

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

**REPRESENTATION NO. 63 OF 2022**

In the matter of Change of tariff category and retrospective recovery

S. M. Jawanmardi .....Appellant  
(Prospect Hotel)

V/s.

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

Appearances:

Appellant : Pratap Hogade, Representative

Respondent: 1. S. K. Sonwalkar, Executive Engineer, Wai Division  
2. Sachin Kumar Bachal, Dy. Ex. Engineer, Panchgani Sub-Dn  
3. Ujwala Lokhande, Addl. Ex. Engineer, Flying Squad, Satara

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

Date of hearing: 10<sup>th</sup> August 2022

Date of Order : 1<sup>st</sup> September 2022

**ORDER**

This Representation is filed on 9<sup>th</sup> May 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 Order dated 8<sup>th</sup> March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Baramati Zone (the Forum). The Appellant deposited Rs. 25,000/- in terms of Regulation 19.21(h) on 20<sup>th</sup> May 2022, hence, the Representation is registered on 20<sup>h</sup> May 2022.




(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



2. The Forum, by its Order dated 08.03.2022 has rejected the grievance application in Case No. 14 of 2021. The Forum observed that the as per MRI Report dated 19.10.2020 at 17.33 hrs., the connected load was found 25.02 KW and Maximum Demand recorded was 25.86 KVA on 28.05.2021. The supplementary bill which was given towards tariff difference of LT II (A) to LT II (B) tariff category was found in order as per Section 56(2) of the Electricity Act, 2003.

3. The Appellant filed this representation against the order of the Forum. The hearing was held on 10<sup>th</sup> August 2022. The Appellant was present physically, however, the Respondent attended the hearing through Video Conference. The Appellant's written submission and arguments in brief is stated as below: -

- (i) The Appellant is a LT Consumer (No.104342018539) from 10.03.1994 having sanctioned load (SL) of 19.50 KW at Panchgani, Taluka Wai, Dist Satara. The Appellant is using power supply for hotel business. The Appellant was earlier billed under LT II (A) Tariff Category, however, the Appellant is now billed under LT II (B) Tariff Category.
- (ii) The Flying Squad, Satara of the Respondent carried out a spot inspection on 19.10.2020 of the premises of the Appellant. The Flying Squad carried out a Panchnama and claimed that the Contract Demand is 25.8 KVA and recommended to change the tariff category from LT II (A) to LT II (B) tariff category. However, the copy of the Panchnama was not given to the Appellant.
- (iii) The Respondent, by its letter dated 22.01.2021, issued a supplementary bill of retrospective recovery of Rs. 6,45,789.39 towards tariff difference from LT II (A) to LT II (B) for the period of April 2019 to December 2020. The supplementary bill was added in the bill of February 2021. The Respondent issued a disconnection notice by its letter dated 26.02.2021 as per Section 56(1) of the Electricity Act, 2003 (the Act).
- (iv) The Appellant, by its letter dated 09.02.2021, requested to cancel the retrospective recovery and accepted the current bill. The Appellant, by its letter, on the same day requested to give copy of the spot inspection report, correspondence done by the Flying Squad and calculation sheet of assessment done. The Respondent by its letter dated 15.02.2021 gave some incomplete details. The Collector issued notification of lockdown period from 22.03.2020 to September

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



2020 due to Covid-19 pandemic. The Appellant by its letter dated 01.03.2021, intimated that there was no electricity use during the lockdown period.


- (v) The Appellant has referred to the order dated 11<sup>th</sup> February, 2003 in Case No. 24 of 2001 of the Maharashtra Electricity Regulatory Commission (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.”*

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.

- (vi) The Appellant also referred to the order dated 7<sup>th</sup> 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 anr. In the said case, the ATE has 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.
- (vii) 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.

*“25. From a careful consideration of the above, it is quite evident that the present is not a case covered by sub-clause (1) of Section 56. It is not a case of nonpayment of electricity charges, not to speak of neglect in paying the charges. Right from the beginning when the respondent became a consumer under the petitioner its tariff category was changed from time to time by the petitioner and was accordingly billed. It is not the case of the petitioner that the respondent had defaulted in the payment of such electricity bills. It was only after the CAG pointed out that respondent ought to have been charged under tariff category LT-I from September, 2012, that petitioner carried out inspection in the premises of the respondent on 03.02.2018. Thereafter the tariff category of the respondent was changed to LT-I from February, 2018 but at the same time, a*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai




*supplementary bill dated 17.03.2018 for the differential amount was issued retrospectively from September, 2012.*

*26. While examining 56(2) the Full Bench held that a consumer cannot be vexed in the event the licensee is negligent in recovering the amount due. If the views of CAG is treated as correct, in that event the electricity charges on the basis of tariff category LT-I became due from September, 2012. For the next two years from September, 2012 there is nothing on record to show that the petitioner had raised any bill or attempted to recover electricity charges from the respondent under LT-I tariff category. Even after two years no such bills were raised. First time on the basis of LT-I tariff category bill was raised on 17.03.2018. The language used in sub-section (2) is "when such sum became first due" in contradistinction to such sum being first billed. Period of limitation will commence when such sum became first due. Admittedly, as per the petitioner such charge or sum became first due in September 2012 but billed for the first time on 17.03.2018. In such circumstances, it was not open to the petitioner to raise the supplementary bill retrospectively on 17.03.2018 for the period from September, 2012 and thereafter issue disconnection notice.*

*27. That being the position, Court finds no error or infirmity in the impugned decision."*

The High Court has rejected the Writ Petition of MSEDCL, and the order passed by the Electricity Ombudsman is upheld by rejecting retrospective recovery. The Respondent challenged this Judgement up to the level of Hon'ble Supreme Court; however, the appeal of the Respondent is rejected. The ratio of the Judgement is applicable to the Appellant's case which is similar in nature. Hence, the Respondent can make recovery prospectively from the date of inspection i.e., 21.10.2020.

- (viii) The Appellant filed its grievance application in the Internal Grievance Redressal Cell (IGRC). A hearing was held on 16.03.2021. The IGRC by its order dated nil rejected the grievance application. The Appellant approached the Forum on 17.11.2021. The Forum, by its Order dated 08.03.2022 also rejected the grievance. The Forum failed to understand the basic issue.
- (ix) The SL of the Appellant is 19.5 KW. The Appellant was billed under LT II (A) tariff category. If the SL exceeds 20 KW and CD exceeds 25 KVA then the LT II (B) tariff category is applicable. The CD with respect to LT II (A) tariff category should be fixed first, and then the penalty of excess KVA comes in picture when the CD exceeds this. The Respondent did not finalise CD when 19.5 KW load was in service.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



For conversion of KW into KVA, the Power Factor of 0.8 shall be applied.

Hence,  $KVA = KW / (PF) = 19.5 / 0.8 = 24.375$  KVA

As per Flying Squad Record,

- a) MD recorded 25.86 KVA on 28.05.2019
- b) MD recorded 25.8 KVA on 19.10.2020

Hence, if the assessment has to be done, it should be done only for the months of May 2019 and October 2020 and cannot be done for other months.

The Commission has already issued directions for billing in case the CD exceeds the sanctioned Contract Demand, which is reproduced below:

*“Penalty for exceeding Contract Demand:*

*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).*

*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.”*


The Appellant did not exceed contract demand more than three times in a calendar year.


Hence, the Appellant has not done any breach of agreement.

The Appellant has already applied for clubbing of the two connections and the Respondent has clubbed the same.

- (x) In view of the above, the Appellant prays that the Respondent be directed
  - a) to cancel the supplementary bill of retrospective recovery of Rs.6,45,789.39 along with interest and delayed payment charges levied.
  - b) to charge CD for two months only, for May 2019 and Oct. 2020.


4. The Respondent filed a reply by its letter dated 10.06.2022. The Respondent attended the hearing on 10<sup>th</sup> August 2020 through Video Conference. The Respondent’s submission and arguments in brief is as below: -

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



- (i) The Appellant is a LT Consumer (No.104342018539) from 10.03.1994 having SL of 19.50 KW at Panchgani, Taluka Wai, Dist. Satara. The Appellant is using power supply for hotel purpose. The Appellant was billed under LT II (A) Tariff Category till Jan.2021, however, the Appellant is being billed under LT II (B) Tariff Category from Feb. 2021.
- (ii) The Flying Squad, Satara has carried out a detailed inspection of the Appellant's premises on 19.10.2020 in the presence of the Appellant. During the inspection, it was observed that
- The Appellant was using power of 25.8 KVA (25.0 KW) which was more than the sanctioned load of 19.5 KW (below 0 to 20 KW).
  - The Appellant was being billed under LT II (A): 0 to 20 KW Slab of Tariff Category as per Sanctioned Load of 19.5 KW. The Appellant unilaterally extended the connected load into the billing slab of 20 to 50 KW, and did not inform about extension of the load, and to change the tariff category from LT II (A) to LT II (B).
  - In addition, there were two connections in the same premises which needed to be clubbed. It has to be billed under LT II (B) Tariff Category. The Appellant did not inform about them.
  - Meter Reading Instrument (MRI) Data retrieved from the meter (No. MSE 60748) shows that:
    - 25.86 KVA (25.02 KW) on 28.05.2019 at 17.00 Hrs.
    - 25.80 KVA (25.0 KW) on 19.10. 2020 at 16.00 Hrs.
  - The Appellant has another electric connection having No. 19434201839 in the same premises in the name of K.B. Jawanmardi with commercial tariff.
  - These two connections have to be clubbed as per Respondent's clubbing circular dated 14.10.2010.

As per observation of the inspection report, the Respondent issued a supplementary bill of Rs. 6,45,790/- on 22.01.2021 towards Tariff Difference from LT II (A) ( 0 to 20 KW Slab) to LT II (B) ( above 20 to 50 KW Slab) of Commercial Tariff Category for the period from April 2019 to December 2020. The supplementary bill is for 21 months which is within the limit of 24 months, as per provision of Section 56(2) of the Act. The said debit bill adjustment of assessment was added in the bill of Feb.


  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai





2021. The tariff category of the Appellant was changed from LT II (A) to LT II (B) from Feb. 2021.

- (iii) The Appellant filed a grievance application before IGRC on 16.03.2021. The IGRC by its order dated nil rejected the grievance application. The Appellant approached the Forum on 17.11.2021. The Forum, by its Order dated 28.03.2022 also rightly rejected the grievance application.
- (iv) The Respondent cited 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. in support for recovery of escaped billing and also relied on 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.
- (v) The Respondent argued that this is not an abrupt change in the tariff category, or reclassification of tariff category, as is observed in Case No. 24 of 2001 of the Commission and Judgement of the ATE in Appeal No. 131 of 2013 in the matter of Vianney Enterprises V/s Kerala State Electricity Regulatory Commission and anr.
- (vi) The Respondent argued that the Appellant has enjoyed the benefit of two connections in one premises, being billed under LT II (A) tariff category which is comparatively less than the LT II (B) tariff category, for a long period. Apart from this, there was recorded sanctioned load of 25.02 KW as per MRI Report. The Respondent further argued that the connected load is much more than the recorded KW load. The Tariff category is based on sanctioned load as
  - a. LT II (A): 0 to 20 KW sanctioned load, on fixed charges basis
  - b. LT II (B): > 20 to 50 KW , on Demand Charges and TOD Tariff basis
  - c. LT II (C): > 50 KW, on Demand Charges basis and TOD Tariff basis
- (vii) The Respondent prays that the Representation of the Appellant be rejected.

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



## Analysis and Ruling

5. Heard the parties. Perused the documents on record. The Appellant is a LT Consumer (No.104342018539) from 10.03.1994 having SL of 19.50 KW at Panchgani, Taluka Wai, Dist Satara. The Appellant is using power supply for running a hotel. The Flying Squad of the Respondent inspected the premises on 19.10.2020 in the presence of the Appellant. During the inspection, it was observed **that** MD and KW was recorded as 25.80 KVA & 25.0 KW on 19.10. 2020 and 25. 86 KVA & 25.02 KW on 28.05.2019 respectively as per MRI Report of the meter. The Appellant has another electric connection No. 19434201839 in the same premises with commercial tariff category. The Appellant was billed under LT II (A) tariff category. The Respondent issued a supplementary bill of retrospective recovery of Rs.6,45,789.39 on 22.01.2021, towards tariff difference from LT II (A) to LT II (B) for the period of April 2019 to December 2020. The supplementary bill was added in the bill of February 2021.


6. The Appellant has relied upon the order of the Commission dated 11<sup>th</sup> February 2003 in Case No. 24 of 2001, the order of the ATE in Appeal No. 131 of 2013 and Judgement of Hon. High Court in WP No. 10536 of 2019 of MSEDCL V/s The Principal, College of Engineering, Pune, and argued that the recovery of tariff difference could not be retrospective; and it can only be from the date of detection of the error.


7. On the contrary, the Respondent cited 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. in support for recovery of escaped billing and also relied up on 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.

8. 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.*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai





*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)*

In view of the above Judgment of the Hon’ble Supreme Court, we hold that the Respondent can recover the “escaped billing” only for 24 months retrospectively. In the instant Representation, the recovery period is 21 months. The Electricity Ombudsman (Mumbai) in several representations has allowed recovery of 24 months towards tariff difference.

9. The Commission, by its various Tariff Orders, has decided the tariff for categories of consumers. The Tariff Categories for Commercial Consumers are nearly the same as concerned load slab specified in Commission’s Mid-Term Review order in Case No. 195 of 2017. The relevant portion of the tariff order is quoted below:


***“LT II: LT – Non-Residential or Commercial***

***LT II (A): 0 - 20 kW***

.....  
***d) Marriage Halls, Hotels / Restaurants, Ice-cream parlours, Coffee Shops, Guest Houses, Internet / Cyber Cafes, Telephone Booths not covered under the LT I category, and Fax / Photocopy shops;***

***LT II (A)***

<i>Consumption Slab (kWh)</i>	<i>Fixed/ Demand Charge (Rs. per month)</i>	<i>Wheeling Charge (Rs/kWh)</i>	<i>Energy Charge (Rs/kWh)</i>
<i>LT II (A)</i>			
<i>(i) 0 to 200 units per month</i>	391	1.28	6.10
<i>(ii) Above 200 units per month (only balance consumption)</i>	391	1.28	9.25

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



**LT II (B): > 20 kW and ≤ 50 kW and (C) > 50 kW**

*Applicability:*

*As per the applicability described in LT II (A) and for the Sanctioned Load in the range applicable in this sub-category, i.e. LT II (B) and LT II (C).*

<b>Consumption Slab (kWh)</b>	<b>Fixed/ Demand Charge (Rs. per month)</b>	<b>Wheeling Charge (Rs/kWh)</b>	<b>Energy Charge (Rs/kWh)</b>
<b>LT II (B) &gt; 20 kW and ≤ 50 kW</b>	391	1.28	9.30
<b>LT II (C) &gt; 50 kW</b>		1.28	11.60
<b>TOD Tariffs (in addition to above base Tariffs)</b>			
2200 Hrs-0600 Hrs			-1.50
0600 Hrs-0900 Hrs & 1200 Hrs-1800 Hrs			0.00
0900 Hrs-1200 Hrs			0.80
1800 Hrs-2200 Hrs			1.10

*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.*

**Monthly Billing Demand will be the higher of the following:**

- a) 65% of the actual Maximum Demand recorded in the month during 0600 hours to 2200 hours;
- b) 40% of the Contract Demand.


*Note:*

- Only the Demand registered during the period 0600 to 2200 Hrs. will be considered for determination of the Billing Demand.
- In case of a change in Contract Demand, the above period will be reckoned from the month following the month in which the change in Contract Demand is effected.

**Penalty for exceeding Contract Demand**

*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).*

*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.”*

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai



The tariff policy remained the same in **Commission’s Multi Year Tariff order in Case No. 322 of 2019 dated 30.03.2020** which is effective from 01.04.2020, except a change in tariff rate.

10. As per Tariff Order of the Commission in force, there is no KVA Contract Demand for tariff category slab of “0 to 20 KW”. However, Contract Demand tariff is applicable in LT II (B) and LT II (C) tariff category.

There is a considerable difference in bill calculation between LT II (A) to LT II (B) Tariff Slabs mainly due to difference in Demand Charges. Hence, there is a tendency of some consumers to take sanctioned load below 20 KW and to practically use load more than 20 KW. This case is one example of such a modus Operandi.

Debit bill adjustment calculation for July 2019					
Particulars	Rate per KVA	Recorded Demand Taken	Billing Demand (65% of Recorded Demand)	Total Demand Charges (RS.)	Remarks
Fixed Charges /Demand Charges levied	391	25.86	17	6647	
Demand Penalty	586.5	25.86		15166.89	(391X1.5)= 586.5
Note :	Demand penalty Charged as Rs. 15249/- in B 80 documents.				


There is no data of month wise KVA MD put on record, except MD of May 2019 and Oct. 2020. It is an injustice to the consumer to bill this KVA MD with these recorded MD for the entire assessment period from April 2019 to Dec. 2020.


It is more reasonable that the billing demand be considered only 40 % of the recorded MD of 25.86 i.e., 10 KVA instead of 17 KVA (65% of 25.86 KVA MD recorded) for the period of May 2019 to Dec. 2020, except 17 KVA in May 2020 and Oct. 2020 respectively.

Further, there was a restriction imposed on all hotel businesses during the lockdown period from 22.03.2020 to Sept. 2020. Hence, it is necessary to withdraw the penalty of CD for this period.

11. In view of the above, the Respondent is directed as under: -

- a) to revise the bill considering 10 KVA (40 % of the recorded 25.86 KVA MD) instead of 17 KVA (65% of the recorded 25.86 KVA MD) for the period of May 2019 to Dec. 2020 (except

  
 (Dilip Dumbre)  
 Secretary  
 Electricity Ombudsman Mumbai



17 KVA in the 2 months of May 2020 and Oct. 2020 respectively) without any interest and Delayed payment charges.


- b) to restrict demand penalty to 10 kVA, specifically in this case for the period June 2019 to March 2020, and to withdraw demand penalty charges during the period from April 2020 to Sept. 2020 considering Covid-19 pandemic and subsequent lockdown.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) Other prayers of the Appellant are rejected.

12. The Representation is disposed of accordingly.

13. The Secretariat of this office is directed to refund Rs. 25000/- paid by the Appellant to the Respondent for adjusting in ensuing bill.

14. 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 II (A) [0-20 KW] to LT II (B) [> 20 KW] tariff category.

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

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

