

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 41 OF 2020

In the matter of change of tariff category

Jay Jinendra Realtors Pvt. Ltd.....Appellant

V/s.

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

Appearances

For Appellant : Harshad Sheth, Representative

For Respondent : 1. Sidharaj S. Kinnur, Executive Engineer, Vasai  
2. A.S. Mirza, Addl. Executive Engineer, Vasai Road (E) Sub. Dn.

**Coram: Deepak Lad**

Date of Hearing: - 24<sup>th</sup> July 2020

Date of Order : - 30<sup>th</sup> July 2020

**ORDER**

This Representation is filed on 27<sup>th</sup> February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 3<sup>rd</sup> February 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone.

2. The Forum, by its order dated 03.02.2020 has partly allowed the grievance application in Case No.1984 of 2019-20 and the operative part of the order is as below: -

- “2) Respondent utility to change tariff from Commercial to Industrial with immediate effect. Respondent utility to refund the tariff difference on account of not giving effect to change of tariff in the second cycle after receipt of application from the consumer.
- 3) Claim for retrospective refund of tariff difference prior to the application of the consumer is rejected.”

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is a LT Consumer (No.002290007332) for common electricity use of the Industrial Estate from 19.07.2014 having current Contract Demand of 38 KVA and Connected Load of 30 KW at Survey No. 60, 62, 63, 64 & others, Building No. 3, Jai Vijay Industrial Estate, Western Express Highway, Bapne, Naigaon, Vasai. Initially, the Appellant was billed with commercial tariff category, at present, the Appellant is billed with industrial tariff as per order of the Forum.
- (ii) The Industrial Estate of the Appellant is fully occupied by gala holders for Industrial use. The Appellant has taken power supply for gala holders for their common use of electricity like street lights, passage lightings, water pumps etc. The Appellant was billed under LT II B: Commercial tariff for their common usage previously.
- (i) The Appellant filed the grievance application with Internal Grievance Redressal Cell (IGRC) on 11.10.2019 for change of tariff category from Commercial to Industrial and refund of tariff difference for two years. The IGRC did not conduct the hearing within 60 days.
- (ii) The Appellant approached the Forum on 11.12.2019. The Forum, by its order dated 03.02.2020 has partly allowed the grievance application and directed the Respondent to change the tariff category from Commercial to Industrial with immediate effect and to refund the tariff difference considering the change of tariff carried out in the second billing cycle after receipt of application from the

consumer. However, claim for retrospective refund of tariff difference for 24 months prior to the application of the Appellant is rejected.

- (iii) The Appellant relies upon the order of Kalyan Forum dated 02.05.2019 in Case No. 1827 of 2018-19 in this regard. The Forum has confirmed that when it is Industrial Estate industrial production, the common supply for lift, water pumps and common lightings should be categorized under Industrial tariff. The Forum has also directed to refund tariff difference for 24 months from the date of application made to the Distribution Licensee.
- (iv) The Appellant referred the order of the Bhandup Forum dated 26.11.2019 in Case No. 269/2019, orders of Electricity Ombudsman (Mumbai) in Rep. No. 42 of 2019 dated 26.03.2019, in Rep. No. 91 and others dated 24.05.2019 and in Rep. No. 138 of 2019 dated 19.08.2019 for retrospective recovery.
- (v) The Appellant referred the judgment of the Hon'ble Supreme Court of India dated 12.02.2016 in Civil Appeal No. 3699 of 2006 in case of Rashtriya Ispat Nigam Ltd. V/s Prathyusha Resources & Infra Pvt. Ltd for cause of action. The Hon'ble Court has held that

*“We shall now consider the settled law on the subject. This Court in a catena of Judgment has laid down that the cause of action arises when the real dispute arises i.e. when one party asserts and other party denies any right”*

- (vi) The Forum has given order on 03.02.2020. The Appellant referred the Judgment dated 10.02.2020 of the Hon'ble High Court Bombay in Writ Petition No. 8712 of 2018 & 8731 of 2018 in which it upheld the order of the Forum and retrospective recovery. The contention of MSEDCL that the change of tariff can be effected from the date of application is rejected. Hon'ble High Court has considered Regulation 6.6 and 6.7 of the CGRF Regulations by rejecting the application of MSEDCL.
- (vii) The Appellant, therefore, prays that the Respondent be directed to refund tariff difference from commercial tariff to industrial tariff category for 24 months prior to first date of application along with interest as per Section 62(6) of the Electricity Act, 2003 (the Act).

4. The Respondent filed its reply by letter dated 10.01.2020 stating in brief as under: -

- (i) The Appellant is a LT Consumer (No.002290007332) for common electricity use from 19.07.2014 having current Contract Demand of 38 KVA and Connected Load of 30 KW at Survey No. 60, 62, 63, 64 & others, Bapne, Naigaon, Vasai. The Application of the Appellant was sanctioned for commercial purpose and Meter No. 5796015 of Genus make is installed to the Appellant.
- (ii) The electric supply is in the name of Jay Jinendra Retailers Pvt. Ltd. which was sanctioned and utilized for water pump purpose. The Industrial Estate of Appellant is not owned by Government of Maharashtra and local body. It is a private Industrial estate run for commercial purpose for earning profit. The Industrial tariff is applicable where power supply is used for manufacturing as well as processing of product. The supply of the Appellant was not utilized for Industrial activity. Hence, Industrial tariff could not be applicable to the Appellant.
- (iii) As far as applicability of tariff to water supply in Industrial area is concerned, the Forum has gone through the Commercial Circular No. 175 dated 05.09.2012 based on tariff order of the Maharashtra Electricity Regulatory Commission ( the Commission) dated 16.08.2012 in Case No. 19 of 2012, in which applicability of Industrial tariff is mentioned as follow:

***“LT V (B): LT-Industry – General***

*This tariff shall also be applicable for use of electricity / power supply for administrative office / Time officer, Canteen, Reservation hall / Sport Club/Health Club/ Gymnasium/Swimming Pool exclusively meant for employees of the Industry, lifts, water pumps, fire fighting pumps premises (security) lighting, Research and Development units, etc. provided that all such facility are situated within the same industrial premises and supplied power supplied power from the same point of supply.”*

- (iv) Also in Commercial Circular No. 243 dated 03.07.2015 is based on tariff order of the Commission dated 26.06.2015 in Case No. 121 of 2014 says that :

***Tariff to water supply to Industrial Premises***

*“Water works or water supply schemes for self-consumption by Industrial complexes / premises of individual in the Industrial tariff category.”*

The Commission also in its tariff order dated 26.06.2015 in Case No. 121 of 2014 effective from 1<sup>st</sup> June 2015 has held as under:

***“Water Supply to Industrial premises***

***MSEDCL’s submission***

*6.36.1 It has been suggested that the water works/supply in small private industrial complexes or premises may be billed as per the PWW Category, as in case of water works in Maharashtra Industries Development Corporation (MIDC) Areas. In response, MSEDCL has submitted that water works or water supply schemes owned by private industrial complexes or premises which are being used for self- consumption by such complexes or premises may be billed as per the Industrial category. However, water supply schemes not owned by the them should continue to be billed under the Commercial category.*

***Commission’s Ruling***

*6.36.2 The Commission has earlier ruled in its Order in Case No. 19 of 2012, that such activity may have commercial motives if it is not completely under the ownership, operation and maintenance of a Government body or local authority. However, the Commission is also of the view that water supply exclusively for industrial purpose should not be covered under the Commercial category. Therefore, the Commission has decided that water works or water supply schemes for self-consumption by industrial complexes/premises of individual private industries shall be included in the Industrial tariff category.”*

After perusal of various circulars including Commission’s Tariff Order, the Forum has reached to the conclusion that supply / Common lighting used for Industrial area should be categorized under Industrial category only. Hence, the Forum has

directed to change tariff of consumer from Commercial to Industrial from his application dated 11.10.2019. Accordingly, as per order of the Forum, the tariff of Appellant was changed from billing month of May 2020 and tariff difference for the period of November 2019 to February 2020 of Rs. 52,799.93/- credited in next billing cycle.

- (v) It is an admitted fact that the Appellant was being charged under Commercial tariff category since the date of connection. On 11.10.2019, the Appellant gave an application for change of tariff from Commercial to Industrial tariff category. The Respondent changed the category as per the order of the Forum and calculated the refund to be made to the Appellant. However, it is asking for refund for two years period prior to the date of application.
- (vi) Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees. Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations) provides for change of tariff on the application of the consumer within the second billing cycle. This change of tariff category is prospective in nature and not retrospective therefore, there is no question of refund for two years prior to the date of application. The Forum has issued the appropriate order which has been implemented.
- (vii) Basically, the connection was released as per the application of the Appellant with Commercial Category. It is difficult for the Respondent to ascertain, whether the two years period for which the Appellant is asking refund, electricity was used for commercial purpose or otherwise. Therefore, grant of retrospective refund is not justified.
- (viii) In view of the above, the Respondent prays that the representation of the Appellant be rejected.

5. The hearing could not be conducted due to onset of Covid-19 epidemic Since then the conditions were not conducive for conducting the usual hearings through physical presence, the hearing was scheduled on 24.07.2020 on e-platform after the consent from the parties.

However, because of connectivity issues, video conferencing was not healthy. I, therefore, requested both the parties to join the audio conferencing to which they freely consented.

6. During the hearing, the Appellant and the Respondent argued in line with their respective written submissions and reiterated the same.

### **Analysis and Ruling**

7. Heard the parties and perused the documents on record. I noted the following points as it fell from the written submissions and the arguments:

- (a) The Appellant is a developer of the industrial estate where the connection has been released.
- (b) The connection applied for by the Appellant was commercial. The Respondent released the connection with the commercial tariff.
- (c) The Appellant was paying electricity bills as per Commercial tariff till the filing of the grievance without any demur.
- (d) The Appellant applied for change of category with the Respondent as well as filed grievance with the IGRC on 11.10.2019 and requested for grant of retrospective refund for 24 months prior to October 2019.
- (e) The Commission's Order dated 16.08.2012 in Case 19 of 2012 was in force when the connection of the Appellant was released, the date of connection being 19.07.2014.

8. The Commission's Order dated 16.08.2012 in Case 19 of 2012 was in force when the Appellant applied for connection. The Appellant demanded a Commercial connection after due stock taking of its requirement and nature of work. Similarly, the Respondent after due verification released the connection on 19.07.2014 and applied commercial tariff. It inter alia means that the Appellant and the Respondent were on the same page as far as purpose of the connection and application of commercial tariff is concerned. This is more so clear as the Appellant paid all the bills from the date of connection at the commercial tariff without any demur. It is, therefore, clear that the purpose for which, the power was being used was Commercial and nothing else. When the Appellant was convinced that the connection now needs to be billed on an industrial tariff as per the order of the Commission, which was very

much in force from 2012, it applied for the same with the Respondent. It is a different matter that the Respondent did not act prudently, and the Appellant had to process his application through grievance redressal mechanism under the CGRF Regulations. It is only after the order of the Forum that the Respondent changed the tariff.

9. The Respondent argued that the Appellant filed an application for grant of industrial tariff with retrospective effect that too for two years. It is not understood as to how this period of two years has come up and the logic behind the same. The Appellant has not cited any justifiable reason for retrospective applicability of the tariff. Even if, the Respondent intends to go back in time to check and verify, it is not possible for it to ascertain as to the actual purpose for which the power was used by the Appellant in a period of two years prior to the date of application.

10. I also noted that the Appellant has not specifically brought any evidence on record which conclusively prove that it has not used power for commercial purpose. Presuming that it has not used power for commercial use still there is no propriety for applicability of tariff at industrial rate for the past period. It is not the case that the Respondent has wrongly applied the tariff and the Appellant has suffered on account of it. Nowhere, the Appellant in its representation or during the hearing, taken the plea that the Respondent has wrongly applied tariff. It is simply asking for retrospective relief for two years prior to the date of application. It has also cited the orders of the Forum which for the obvious reasons are not considered by me. As regards other orders /judgments cited by the Appellant, I am of the view that the ratio of the orders /judgments cannot be blindly applied, as the context in the instant case is totally different.

11. In view of the above, I do not find it necessary to interfere with the order of the Forum. The representation is disposed of accordingly with no order as to cost.

Sd/

(Deepak Lad)  
Electricity Ombudsman (Mumbai)