

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 32 OF 2020

In the matter of change of tariff category and retrospective recovery

Shyam Gul Choudhary Appellant

V/s.

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

Appearances

For Appellant : 1. Shyam Gul Choudhary
2. Rajesh Navadkar, Representative
3. Vijaykumar Kammana, Representative
4. Mukund A. Mahale, Representative

For Respondent: 1. Uday Bhosale, Acting Executive Engineer, Pen
2. Umakant P. Sapkale, Dy. Executive Engineer, Pen


Coram: Deepak Lad

Date of Hearing: 4th September 2020

Date of Order : 9th October 2020

ORDER

This Representation is filed on 24th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 23rd December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone.


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2. The Forum, by its order dated 23.12.2019 has partly allowed the grievance application in Case No. 18 /2019 and the operative part of the order is as below: -

“2.the respondent utility hereby directed to claim only the electricity consumption bill from the Appellant/consumer without any interest or DP charges and excess amount or difference amount be adjustable in future bill.”

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is LT consumer (No. 032678802149) from 20.07.2017 having Contract Demand of 75 KVA and Connected Load of 80.43 HP at G.No.201, At Post-Pen, District Raigad. The Appellant is billed under LT IV(C) tariff category at present for his Aquaculture plant developed as per Govt. of Maharashtra (GOM) norms and policy. The Appellant has applied Aquaculture plant permission on 30.04.2017 to the GOM, which is permitted by Commissioner of Fisheries, GOM vide its letter dated 21.11.2017. The Appellant is regular in paying the electricity bills.
- (ii) Junior Engineer, Vashi Section of the Respondent carried out spot inspection of the site on 7.09.2018. It is written in the inspection report that the said meter is used for production of prawns (kolambi). However, the inspection report indicates that the plant was closed.
- (iii) Appellant received a handwritten provisional bill of Rs.5,35,120/- for the period from August 2017 to September 2018 towards tariff difference recovery of wrong tariff code as per spot inspection report without mentioning activity, tariff and category.
- (iv) The Appellant further received handwritten provisional bill of Rs. 47,350/- for the month of October 2018 and November 2018, without mentioning activity, tariff and category which was paid on 29.11.2018 as the Appellant agreed to it.



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- (v) The Appellant received a bill of December 2018 as Tariff code: 87 LT – IV H bill along with debit bill adjustment of Rs.5,69,524.36, mentioning Activity: blank, Tariff: 87 LT – IV H, Category: blank.
- (vi) This is nothing but retrospective recovery of arrears on the basis of abrupt reclassification. Hence the Appellant approached the Respondent vide his letter dated 12.12.2018 for its grievance to withdraw provisional bill Rs.5,35,120/- for the period from August 2017 to September 2018. However, they did not give any relief. The Appellant is using electricity for Aquaculture and not for Agriculture Cold Storage. Appellant disagreed with the Respondent’s bill revision report (B80) dated 25.10.2018.
- (vii) The Appellant filed the grievance application with Internal Grievance Redressal Cell (IGRC) on 01.01.2019. The IGRC, by its letter dated 18.01.2019 has scheduled the hearing on 28.01.2019. However, the hearing was not conducted though the Appellant was present in the office of IGRC. It is regretted to state that, instead of hearing in IGRC, the Appellant was threatened for disconnection of power supply for non-payment of disputed bill, which is against the principle of natural justice. The Appellant had paid total Rs.5,00,000/- from 10.01.2019 to 26.02.2019 against the provisional bill to avoid disconnection.
- (viii) The Appellant approached the Forum on 05.06.2019 for interim relief against threat for disconnection of power supply towards non-payment of disputed bill. The Forum issued an Interim Order dated 16.07.2019. The content in the order is as below:

“The respondent is hereby directed not to disconnect the electricity supply of the complainant on payment of Rs. 50,000 from the arrears of Rs. 2,67,000.00 and in continuation of regular bill till disposal of this matter or the further order whichever will be earlier one. Informed to utility accordingly.”

Accordingly, the Appellant paid Rs.50,000/-on 22.7.2019.


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- (ix) The Respondent issued electricity bills in which it was mentioned Tariff as 80 LT – IV H and Category: LT-IV H. This tariff category is not available in any of the Tariff Orders of Maharashtra Electricity Regulatory Commission (the Commission). Therefore, the Respondent was asked to clarify during the hearing of the Forum. However, no satisfactory reply received from the Respondent. The Tariff Order of the Commission dated 12.09.2018 in Case No. 195 of 2017 is effective from 01.09.2018. The tariff for Aquaculture activity reads as

LT IV (C): LT – Agriculture – Others

Applicability:

This tariff category is applicable for use of electricity / power supply at Low / Medium Voltage

for:.....

*d) Floriculture, Horticulture, Nurseries, Plantations, **Aquaculture**, Sericulture, Cattle Breeding Farms, etc;*

But no clarification had been given about tariff code 87 LT-IV H.

- (x) The Forum issued order on 23.12.2019. Relevant portion at page no. 6 in the last para reads as below....

“We have heard both sides and gone through contents of Appellant and reply file by utility and this Appellant was protected by Interim order of not to disconnect the connection by CGRF order dtd.16.07.2019. On perusal of the reply and the along with letter of CE Commercial. It appears that, the meaning of the code of in bill Appellant LT IV -H is the same tariff code for LT-IV-C those the code LT IV -H is not there in record but it is submitted that the utility is that the billing is proper according to use for electricity. Hence, we found that interest and DP charges settled upon the billing amount is to be exempted for this Appellant as he as contrasted for the wrong billing. However, it is cleared from the record that the utility had changed tariff according to use and consumption of the electricity. We found that there is no wrong calculation of electricity charges by the utility. Hence, we proceed to pass the following order:

- 1. This application is hereby partly allowed.*
- 2. The respondent utility hereby directed to claim only the electricity consumption bill from the Appellant / Appellant without any interest or DP charges and excess amount or difference amount be adjustable in future bill.”**Emphasis added.***



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Secretary

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- (xi) The Forum agreed that it is cleared from the record that the utility had changed tariff according to use and consumption of the electricity but did not squash retrospective recovery of arrears.
- (xii) Appellant respectfully submit that, as per the Commission's Order dated 03.11.2016 in Case No. 48 of 2016 of MSEDCL for the period from FY 2016-17 to FY 2019-20 with effect from 1.11.2016,

LT IV: Agriculture applicability which reads as.....

LT IV (A): LT - Agriculture Un-metered – Pump sets

.....

LT IV (B): LT – Agriculture metered – pump sets.....

.....

LT IV (C): LT – Agriculture – Others

Applicability

This tariff category is applicable for use of electricity / power supply at Low / Medium Voltage for:

a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise;

b) Poultries exclusively undertaking layer and broiler activities, including Hatcheries;

c) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process;

d) Floriculture, Horticulture, Nurseries, Plantations, **Aquaculture**, Sericulture, Cattle Breeding Farms, etc;

- (xiii) Therefore, from date of connection 20.07.2017, tariff applicable to the Appellant is LT IV (C): LT – Agriculture – Others. Even though there was no change in use of Appellant, the licensee changed the tariff category retrospectively on the basis of spot inspection report dated 07.09.2018 from
- ✓ LT IV (A): LT – Agriculture (period From August 2017 to Nov 2018)
 - ✓ LT -IV H (From December 2018 to October 2019)
 - ✓ LT IV (C): LT – Agriculture – Others (from November 2019 till date)



(Dilip Dumbre)
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Hence, the Appellant cannot be held accountable for retrospective recovery of arrears on the basis of abrupt reclassification of the Appellant's tariff category.


- (xiv) The Appellant refers the Commission's order dated 11.02.2003 in Case No. 24 of 2001. The relevant portion is quoted below:

"No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective". (Emphasis added)

- (xv) The Appellant also referred the order dated 07.08.2014 of Appellate Tribunal for Electricity (ATE) in Case No. 131 of 2013, wherein it is stated that tariff change is permissible from date of detection of error in tariff classification.

"The State Commission has consistently maintained in the various orders dated 09.01.2008 and 08.10.2009 in case of similar units carrying out filling and packing of oil that they would fall under LT VII (A) – commercial category and that the arrears for difference in tariff could be recovered from the date of detection of the error."

- (xvi) As per the above decision of the Commission and the ATE, no past recovery is permissible. The change of tariff category be applied prospectively from the date of detection of the error which is October 2018.
- (xvii) Appellant referred the orders of Hon. Ombudsman Mumbai in which they have clearly mentioned that no retrospective recovery is allowed


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- *Case No.60 / 2019 in case of The Principal, College of Engineering, Pune*
- *Case No.12 / 2018 in case of M/s Himadri Foods Ltd. MIDC, Mahape, Navi Mumbai.*

(xviii) The Respondent is not entitled to recover the dues as per Section 56 (2) of the Electricity Act, 2003 (the Act), since there has been no any change of business activity/purpose of power use (Aquaculture) by Appellant.

(xix) Under the Act, Section 62 (3) and (6) reads as

Section 62 (Determination of tariff):

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

.....

.....

(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.

(xx) Based on the above order the recovery on account of reclassification can be prospective only, arrears of difference in tariff category would be recovered only from the date of detection of the error without applying DPC and interest on the said arrears.

(xxi) The Appellant prays that the Respondent be directed

a. to withdraw retrospective supplementary bill of Rs.5,35,120/- for change in tariff category from LT-IV A to LT-IV C tariff for the period from August 2017 to September 2018. The revised tariff category would be therefore applicable prospectively from the date of inspection i.e. on 7.9.2018.




(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



- b. to accept only current bill amount as per monthly consumption with prompt payment discount till the disposal of dispute between Appellant and the MSEDCL.
- c. to set aside notice for disconnection, not to disconnect power supply and not to issue notice for disconnection since the grievance is under Grievance Redressal Mechanism.
- d. to refund the amount paid towards supplementary bill along with interest equivalent to the bank rate at 9%.
4. The Respondent filed its reply by letter dated 17.03.2020 stating in brief as under:-
- (i) The Appellant is LT consumer (No. 032678802149) from 20.07.2017 having Contract Demand of 75 KVA and Connected Load of 80.43 HP at G.No.201, At Post- Pen, District Raigad. The Appellant is billed under LT IV(C) tariff category at present for his Aquaculture plant.
- (ii) The Appellant has initially, submitted application requesting industrial connection in prescribed A1 Form on 07.04.2017. Later on, the Appellant changed his A1 Form and applied for agriculture connection on the same survey number and address. In this A1 Form, the Appellant has not mentioned any activity detail whether he requires new connection for agriculture or cold storage or Aquaculture etc. Due to which LT IV (A): LT - Agriculture tariff was assigned to consumer by overlook and the Appellant was being billed with the same tariff code. When the Section Officer, Vashi of the Respondent came to know that the activity of the Appellant is Aquaculture, he carried out spot inspection of the site on 7.09.2018. During inspection, it was observed that the Appellant is using power for production of prawns (kolambi). The activity of the Appellant is Aquaculture. He recommended to change the tariff category from LT IV-A to LT IV (C): LT – Agriculture – Others.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (iii) The Respondent served a provisional bill of Rs.5,35,120/- towards retrospective tariff difference recovery for the tariff category from LT IV (A) to LT IV(C) for the period from August 2017 to September 2018. The Respondent referred Section 56(2) of the Act which empowers the licensee to claim retrospective recovery for the period of 24 months when there is a bonafide mistake. The Respondent clarified the queries raised by the Appellant regarding supplementary bill of Rs.5,35,120/-from time to time.
- (iv) The Respondent referred Commercial Circular No. 311 dated 01.10.2018 for agricultural tariff. Three categories were identified for Agricultural and Allied services with tariff code and purpose as follow.

LT IV (A) – Ag unmetered (Four – sub – category)

LT IV (B) – Ag Meter (one sub – category)

LT IV (C) – Ag -Others (three sub – category)

In LT IV (C), there are three sub categories Ag – Poultry, Ag-Poultry motive, Ag-Cold Storage.

So, for simplicity, Computerised Billing System named these categories alphabetically.

TARIFF CODE	ALPHABETICAL SUBCODE	DESCRIPTION
80	A	LT-IV Ag metered
81	B	LT-IV Ag unmetered CAT-I
82	C	LT-IV Ag unmetered CAT-II
83	D	LT-IV Ag unmetered CAT-I 5-7.5 HP
84	E	LT-IV Ag unmetered CAT-II 5-7.5 HP
85	F	LT-IV Ag Poultry



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai




86	G	LT-IV Ag Poultry motive power
87	H	LT-IV Ag Cold Storage

It is brought to notice that tariff code 85,86 and 87 (i.e. F, G, and H) are in LT IV (C) Tariff Category and has same unit rate as per circular. In LT IV-H, Floriculture, Horticulture, Nurseries, Plantation, Aquaculture, Sericulture, Cattle breeding farms, Cold Storage, etc. This is nothing but internal computerised billing system of the Respondent.

- (v) The Respondent relied on the Judgment dated 12.03.2019 of Larger Bench of Bombay High Court in W.P. 10764 of 2011 along with other Writ Petitions on Section 56 (2) of the Act and the order of the Ombudsman in Representation 4 of 2020 dated 25.02.2020 of Organica Mushroom Farm V/s MSEDCL, Nashik in support of their claim. Hence, the claim of the Respondent is well within the provisions of the Act, Rules and Regulations.
- (vi) The Respondent summarised following point: Tariff category is as per Commercial Circular No. 311 dated 01.10.2018 which is based on Tariff Order of the Commission. Same unit rate is for some category, only nomenclature was changed in the interest in billing algorithm.
- (vii) The Respondent prays that the representation of the Appellant be rejected.

5. The representative of the Appellant vide his email dated 04.09.2020 has made additional submission. Besides other things which are already captured above, the Appellant reiterated the Judgment dated 09.06.2020 of Bombay High Court in Writ Petition No. 10536 of 2019 in which Larger Bench Judgment dated 12.03.2019 in W.P. No. 10764 of 2011 with Other WPs of the Bombay High Court is also discussed.

6. Due to the Covid-19 epidemic and subsequent situations arising out of it, the hearing was held through video conferencing on 04.09.2020. During the hearing, the Appellant's various representatives argued in line with its written submission. The



 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai




Appellant's representative, Vijaykumar stated that the application for connection was submitted on 07.04.2017 and agriculture connection (C.No.032678802149) was released on 20.07.2017 with 80.43 HP and contract demand 75 kVA. Site Inspection was done on 07.09.2018 when it was observed that the applied tariff was wrong. Rajesh Navadkar, another representative stated that the GOM sanctioned the aquaculture project of the Appellant. The Respondent issued supplementary bill for retrospective recovery for the period August 2017 to September 2018 for the tariff difference between LT IV (A): LT – Agriculture and LT IV (C): LT – Agriculture – Other. It also argued that the tariff mentioned on the bill is 80 LT-IV H and subsequently 87 LT-IV H which is not at all incorporated in the Commission's order.

7. The Appellant vehemently relied on ATE Judgment dated 07.08.2014 in Appeal No. 131 of 2013 and the Commission's order dated 11.02.2003 in Case No. 24 of 2001 which prohibits retrospective recovery. In the same vein, the Appellant cited Judgement of Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune. This Judgment is in respect of challenge to the order of the Electricity Ombudsman (Mumbai) withdrawing retrospective recovery. This Judgment also discussed the Judgment of the Larger Bench in W.P. No. 10764 of 2011 and other Writ Petitions of the Bombay High Court interpreting Section 56 (2) of the Act. Considering the various citation advanced in the hearing, the Appellant argued that the Respondent, in case of escaped billing, can only prospectively bill the Appellant. The Appellant prayed that the Respondent be directed to withdraw supplementary bill of tariff difference for the period from August 2017 to September 2018 without interest and DPC.

8. The Respondent argued during the hearing that the activity of the Appellant is prawns (kolambi) cultivation. The tariff category applicable to the Appellant was LT IV (C): LT – Agriculture – Others, as per tariff order dated 03.11.2016 in Case No. 48 of 2016 effective from 01.11.2016. The Respondent correctly applied LT IV (C): LT – Agriculture – Others from December 2018 which was supposed to be applied from August 2017. This mistake was intimated to the Appellant during inspection on



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




07.09.2018. Afterwards the correct tariff code was updated in the system and communicated verbally that the legal retrospective recovery of tariff difference will be shortly issued. It was added in the bill of December 2018 despite specifically pointing out to pay the retrospective arrears right in the month of September 2018. The bill for the month of October 2018 and November 2018 with the correct tariff was issued manually. This is as per the provision of Section 56 (2) of the Act. The demand of tariff difference was continuously made from September 2018 onwards. The Forum, by its order dated 23.12.2019 has rightly decided the grievance. Considering all these facts, the Respondent prays for rejection of the representation.

Analysis and Ruling

9. Heard the parties and perused the documents on record. The Appellant is LT consumer (No.032678802149) from 20.07.2017 having Contract Demand of 75 kVA for his Aquaculture plant. It is the submission of the Respondent that the Appellant was billed at **LT IV (A): LT - Agriculture Un-metered – Pump sets** tariff category till September 2018. As a matter of fact, this appears to be a mistake as the tariff actually applied is **LT IV (B): LT - Agriculture Metered – Pump sets** as the Respondent provided the meter and billed the Appellant accordingly. This is substantiated by the document B-80 prepared by the Respondent. When the Respondent inspected the premises on 07.09.2018, it realized its mistake of billing the Appellant under wrong tariff category. Therefore, it tried to correct the mistake by billing the Appellant provisionally with tariff category of **LT IV (C): LT – Agriculture – Others** for the month of October 2018 and November 2018. The correct tariff category was incorporated in the billing system from December 2018 onwards and the Appellant was issued bill accordingly. Pursuant to this change of tariff category, the Respondent raised plain tariff difference from LT IV (A) to LT IV (C) with retrospective recovery of Rs.5,35,120/- for the period August 2017 to September 2018 and added in monthly bill of December 2018.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



10. The Commission by its order dated 03.11.2016 in Case No. 48 of 2016 has created a new tariff Category for **LT Agriculture – Others** effective from 01.11.2016. The relevant portion of the said tariff order is quoted as below: -

LT IV: Agriculture

LT IV (A): LT - Agriculture Un-metered – Pump sets
.....

LT IV (B): LT – Agriculture metered – pump sets.....
.....

LT IV (C): LT – Agriculture – Others

Applicability

This tariff category is applicable for use of electricity / power supply at Low / Medium Voltage for:

a) Pre-cooling plants and cold storage units for Agricultural Products – processed or otherwise;

b) Poultryes exclusively undertaking layer and broiler activities, including Hatcheries;


C) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process;

*d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc. (**Emphasis added**)*

11. The Appellant claimed relief under the Commission’s order dated 11.02.2003 in Case No. 24 of 2001 and ATE Judgment dated 07.08.2014 in Appeal No. 131 of 2013 which stipulates that recovery due to abrupt change of tariff category cannot be made retrospectively. Further, notwithstanding this, the order of the Commission and the Judgment of the ATE 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 interpreting Section 56 (2) of the Act which is quoted below: -

Section 56 (2) of the Electricity Act, 2003

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

Relevant portion of the Larger Bench Judgment

“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. *Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.”*

As a result of the above discussion, the issues referred for our opinion are answered as under:



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



- (A) ***The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.***
(Emphasis added)
- (B) *As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*
- (C) *The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.*

12. The Appellant also cited the Judgment in Writ Petition 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. However, the context of the case is totally different from the instant case and therefore, the ratio of this judgement cannot be applied blindly. More importantly, the Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held:


“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)

.....”

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. In the instant case, the error on the part of the Respondent is bona fide and hence it is


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



entitled to recover tariff difference for the period from August 2017 to September 2018 which is a period within the two years prior to detection of such error, under Section 56 (2) of the Act.


13. The undersigned has decided many cases relying on the Judgment of the Larger Bench of the Hon'ble Bombay High Court. In the instant case, the Respondent has demanded tariff difference bill for 14 months from August 2017 (date of connection) to September 2018 as the error has been detected during inspection on 07.09.2018 by debiting it in the bill for the month of December 2018 after which the Appellant has been regularly being billed with the correct tariff. It is noted that supplementary bill for October and November 2018 was already issued with the correct tariff.

14. The Appellant raised the issue of various Tariff Codes shown in its bills which are not in the tariff orders of the Commission. Basically, this is a non-issue as these tariff codes are part of the software programme prepared by the Respondent for issue of bills and running the entire billing system. This is not only in the case of the Appellant but applied across the board. It is important to note that this billing codes have not resulted in overcharging the Appellant than has been approved by the Commission.

15. It cannot be denied that putting such codes in the bills may confuse the consumers at large if such consumers try to correlate it with the Commission's order. In the circumstances, the Respondent is advised to use standard terminology of the tariff orders in the bill to avoid confusion and software coding may be indicated somewhere else in the bill which will not create confusion. This issue may be taken with the higher authorities of the Respondent.

16. In view of the above discussions, the Respondent is directed as under: -

- (a) To recover the amount towards tariff differential between **LT IV (C): LT – Agriculture – Others** and **LT IV (B): Agriculture** for the period from


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



August 2017 to September 2018. DPC and interest on tariff differential levied, if any, shall be withdrawn.

- (b) To grant three instalments to the Appellant for payment of the balance amount along with the current bill. In case of default, the interest, DPC shall be levied.
- (c) Compliance to be submitted within two months from the date of issue of this order.

17. The Forum's order is therefore revised to the above extent. Other prayers of the Appellant are rejected. The Representation is disposed of accordingly.

18. The secretariat of this office is directed to refund the amount of Rs.25000/- (deposited by the Appellant) to the Respondent for adjusting it against the Appellant's ensuing bill.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

