

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO. 08 OF 2020

IN

REPRESENTATION NO. 10 OF 2020

In the matter of change of tariff category and tariff difference

The Chief Trustee

Swami Shanti Prakruti Chikitsa Yoga Kendra Review Applicant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Ulhasnagar II (MSEDCL)..... Respondent

Appearances: -

For Appellant : B. R. Mantri, Representative

For Respondent: Ashok Sawant, Executive Engineer, Ulhasnagar II


Coram: Deepak Lad

Date of Hearing: 28th October 2020

Date of Order : 11th November 2020

ORDER

This Review Application is registered on 6th October 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) for review of the Order dated 27th April 2020 passed in Representation No.10 of 2020.


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2. The Electricity Ombudsman, Mumbai in its order dated 27.04.2020 in Representation No. 10 of 2020 has directed as below: -

*“(a) to revise the bill towards tariff differential from Industrial to Public Services – Others tariff category for the period from July 2016 to April 2018 as recovery for May 2018 and June 2018 has already been done by the Respondent, without any DPC and interest.
(b) to allow the Appellant to pay this amount in suitable monthly instalments, if it so desires. In the event of default on payment of instalment along with the current bill, DPC and interest shall be levied.”*

3. Aggrieved by this order, the Applicant has filed this Review Application stating in brief as under: -

- (i) As per CGRF Regulations 2006, the review application is to be filed within 30 days from the date of the order but due to lockdown pursuant to Covid-19 epidemic, the Applicant was not able to submit the same and hence request for condonation of delay.
- (ii) At the time of hearing, the Hon'ble Bombay High Court Judgement dated 13.12.2019 in W.P. No.7149 of 2019 of MSEDCL vs Mohammad Sajid Haji Sardar was not in the Applicant's knowledge so, could not produce the same. The Applicant is submitting this order in review application. The Hon'ble has dismissed this W.P. No. 7149 of 2019, in which MSEDCL has challenged the Forum's order dated 10.10.2018, in which retrospective recovery against tariff difference between Industrial to Commercial was set aside. The Hon'ble High Court held that:-

" 16. From the order dated 10.10.2018 what is discernible is that according to the petitioner right from inception, respondent was consuming electricity not for industrial purpose but for commercial purpose. Supply was given in the year 2009 but the bill for commercial use was raised on 15.09.2017. There is nothing on record to show that petitioner has been raising bill continuously upon the respondent as a commercial consumer prior to 15.09.2017. If the contention of the petitioner is accepted, then respondent was required to be charged as a commercial consumer from the year 2009 itself. The period of two years expired in 2011. But bill as commercial consumer was first raised on 15.09.2017. Section 56(2) bars recovery of any sum due from a consumer beyond a period


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of two years when such sum first became due. Therefore, to retrospectively charge the respondent as a commercial consumer from the year 2009 in the year 2017 would not be justified. It is not a case where respondent had surreptitiously consumed electricity for commercial purposes though he was charged as industrial consumer."

- (iii) One more Judgment dated 09.06.2020 was issued by the Hon'ble Bombay High Court in W.P. No.10536 of 2019 against the order passed by the Electricity Ombudsman in Representation No. 60 of 2019, which has been decided on the earlier decision dated 11.02.2003 of Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 24 of 2001 in the matter of retrospective recovery. Hon'ble High Court held that

"25. From a careful consideration of the above, it is quite evident that the present is not a case covered by sub-clause (1) of Section 56. It is not a case of nonpayment of electricity charges, not to speak of neglect in paying the charges. Right from the beginning when the respondent became a consumer under the petitioner its tariff category was changed from time to time by the petitioner and was accordingly billed. It is not the case of the petitioner that the respondent had defaulted in the payment of such electricity bills. It was only after the CAG pointed out that respondent ought to have been charged under tariff category LT-I from September 2012, that petitioner carried out inspection in the premises of the respondent on 03.02.2018. Thereafter the tariff category of the respondent was changed to LT-I from Feb-2018 but at the same time, a supplementary bill dated 17.03.2018 for the differential amount was issued retrospectively from Sept-2012.

26. While examining 56(2) the Full Bench held that a consumer cannot be vexed in the event the licensee is negligent in recovering the amount due. If the views of CAG are treated as correct, in that event the electricity charges on the basis of tariff category LT-I became due from Sept-2012. For the next two years from Sept2012 there is nothing on record to show that the petitioner had raised any bill or attempted to recover electricity charges from the respondent under LT-I tariff category. Even after two years no such bills were raised. First time on the basis of LT-I tariff category bill was raised on 17.03.2018. The language used in sub-section (2) is "when such sum became first due" in contradistinction to such sum being first billed. Period of limitation will commence when such sum became first due. Admittedly, as per the petitioner such charge or sum became first due in Sept2012 but billed for the first time on 17.03.2018. In such circumstances, it was not open to the petitioner to raise the supplementary bill retrospectively on 17.03.2018 for the period from Sept-2012 and thereafter issue disconnection notice.


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Above both orders are squarely applicable in this matter also.

- (iv) MSEDCL has levied tariff for the period of June 2015 to April 2018 as Industrial. As pointed out by the Flying Squad, raised tariff recovery difference (Industrial to Public Services-Others) for the period of June 2015 to April 2018 in the month of July 2018 as debit bill adjustment.
- (v) On the basis of MSEDCL submission, tariff category Public Services-Others was due from June 2015. For the next two years from June 2015, MSEDCL has never raised any bill. Even after two years no such bills were issued. As per MSEDCL submission such charge or sum became first due in June 2015 but billed for the first time in July 2018. As per above quoted Hon'ble High Court observation, it was not open to the MSEDCL to raise the recovery / supplementary bill retrospectively in July 2018 for the period June 2015 to March 2018.
- (vi) The Review Applicant therefore prays for review of the order dated 27.04.2020 in Representation No. 10 of 2020 and quash the supplementary bill.

4. The Respondent filed its reply on 26.10.2020 by email stating as under:


- (i) The Appellant (LT Consumer No.021517007398) is using supply for the purpose of Naturopathy Yoga Chikista Kendra which is categorized under LT public services for the purpose of electricity billing whereas it was billed with Industrial tariff which is less than applicable tariff.
- (ii) The case was detected by the Flying Squad, MSEDCL, Kalyan Circle-II in the month of May 2017 but the case was kept under observation and verification of other required documents. Therefore, actual tariff was changed, and differential recovery was raised in the month of July 2018. The recovery by way of supplementary bill is in accordance with the Section 56(2) of the Electricity Act 2003 (the Act). It is a fact that the consumer was using power for hospital purpose and not the industrial one. Therefore, the recovery by the Respondent by way of supplementary bill is correct.


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- (iii) The order of Hon'ble Ombudsman is in line with the Judgment dated 12.03.2019 of the Larger Bench of the Hon'ble Bombay High Court and interpretation of Section 56(2).
- (iv) The Appellant was initially supplied power for industrial activity. Obviously, it was authorized to use power for this activity only. However, the Review Applicant in the meanwhile, has changed the activity to Yoga Kendra. This change in the activity should have been intimated by the Applicant to the Respondent for application of appropriate tariff. But it failed to do so. The Appellant has cited the Judgment of the Hon'ble Bombay High Court in W.P. No. 7149 of 2019. The context of the case in the Judgment and that of the Appellant are squarely different. Therefore, it cannot be blindly applied to the instant case. Therefore, the Respondent is of the opinion that this Judgment is not applicable.
- (v) Similarly, the reference of the Judgment of the Hon'ble Bombay High Court in W.P. No. 10536 of 2019 is uncalled for because it is noted in the Judgment that court will have to decide the issue on case to case basis. Also, the fulfilment of condition as set out in sub sections will be an issue to be decided on the basis of facts and circumstances in each case. No general rule can be laid down. Therefore, the circumstances of W.P. No.10536 of 2019 and W.P. No. 7149 of 2019 are not applicable to this case. In the instant case, change of purpose ought to have been informed by the Appellant.
- (vi) Condonation on the ground of Covid-19 pandemic lockdown is not at all convincing as there was no restriction on communication through electronic media like E-mail, WhatsApp, text messages etc. Filing of review application is delayed by 158 days after the order which is not at all justifiable. It is rather taking an advantage of pandemic lockdown. Therefore, prayer of the Review Applicant may please be outrightly rejected on above grounds.

5. The Applicant, in its additional submission on 28.10.2020 by email has stated in brief as under: -


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- (i) The Hon'ble Supreme Court Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in the matter of Ajmer Vidyut Vitran Nigam Limited V/s Rahamatullah Khan.:-

In this case, Distribution Licensee has issued the additional demand for tariff recovery for the period of July 2009 to September 2011 on 18.03.2014. The Respondent Consumer has approached the District Consumer Forum and raised the objection under Section 56(2). The District Consumer Forum has rejected the additional demand being time barred. The Licensee then filed the appeal before the State Redressal Commission. Thereafter, the State Redressal Commission allowed the appeal of the licensee vide Order dated 30.05.2017. Finally, such through appeals, the case went to National Consumer Disputes Redressal Commission (NCDRC). Neither consumer nor distribution licensee has raised other points except Section 56(2). So, no other points have been discussed in this case such as power of State Commission, order of Appellate Tribunal for Electricity (ATE), etc. The NCDRC has set aside the recovery and held that the additional demand was barred by limitation under Section 56(2) of the Electricity Act, 2003. The Distribution Licensee has filed an appeal in the Hon'ble Supreme Court against this order. The Hon'ble Supreme Court has not set aside the NCDRC order on which appeal has been made. The Hon'ble Supreme Court upheld the decision of NCDRC and held that

“The licensee company raised an additional demand on 18.03.2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

The licensee company may take recourse to any remedy available in law for recovery of the additional demand but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.”


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In this case, District Consumer Forum, State Redressal Commission, NCDRC and the Hon'ble Supreme Court dealt only relief claimed against Section 56 (2) and no other points have been discussed with reference to ATE or the Commission orders regarding recovery of tariff difference with retrospective effect. So, above quoted order of the Hon'ble Supreme Court is not applicable in this case in the matter of retrospective recovery of tariff which has not related with escaped billing.

- (ii) The Maharashtra Electricity Regulatory Commission in Case No. 24 of 2001 and 42 of 2015 held that:


The differential tariff recovery has not related with escaped billing due to error in meter or in billing. Any reclassification of a consumer must follow a definite process of natural justice and recovery, if any, would be prospective only from the date of communication about the reclassification.

- (iii) On the above Commission's ruling, quoted orders in review application, the Hon'ble Bombay High Court has upheld the order given by the Forum and Electricity Ombudsman in the matter of tariff recovery.

On the basis of MSEDCL submission, tariff category Public Services- Others due from June-2015. For the next two years from June-2015, MSEDCL has never raised any bill. Even after two years no such bills were issued. As per MSEDCL submission such charge or sum became first due in June-2015 but billed for the first time in July-2018.

6. Due to Covid-19 epidemic, hearing are scheduled on e-platform and hence the instant representation was heard on 28.10.2020 on e-platform. The Appellant as well as the Respondent have reiterated their submissions stating that whatever submissions they have given in writing, may be considered.

Analysis and Ruling


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Electricity Ombudsman Mumbai



7. Heard the parties and perused the documents on record. This Review Application is filed under Regulation 19 of the CGRF Regulations 2006 which is reproduced below:

19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, 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 or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.

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

19.3 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.


19.4 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.

8. Considering the Covid-19 situation, I have taken a lenient view and condoned the delay in filing the review application though the Review Applicant could have well filed it through electronic media in time.

9. The Review Applicant's main contention in filing this application is that at the time of proceedings of the original representation, it was not aware about certain Judgments. It has cited: -

(a) Judgement in WP No. 7149 of 2019 dated 13.12.2019 of the Hon'ble Bombay High Court in Case of MSEDCL V/s Mohammad Sajid Haji Sardar

(b) Judgement in WP No.10536 of 2019 dated 09.06.2020 of the Hon'ble Bombay High Court in Case of MSEDCL V/s Principal, College of Engineering, Pune.


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(c) The Hon'ble Supreme Court Judgment in C.A. No. 1672 of 2020 dated 18.02.2020 in Case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah Khan alias Rahamjulla

The context of the Judgements dated 13.12.2019 in W.P. No. 7149 of 2019 and dated 09.06.2020 in W.P. No. 10536 of 2019 are totally different from the instant case and therefore, the ratio of these Judgments cannot be applied blindly / thoughtlessly. More importantly, the Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 which is also cited by the Applicant has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.


Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. (Emphasis added)

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh, this Court held that :-

“Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.” (emphasis supplied)

In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available


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in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act.”
(Emphasis added)


The Judgment is crystal clear and does not need any additional explanation. However, I am of the opinion that the Applicant has miserably failed to understand, interpret, and appreciate the said Judgment in its true spirit. The ratio of the Judgment is that the licensee company can recover energy bill by way of additional supplementary demand for a period of two years for the bona fide error and further it does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2). In the instant case, the error on the part of the Respondent is bona fide and hence it is entitled to recover tariff difference prior to detection of such error, under Section 56 (2) of the Act.

The undersigned has decided many cases relying on the Judgment of the Larger Bench of the Hon’ble Bombay High Court and the Hon’ble Supreme Court.

10. The Appellant claimed relief under the Commission’s orders in Case No. 24 of 2001, and in Case No. 42 of 2015. Notwithstanding this, these orders of the Commission are no more relevant in view of the Larger Bench Judgment dated 12.03.2019 of the Hon’ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions and also the Judgment dated 18.02.2020 of the Hon’ble Supreme Court of India in Civil Appeal No.1672 of 2020 for interpreting Section 56 (2) of the Act.

11. The Review Application does not warrant any review and is therefore rejected.

Sd/-
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