BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION 95 OF 2019

In the matter of refund of tariff difference

Dr. Sanjay Barnawal ..... Appellant
(Satyam Multispecialty Hospital)

V/s.

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

For Appellant : Pranab T. Shende, Representative

For Respondent : M. V. Suryatal Addl. Ex. Engineer, Panvel

Coram: Deepak Lad

Date of Order: 24th May 2019

ORDER

This Representation is filed on 29th March 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 *(CGRF Regulations)* against the Order dated 26th February 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone *(the Forum)*.

2. The Forum, by its Order dated 26th February 2019 has dismissed the grievance.

3. Not satisfied with the Order of the Forum, the Appellant has filed this representation stating in brief as below: -

(i) The Appellant is a multispecialty hospital having connection in the name of Dr. Sanjay Barnawal from 18th June 2010 at Kalamboli. The Appellant was billed LT-II-Commercial tariff initially.

(ii) The Maharashtra Electricity Regulatory Commission (*the Commission*) created new tariff category as per its Tariff Order dated 16th August 2012 in Case No. 19 of 2012, called as Public Services for hospitals and dispensaries, etc. The Appellant consumer was therefore liable to be charged LT – X Public Services tariff category.

(iii) The Appellant made application on 28th July 2016 for change of tariff category with retrospective effect since the installation of commercial meter. The Respondent inspected the premises and thereafter changed the category into Public Services from November 2016. The Respondent however did not refund tariff difference from August 2012 with interest as per section 62(6) of the Electricity Act 2003 (*the Act*).

(iv) The Appellant made second application on 28.11.2017 requesting refund tariff difference with interest for 24 months from the date of first application which was submitted on 28.07.2016. The Respondent did not refund the retrospective tariff difference.

(iv) The Appellant filed the grievance application in Internal Grievance Redressal Cell (IGRC) on 28.02.2018. The IGRC by its order dated 16.05.2018 has directed to change the tariff from its date of application i.e. July 2016.

(vi) The Appellant approached the Forum on 01.11.2018 against the IGRC Order. The Forum by its Order dated 26.02.2019 has dismissed the grievance.

(vii) The Appellant has prayed for refund of tariff difference for 24 months prior to the first application dated 28.07.2016 along with the interest.

4. The Respondent MSEDCL has filed reply by letter dated 22.04.2019. The Respondent has stated as below: -

(i) The Appellant is a consumer from 18.06.2010 and was billed commercial tariff initially. The Appellant was billed in Public Service category from November 2016.

(ii) The Appellant applied for public service tariff on 28.11.2017 for refund of retrospective tariff difference for 24 months prior to date of its first application. Since the tariff was already changed to Public Services in November 2016, the claim for refund of tariff difference was rejected being time barred.

(iii) The Appellant filed the application in IGRC on 28.02.2018. The IGRC by its order dated 16.05.2018 directed to change the tariff as Public Services from its date of application i.e. July 2016.

(iv) The Appellant approached the Forum on 01.11.2018. The Forum by its order dated 26.02.2019 has dismissed the grievance of the Appellant as the claim was time barred. Hence, the representation of the Appellant be rejected.

5. During hearing Mr. Shende, Representative stated that he has filed rejoinder on behalf of the Appellant. As per section 62(6) of the Electricity Act, 2003, if a licensee recovers a price or charge exceeding tariff determined under this section, the excess amount is recoverable along with interest by the person who has paid it. The Appellant consumer was therefore liable to be charged LT – X Public Services tariff category as per the tariff order of the Commission. This was not done by the licensee. The Appellant made a first application on 28.07 2016 and second application on 28.11.2017 for change of tariff category. The Respondent has changed the tariff from November 2016. As per the order of the IGRC, the complaint of the Appellant is totally allowed, and tariff change is permitted from July 2016. However, no retrospective tariff difference for 24 months was refunded. The Appellant approached the Forum which dismissed the case stating the claim being time barred. In Representation 258, 271 of 2018 and 42 of 2019 and in similar other cases decided by the Electricity Ombudsman (Mumbai), relief has been granted by directing refund of 24 months prior to date of application made to the licensee. The Appellant is therefore entitled for tariff difference of further period of 23 months

from August 2014 to June 2016. Mr. Shende further submitted that the Appellant would not claim interest on the refundable amount.

6. The Respondent MSEDCL on the other hand, argued in line with their written reply. The Forum by its order dated 26.02.2019 has rightly dismissed the grievance of the Appellant considering the views taken in Regulation 6.6 of the CGRF Regulations. The Appellant approached the Forum on 01.11.2018 and hence the period of retrospective tariff difference as per first application of July 2016 is time barred. The Appellant prayed that the representation of the Appellant be dismissed.

Analysis and Ruling: -

7. Heard the parties and perused the documents on record. The Appellant having power supply connection for Multispecialty Hospital in the name of Dr. Sanjay Barnawal. The Appellant at the relevant time was billed as per LT-II Commercial tariff in accordance with the tariff order then in force. The Commission in its Tariff Order dated 26.06.2015 in Case No. 121 of 2014 has categorized LT X: LT- Public Services into LT-X(A): LT–Public Services–Government Educational and Hospitals and LT X (B): LT–Public Services–Others. The LT X (B): LT–Public Services–Others reproduced as below: -

> ***"LT X (B): LT - Public Services - Others***
>
> *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).***

This tariff order was made effective from 1st June 2015.

8. The Commission thereafter issued tariff order in Case No. 48 of 2016 dated 3.11.2016 wherein the above tariff category and its applicability remained unchanged. The Respondent however did not change the tariff category into LT X (B) at its own, post issue of the tariff order. However, the Respondent MSEDCL changed tariff category to LT X (B) on submission of the application by Appellant.

9. The Appellant applied on 28.07.2016 for retrospective tariff difference for 24 months prior to the date of its first application and reminded on 28.11.2017. The tariff of the Appellant was already changed to Public Services in November 2016. The Appellant filed grievance in IGRC which by its order dated 16.05.2018 has directed to change the tariff to public services from its date of application i.e. July 2016. The Appellant approached to the Forum on 01.11.2018. The Forum by its order dated 26.02.2019 has dismissed the grievance of the Appellant. The Forum in its order has observed as below: -

"The Regulation 6.6 of MERC regulations is very specific and settled position of law .The applicant has not filed his grievance before Forum within 2 years from actual cause of action. It is crystal clear the Grievance of the applicant is time barred. Hence I proceed to pass following order.

ORDER

This application 212 / 2018 here by dismissed"

The retrospective period of 24 months prior to date of filing the application to the Forum has started from 01.11.2016 as per Regulation 6.6 of the CGRF Regulations. The IGRC by its order 16.05.2018 has already given effect of public service tariff from July 2016. The further period as per first application dated 28.07.2016 is time barred and hence the Forum has dismissed the grievance.

Electricity Ombudsman Mumbai M.E.R.C.

The Appellant has referred orders of the Electricity Ombudsman (Mumbai) in Representation 258 and 271 of 2018 and 42 of 2019. Similarly, he has also referred order of the Electricity Ombudsman (Nagpur) in Representation 100 of 2015. After perusal of these citations, I noticed that the Regulations 6.6 has not been evoked in these cases. However, the Forum has adjudicated the Appellant's case in accordance with Regulation 6.6. The citations referred by the Appellant do not apply in this case. It has also cited W.P. No. 3997 of 2016 of Bombay High Court, Bench at Nagpur. On the contrary, I believe that the instant representations squarely fall in line with the judgment in W. P. No. 6859, 6860, 6861 and 6862 of 2017.

10. In view of the above I do not find it necessary to interfere with the order of the Forum. The Representation is therefore rejected. No order as to cost.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)