BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 47 OF 2019

In the matter of refund of tariff difference

Dr. Pradeep H. Bhave ..... Appellant
(Pooja Nursing Home)

V/s.

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

For Appellant : 1. Pranab T. Shende, Consumer Representative
2. Yogita Shende, Consumer Representative

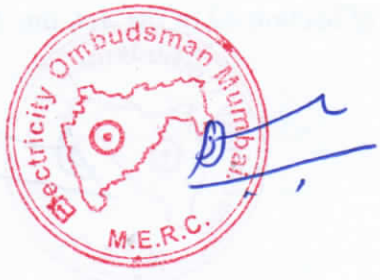
For Respondent : 1. Umesh S. Lele, Addl. Ex. Engr., MSEDCL, Thane

Coram: Mr. R. D. Sankhe

Date of Order: - 26th March 2019

ORDER

This Representation is filed on 28th January, 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 *(CGRF Regulations)* against the Order dated 27th November, 2018 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone *(the Forum)*.



2. The Forum, by its Order dated 27th November, 2018 has dismissed the grievance application of the consumer.

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

(i) The Appellant is a LT supply consumer 1st January 1987 having consumer No. 000021125290 and sanctioned load of 10.5 KW from at Flat No. 09, Shridhar Smruti, Gokhale Road, Thane (W).

(ii) The Municipal Corporation of the City of Thane, issued Certificate of Registration dated 4th June, 2015 and having date of Registration as 4th March 2003 in the name of Dr. Pradeep H. Bhave, in respect of Pooja Nursing Home, Naupada. The certificate of registration was valid upto 31st March 2018. The certificate for further renewal is under process.

(iii) As per its Tariff Order dated 16thAugust, 2012 in Case No. 19 of 2012, the Maharashtra Electricity Regulatory Commission (*the Commission*) created new tariff category called Public Services for hospitals and dispensaries, etc. Thereafter, Tariff Orders were issued by the Commission in Case No. 121 of 2014 and Case No. 48 of 2016. The Appellant consumer was accordingly liable to be charged LT – X(B) Public Services tariff category. After the tariff orders, the MSEDCL issued Commercial Circulars directing field officers to complete the exercise of recategorization within one month. However, this was not done.

(iv) The Appellant made application on 5th October 2017, for change of tariff category. The Respondent inspected the premises and thereafter changed the category into LT – X (B) Public Services from billing month of November 2017. The Respondent, however, did not refund the tariff difference with interest as per Section 62(6) of the Electricity Act 2003 (*the Act*) from the date of connection.

(v) Regulation 7 of Maharashtra Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 provides as under :

7. Adherence to the Tariff Order

7.3 Subject to the provisions of Section 49 and the proviso to clause (d) of subsection 1 of Section 62 of the Act, any licensee or generating company found

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to be charging a tariff different from the one approved by the Commission shall be deemed to have not complied with the directions of the Commission and shall be liable to penalties under Section 146 of the Act, without prejudice to any other penalty to which it may be liable under any other provisions of the Act.

(vi) Regulation 11 of MERC (Terms and Conditions of Tariff) Regulations, 2005 provides as Under :-

11. Adherence to the Tariff Order

11.3 If any Licensee or Generative Company recovers a price or charge exceeding the tariff determined under Section 62 of the Act and in accordance with these Regulations, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate of the Reserve Bank of India without prejudice to any other liability incurred by such Licensee or Generating Company.

(vii) The Appellant approached the Internal Grievance Redressal Cell (IGRC) on 27th February 2018. IGRC in its order dated 25th April, 2018 observed that as per Regulation 4.13 (b) of Maharashtra Electricity Regulatory Commission (Standard of Performance of Distribution Licensees, period of Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations, 2014), change in tariff category is to be done within second billing cycle and rejected the request for change retrospectively 2 years prior to date of application dated 5th October 2017.

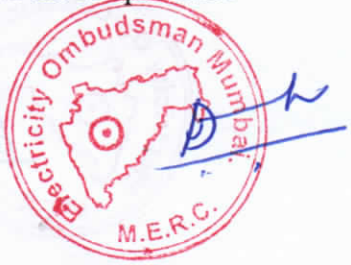
(viii) The Appellant filed grievance before the Forum on 30th June 2018. The Forum by its Order dated 27th November 2018 has dismissed the case.

(ix) The Appellant has therefore prayed to refund of tariff difference retrospectively 2 years prior to date of application dated 5th October 2017 together with interest.

4. The Respondent MSEDCL has filed reply by letter dated 2nd March 2019. The Respondent has stated as below: -

(i) The Appellant is LT consumer from 1st January 1987.

(ii) The Appellant consumer is receiving regular energy bills without any error in meter or any complaint from the Respondent.



(iii) The Appellant first time applied on 5th October 2017 for change of tariff from Commercial to Public Services. The premises were inspected and tariff category of the consumer was changed to LT-X(B) Public Services from the month of November 2017. Regulations 4.13 (b) of SOP Regulations provides that change in tariff category is to be done within second billing cycle.

(iv) The Respondent has no knowledge or intimation of actual date of commencement of hospital activity at the premises.

(v) It was the duty of consumer to apply for change of tariff category on the basis of actual use of power supply. There are large number of live LT consumers and it is not possible to inspect each and every premises.

(x) The Appellant approached IGRC claiming tariff difference of 24 months prior to application dated 5th October 2017.

(vi) IGRC passed the order stating that change in tariff cannot be done with retrospective effect. The Appellant approached the Forum on 30th June 2018. The Forum has rightly dismissed the grievance.

(vii) The Respondent cannot determine the tariff-of past period as the Respondent is not having record or evidence about running of hospital. The address of the hospital does not tally with the address mentioned on the registration certificate issued by Thane Municipal Corporation. The respondent prayed that the representation of the Appellant be rejected.

5. During the hearing Mr. Shende Consumer Representative stated that he has filed detailed representation as well as rejoinder on behalf of the Appellant in reply to the Respondent. He referred to the Registration Certificate dated 4th June 2015 issued under Maharashtra (Bombay) Nursing Act, 1949 by the Thane Municipal Corporation. It is showing the date of registration of hospital as 4th March 2003 and valid up to 31st March 2018. Further validity is under process. The address of hospital was mentioned as Naupada only in the registration certificate of Thane Municipal Corporation. However, certificate of Enviro-Vigil (an organization for Common Bio Medical Treatment and Disposal Facility) clearly mentions the period & detailed address of the hospital. Similarly, Maharashtra Pollution Control Board in its certificate dated 29.10.2013 has mentioned the correct address of the hospital and its function as hospital and has granted permission for generation of bio medical waste. The Appellant argued that, the Commission in

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its Tariff Order dated 16th August, 2012 created new tariff category called Public Services for hospitals and dispensaries, etc. The Commission again issued Tariff Orders in Case No. 121 of 2014 and Case No. 48 of 2016. After the tariff orders of the Commission, the Chief Engineer (Commercial) issued Circular directing the field officers to inspect the premises and to apply correct tariff as per the tariff orders of the Commission. The field officers, however, failed to carry out their duty. As per section 62(6) of the Electricity Act, 2003, if a licensee recovers a price or charge exceeding tariff determined under this section, the excess amount is recoverable from the licensee along with interest by the person who has paid it. The Appellant consumer was accordingly liable to be charged LT – X(B) Public Services tariff category from the date of tariff orders of the Commission. This was, however, not done by the licensee. The Appellant therefore made an application for change of tariff category. The Forum did not understand the basic issue of functioning of the ENT hospital and has wrongly dismissed the grievance. The Appellant is, entitled for the refund of the tariff difference for 24 months prior application dated 5th October 2017. Mr. Shende, however, fairly stated during hearing that the Appellant would not claim interest on the refundable amount of tariff difference.

6. The Respondent MSEDCL was represented by Shri U. S. Lele, Addl. Executive Engineer, Power House Sub Division. He argued that application for change of tariff category was received on 5th October 2017 and thereafter, the effect was given in the bill for the month of November 2017. As per regulation 4.13 (b) of the SOP Regulations, 2014, it is within two billing cycles and there was no lapse on the part of the licensee. It was brought to his notice during the course of hearing that supply was released basically for residential purpose. Subsequently, it was converted into Commercial. There is no specific address in the certificate of Thane Municipal Corporation for registration of the hospital. The documents of Maharashtra Pollution Control Board and Enviro-Vigil referred by the appellant is not applicable here. The Forum has rightly rejected the grievance of the appellant. The Respondent prayed that the Representation of the Appellant be rejected.

7. Heard the parties.

8. The Appellant consumer is admittedly given supply connection on 1st January 1987 at Flat No.9, Shridhar Smruti, Gokhale Road, Thane. In the Tariff Order dated 16th August, 2012

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in Case No. 19 of 2012, the Commission created new Tariff category for Public Services effective from 1st August, 2012. It was applicable as follows:

> *LT X: LT-Public Services : Applicability*
>
> *This Tariff shall be applicable to Education Institutes, Hospitals, Dispensaries, Primary Health Care Centers, Pathology Laboratories, Police Stations, Post Offices, Defense Establishments (Army, Navy and Air Force), Public Libraries and Reading Rooms, Railway except Traction (Shops on the Platforms / Railway Station / Bus Stands will be billed under Commercial category as per the respective slab), State Transport Establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to aeronautical operations).*
>
> *Sports Club /Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club /Health Club / Gymnasium / Swimming Pool is situated in the same premises and is exclusively meant for the students / patients of such Educational Institutions & Hospitals.*

9. The Commission thereafter issued Tariff Orders in Case No. 121 of 2014 dated 26th June 2015 and in Case No. 48 of 2016 dated 3rd November 2016. The Public Service category for hospitals, etc. has been continued in these tariff orders. After each tariff order of the Commission, the Chief Engineer (Commercial) of MSEDCL issued Commercial Circulars instructing field officers of MSEDCL to implement the tariff orders with specific directions that wherever the Commission has redefined or created new category, steps should be taken to visit the premises and to recategorize the tariff within a month. This has not been done by the concerned field officers in many areas, even after subsequent tariff orders.

10. The Appellant in this case filed an application on 5th October 2017 to the MSEDCL. The tariff category of the Appellant has been changed to LT -X (B) from November 2017. The IGRC has rejected the complaint for giving retrospective effect. The Forum has rejected the grievance. The Registration Certificate dated 4th June 2015 clearly shows that, the date of Registration of hospital is 4th March 2003. The hospital is working for many years as per

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documents submitted during the hearing viz, Certificate of Maharashtra Pollution Board, Certificate from Enviro-Vigil.

11. The Appellant in this case filed an application on 5th October 2017 to the MSEDCL. The tariff category of the Appellant has been changed to LT -X (B) from November 2017. The IGRC has rejected the complaint for giving retrospective effect. The Forum has also rejected the grievance. The list of the running hospitals submitted by Thane Municipal Corporation within their jurisdiction clearly shows the date of working of the hospital since 04th March 2003 at Shridhar Smriti, Gokhale Road, Thane. Secondly Certificate submitted by Maharashtra Pollution Board dated 29.10.2013 also shows the full address of the hospital. The order of the Forum rejecting the grievance is incorrect and is liable to be set aside.

12. In Representation No. 74 and 77 of 2017 and in similar other cases decided by the Electricity Ombudsman (Mumbai), relief has been granted directing refund of 24 months prior to date of application made to the licensee. As per the provisions of section 62(6) of the Electricity Act, 2003, the excess amount recovered has to be refunded along with interest. Considering the fact that the application was made to the licensee on 5th October 2017 and the Appellant has claimed tariff difference of 24 months prior to application made to the licensee, the Appellant is entitled for refund of tariff difference preceding 24 months from application to the licensee. The Appellant has waived the claim of interest on the refundable amount.

13. This representation is accordingly allowed. The Respondent MSEDCL is directed to refund the tariff difference preceding two years from application dated 5th October 2017. The Respondent will be at liberty to adjust the refundable amount through the monthly bills of the Appellant.

14. Compliance to be reported by the Respondent MSEDCL within two months from the date of receipt of this order.

Sd/-
(R. D. Sankhe)
Electricity Ombudsman (M)

Electricity Ombudsman (M.E.R.C.)
Certified to be a true copy
(Shri D. S. Pimbre)
Secretary