

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 4 OF 2023

In the matter of change of tariff category and refund of tariff difference.

Spandan Multispecialty Hospital & ICUAppellant
(Cons. Name: Anila B. Mehta, Cons. No. 029476818778)

V/s

Maharashtra State Electricity Distribution Co. Ltd. Panvel Urban (MSEDCL) ...Respondent

Appearances:

Appellant : None

Respondent : R. J. Patil, Executive Engineer I/c


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing : 16th February 2023

Date of Order : 2nd March 2023

ORDER

This Representation was filed on 10th 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 15th November 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




2. The Forum, by its order dated 15.10.2022 partly allowed the Grievance Application No.158/2021-22. The operative part of the order is as below: -

“2. The Respondent is directed to refund the tariff difference amount from the date of application i.e., 30.10.2021 till the actual effect of change of tariff and the difference amount is to be adjusted in the future monthly bills of the consumer.

3. The Applicant consumer is not entitled to any interest on refund amount.”

3. Aggrieved by the order of the Forum, the Appellant filed this representation. The e-hearing was scheduled on 16.02.2023 through Video Conference as per discussions with Appellant and Respondent. The Representative of the Appellant, by his email dated 16.02.2023, intimated that he would be unable to appear for the hearing, and requested to be exempted from the hearing. His written submission in the rejoinder form had already been submitted by e-mail dated 15.02.2023, and he requested to decide the case on merits as per written submission and rejoinder. The Respondent was heard at length. The Appellant’s written submission along with rejoinder in brief are stated as below: -

(i) The Appellant (Consumer No.029476818778) is a hospital namely “Spandan Multispecialty Hospital & ICU”. Dr. Sujay Bhirud is an occupier and operates this hospital at Plot No. 127, behind Gram Vikas Bhavan, Sector 21, Kharghar, New Panvel. The name of the original consumer / owner is Anila B. Mehta from 24.08.2017 having sanctioned load of 15 KW. The Appellant entered into a leave and license agreement with Anila B. Mehta (original consumer) on 18.04.2021 for a period of 60 months from 01.05.2021 to 30.04.2026 for the said premises. The Appellant has taken necessary permission to operate a Hospital / Nursing Home from Panvel Municipal Corporation from May 2021 on the said premises. The Appellant put on record a certificate of registration in the name of “Spandan Multispecialty Hospital & ICU” under Bombay Nursing Home Registration Act 2005 issued by Panvel City Municipal Corporation with effect from 03.05.2021, and a certificate of Maharashtra Pollution Control Board (MPCB) for disposal of Bio-Waste, etc. All these certificates are revalidated from time to time.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (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, as per the Tariff Orders issued from time to time, the Commission further sub-categorized the “Public Services” tariff category into two sub-categories which are
- (a) LT X (A): LT - Public Services - Government Educational Institutes & Hospitals, and
- (b) LT X (B): LT – Public Services – Others.

The said Tariff Orders issued by the Commission from time to time are as follows:

- Case No. 121 of 2014 dated 26.06.2015.
- 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.


Hence, the Appellant is entitled to be billed under “Public Services-Others” tariff category from May 2021 onwards. However, the Appellant was billed with Residential tariff category up to November 2021.

- (iv) The Appellant referred the Regulations 8.2, 8.2.1, 8.2.2 and 8.3.4 of MERC - General Conditions of Distribution License Regulations, 2006 which clearly state that.

"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



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”

- (v) The Appellant was unaware about the procedure of the Respondent and its internal circulars. The Respondent failed to apply the “Public Services-Others” tariff category to the hospital and continued to bill the Appellant with a higher tariff of “Residential” Category. The Respondent and their representatives normally visit the consumer premises periodically to inspect and record the readings of energy consumption for raising bills. They are aware that the activity of the Appellant is hospital from May 2021.
- (vi) The Appellant made an online application on 30.10.2021 for tariff change from Residential to Public Services-Others as per Regulation 5.2 of Supply Code & SOP Regulations 2021. The Appellant submitted a request letter and a hard copy of the application on 03.11.2021 for change of the tariff category from May 2021 and for refund of tariff difference retrospectively.
- (vii) The Respondent inspected the premises of the Appellant on 27.12.2021. The tariff category of the Appellant was changed from LT I (B) to LT VII (B) Public Services-Others only from December 2021 onwards.
- (viii) Not satisfied with the remedy provided by the Respondent, the Appellant filed a grievance application before the Forum on 27.12.2021. The Forum, by its order dated 15.11.2022 partly allowed the grievance and directed to refund the difference of tariff amount from the date of the application. The Forum failed to understand the basic issue that the hospital is running from May 2021 as per evidence submitted.
- (ix) 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



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Steel & Power Ltd. The principle laid down by the High Court should be considered for refund of tariff difference.


- (x) 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.
- (xi) The Appellant filed a rejoinder by email on 15.02.2023 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: -
- Practice Directions of the Commission dated 22.07.2019 for allowing Uniform Interest Rate on the Refunded Amount to Consumers.
 - The judgment of ATE dated 12.02.2020 in Appeal No. 337 of 2016 & others.
 - The MSEDCL circular No. 323, dated 03.04.2020 in MERC Order in Case No. 322 of 2019 dated 30.03. 2020.
 - The MSEDCL circular No. 0319 vide Ref. No. 18076 dated 28.06.2019.
 - The order of Hon'ble Electricity Ombudsman (Mumbai) dated 04.02.2018 in Representation No. 271 of 2018.
 - The order of Hon'ble Electricity Ombudsman (Mumbai) dated 01.02.2018 in Representation No. 269 of 2018.
 - 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. Rd. Shri. Girsih Dadasaheb Dadwad & Anr.
- (xii) The claim for interest on tariff difference amount is valid, and therefore deserves to be allowed. It is evident that the amount towards the difference of tariff between Residential 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.
- (xiii) The Appellant prays that the tariff category of the Appellant be changed to "Public Services-Others" from May 2021 to Oct. 2021, and to refund the tariff difference along with interest.

4. The Respondent, by its letter dated 08.02.2023 has submitted its written reply. The written submission along with its arguments are stated in brief as below: -


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- i. Anila B Mehta is a LT consumer (No. 029476818778) since 24.08.2017 at Plot No. 127, Behind Gram Vikas Bhavan, Sector 21, Kharghar for 15 KW load under Residential Tariff category till Nov.2021, and now under Public Services-Others Tariff. The premises is a separate bungalow on rental basis. The Leave and Licence agreement is between Anila B Mehta and Sujay Bhirud, partner of Spandan Multispecialty Hospital for the period of 19.4.2021 to 31.3.2024.
- ii. The Appellant made an online application on 30.10.2021 vide ID No.35785223 for change of Tariff category from LT-I Residential to LT V II (B) Public Services – Others.
- iii. The Appellant submitted a hard copy of his application on 03.11.2021 along with Rent Agreement, Medical Council Certificate, Certificate from Nasik University, Certificate of Registration from Municipal Corporation, etc., and also requested for refund of tariff difference from 03.05.2021.
- iv. After receipt of the online application and the required documents, the Respondent carried out a spot inspection of the consumer's premises on 10.11.2021 for confirmation of the activity for applying the proper tariff as per the usage. During inspection, it was observed that the activity of the consumer is that of a private Hospital.
- v. The proposal for tariff change was forwarded to the competent authority on 18.11.2021 for further approval. The competent authority gave the approval for change of tariff category i.e., LT-I (B) Residential to LT VII (B) Public Services- Others with effect from Dec. 2021 and rejected the retrospective refund from May 2021.
- vi. The Appellant approached the Forum on 27.12.2021 for the refund of tariff difference from May 2021 to Nov. 2021. The Forum, by its order dated 15.11.2022 partly allowed the Grievance and directed to refund the difference of tariff amount since the date of application (30.11.2021) till the actual date of the change of tariff of the Applicant, which was one month. As per the said order, the tariff difference of Rs.7833.37 was passed on to the Appellant through credit adjustment on 05.12.2022.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Reply on Merit:-

- vii. The connection of the original consumer is in the name of Anila B. Mehta for residential purpose. It is difficult to identify such consumers where a rent agreement is made by the consumer with their tenant without any intimation to the Respondent, and they simultaneously changed the tariff category. Neither the tenant nor the original consumer informed the Respondent about the change of purpose from residential to commercial in May 2021. This is 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 from 03.05.2021 is not justifiable. The Forum, by its order dated 17.10.2022 has partly allowed the Grievance Application to refund the tariff difference amount from the date of application i.e., 30.10.2021 till the actual effect of change of tariff.
- viii. The connection stands in the name of an individual person and not in the name of a hospital. This does not provide any idea as to the exact activity being carried out over there and therefore it is difficult for the respondent to identify such individual cases where a private rent agreement is carried out, and to apply the appropriate tariff, unless specifically informed by the consumer. It was the duty of the Appellant itself to submit the documents showing the activity of hospital, and to apply to the Respondent for change of tariff. The Appellant applied to the Respondent only on 30.10.2021 for the change of tariff, and the required documents were submitted only on 03.11.2021 to the respondent. Thereafter immediately the action of change of tariff was initiated by the respondent from the next billing cycle i.e. December 2021 as per Annexure – I of Supply Code & SOP Regulations 2021.
- ix. It is the mistake and negligence on the part of the appellant of giving late intimation to the respondent for change in activity; hence the Respondent is not responsible for any loss of the Appellant. At this later stage, the consumer cannot claim refund of tariff difference for his own mistake and negligence.
- x. After issue of the tariff order, the Respondent issued guidelines to check the installations for applying the appropriate tariff. The main intension was that the tariff change should be checked where there is a change of tariff category of specific


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



cases. It is a very difficult to check all consumers for their tariff category. Only specific cases can be checked where specific information is received about application of a new tariff category. Shri Pranav Shende, Consumer Representative, is misusing this interpretation and issuing threats in field, and using unnecessary RTI applications.

- xi. In view of above, the Respondent requested to reject the Representation of the Appellant.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The Original consumer (Anila B Mehta) is a LT consumer (No. 029476818778) since 24.08.2017 having sanctioned load of 15 KW at Plot No. 127, Behind Gram Vikas Bhavan, Sector 21, Kharghar, Panvel under Residential Tariff category. The premises is a separate bungalow. A Leave and Licence agreement was made between Anila B Mehta and Sujay Bhirud, partner of Spandan Multispecialty Hospital, for the period of 19.4.2021 to 31.3.2024. The Appellant made an online application on 30.10.2021 for change of Tariff category from LT-I Residential to LT V II (B) Public Services –Others. The Appellant sent a hard copy of the said application on 03.11.2021 to the Respondent along with relevant documents like permission of Municipal Corporation to operate the hospital, its registration, bio–Medical waste Certificate etc.


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

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




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.”

7. The Commission, thereafter, issued 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.

8. It is the argument of the Appellant that applying the appropriate tariff to various consumers is the duty of the Respondent. On the other hand, the Respondent argues that Public Services-Others is a concessional tariff, and the beneficiary has to apply as per their activity. The Respondent’s guidelines used the generalised term “to check the installations for appropriate tariff” after issue of the Tariff Order. The main intension behind this was that whenever there is an introduction of a new tariff and/or change of tariff category, specific cases need to be checked for application of tariff category. **The Respondent had no information or intimation prior to 30.10. 2021, that the Appellant 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 10.11.2021 after receiving the application, and it was only then that the hospital use was confirmed for the first time.

9. The original connection was in the name of “Anila B. Mehta”, without even a mention of the word “hospital”. The original connection was for residential purpose, and an application for change of tariff category was made for the first time only on 30.10.2021. Hence, the claim of refund for tariff difference from May 2021 to Oct. 2021 does not stand on merit.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




10. Further, the permission issued by Panvel Municipal Corporation is in the name of one Prafful Vishwanath Patil in respect of “Spandan Multispecialty Hospital & ICU” from 03.05.2021 on the said premises. However, it seems that the Hospital is run by Sujay Bhirud, partner of Spandan Multispecialty Hospital, who is the Appellant in the present case. There is no clarity of the relation between Prafful Vishwanath Patil and Sujay Bhirud.

11. The Forum has rightly analysed the case and hence no interference is needed in the order of the Forum. This authority has already decided several cases involving the same issue of the tariff category applicable to hospitals. The Appellant has unnecessarily and hastily filed this representation leading to unnecessary waste of administrative time and resources.

12. The Forum’s order is upheld, and the instant Representation is disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

