

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 49 OF 2023

(REVIEW OF THE ORDER IN  
REPRESENTATION NO. 08 OF 2023)

In the matter of change of Tariff Category and refund thereof

Nilay Milan & Milan Mehta.....Review Applicant  
(Progenesis IVF Pvt. Ltd.)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Wagle Estate Dn. (MSEDCL) .....Respondent

### Appearances:

Review Applicant: Pranab Shende, Representative

Respondent : 1. Satish Jadhav , Executive Engineer, Wagle Estate Dn.  
2. Anil Mhaske, AEE, Kolshet Sub-Dn.

**Coram: Vandana Krishna [IAS (Retd.)]**


Date of hearing: 28<sup>th</sup> June 2023

Date of Order : 31<sup>st</sup> July 2023

## ORDER

This Review Application was received on 28<sup>th</sup> April 2023 under Regulation No.22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 31<sup>st</sup> March 2023 in Representation 08 of 2023 passed by the Electricity Ombudsman (Mumbai).

2. The Electricity Ombudsman, Mumbai, by its order dated 31<sup>st</sup> March 2023 disposed of Representation No.8 of 2023 with the following directions: -


  
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Electricity Ombudsman Mumbai



*“The Forum has rightly analyzed the case and hence no interference is needed. The Forum’s order is upheld, and the instant Representation is rejected and disposed of accordingly.”*

3. The Applicant has filed this Review Application to review the above order dated 28<sup>th</sup> April 2023 passed by the Electricity Ombudsman. The e-hearing was held on 28<sup>th</sup> June 2023 through Video Conference. Both the parties were heard at length. The Applicant’s written submissions and arguments in brief are as below:

- (i) The Applicant is a LT Consumer (No. 000014398716) from 04.08.2018 having Sanctioned Load (SL) of 84 KW and Contract Demand (CD) of 84 KVA at Shop S-16, First Floor, Dosti Imperia, G.B. Road, Chitalsar, Manapada, Thane. The Applicant runs a hospital namely “Progenesis Fertility Centre & Maternity Home.” The Applicant has been given the necessary permission to operate the Hospital from 15.03.2019. The Competent Authority of Municipal Corporation of Thane issued a Certificate of Registration to this hospital under Bombay Nursing Home Registration Act 1949 from 15.03.2019. A Nursing Home Certificate is only issued to a Nursing Home / Hospital after the Hospital/Nursing Home setup is ready as per the Section 5 of the Bombay Act No. XV of 1949, the Maharashtra Nursing Homes Registration Act. This clearly establishes that the hospital was running from 15.03.2019 onwards.
- (ii) The Applicant is unaware about the internal procedure of the Maharashtra Electricity Regulatory Commission tariff orders, guidelines, regulations. The Applicant applied to the office of the Commission to provide the details of the advertisement given towards the tariff orders published in the newspapers by the Respondent. In its reply the Commission informed that no such information is available.
- (iii) The hospital was started in the month of March 2019. The Applicant made an online application for tariff change from commercial to public services –others on 17.01.2020. The Respondent was duty bound to give retrospective effect of tariff change from March 2019 to Jan.2020. However, the Respondent changed the tariff only from Feb. 2020 onwards. The retrospective effect of tariff difference from commercial to public services –others is still pending from March 2019 to Jan.2020.
- (iv) It was the duty of the Respondent to apply the correct tariff category, which it failed to do, and continued to bill the Applicant with the higher tariff of Commercial category.


  
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This is in spite of the Respondent and its representatives visiting the consumer premises periodically to inspect, and record the reading of the energy consumption of electricity.

- (v) The Applicant has not changed his use; he was using the premises for hospital after the receipt of the hospital / Nursing Home certificate. The Applicant has made several oral submissions / requests to change the tariff category with the Respondent who used to visit the Applicant's premises periodically. The Respondent and their representatives were aware of the use of electricity consumption for Hospital / Nursing Home by the consumer. However, the Respondent submitted their energy bills regularly at commercial tariff to the Applicant and recovered it.
- (vi) The Applicant contends that the Electricity Ombudsman (Mumbai) has dismissed the grievance case wrongly, with wrong reasoning and wrong conclusion; and did not consider the relevant facts of the case. The Forum and the Electricity Ombudsman failed to understand the basic issue and merits of the case that the hospital is functioning from March 2019.
- (vii) The Applicant applied for load revision on 14.01.2019 with the Respondent, whose documents are still in the custody of the Respondent, and the Respondent has failed to provide the copy of the "A-1 Form", the "Meter change report", the copy of the spot verification report (SVR) and the copy of the "test report (D-1 Form)", the copy of the agreement with the reply. It will be necessary to go through these documents. It was revealed that the extension of load was done only for hospital purpose. The Respondent knew this basic fact of load extension for hospital purpose but is purposefully suppressing these documents.
- (viii) The Applicant has also relied upon the Judgment dated 01.08.2018 of Bombay High Court, in Writ Petition No. 8712 OF 2018, of M/s. Maharashtra State Electricity Distribution Co. Ltd. Vs. Dr. Shri. Girish Dadasaheb Dadwad & Anr. The relevant portion from this order is reproduced below, refer page No.7 and 8;

*12. It is contended on behalf of the petitioner that the petitioner is the largest public utility in the state and has lakhs of consumers. The contention is that in such circumstances it is not expected of the petitioner to effect the change of category on its own. It is contended that the consumer on the basis of the change in the category should apply and the change can only be effected from the date of such application. On the contrary it is contended on behalf of the first respondent that the consumer has no means*

  
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*to know the internal circulars of the petitioner and it is for the petitioner to effect the change and extend the benefit of such change in the tariff category on its own.*

*13. I find that the contention on behalf of the first respondent is acceptable. This is because clause 4 of the 'action plan' of the circular no 175 as reproduced above would indicate that it was the responsibility cast on the field officers of the petitioner to ensure that whenever the tariff category is redefined or newly created by the commission the existing/prospective consumer is properly categorized by actual field inspection and the data is updated in the system. Thus, the contention that the change can only be effected from the date of the application cannot be accepted.*

- (ix) The Applicant is also entitled for interest on the refund amount as per the Section 62 (6) of the Electricity Act, 2003 which clearly states:

*“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.”*


- (x) The Applicant is also relying on various orders as per the Regulations 9.4 of CGRF and EO Regulation 2020, passed in favour of various consumers, issued under the Section 62 (6) of the Electricity Act of 2003 by the MERC in refund matters. The dates of the MERC orders and the case numbers are given below:

1. MERC order dated 01.08.2018 in Case No. 67/2018
2. MERC order dated 01.08.2018 in Case No. 68/2018
3. MERC order dated 20.04.2018 in Case No. 127/2016
4. MERC Order dated 03.02.2014 in Case No. 51/2013.
5. MERC Order dated 31.07.2017 in Case No. 141/2015

- (xi) The Applicant has preferred this review application for reconsideration on the grounds as stated below:

Grounds For Review:

- 1) The Impugned Order dated 31.03.2023 in Representation No. 8 of 2023 is illegal, invalid, and contrary to established principles of justice, equity, and good conscience.
- 2) The Impugned Order is not issued as per Regulation 20.5 of the CGRF & EO Regulation 2020. All orders of the Hon'ble Electricity Ombudsman Orders as per the Regulation 20.5, should be consistent with the Commission's Regulations and Orders of the MERC

  
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(Consumer Grievance Redressal Forum & Electricity Ombudsman) regulation 2020, the regulation 20.5, which is reproduced below;

*“The Electricity Ombudsman shall ensure that all Orders are consistent with the Commission’s Regulations and Orders:*


*Provided that the Order issued by the Electricity Ombudsman shall be a reasoned and speaking Order and specifically mention the Regulations and Orders based on which its Order has been passed.”*

- 3) The Applicant is also relying on Regulation 9.4 of the CGRF & EO Regulation 2020. The Regulation 9.4 is reproduced below:

*“The Forum shall ensure that all Orders are consistent with the Commission’s Regulations and Orders: Provided that the Order issued by the Forum shall specifically mention the applicable Regulations and Orders based on which its Order has been passed: Provided further that the Forum on its own shall not interpret and rule beyond the applicable Regulations and Orders.”*

- 4) The Applicant has not changed his use and there is nothing on record proven by the Respondent that the Applicant has changed his use.
- 5) The Applicant is submitting the following fresh evidence under Regulation 22 of the CGRF & EO Regulation 2020 which was not within his knowledge earlier.

- a) The Applicant is relying on the Bombay Act No. XV of 1949, the Maharashtra Nursing Homes Registration Act. The Applicant has relied on information received under the RTI Act, the details of the registration issued to the Nursing Home/Hospital under section-5, from the office of the Thane Municipal Corporation (Health Department, TMC). This establishes that the hospital is functioning from 15.03.2019.
- b) The Applicant has relied on the PNDT registration Certificate issued to the Nursing Home/Hospital, after verification of the installation of the machines at the centre (M/s. Progenesis Fertility Centre & Maternity Home) at the above-mentioned address by the Competent Authority (Municipal Authorities) under section 19(1) of the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (57 of 1994). The period of this certificate is 26.03.2019 to 26.03.2024.

  
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c) The scan photo copy of the Bank statement reflecting the payment made by the Hospital M/s. Progenesis Fertility Centre & Maternity Home towards the energy bill, for the month of 11.03.2019 onwards.

6) It is therefore prayed to allow the claim of the Applicant towards the tariff difference refund amount, from 15.03.2019 to 17.01.2020 along with interest under Section 62 (6) of the Electricity Act, 2003, and under regulation 16.2 of MYT 2019 of MERC.


4. The Respondent has filed its reply dated 16.05.2023. Its submission and arguments are as below:

(i) The Applicant has filed this present Application for Review of the Order dated 31.03.2023 of this Hon'ble Electricity Ombudsman passed in Representation No. 08 of 2023. This Review application is filed under Regulation 22 of MERC's CGRF & Ombudsman Regulations-2020. As per this Regulation, a Review can be filed on account of some mistake or error apparent from the face of the record; or upon the discovery of new & important matter or evidence which was not within his knowledge at the time when the original order was passed. This condition is not fulfilled in this case.

The Hon'ble Ombudsman has passed the Order dated 03.02.2023 as per the rules and regulations, hence there is no mistake or error in the order. Therefore this Review application ought to be rejected.

(ii) **The Original consumer (No. 000014398716) was a Commercial consumer, “Dosti Realty Ltd.” from 04.08.2018 for 18 KW at Shop S-16, First Floor, Dosti Imperia, G.B. Road, Chitalsar, Manapada, Thane. The sanction of additional load of 84 KW from 18 KW, totalling to 102 KW, was also done in the name of “Dosti Realty Ltd.” vide load sanction LT/ 87 dated 10.01.2019. The change of name from Dosti Realty Ltd. to Nilay Milan & Milan Mehta was done during the grievance process with the Forum in 2022. It is notable that both these names i.e. “Dosti Realty Ltd.” and “Nilay Milan & Milan Mehta” do not include the words “Hospital”**


(iii) The Applicant states that he is not satisfied with the order under review of this Hon'ble EO, as the grievance has been dismissed wrongly, with wrong reasoning and wrong conclusion. In this application, the Applicant can review the order only on the grounds given under the Regulation 22 of the CGRF and EO Regulations 2020, and cannot speak

  
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about the merit of the order passed. If the Applicant thinks that the order is passed with wrong reasoning and wrong conclusion, then he has to file an appeal in the High Court. Therefore, this Review application ought to be rejected.

- (iv) The Applicant made an online application on 17.01.2020 for change of tariff category from Commercial to Public Services-Others. **The Forum has rightly allowed the change of tariff only from the date of application, as the respondent cannot verify the hospital activity of the Applicant retrospectively from March 2019 as claimed by him.** Hence, the Respondent cannot refund the tariff difference retrospectively. If the activity of the consumer was of hospital prior to the application to respondent, then why did he not file the application for tariff change when he got the certificate of hospital activity? The Respondent, after inspection of the activity, has already changed the tariff from the date of application, and has also refunded the tariff difference in compliance of the Forum's order.
- (v) It is the mistake and negligence on the part of the Applicant of giving late intimation to the respondent of their change in activity, hence the respondent is not responsible for any loss of the Applicant. At this late stage the Applicant cannot claim refund of tariff difference due to his own mistake and negligence.
- (vi) The Applicant submitted a Certificate of Registration from Municipal Corporation of Thane under Bombay Nursing Home Registration Act 1949 in respect of "Progenesis Fertility Centre & Maternity Home" from 15.03.2019. The permission issued by Municipal Corporation of Thane is in the name of one Dr. Narhari Sambhaji Malagaonkar. The Respondent has been unable to establish any relation between Nilay Milan & Milan Mehta (the Applicant) and Dr. Narhari Sambhaji Malagaonkar. Schedule A, Schedule B and Review application was not signed by the Applicant and/or Dr. Narhari Sambhaji Malagaonkar. Therefore, this Review Application should be rejected on this ground alone, as it is not maintainable.
- (vii) The copy of the "A-1 Form", the "Meter change report", the copy of the spot verification report (SVR) and the copy of the "test report (D-1 Form)" was already sent by email to the Applicant.
- (viii) The Forum has considered all these aspects and allowed the tariff difference only from the date of application, and also rejected interest on that refund amount. This Hon'ble EO also, vide order under review, has opined that the Forum has rightly analysed the case,

  
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and hence no interference is needed in the order of the Forum, and has accordingly upheld the Forum's order.

- (ix) The Applicant has cited some orders of Hon'ble Supreme Court, Hon'ble High Courts, the Commission and in his Review Application. In all these cases, the facts and circumstances are different and not similar to this present grievance in hand. Hence the referred decisions are not applicable in this present case.
- (x) The representative of the Applicant was directed by this Authority to ensure the presence of the Occupier- Doctor in the hearing; however, he was not present for the hearing.
- (xi) In view of the above, it is prayed to dismiss the present Review Application as there is absolutely no merit in this Application.


### **Analysis and Ruling**

5. Heard both the parties and perused the documents on record. The issues raised by the Applicant were discussed at length.

6. We are of the opinion that all important issues in sum and substance have already been covered in the original order. The review application is nothing but a repetition of the original representation, wherein the main issue raised by the Applicant is that it is the Respondent's duty to find out which of its consumers have changed their use to hospital, and are eligible for a different tariff category. The Applicant did not raise any new issue which can influence the decision of the original order.

7. The Applicant has produced a certificate of Thane Municipal Corporation to operate the hospital from March 2019. However, this fact does not change the basic circumstances of the case, that the word "hospital" is nowhere included in the consumer's original connection or records, which aspect has already been covered elaborately in the original order. There is merit in the Respondent's argument that if the Applicant was running a hospital since March 2019, he should have applied for the correct tariff category much earlier than his actual application made on 17.01.2020.

8. However, the Applicant is not satisfied with the impugned order stating that the grievance has been dismissed wrongly with wrong reasoning and wrong conclusion. It is notable that the Applicant himself never bothered to attend the hearing, and relied on his representative to submit the say and attend hearings.

  
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9. The main contention of the Applicant is that it is the responsibility of the Respondent to obtain information regarding change in use from Commercial to Public Services – Others. This typically applies to cases where the “public services – others” use is already in existence, or has been going on.

10. The Applicant repeatedly states that he was unaware about the internal procedure and circulars of the Respondent, hence cannot be expected to apply under the correct tariff category. The Respondent pointed out that all tariff orders of the Commission are available in the public domain. The stand of the Applicant about not knowing the correct tariff category does not ring true. Firstly, ignorance of statutes and law cannot be used for the benefit of the Applicant. Secondly, the Applicant is a member of Medical Practitioners Association, which is responsible for raising awareness of its members on various relevant issues. Thirdly, the Applicant is also represented by his representative who is fully aware of various provisions in the Respondent’s circulars since the year 2014, where he has represented hospital related cases for Public Services-Others tariff category.

11. The Applicant has repeatedly argued that the Respondent visited and inspected his premises regularly for recording energy consumption; hence is expected to know about hospital use. Generally, the meter reading is outsourced to an agency, and its staff only visit the meter room and not the main part of the premises. Even if they were to visit the main premises, they are not authorized to assess the purpose of use. Their limited duty is to take a correct reading of the meter. Considering all these aspects the arguments of the Applicant are unacceptable.

12. The Applicant has contended that his A1 form / application for enhancement of load clearly indicates the hospital use. We have studied the A1 form in detail, and we found that nowhere does this application / form indicate hospital use. This application has been made by Dosti Realty Ltd. for extension of load of 84 KW from 18 KW to 102 KW. The breakup of additional load of 84 KW also does not indicate specifically the hospital use. These facts were already on record in the original representation. Further, the technical feasibility report of the Respondent dated 02.01.2018 also mentioned the purpose as “Commercial”. In other words, from all the documents on record, nowhere is there any indication that the use was for hospital purposes.

  
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13. After getting the original connection for commercial purpose, the applicant subsequently changed the purpose unilaterally to “hospital” without any intimation to the Respondent. Further, there was no information available in the existing database of the Respondent regarding the Applicant’s hospital in particular. So, the question of applying the “public services – others” tariff category on its own does not arise.


14. In brief, the main argument of the Applicant is that it is the duty of the Respondent to apply the appropriate tariff to various consumers. On the other hand, the Respondent argues that Public Services- Others is a concessional tariff, and the beneficiary has to apply for the same as per the activity. The Respondent’s guidelines have used the general term “to check the installations for appropriate tariff” after issue of the Tariff Order. The main intention behind this was that whenever there is an introduction of a new tariff category, and /or change in tariff category of specific consumers as per tariff order of Commission in force, such specific cases which come in this domain need to be physically checked for application of the revised tariff category. The Respondent had no information or intimation since March 2019 that the Applicant was running a hospital, as the original connection does not mention the word ‘hospital’ anywhere. We find substance in this argument. After the Respondent inspected the premises after receiving the application on 17.01.2020, the tariff category was changed from LT II Commercial to LT VII (B) Public Services – Others from Jan. 2020 onwards. The Respondent has also refunded the tariff difference from the date of the application which is in compliance of the Forum’s order. The relevant regulation is reproduced below:

15. Regulation 4.13 of MERC (Standards of Performance of Distribution Licensees, Period for giving supply & Determination of Compensation) Regulations 2014 states as below:

*“The Distribution Licensee shall intimate the charges to be borne by an applicant for change of name and change of tariff category within seven (7) days of receipt of an application in this regard and shall give effect to it within the following time limits :—*

*a) change of name shall be effected within the second billing cycle on receipt of an application and payment of necessary charges.*

*(b) change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.”*

  
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As per Regulation 4.13 of the SOP Regulations 2014, it is the responsibility of the consumer to inform the distribution licensee about any change of purpose. If the connection is sanctioned for one particular purpose, the consumer cannot change the purpose without informing the distribution licensee, and this will amount to an irregularity. For example, if the connection is sanctioned for residential purpose, the consumer cannot convert it to any other category without informing or making any application for change of tariff category. This is true whether or not the subsequent tariff is higher or lower compared to the earlier tariff. In fact, if the consumer unauthorizedly converts to a use which carries a higher tariff, he is even liable for action under Section 126 of the Electricity Act, 2003. The Applicant allegedly changed his use to 'hospital' without informing the licensee or applying for change of tariff category right from March 2019 to January 2020. Even though he committed this irregularity, now the Applicant is seeking refund of tariff difference with interest. If such irregularities are allowed, the purpose of the concerned regulation regarding change of tariff category under Standards of Performance Regulations will be frustrated, and there will be complete indiscipline in the state regarding proper use of electricity connections. This will create a wrong precedent that any consumer can change the category for any purpose without intimation to the Licensee. This Regulation 4.13 has already been taken into consideration while issuing the original order.

16. The provision with respect to review of orders passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below: -


*"22 Review of Order of Electricity Ombudsman*

*22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:*

- (a) Where no appeal has been preferred;*
- (b) on account of some mistake or error apparent from the face of the record;*
- (c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.*

*22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.*

*22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.*

  
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- 22.4 *When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.*
- 22.5 ..... ”

17. All these issues and facts were already on record and were taken into consideration when the original order in Representation 08 of 2023 was passed. The Review Application has not brought out any new issue which has not been dealt with in the impugned order, which is the primary requirement for considering review of an order under Regulation 22 of the CGRF & EO Regulations 2020. The Applicant is trying to seek an appeal under the guise of review which is not permitted. The scope of a review is very limited. The undersigned has power to review its ruling to correct a patent error and not a minor mistake of inconsequential import.


18. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

- a) Kamlesh Varma v/s Mayawati and Ors. reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -

*(“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”*

- (b) In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

*“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”*


  
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19. The orders / judgments referred to by the Applicant are not applicable in the instant case. This Authority expresses displeasure for the repetitive submissions made by the Applicant, and for filing a review without any fresh ground.

20. In view of the above, the Review Application of the Applicant is rejected with a cost of Rs.2000/- which is payable to this office and is disposed of accordingly.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

