

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 222 OF 2019

In the matter of refund of tariff difference

Navi Mumbai Mahila Utkarsh Mandal Appellant

V/s.

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

Appearances

For Appellant : Pranab T. Shende, Representative

For Respondent : 1. Ajay A. Chafale, Executive Engineer
2. Pranay Chakraborty, Dy. Ex. Engineer
3. G.A.Mali, Asst. Law Officer


Coram: Mr. Deepak Lad

Date of Order: - 6th May 2020

ORDER

This Representation is filed on 19th December 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 22nd October 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The Forum, by its Order dated 22.10.2019 has partly allowed the grievance application in Case No. 234/2018. The operative part of the order is as below: -



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“2. The applicant is entitled for the refund from October 2016 onwards for all months till months prior to the date of filing this application to CGRF i.e. 20.11.2018. The period of getting tariff benefit from LT II to LT X (B) from date of conversion of tariff LT X(B) should be considered. ”

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.000157185381) with a sanctioned load of 48.30 KW from 15.01.2007 at Plot No. 8, Sector 9, Ghansoli, Navi Mumbai. The Appellant is running, operating school/college as Educational Institute, registered under the Bombay Public Trust Act. The Appellant was billed under LT-II-Commercial tariff category initially.
- (ii) The Maharashtra Electricity Regulatory Commission (the Commission) created new tariff category as per its Tariff Order dated 16th 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 06.10.2016 for change of tariff category with retrospective effect. The Respondent inspected the premises and thereafter changed the tariff category into Public Services from October 2016. The Appellant sent reminder by email on 07.09.2017 and 09.10.2017 for retrospective refund of tariff difference. The Respondent however did not refund tariff difference with interest as per Section 62(6) of the Electricity Act 2003 (the Act).
- (iv) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 08.06.2018. The IGRC, by its order dated 23.08.2018 has directed to change the tariff prospectively from the date of application. The


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Appellant approached the Forum on 28.11.2018 against the order of the IGRC. The Forum, by its Order dated 22.10.2019 has allowed tariff difference from October 2016 onwards.

- (vi) The Appellant put on record a letter from the Electrical Inspector, Govt. of Maharashtra, Wagle Estate which indicate the refund of electricity duty was approved from April 2011 to August 2016. It is clearly established that the Appellant is an Educational Institute.
- (vii) The Appellant referred the Judgment of Bombay High Court, Nagpur Bench dated 18.07.2017 in Writ Petition (W. P.) No.3997 of 2016 of MSEDCL V/s Shilpa Steel and Power Ltd. Nagpur in which tariff determination and for change of tariff category was decided for more than two years i.e. the Regulation 6.6 of CGRF Regulations of 2 years' time limit is not applicable for change of tariff category.
- (viii) The Appellant referred the order of the Commission dated 01.08.2018 in Case No 68 of 2018 of Rattan India Nashik Power Ltd. V/s MSEDCL for change in tariff category from commercial to industrial for its startup of Power connection. The Commission has allowed industrial tariff from 03.02.2014 which is more than two years, considering claim cannot be barred by limitation as per Section 62(6) of the Act.
- (ix) The Appellant has raised the grievance continuously with the Respondent.
- (x) The Appellant, therefore, prays for refund of tariff difference from 1st August 2012 along with interest.

4. The Respondent MSEDCL filed a reply by its letter dated 22.01.2020 stating brief as below: -

- (i) The Appellant is a consumer from 15.01.2007 and was billed under Commercial tariff category initially.
- (ii) The Appellant applied for public service tariff on 06.10.2016 for refund of retrospective tariff difference from 01.08.2012. The Respondent inspected the


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premises and the Appellant was billed in Public Service category from billing month of November 2016 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).

- (iii) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 08.06.2018. The IGRC, by its order dated 23.08.2018 has directed to change the tariff prospectively from the date of application. The Appellant approached the Forum on 28.11.2018 against the order of the IGRC. The Forum, by its Order dated 22.10.2019 has allowed tariff difference from October 2016 onwards for refund of tariff difference for 24 months prior to the date of submission of application to the Forum. The order of the Forum is under process for implementation. As per Regulation 6.6 of CGRF Regulations, the prayer of the Appellant for further relief is not maintainable.
- (iv) Hence, the Representation of the Appellant be rejected.

5. During the hearing on 24.01.2020, the Appellant and Respondent argued in line with their written submissions. The Appellant argued that it is an Educational Institute which is functioning since 2007. The Electrical Inspector, Govt. of Maharashtra, Wagle Estate approved the refund of electricity duty from April 2011 to August 2016 which clearly established that the Appellant is Educational Institute. The Respondent has not also disputed this fact. The public services tariff category as per the order of the Commission came in force with effect from 01.08.2012. The Appellant is entitled for Public Services Tariff Category. The Appellant prays for refund of tariff difference from 1st August 2012 along with the interest.

6. The Respondent argued that the order of the Forum is under implementation. 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 16th August 2012 in Case No. 19 of 2012. Thereafter, Tariff Order was issued by the



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Commission on 26.06.2015 in Case No. 121 of 2014 which was effective from 01.06.2015 onwards on which 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. There are various judgments of Bombay High Court on which the Regulation 6.6 of the CGRF Regulations has upheld and hence the judgment of W. P. No.3997 of 2016 of Shilpa Steel and the order of the Commission dated 01.08.2018 in Case No 68 of 2018, referred by the Appellant, is not applicable in this case. 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

7. Heard the parties and perused the documents on record. I noted that the Appellant made first application on 06.10.2016 for change of tariff category and the Respondent has changed tariff category from LT II Commercial to LT – X (B) Public Services-Others from Nov 2016. The Appellant approached the Forum on 28.11.2018, whereas it has prayed for refund of tariff difference from Commercial 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. 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 (B) Public Services tariff Category to only educational institutes run by Government, Semi-Government or Local Bodies. The Appellant has also supported his claim on the strength of the electricity duty charged to it. However, charging of electricity duty has nothing to do with the tariff determination by the Commission.


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8. When there is no tariff available to the Appellant's institute in 2012, there is no question of representation being entertained. 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 28.11.2018.


9. The Appellant has referred the order dated 01.08.2018 of the Commission in Case No. 68 of 2018 of Rattan India Nashik Power Ltd. V/s. MSEDCL. In this regard, I would say that the Appellant has not properly appreciated the facts of this case. The issue of limitation as discussed in the order is squarely different from what has been made out in the instant representation. Therefore, this order of the Commission is not applicable in the instant case.

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 28.11.2016 which is two years prior to date of filing the application with the Forum which is 28.11.2018. The Appellant made first application on 06.10.2016 and approached the Forum after 2 years i.e. 28.11.2018.

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 is 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: -


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“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 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)


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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.

13. The Forum's order dated 22.10.2019 is reasoned and speaking one. Hence, I do not find it necessary to interfere with the order of the Forum. Therefore, the representation is rejected and disposed of accordingly.

14. No order as to cost.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

