

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 91 OF 2021

In the matter of change of tariff category and retrospective recovery

Blueridge Unit C1Appellant
(Tower No.20 to 23 CHS Ltd.)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., MSEDCLRespondent
(Ganeshkhind Urban Circle, Pune)

Appearances:

Appellant : Dinesh Barhate, Representative
Respondent : Satish D. Rajdeep, Superintending Engineer


Coram: Deepak Lad

Date of hearing: 3rd February 2022

Date of Order : 10th February 2022

ORDER

This Representation is filed on 20th December 2021 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 22nd October 2021 passed by the Consumer Grievance Redressal Forum, Pune (the Forum).


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Secretary
Electricity Ombudsman Mumbai



Preamble:

The Appellant was being billed at HT VI: HT - Group Housing Society (Residential) from December 2016. The Respondent then corrected its mistake by changing the tariff category to LT I (B): LT – Residential LT1 from the month of September 2020 through system. However, the Respondent issued supplementary bill of Rs.81,35,660/- on 07.09.2020 towards tariff difference for the period from December 2016 to July 2020. This bill was again revised to Rs.87,21,495/- on 10.11.2020. The Appellant filed the grievance application for Interim Relief with the Forum on 19.11.2020.

The Forum by its Interim Order dated 25.01.2021 has partly allowed the Interim Relief. The operative Part of the Interim Order is as below:

- “b) The consumer is directed to pay the 50% of the disputed bill amount i.e., 50% Rs.87,21,495/- i.e. Rs.43,60,747/- within 7 days from the date of issue of this order, together with the current bills to be paid regularly.*
- c) On deposit of the said 50% of the disputed amount as above alongwith current bill, the grievance of the consumer would be heard as per scheduled date of hearing which will be communicated to the parties to the grievance separately in detail.*
- d) Pending final order in the dispute / grievance of the consumer, the Respondents are directed to follow the present interim order as above against disconnection of the supply of the consumer.”*


The Complainant, personally, approached this office and explained that it is not possible for it to pay such a huge amount of Rs. 43,60,747/- against the Interim Order dated 25.01.2021 within 7 days in one lumpsum and requested for some relief on this account. The undersigned on dated 28.01.2021 issued following directions: -

- “(a) Rs.25,00,000/- as per the Forum’s Interim Order.*
- (b) The balance amount to be paid in two monthly instalments.”*

The Forum by its order dated 17.02.2021 directed the Complainant to approach the Internal Grievance Redressal Cell for its grievance.

The IGRC, by its order dated 10.03.2021 has directed as below:

“As per MERC tariff orders and relevant MSEDCL circulars, the tariff of the consumer was corrected from HT-VI to LT-I i.e. LT Residential category and supplementary bill issued


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accordingly with retrospective effect from Dec-2016. The said supplementary bill is correct. Grievance raised by consumer is rejected.”

2. The Forum, by its final order dated 26.10.2021 has partly allowed the grievance application. The Operative parts of the order which is in Marathi language is reproduced as below: -

- "È/ tÇardaraceid/07.09.2020 cerKkm +/81,35,660/- v id/06.11.2020 cerKkm +/87,21,495/- iDsbr 2016 tej uE2020 ya kal av2IceidLaehl doNhl bli r± kr-yat yæ Aahæ
- È/ samnwal a yana Aadæ deyat yæo kl, ha Aadæ paPtIpasþ ÈÈ idvsaCya Aat tÇardaras lI mihNyaCya Oøj l id/28.08.2020 Cya puIÈe24 mihNyaCyeSupplementary -Provisional Bill to words Tariff Change from HT-VI to LT-I Upav`l v taIpatæ vIj dyk tyar k+n TyacesivStr ivvr`p5 tÇardaras smj è AXyapK are `avæ
- l/ samnwal a yana Aadæ deyat yæo kl, Aadæ Çmak È Cyapna`etyar kèæya bli aci rKkm jr kml Asèa tr tÇardaraneAtirm AadæaCya A2In rahþ wr`a kèæal 50% rKkm +/43,60,747/- yatþ vj a k+n JvRt rKkm tÇardaras Aadæ paPtIpasþ 30 idvsaCya Aat tÇardaras Aada kravI/
- f/ samnwal a yana Aadæ deyat yæo kl, Aadæ Ç È Cyapna`etyar kèæya bli aci rKkm jr j aStI Asèa tr tÇardaraneAtirm AadæaCya A2In rahþ wr`a kèæ l 50% rKkm +/43,60,747/- yatþ vj a k+n JvRt rKkm tÇardaras vg; esivStr bli dæn mag`l k+n Aadæ paPtIpasþ ÈÈ idvsaCya Aat tÇardarak Dþ w+n `yavI/
- l/ samnwal a yana Aadæ deyat yæo kl, Aadæ Ç/È v È cepal n mætit n kèyas id 02.02.2021 pasþ d/sa/d/xæ6% drane tÇardaras rKkm im; èapyR deyas j babdar rahþI l"


3. Not satisfied with the order of the Forum, the Appellant has filed this representation which is taken in brief as below: -

- (i) The Appellant is an HT consumer (No. 170149045600) having Sanctioned Load (SL) of 980 KW and Contract Demand (CD) of 980 KVA at S.No.119 to 125+154+160 and Other, Phase-1, Near Cognizant, Hinjewadi, Pune. The new connection was sanctioned by the Respondent in the name of Flagship Infrastructure Pvt Ltd, vide load sanction letter dated 21.04.2016, at 22 kV Voltage level and LT1 tariff category for the common purpose of Residential Complex. The supply was released on 08.12.2016.


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- (ii) After formation of Co-operative Housing Society, the Developer handed it over to the Appellant, who then applied for change of name from Flagship Infrastructure Pvt Ltd to Blueridge Unit C1, Tower 20 to 23 CHS Ltd. Change of name has been sanctioned by the Respondent vide letter dated 11.05.2019 and has been effected from May 2019 billing cycle.
- (iii) The Respondent has made mistake in generating electricity bills with HT VI: HT - Group Housing Society (Residential) tariff category instead of LT I (B): LT – Residential LT1 tariff, as mentioned in load sanction letter.
- (iv) Being a responsible and good citizen, the Appellant has pointed the issue to the Respondent on 29.04.2019, but the Respondent has not taken its cognizance.
- (v) On 30.09.2020, the Appellant received supplementary bill of Rs.81,35,660/- towards difference of tariff change from HT VI: HT - Group Housing Society (Residential) to LT I (B): LT – Residential LT1 for the period from December 2016 to July 2020 (44 months) which is not acceptable to them. It was protested vide letter dated 06.10.2020.
- (vi) However, despite getting any relief, the Appellant received another letter from the Respondent dated 10.11.2020, stating the manual calculations made for the period December 2017 to March 2017 and March 2020 to April 2020, were wrong. After making corrections, the supplementary bill is revised and increased to Rs.87,21,495/-, which is also not acceptable.
- (vii) The Appellant filed the grievance application for Interim Relief with the Forum on 19.11.2020. The Forum, by its Interim Order dated 25.01.2021 has partly allowed the Interim Relief and directed to pay the 50% of the disputed bill amount of Rs.87,21,495/- i.e. Rs.43,60,747/- within 7 days. As the Appellant did not have such a huge amount for payment in one go, the Appellant approached Hon'ble Electricity Ombudsman (Mumbai) for grant of instalments which was graciously granted vide order dated 28.01.2021. Pursuant to this order of Electricity Ombudsman, the Appellant paid Rs 25,00,000/- on 02.02.2021 initially, Rs 9,30,374/- on 01.03.2021, and third & final instalment of Rs.9,30,373/- on 02.04.2021.


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- (viii) The Forum, by its order dated 17.02.2021 directed the Complainant to approach the IGRC for redressal of its grievance. The IGRC, by its order dated 10.03.2021 has rejected the grievance application. The Appellant then approached the Forum on 23.03.2021. The Forum, by its final order dated 22.10.2021 has partly allowed the grievance application by ordering recovery for 24 months as against 44 months prior to 28.08.2020.
- (ix) The Respondent, vide its letter dated 03.12.2021, has complied the Forum's Order dated 22.10.2021, and requested to pay the difference amount of Rs.9,84,290/-. Accordingly, the Appellant paid Rs.9,84,290/- on 12.12.2021.
- (x) The Respondent issued first supplementary bill on 30.09.2020 which came to be revised and issued on 10.11.2020. This amount is debited in monthly energy bill of December 2020 for billing period of 01.12.2020 to 31.12.2020. So, the first date of demand is 01.12.2020. The Appellant referred the order passed by the Hon'ble Electricity Ombudsman (Mumbai) in Representation No. 65, 66 and 67 of 2020 in the matter of change of tariff category and retrospective recovery.
- (xi) The Appellant prays that bill for 44 months need to be cancelled and revised bill for 24 months be issued for the period from 01.12.2018 to 01.12.2020 without DPC and interest.
4. The Respondent MSEDCL has filed its reply dated 21.01.2022 stating, in brief as below:
- (i) The Appellant is a HT consumer (No. 170149045600) having SL of 980 KW and CD of 980 KVA at S.No.119 to 125+154+160 and Other, Phase-1, Near Cognizant, Hinjewadi, Pune.
- (ii) The Appellant (Originally 'Flagship Infrastructure Pvt Ltd.') had applied for new HT power supply connection on 16.10.2015 for residential common facilities (Common Lighting area, Water Treatment Plant, Fire Plant, Lift etc.). Accordingly, the Respondent sanctioned, and released the electric connection on 08.12.2016 under LT I (B): LT – Residential LT1 Tariff Category and executed the Agreement with Appellant. But in 'NC Module 'in the billing, there was no provision of feeding LT I (B): LT – Residential LT1 tariff category directly to the


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System. It was to be corrected at back end at the time of first bill generation, but it was skipped due to oversight.

- (iii) As per Tariff Order dated 03.11.2016 of the Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 48 of 2016, and Respondent's Commercial Circular No. 275 dated 18.11.2016, the Appellant was under tariff category of LT I (B): LT – Residential LT1 but inadvertently, HT VI: HT - Group Housing Society (Residential) Tariff was applied from 08.12.2016 (i.e., date of connection).
- (iv) In accordance with Tariff Order of the Commission effective from 01.08.2012, individual residential consumers taking supply at HT voltage level is to be charged with LT I (B): LT – Residential LT1 tariff.
- (v) Further Tariff Order dated 12.09.2018 of the Commission in Case No. 195 of 2017, LT I (B): LT – Residential LT1 tariff is applicable to consumers who are supplied power at High Voltage for Government/ Private/Co-operative Housing Societies where electricity is exclusively used for common facilities such as lighting, Lifts, Parking lots, Fire Fighting Pumps, Club House, Community Hall etc.

However, the Appellant who is using power supply for common facilities of the residential buildings was wrongly billed at HT VI: HT - Group Housing Society (Residential) tariff instead of LT I (B): LT – Residential LT1 tariff since the date of connection. Hence as per Govt. Audit Para, it is proposed to recover the tariff difference between HT VI: HT - Group Housing Society (Residential) and LT I (B): LT – Residential LT1 tariff for the period since 08.12.2016 (Date of connection). Further, it is found necessary to change the tariff of consumer as LT I (B): LT – Residential LT1 tariff from HT VI: HT - Group Housing Society (Residential) since next billing cycle.


- (vi) It is submitted that as per the Regulation No.13 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 (Supply Code Regulations 2005), the distribution license may classify or reclassify a consumer into various Commission approved tariff


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categories based on the purpose of supply. Accordingly, considering the usage of electricity by the consumers for common connection for Residential Purpose as per tariff orders of the Commission in force.


- (vii) The Respondent issued provisional bill of Rs.81,35,660/- on 28.08.2020 towards tariff difference from HT VI: HT - Group Housing Society (Residential) to LT I (B): LT – Residential LT1 Tariff category for the period from December 2016 to July 2020 and confirmed the same on 07.09.2020 to the Appellant.
- (viii) The Appellant was also requested through telephonic conversation that according to Government audit para, tariff of Appellant was changed from HT VI: HT - Group Housing Society (Residential) to LT I (B): LT – Residential LT1 tariff has been changed and supplementary bill from date of connection to July 2020. Afterwards, request was made to the Appellant to make the payment of the same within 15 days as per supplementary bill. The Appellant visited the Respondent office and requested to provide the worksheet of tariff difference. Accordingly, this office provided a sample copy of online bill revision calculation on email.
- (ix) However, the earlier bill was further revised to Rs. 87,21,495/- and has been issued to the Appellant vide letter dated 10.11.2020.
- (x) Further, the Appellant filed case before the Forum on 19.11.2020 wherein Forum had passed an Interim Order on 25.01.2021 and directed the Appellant to deposit 50% amount of said assessment bill, and further on 17.02.2021 directed to approach the IGRC. Hence, Appellant filed complaint before IGRC on 26.02.2021 and IGRC ordered on 10.03.2021 that, *"as per MERC tariff orders and relevant MSEDCL circulars, the tariff of the Appellant was corrected from HT-VI to LT Residential category and supplementary bill issued accordingly with retrospective effect from Dec-2016. The said supplementary bill is correct. Grievance raised by Appellant is rejected."*
- (xi) Being aggrieved by the said order of IGRC, the Appellant filed grievance before the Forum on 23.03.2021 wherein the Forum has passed an order dated 22.10.2021. The Forum has allowed the Respondent to make recovery from the


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Appellant for 24 months prior to 28.08.2020. Accordingly, bill was issued to the Appellant.

- (xii) It is admitted by the Appellant that they are ready to pay supplementary bill amount for the period of only 2 years, but as per Appellant request that period of recovery may be calculated for 24 months prior to 01.12.2020. However, it is humbly submitted that, as per the Spot Verification Report, the tariff of the said Appellant i.e., HT-VI to LT-I has been changed in the month of September 2020. Therefore, tariff for the month of September, October, November, and December 2020 have been already changed from HT-VI to LT-I. Therefore, the prayer of Appellant regarding recovery should be charged from the date of 01.12.2020 may not be considered.
- (xiii) The Hon'ble Supreme Court has given Judgment in Civil Appeal No. 1672 of 2020 wherein the issue regarding meaning to the term "first due" in Section 56 (2) of the Electricity Act, 2003 (the Act), the Hon'ble Supreme Court has stated in para No. 6.6 of the said judgment that, the liability to pay arrears on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become "first due" only after the bill is issued to the Appellant, even though the liability to pay may arise on the consumption of electricity.
- (xiv) Further, the Hon'ble Supreme Court has stated regarding limitation of two years provided in Section 56 (2) of the Act would be applicable to an additional or supplementary demand. Thus, in para No. 7.3 clearly mentioned that Sub Section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity if the Appellant neglects to pay the electricity dues. The statutory right is subject to the period of limitation of two years provided by Sub Section (2) of Section 56 of the Act. Which means that the period of limitation mentioned under the Sub Section (2) of Section 56 of the Act is only for the disconnection of electricity of the Appellant who neglects to pay the electricity dues and not for the recovery of arrears amount from the Appellant.


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- (xv) As far as recovery of amount for more than two years is concerned, the Hon'ble Supreme Court has stated in para No. 8 of the said Judgment that Section 56 (2) however, does not preclude the licensee company from raising a supplementary demand after expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.
- (xvi) Further, submitted that the period of limitation is concerned, the same will commence from the date of discovery of mistake. As per Section 17 (1) (c) of the Limitation Act, 1963 in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.
- (xvii) In the present case the mistake i.e. applicability of wrong tariff has been discovered when Govt. Auditor's Audit Enquiry on 11.03.2020 and therefore as per Limitation Act, MSEDCL may take recourse to any remedy available in the law for recovery of additional demand. Therefore, as per the Judgment of the Hon'ble Supreme Court, MSEDCL is entitled to recover an amount of supplementary bill given to the Appellant by way of filing of recovery suit against the said Appellant before the Competent Court having jurisdiction.
- (xviii) Thus, in light of the above facts, information and the Judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020, the MSEDCL can issue supplementary bill for the period preceding the date of discovery of mistake and can recover the said supplementary bill by availing any remedy available in the law for recovery of additional demand. In the present case, supplementary bill given to the Appellant is as per the Commission's tariff orders and relevant MSEDCL circulars and the same is correct.
- (xix) Further kindly submitted that in the light of judgment passed by the Hon'ble Supreme Court of India in Civil Appeal No.1672 of 2020 the amount of Rs.88,56,117.80 for the period of December 2016 to August 2020 is legally recoverable from the Appellant. The amount recoverable from the Appellant for


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tariff difference is of Rs. 88,56,117.80, because earlier revised supplementary bill dated 10.11.2020 was given for the period of December 2016 to July 2020 and tariff of the said Appellant was changed in the month of September 2020, therefore, amount of tariff difference for the month of August 2020 which was skipped while calculation of revised supplementary bill has been debited in the energy bill month of December 2020 (Rs. 87,21,495/for revised supplementary bill period December 2016 to July 2020 + Rs. 1,34,622.80 for tariff difference for the month of August 2020 is amounting to Rs.88,56,117.80).

- (xx) The Respondent submits that, being aggrieved by the above said order of the Forum, it has filed Writ Petition ST No.23678/2021 before the Hon'ble High Court, Bombay on 03.12.2021, to set aside the order of the Forum and allow recovery for the entire period. The same is pending till date. The copy of the current status of the matter from the official website of Hon'ble High Court is put on record.
- (xxi) Therefore, it is humble submission before this Hon'ble Electricity Ombudsman, Mumbai that, the present Representation may please be rejected and requested to give necessary direction to the Appellant to pay the entire amount of tariff difference in this matter.

Analysis and Ruling

5. Hearing was conducted on e-platform on 03.02.2022 through video conferencing due to Covid-19 Epidemic. Both the parties argued their sides. The Respondent admitted that it has challenged the order issued by the Forum by filing a Writ before the Hon'ble Bombay High Court on 03.12.2021.

6. After perusing the documents on record, particularly, the web page document of the Hon'ble Bombay High Court, which is submitted by the Respondent, in support of having filed a Writ, it is not understood when it has filed the Writ challenging the order of the Forum. It is also not understood that how come the Respondent prays before the undersigned in the instant


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Representation for setting aside the order of the Forum, and allow the recovery for the entire period.

7. In this case, it is necessary to refer Regulation 17.9 (e) of the CGRF & EO Regulations 2006 which is quoted below:

“The Electricity Ombudsman shall not entertain a representation:

(a).....

(b).....

(c)

(d).....

(e) Where the representation by the consumer, in respect of the same Grievance, is pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;


(f).....

(g)”

Similar provision exists in Regulation 19.22 (g) of the CGRF & EO Regulations 2020.

8. In view of the above, the undersigned cannot entertain the instant Representation and the Representation stands disposed of accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


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