

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 195 OF 2019

In the matter of refund of tariff difference

Ekdant Heritage Co-operative Housing Society Appellant

V/s

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

Appearances

For Appellant : Ramchandra N. Londhe

For Respondent : Rahul K. Gaware, Executive Engineer, Bhosari


Coram: Deepak Lad

Date of Order : 6th January 2020

ORDER

This Representation is filed on 13th November 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 9th September 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL, Pune Zone (the Forum).


2. The Forum, by its Order dated 9th September 2019 has dismissed the consumer complaint No. 42 of 2019.


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3. Aggrieved by the order of the Forum dated 09.09.2019, the Appellant has filed this representation stating in brief as below: -

- (i) The Appellant, Ekdant Heritage Co-op. Housing Society Ltd., is a residential complex having 48 flats. There are three wings namely A, B and C. Each wing having three phase connections with sanctioned load of 5 KW for common use like lift, water pump, and common lightings from 15.10.2010 which are as below: -
 - a) A wing - Consumer No. 170100006670.
 - b) B wing - Consumer No. 170100006840.
 - c) C wing - Consumer No. 170100006505.
- (ii) The Appellant was levied Commercial tariff though it is used for residential purpose. The connections were released before formation of the Society. The Society is registered on 09.06.2011.
- (iii) The Appellant pointed out to the Respondent about the wrong applicability of tariff and submitted application on 03.08.2011 for change of tariff category from Commercial to Residential with retrospective effect along with supporting documents of registration of the Society. The Appellant again reminded vide letter dated 02.10.2015 for change of tariff category retrospectively.
- (iv) The Respondent changed the tariff category in the bill of September 2015 for Consumer No. 170100006670 and No. 170100006840 for A and B wing respectively. The Appellant further reminded vide letter dated 15.02.2018 for change of tariff category for Consumer No. 170100006505 for C Wing as well as retrospective refund for all three connections.
- (v) The Respondent changed the tariff category for Consumer No. 170100006505 i.e. for C Wing in March 2018.
- (vi) The change of tariff category for all three connections were done prospectively, however, no refund was given towards retrospective period.
- (vii) Since the Respondent did not resolve this issue, the Appellant filed grievance application in the Internal Grievance Redressal Cell (IGRC) on 16.4.2019 and the IGRC by its order dated 18.06.2019 rejected the grievance. Then it approached the Forum on 05.07.2019, however the Forum, by its Order dated 09.09.2019 dismissed the grievance. The Forum did not understand the basic issue of cause of action.


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- (viii) The cause of action is continued from 2011 till date as the Appellant has put up the grievance continuously to the Respondent from 2011 onwards with regular interval. Therefore, the Appellant is entitled for refund of tariff difference from date of supply of the three connections.
- (ix) The Appellant prayed that the Respondent be directed to refund tariff difference retrospectively from 25.10.2010 onwards as applicable.

4. The Respondent MSEDCL has submitted reply by letter dated 05.12.2019 stating in brief as under: -

- (i) The Appellant is a residential complex at Plot No. 22, Sector 20, Krushna Nagar, Chinchwad. The Appellant has filed this representation in respect of its three connections which are used for common purpose of the Society.

Consumer No.	Details	Supply Date	Sanctioned load (KW)	Billing started as per Residential Tariff Category	Remarks
170100006670	A Wing	25.10.2010	5	Sept 2015	Common use
170100006840	B Wing	25.10.2010	5	Sept 2015	Common use
170100006505	C Wing	25.10.2010	5	Sept 2015	Common use

- (ii) The Appellant has filed application for the first time on 02.10.2015 for change of tariff category from commercial to residential for the three connections as tabulated above. The tariff category of all three wings was changed to residential from September 2015 prospectively.
- (iii) The tariff category of C Wing (No. 170100006505) again billed under Commercial Tariff Category from November 2016 to March 2018. The electric installation was inspected and the tariff difference from Commercial to Residential was refunded for an amount of Rs. 6362.66 for the said period i.e. November 2016 to March 2018. The said Appellant is being billed under residential tariff category from April 2018 onwards.



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- (iv) The claim of Appellant stating that the application for residential tariff was made in the year 2011 is not correct. There is no such application on record of the Respondent as well as the Appellant did not show any such inward documents.
- (v) The Appellant is billed for residential tariff prospectively as per Regulation 4.13 (b) of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations).
- (vi) The Respondent prayed that the representation of the Appellant be rejected.

5. The hearing was held on 11.12.2019. During hearing, the Appellant and Respondent argued in line with their written submissions. The Appellant argued that it had pointed out about the wrong applicability of tariff by application on 03.08.2011 and requested for change of tariff category from Commercial to Residential with retrospective effect. The Respondent changed the tariff from September 2015 onwards prospectively. Hence, the Appellant reminded time and again for retrospective effect and this cause of action continued from 2011 till date with regular follow up. Since this is continuous action, the Appellant is entitled for refund of tariff difference from date of supply of the three connections. The Appellant prayed that the Respondent be directed to refund tariff difference retrospectively from 25.10.2010 onwards as applicable.

6. The Respondent stated that the case squarely falls under Regulation 6.6 of the CGRF Regulations since the Appellant need to file case with the Forum within two years from the cause of action. The Appellant filed the case with the Forum on 05.07.2019 i.e. in July 2019. Therefore, the cause of action of two years prior to July 2019 i.e. the period from August 2017 to July 2019 is realistic. He further submitted that from September 2015 onwards, the Appellant is billed in residential tariff category. The commercial tariff applied for C Wing for the period November 2016 to March 2018 is also refunded in the bill of April 2018. In short, residential is applied from September 2015 for all three connections. The Appellant has created a fabricated case from 2011 onwards for refund. Hence, the claim of the Appellant is not tenable. The Appellant pointed out that the connections of common use were taken by the builder. The connections might be used for construction purpose hence the commercial tariff


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might have been applied. The Forum has dismissed the case under Regulation 6.6 of CGRF Regulations. Therefore, the representation be also dismissed on the same grounds.

Analysis and Ruling

7. Heard the parties. I perused the documents on record. I am convinced that the Respondent has changed the tariff category from commercial to residential of all three connections in the month of September 2015 as per the Consumer Personal Ledger. It appears that from November 2016 to March 2018, Consumer No.170100006505 of C Wing was billed at commercial tariff, however, it was refunded in the bill of April 2018. Considering all these aspects, the Respondent has billed the Appellant in residential category from September 2015 onwards effectively. The Appellant approached the grievance mechanism in 2019 for the first time. It is expected that the consumer should approach the IGRC in a reasonable period though there is no such limit provided under the Regulations. This needs to be harmoniously read with Regulation 6.6 which ultimately puts two years limitation period for CGRF to admit the case. This principle, and logic is upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon. Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs.


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Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the


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representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”


8. I noted that the Appellant approached the Forum on 05.07.2019 whereas it has prayed for refund of tariff difference from commercial to residential tariff category for the period starting from 25.10.2010 onwards. The Respondent changed the tariff category from September 2015. The instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations as the period of relief is not within the limit of two years prior to date of filing the application with the Forum i.e. 05.07.2019 The said Regulation is quoted below:-

“The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen.”

9. In view of the above discussions, I am of the considered view that the Forum has rightly decided the case in view of the provisions of Regulation 6.6 and therefore there is no need to interfere with the order of the Forum.

10. Hence, the Representation is rejected.

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


(Dilip Dumbre)
Secretary
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