

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 35 OF 2024

(REVIEW OF THE ORDER IN REPRESENTATION NO. 79 OF 2023)

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

Narsaiah V. Tumma (Occupier)..... Review Applicant
Mr. Kabukar Sanjay Kashinath (Original Consumer)
(Cons. No. 13895154665)

V/s

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

Appearances:

Review Applicant: 1. Narsaiah V. Tumma, Consumer
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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Secretary

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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 29th November 2023 in Representation 79 of 2023 passed by the Electricity Ombudsman (Mumbai). The Electricity Ombudsman (Mumbai), by its order dated 29th November 2023 (the impugned order) had rejected the grievance of the Applicant.

2. 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 Appellant is a consumer (Service No.13895154665) from 12.01.2009 having sanctioned load of 26.15 HP at H. No.1465/5, Shreeji Compound, Narpoli, 72 Gala Rd, Opp. Khadi Machine Bhiwandi.
- (ii) The order of Electricity Ombudsman (Mumbai) in Rep. No. 79 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) In the impugned order the Ombudsman has stated that
“13. *The Forum has given a reasoned order. There is, therefore, no reason to interfere in the order of the Forum...*”
However, the basis on which the Forum's order is delivered is not true.
- (iv) The Applicant referred to the order of the Forum in its finding on page no. 8/9 where it was mentioned that:

“The Forum also noted that vide letter dated 04-01-2023, the applicant himself admitted that he had removed all the Power Looms from the premises.”


It is not true, since the Applicant has mentioned that he has installed intermingle machine by removing some of his power looms. In addition, in the spot inspection report, it is mentioned that there is no powerloom found in running condition in the room. The words ALL and SOME makes the difference in delivering the order. The word ALL puts the


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consumer subject to action under Section 126 of the Act 2003 (the Act), while the word SOME does not change the purpose and hence Section 126 of the Act is not applicable to the consumer.

- (v) The Respondent in its photography evidence has produced the photos of the consumer, the compressor, intermingle machine and the winding machine. Then why was the photograph of the non-running looms not submitted? The Respondent has edited the photographs to show only the machines and not the power-looms. There are power looms in the premises but are not running due to shortage of raw material or labourers.
- (vi) The Respondent, MSEDCL, by its Commercial Circular on 11.3.2019, issued “*Guidelines in respect of finalising 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**.
- (vii) In the Forum’s order, it has been mentioned that “**we note that a fresh inspection can only determine the current electricity use and not the past use.**” The power looms were in the premises and a second inspection would reclassify the tariff category then and there.
- (viii) Regulation 14 of Supply Code & Regulations 2021 is reproduced below:
“14. Classification and Reclassification of Consumers into Tariff Categories


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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 above Regulation that the consumer has to be heavily penalized instead of doing reclassification as per new use.

- (ix) **A reclassification of category is done in another matter of service no. 13010117946, wherein the category was for power loom, 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 to commercial in the bill for the month April 2023 without penalizing him. This is the right way of classification and reclassification.**
- (x) 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 power loom 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 power loom 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.
- (xi) It was only on 31.10.2023 that the premises were surveyed again, wherein in 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.**



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(xii) **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 Electric Inspector under Section 127.**

(xiii) In view of the above, the Applicant prays that the present Review Application be allowed as per Regulation 22 of CGRF & EO Regulations 2020. The Appellant prays that:

- a. The category of the consumer be restored to its original “power loom” category.
- b. The excess amount collected by way of change of category to commercial be refunded.
- c. The current energy bills be generated considering “powerloom” category.
- d. Not to disconnect the power supply of the consumer till the final disposal of the case.

3. The Respondent MSEDCL & TPL filed their written replies on 23.02.2024 & 09.02.2024 respectively. Their written submissions and arguments on 26.02.2024 are as below: -

(i) The Applicant is a consumer (Service No. 13895154665) from 12.01.2009 having sanctioned load of 26.15 HP in the name Mr. Kabukar Sanjay Kashinath at H.No:1465/5, Shreeji Compound, Narpoli, 72 Gala Rd, Opp. Khadi Machine Bhiwandi. The premises are rented out to the Appellant for running powerlooms. The supply was sanctioned for powerloom purpose for the Occupier Mr.Narsayya Venkati Tumma who is the Applicant in the present case.

(ii) The grievance of the Applicant was 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 27.10.2022 (Commercial Use), or
- b) Provisional Assessment Order of Rs. 2,43,405/- on 27.10.2022, or
- c) Final Assessment Order dated Rs. 2,43,405/- on 27.11.2022, or
- d) the validity of applying Section 126 of the Act, the Appellant has choice to challenge it within thirty days of the said order, accompanied by the required 50% fee to the

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Appellate Authority i.e. Electric 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, where the Forum as well as the Ombudsman are barred from entertaining a case under Section 126 of the Act.

- (iii) The Respondent relies upon the order 28.07.2023 in Review Application No. 34/2023, where this Hon'ble Electricity Ombudsman observes that:

“The scope of a Review under Regulation 22 of the CGRF and EO Regulation 2020 is very limited. The said regulation is quoted below: -

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:

- (iv) Instead of complying with the order passed by the Hon'ble Electricity Ombudsman, the Appellant/consumer has approached for review without any sufficient cause.
- (v) The Grievance and the Representation filed by the Appellant/consumer was rejected on the grounds that the cause of action arose as the case was booked under Section 126 of the Electricity Act 2003, thus the Electricity Ombudsman has no jurisdiction to grant any relief.

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In such a situation, the Review Application of the Appellant/consumer cannot be entertained before the Hon'ble Electricity Ombudsman on the same cause of action.

- (vi) The Applicant has not raised any new submission nor has submitted any new relevant evidence in support of the Review Application, and hence it deserves to be rejected. Review is maintainable only upon discovery of new and important evidence which was not within the knowledge of the Applicant, or on account of some mistake or error. The grievance before the Forum challenging the Final Assessment Order under Section 126 was held not tenable. The Hon'ble Electricity Ombudsman relied on the Bombay High Court order in W.P. No. 596 / 2017, and considering the Regulation 7.9 of the Supply Code & SOP Regulations 2021 had rejected the representation. Thus, there is no case of review of the order dated 29.11.2023. The Applicant's representative has again failed to raise any new or important matter or evidence before the Authority and has approached with malafide intention.
- (vii) In support of its submission, the Respondent has relied on the order dated 27.01.2021 in Review Application No. 10/2020 (Sawant Dinkar Vs MSEDCL). Hence, it is requested to dismiss the said review.
- (viii) The supply of the Applicant was disconnected for non-payment of current bills, and not for assessment amounts.
- (ix) The Applicant filed this review on 03.01.2024, which is beyond the required period of 30 days from the original order dated 29.11.2023. Technically it is time barred, and the Applicant did not mention any reason for this delay.
- (x) In view of the above facts, the Respondent prays that the Review Application of the Applicant be rejected with cost.

Analysis and Ruling

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


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5. 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, wherein the main issue was already covered in the original order dated 29.11.2023.

6. 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 Appellant's signature on the "Spot Inspection Report" and did not hand it over to the Appellant. The Appellant denied that any provisional assessment calculation or hearing opportunity was given to him. The Applicant has emphasized that he has installed an intermingle machine by removing only some (and not all) of his powerlooms. The Applicant claims that the words ALL or SOME make all the difference in delivering the order. If the consumer had removed ALL his powerlooms, he would be liable for action under Section 126 of the Act 2003 (the Act). However, if he removed only SOME of the powerlooms, the main purpose continues to be the same, and hence Section 126 of the Act is not applicable. There are various procedural flaws in applying Section 126 of the Act. The Final Assessment was not served to the Appellant within time. Hence, the Appellant did not get the opportunity to approach the Appellate authority as per Section 127 of the Act. The Appellant claims that he got a copy of the final assessment only on 03.01.2023. Hence, this is not a fit case of Section 126. The Applicant has requested the Electricity Ombudsman to intervene in the matter and advise/direct the Appellate Authority (the Electrical Inspector) to entertain the appeal, if filed under Section 127 and to waive of the delay in filing the appeal.

7. On the other hand, the Respondent claims that the Appellant was using power supply for running intermingle machine, i.e. other than the use sanctioned (for powerlooms) for earning profit. The Respondent has acted under Section 126 of the Act. The Applicant did not produce any new evidence or mistake or error apparent from the face of the record, and this review is a mere repetition of old submissions.



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8. We do not find any merit in the arguments of the Applicant. As already mentioned in the original order, even if there were technical flaws or procedural lapses in issuing the provisional / final assessment orders (e.g. calculations not shown, Appellant's signature not taken on the spot inspection report, etc.), these issues could have been raised before the Electrical Inspector. On the merit of the case too, the issue of removal of ALL versus only SOME of the powerlooms could also have been raised before the Electrical Inspector. Finally, even if it is admitted that the Appellant got a copy of the final assessment only on 03.01.2023, nothing stopped him from approaching the Electrical Inspector by 03.02.2023 and pointing out all the above alleged flaws. Provision with respect to review of order passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below: -

"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."

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9. 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.

10. 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.

11. 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 the 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.

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

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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Secretary
Electricity Ombudsman Mumbai

