

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 50 OF 2021

In the matter of change in tariff category

Nathulal Dangi Appellant
(Shantaram D. Bhoir – Consumer)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Nerul (MSEDCL)..... Respondent

Appearances:

Appellant : Suraj Chakraborty

Respondent :1. S.D. Gaikwad, Executive Engineer
2. M.K. Sangle, Executive Engineer (Adm)
3. A. N. Kale, Addl. Ex. Engineer


Coram: Deepak Lad

Date of hearing: 20th August 2021

Date of Order : 24th August 2021

ORDER

This Representation is received on 27th April 2021 under **Regulation 19.1** of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) against the Order dated 31st March 2021 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum).



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2. Primarily, the Appellant was asked to pay an amount of deposit as per Regulation 19.22 (h) of the CGRF Regulations 2020 vide letter dated 05.05.2021. However, on close scrutiny and discussion with the Appellant, it was revealed that a case of theft of energy under Section 135 of the Electricity Act, 2003 (the Act) was lodged by the Respondent. The Appellant paid the amount of assessment, however, challenged the case in the appropriate Court of Law and hence not paid the compounding charges. Therefore, the Appellant is not required to pay the amount of deposit under the CGRF Regulations 2020, hence, the Representation is registered on 05.06.2021.

3. The Appellant's submission in brief is as follows:

- (i) The electricity connection is released by the Respondent on 06.04.2013 to LT Consumer (No. 000280052060) which stands in the name of Shantaram D. Bhoir at Plot No. PAP -D- 158, TTC Industrial Estate, Shiravane.
- (ii) The Appellant, Nathulal Dangi is the user of the said premises from 04.04.2018 through a Leave & Licence Agreement and runs a business of manufacturing of Ice-Cream products with all required Government permissions.
- (iii) Prior to occupation of the premises by the Appellant, the then user was being billed at Commercial tariff. The same was continued to the Appellant.
- (iv) The Appellant through his online application (CFC No.25465248) dated 16.02.2020 filed request for change of tariff category from Commercial to Industrial and also submitted the hard copy of the same on 24.02.2020 at Palm Beach Subdivision Nerul. However, nothing was heard from this concerned office of the Respondent and therefore, a complaint was filed on 18.09.2020 with the Superintending Engineer, Vashi.
- (v) The Appellant was using power supply for Industrial purpose from 04.04.2018 and since then was regularly paying the bills for Consumer No. 000280052060 from time to time without any default.
- (vi) The Respondent changed the tariff category from Commercial to Industrial with effect from the month of February 2021 which was applied in the bill of March 2021. However, retrospective effect has not been given on the basis of Leave &


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Licence Agreement. The Appellant claims this refund of tariff difference as per Section 56(2) of the Act.

- (vii) The Appellant further submits that the Subdivision Officer visited his premises on 29.01.2021 and in inspection report clearly mentioned that the Appellant is in possession since 2017. However, the action of the Respondent is not in line with Supply Code and SOP Regulations and the orders passed by Maharashtra Electricity Regulatory Commission (the Commission).
- (viii) The Respondent has falsely implicated the Appellant in theft of energy case and subsequent filing of First Information Report (FIR). The Appellant has paid the assessment charges towards alleged theft of energy and contesting the case lodged by the Respondent in the appropriate Court of Law. The assessment was done considering Commercial tariff however, the Appellant was using the power for Industrial purpose Therefore, the Appellant has not paid the compounding charges.
- (ix) The Appellant filed the case with the Forum on 01.12.2020. The Forum, by its order dated 31.03.2021 has dismissed his grievance application for change of tariff category. The Forum did not understand the basic issue and dismissed the case wrongly stating that the Forum has no jurisdiction to deal with the theft cases. The Respondent admitted during the hearing at the Forum that the Appellant is in the business of manufacturing of Ice-Cream.
- (x) Hence, the Appellant prays for the following : -
- a) As per commitment given by Subdivision Officer during the hearing at Forum, no refund is given from 16.02.2020 till date. Therefore, allow for the refund from date of application.
- b) The refund should be allowed as per commencement date in approval granted by Ministry of Micro, Small, Medium Enterprises (MSME) and as per the provisions of Section 56 (2) of the Act.

4. The Respondent has submitted its reply dated 13.07.2021 which is stated in brief as follows: -


- (i) At the very outset, the Respondent denies all and singular allegations, statements and contentions made in the Representation to the extent that the same are contrary


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to and/or inconsistent with what is stated herein. Further, nothing shall be deemed to have been admitted by the Respondent merely because the same may not have been dealt with specifically and/or traversed seriatim.

- (ii) The electricity connection is released by the Respondent on 06.04.2013 to LT Consumer (No. 000280052060) which stands in the name of Shantaram D. Bhoir at Plot No. PAP -D- 158, TTC Industrial Estate, Shiravane. The Appellant is a tenant and using power for his business.
- (iii) The Thane Flying Squad of the Respondent lodged a theft case under Section 135 of the Act on 20.12.2019, the supply was disconnected, and FIR was lodged on 22.01.2020. Appellant paid the energy assessment charges of Rs.939459/- after which his power supply was reconnected on 31.01.2020.
- (iv) The Appellant applied for change of tariff category from Commercial to Industrial on 16.02.2020 vide Application No.25465248. On receipt of this application, the Section Engineer visited the Appellant's premises and asked the Appellant to submit all necessary documents which are required for processing the proposal of change of tariff category. The period being quite close to financial year ending, the Section Officer was busy in recovery drive of those consumers in arrears and did not take further follow-up with the Appellant and from March 2020, Covid-19 Pandemic started resulting in nationwide lockdown from 22.03.2020.
- (v) After start of Mission Begin Again, the case of the Appellant was scheduled for hearing at Circle Office on 02.11.2020 as a matter of internal procedure. The Appellant was not present, but his representative was informed over phone to submit the valid lease agreement as the existing one was due to expire on 30.11.2020, and also document in case of change of ownership as Shantaram Bhoir had sold the premises to Mrs Geetika Mohan Dagavkar on 12.12.2017. Instead of submitting the required documents, the Appellant approached the Forum on 01.12.2020.
- (vi) After receipt of valid documents, tariff category is changed from Commercial to Industrial in February 2021 which was applied in the bill of March 2021. The Respondent assured that the tariff change effect will be given shortly from the date of application.


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- (vii) The Forum, in its operative part of the order has stated in brief that the case under Section 135 of the Act has not been disposed of as yet by the Competent Court as the Appellant did not pay compounding charges. Therefore, the Forum has no jurisdiction in the matter.
- (viii) In view of the above, it is therefore most respectfully prayed that this Hon'ble Authority may graciously be pleased to:
- (a) Dismiss the present representation filed by the Appellant being not maintainable and uphold the Forum's order.
 - (b) Deny the tariff change claimed retrospectively by the Appellant as retrospective period contains 15 months of theft assessment under Section 135 of the Act.
 - (c) Hold the acts of the Respondent as just and in accordance with law.

5. The physical hearing was held at Vashi on 20.08.2021 after observing Covid-19 guidelines for appropriate behaviour. Both the parties argued in brief in line with their written submissions and therefore, is not repeated here.

Analysis and Ruling.

6. Heard the parties and perused the documents on record. The Respondent has effected the change in tariff category from Commercial to Industrial from March 2021 pursuant to application dated 16.02.2020. The Respondent agreed in writing that this change of tariff will be effected from the date of application i.e. 16.02.2020 and it follows that refund from 16.02.2020 to February 2021 would be paid by way of adjustment in energy bill.

The Appellant is demanding retrospective application of Industrial tariff from the date when he entered into lease agreement with the owner and with the submission that his business of manufacturing Ice-Cream products has started from that date. The Appellant at his own volition agreed during the hearing that he did not specifically apply for change of tariff category from the date of use of the premises which is a mistake on its part. Therefore, as per Section 56(2) of the Act, two years prior to date of application (16.02.2020), the Respondent should approve tariff change. Thus, he is demanding refund towards tariff difference from March 2018 to February 2020 for 24 months.


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The Appellant's submission that energy assessment for alleged theft of energy under Section 135 of the Act was done at Commercial tariff. Hence, this also needs to be done with Industrial tariff category. The Respondent has filed FIR under Section 135 of the Act on 22.01.2020 and the matter is sub-judice in appropriate Court of Law. The Respondent pleaded that the period of assessment overlaps with the demand of the Appellant for retrospective tariff change, the matter therefore, cannot be decided. In my opinion without prejudice to the finding of the Court, that may come in course of time, the important issue that needs to be decided whether the Appellant is really entitled for change of tariff category with retrospective effect for 24 months prior to date of application.

The Appellant, as per his own submission, has entered into a lease agreement with the owner of the premises for running his business. This agreement basically was not submitted by the Appellant at very initial stage of claim of start of his business. Prior to this agreement, previous occupier / user was being billed at Commercial tariff. It was incumbent on the Appellant to have applied for change of tariff with the Respondent from the date he started production which he failed to do. The Appellant argued that it was a mistake on his part. Now he is pleading that the inspection when the alleged theft was detected by the Respondent and report suitably drawn, did mention machineries that were installed at the premises for manufacturing of Ice-Cream. However, this submission has no bearing whatever as to the actual purpose for which power has been used prior to such inspection.


Regulation 4.13 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014) stipulates that change of tariff category on receiving the application needs to happen within second billing cycle. The said Regulation is reproduced below:

"4.13 The Distribution Licensee shall intimate the charges to be borne by an applicant for change of name and change of tariff category within seven (7) days of receipt of an application in this regard and shall give effect to it within the following time limits: —

*(a) **change of name shall be effected within the second billing cycle on receipt of an application and payment of necessary charges.***

(b) change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges."

(Emphasis added)


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That being the case, date of application for change of tariff category being 16.02.2020, actual tariff application needs to happen within two billing cycles after payment of requisite fees. The Respondent has already effected the change from March 2021 and assured to apply it from the date of submission of application (16.02.2020).

I am surprised how the Respondent has assured to apply new tariff category from the date of application itself without verification of date of payment, etc. because it has not been made clear by both the parties as to when demand note for payment of requisite charges (as may be applicable) was issued and payment made by the Appellant. In light of the above provision, question of retrospective application of change of tariff category under Section 56 (2) of the Act as prayed by the Appellant, does not arise. Therefore, the Representation is rejected, and I pass the following order:

- (a) The Respondent is directed to effect the change in tariff category as requested by the Appellant strictly as per the provision of Regulation 4.13 of the SOP Regulation 2014.
- (b) The Respondent to submit compliance within two months from the date of issue of this order.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

