

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 64 OF 2020

In the matter of refund of tariff difference

St. Gonsalo Garcia College of Arts & Commerce ..... Appellant

V/s.

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

### Appearances

For Appellant : 1) Dr. Somnath Vibhute, Principal  
2) Jinesh K. Shah, Representative

For Respondent : Mahesh Vijay Madhavi, Additional Executive Engineer

**Coram: Mr. Deepak Lad**


Date of Hearing : 10<sup>th</sup> September 2020

**Date of Order: - 24<sup>th</sup> September 2020**

## ORDER

This Representation is filed on 17<sup>th</sup> July 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 2<sup>nd</sup> March 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).

2. The Forum, by its Order dated 02.03.2020 has partly allowed the grievance application in Case No. 2003 of 2019-20. The operative part of the order is as below: -

  
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- “2). The consumer is entitle for the change of tariff from LT Residential - I to LT X B public services for 24 months prior to the date of its application.
- 3) Consumer also entitled to get the refund of Tariff difference for these 24 months which can be adjusted in future bills.
- 4) Consumer is not entitle for any interest.”

3. Not satisfied with the Order of the Forum, the Appellant has filed this representation stating in brief as below:-

- (i) The Appellant is a LT consumer (No.001510271714) from 01.09.1998 with a sanctioned load of 56 KW and contract demand of 50 KVA at Survey No.104, Near ST Depot, P-12A, Vasai (West). The Appellant is running, operating college as Educational Institute. The Appellant was billed under LT I Residential tariff category initially.
- (ii) The Maharashtra Electricity Regulatory Commission (the Commission) created new tariff category as per its Tariff Order dated 16<sup>th</sup> August 2012 in Case No. 19 of 2012 called as Public Services for Educational Institutes, Hospitals and Dispensaries, etc. The Appellant was therefore entitled to be billed under LT – X Public Services tariff category from 1.08.2012. Thereafter, Tariff Orders were issued by the Commission in Case No. 121 of 2014 and Case No. 48 of 2016. Hence, the Appellant consumer was accordingly entitled to be billed under LT – X (B) Public Services-Others tariff category.
- (iii) The Appellant made first application on 02.11.2018 for change of tariff category with retrospective effect and followed up with local offices of the Respondent. However, the Respondent did not take the any action.
- (iv) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 11.11.2019. The IGRC, by its order dated 28.11.2019 has directed as below:

*“The above grievance is hereby partly allowed. The Add. Executive Engineer, Vasai Urban Sdn directed to verify the use of consumer numbers 001510271714 and if found to be used for College purpose, change the category of consumer no. 001510271714 from LT-I to LT XB in the next billing cycle and charged complainant the tariff under category of LT-X B – Public*

  
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*Services from 03.11.2016 to till the billing month of category change and refund the difference within one month from date of receipt of this order.”*

- (v) The Appellant filed the grievance application in Forum on 24.01.2020 to refund of tariff difference from LT I to LT X B from the Public Services from 01.08.2012 to till the billing month of category change and refund the difference along with bank interest. The Forum, by its Order dated 02.03.2020 has allowed the retrospective refund of two years from the date of application. However, did not refund from 01.08.2012.
- (vi) The Appellant, therefore, prays for refund of tariff difference from 01.08.2012 along with interest.

4. The Respondent MSEDCL filed a reply by its letter dated 09.09.2020 stating brief as below: -

- (i) The Appellant is a LT consumer (No.001510271714) from 01.09.1998 with a sanctioned load of 56 KW and contract demand of 50 KVA at Survey No. 104, Near ST Depot, P-12A, Vasai (West). The Appellant is a college as Educational Institute.
- (ii) The Appellant was billed under LT I Residential tariff category since last 22 years. The Appellant never complained about change of tariff after change in usage on the contrary. The Appellant enjoyed the residential tariff from the date of connection till date for the activity where the commercial tariff was applicable and preferred to keep mum. When there is a rise in consumption, he was billed in higher slab of residential tariff category first time on 02.11.2018.
- (iii) It appears that the case of the Appellant is a change of tariff category as per Regulation 4.13 (b) of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees. Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations). Hence, the Appellant is not entitled for retrospective tariff difference from LT I to LT X B.
- (iv) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 11.11.2019. The IGRC, by its order dated 28.11.2019 has directed to change the tariff from the date of application i.e. 02.11.2018 and retrospective

  
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refund of two years from the date of application. The Appellant approached the Forum on 24.01.2020 against the order of the IGRC. The Forum, by its Order dated 02.03.2020 has allowed tariff difference from October 2016 onwards for refund of tariff difference for 24 months prior to the date of its application.

- (v) Section 56(2) of Electricity Act 2003 and Regulation 6.6 and 6.2 of CGRF Regulations is not applicable to this grievance as it is the case of change of tariff category.
- (vi) The order of the Forum is implemented, and tariff difference has passed on to the Appellant in the bill of February 2020. The prayer of the Appellant is not maintainable for further relief as per Regulation 6.6 of CGRF Regulations.
- (vii) Hence, the Representation of the Appellant be rejected.

5. Due to the COVID-19 epidemic in India and subsequent situations arising out of it, the hearing was held through video conferencing on 10.09.2020.

6. During the hearing on 10.09.2020, the Appellant requested to condone the delay was due to COVID-19 epidemic. The Appellant and Respondent argued in line with their written submissions. The Appellant argued that the Appellant is an educational institute since 1995. The Respondent billed the educational institute on residential tariff category initially. There is no change of purpose from date of application. The public services tariff category as per the order of the Commission came in force with effect from 01.08.2012. The Appellant argued that the Electricity Ombudsman Nagpur by its order dated 02.09.2015 in Representation No. 36 of 2015 has allowed change of tariff category as a public services from 01.08.2012 where the Appellant is a medical practitioner who runs a Diagnostic Centre of similar case. The Appellant prays that the Respondent be directed to refund the tariff difference from Residential tariff to public services tariff category from 01.08.2012 along with the interest.

7. The Respondent argued that the order of the Forum is implemented. The Respondent argued that the Public Services Tariff Category was applicable only for Government Educational Institute from 01.08.2012 as per Tariff Order of the Commission dated 16<sup>th</sup> August 2012 in Case No.19 of 2012. Thereafter, Tariff Order was issued by the Commission on 26.06.2015 in Case No.121 of 2014 which was effective from 01.06.2015 onwards on which

  
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the Private Educational Institutes are entitled to be billed under LT – X (B) Public Services- Others tariff Category. The Appellant has wrongly quoted the Tariff Order of the Commission in Case No.19 of 2012. As a matter of fact, private educational institutes are covered for tariff under LT – X (B) Public Services-Others tariff Category in the tariff order dated 26.06.2015 of the Commission in Case No.121 of 2014. As per Regulation 6.6 of CGRF Regulations, the prayer of the Appellant for further relief is not maintainable, hence, the Representation of the Appellant be rejected.

### **Analysis and Ruling**

8. Heard the parties and perused the documents on record. I noted that the Appellant made first application on 02.11.2018 for change of tariff category and the Respondent has changed tariff category from LT I to LT – X B Public Services-Others from February 2020. The Appellant approached the Forum on 24.01.2020, whereas it has prayed for refund of tariff difference from Residential to Public Services-Others, for the period starting from 01.08.2012 to 31.10.2016. Basically, the Appellant is trying to derive the advantage of the tariff LT – X (B) Public Services-Others tariff Category from 01.08.2012 however, this tariff category came into being on 26.06.2015 and made effective from 01.06.2015 as per the Commission's order in Case No.121 of 2014. The logic advanced by the Appellant is that its institute is an educational institute. However, the Appellant has not properly appreciated the order of the Commission in operation prior to 01.06.2015 which provided tariff under LT – X : LT- Public Services tariff Category to only educational institutes run by Government, Semi-Government or Local Bodies.

9. When there was no tariff available to the Appellant's institute in 2012, there is no question of entertaining his representation. If the appropriate tariff of LT – X (B) Public Services-Others is to be applied to the Appellant, the appropriate date could be 01.06.2015. However, it is not even entitled for this date as it has approached the Forum on 24.01.2020.

10. The prayer of the Appellant does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations. The relief could be granted from 24.01.2018 which is two years prior to date of filing the application with the Forum which is 24.01.2020.

  
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11. The Regulation 6.6 of CGRF Regulations is quoted below: -

*“The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen.”*


It is expected that the consumer should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 of CGRF Regulations which ultimately puts two years limitation period for the Forum to admit the case. This principle and logic are upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon. Bombay High Court, Bench at Aurangabad which is very much relevant in the instant Representation. The relevant portion of the judgment is quoted below: -

*“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.*

*38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.*

*39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.*

*42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid*

  
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*disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.*

*43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.*


*44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.*

*45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.*

*46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”*

12. In view of the above discussions, I am of the considered view that the Appellant does not have any case as it does not fit into the regulatory framework of Regulation 6.6 of the CGRF Regulations and the ratio of the case Cited by the Appellant is not applicable here.

13. The Forum has given retrospective relief for two years from the date of its application i.e. 02.11.2018. However, as per Regulation 6.6 of the CGRF Regulations, the retrospective refund of tariff difference is prior to two years from the date of filing the application in the Forum i.e. 24.01.2020. The order of the Forum is modified to that extent.

  
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In view of the above, the Respondent is directed to revise the retrospective refund of tariff difference from LT - I to LT – X (B) Public Services-Others tariff category for the period 24.01.2018 till the change of tariff category effected.

14. The Respondent is directed to submit the compliance within period of two month from the date of issue of this order.

15. Therefore, the representation is disposed accordingly.

Sd/-  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
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