

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 6 OF 2020

In the matter of change of tariff category

Shrisai Medicare Services Pvt. Ltd. Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Pune Rural Circle (MSEDCL) ... Respondent

Appearances

For Appellant : B. R. Mantri, Representative

For Respondent : 1. Vitthal T. Adhal, Executive Engineer
2. Sohan Dhamne, Sr. Manager.


Coram: Deepak Lad

Date of Order: - 27th April 2020

ORDER

This Representation is filed on 7th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 8th November 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum, by its order dated 08.11.2019 has partly allowed the grievance application in Case No. 46 of 2019. The operative part of the order is as below: -


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“2. The debit adjustment bill excess to the current bill Rs.16,35,312.00/- is illegal and hence quashed and set aside.


3.The Respondent utility is directed to revise and reassess the tariff difference of appropriate category for earlier period of twenty four (24) months i.e. for the period preceding to November 17 and work out the exact liability of the consumer after application of due and appropriate tariff category.

4. No interest, DPC and penalty be levied on the bill represent payment of past period dues.

5. The consumer may pay the said revised bill in twelve (12) equal monthly instalments along with the current bill/s.”

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

- (i) The Appellant is a HT Consumer (No.181169057440) from 16.12.2013 at Diamond Commercial Complex, Somatane Phata, Maval. The activity of the Appellant is a hospital. It is charged as per HT-1 Industrial tariff category.
- (ii) The Appellant has paid all the bills raised by the Respondent from time to time.
- (iii) The Respondent has issued debit bill of Rs.16,35,311/- in the bill for the month of February 2019 which is received on 12.03.2019.
- (iv) The debit bill recovery is related to escape billing due to error in meter.
- (v) Recovery as per Government Auditor Report for earlier period is without any notice from the Respondent. Moreover, the Respondent has not justified its claim.
- (vi) The Respondent has not followed the Commission direction in Case No. 24 of 2001, which directs recovery to be made prospectively only. Classification & Reclassification is the responsibility of the Respondent and burden due to wrong categorization cannot be transferred to the Appellant.


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- (vii) There is no provision for supplementary bill as per provision of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulation) and the Electricity Act, 2003 (the Act). There is no legal provision for recovery of tariff difference.
- (viii) Respondent has issued Commercial Circular No. 377 dated 02.07.2003 as per the Order of the Commission in Case No. 24 of 2001. In this regard, Appellate Tribunal for Electricity (ATE) also issued judgement in Appeal No. 131 of 2013 on 07.08.2014. This judgement also bars retrospective recovery.
- (ix) In view of the order of the Commission and ATE judgement, retrospective recovery as proposed by the Respondent is illegal and the Appellant prays that
- The matter be remanded to the Forum.
 - Retrospective recovery be withdrawn.
 - If Respondent shows the regulation which permits recovery, then as per the High Court Order, it should be restricted as per limitation in accordance with Section 56(2) of the Act for 2 years i.e. April 2017 to March 2019.
 - No DPC and Interest should be charged.

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


- The Appellant is a HT Consumer (No.181169057440) from 16.12.2013 at Diamond Commercial Complex, Somatane Phata, Maval. The first bill was issued from April 2014 onwards with tariff of HT-1 Industrial. The activity of the Appellant is shown as hospital on the electricity bill. The purpose of usage of supply is found to be same when inspected.
- As per Regulation 13 of the Supply Code Regulations

“The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer.”


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- (iii) The Respondent, Executive Engineer, Testing division has inspected the premises of the Appellant on 20.05.2017 and informed by its letter dated 25.05.2017 that the Appellant was billed with wrong tariff category of Industrial and needs to be billed as per tariff order of the Commission. The Government Auditor has also pointed out that the Appellant is billed with wrong tariff category and advised to recover retrospective tariff difference.
- (iv) The tariff was reclassified from HT-1 Industrial to HT-IX B–Public Services- Others from December 2017. There is no abrupt reclassification tariff category, however, it is as per the direction of Tariff Order of the Commission. The Government Auditors have also raised audit para on the said issue and demanded recovery of arrears in the said matter.
- (v) The Respondent, by its letter dated 30 .01.2019, has informed the Appellant that the retrospective recovery of tariff difference of Rs. 16,35,311.44 is for the period from April 2014 to November 2017 as per Government Audit Para. 10 dated 07.01.2019.
- (vi) The Appellant filed grievance in Internal Grievance Redressal Cell (IGRC) on 09.05.2019. The IGRC, by its order dated 05.09.2019 has rejected the grievance. Then the Appellant approached the Forum on 23.08.2019. The Forum, by its order dated 08.11.2019 has partly allowed the grievance and directed to revise the tariff difference retrospectively for 24 months as per the provision of Section 56 (2) of the Act.
- (vii) Accordingly, the bill revision in B80 Form was processed for the period from December 2015 to November 2017 excluding interest, DPC, and penalty. Accordingly, consumer has given twelve (12) equal monthly instalments of Rs.82,030/- amounting to Rs.9,84,359.37 in billing month of November-2019. The Respondent has implemented the order of the Forum and therefore nothing remains to be addressed.


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(viii) In view of the above, the Respondent prays that the representation of the Appellant be disposed of accordingly.

5. During the hearing on 28.02.2020 at Pune, when the Appellant was confronted with its inconsistent prayer, the Appellant submitted that the matter may not be remanded to the Forum and it will be confirmed by it in writing. This office received email on 13.03.2020 in which the Appellant informed that the recent High Court Judgment in Writ Petition No. 7149 of 2019 be considered for differential recovery. Therefore, the prayer of the Appellant is considered to that extent.

6. During the hearing, both the parties argued at length and reiterated its submission. The Appellant argued that recovery as proposed by the Respondent is not in line with the order of the Commission in Case No.24 of 2001 and ATE Judgement in Appeal No.131 of 2013 which allow prospective recovery only. The Respondent argued that it has implemented the Forum's order completely for recovery of tariff differential from Industrial to Public Service – others for the period of 24 months. Retrospective recovery for 24 months is in line with the provision of Section 56(2) and the settled position of law in this regard is in view of the Judgment dated 12.03.2019 by the Larger Bench of Bombay High Court in Writ Petition No.10764 of 2011 with other Writ Petitions. Therefore, nothing remains in the case and be decided accordingly.

Analysis and Ruling

7. Heard both the parties and perused the documents on record. The Respondent, by its letter dated 30.01.2019, has informed the Appellant that the retrospective recovery of tariff difference of Rs. 16,35,311.44 for the period from April 2014 to November 2017 is as per Government Audit Para dated 07.01.2019. The Forum, in its order dated 08.11.2019 directed the Respondent utility to revise and reassess the tariff difference with appropriate tariff category for period of twenty-four (24) months prior to December 2017. Accordingly, the Respondent has revised the bill for Rs.9,84,359.37 for the period from December-2015 to November-2017


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excluding interest, DPC, and penalty. Accordingly, Respondent has given twelve (12) equal monthly instalments of Rs.82,030/-.

8. 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, by its letter dated 30.01.2019, and debit bill adjustment in the monthly bill of February 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


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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 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


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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.*

9. The Appellant has, however, referred Commission’s order in Case No. 24 of 2001 and ATE Judgement in Appeal No. 131 of 2011 which stipulates prospective recovery. It has also cited recent Judgement dated 13.12.2019 of the Bombay High Court in WP No. 7149 of


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2019. However, the position of law is settled by the Judgment of the Larger Bench of Bombay High Court quoted above. Therefore, the citations of the Appellant are no more relevant.

10. The Respondent has raised the bill of Rs.16,35,311.44 for the period from April 2014 to November 2017 as per Government Audit Para dated 07.01.2019 for the first time in the bill of February 2019. Therefore, 24 months prior to February 2019 shall be the period of recovery. However, the Respondent has already applied the tariff of Public Services – Others in respect of the Appellant in the month of December 2017. Therefore, actual retrospective recovery shall be limited to February 2017 to November 2017.

11. In view of the above discussions and Larger Bench Judgment, the Respondent can recover retrospective recovery for 24 months prior to February 2019. However, actual recovery shall be limited to February 2017 to November 2017.


12. In view of above, I, therefore, pass the following order: -

The Respondent is directed

- (a) to revise the bill towards tariff differential from Industrial to Public Services – Otherstariff category for the period from February 2017 to November 2017 without any DPC and interest.
- (b) to allow the Appellant to pay this amount in 6 monthly instalments along with current bill. In the event of default on payment of instalment along with the current bill, DPC and interest 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.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

