

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 34 OF 2024

(REVIEW OF THE ORDER IN REPRESENTATION NO. 100 OF 2023)

In the matter of assessment under Section 126 of the Electricity Act, 2003

Ansari Mohd. Ahmed Habibullah Review Applicant
(Consumer No. 13892726382)

V/s

Maharashtra State Electricity Distribution Co. Ltd., Thane (MSEDCL)..... Respondent
(Torrent Power Limited (TPL)..... Distribution Franchisee, Bhiwandi)

Appearances:

Review Applicant: 1. Ansari Mehfooz Ahmed
2. Adil Punjabi, Representative

Respondent :1. Ajay N. Bhasaketre, Addl. Ex. Engineer, TUC, MSEDCL
2. Prakash Chandan, AGM, TPL
3. Hemangi Bhogvekar, Nodal Officer/ Manager, TPL

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

Date of hearing: 26th February 2024

Date of Order : 4th March 2024

ORDER

This Review Application was received on 3rd January 2024 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity

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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 13th December 2023 in Representation 100 of 2023 passed by the Electricity Ombudsman (Mumbai).

2. The Electricity Ombudsman (Mumbai), by its order dated 13th December 2023 (impugned order) rejected the grievance of the Applicant.

3. Aggrieved by this order of the Electricity Ombudsman (Mumbai), the Applicant has filed this Review Application. The physical hearing was held on 26th February 2024. Both the parties were physically present. The Electricity Ombudsman joined through video conferencing. Parties were heard at length. The Applicant's written submissions and arguments are as below:

- (i) The Applicant is a consumer (Service No. 13892726382) from 03.04.2002 having sanctioned load of 0.4 KW in the name of Ansari Mohd. Ahmed Habibullah at H. No. 1099, Nr Alfa Hotel, at Kariwali, Bhiwandi. The supply is used for powerloom lighting.
- (ii) The order of Electricity Ombudsman (Mumbai) in Rep. No. 100 of 2023 is perfect in nature, taking into account the evidence and say filed by the Applicant, but there are errors in some of the submissions and hence the Applicant has filed this review considering fresh evidence.
- (iii) The Forum in its order dated 18.08.2023 has referred to a video of the premises. As mentioned in the order, the Respondent submitted a video of the premises which has been seen by the Electricity Ombudsman. It is worth mentioning that the video cannot be taken as evidence since it was never mentioned in the submissions before the Forum. Also, the video can only determine the current electricity use, not the past use. Hence it is necessary to verify the authenticity of the evidence produced. This alleged evidence cannot be considered.
- (iv) The Applicant referred to the paras of the impugned order dated 13.12.2023 as below:
"2(iii) The Respondent carried out a spot inspection of the premises on 11.11.2022, when it was observed that the actual usage of power was for Godown and Office purposes (other than Power Loom, non-Subsidized tariff). Hence a Vigilance case was lodged under



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Section 126 of the Electricity Act, 2003 (the Act) towards unauthorized use of electricity. The Appellant refused to sign on the spot inspection report. The load of the Appellant was found as 8 tube lights, 4 CFL, 1 fan and 1 weighing machine. Photos and videos were taken as evidence. A Panchnama was also carried out in the presence of two witnesses.

(iv) The Respondent TPL issued a Provisional Assessment Order of Rs. 2,19,840/- on 16.11.2022 i.e. within 5 days of the inspection, for the period from Nov. 2021 to Nov.2022 under the provision of Section 126 of the Act.”

- (v) On the basis of this, the tariff category of the Applicant was allegedly changed by the Respondent from **Powerloom to Commercial (Godown and Office Purpose)**.
- (vi) The TPL officials visited the site of the Applicant on 17.12.2022 (photo kept on record) where it was observed that there was a water pump installed in his premises. This installation of the water pump was sufficient for them to change his category from **commercial** to **residential** (which they had changed from powerloom (lighting) to commercial) which is not in accordance with the directives of the Commission and as per the Act. During this visit, no spot inspection copy was handed over, nor was any consent taken in doing so.
- (vii) The Applicant submitted the sequence in which the events occurred in chronological order as below:
- The Respondent TPL allegedly carried out a spot inspection on **11.11.2022**.
 - The Applicant visited the office of the Respondent on **12.11.2022**.
 - The Applicant was asked to revisit on **15.11.2022**.
 - The Respondent TPL issued a Provisional Assessment Order which was hand delivered but bore no signature of the person receiving it on **18.11.2022**.
 - The Applicant put forward his grievance regarding the Provisional Assessment Order and asked for a revisit on **01.12.2022**. (copy kept on record)
 - The Respondent TPL sent its representative on **17.12.2022** for further coordination. (Necessary photograph is kept on record).


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- The Respondent TPL claims that the Final Assessment Order was passed on **16.12.2022**. If that is true, why was it not sent along with the representative who visited on **17.12.2022**? He confirmed the load, saying that a water pump has been installed and connected to the powerloom (lighting) meter, and hence there is misuse of electricity (the consumer claims that he received the Final Assessment Order on **19.01.2023**). It has been very rightly pointed out that the Respondent did not issue the Provisional Assessment Order and Final Assessment Order within the stipulated period to the Applicant.
- When the load of the consumer was confirmed by the representative visiting on 17.12.2022, eventually the spot inspection report, the Panchnama, Provisional Assessment Order and the Final Assessment Order stands cancelled, since the consumer put forward his objection within the stipulated time frame i.e. on 01.12.2023.
- If the representative had found something wrong in the usage of electricity, then he should have restarted the procedure once again with a fresh inspection report, a fresh Provisional Assessment Order and so on, and only then changed the purpose from office and commercial to residential, which they have done again without informing the consumer.
- It was again brought to the knowledge of TPL that the water pump installed in the premises was not connected to his meter but to residential meter of his tenant (Service No.13895537360) which is confirmed by the Joint Inspection Report dated 22.11.2023, when the officer from MSEDCL, the officer from TPL and the consumer were present.
- **Even if it was found that the water pump was connected to his powerloom (lighting) meter, there was no harm in it, and the Applicant could not be booked under Section 126 of the Act, since installation of a water pump is compulsory for a weaver who weaves cotton or spun fabrics since it is used for air conditioning purpose and for the humidification of his premises.**



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- (viii) Thus, the Respondent TPL has erred in booking the consumer under Section 126 of the Act, and hence there is no need to challenge the case under Section 127 of the Act.
- (ix) A case was filed against the Respondent TPL for changing his tariff category without taking him into confidence or consultation. Hence the case under Section 126 of the Act should be scrapped and the Final Assessment Order needs to be withdrawn.
- (x) The Respondent, MSEDCL, by its Commercial Circular on 11.3.2019, issued “Guidelines in respect of finalizing the cases under Section 126 of the Electricity Act, 2003”. TPL has not been following these guidelines seriously and there is a lack of transparency in its working. The Franchisee has not gone through the proper procedures and annexures. They should have sent the notices and Provisional Assessment order by post / RPAD or courier. Even if they had sent the notices by hand, they should have authenticated the person receiving it and not by a signature by any Tom Dick and Harry. **Also, the Franchisee has not submitted the calculation pertaining to assessment**, and hence the consumer cannot be booked just by providing fabricated provisional and final assessment. **The consumer can only approach the Electrical Inspector when he has a copy of the spot inspection report, the provisional order and the final order given to him.** Only then he can approach under Section 127 of the Act. Hence the booking of the consumer under Section 126 is **totally illegal**.
- (xi) As per Regulation 14 of Supply Code & Regulations 2021 which is reproduced below:

“14. Classification and Reclassification of Consumers into Tariff Categories

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

It is not mentioned in the Regulation that the consumer has to be heavily penalized, instead of reclassification as per the new use.

- (xii) **A reclassification of category is done in another matter of Service No. 13010117946, wherein the category was for powerloom, and a notice was served upon him under Section 126 of the Act dated 23.03.2023, and the tariff was changed from power loom**



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to commercial in the bill for the month of April 2023 without penalizing him. This is the right way of classification and reclassification.

- (xiii) The Applicant put on record another example of booking a consumer under Section 126 of the Act. A service in the name of Vishwanath Baxi having a three-phase meter (Service No.13010343491) wherein the actual user is Rajesham Baddapuri. Due to development work undertaken by the Municipal Corporation, the electric meter of the consumer was removed by TPL as a safety measure on 29.10.2020, after the powerloom shed was redeveloped. The shed was approximately 40 feet x 40 feet, with only 40 feet x 10 feet space left. The space left could only be used for commercial purpose like shops. After various visits to TPL for restoring the meter on site on 28.12.2020, he requested TPL to change his tariff from powerloom to commercial on 03.08.2021. The premises were surveyed on 05.08.2021 and he requested them to change his tariff, but they did not respond.

It was only on 31.10.2023 that the premises were surveyed again, wherein the consumer showed them all the documents. Due to negligence and inefficiency of TPL the consumer started putting his grievance before MSEDCL (Nodal Office). On 08.11.2023 the Nodal Officer asked the consumer to visit the office of TPL wherein he was handed a notice RPRC/TC/2392 along with a notice RPRC/PO/23/114, both bearing the same date 08.11.2023. **How come the franchisee penalizes the consumer when he himself is asking the company to change the category.**

- (xiv) **The Applicant prays that the Electricity Ombudsman (Mumbai) may intervene in the matter and advise / direct the Appellate Authority to waive off the delay in filing the appeal with the Electrical Inspector under Section 127.**
- (xv) In view of the above, the Applicant prays that the present Review Application be allowed as per Regulation 22 of CGRF & EO Regulations 2020.
- (xvi) The Applicant's prayers are as under:
- to consider and issue an interim order, not to disconnect his supply till the final order.
 - to restore his original powerloom tariff category.**


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c. to refund the excess amount collected by way of tariff change.

4. The Respondent MSEDCL & TPL filed their written replies on 15.02.2024 & 12.02.2024 respectively. Their written submissions and arguments on 26.02.2024 are as below: -

- (i) The Applicant is a consumer (Service No. 13892726382) from 03.04.2002 having sanctioned load of 0.4 KW in the name of Ansari Mohd. Ahmed Habibullah at H. No. 1099, Nr Alfa Hotel, at Kariwali, Bhiwandi for powerloom (lighting) purpose.
- (ii) The tariff category of the Applicant was changed by the Respondent from **Powerloom to Commercial (Godown and Office Purpose)**.
- (iii) The grievance of the Applicant has already been heard by the Hon'ble Electricity Ombudsman at length, and it was observed that there is an independent machinery available under Section 127 of the Act to challenge the Final Assessment Order which covers all grounds including procedural defects as well as legal flaws. If the Applicant is challenging:
 - a) the findings of the Spot Inspection Report dated 11.11.2022 (Commercial Use), or
 - b) Provisional Assessment Order of Rs. 2,19,840/- on 16.11.2022, or
 - c) Final Assessment Order dated 16.12.2022, or
 - d) the validity of applying Section 126 of the Act, the Appellant has a choice to challenge these within thirty days of the said order, by depositing the required 50% amount as fee to the Appellate Authority i.e. Electrical Inspector under Section 127 of the Act, and not by approaching the Consumer Grievance Redressal Forum which is not maintainable as per Regulation 7.9 of CGRF & EO Regulations 2020. The Forum as well as the Ombudsman are barred from entertaining a case under Section 126 of the Act.
- (iv) The Hon'ble Electricity Ombudsman directed the parties to settle the case amicably as far as possible. The Respondent TPL communicated with the Appellant for a discussion, asking him to deposit at least plain recovery of tariff difference. However,

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the Applicant did not respond positively. Instead of complying with the advice of the Hon'ble Electricity Ombudsman, the Applicant preferred to file this Review Application without any new evidence.

- (v) The Applicant, by the present Review Application has urged to consider the guidelines for booking unauthorized use of electricity under Section 126 of the Act, which was already on record. The Hon'ble Electricity Ombudsman, after perusal of the entire records, passed the impugned order and rejected the Representation of the Applicant. Thus, the grounds to review the impugned order are not established. Further, the Applicant failed to establish any mistake or error apparent on the face of the record to review the impugned order.
- (vi) The Forum and the Hon'ble Electricity Ombudsman had rejected the Grievance and Representation on the grounds that the cause of action arose due to the case being booked under Section 126 of the Act, and observed that, as per the Regulation 7.9 of the CGRF and EO Regulations 2020, the Hon'ble Electricity Ombudsman and the Forum has no jurisdiction to entertain and grant interim relief in the complaint/grievance relating to electricity theft under Section 135 and unauthorized use of electricity under Section 126 of the Act. Thus, this Review Application of the Applicant is not tenable.
- (vii) To support their submissions, the Respondent relied on the order dated 27.01.2021 in Review Application No. 10/2020 (Sawant Dinkar V/s MSEDCL) where this Hon'ble Electricity Ombudsman observed that:

"The scope of the review is limited. The mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has power to review its ruling to correct a patent error and not a minor mistake of inconsequential import. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

- (a) *Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -*



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"8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient."

(b) *In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the*

Supreme Court held as under: -

"11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases. "

- (viii) The supply of the Applicant has been disconnected for **non-payment of current bills**, and not for assessment amounts.
- (ix) In view of above facts, the Respondent prays that the Review Application of the Applicant be rejected with cost.

Analysis and Ruling

5. Heard both the parties and perused the documents on record. The issues raised by the Applicant were discussed at length.

6. We are of the opinion that all important issues in sum and substance have already been covered in the original order. The review application is nothing but a repetition of the original representation,



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wherein the main issue was already covered in the original order dated 13.12.2023. The Applicant contended that the provisional assessment was issued on the basis of fabricated documents of inspection report, photos etc. dated 27.10.2022. The Respondent did not take the Applicant's signature on the "Spot Inspection Report" and did not hand it over to the Applicant. The Applicant denied that any provisional assessment calculation or hearing opportunity was given to him. There are procedural flaws in applying Section 126 of the Act. The Final Assessment was not served to the Applicant. Hence, the Applicant did not get the opportunity to approach the Appellate Authority as per Section 127 of the Act. The Applicant claims that he got a copy of the final assessment only on 03.01.2023. The Applicant contends that the consumer can only approach the Electrical Inspector (Appellate Authority) when he has a copy of the spot inspection report and the calculations of the provisional order and the final order. We find that this contention is not tenable. The Applicant can very well approach the Electrical Inspector even in the absence of these documents.

7. The Applicant contends that the installation of a water pump is compulsory for a weaver who weaves cotton or spun fabrics since it is used for air conditioning purpose and for the humidification of his premises. Hence this is not a fit case of Section 126 of the Act. The Applicant has requested the Electricity Ombudsman (Mumbai) to intervene in the matter and advise / direct the Appellate Authority (the Electrical Inspector) under Section 127 to waive of the delay in filing the appeal with the Electrical Inspector. In other words, the Applicant has now shown his willingness and inclination to approach the Electrical Inspector during the hearing.

8. The Respondent claims that the Appellant was using power supply for a higher tariff category other than the use sanctioned. The Respondent has acted under Section 126 of the Act. The Applicant did not produce new evidence, or mistake or error apparent from the face of the record, and it is a mere repetition of old submissions.

9. The provision with respect to review of orders passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below: -


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“22 Review of Order of Electricity Ombudsman

22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

- (a) Where no appeal has been preferred;*
- (b) On account of some mistake or error apparent from the face of the record;*
- (c) Upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.*

22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.

22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

10. The Review Applicant has not brought out any new issue which has not been dealt with in the impugned order, which is the primary requirement for a review of this order under Regulation 22 of the CGRF & EO Regulations 2020.

11. We are of the opinion that all important issues in sum and substance have been covered in the original order. The scope of a review is limited. The Applicant did not raise any new issue which can influence the decision of the original order, nor did he point out any mistake on the face of the record of the order. The only purpose in approaching the Ombudsman instead of the Electrical Inspector



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seems to be to avoid depositing 50% of the due amount, which is payable in any case even if the case were not booked under Section 126, but was treated as a normal case of plain recovery of tariff difference. Furthermore, the Applicant had even stopped paying the current bills. The entire conduct of the Appellant, or his representative, is found to be questionable, leading to unnecessary wastage of administrative time and resources, and deserves to be penalized.

12. The Electrical Inspector is an independent Appellate Authority under Section 127 of the Act. The CGRF & EO Regulations 2020 does not provide any power to the Electricity Ombudsman to give him advice to register a case under Section 127 of the Act, or to condone any delay. However, for the sake of giving an extra opportunity to the Applicant, we hereby advise the Appellate Authority, viz. the Electrical Inspector, to consider admitting the appeal, if filed, by condoning the delay, if the necessary fees are paid in advance by the Applicant as per the provisions in law.

13. In view of the above, the Review Application of the Applicant is rejected with a cost of Rs.4000/- and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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Secretary
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