

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO. 15 OF 2021

IN

REPRESENTATION NO. 50 OF 2021

In the matter of change in tariff category

Nathulal Dangi (User)..... Review Applicant
(Shantaram D. Bhoir – Consumer)

V/s.

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

Appearances:

Applicant : Suraj Chakraborty, Representative

Respondent :1. S. D. Gaikwad, Executive Engineer, Nerul Dn.
2. M.K. Sangle, Executive Engineer (Adm.), Vashi

Coram: Deepak Lad

Date of hearing: 6th October 2021

Date of Order : 7th October 2021

ORDER

This Review Application is received on 22nd September 2021 by email under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) for review of the Order dated 24th August 2021 in Representation 50 of 2021 passed by the Electricity Ombudsman (Mumbai).


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Secretary
Electricity Ombudsman Mumbai



2. The Electricity Ombudsman (Mumbai), by its order dated 24th August 2021 has disposed of the Representation No.50 of 2021 with the direction as below:

“(a) The Respondent is directed to effect the change in tariff category as requested by the Appellant strictly as per the provision of Regulation 4.13 of the SOP Regulation 2014.”

3. Aggrieved by this order dated 24.08.2021, the Applicant has filed this Review Application which in brief is as below:

- (i) The Applicant is LT Industrial Consumer (No. 000280052060) which stands in the name of Shantaram D. Bhoir at Plot No. PAP -D- 158, TTC Industrial Estate, Shiravane. The Applicant is a tenant and using power for his ice-cream manufacturing process.
- (ii) The order of the Electricity Ombudsman speaks about payment of charges towards change of tariff category. However, Schedule of Charges Circular issued by the Respondent on 07.04.2020 does not provide for such charges. The charges for change of tariff category were never applied by the Respondent previously.
- (iii) The Applicant referred the order passed by the Electricity Ombudsman (Mumbai) in Representation No. 133 of 2019 in Case of Subhash Vithal Kanekar ((Contacare Ophthalmic Pvt. Ltd.- User) V/s MSEDCL where the retrospective tariff refund is allowed.
- (iv) The Respondent issued Commercial Circulars for implementation of tariff orders issued by Maharashtra Electricity Regulatory Commission (Commission) from time to time. It is the prime responsibility of the Respondent to inspect the premises and apply proper tariff. However, the Respondent failed to do so. Hence, the benefit goes in the favour of the Applicant. He is eligible for industrial tariff from last about eight years.
- (v) The registered agreement of the Applicant itself is concrete proof that he is using premises for manufacturing ice creams for past 8 years. Also, the Flying Squad report 2019 clearly mentioned about machinery of production and activity of ice cream. It is the duty of the Respondent to verify the consumer, whenever the new tariff or changes in tariff order. On this ground, the refund should be allowed.


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- (vi) It is therefore prayed that the retrospective refund should be allowed as per 56(2) of the Electricity Act, 2003 (the Act) from the date of application in interest of justice.

4. The Respondent filed its reply dated 05.10.2021 by email stating as under: -

- (i) At the very outset, the Respondent denies all and singular allegations, statements and contentions made in the Review Application to the extent that the same are contrary to and/or inconsistent with what is stated herein. Further, nothing shall be deemed to have been admitted merely because the same may not have been dealt with specifically and/or traversed seriatim.

Brief History & Facts:

- (ii) The Applicant, Mr. Nathulal Dangi is a tenant at the premises where the connection in the name of Shantaram Dharma Bhoir having Consumer No. 000280052060 exists since 06.04.2013. This connection is at Plot No. Pap-D-158, TTC Industrial Estate, Shirvane Navi Mumbai. The Applicant has filed Review Application No.15/2021 against the order passed in Representation No 50/2021.
- (iii) Applicant approached the Forum on 01.12.2020 which dismissed the grievance stating that

“CGRF has Perused and heard both sides and gone through the records, it appears that in this matter there was the offense to place under section 135 of Indian Electricity Act 2003, further it appears that this case was compounded between the parties for the total amount Rs.2,40,000/- but the compounding amount of Rs.2,40,000/- was not deposited or paid by the Appellant consumer to the respondent, therefore it cannot be held that case is compounded and disposed of. The offense of the under section 135 of Indian Electricity Act 2003 is exclusively trial able by Court of Session and therefore up to the disposal of this case under section 135 of Indian Electricity Act 2003, this CGRF has no jurisdiction to give any verdict on the point of arrears, non-payment or tariff category as commercial or industrial etc”.

- (iv) Aggrieved with this order, the Applicant filed the Representation No. 50 of 2021 before the Hon'ble Electricity Ombudsman. Accordingly, order was disposed on 24.08.2021 with the following directions:

“a) The Respondent is directed to effect the change in tariff Category as requested by the Appellant strictly as per the provision of Regulation 4.13 of the SOP Regulation 2014.


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b) *The Respondent to submit the compliance within two months from the date of issue of this order.*”

(v) Reply on merits: -

- 1) Regulation 4.13 of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014) provides for payment of charges towards change of name and change of tariff category. However, there is no such provision in the Circular dated 07.04.2020 issued by the Respondent for various services provided as per Schedule of Charges. Hence, no charges are recovered from the Applicant. However, there appears to be mention of charges in the impugned order probably due to oversight.
- 2) The Respondent submits that as claimed by the Applicant for retrospective refund towards tariff difference as per Section 56 (2) of the Act, it is brought to the notice of the Hon’ble Electricity Ombudsman that Section 56 deals with the disconnection of supply due to default in payment. The matter currently in discussion is of change of tariff and hence, any claim of refund from the Applicant under this section may be denied.
- 3) The Respondent submits that the claim of the refund of the Applicant on the basis of the registered agreement of consumer that he is using premises for manufacturing ice creams from past 8 years may be denied. Further, the Respondent submits that the past use of premises cannot be ascertained from the agreement. The said consumer was caught in theft of electricity & booked under Section 135 of the Act. Accordingly, F.I.R. is lodged against the Applicant of which he failed to pay the compounding charges of Rs.2,40,000/- and criminal case is in process in the Court of Law. Based on the above, the Respondent submits to the Hon’ble Electricity Ombudsman to deny any claim of refund to the Applicant.
- 4) The Respondent has followed the order dated 24.08.2021 issued by the Hon’ble Electricity Ombudsman. The Applicant has not brought anything new which he was not aware of during the original proceeding, nor did he point out any error


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on the face of the record in the impugned order. The Review Application is nothing short of repetition of the original representation.

5) It is, therefore, prayed that the Review Application be dismissed.

5. The hearing was conducted on 06.10.2021 on e-platform through video conferencing due to Covid-19 epidemic. The Applicant argued that Schedule of Charges does not prescribe any charges to be paid for change of tariff. He further argued that the Respondent on being approached said that the impugned order is not clear. In many similar cases, relief under Section 56 (2) of the Act towards recovery for 24 months has been awarded by the Electricity Ombudsman. The same principal may be followed in this case and hence, it is necessary to review the order.

6. The Respondent on the other hand said that the impugned order is reasoned and speaking one and there is no need to review.

Analysis and Ruling

7. At the outset, I am at pains to point out that both the parties without understanding the impugned order have made their respective submissions with respect to noting at para 6 in the impugned order on payment of certain fees towards change of tariff category applied for by the Respondent. To cap it all, the Respondent says that there is a possibility of mistake through oversight that crept into the impugned order. Both the parties are absolutely wrong which will be very clear on the plain reading of Regulation 4.13 of the SOP Regulations 2014, and the relevant paragraph of the impugned order which are quoted below:

*“4.13 The Distribution Licensee shall intimate the charges to be borne by an applicant for change of name and **change of tariff category** within seven (7) days of receipt of an application in this regard and shall give effect to it within the following time limits: —*

(a) change of name shall be effected within the second billing cycle on receipt of an application and payment of necessary charges.

(b) change of category for use of supply in reference of Tariff schedule shall be effected within the second billing cycle on receipt of application and payment of necessary charges.”

(Emphasis added)


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This Regulation clearly states that charges to be collected shall be intimated for change of tariff category. It is a different matter that it is not in the Schedule of Charges Circular of the Respondent. Further, the relevant portion of paragraph 6 of the impugned order states that:

“I am surprised how the Respondent has assured to apply new tariff category from the date of application itself without verification of date of payment, etc. because it has not been made clear by both the parties as to when demand note for payment of requisite charges (as may be applicable) was issued and payment made by the Appellant.” (Emphasis added)

If this paragraph is read with the Regulation 4.13, it is clear that if charges are stipulated, same should be recovered inter-alia it means that if it is not prescribed, no need to recover. It is a simple English which was not properly understood and appreciated by both the parties.

8. The Review Applicant has stressed for refund towards tariff difference from Commercial to Industrial for past 8 years on the strength of the Registered Leave & Licence Agreement dated 13.12.2017 (submission of the Review Applicant at para 3 (v) above). It is not understood how the Review Applicant is claiming refund for 8 years when the registered document which is relied upon is registered on 13.12.2017. Therefore, there is no cohesiveness in submission of the Review Applicant.

9. The Review Applicant does not appear to have read this agreement too because this L&L Agreement nowhere speaks about the activity of Ice-cream manufacturing. On the contrary, it specifically states about the Commercial activity. In this regard, Clause 3 & 4 on page 3, and Clause 5 on page 5 are valid testimony to the activity being Commercial. These Clauses are quoted below: -

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“3. THE LICENSOR has good right, title, full power and absolute authority to give on Leave and License basis the SHOP / OFFICE / GALA to the LICENSEE.

*4. Based on the above declaration and assurances of the LICENSEE and the LICENSOR relying on the same, the LICENSOR has agreed to grant to the LICENSEE and the LICENSEE has agreed to take by way of License the right to use the SHOP / OFFICE / GALA for **Commercial purposes** on Leave and License basis subject to the terms and conditions agreed by and between the parties hereto.” (Emphasis added)*


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“5) That the SHOP / OFFICE / GALA shall be used for Commercial purpose only. Nothing in this clause shall be construed as permitting any other use and occupy the said SHOP / OFFICE / GALA for any other person/s.” (Emphasis added)

The above Clauses leave no room to interpret that the premises was being used for Industrial purpose, therefore, this Leave & Licence Agreement is of no help to the Review Applicant. Besides this, it must be understood that prior to the Review Applicant occupying the premises, the tariff applicable to the then occupier’s activity was Commercial. The Review Applicant ought to have taken an appropriate call on its activity vis-à-vis the tariff applicable. The Appellant remaining dormant pretty long, and all of a sudden asking for Industrial tariff with retrospective effect is not in the fitness of things. Moreover, the Review Applicant is casting liability on the Respondent to have changed the tariff by taking recourse to the tariff Circular of the Respondent. This Circular is in different context and does not deal with the cases if the consumer flip flops its business activity without intimating the Respondent.

10. Moreover, the Review Applicant failed to bring any new issue which he was not aware of during the proceedings in the impugned order, and he further failed to point out any error on the face of record, which is a necessary requirement of Regulation 22 of the CGRF Regulations 2020 for review of the order. Therefore, the Review Application is rejected.

11. While parting with the order, it is necessary to bring out to the notice of both the parties that they should be careful in future before making any submission in new cases that may come in future.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

