

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION 173 OF 2019

In the matter of retrospective recovery towards tariff difference

Indus Tower Ltd..... Appellant  
(C. No. 170144173999)

V/s.

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

### Appearances

For Appellant : 1. Dharendra Srivastav  
2. D. S. Talware, Representative

For Respondent : 1. S. R. Waiphalkar, Executive Engineer, Pimpri  
2. H. H. Narkhade, Addl. Executive Engineer  
3. A. R. Panse, Dy. Manager (F & A)  
4. S. R. Chavan, Asstt. Law Officer

**Coram: Deepak Lad**

Date of Order: 30<sup>th</sup> October 2019

### ORDER

This Representation is filed on 13<sup>th</sup> September 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 29<sup>th</sup> August 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum, by its Order dated 29<sup>th</sup> August 2019 in Case No.40 of 2019 has disposed of the grievance observing as under: -

*“It is apparently clear that the issue is pending before Aptel Authority in group matter which is under consideration. In view of this fact I do not feel proper to adjudicate the same matter giving my finding on the issues associated with the present complaint before the Forum, until the Competent Aptel Authority decide the issue finally. The interim order already passed by Aptel Authority shall be binding on the Utility. Hence I find no reason to interfere and passed any further orders in the matter.”*

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

- (i) The Appellant is a LT Consumer (No. 170144173999) for its mobile tower from 29.09.2006 at CTS 45/1, 4512, Laxmi Complex, BP Road, Chinchwad, Pune. The Appellant is presently billed under industrial tariff category.
- (ii) The issue of application of appropriate tariff to such businesses is under adjudication at the Hon'ble Appellate Tribunal for Electricity (ATE) through Appeal No. 337/2016 and batch of matters. In the interim judgment dated 12.09.2017, the Hon'ble ATE directed that the Appellants (in ATE Appeal) shall pay to Maharashtra State Electricity Distribution Co. Ltd., the tariff in terms of industrial category including all outstanding and current dues, without prejudice to the rights and contentions of all the parties.
- (iii) The Appellant, in the instant representation has also filed IA Nos. 1090, 1089 & 1091 of 2017 in DFR No. 3976 of 2017. The ATE passed interim judgment on dated 13.12.2017. In this judgment, it is ordered that the judgment dated 12.09.2017 in Appeal No. 337/2016 and batch of matters shall apply to the Appellant in the instant representation.
- (iv) The order of the Forum was received late, hence, there is slight delay in filing the representation which may be condoned.
- (v) The Appellant is in the business of telecommunication network infrastructure provider including installation, operation and maintenance without interruption. The Appellant is having about 13000 + mobile tower sites throughout the State of Maharashtra.
- (vi) The Respondent has debited a supplementary bill of Rs.686183.71 in March 2019 bill without any details and justification.

- (vii) The Appellant registered its complaint to the Respondent, Sub Division Officer (SDO) on 25.04.2019 requesting for details and correct bill, however the Appellant did not receive any correct bill.
- (viii) The Respondent, by its letter dated 04.05.2019 informed that the supplementary bill is issued on the instructions of the Respondent's Flying Squad towards tariff difference from Industrial to Commercial for the period from June 2015 to January 2018.
- (ix) The said supplementary bill is of 45 months and debited in the bill of March 2019. As per Section 56 (2) of the Electricity Act 2003 (the Act) the Respondent cannot recover any dues for more than 24 months. Hence, the supplementary bill is time barred and need to quash along with interest and Delayed Payment Charges (DPC) levied. Thereafter, the supply of the Appellant was disconnected on 29.05.2019 without any notice.
- (x) The Appellant approached the Forum on 31.05.2019 for interim relief against the disconnection of supply without any notice as per Section 56 (1) of the Act. The Appellant prayed for withdrawal of the wrong bill along with interest and DPC to compensate as per Regulations 6 (i) of the Maharashtra Electricity Regulatory Commission(Standards of Performance of the Licensees, period of giving Supply and Determination of Compensation), Regulations 2014 (SOP Regulations) and to award compensation of Rs. 10,000/- towards harassment. However, the Forum has neither given any relief in interim order nor in its final order but disposed the grievance application on wrong conclusion.
- (xi) Not satisfied with the order of the Forum, the Appellant filed this representation on 13.09.2019. In its representation, the Appellant referred the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in Writ Petition (W.P.) No. 10764 of 2011 and Others on the issue of Section 56 (2) of the Act. The Appellant also referred the order passed by the Nagpur Forum in Case No. 108 /2012 and Aurangabad Forum in Case No. 602 /2016 on the issue of Section 56 (2).
- (xii) The Appellant has therefore prayed that the Respondent be directed :-
- (a) to revise the supplementary bill as per Regulations of the Commission and provisions of the Act.
  - (b) to withdraw interest and DPC levied till date.
  - (c) to compensate as per Regulations 6 (i) of SOP Regulations.
  - (d) to award compensation of Rs.10,000/- towards harassment.

4. The Respondent MSEDCL filed its reply by letter dated 01.10.2019 stating as below: -

- (i) The Appellant is LT Commercial consumer (No. 170144173999) having sanctioned load of 27 KW for its mobile tower from 29.09.2006 at CTS 45/1 4512 Laxmi Complex B.P. Road, Chinchwad.
- (ii) The Flying Squad of the Respondent inspected the electrical installation of the Appellant on 03.11.2017. During inspection it was observed that the Appellant is billed on Industrial tariff category instead of Commercial tariff category from June 2015. As per inspection report of the Flying Squad, the supplementary bill of Rs.686183.71 was worked out for the period from June 2015 to January 2018 as per Commercial circular No. 243 dated 03.07.2015 and debited in the electricity bill of the Appellant in the month of March 2019. The same was intimated to the Appellant vide its letter dated 04.03.2019.
- (iii) As per request of the Appellant, the working calculation sheets, Flying Squad's Report are given to the Appellant on 04.05.2019. The same documents were again given to the Appellant's representative Mr. Vasant Kamble on 29.05.2019.
- (iv) The Appellant did not pay the dues raised by the Respondent. Hence, the disconnection notices are given to the Appellant from time to time on the registered mobile number by way of SMS as per Section 56(1). Continuous follow up was done for recovery, however the Appellant did not pay the dues. Hence, the supply of the Appellant was disconnected on 29.05.2019.
- (v) The issue of application of appropriate tariff to mobile tower is under adjudication at the Appellate Tribunal for Electricity (ATE). The Appellant is also the petitioner in the said appeal. As per judgment given in Interim Order of the Hon'ble ATE, the Appellant has to be billed provisionally under industrial tariff category. Hence, the tariff category of the Appellant remains as an industrial one till date.
- (vi) The Appellant approached the Forum on 31.05.2019. The Forum, by its order dated 29.08.2019 disposed the issue as the subject matter is pending in the ATE.
- (vii) The Respondent prayed that the Representation of the Appellant be rejected.

5. The hearing of this representation was held on 23.10.2019 at the CGRF Pune office. Delay in filing the representation is hereby condoned. During the hearing, the Appellant and the Respondent

argued in line with their written statement. The Appellant's only argument was that as per Section 56 (2) of the Act, Respondent can bill the consumer retrospectively for not more than 24 months. The Respondent has billed the Appellant for more than 24 months and therefore, the bill to that extent need not be considered. Besides this, the Appellant's argument was with respect to non-cooperative attitude of the Respondent officials and hesitation in parting with the suitable data to get the clarity on the issue. Therefore, for this indifferent attitude of the Respondent, compensation needs to be awarded.

6. The Respondent, on its part, submitted that as per Tariff Order dated 26.06.2015 in Case of 126 of 2014 of the Commission with effect from 01.06.2015, IT/ITES companies who have Permanent Registration Number provided by the Industries Department, Government of Maharashtra are entitled for Industrial Tariff Category. In the instant case, the Appellant has not submitted the required Permanent Registration Number till date and hence they are supposed to be billed on Commercial Tariff Category from 01.06.2015. However, the Appellant has been mistakenly billed on Industrial Tariff Category. Hence the retrospective recovery made by the Respondent is correct for the period from June 2015 to January 2018.

### **Analysis and Ruling**

7. Heard the parties and perused the record. I noted some of the important events which are as below: -

- (a) Respondent's flying squad inspected the premises on 03.11.2017.
- (b) Supplementary bill with retrospective recovery for June 2015 and January 2018 is issued by the Respondent in March 2019 for Rs. Rs.686183.71.
- (c) Appeals at the ATE is with respect to applicability of tariff though however ATE has directed that the Appellants (in ATE Appeal) shall pay to Maharashtra State Electricity Distribution Co. Ltd., (the Respondent in the instant Representation) the tariff in terms of industrial category including all outstanding and current dues, without prejudice to the rights and contentions of all the parties.

8. I do not concur with the findings of the Forum because notwithstanding which tariff needs to be applied, past recovery needs to be examined in light of the provisions of Section 56 (2) of the Act. Hon'ble ATE will decide on the Appeals in due course of time, however, it has directed, in its

Interim Appeal dated 12.09.2017 that the Appellants to pay to Respondent the tariff in terms of Industrial category including all outstanding and current dues. Thus, it follows that the retrospective recovery of the Appellant will have two components, one commercial up to 11.09.2017 and industrial from 12.09.2017 onwards.

9. In view of the above discussion, the question remains as to what extent the Respondent can bill the Appellant retrospectively. The Larger Bench Judgment of Bombay High Court dated 12.03.2019 in W.P. No. 10764 of 2011 and others have clearly spelt out the period envisaged under Section 56 (2) of the Act. The undersigned has issued many orders considering the above judgement. In view of this settled position of law with respect to Section 56 (2), the Respondent can issue the supplementary bill for 24 months only prior to the month in which the bill has been served to the Appellant. In this case, the bill is served in the month of March 2019 and therefore, the billing period for the retrospective recovery for 24 months shall be from March 2017 to February 2019. However, there would be overlap of the period for tariff difference to be recovered as per the Interim Judgment dated 12.09.2017 of Hon`ble ATE.

10. In view of the above, in the instant case, the retrospective period of recovery shall be as under:


- (a) 01.03.2017 to 11.09.2017 recovery shall be for tariff difference between commercial and industrial.
- (b) 12.09.2017 to February 2019 (the Respondent for the reasons best known to it, has served the retrospective bill till January 2018 only) at Industrial tariff and therefore, there cannot be any tariff difference recovery as ATE has in its Interim Appeal permitted tariff to be industrial one.

11. Hence, I pass the following order: -

- (a) The Respondent is directed to consider the retrospective period for tariff difference from 01.03.2017 to 11.09.2017 and revise the bill accordingly as there would be zero recovery from 12.09.2017 till February 2019 as the tariff applied is industrial one.
- (b) DPC and interest levied, if any, on account of this supplementary bill shall stand withdrawn.
- (c) It goes without saying that the outcome of the appeals at ATE mentioned at 3 (ii) and (iii) above shall apply in the instant case.

- (d) The Respondent is at liberty to investigate the issue and fix the responsibility on the erring officials, if deemed appropriate for the delay in issuing the supplementary bill in March 2019 despite the inspection was carried on 03.11.2017.
- (e) The Forum's order is modified to this extent.
- (f) The prayer of the Appellant with respect to compensation under SOP Regulations cannot be accepted.
- (g) The compliance of this order shall be reported by the Respondent within two months from the date of this order.
- (h) The secretariat of this office is directed to refund Rs.25000/- deposited by the Appellant immediately.
- (i) The representation is disposed of accordingly.

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

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

