 04.11.2019 has partly allowed the grievance application in Case No. 39 of 2019. The operative part of the order is as below: -

- “b) The retrospective arrears recovery since July-2014 to Nov-2018 is illegal stands set aside.*
- c) The Respondent Utility shall revise and reassess the category of LT I residential as activity in the premises is Girl Hostel and shall reclassify and fix the tariff accordingly.*
- d) The tariff difference if any payable by the consumer shall be restricted to 24 months i.e. from date of inspection 26.11.2018 payable amount shall be recovered in 12 equal monthly installments.*
- e) No interest DPC & Penalty shall be charged against the consumer.”*


3. Not satisfied with the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is a LT Consumer having sanctioned load of 30 KW and Contract Demand of 37 KVA from 01.01.1979 at opposite Phulenagar, Alandi Road, Yerwada, Pune.
- (ii) The Appellant is one of the five international centres of the World Association of Girl Guides and Girl Scouts (WAGGGS). It acts as an umbrella body for the World Centres and member organization, including the Girl Guide Wing of the Bharat Scouts and Guides in India. The WAGGGS is registered in the United Kingdom under the Charity Commission of England and Wales and the registered No. is 1159255.
- (iii) The Appellant was initially billed under commercial tariff category however it was changed to industrial tariff category from July 2014 onwards. The Appellant never demanded industrial tariff.


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- (iv) On 26.11.2018, the Respondent Flying Squad carried out a spot inspection of the premises and found that the Appellant is billed under industrial tariff category for the electricity which was incorrect. As a result, the Respondent issued a bill of Rs.23,02,530.98 in January 2019 including tariff difference from industrial to commercial tariff category for the period July 2014 to October 2018. The Appellant approached the Respondent to withdraw the unjustified bill but there was no proper response.
- (v) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 24.05.2019. The IGRC by its order dated 01.06.2019 has rejected the grievance. The Appellant approached the Forum on 10.06.2019. The Forum by its order dated 04.11.2019 has partly allowed the grievance. The retrospective recovery towards tariff difference from industrial to commercial for July 2014 to November 2018 was declared illegal and set aside. The Forum directed the Respondent to revise the category as LT I residential on the basis of Girls Hostel and to restrict for retrospective period of 24 months for the tariff difference from date of inspection 26.11.2018, payable in 12 equals monthly instalments.
- (vi) The Forum has not considered that
- a) The changes in tariff category were the mistakes of the Respondent. The Appellant was unaware of any changes in the past. The Appellant is a regular paying consumer of the bill.
 - b) The Appellant is not a girl's hostel. The Appellant is a charitable organisation which does not charge the visitors but relies on funding coming from donations from Girl Guides and Scouts from across the world. The retrospective recovery is very large and the Appellant simply do not have the money to cover this.
- (vii) The Appellant prayed that the appropriate tariff be applied considering the activity of the Appellant and the retrospective recovery be quashed. The centre is a place for Girl Guides and Girl Scouts around the world to come together to share their experiences, as well as the culture and traditions of their homelands and Member Organizations


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4. The Respondent filed its only one page reply by its letter dated 28.01.2020 stating in brief as below:-

- (i) The Appellant is a LT Consumer having sanctioned load of 29 KW and Contract Demand of 37 KVA from 01.01.1979 Phulenagar, Alandi Road, Yerwada, Pune. The Appellant was billed under commercial tariff category initially.
- (ii) The Respondent, Flying Squad Team has carried out site inspection of the premises on 26.11.2018. During inspection, it was observed that the activity of the Appellant is of commercial in nature, however, the Appellant was billed under industrial tariff category. The activity of the consumer is not a manufacturing activity but a commercial in nature. Hence, the Appellant was being billed under commercial tariff category instead of industrial tariff category from January 2019.
- (iii) The Respondent issued a bill of Rs. 23,02,530/-towards retrospective tariff difference from industrial to commercial for the period July 2014 to October 2018, and also issued the bill for November and December 2018 (two months) for Rs.84162/-. Thus, total amount of recovery works out to Rs.23,86,692/- for the period July 2014 to December 2018 and the regular tariff at commercial rate started levying from January 2019 onwards.
- (iv) The Appellant filed its grievance in IGRC on 24.05.2019. The IGRC by its order dated 01.06.2019 has rejected the grievance. The Appellant then approached the Forum on 11.06.2019 which issued order on 04.11.2019 and partly allowed the grievance by way of limiting the retrospective recovery to 24 months prior to the date of inspection and has also directed to change the tariff as LT-1 Residential as the activity of the Appellant is Girls Hostel.
- (v) The Respondent has taken steps to get the approval of the competent authority for revision of the bill as per the order of the Forum as a matter of procedure. The order will be implemented shortly.


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5. The hearing was held on 28.02.2020 at Pune. Both the parties argued in line with their written submissions. The Appellant argued that it is NGO. It runs a centre for Girl Guides and Girl Scouts around the world to come together to share their experiences, as well as the culture and traditions of their homelands and Member Organizations. It is a charitable organisation which does not charge the visitors, but it fully relies on the funding coming from donations from Girl Guides and Scouts from across the world. Moreover, it imparts in innovative non-formal education programmes, leadership development, advocacy work and community action empowering girls and young women to develop the skills and confidence needed to make positive changes in their lives, in their communities and countries. The centre was being billed at Commercial tariff initially. It is a mystery as to how the Respondent changed it to Industrial tariff. The Flying Squad of the Respondent visited the premises on 26.11.2018. Post inspection the Respondent issued the bill of Rs. 23,02,530/-towards retrospective tariff difference from industrial to commercial for the period July 2014 to October 2018, and further supplementary bill for November 2018 and December 2018 (two months) for Rs.84162/-. Thus, total amount of recovery works out to Rs.23,86,692/- for the period July 2014 to December 2018 and the tariff at commercial rate was levied from January 2019 onwards. The Appellant is surprised with this humongous bill when it is not at fault. The same should be corrected and appropriate tariff be applied. The Appellant is ready to pay at Commercial rate.

6. The Respondent, prima facie, appeared to be not appropriately prepared with the details of the case hence did not argue much except that it is implementing the Forum's order. It was unable to even provide the details of various loads at the premises when asked for.

Analysis and Ruling

7. Heard both the parties and perused the documents on record. The Forum has issued the order directing the Respondent to revise the bill to the extent of retrospective recovery for 24 months prior to inspection of the Flying Squad. It has also directed to revise the tariff to Residential one from Commercial.


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8. From the submission of the Appellant which fairly matches with the information available on its website, it is clearly that it runs a centre which undertakes innovative non-formal education through various programmes, leadership development, advocacy work and community action which empowers girls and young women to develop the skills and confidence needed to make positive changes in their lives, in their communities and countries. It implies that it is a residential programme for the women visitors. During the hearing also, the Appellant accepted that there is a hostel facility besides swimming pool, office, canteen, etc. for visitors.

9. During the hearing, the Respondent was asked to submit load profile of the Appellant which it submitted on the day of writing this order, which is highly deprecated. The load profile is tabulated as below: -

Sr. No.	Description	Total Load (in KW)
1	Residential Guide House (4 Nos.)	36.45
2	Dormitories and Rooms (for Living Campaigners during the course)	92.85
3	Dining Room and Kitchen	14
4	Offices	23.55
5	Common	40.97

From the above, it is crystal clear that the centre has a residential facility for visitors. The tariff applicable as per the order of the Commission then in force (during the period of recovery) is LT 1 Residential. Therefore, the Appellant needs to be billed as per LT 1 Residential tariff and the Forum is right in issuing the directions to that extent.

10. The Forum has directed for retrospective recovery for 24 months prior to date of inspection by Flying Squad i.e. 26.11.2018.



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11. Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, 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. In this case, the Respondent has raised the bill towards tariff difference for the first time in the month of January 2019. The relevant portion of the Larger Bench Judgment dated 12.03.2019 interpreting Section 56 (2) of the Act is quoted below: -

“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


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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 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 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.*

12. In view of the above discussions and Larger Bench Judgment, the Respondent can recover retrospective recovery for 24 months from January 2017 to December 2018 and I, therefore, pass the following order:-

The Respondent is directed


- (a) to recover the amount towards tariff differential from industrial to LT 1 Residential for the period from January 2017 to December 2018 without any DPC and interest.


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- (b) to allow the Appellant to pay this amount in 15 monthly instalments along with current bill. In case of default, the interest, DPC shall be levied.
- (c) Compliance to be submitted within two months from the date of issue of this order.
13. The Forum's order is therefore revised to the above extent. The Representation is disposed of accordingly.
14. The Secretariat of this office is directed to refund the amount of Rs.25000/- to the Appellant immediately.

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


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Secretary
Electricity Ombudsman Mumbai

