

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 8 OF 2023

In the matter of change of Tariff Category and refund thereof

Nilay Milan & Milan Mehta Appellant
(Progenesis IVF PVT. Ltd.)

V/s.

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

Appearances:

Appellant : Pranab Shende, Representative

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

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 6th March 2023

Date of Order : 31st March 2023

ORDER

This Representation was filed on 23rd January 2023 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 28th November 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).



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2. The Forum, by its order dated 28.11.2022 has dismissed the Grievance Application No.101/2021-22.


3. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 06.03.2023 through Video Conference. Both the parties were heard at length. The Appellant's written submission and arguments in brief are stated as below: -

- (i) The Appellant 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 Appellant runs a hospital namely "Progenesis Fertility Centre & Maternity Home." The Appellant has been given necessary permission to operate the Hospital from 15.03.2019.
- (ii) The Respondent MSEDCL is a public undertaking and is bound to function as per law. It is duty bound to follow the rules mentioned in the provisions of the Electricity Act 2003 (the Act), and the various conditions therein.
- (iii) The Commission created a new tariff category as per its Tariff Order dated 16.08.2012 in Case No. 19 of 2012, called "Public Services" for Educational Institutes, Hospitals and Dispensaries, etc. Subsequently, the Commission further sub-categorized the "Public Services" tariff category into two sub-categories as per Tariff Order dated 26.06.2015 in Case No. 121 of 2014 which are as below:

1. LT X (A): LT - Public Services - Government Educational Institutes & Hospitals,
2. LT X (B): LT – Public Services – Others.

This classification was continued in the following subsequent Tariff Orders of the Commission:

- Case No. 48 of 2016 dated 03.11.2016
- Case No. 195 of 2017 dated 01.09. 2018
- Case No. 322 of 2019 dated 31.03.2020


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- (iv) Hence, the Appellant was entitled to be billed under LT – X (B) Public Services-Others tariff category from the date of connection i.e., from March 2019. However, the Appellant was billed with Commercial tariff category up to April 2020.
- (v) The Appellant is using the said premises for running a hospital, and the “Progenesis Fertility Centre & Maternity Home” is operated by Dr. Narhari Sambhaji Malagaonkar who is the occupier of this premises and is a registered Medical Practitioner. The Appellant put on record 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, and a certificate of Maharashtra Pollution Control Board (MPCB)] for disposal of Bio-Waste, etc.
- (vi) The Appellant referred to the Regulations 8.2, 8.2.1, 8.2.2 and 8.3.4 of MERC - General Conditions of Distribution License Regulations, 2006.

"8.2. COMPLIANCE WITH LAWS, RULES AND REGULATIONS.

8.2.1 The Distribution Licensee shall comply with the provisions of the Act, Rules, Regulations, Orders and Directions issued by the Commission from time to time and the provisions of all other applicable laws.

8.2.2 The Distribution Licensee shall duly comply with the regulations, orders and directions of the Central and State Transmission Utilities, National Load Despatch Centre, Regional Load Despatch Centre and the State Load Despatch Centre, Central Electricity Authority and other statutory authorities under the Act.

8.3.4. The Distribution Licensee shall sell or supply electricity in accordance with the terms of his Licence and shall be entitled to recover tariffs, charges, and fees and require security deposit to be made for supply of electricity or for provision of services, in accordance with the provisions of the Act, the Rules and Regulations made thereunder, and orders passed by the Commission from time to time."


- (vii) The Appellant made an online application on 17.01.2020 for change of tariff category from Commercial to Public Services-Others **with retrospective effect** from March 2019. The Appellant submitted a request letter and a hard copy of the application on 17.01.2020.
- (viii) The Respondent inspected the premises of the Appellant on 27.05.2020. The Tariff of the Appellant was changed from LT II Commercial to LT VII (B) Public Services- Others from May 2020 onwards.

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- (ix) Not satisfied with this, the Appellant filed a grievance application before the Forum on 28.09.2021. The Forum, by its order dated 28.11.2022 dismissed the Grievance Application. The Forum failed to understand the basic issue that the hospital is running from March 2019.
- (x) The Appellant referred Regulation 13 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulation 2005) which is reproduced as below:
- “13. Classification and Reclassification of Consumers into Tariff Categories***
The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer.”
- (xi) The Appellant cited the Judgment of Hon’ble High Court of Bombay, Nagpur Bench in Writ Petition No. 3997 of 2016 in the matter of MSEDCL V/s. Shilpa Steel & Power Ltd. The principle laid down by the High Court should be considered for refund of tariff difference.
- (xii) The Appellant referred various orders (38 of 2017, 39 of 2017, 271 of 2018 & 42 of 2019) of the Electricity Ombudsman (Mumbai) on the same subject matter in support of its submission.
- (xiii) The Appellant filed a rejoinder by email on 03.03.2023 in response to the reply filed by the Respondent. Most of the issues in this rejoinder are a repetition of the representation; however, the important issues are briefly captured below: -
- a. Practice Directions of the Commission dated 22.07.2019 for allowing Uniform Interest Rate on the Refunded Amount to Consumers.
 - b. The Judgment of Appellate Tribunal for Electricity (ATE) dated 12.02.2020 in Appeal No. 337 of 2016 & others.
 - c. The MSEDCL circular No. 323, dated 03.04.2020 in MERC Order in Case No. 322 of 2019 dated 30.03.2020.
 - d. The MSEDCL circular No. 0319 vide Ref. No. 18076 dated 28.06.2019.


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- e. The order of Hon'ble Electricity Ombudsman (Mumbai) dated 04.02.2018 in Representation No. 271 of 2018.
 - f. The order of Hon'ble Electricity Ombudsman (Mumbai) dated 01.02.2018 in Representation No. 269 of 2018.
 - g. The Judgment dated 10.02.2020 of the Hon' ble Bombay High Court, in Writ Petition No. 8712 of 2018 in Case of Maharashtra State Electricity Distribution Co. Ltd. V/s. Dr. Shri. Girish Dadasaheb Dadwad & Anr.
 - h. The Respondent, while answering the questions raised in the Maharashtra Assembly (the Maharashtra Vidhan Parishad, and the Maharashtra Legislative Council) as per the O/o the SE, Thane circle and as per the information provided by the information officer from the O/o the SE, Thane circle under the RTI Act, has replied as follows: - Consumers which are not identified by their name or address on the energy bill have still been categorized from commercial to public services tariff Suo moto. The Appellant has relied on the information received by the consumer representative under the RTI Act. The same procedure should have been applied to the Appellant. Being unable to identify the hospital activity is a mere excuse of the Respondent, and its inability should not be passed on to the Appellant.
- (xiv) The claim for interest on tariff difference amount is valid, and therefore deserves to be allowed. The amount towards the difference of tariff between Commercial tariff and LT- Public Service-Others was utilized by the Respondent for its business; therefore, it ought to have been refunded with interest as contemplated in Section 62(6) of the Act.
- (xv) In view of the above, the Appellant prays that the tariff category of the Appellant be changed to "Public Services-Others" from March 2019 to April 2020, and to refund the tariff difference along with interest.

4. The Respondent, by letter dated 11.02.2023 has submitted its written reply. Its written submission along with its arguments are stated in brief as below: -


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- (i) The Appellant 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.
- (ii) The original Applicant, M/s. Dosti Reality Ltd. had applied through an online application (No. 13448597) for a new connection of 18 KW commercial load under Commercial tariff category. The connection of the Applicant was accordingly released on 04.08.2018 under Commercial category.
- (iii) According to this application, the Applicant had not mentioned the purpose as hospital/lab/fertility center etc. indicating usage for public services - others.
- (iv) The same Applicant subsequently applied for Additional Load of 84 KW, again for Commercial purpose. As per the survey/feasibility, sanction letter, the purpose of the additional load is commercial. After receipt of the sanction letter EE/WE/Tech/LT/87 dated 14.01.2019, the Firm Quotation was issued on 22.01.2019, and the additional load was subsequently released.
- (v) While making the above application for enhancement of load in Jan 2019, the Public Services-Others tariff category was already established by the Commission in the tariff order dated 01.09.2018 in Case No. 195 of 2017. But the Appellant applied specifically for Commercial purpose, hence the enhancement of load was approved under Commercial tariff category as per the consumer's own request. Hence the benefit of Public Services-Others tariff cannot be given to the consumer retrospectively.
- (vi) The change of name application from M/s. Dosti Reality Ltd. to Nilay Milan & Milan Mehta was done during the grievance redressal process at the Forum level. Prior to this, the connection was in the name of Dosti Reality Ltd. and for commercial purpose for Shop No. S1-16, and not in the name of the hospital. Therefore, it was difficult for the Respondent to identify suo-moto such individual cases where the use is for hospital purpose. It is the duty of the concerned consumer to apply for a change of tariff category in view of their demand for concessional tariff, as approval of the competent authority is necessary. It was the responsibility of the consumer to inform about the


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- change in the purpose of electricity usage, and to apply for the appropriate tariff as per their usage as per the Supply Code Regulations 2005 which was in force at that time.
- (vii) The Appellant made an online application only on 17.01.2020 vide ID No. 24779430 for change of Tariff category from LT-II Commercial to LT VII (B) Public Services – Others.
- (viii) The Appellant submitted a hard copy of his application on 17.01.2020 along with Medical Council Certificate, Certificate of Registration from Municipal Corporation of Thane, etc. Accordingly, after verification of use for fertility clinic centre, the tariff was changed in the month of May 2020.
- (ix) The Appellant remained silent on this issue from May 2020 to September 2021, i.e., for almost 16 months. He approached the Forum on 28.09.2021 for the refund of tariff difference from March 2019 to April 2020. The Forum, by its order dated 28.11.2022 dismissed the grievance application as there was no merit in the case. The tariff difference of Rs.1680.46 from the date of his application i.e., Feb. 2020 to April 2020 was credited to the consumer vide bill revision ID-1-2862638 dated 28.01.2022 in the month of Jan 2022. This is a concessional tariff, and the competent authority needs all concerned documents for sanctioning the change of tariff to Public Services-Others. Hence, in the present case, the refund of tariff difference prior to his application i.e., from March 2019 to Jan.2020 is not justifiable.
- (x) The Commission in its tariff order dated 16.08.2012 in case no. 19 of 2012, which was effective from 01.08.2012, introduced a new tariff category for public services. As per Tariff Order dated 26.06.2015 in Case No. 121 of 2014, the Public Services category was sub-divided into two parts which are as below:
- LT X (A): LT - Public Services - Government Educational Institutes & Hospitals,
 - LT X (B): LT – Public Services – Others.

The same tariff category is in force as per various tariff orders of the Commission from time to time.


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- (xi) However, in this case, the original connection was requested by the original consumer in the year 2018 for Commercial activity in the name of “Dosti Realty Ltd.” At that time, the “Public Services- Others” tariff category was already in force. However, the Appellant took the connection for Commercial purpose. After that the consumer changed the purpose of his activity without the knowledge of the Respondent. In this case, neither is the connection in the name of any hospital, nor does the address provide any idea as to the exact activity being carried out over there. Therefore, it is difficult to identify such individual cases suo moto and apply the appropriate tariff. Hence suo-moto action for change in tariff is not acceptable prior to an application for change of tariff.
- (xii) Further, the permission issued by Municipal Corporation of Thane is in the name of one Dr. Narhari Sambhaji Malagaonkar in respect of “Progenesis Fertility Center & Maternity Home” from 15.03.2019 and is valid up to 31.03.2021. The Respondent has been unable to establish the relation between Nilay Milan & Milan Mehta (the Appellant) and Dr. Narhari Sambhaji Malagaonkar. The change of Tariff application seems to have been filed by some unknown name claiming to be a partner of Dr. Narhari Sambhaji Malagaonkar. The “Schedule A” is signed by Mrs. Nilima R. Hanchate as Centre Head, and “Schedule B” is signed by Dr. Sneha Ayyar as Centre Head of Progenesis IVF Pvt. Ltd., Thane. Thus, there is no consistency or clarity as to who actually runs the hospital, and the locus standi of the Appellant is not clear.
- (xiii) The Appellant has raised an issue, in the context of a Maharashtra Legislative Assembly question regarding classification of hostel tariff category, that consumers whose use is not identified by their name or address on the energy bill, have still been categorized from Residential to Public Services suo moto by the Respondent. This is denied by the Respondent in toto. A perusal of the Legislative Assembly question clearly shows that there is no mention of any suo moto action in the question raised.
- (xiv) The Respondent clarifies that previously all such hostels on its record were covered under Residential tariff category as per the tariff order in force. The Respondent


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already had information in its database as to which were the hostels running under Residential category. The Commission, by its order dated 30.03.2020 in Case No. 322 of 2019 reclassified these hostels under Public Services – Others tariff category. The Respondent was duty bound to obey the order of the Commission. This is a totally different situation than the current case. The hostels were running for years or even decades prior to the Commission's orders. Further, the Respondent's database already had information about these hostels. However, in the current case, the hospital started running a few years after the Commission's order. The Respondent cannot be expected to know suo moto when this happened, unless informed by the consumer. The Respondent's database did not have any information regarding hospitals including the current Appellant's connection.

- (xv) As requested by the Appellant's representative, the papers available on record of meter replacement report and feasibility report for enhancement of load were already forwarded to him as per directions.
- (xvi) In view of the above, the Respondent requested to reject the Representation of the Appellant with cost.

Analysis and Ruling

5. Heard the parties and perused the documents on record. 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, totaling to 102 KW, was also done in the name of "Dosti Realty Ltd." vide load sanction LT/ 87 dated 10.01.2019. The Respondent informed that the change of name from Dosti Realty Ltd. to Nilay Milan & Milan Mehta was done during the grievance process with the Forum.


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6. The Commission issued a Tariff Order in Case No. 121 of 2014 (effective from 01.06.2015) wherein, for the first time, it subdivided the category LT-X: LT- Public Services, into two subcategories which are as follows: - LT X (A): LT - Public Services - Government Educational Institutes and Hospitals, and LT X (B): LT - Public Services – Others. The activities under the second sub- category i.e., LT X (B): LT - Public Services – Others are as follows: -

“Applicability : This Tariff shall be applicable to Educational Institutions such as Schools and Colleges, and Hospitals, Dispensaries, Primary Health Care Centres and Pathology Laboratories and Libraries and Public reading rooms other than those of State or Central Government, Municipal Bodies, Zilla Parishads, Panchayat Samities or Gram Panchayat; all offices of Government/Municipal Bodies, Local Authority, local self-Government, Zilla Parishad, and Gram Panchayat; Police Stations, Police Chowkies, Post Offices, Defence establishments (army, navy and air-force), Spiritual Organisations which are service oriented, Railway/Monorail/Metro except traction, State transport establishments,; and State Transport Workshops, Transport Workshops operated by Local Authority, Fire Service Stations, Jails, Prisons, Courts, Airports (only activity related to aeronautical operations), Ports, Sports Club / Health Club / Gymnasium / Swimming Pool attached to the Educational Institution / Hospital provided said Sports Club / Health Club / Gymnasium / Swimming Pool is situated in the same premises and is primarily meant for the students /faculty/ employees / patients of such Educational Institutions and Hospitals.” (Emphasis added)

The Commission subsequently issued similar Tariff Orders in Case No. 48 of 2016 dated 03.11. 2016, in Case No. 195 of 2017 dated 01.09.2018, and in Case No. 322 of 2019 dated 31.03.2020 respectively.


7. The Appellant made an online application only on 17.01.2020 for change of tariff category from Commercial to Public Services-Others with retrospective effect from March 2019. The Appellant submitted a request letter and a hard copy of the application with required attached documents on 17.01.2020. The Respondent inspected the premises of the Appellant on 27.05.2020. The tariff category of the Appellant was changed from LT II Commercial to LT VII (B) Public Services-Others initially from May 2020 onwards. Subsequently, this concessional tariff was applied from the date of application, i.e., from February 2020 onwards. The Respondent has also refunded the tariff difference of Rs. 1680.46 from Commercial to Public services –Others for the period from Feb. 2020 to April 2020 in the bill of Feb. 2022.


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8. The main contention of the Appellant 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 for years. In the particular circumstances of this case, we find that though the Commission had created the subcategory of Public Services – Others in June 2015 as per Case No. 121 of 2014, the application for electric connection for commercial purpose was made by Dosti Reality Ltd. only in 2018. Even by the Appellant’s own admission, the hospital started only from March 2019, much after the Commission’s order. (The load enhancement was done in January 2019 in the same name, again for commercial purpose.) At that point of time, the public services – others tariff category was in existence for a few years, yet the application was made for commercial purpose. The Respondent informed that a formal inspection was carried out and the activity was found commercial till that point of time. 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 hospitals in general, and the Appellant’s hospital, in particular. So, the question of applying the “public services – others” tariff category suo moto does not arise. Hence, we do not find any weightage in the argument of the Appellant that it was the responsibility of the Respondent to reclassify the tariff category on its own.

9. In brief, the main argument of the Appellant 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, 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 prior to 17.01.2020 that the Appellant


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was running a hospital, as the original connection does not mention the word ‘hospital’ anywhere. We find substance in this argument. The Respondent inspected the premises on 27.05.2020 after receiving the application dated 17.01.2020, and it was only then for the first time confirmed that the supply is for hospital use. However, the benefit of the revised tariff category has already been given from February 2020.

10. The Forum has rightly analyzed the case and hence no interference in the order of the Forum is needed. The ratio of various orders referred to by the representative of the Appellant are not applicable in the instant case. Other prayers of the Appellant are rejected.

11. The Forum’s order is upheld, and the Representation is rejected and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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Secretary

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