

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 107 OF 2023

In the matter of recovery of tariff difference due to utilization of excess load

Amar Punjab Hotel..... Appellant
(Consumer No. 400000040116)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Thane 1 (MSEDCL) Respondent

Appearances:

Appellant: 1. Vicky Khandpur
2. Ashok Patil, Representative

Respondent: A. R. Rathod, Addl. Ex. Engineer, Gadkari S/dn.

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

Date of hearing: 8th December 2023

Date of Order : 29th January 2024

ORDER

This Representation was filed on 16th October 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 9th

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August 2023 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum) in Case No. 183 of 2022-23. The Forum, by the order dated 09.08.2023 dismissed the grievance application. The Forum observed that as per the MRI Report, the connected load was found to be more than 25.02 KW; against the sanctioned load of 14.5 KW; and Maximum Demand recorded was in the range of 27.20 to 27.34 kVA. The supplementary bill which was given towards tariff difference between LT II (A) and LT II (B) tariff category was found in order.


2. Aggrieved by the order of the Forum, the Appellant has filed this representation. The e-hearing was held on 8th December 2023 through video conference. Parties were heard at length. The Appellant's submissions and arguments are stated as below:

- (i) The Appellant has prayed to condone the delay of 8 days in filing the representation on 16.10.2023 from the order dated 09.08.2023 of the Forum due to a medical emergency. (Note : The delay is condoned)
- (ii) The Appellant is a LT Consumer (No. 400000040116) from 09.01.1987 having Sanctioned load, address, date of supply as tabulated in Table 1.

Table 1:


Name	Consumer No.	Address	Sanctioned Load (KW)	Date of Supply
Amar Punjab Hotel	400000040116	Solanki Plot, Louiswadi, Thane (West)	14.7	01.01.1987

- (iii) The Appellant is using power supply for running a hotel business. The Appellant is billed under "0 to 20 KW" slab of LT II (A) : Commercial Tariff Category.
- (iv) The Appellant states that he is consuming load well within the sanctioned limits and never used excessive load more than the sanctioned load.


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- (v) The Respondent inspected the premises of the Appellant on 21.12.2022 when the **Respondent noted in his inspection report that though the Sanctioned Load is 14.7 KW, and the demand exceeds 22 kVA.** Based on this wrong and baseless report, the Respondent issued a wrong, illegal, and exorbitant supplementary bill of Rs.3,74,615/- on 09.01.2023 for the period from Jan. 2022 to Dec. 2022.
- (vi) LT Meter No. 07860218419 is installed on the premises of the Appellant. This meter is a normal three phase meter and not a LTMD TOD Meter which can measure kVA MD billing.
- (vii) The Maharashtra Electricity Regulatory Commission (the Commission) has approved demand-based tariff for consumers where sanctioned, load is more than 20 KW and contract demand is sanctioned. However, in the Appellants case, the electricity tariff is based on demand of load up to 20 KW, and hence kVA billing based on demand is not applicable. The MSEDCL has no authority to issue recovery bills on the basis of demand in kVA, as there is no provision in the Regulations and tariff orders for levy of recovery for retrospective period on the basis of demand-based tariff for slab of 0 to 20 KW.
- (viii) The said supplementary bill for levying retrospective recovery for one year is illegal. The Inspecting Engineer noted Contract Demand of 21.64 kVA on the meter (as per meter photo) on 21.12.2022, he has no authority to propose recovery for the last one year retrospectively. **As per the tariff circulars, the MSEDCL can at the most levy the higher demand charges and higher tariff on the basis of Maximum Demand recorded in the meter only with prospective effect from the date of inspection.** Higher demand charges and higher tariff cannot be applied on mere presumptions without any valid evidence. Except the meter photo dated 21.12.2022, the Inspecting Engineer does not have any substantial evidence for the recovery prior to 21.12.2022. On what basis can the Inspecting Engineer presume that the Appellant was consuming excessive load prior to the inspection date without any substantial evidence.


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(ix) In view of the above, it is prayed :-

- a) To grant interim relief / stay order against the disconnection of supply till disposal of this case.
- b) To quash and set aside the supplementary recovery bill of Rs.3,74,615/- issued by the MSEDCL on 09.01.2023 for the period of one year i.e. Jan.2022 to Dec. 2022 along with the entire interest and DPC levied thereon.

3. The Respondent filed its reply on 01.11.2023. Its submissions and arguments are as below:-

- (i) The details of the Appellant's connections are stated in para 2 (ii) above.
- (ii) During a Mass drive of Installation Checking, the Section Engineer of the Respondent inspected the premises of the Appellant on 21.12.2022. During inspection, it was observed that the Appellant was using power more than the sanctioned load of 14.7 KW. The meter display showed Maximum Demand (MD) of 22 kVA. The Appellant is consuming power in the Tariff Slab of < 20 KW. Hence, it was recommended that the Appellant has to be charged under LT II (B) Commercial Tariff Category, which is applicable when the connected load is 20 KW to 50 KW. *(Note: The Respondent did not take the signature of the Appellant on its inspection report, and a copy of the said report was not given to the Appellant.)*
- (iii) **Accordingly, the Respondent issued a supplementary bill of Rs. 3,74,615/- on 09.01.2023 towards tariff difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (>20 KW to 50 KW) Commercial Tariff Category for the period from Jan-21 to Dec-22.**
- (iv) The Appellant submitted a letter dated 17.02.2023 and stated that no tariff difference assessed bill is applicable to the Appellant, and requested to revise the bill and to

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withdraw the entire assessed amount, by referring to the Commercial Circular No. 323 dated 03.04.2020.

- (v) As per the report received from the Section Officer on 21.12.2022, the Appellant had used load above 20 KW instead of the sanctioned 14.7 KW load. The earlier meter was 10-40 A meter which had no provision to take meter data by MRI, even though consumption was above 20 KW. A new superior meter was installed in March 2023. Month wise meter photos after installation of 40-200 A meter are kept on record. Also, the Appellant was shifted from “Processing Cycle: PC-6” to “PC-0” which has a close monitoring of important consumers.
- (vi) As per the tariff order dated 30.03.2020 of the Commission in Case No. 322 of 2019, in case a consumer (availing demand-based tariff) exceeds his contract demand, he will be billed at the demand charge applicable for the demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable demand charge.
- (vii) As per the actual records of the meter and photos available, this consumer was charged with plain recovery for the tariff difference for only one year by referring to the CPL for unit consumption pattern. All details like KW consumption & other events are verified. Hence, the given assessment is correct as per the rules & regulations of the Company.
- (viii) Further, the Distribution licensee can enhance the contract demand of the consumer when the consumer exceeds the contract demand on more than three occasions during a calendar year, irrespective of whether the consumer submits an application for the same or otherwise.
- (ix) The contract demand has also been revised, and 15 days’ notice has been issued to the Appellant by Gadkari Subdivision, so that the consumer can pay the necessary charges as may be stipulated under the approved schedule of charges for the revised contract demand.

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- (x) Meanwhile, the Appellant submitted his grievance before the Forum on 23.02.2023 which was dismissed by order dated 09.08.2023.
- (xi) In view of the above facts, it is requested to dismiss the present representation and allow MSEDCL to recover the dues from the Appellant.


Analysis and Ruling


4. Heard the parties. Perused the documents on record. The Appellant is a hotel namely Amar Punjab Hotel at Solanki Plot, Louiswadi, Thane (West). It is a three phase LT Commercial Consumer (No. 400000040116) of the Respondent since 01.01.1987 with Sanctioned Load of 14.7 KW i.e. below 20 KW.

5. During a mass drive on 21.12.2022, the Section Engineer inspected the Appellant's premises when it was observed that the connected load of the Appellant is 22 kVA.

6. Accordingly, the Respondent issued a supplementary bill of plain recovery of Rs. 3,74,615/- on 09.01.2023 towards Tariff Difference from LT II (A) (0 to 20 KW Slab) to LT II (B) (20 to 50 KW Slab) of Commercial Tariff Category retrospectively for the period from Jan-2022 to Dec.2022 (12 months).

The previous and subsequent consumption pattern of the Appellant is tabulated below.


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Year	2020-21	2021-22	2022-23	2023-24
Month	Cons. (units)	Cons. (units)	Cons. (units)	Cons. (units)
April	338	3875	5659	6804
May	482	3222	6026	7165
June	482	2972	5923	6793
July	482	3164	5528	6725
Aug	9574	3188	6089	6671
Sept.	2269	3171	6673	6681
Oct.	2261	3623	6596	
Nov.	3706	4424	6522	
Dec.	3531	4979	6331	
Jan.	4298	4723	6274	
Feb.	4011	4394	1290	
March	3930	4658	13978	

Note: Meter replaced in Mar 2023 (No. 06203174)

7. The Commission, by its various Tariff Orders, has determined the tariff for categories of consumers. The Commission's Multi Year Tariff order in Case No. 322 of 2019 dated 30.03.2020 effective from 01.04.2020 is reproduced as below:-

“LT II: LT – Non-Residential or Commercial

LT II (A): 0 - 20 kW

.....

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1. Advertisements, hoardings (including hoardings fixed on lamp posts/installed along roadsides), and other commercial illumination such as external flood-lights, displays, neon signs at departmental stores, malls, multiplexes, theatres, clubs, hotels and other such establishments.



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Rate Schedule			
Rate Schedule Tariff w.e.f. 1 April, 2020 to 31 March, 2021			
Consumption Slab (kWH)	Fixed/Demand Charges	Wheeling charges (Rs./kWH)	Energy Charges (Rs./kWH)
<i>LT II (A) 0-20 kW</i>	<i>Rs. 403.00 per Month</i>	<i>1.45</i>	<i>7.36</i>
<i>LT II (B) > 20 kW and? 50 kW</i>	<i>Rs. 403.00 per kW per Month</i>	<i>1.45</i>	<i>10.72</i>
<i>LT II (C) > 50 kW</i>	<i>Rs. 403.00 per kW per Month</i>	<i>1.45</i>	<i>12.83</i>
TOD Tariffs (in addition to above base Tariffs) (Rs/kWh)			
<i>2200 Hrs - 0600 Hrs</i>			<i>-1.50</i>
<i>0600 Hrs - 0900 Hrs & 1200 Hrs - 1800 Hrs</i>			<i>0.00</i>
<i>0900 Hrs - 1200 Hrs</i>			<i>0.80</i>
<i>1800 Hrs - 2200 Hrs</i>			<i>1.10</i>

Tariff on yearly basis w.e.f. 1 April, 2021 to 31 March, 2022 and so on up to 1 April, 2024 to 31 March, 2025.

MISCELLANEOUS AND GENERAL CHARGES:

Penalty for exceeding Contract Demand

In case the consumer exceeds its Contract Demand (including during the non-peak hours, i.e., 22:00 hrs to 06:00 hrs.) in any particular month, the Load Factor Incentive will not be payable to the consumer in that month

Penalty for exceeding Contract Demand

In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).



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In case a LT consumer with a sanction demand/ contract demand less than 20 kW records actual contract demand above 20 kW, he will be billed at the tariff applicable for the respective load slab approved by the Commission, in which recorded demand falls for that billing cycle only and also be charged an additional amount at the rate of 150% of the applicable charge for the Demand in excess of the Contract Demand.

Further Distribution licensee can enhance the Contract Demand of the consumer when the consumers exceeds the Contract Demand on more than three occasions during a calendar year, irrespective whether the Consumer submits an application for the same or otherwise. However, before such revision of Contact Demand, Distribution Licensee must give 15 days' notice to such consumer. Also, the Consumer is liable to pay necessary charges as may be stipulated in the approved Schedule of Charges for the revised Contract Demand.

Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations. consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.

.....
.....
Monthly Billing Demand will be the higher of the following:

- a) 65% of the actual Maximum Demand recorded in the month during 0600 hours to 2200 hours;*
- b) 40% of the Contract Demand.*

Note:

- Only the Demand registered during the period 0600 to 2200 Hrs. will be considered for determination of the Billing Demand.*
- In case of a change in Contract Demand, the above period will be reckoned from the month following the month in which the change in Contract Demand is effected.*

.....
..... ***(Emphasis added)***

- As per the Tariff Order of the Commission in force, there is no kVA Contract Demand for the tariff category slab of "0 to 20 KW". Contract Demand tariff is applicable in LT II (B) and LT II (C) tariff category; however, the Commission's rate schedule mentions the tariff slab of LT II (B) also as 20 to 50 KW.



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8. The MRI Data submitted by the Respondent was scrutinized for KW and kVA values, which is tabulated as below:

Meter Information : Reading Counters			
Date	KW	KVA	Status with Reset Mechanism
01.02.2023	15.90	21.00	Auto Reset
01.03.2023	17.30	21.64	Auto Reset
01.04.2023	17.72	21.34	Auto Reset
01.05.2023	18.52	22.08	Auto Reset
01.06.2023	18.72	23.40	Auto Reset
01.07.2023	19.16	23.92	Auto Reset
01.08.2023	17.28	23.08	Auto Reset
01.09.2023	17.98	22.10	Auto Reset
01.10.2023	18.46	23.36	Auto Reset
01.11..2023	19.14	22.66	Auto Reset
01.12.2023	20.32	25.46	Auto Reset

We find that at best the case falls on the border – line between 0-20 KW and 20-50 KW. The KW value falls below 20 while the kVA value falls above 20 during the year 2023. It cannot be said to be a clearcut case of exceeding contract demand. The tariff schedule is applicable for KW values even for LT II (B) slab; hence, we consider the KW values as valid.


9. Further, the basic MRI data which was required for the disputed assessment period from Jan.-22 to Dec.-22 was not available with the Respondent. The data recorded for the year 2023 cannot be used retrospectively, even though the consumption pattern of the Appellant remains nearly the same. Hence, the recovery is technically not justified, and the benefit of doubt should be passed on to the consumer. Hence, the supplementary bill of Rs.3,74,615/- towards tariff difference between LT II (A) and LT II (B) tariff category for the period from Jan. 2022 to Dec. 2022 needs to be set aside.


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10. The Forum's order is set aside.
11. The Respondent is directed as under: -
- a. To withdraw the supplementary bill of Rs.3,74,615/- towards tariff difference between LT II (A) and LT II (B) tariff category for the period between Jan. 2022 to Dec. 2022. The interest and delayed payment charges levied, if any, be withdrawn from the date of issue of the supplementary bill till the date of this order.
 - b. Compliance to be submitted within two months from the date of issue of this order.
 - c. Other prayers of the Appellant are rejected.
12. The Representation is disposed of accordingly.
13. The Secretariat of this office is directed to refund Rs. 25000/- paid by the Appellant to the Respondent for adjusting in the ensuing bill.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

