

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 189 OF 2022

In the matter of change of Tariff Category and refund thereof

Dr. Khalid Umarkhan Deshmukh Appellant
(Noble Care Multispecialty Hospital)

V/s.

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

Appearances:

Appellant : Pranab Shende, Representative
Respondent : R. J. Patil, Addl. Executive Engineer


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 19th January 2023

Date of Order : 3rd February 2023

ORDER

This Representation was filed on 15th December 2022 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 17th October 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


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2. The Forum, by its order dated 17.10.2022 has partly allowed the Grievance Application No.20 /2021-22. The operative part of the order is as below: -

“2. The Respondent is directed to refund the difference of tariff amount since date of application till actual date of the change of tariff of the Applicant.

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 held on 19.01.2023 through Video Conference. Both the parties were heard at length. The Appellant’s written submission and arguments in brief are stated as below: -

- (i) The Appellant prays that the tariff category of the Appellant be changed to “Public Services-Others” from 24.05.2019, and to refund the tariff difference along with interest.
- (ii) The Appellant is a LT Consumer (No. 028652899996) from 02.05.2006 with Sanctioned Load (SL) of 3 KW at Office-001, 1st Floor, Mehta Coop. Housing Society, Near Sebastian Church, Plot No. 23, Sector 8, Kalamboli.
- (iii) The Appellant (Dr. Khalid Deshmukh) is a registered Medical Practitioner and is operating a hospital namely “Noble Care Multispecialty Hospital”. The Appellant put on record a Nursing Home Certificate under Section 5 of the Bombay Nursing Home Registration Act 1949 registered on 21.08.2012 and issued by the competent Authority (The Civil Hospital, Alibag, Raigad district) on 29.03.2015 which was valid till 31.03.2018 in respect of Noble Care Multispecialty Hospital situated at the above address, and a certificate of Maharashtra Pollution Control Board (MPCB) for disposal of Bio-Waste, etc. All these certificates are revalidated from time to time.
- (iv) The Appellant has taken necessary permission to operate the Hospital from the Competent Authority (the Civil Hospital, Alibag, Raigad District, and the Panel


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Municipal Corporation) for running and operating the Hospital since August 2012 onwards.

- (v) The Maharashtra Electricity Regulatory Commission (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, 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, as per the Tariff Orders issued by the Commission from time to time in the following cases:

- 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. However, the Appellant was billed with Commercial tariff category up to August 2021.

- (vi) The Appellant referred the Regulation 8.2, 8.2.1, 8.2.2 and 8.3.4 of MERC - General Conditions of Distribution License Regulations, 2006 which clearly states 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 Centre, Central Electricity Authority and other statutory authorities under the Act.


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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.*”

- (vii) The Respondent failed to apply the “Public Services-Others” tariff category and continued to bill the Appellant with a higher tariff of “Commercial” Category. This is in spite of the Respondent and their representatives who used to visit the consumer premises periodically to inspect and record the readings of energy consumption for raising bills.
- (viii) **The Appellant made an online application on 24.05.2021 for tariff change from Commercial to Public Services-Others as per Regulation 5.2 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021). The Appellant submitted a request letter and hard copy of the application on 02.06.2021 for change of the tariff category from 24.05.2019 and for refund of tariff difference retrospectively for the period of 24 months i.e., from 24.05.2019 to 24.05.2021.**
- (ix) **The Respondent inspected the premises of the Appellant on 07.09.2021. The tariff category of the Appellant was changed from LT II to LT VII (B) Public Services-Others only from Sept. 2021 onwards.**
- (x) Not satisfied with the remedy provided by the Respondent, the Appellant filed a grievance application before the Forum on 02.06.2021. The Forum, by its order dated 17.10.2022 has partly allowed the grievance and directed to refund the difference of tariff amount from the date of the application for change of tariff. The Forum failed to understand the basic issue that the hospital is running prior to creation of the new tariff category i.e., Public Services-Others.


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- (xi) 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 Steel & Power Ltd. The principle laid down by the High Court should be considered for refund of tariff difference.
- (xii) 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.
- (xiii) The Appellant filed a rejoinder by email on 18.01.2023 at 20.58 hrs., 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: -
- (a) Practice Directions of the Commission dated 22.07.2019 for allowing Uniform Interest Rate on the Refunded Amount to Consumers.
- (b) The Appellant referred Regulation No. 5 of Supply Code & SOP Regulations 2021 in support of its grievance which is quoted as below:-

“5.1 The Distribution Licensee shall provide facility to the Applicant to submit its application for supply / additional load / shifting of services/ extension of services / restoration of supply and all other purposes through hard copy or online web portal or mobile application:

5.2 Post successful submission on online application, unique reference number shall be allotted through web-based application/mobile app/SMS/e-mail or any other digital mode. Applicant shall able to monitor progress of its application through online portal or through offline enquiry using unique reference number.

Provided that in case hard copy of the application form is submitted, the same shall be digitized by the Distribution Licensee as soon as it is received but not later than Twenty-Four (24) hours and acknowledgement with the unique reference number for that Applicant shall be generated and intimated to the Applicant.

5.3 If there is delay in providing the service, then Distribution Licensee shall automatically compute the compensation for the same as per Annexure 'II' and display such compensation to the Applicant through online module:


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Provided such compensation shall reflect in the Consumers data base maintained by the Distribution Licensee and shall be credited in electricity bill of the Applicant within Ninety (90) days of the occurrence of event or immediately after generation of first energy bill resulting in payment of Compensation.

Provided further that the Commission may notify any change in the Annexures of this Regulations through Order or Practice Directions, as may be necessary from time to time.

5.7 It shall be the duty of the Distribution Licensee to ensure:

[a]. that a system generated acknowledgement shall be issued forthwith and in case of any deficiency same shall be intimated to the Applicant within Two (2) days of the receipt of the application. The deficiency shall be communicated on registered mobile number through SMS/registered e-mail address, as the case may be;


Provided that if Applicant does not remove the defects within Fifteen (15) days, the Distribution Licensee shall reject such application as incomplete with intimation to the Applicant on registered mobile number through SMS or registered e-mail address, as the case may be and remit the fees paid (excluding application processing fees), if any, to the Applicant.

[b]. The Licensee shall indicate all the deficiencies in the application form to the Applicant in one go only and shall not raise any new deficiency subsequently:

Provided that in case the Licensee fails to intimate the Applicant about any deficiencies in his application within the stipulated Two (2) days, the application shall be deemed to have been accepted by the Licensee on the date of online submission of the application.” (Emphasis added)

The Respondent failed to implement the Regulation quoted above.

- (c) Judgment of Appellate Tribunal of Electricity (ATE) dated 12.02.2020 in Appeal No.337 of 2016 and others in Case of Bharti Airtel & Batch V/s MSEDCL. The ATE has allowed refund of change of tariff category retrospectively.



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- (d) The Respondent's Commercial Circular No.319 dated 28.06.2019 regarding the Policy of refund of tariff difference amount to consumers through RTGS/ NEFT in their bank account, instead of adjusting the refund amount in their electricity bills.
- (xiv) The entire litigation in the present case would have been avoided if the field officials of the Respondent had shown some regard to the MSEDCL HO Circulars.
- (xv) The Appellant relies upon the following judgement passed by Hon'ble Supreme Court as the observations recorded therein are squarely applicable in the present case. Hon'ble Supreme Court in Alok Shanker Pandey V/s. Union of India &Ors., II (2007) CPJ 3 (SC) as follows: -

“9. It may be mentioned that there is a misconception about interest. Interest is not a penalty or punishment at all, but it is the normal accretion on capital. For example, if A had to pay B a certain amount, say 10 years ago, but he offers that amount to him today, then he has pocketed the interest on the principal amount. Had A paid that amount to B 10 years ago, B would have invested that amount somewhere and earned interest thereon, but instead of that A has kept that amount with himself and earned interest on it for this period. Hence equity demands that A should not only pay back the principal amount but also the interest thereon to B.”

- (xvi) The Applicant relies upon the above judgement passed by the Hon'ble Supreme Court and the observations recorded therein are squarely applicable in the present case. A natural consequence of the principle of equity is that if any party utilizes the money paid by the other party, then it is required to refund that money with interest.


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(xvii) 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 Commercial 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 Electricity Act 2003.

(xviii) The Applicant relies upon the Judgement of Hon'ble Supreme Court in SC I – AIR 1979 SC 1144 – Madras Port Trust V/s Himanshu International' wherein the Court had also observed that:-

“It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens.” It is a basic natural consequence of the principle of equity that if any party utilises money paid by the other party, then it is required to refund money with interest.”

4. The Respondent, by its letter dated 06.01.2023 has submitted its written reply. The written submission along with its arguments are stated in brief as below: -

- (i) The Appellant (Dr.Khalid Umarkhan Deshmukh) is a LT Consumer (No. 028652899996) from 02.05.2006 with SL of 3 KW at Office - 001, 1st Floor, Mehta Coop. Housing Society, Near Sebastian Church, Plot No. 23, Sector 8, Kalamboli.
- (ii) **The Appellant, for the first time, made an online application only on 02.06.2021 for change of tariff category from LT-II Commercial to LT VII (B) Public Services-Others with effect from May 2019.**
- (iii) After receipt of the online application and the required documents, the Respondent carried out a spot inspection of the consumer's premises on 10.06.2021 for confirmation of the activity for applying the proper tariff as per the usage. During the


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inspection, it was observed that the activity of the consumer is running a private Hospital.

- (iv) The proposal for tariff change was forwarded to the competent authority on 11.06.2021 for further approval. **The competent authority gave the approval for change of tariff category i.e., LT-II Commercial to LT VII (B) Public Services-Others with effect from Sept. 2021 and rejected the retrospective refund from May 2019.**
- (v) The Appellant approached the Forum on 02.06.2021 for the refund of tariff difference from May 2019 to Aug. 2021. The Forum, by its order dated 17.10.2022 has partly allowed the Grievance and directed to refund the difference of tariff amount since the date of application till the actual date of the change of tariff of the Applicant, which is a period of about 3 months.
- (vi) The Respondent is under process of implementing the Forum's order.


Reply on Merits:-

- (vii) The connection was released to the Appellant on 02.05.2006 for commercial purpose as per his own request application for a new connection under "Commercial" Tariff Category. At the time of release of this connection, the activity of the consumer was not running a hospital, and he had not submitted any such documents at the time of new connection for showing that his activity was that of hospital. The Commission vide its tariff order dated 16.08.2012 in Case No. 19 of 2012 for the first time established a new tariff category i.e., Public Services. Thereafter, the Commission vide its tariff order dated 26.06.2015 in Case No.121 of 2014 effective from 01.06.2015 divided this Public Service category into two subcategories i.e., LT X (A): LT – Public Services for Government Educational Institutes & Hospitals and LT X (B): LT Public Service - Others for Private Educational Institutes & Hospitals.
- (viii) As per available records, the Appellant's original activity was not of hospital. Therefore, the tariff category was not changed in 2015 after establishment of the new tariff of Public Services-Others.


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- (ix) 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 failed to do so within time, and applied to the Respondent only on 02.06.2021 for the change of tariff and for the refund of tariff difference.
- (x) **The original connection to the Appellant was released in the name of a person at the premises bearing Shop No. 1, Mehata Society, Plot No. 23, Sector 8, Kalamboli, & not in the name of a hospital. This does not give any idea as to the exact activity being carried out over there, which makes it difficult for the Respondent to identify such individual cases and to apply the appropriate tariff in Multistorey buildings, unless the consumers, themselves intimate the change in activity to the Respondent.**
- (xi) The Appellant is relying upon the certificates of its hospital activity (which are effective from around 2015) and applied for change of tariff category to the Respondent on 02.06.2021 for refund of tariff retrospectively from May 2019. If the activity of the Appellant was that of hospital prior to the application to Respondent, then why has he not filed the application for tariff change around 2015 when he had the certificate of hospital activity? The Appellant has not intimated immediately to the respondent after getting the certificates of hospital activity. He has intimated in June 2021 for the first time, and as per the request for change in tariff, the tariff was also changed immediately after carrying out the spot inspection to verify the activity. It is the mistake and negligence on the part of the appellant of giving late intimation to the respondent for change in activity, and hence the Respondent is not responsible for any loss of the Appellant. At this later stage, the Appellant consumer cannot claim refund of tariff difference for his own mistake and negligence.
- (xii) In view of above, the Respondent requested to reject the Representation of the Appellant.


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Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant (Dr.Khalid Umarkhan Deshmukh) is a LT Consumer (No. 028652899996) from 02.05.2006 with SL of 3 KW at Office 1, 1st Floor, Mehta Co-Op. Housing Society, Near Sebastian Church, Plot No. 23, Sector 8, Kalamboli.

6. The Appellant is a registered Medical Practitioner operating a hospital namely “Noble Care Multispecialty Hospital”. The Appellant had made an online application on 24.05.2021 for change of tariff category from Commercial to Public Services-Others. The Appellant sent a hard copy of the said application on 02.06.2021 to the Respondent along with relevant documents like permission of Municipal Corporation to operate the hospital, its registration, bio–Medical waste Certificate etc.

7. 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 sub-categories 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 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*


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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.”

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 it had no information or intimation; prior to 2021, that the Appellant was running a hospital, as the original connection does not mention the word ‘hospital’ anywhere.


9. The original connection was under his personal name “Dr.Khalid Umarkhan Deshmukh”, without even a mention of the name of the hospital. The original connection was for commercial purpose, and his application gave no indication that it was meant for hospital purpose.

10. We have verified the address mentioned on the electricity bill which is as follows:

*“MR. DR.KHALID UMARKHAN DESHMUKH
OFF-001 MEHTA CHS, PLOT-23 SEC-08 KALAMBOLI 410218”*

The Appellant continued to receive the bills in this name right from the year 2006 till date.

11. In other words, nowhere is the name or activity of the hospital expressly written / seen / notified prior to the application dated 24.05.2021. There is merit in the Respondent’s argument that there was no mention of the hospital activity in the original application or in its database. In such circumstances, it becomes difficult, if not impossible, for the Respondent to identify the activity as running a hospital, and to apply the appropriate tariff. Hence, the claim of refund from May 2019 has no merit.


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12. The Forum, by its order dated 17.10.2022 has stated in its paragraphs that:

“It is observed that, since date of connection, the consumer was charged with the Commercial tariff. In this case the initial connection was requested by the Applicant on 02.5.2006 for Commercial activity in the individual name of the Applicant and accordingly the connection was released by the Respondent for Commercial purpose in the name of Mr.Dr. Khalid Umar Khan Deshmukh. The Tariff orders also in public domain and the Commission issues the tariff orders after a due process of wide public consultation and by undertaking public hearing. The Applicant therefore cannot afford to be negligent about their rights and responsibilities.

*.....
Further, as this connection stands in the name of individual and not in the name of any hospital/ Laboratory, which does not provide any idea as to the exact activity being carried out over there and therefore it is difficult to identify such individual cases and apply the appropriate tariff.”*

13. The Forum has rightly analyzed the case and hence no interference is needed in the order of the Forum. The Forum’s order is upheld, and the instant Representation is disposed of accordingly.

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

(Dilip Dumbre)
Secretary

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