

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 2023

In the matter of change of Tariff Category and retrospective recovery thereof

Crystal Garden Apartments Unit No-1 (Cons. No. 160221142681).....Appellant

Vs.

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

Appearances:

Appellant :1. Arvind Padhye, Society Member
2. Chetan Nemade, Representative

Respondent: 1. Sanjeev Rathod, Executive Engineer, Shivajinagar Dn.
2. Sachin Patil, Addl. Executive Engineer, Ganeshkhind S/Dn.


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

Date of hearing : 10th April 2023

Date of Order : 20th April 2023

ORDER

This Representation was filed on 18th January 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 22nd November 2022 passed by the Consumer Grievance Redressal Forum, Pune (the Forum).


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2. The Forum, by its order dated 22nd November 2022 dismissed the grievance application in Case No. 11/2022. The Appellant filed this representation against the above – said order of the Forum. An e-hearing was held on 10th April 2023 where the Appellant and the Respondent were heard through video conferencing at length. The written submissions as well as the arguments of the Appellant are taken in brief as under:

- (i) The Appellant (Crystal Garden Apartments Unit No-1) is a residential consumer (No. 160221142681) from 10.07.2010 having sanctioned load of 14.5 HP at Survey No. 134/31, 34/4C, Plot 11, Near “Whispering Wind Soc.”, Pashan, Pune. The Appellant is a Co-operative Housing Society Ltd. having 5 wings A, B, C, D, E with a total of 215 residential flats registered under “Maharashtra Ownership Apartment Act 1970”. **The electric connection is used for the purpose of “Water pumping, water purification activities” of the society.**
- (ii) The Appellant referred to various tariff orders of the Maharashtra Electricity Regulatory Commission (the Commission) where water pumping of Housing Societies/ Complexes was classified under “**LT III- Public Water Works and Sewage Treatment Plants (LT III-PWW & STP)**” tariff category. The Tariff Orders of the Commission are categorised as below:-
 - a. Case 48 of 2016 dated 03/11/2016.
 - b. Case 195 of 2017 dated 12/09/2017.
 - c. Case 322 of 2019 dated 30/03/2020.

The above tariff orders specifically provide a tariff category of “LT III-PWW & STP” to Housing Societies/Complexes for the purpose of water pumping and water purification activities.

- (iii) The Appellant was originally billed under Residential Tariff Category from the date of connection i.e., 10.07.2010. The Appellant was supposed to be billed under LT III-PWW & STP tariff category, hence the Appellant applied for change of tariff category from LT-I-A Residential to LT III-PWW & STP through an online


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application, and submitted a hard copy of letter dated 29.06.2020 to the Respondent along with the requisite documents.


- (iv) The Respondent inspected the premises on 06/07/2020 and changed the tariff category from LT-I-A Residential to LT III-PWW & STP from August 2020.
- (v) However, after 15 months, the Respondent, AEE, Geneshkhind Sub-Division reversed the above decision by its letter dated 25/11/2021, and changed back the tariff category from LT III-PWW & STP to LT-I Residential, and issued a supplementary bill of Rs.5,84,360/- towards the tariff difference from LT-III to LT-I Residential.
- (vi) The Appellant filed its grievance application before the Forum on 27.01.2022. The Forum, by its order dated 22.11.2022 dismissed the grievance application. The Forum failed to understand the basic issue of application of proper Tariff Category and wrongly concluded that LT-III tariff is “only applicable for Local Self Government Bodies” and not for others.
- (vii) The Appellant referred to the concerned quote of tariff orders of the Commission in the MSEDCL Commercial Circular No.323 dated 03/04/2020 which is reproduced as below:

“LT III- Public Water Works (PWW) and Sewage Treatment Plants

Applicability:


*This tariff category is applicable for electricity / power supply at Low / Medium Voltage for pumping of water, purification of water and allied activities relating to Public Water Supply Schemes, Sewage Treatment Plants and Waste Processing Units, provided they are owned or operated or managed by Local Self-Government Bodies (Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils and Corporations, etc), or by Maharashtra Jeevan Pradhikaran (MJP), Maharashtra Industries Development Corporation (MIDC), Cantonment Boards and **Housing Societies/complexes.***

All other Public Water Supply Schemes and Sewage Treatment Plants (including allied activities) shall be billed under the LT II or LT V category tariff, as the case may be.” (Emphasis added)


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- (viii) The Appellant claims that it has its own public water supply system which includes underground water tank, water pumps, water purification setup, and water supply pipeline to the overhead tanks, overhead water tanks, and water pipelines to the individual flats of the society, just like Local Self Government Bodies.
- (ix) It is not clear why the Forum has taken the view that the LT-III tariff category is not applicable to “Housing Societies/Complexes” when the above-mentioned Commission’s Tariff Orders clearly includes “Housing Societies/Complexes” within the scope of LT-III tariff category for the purpose of water pumping, water purification activities.
- (x) The Respondent and the Forum was unable to give a satisfactory answer or define/ explain the following points raised by the Appellant.
- (a) Whether the LT III-PWW & STP tariff category is “Purpose based” tariff category or not?
 - (b) What is the meaning of “Housing societies/complexes” in LT III-PWW & STP tariff applicability?
 - (c) “Housing societies/complexes” by default applies to residential consumers then what is the meaning of “Housing societies/complexes” in the LT III-PWW & STP tariff?
 - (d) If LT III-PWW & STP tariff applicability is only to STP and not for other activities, then how it is not applicable?
 - (e) Which rules/MERC orders/MSEDCL circulars/GR says, “Public Water Works”, or “Public Water Supply Schemes/system” is only meant for Government owned schemes?
 - (f) The Appellant-Society supplies water to 215 flats and their residents for their general use. Residents of “Crystal Garden Apartment Unit No-1” are “public” to whom water is supplied.


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- (xi) The Appellant referred to various Judgements/orders in support of its arguments for “Determination of Tariff” which are listed below:-
- Judgement dated 31/05/2009 in Case No.195 of 2009 of Appellate Tribunal for Electricity (ATE)
 - Orissa High Court Judgement dated 15/03/2013 in case of Basudev Mahakud Executive Engineer (Electrical), Bhubneshwar Division Vs. National Seeds Corporation
 - MERC Case No 42 of 2015, The Seafood Exporters Association of India, Maharashtra Veej Grahak Sangathana Vs Maharashtra Electricity Distribution Co. Ltd.
 - MERC Case No 10 of 2001, MIDC vs MSEB
- (xii) The Appellant argued that till March 2016 “Sewage Treatment Plants (STP) was not covered under LT-I Residential category, then how can MSEDCL charge for STP under LT-I Residential tariff category to housing societies till March 2016? The Appellant also referred to the recent Tariff Order dated 31/03/2023 of the Commission in Case No. 226 of 2022. It has further detailed the applicability of LT-III tariff to “**Housing Societies/complexes**” by adding the words “**(including operated by developers in integrated township projects)**”
- In view of the above, the Appellant prays that the Respondent be directed:
- to change the tariff category from LT I -Residential to **LT III-PWW & STP**
 - to refund the tariff difference from Nov. 2016 onwards.

3. Post Hearing, the Appellant by its email dated 10.04.2023 has forwarded additional information as directed by the Hon’ble Ombudsman. The Appellant states as below:

➤ **Sources of water used by Crystal Garden Apartment for water treatment and pumping:**

It was mentioned by the Respondent that the Appellant- Society is supplied water through Pune Municipal Corporation (PMC). Actually, the Appellant- Society uses multiple sources of water throughout the year to satisfy the requirements of its residents.


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These include -

1. PMC water piped by PMC to Society's underground tanks.
2. Water pumped up from bore wells created by the Society within the premises.
3. Tanker water supplied by private water suppliers.
4. Tanker water supplied by PMC (if and when available)


The Appellant claims that the pumps deployed by the Appellant-Society are used for treatment of all of this water, and for pumping all of it to the overhead tanks of the individual buildings of the Appellant Society multiple times in a day. So the Appellant-Society is engaged in water treatment and pumping of PMC as well as non-PMC water in a manner very similar to PMC. Hence it is not correct to say that the Appellant-Society uses only PMC water.

➤ **Water provision by PMC and pumping by the Appellant Society**

During the hearing, the Respondent mentioned that PMC has been granted concessional electricity rates by MSEDCL for pumping water to the whole city, so the Appellant should not be granted similar concession again.

However, the Appellant argued that the water received from PMC by the Appellant has to be further pumped up to the overhead tanks by deploying special pumps. This is a direct extension of the (partial) pumping done by the PMC. Additionally, as mentioned above, the Appellant also treats and pumps substantial amount of non-PMC water (tanker/bore well water) that is sourced by it independently. Hence the same concessional rates under LT-III tariff category that have been granted to PMC for water processing and pumping must be extended to the Appellant for completing that job.

- The Respondent argued during the hearing that, considering the broad philosophy and intention of the Commission's words "Public water supply schemes" in the applicability of LT-III tariff, the same should not be allowed for non-Governmental users, even if the LT-III category includes "Housing Societies/Complexes".


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On the other hand, the Appellant argued that “Public water supply schemes” are not necessarily operated by Government. The Appellant also operates the pumping system for the benefit of the “public” that lives within the Appellant society. The developers of townships operate pumping systems for the benefit of the public that lives within the townships. The supply of such water to the Appellant members is being done entirely as “domestic water supply” as defined by “**The Maharashtra Jeevan Authority Act – Chapter VI Section 40**”.

- The recent Tariff Order dated 31.03.2023 of the Commission in Case No. 226 of 2022 has further detailed the applicability of LT-III tariff to “**Housing Societies/complexes**” by adding the words “**(including operated by developers in integrated township projects)**” to the existing applicability description. This further supports the view that the Appellant falls under the applicability of LT-III tariff because it clearly shows that non-Government parties are covered by the Applicability description.

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

- (i) The Appellant is a residential consumer (No. 160221142681) from 10.07.2010 having sanctioned load of 14.5 HP at Survey No. 134/31, 34/4C, Plot 11, Pashan, Pune. The Appellant is a Co-operative Housing Society Ltd.
- (ii) The Appellant had applied online (ID No. 26894485) on 29.06.2020 for change of tariff category from LT- I A (Residential) to LT III-PWW & STP. The Assistant Engineer, Sus Road Section inspected the premises on 06.07.2020 and observed in his report under the remark’s column as below:
“Consumer is using supply for water pumping. Please change tariff of consumer.”
- (iii) Accordingly, this tariff change proposal was sent for approval to the Circle Office of the Respondent. On its approval, the Respondent changed the tariff category on 28.08.2020 from LT- I A (Residential) to LT III-PWW & STP.
- (iv) The Appellant is mainly supplied water from Pune Municipal Corporation (PMC), lifting it to distribute to society flats. The Appellant is neither managed by any Local Self-Government Body nor belongs to Public Water Supply Schemes and


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Sewage Treatment Plants. The Appellant is only storing water provided by PMC in underground tanks, and then lifting it for distribution to their society flats. Hence, the Appellant is not eligible for the tariff category of LT III-PWW & STP.

- (v) The Respondent realised its mistake in changing the tariff category to LT III-PWW & STP. So, the Respondent reversed the tariff category to LT I (B) Residential in the month of November 2021, and issued a supplementary bill of Rs.5,84,360/- on 25.11.2021 towards the tariff difference from LT III-PWW & STP to LT I (B) Residential.
- (vi) As per Commercial Circular no 323 dt 03.04.2020, Tariff Applicability is as follows:-


(A) LT I Residential:-

“Government/Private/Co-operative Housing Colonies/complexes (where electricity is used exclusively for domestic purposes) only for common facilities such as Water Pumping / Street and other common area Lighting / Lifts /Parking Lots/ Fire-fighting Pumps and other equipment, etc.”

(B) LT III: LT-Public Water Works (PWW) and Sewage Treatment Plants

*“This tariff category is applicable for electricity / power supply at Low / Medium Voltage for pumping of water, purification of water and allied activities relating to **Public** Water Supply Schemes, Sewage Treatment Plants and Waste Processing Units, **provided** they are owned or operated or managed by Local Self-Government Bodies (Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils and Corporations, etc.), or by Maharashtra Jeevan Pradhikaran (MJP), Maharashtra Industries Development Corporation (MIDC), Cantonment Boards and **Housing Societies/complexes**. All other Public Water Supply Schemes and Sewage Treatment Plants (including allied activities) shall be billed under the LT II or LT V category tariff, as the case may be.”*

- (vii) The Appellant’s society is covered under (A) above, and not under (B). In view of the above tariff applicability, **LT III-PWW & STP** tariff was changed back to LT-I A (Residential), & the bill of tariff difference of Rs.5,84,358.04/- was issued to the consumer on 25.11.2021. The consumer is deliberately creating confusion & doubt to avail lower tariff benefit.
- (viii) Consumer made an appeal on 27.01.2022 to the Forum for cancellation of tariff difference bill for Rs.5,84,360/- dt 25.11.2021. As per the Forum's final order dated


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22.11.2022, it has been rejected on the above grounds. Hence, it is kindly requested to reject the representation of the Appellant with cost.


Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is a residential consumer from 10.07.2010 having sanctioned load of 14.5 HP at Survey No. 134/31, 34/4C, Plot 11, Pashan, Pune. The Appellant is a Co-operative Housing Society Ltd. having 5 wings A, B, C, D, E with 215 residential flats. The Appellant was originally billed under Residential Tariff Category from the date of connection i.e., 10.07.2010. The Appellant applied for change of tariff category from LT-I (B) Residential to LT III-PWW & STP through an online application. The Respondent changed the tariff category from LT-I-A Residential to LT III-PWW & STP from August 2020. However, after 15 months, the Respondent realized its mistake that LT III-PWW & STP tariff category is not applicable to the Appellant, and reversed the tariff category to LT-I Residential by issuing a supplementary bill of Rs.5,84,360/- towards tariff difference from LT III-PWW & STP to LT-I Residential from August 2020 to October 2021.

6. Let us examine the evolution of the Commission's orders in this regard. The Commission in its various tariff orders have established a separate tariff category for Public Water Works. The orders are given chronology wise as below:

I) Case No.1 of 2001 MERC Tariff Order for MSEB – FY 2001-02

*"The Commission directs the MSEB, under Section 22(2)(e) of the ERC Act, 1998, to submit zonal level energy audits for all circles/zones on a monthly basis to the Commission, along with the 'Action Taken Report' for each circle/zone. The Commission intends to charge 'circle/zone-wise T & D loss Charge' latest by the 1st October 2002 instead of the across-the board T & D loss Charge. **The Commission has also not applied the T & D loss charge for public utilities like the Railways, Public Water Works, Commission's Analysis & Decision on MSEB's Proposal 163 MERC Tariff Order for MSEB – FY 2001-02 Street Lighting and Mula Pravara Society, as, in the view of the Commission, these do not seem to have any incentive to pilfer energy.**"*


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Hence it was the view of the Commission that Public Water Works tariff is rationally applicable for Public Activity for **public utilities**.

II) Case No. 116 of 2008 dated 17.08.2009.

The Commission finds merit in the suggestion to include electricity used for the purpose of Sewage Treatment under Public Water Works since these are offered by the same entity, viz., Municipal Corporation or Council, etc. Accordingly, the Commission rules that PWW category will include electricity used for the purpose of Sewage Treatment as well. The Tariff category was renamed from “**Public Water Works**” to “**LT III: LT - Public Water Works and Sewage Treatment Plants**”.

III) Case No. 19 of 2012 dated 16.08.2012:

LT III: LT - Public Water Works and Sewage Treatment Plants:

Applicability: Applicable for use of Electricity / Power Supply at Low / Medium Voltage for pumping of water, purification of water & other allied activities related with Public Water Supply Schemes and Sewage Treatment Plants

provided such Public Water Supply Schemes and Sewage Treatment Plants are owned, operated, and managed by Local Self Government Bodies, like Gram Panchayat, Municipal Council, Municipal Corporation including Maharashtra Jeevan Pradhikaran, and cantonment boards:

IV) Case No. 121 of 2014 dated 26.06.2015.


LT III: LT- Public Water Works and Sewage Treatment Plants Applicability:

This category shall be applicable for

“Use of Electricity / Power Supply at Low / Medium Voltage for pumping of water, purification of water and other allied activities related to Public Water Supply Schemes and Sewage Treatment Plants”.

provided they are owned, operated, and managed by Local Self Government Bodies, like

- (i) Gram Panchayats,
- (ii) Municipal Councils and Municipal Corporation, etc. or by


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- (iii) Maharashtra Jeevan Pradhikaran,
- (iv) **Maharashtra Industries Development Corporation (MIDC)** and
- (v) Cantonment Boards;.

Note: In this Tariff order “MIDC” was added.

V) Case No. 48 of 2016 dated 03.11.2016.

LT III: LT-Public Water Works (PWW) and Sewage Treatment Plants

Applicability: This tariff category is applicable for electricity / power supply at Low / Medium **Voltage for pumping of water, purification of water and allied activities relating to Public Water Supply Schemes and Sewage Treatment Plants,**

provided they are owned or operated or managed by

- Local Self-Government Bodies (Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils and Corporations, etc.), or by
- Maharashtra Jeevan Pradhikaran (MJP),
- Maharashtra Industries Development Corporation (MIDC),
- Cantonment Boards and
- **Housing Societies/complexes.**


Note :In this Tariff order “Housing Societies/complexes” were added those are doing this type of work.

VI) Case No. 226 of 2023 dated 31.12.2023.

LT III: LT-Public Water Works (PWW) and Sewage Treatment Plants

Applicability: This tariff category is applicable for electricity / power supply at Low / Medium Voltage for pumping of water, purification of water and allied activities relating to Public Water Supply Schemes, Sewage Treatment Plants and Waste Processing Units, provided they are owned or operated or managed by

- Local Self-Government Bodies (Gram Panchayats, Panchayat Samitis, Zilla Parishads, Municipal Councils and Corporations, etc.), or by
- Maharashtra Jeevan Pradhikaran (MJP),
- Maharashtra Industries Development Corporation (MIDC),
- CIDCO,


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- Cantonment Boards,
- **Housing Societies/complexes (including operated by developers in integrated township projects),**
- **Water ATM (RO/UV/UF) Water Purifier Plants which are operated by Gram panchayat / local body or women's self-help groups.**

Note: Note :In this Tariff order “Housing Societies/complexes” were added with including operated by developers in integrated township projects and in addition it was extended to “ Water ATM (RO/UV/UF) Water Purifier Plants which are operated by Gram panchayat / local body or women's self-help groups” those are doing this type of work.

7. The main dispute is regarding which of the tariff categories, i.e., LT-I Residential or LT III: LT - Public Water Works, is applicable to housing societies / complexes such as the Appellant. As mentioned above in para 4 (vi), housing societies / complexes have been included under two tariff categories as per the Commission's tariff orders. **The words “housing societies / complexes” are mentioned under both tariff categories i.e., LT-I Residential and LT III: LT - Public Water Works & STP.** But the basic purpose of these tariff categories is totally different. Therefore, the question arises, under which of these two tariff categories should the Appellant Society be categorized. In order to determine this, we need to go into the depth of the tariff categorisation and its philosophy and intention.

The evolution of the Commission's orders shows that initially, private cooperative housing societies and complexes were clearly categorised under the Residential tariff category while LT III was applicable only to “Public Water Schemes”. On the face of it, “Public” Water Schemes indicate schemes owned and managed by the Government or Semi-Government bodies as mentioned in the LT-III category. However, subsequently the words “housing societies / complexes” has been added in this category, and at the same time, “housing societies / complexes” is also retained under the LT-I Residential tariff category. LT – III category primarily relates to public water supply schemes with the proviso that they can be owned and operated by local self-government bodies *or* housing societies. This is only a proviso, and the main category will continue to apply only when the works relate to Public



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Water Supply Schemes. **These two provisions indicate that some, but not all, housing societies / complexes would be covered under “public” water supply schemes.** Then how to determine which scheme run by housing societies / complexes are covered under “Public” Water Supply Schemes and which would not be covered? Here, we must delve into the apparent intention of the Commission in making the proviso mentioned above.

In including some (but not all) housing societies / complexes under “public” works, the apparent intention of the Commission seems to be to cover such housing societies which have gone the extra mile and designed their own water supply scheme from start to finish, without depending on the local government body altogether. In other words, only such societies would be covered which lift water directly from their original source (such as rivers, lakes, water reservoirs) and then distribute it further within the society after treating it. This work is generally done by local self-government bodies with some exceptions. Generally, only a few large housing societies lift water from the original water source and also do the water purification / filtration process at their own level through their independent water filtration plants. However, a vast majority of housing societies are supplied water from the concerned municipal corporation or municipal body, and are thus not covered under this provision. Such housing societies would be covered, by default, under LT-I Residential tariff category. In the current case, we find that a major part of the water used by the Appellant is provided by the Pune Municipal Corporation up to the point of the society’s underground water tanks. Before supplying this water, water filtration is also done at the level of Pune Municipal Corporation, and it is this treated water which is supplied to the city including the Appellant. The Appellant, thereafter, takes the water from its underground tanks, lifts and stores it in its overhead tanks and further distributes it to its members.

Even if the Appellant had gone one step ahead and directly lifted water from the original source, the LT – III category would, at the most, have applied only to that particular water pumping machinery which would have lifted water from the source up to the premises of the society, i.e. its underground water tanks. The other internal pumping machinery of the society which lifts water to its overhead tanks, would still have been covered under LT-I category. In other words, the benefit of LT-III category would not automatically apply to *all*


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Secretary
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the pumping machinery of a society, but one would have to examine in detail which part can be categorised as “public” and which part as “private”.


The Pune Municipal Corporation is the body which lifts water from the original water source / rivers like Mutha or Khadakwasla dam for providing water to the entire city of Pune, including the Appellant Society. A common water filtration plant for the city is also run by the PMC. Therefore, the definition of “Public” Water Works actually applies to the PMC and such municipal bodies. Even though the Crystal Garden Apartment Unit 1 may be occasionally using their own water source such as bore well or water tankers when the PMC water supply is inadequate, this happens more as an exception rather than a rule. Therefore, we find that the definition of “Public” Water Works cannot be applied to Crystal Garden Apartment Unit No.1, the Appellant.

To substantiate this point, there are examples of large private housing societies / complexes such as RCF Housing Colony, Nava Sheva Port Trust, etc. which lift water directly from the water source such as rivers / dams. They have developed their independent water supply scheme including water filtration plants and lifting of water from the source, However, the case of Crystal Garden Apartment Unit No.1 is different as explained above.

8. The ratio of various orders referred to by the representative of the Appellant are not applicable in the instant case.

9. The Forum has rightly analysed the case and hence no interference in the order of the Forum is warranted. The Forum’s order is upheld.

10. It is not clear how and why the concerned officer of the Respondent allowed change of tariff category to “Public Water Works” for 15 months from August 2020 to October 2021 without seeking official clarification from the Commission, when this categorisation had implications for hundreds of such similar housing societies. The Respondent is advised to take suitable action against the erring authority in this regard.



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11. The Respondent is also advised to refer the matter to the Commission for further clarity, since it relates to determination of tariff category.

12. The Representation is rejected and disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

