

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NOS. 104, 105, 106, 107 and 108 OF 2022

In the matter of Contract Demand Penalty and billing

- | | | |
|------|---------------------------------|------------------------|
| I) | Modern Engineering & Spring Co. | (Rep. No. 104 of 2022) |
| II) | Aditi Die Cast | (Rep. No. 105 of 2022) |
| III) | Sandeep V. Sankhe | (Rep. No. 106 of 2022) |
| IV) | Ramesh Rikhavdas Shah | (Rep. No. 107 of 2022) |
| V) | Mahendra Ratanshi Sangoi | (Rep. No. 108 of 2022) |

..... Appellants

V/s.

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

Appearances:

Appellant : Harshad Sheth, Representative

Respondent: 1. A. S. Mirza, Addl. Executive Engineer, Vasai Road (E) S/Dn.
2. V.M. Gokhale, UDC, Vasai Road (E) S/Dn.


Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 29th August 2022

Date of Order : 7th October 2022

ORDER

These five Representations were filed on 11th July 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the respective orders and their review orders passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum).



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Secretary
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2. The Forum, by individual Orders passed in each case, has partly allowed the grievance application by giving the following directions. All the five cases are tabulated as below:

Table :1

Rep. No.	Appellant	Date of filing grievance in Forum	Case No. & Date of Forum's Order	Directions in Forum's Order	Date of filing Review in Forum	Case No. & Date of Forum's Review Order	Direction in Forum's Order
104	Modern Engineering & Spring Co.	15.06.2021	64 of 2021 dt. 25.03.2022	2. Respondent shall set aside the supplementary bill issued in the month of May 2021. 3. Respondent shall issue revised supplementary bill for tariff difference towards LT-V to HT-I only for those months in which complainant exceeded the contract demand above 187 KVA.	11.04.2022	35 of 2022 dt. 23.06.2022	The review application is hereby dismissed.
105	Aditi Die Cast	11.04.2022	34 of 2022 dt. 10.06.2022	2. Respondent shall set aside the supplementary bill issued in the month of May 2021. 3. Respondent shall issue revised supplementary bill for tariff difference towards LT-V to HT-I only in those months in which complainant exceeded the contract demand above 187	11.04.2022	34 of 2022 dt. 23.06.2022	The review application is hereby dismissed.
106	Sandeep V. Sankhe	07.06.2021	62 of 2021 dt. 25.03.2022	2. Respondent shall set aside the supplementary bill issued in the month of May 2021. 3. Respondent shall issue revised supplementary bill for tariff difference towards LT-V to HT-I only for those months in which complainant exceeded the contract demand above 187 KVA.	11.04.2022	33 of 2022 dt. 23.06.2022	The review application is hereby dismissed.
107	Ramesh Rikhavdas Shah	07.06.2021	61 of 2021 dt. 25.03.2022	2. Respondent shall set aside the supplementary bill issued in the month of May 2021. 3. Respondent shall issue revised supplementary bill for tariff difference towards LT-V to HT-I only for those months in which complainant exceeded the contract demand above 187 KVA.	11.04.2022	32 of 2022 dt. 23.06.2022	The review application is hereby dismissed.
108	Mahendra Ratanshi Sangoi	07.06.2021	60 of 2021 dt. 31.03.2022	2. Respondent shall set aside the supplementary bill issued in the month of May 2021. 3. Respondent shall issue revised supplementary bill for tariff difference towards LT-V to HT-I only for those months in which complainant exceeded the contract demand above 187 KVA.	11.04.2022	31 of 2022 dt. 23.06.2022	The review application is hereby dismissed.


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3. Aggrieved by the orders of the Forum, the Appellants have filed these representations separately; however, the facts in all these representations are similar in nature, and common grounds are raised. Therefore, for the purpose of this order, these representations are clubbed together. The physical hearing was held on 29.08.2022 where the parties were heard at length. The detailed submissions and arguments of the Appellants are as below: -

I) Rep. No.104 of 2022 (Modern Engineering & Spring Co.):

(i) The Sanctioned Load (SL), Contract Demand (CD) and supplementary bill is given in the table as below:

Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
Modern Engineering & Spring Co.	001590013672	Unit no 1 & 101, Arrow House, K.T.Ind Park-1, Bilalpada, Gokhiware,VASAI (E)	200 HP	186	12,82,070	25.05.2021


(ii) Grievance:

a) The Respondent issued a supplementary bill of tariff difference from LT to HT Tariff Category for the months when CD exceeded the sanctioned CD for the following period.

- Dec. 16 to March 2017 (4 months): CD of 188 KVA
- April 2017 to Jan 2018 (10 months): CD of 192 KVA
- June 2018 & July 2018 (2 months): CD of 205 KVA
- Sept. 2018 to Dec 2018 (4 months): CD of 205 KVA

The same value of CD was recorded by the meter which is not technically possible. This clearly indicates that the CD recording system in the meter is defective. Hence, the Appellant claims that the supplementary bill is fictitious.

b) In the present case, for the last 3 years from year 2018 to year 2021, the Respondent has not followed the Regulations of Maharashtra Electricity Regulatory Commission (the Commission) for taking cognizance of exceeding CD more than 3 times in a year. This is a


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violation of Regulations. A supplementary bill of Rs.12,82,070/- dated 25.05.2021 cannot be accepted even if the Respondent's Auditors have pointed it out.

II) Rep. No.105 of 2022 (Aditi Die Cast) :

(i) The SL, CD and supplementary bill is given in the table as below:

Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
Aditi Die Cast	1849024630	Plot No 22, S.No. 234, Nr. Patani Ind. estate,Gokhiware, Vasai (E), Dist. Palghar	200 HP	186	10,53,710	25.05.2021

a) The Respondent issued Supplementary Bill of tariff difference from LT to HT Tariff Category for the following months when CD exceeded the sanctioned CD.

➤ Feb. 2020 to April 2020 (3 months) CD of 192 KVA

The same value of CD was recorded by the meter which is not technically possible.

III) Rep. No. 106 of 2022 (Sandeep V. Sankhe):

(i) The SL, CD and supplementary bill is given in the table as below:


Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
Sandeep V. Sankhe	001849032	Gala no.1, Raj Realty Ind. Estate,Morya naka, Sativali,	150 KW	186	13,49,030	25.05.2021

➤ The Respondent issued a supplementary bill of tariff difference from LT to HT Tariff Category when CD exceeded the sanctioned CD,

➤ Feb. 2019 to Dec. 2020 (18 months)

IV) Rep. No.107 of 2022 (Ramesh Rikhavdas Shah):

(i) The SL, CD and supplementary bill is given in the table as below:


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Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
Ramesh Rikhavdas Shah	002171794733	S.No. 20, H.No. A,B,C/1, Bldg No 2, Nr. Swagat petrol Pump, N.H.No 8, Sativali, Vasai (E), Dist. Palghar	200 HP	186	6,01,870	25.05.2021

- The Respondent issued Supplementary Bill of tariff difference from LT to HT Tariff Category when CD exceeded the sanctioned CD.
- Jan.2020 to Dec. 2020 (12 months)

V) Rep. No.108 of 2022 (Mahendra Ratanshi Sangoi):


- (i) The SL, CD and supplementary bill is given in the table as below:

Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
Mahendra Ratanshi Sangoi	002128335148	S.No. 66, Shed no 2 & 3, Village- Deodal, P.O. Kaman, Vasai (E)	150 KW	140	18,09,110	25.05.2021

- The Respondent issued a supplementary bill of tariff difference from LT to HT Tariff Category when CD exceeded the sanctioned CD.
- the period of June 2018 to Dec.2018 (7 months) where CD exceeded the sanctioned CD.

- (iii) Submission on common grounds:

- a) The Appellants stated that the Respondent referred to a Regulation 4.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code and SOP Regulations 2021) that the Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariff as may be fixed from time to time by the Commission. These present grievances are regarding classification under HT / LT based on voltage level supply. This is not a matter of tariff applicability. Hence, the Regulation 4.4.1 of Supply Code and SOP Regulations 2021 is not applicable in the present cases.


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- b) It is clarified by MSEDCL H.O. to all the implementing officers that if CD exceeds the sanctioned CD more than three times in a calendar year, it would be dealt with as per schedule of charges as per Commercial Circular No. 311 dated 01.10.2018 based on tariff order dated 12.09.2018 in Case No. 195 of 2017.
- c) The Respondent filed a petition to the Commission on this issue. As per Commission's order dated 01.01.2019 in Case No.60 of 2018 and supporting Commercial Circular No. 312 dated 15.01.2019, point "e" reads as


"The Commission invoked its inherent powers in its order dated 1.1.2019 (Case No. 60 of 2018) to remove difficulty under Supply Code Regulations, 2005 and ruled that, Distribution Licensee can enhance the Contract Demand of the consumer when the consumer exceeds the contract demand on more than three occasions during a calendar year, irrespective whether the Consumer submits an application for the same or otherwise.

However, before such revision of Contract Demand, Distribution Licensee must give 15 days' notice to such consumer."

(Emphasis Added)

- d) Commercial Circular No. 323 dated 03.04.2020 based on Commission's Tariff Order in Case No. 322 of 2019 at page no. 714 & 715 reiterates the above directions that CD can be enhanced irrespective of whether consumer applies or not.
- e) Appellants refer to Commission's order in Case No. 60 of 2018 dated 01.01.2019. The Commission has noted regular breaching of CD on earlier occasions as pointed out by CAG.

The Commission's order reads that


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“However before revision of CD, MSEDCL must give 15 days’ notice to such consumer.”


In all 5 cases, 15 days’ notice was not given by the Respondent before issuing the supplementary bill, which is not permitted by Regulations.

- f) The Act, Regulations, Rules, and its applicability are known to the Respondent, but not to the consumers in general, so there is no role of the consumer till the receipt of notice or demand letter or bill from the Respondent. The consumer cannot know that he exceeded the CD till it receives a notice.
- g) Appellants only become aware of having exceeded CD if and when they pay the penalty. But why was MSEDCL silent on the issue for 4 years since 2017. Auditors have pointed out, this mistake, but there is no excuse for not raising this issue of exceeding CD for 4 years (from 2017 onwards).
- h) The Supply Code and SOP Regulations 2021 came in force from 25.02.2021. The Regulation 3.2(b) of the said Regulations is quoted as below:

*“Three wire three phase limit is **extended to 200 KVA.**”*

As per above Regulation, the Appellant in Rep. No .104 of 2022 made online application no. 31786942 dated 16.06.2021 for load enhancement from 186 to 200 KVA, after receipt of a supplementary bill of Rs.12,82,070/- dated 25.05.2021.

This is a matter which requires **action which is prospective in nature**. Retrospective action is wrong. At every point, the Respondent is responsible to take initiative for revising CD, but they failed in performing their duty.


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- i) The Appellant has referred to the order dated 11th February 2003 in Case No. 24 of 2001 of the Commission. The Commission has directed as under:

“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively.”

- j) The Appellant, therefore, argued that recovery of arrears towards change in tariff category cannot be done retrospectively, and hence any retrospective recovery by the Respondent be set aside. The Commission in Case No 42 of 2015 has also not allowed retrospective recovery.
- k) The Appellant also referred to the order dated 7th August 2014 passed by the Appellate Tribunal for Electricity (ATE) in Appeal No. 131 of 2013 in the matter of Vianney Enterprises V/s Kerala State Electricity Regulatory Commission and Another. In the said case, the ATE held that the arrears for difference in tariff could be recovered from the date of detection of the error. The Appellant submitted that the said order of the ATE is squarely applicable to the case of the Appellant and the arrears can be recovered only from the date of detection of the error.
- l) The Appellant cited Judgment of Bombay High Court dated 09.06.2020 in Civil Writ Petition (WP) No. 10536 of 2019 of Maharashtra State Electricity Distribution Co. Ltd. V/s The Principal, College of Engineering, Pune. The High Court rejected the Writ Petition of Respondent, and the order passed by the Electricity Ombudsman for rejecting retrospective recovery was upheld. The Respondent challenged this Judgement up to the level of Hon’ble Supreme Court; however, the

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appeal of the Respondent was rejected. The ratio of the Judgement is applicable to the Appellant's case which is similar in nature. Hence, the Respondent **can make recovery only prospectively** from the date of pointing out the alleged irregularities.

- m) The Appellants cited the Judgment dated 12.03.2019 of Larger Bench of Bombay High Court in W.P. 10764 of 2011 on Section 56 (2) of the Act where it was held that "*The distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charge.*"

The Forum failed to understand the basic issues. This is not a case of escaped billing or not a bona-fide mistake of Licensee or short billing or tariff change issue. It is grievance regarding classification of installation based on voltage level supply, where Respondent has failed to discharge their duty & neglected mandatory procedures as per order of the Commission.

- n) The Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. is not applicable in all present cases.


- (iv) The Appellant by its email dated 16.08.2022 has submitted a rejoinder, which is taken on record.

(v) **Nature of Relief Sought from the Electricity Ombudsman:-**

The Appellant prays that the Respondent be directed to withdraw Retrospective recovery in all cases.

4. The Respondent's written submission by email dated 10.08.2022 along with its arguments in hearing on 29.08.2022, is stated in brief as below:

- (i) The Appellants are consumers of the Respondent under tariff category LT V(B-II) –Industrial. The Government Auditor II Maharashtra, Mumbai Branch in its Audit Para dated 05.02.2021 have stated that the Appellants have exceeded their Contract Demand. The said para is reproduced below:


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“As per MERC SOP Regulations, 2014 (Commercial Circular 224 dated 05.07.2014) power supply should be given in accordance with voltage level and Contract Demand of consumer. Further, LT tariff is applicable for consumers having Contract Demand less than 150 KW / 187 KVA, and HT tariff for consumers having Contract Demand above 150 KW / 187 KVA in Municipal Corporation Area.

Besides this, as per Commercial Circular No. 323 dated 03.04.2020 which is the prevailing tariff order based on Commission’s order dated 30.03.2020 in Case No. 322 of 2019 (Penalty for exceeding Contract Demand), provided that in a case a consumer (availing demand based tariff) exceeds Contract Demand, the billing would be at the applicable rate for the demand actually recorded and also at the additional rate of 150% of the applicable demand charge (only for the demand in excess of Contract Demand).

Moreover, Distribution Licensee can enhance the Contract Demand of the consumer when the consumer exceeds the Contract Demand. However, the Distribution Licensee must give 15 days’ notice to such consumers before doing so.

A test check of 10 LT Industrial consumers revealed that 8 consumers have exceeded their Contract Demand more than three times; however the division kept on imposing the demand penalty instead of increasing the Contract Demand. In all 8 cases the Contract Demand was more than 187 KVA. So the tariff category should have been changed to HT instead of billing in LT category.”

- (ii) Based on the Audit para raised by Government Auditor II Maharashtra Mumbai Branch dated 05.02.2021, the supplementary bills were issued to the Appellants. The year wise details of actual demand recorded, the year wise events of the Appellants exceeding Contract Demand, the supplementary bills issued towards recovery of tariff difference of LT-V(B-II) to HT –I are tabulated as below in Table 2 and Table 3:



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Table: 2

Rep. No.	Appellant	Consumer No.	Address	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
104	Modern Engineering & Spring Co.	001590013672	Unit no 1 & 101, Arrow House, K.T.Ind Park-1, Bilalpada, Gokhiware, VASAI (E)	200 HP	186	12,82,070	25.05.2021
105	Aditi Die Cast	1849024630	Plot No 22, S.No. 234, Nr. Patani Ind. estate, Gokhiware, Vasai (E), Dist. Palghar	200 HP	186	10,53,710	25.05.2021
106	Sandeep V. Sankhe	001849032	Gala no.1, Raj Realty Ind. Estate, Morya naka, Satali.	150 KW	186	13,49,030	25.05.2021
107	Ramesh Rikhavdas Shah	002171794733	S.No. 20, H.No. A.B.C/1, Bldg No 2, Nr. Swagat petrol Pump, N.H.No 8, Satali, Vasai (E), Dist. Palghar	200 HP	186	6,01,870	25.05.2021
108	Mahendra Ratanshi Sangoi	002128335148	S.No. 66, Shed no 2 & 3, Village- Deodal, P.O. Kaman, Vasai (E)	150 KW	140	18,09,110	25.05.2021

The period of recovery is shown in the following table:

Table: 3

Rep.104 (Modern Engineering & Spring Co.)			Rep. 105(Aditi Die Cast)			Rep. 106 (Sandeep V. Sankhe)			Rep. 107 (Ramesh Rikhavdas Shah)		
Months /years	Sanctioned CD (KVA)	Actual CD Recorded (KVA)	Months/ years	Sanctioned CD (KVA)	Actual CD Recorded (KVA)	Months/ years	Sanctioned CD (KVA)	Actual CD Recorded (KVA)	Months/ years	Sanctioned CD (KVA)	Actual CD Recorded (KVA)
Dec-16	186	188	Nov-19	186	190	Feb-19	186	218	Feb-20	186	223
Jan-17	186	188	Feb-20	186	192	Mar-19	186	231	Mar-20	187	204
Feb-17	186	188	Mar-20	186	192	Apr-19	186	215	Sep-20	188	210
Mar-17	186	188	Apr-20	186	192	May-19	186	212	Oct-20	189	204
Apr-17	186	192	Sep-20	186	192	Jun-19	186	198	Nov-20	190	196
May-17	186	192	Nov-20	186	203	Jul-19	186	215	Dec-20	191	208
Jun-17	186	192	Dec-20	186	193	Aug-19	186	198			
Jul-17	186	192				Sep-19	186	249			
Aug-17	186	192				Oct-19	186	226			
Sep-17	186	192				Nov-19	186	218			
Oct-17	186	192				Dec-19	186	192			
Nov-17	186	192				Jan-20	186	225			
Dec-17	186	192				Feb-20	186	226			
Jan-18	186	192				Mar-20	186	214			
Jun-18	186	205				Apr-20	186	214			
Jul-18	186	205				Oct-20	186	217			
Sep-18	186	205				Nov-20	186	212			
Oct-18	186	205				Dec-20	186	245			
Nov-18	186	205									
23.9.22		205	23.9.22		135	22.9.22		62	21.9.22		201



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Note: The Respondent vide its letter dated 26.9.2022 has stated that the supplementary bill of Rs. 18,09,110/- of Rep. No. 108 of 2022 has been withdrawn. During the hearing, it was directed to recheck the CD recorded. It was confirmed that the actual CD did not exceed 187 KVA, and hence the supplementary bill of Rs.18.09 lakhs of industrial tariff difference from LT to HT has been withdrawn. Hence, the details about Rep. No. 108 have not been included in the above table.

- (iii) On a perusal of the above Table 3, it is clear that the Appellants exceeded the Contract Demand on more than three occasions. The Respondent issued supplementary bills to the Appellants as per HT –I tariff category for exceeding Contract Demand above 187 KVA, for the concerned months. This period can be divided into 2 parts: the first part pertains to the period prior to May 2019, which is seen in Rep. No. 104, and partly in Rep. 106 of 2022, and the second part pertains to the period from May 2019 onwards, which is seen in Rep. No.105,106 and 107.
- (iv) It is notable that the Appellants in Rep. No. 104 and 107 still continue to exceed their Contract Demand even in September 2022.
- (v) As per SOP Regulations 2014, Regulation 5.3 states *“Provided that in case the consumer who is eligible for single phase connection wants to avail supply at three phases, or any consumer who seeks supply at the voltage level higher than its eligible voltage, such consumer can avail such supply by incurring required expenses.”*

Hence, it is the responsibility of the consumers to change the voltage level as per SOP Regulations 2014.

- (vi) The Commission vide its order dated 30.03.2020 in Case No. 322 of 2019 held as follows :-

“Penalty for exceeding Contract Demand


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In case a consumer (availing Demand-based Tariff) exceeds his Contract Demand, he will be billed at the applicable Demand Charge rate for the Demand actually recorded, and also be charged an additional amount at the rate of 150% of the applicable Demand Charge (only for the Demand in excess of the Contract Demand).

In case a LT consumer with a sanction demand/ contract demand less than 20 kW records actual contract demand above 20 kW, he will be billed at the tariff applicable for the respective load slab approved by the Commission, in which recorded demand falls for that billing cycle only and also be charged an additional amount at the rate of 150% of the applicable charge for the Demand in excess of the Contract Demand.

Further Distribution licensee can enhance the Contract Demand of the consumer when the consumers exceeds the Contract Demand on more than three occasions during a calendar year, irrespective whether the Consumer submits an application for the same or otherwise. However, before such revision of Contact Demand, Distribution Licensee must give 15 days' notice to such consumer. Also, the Consumer is liable to pay necessary charges as may be stipulated in the approved Schedule of Charges for the revised Contract Demand.

Under these circumstances, the consumer shall not be liable for any other action under Section 126 of the EA, 2003, since the penal additional Demand Charge provides for the penalty that the consumer is liable to pay for exceeding his Contract Demand. In case a consumer exceeds his Contract Demand on more than three occasions in a calendar year, the action to be taken would be governed by the provisions of the Supply Code Regulations.”

As per Commission's tariff order, the Appellants ceased to be LT consumers in those months in which Contract Demand exceeded 187 KVA and therefore



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Appellants are liable for tariff charges applicable for demand actually recorded in that particular month.

- (vii) Appellants have stated that as per the Larger Bench Judgement in W.P. 10764 of 2011 dated 12.03.2019 of Hon'ble Bombay High Court; the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years. Forum has observed that the Appellants were not charged as per the correct applicable tariff due to system constraint, hence it is a case of escaped billing.
- (viii) According to Supply Code and SOP Regulations 2021 *“The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariff as may be fixed from time to time by the Commission.”*
- (ix) The Hon'ble Supreme Court of India in Judgment dated 5th October 2021 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others in Civil Appeal No. 7235 of 2009 has clearly differentiated between applications of Section 56 of the Act for “escaped assessment” versus “deficiency in service”. The Hon'ble Supreme Court of India has allowed past recovery which was escaped to due to a bona-fide mistake of the licensee. The Court further held that limitation provided under Section 56(2) will not be applicable for “escaped billing” due to a bona-fide mistake.

The Case of Hon'ble Supreme Court was available on the interpretation of Section 56(2) of Electricity Act, 2003; therefore it prevails over the Judgment of Larger Bench of Hon'ble Bombay High Court. Therefore, the Forum is of the opinion that, due to a bona-fide mistake, the licensee has not charged the relevant HT tariff to Appellants in respective years. This was revealed for the first time in the report of Government Auditor. Therefore this is a clear case of “escape billing” due to a bona-fide mistake /error of licensee, and hence Section 56(2) of Electricity Act, 2003 will not be applicable to the present cases.


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- (x) The Forum has rightly addressed all issues raised herein in these Representations and rightly rejected the Grievances respectively. In view of above, it is requested to reject the Representation.

Analysis & Ruling

5. Heard the parties and perused the documents on record. The Appellants are LT Industrial consumers of the Respondent. The Respondent contended that the Government Auditor II, Mumbai Branch, Maharashtra, in Audit para dated 05.02.2021 has raised the important issue that the Appellants exceeded the upper limit of 187 KVA Contract Demand of LT industrial consumers from 2018 onwards. These consumers have enjoyed power supply which is normally sanctioned for HT consumers, and hence these consumers have to pay for tariff difference of Tariff Category from LT to HT.

6. Accordingly, the Respondent issued supplementary bills of tariff difference from LT to HT Tariff Category for the period when actual recorded Contract Demand exceeded the sanctioned Contract Demand. The details of sanctioned load and Contract Demand and supplementary bills issued by the Respondent are tabulated below:-


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Rep. No.	Appellant	Sanctioned load	Contract Demand(KVA)	Supplementary bill (Rs.)	Date of Supplementary Bill
104	Modern Engineering & Spring Co.	200 HP	186	12,82,070	25.05.2021
105	Aditi Die Cast	200 HP	186	10,53,710	25.05.2021
106	Sandeep V. Sankhe	150 KW	186	13,49,030	25.05.2021
107	Ramesh Rikhavdas Shah	200 HP	186	6,01,870	25.05.2021
108	Mahendra Ratanshi Sangoi	150 KW	140	18,09,110	25.05.2021

The year wise events when the recorded CD exceeded the sanctioned CD by the Appellants, are captured in Table: 3.

7. As per SOP Regulations 2014, the power supply should be given in accordance with voltage level and Contract Demand of consumer. The relevant portion of the Regulation is reproduced as below:

5. Quality of Supply and System of Supply

5.1


5.2

5.3 Except where otherwise previously approved by the Authority, the classification of installations shall be as follows: —

(a) AC system

(i) Two wires, single phase, 230 / 240 volts- General supply not exceeding 40 amperes.

(ii) Four / Three wires, three phase, 230 / 240 volts between phase wire and neutral or 400 / 415volts between the phases / lines and contract demand not exceeding 80 kW/ 100 kVA in all areas, except in Municipal Corporation areas where such limit would be 150 kW/ 187kVA :


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Provided that in case of multiple consumers with contract demand more than 150 kW / 187 kVA, in the same building / premises as a single point supply in the Municipal Corporation areas where such limit would be 480 kW / 600 kVA :

(iii) Three phase, 50 cycles, 11 kV – all installations with contract demand above the limit specified in the clause (ii) and up to 3000 kVA:

Provided that in Mumbai Metropolitan Region or in case of supply to an installation through an express feeder in other area, the contract demand limit would be 5000 kVA.

(b) D.C. system

(1) Two-wire 130 volts (i) General supply not exceeding 10 amperes (ii) Motive power installations upto 1 BHP in aggregate

(2) Three wire, 460 volts between outers – Motive power installations of over 1 BHP:

Provided that in case the consumer who is eligible for single phase connection wants to avail supply at three phases, or any consumer who seeks supply at the voltage level higher than its eligible voltage, such consumer can avail such supply by incurring required expense :

Provided further, the licensee may release electricity supply at the voltage lower than the specified above only under exceptional circumstances by charging voltage surcharge determined by the Commission from time to time. The distribution licensee shall ensure that the supply is provided at the specified voltage within a period of one year. (Emphasis added)

The Appellant has raised a contention that as per Regulation 5.3 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014), “*the licensee may release electricity supply at the voltage lower than the specified above only under exceptional circumstances by charging voltage surcharge determined by the Commission from time to time.*” However, this Regulation is applicable for D.C. System, not A.C. system, unless there are exceptional circumstances. In this case, this Regulation is not applicable.

8. The Appellants contended that even after being pointed out by CAG, 15 days’ notice is essential, yet the notice was not given by the Respondent towards exceeding CD. The supplementary bill was issued without the notice. Here a careful perusal of the relevant orders



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of the Commission indicate that the 15 days' notice is required for enhancing the CD as a long-term correction measure, so that the system is not regularly overloaded. Such notice is not meant for issuing of any supplementary bills; only for enhancing the Contract Demand. These two must be differentiated. Enhancing the CD is a system correction measure, whereas issuing the supplementary bill is merely an administrative measure.

Further, enhancing the Contract Demand within LT Category is different from enhancing Contract Demand from LT to HT. The former is still possible considering the technical parameters; however the latter involves HT side metering, and space is required to be provided by the consumer for developing the concerned infrastructure, particularly installing the distribution transformer, and incurring expenditure for it. In this case, the Appellants have argued that the Respondent should have themselves enhanced the Contract Demand; however this is not possible without changing the supply voltage level from LT to HT due to the reasons explained above.

9. It is important to understand the context in which the Contract Demand is exceeded. The entire distribution system works reliably only if the Contract Demand is within permissible limits. Otherwise, the infrastructure is required to be upgraded to support the higher Contract Demand, with the implied infrastructure cost. The Consumer is duty bound to follow the stipulations related to preventing the overloading of the power system, while the Distribution Licensee is under obligation to maintain reliable power supply. Proper loading of the distribution system is a major factor which determines the reliability of the distribution system. Therefore, if consumers frequently or regularly exceed Contract Demand, it becomes necessary to upgrade the distribution system. Alternatively, consumers must take corrective steps to reduce their load consistently. The problem arises when the consumers neither apply for enhancement of load which is compulsory as per the Supply Code Regulations 2005, nor reduce their load. Many consumers deliberately avoid enhancing Contract Demand to avoid costs, thereby endangering the reliability of the entire distribution system.

10. As per Commission's order dated 01.01.2019 in Case No. 60 of 2018, the Commission invoked its inherent powers to remove the difficulty under Supply Code Regulation 2005 and


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ruled that Distribution Licensee can enhance the Contract Demand of the consumer when the consumer exceeds the Contract Demand on more than three occasions during a calendar year, irrespective of whether consumer submits an application for the same or otherwise. However, **before such revision of Contract Demand**, the Distribution Licensee must give notice to such consumer. Hence, we hold that the 15 days' notice is related to enhancing the Contract Demand and not to issuing the supplementary bills.

11. The Appellants have regularly exceeded their Sanctioned Contract Demand, and they have been penalised for it at the applicable rate for the demand actually recorded and the additional rate of 150% of the applicable demand charge, even when CD is more than 187 KVA. Hence the Appellants should have been covered under the tariff category of HT consumers. The Appellants are liable to pay as per the HT tariff category whenever the Appellants enhanced the load beyond 187 KVA, as pointed out by the CAG.

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Maharashtra Electricity Regulatory Commission				
Tariff Order in Case No. 195 of 2017 dated 12.09. 2018				
LT-V (B): LT - Industry - General				
Rate Schedule				
Consumer Category	Fixed/Demand Charge	Wheeling Charge (Rs/kWh)	Energy Charge (Rs./kWh)	Remarks
				Total
(ii) Above 20 kW	Rs. 280/- per kVA per month	1.30	5.63	6.93
HT I (A): Industry- General				
	Rs. 391/- per KVA per month		7.07	
ToD Tariffs (in addition to above base Tariffs for LT and HT Tariff Category)				
2200 Hrs-0600 Hrs			-1.5	
0600 Hrs-0900 Hrs & 1200 Hrs-1800 Hrs			0.0	
0900 Hrs-1200 Hrs			0.8	
1800 Hrs-2200 Hrs			1.1	
Billing Demand - LT tariff categories : Monthly Billing Demand will be the higher of the following: c) 65% of the actual Maximum Demand recorded in the month during 0600 hours to 2200 hours; d) 40% of the Contract Demand				
Billing Demand - HT tariff categories : Monthly Billing Demand will be the higher of the following: d) Actual Maximum Demand recorded in the month during 0600 hours to 2200 hours; e) 75% of the highest Billing Demand recorded during the preceding eleven months, subject to the limit of Contract Demand; f) 50% of the Contract Demand.				

12. The Appellant referred to the Judgment in Writ Petition No. 10536 of 2019 dated 09.06.2020 of Hon'ble Bombay High Court in Case of MSEDCL V/s Principal, College of Engineering, Pune, order dated 7th August 2014 passed by the ATE in Appeal No. 131 of 2013, and the orders of the Commission dated 13.05.2016 in Case No. 40 of 2015 and dated 11.02.2003 in Case No. 24 of 2001 which are not applicable in the instant case.

13. The Respondent referred to the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. Considering the depth of the grievance, the ratio of this Judgment is not applicable in this case.


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14. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:


“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of Hon’ble Bombay High Court in W.P. No. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

15. The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired. Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. (Emphasis added)
.....”


16. In view of the above discussions, the Judgments of the Supreme Court and Larger Bench of Bombay High Court, we hold that the Respondent can recover supplementary bills only for 24 months retrospectively. However, Section 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in the case of a mistake or bona-fide error. The Respondent raised the supplementary bills towards tariff difference from LT to HT Tariff category on 25.05. 2021. The Respondent can therefore issue supplementary bills of retrospective recovery only for the period from May 2019 to April 2021.


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17. In view of the above, the Respondent is directed as under: -
- a) to revise the supplementary bills towards tariff difference from LT to HT industrial Tariff category only for the period from May 2019 to April 2021 in Rep. No 104, 105,106 and 107 of 2022, and to withdraw the supplementary bill of tariff difference from LT to HT industrial Tariff category in Rep. 108 of 2022.
 - b) to adjust the refund of amount after bill revision in the ensuing bills of the Appellants.
 - c) Compliance to be submitted within two months from the date of issue of this order.
 - d) Other prayers of the Appellant are rejected.
18. The Forum's order is modified to the extent above.
19. The Representation is disposed of accordingly.
20. The Secretariat of this office is also directed to send the copy of this order to the Director (Commercial) MSEDCL who is advised to take up this Contract Demand penalty issue before the Commission when the load is enhanced by any consumer from LT V(B) to HT I (A) Industry -General.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

