

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 10 OF 2020

In the matter of change of tariff category

The Chief Trustee..... Appellant
Swami Shanti Prakrutik Chikitsa Yoga Kendra

V/s

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

Appearances

For Appellant : B. R. Mantri, Representative


For Respondent : 1. Vinod D. Vipar, Addl. Executive Engineer
2. Y. D. Aute, Jr. Engineer

Coram: Deepak Lad

Date of Order: - 27th April 2020

ORDER

This Representation is filed on 14th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 19th November 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).


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2. The Forum, by its order dated 19.11.2019 has dismissed the Grievance Application No. 1957 of 2019-20. However, the operative part of the Forum's order is quoted below: -

“(2) *No order of cost. The utility entitled to recover arrears of bill 24 months earlier from the date of detection of error 11/05/2017. The said arrears can be paid in ten equal monthly installments without charging any interest DPC and penalty. Consumer is not entitled for any other relief.*”

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


- (i) The Appellant is a LT Consumer (No.021517007398) from 17.07.2009, having sanctioned load of 20 KW at Swami Shanti Prakrutic Yoga Kendra, Ulhasnagar Camp 5.
- (ii) The Appellant received the bill of July 2018 with Debit adjustment of Rs.3,17,250.90 on 06.08.2018 which is without any communication and supporting documents for recovery.
- (iii) When the Appellant enquired the reason for the debit bill adjustment, the Respondent has informed that as per Flying Squad letter, recovery is raised for the past period from June 2015 to July 2018. However, the Respondent did not inform under what regulation or act recovery is proposed.
- (iv) The Respondent, Flying Squad carried out spot inspection of the premises on 11.05.2017. In the spot inspection report, the Flying squad has mentioned in remark column that case is kept under observation in view of applicable tariff. Thereafter, concerned billing authority has duty to visit the premises and follow the natural justice as per Model Supply Code of Forum of Regulators constituted under Section 166 (2) of the Electricity Act 2003(the Act), Clause 4.82 of Reclassification of Consumer Category. But same has not followed in its case.
- (v) The Appellant is objecting debit bill adjustment on the following points: -
 - a. The Appellant paid all the bills raised from time to time as per Regulation 15.1, 15.2 and 15.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code Regulation & Other Conditions of Supply)


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Regulations 2005 (Supply Code Regulations). The Appellant protested the recovery of tariff differential for the past period.

- b. The debit bill recovery is not related with escaped billing due to error in meter or in billing as per Regulation 15.3 and 15.4. The same has noted by the Commission in Case No. 24 of 2001 in para (20) and applicable in our case.
- c. The Respondent has not followed the Commission direction in Case No. 24 of 2001, which directs recovery to be made prospectively only. Classification & Reclassification is the responsibility of the Respondent and burden due to wrong categorization cannot be transferred to the Appellant.
- d. There is no provision for supplementary bill as per provision of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulation 2005 (the Supply Code Regulations) and the Electricity Act, 2003 (the Act). There is no legal provision for recovery of tariff difference.
- e. Respondent has issued Commercial Circular No 377 dated 2.7.2003 as per the order of the Commission in Case No. 24 of 2001. In this regard, the Appellate Tribunal for Electricity (ATE) also issued Judgement in Appeal No. 131 of 2013 on 07.08.2014. This Judgement also bars retrospective recovery.
- f. In view of the Order of the Commission and Judgement of the ATE, retrospective recovery as proposed by Respondent is illegal and the Appellant prays for
 - A. The matter be remanded to the Forum.
 - B. Retrospective recovery of the bill adjustment of Rs.3,17,250.90 shown in monthly bill of July 2018 be withdrawn.
 - C. If Respondent shows regulation which permits recovery, then as per High Court order it should be restricted as per limitation in accordance with Section 56(2) of the Act for 2 years.
 - D. No DPC and Interest should be charged.


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4. The Respondent filed its reply by letter dated 15.02.2020 stating in brief as under: -
- (i) The Appellant is a LT consumer (No. 021517007398) from 17.07.2009 with connected load of 20 KW at Ulhasnagar Camp 5. It was initially billed under industrial tariff.
 - (ii) The Respondent, Flying Squad carried out spot inspection of the premises on 11.05.2017. During inspection, it was observed that the activity of the Appellant is a Yoga Chikitsa Kendra which is a hospital for natural care treatment. Hence, it is necessary to be billed under the tariff category of Public Services –Others instead of industrial tariff category. The Flying Squad Team requested the concerned subdivision office to send the necessary documents submitted at the time of release of connection to verify the basic purpose of the Appellant or confirm other possibilities. The documents could not be made available due to misplacement of these documents during shifting of office in 2014.
 - (iii) Moreover, it was decided to apply plain recovery of tariff difference for 24 months from June 2015 to May 2017 prior to date of inspection i.e. 11.05.2017.
 - (iv) In the Tariff Order dated 26.06.2015 of the Maharashtra Electricity Regulatory Commission (the Commission) in Case No. 121 of 2014, the Commission has created new tariff category called LT – X(B) Public Services -Others for private hospitals and dispensaries, spiritual organizations, etc. Thereafter, the subsequent tariff order in Case No. 48 of 2016 came into force in the same manner. Accordingly, the Appellant is liable to be charged LT – X (B) Public Services-Others tariff category.
 - (v) Hence, supplementary bill of Rs.3,17,251/- towards tariff difference was prepared for the period June2015 to April2018. The same was approved in the month of July2018 (Bill revision ID 8624496) and is debited in the bill of July 2018.



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- (vi) Aggrieved with this, the Appellant filed the grievance application before the Internal Grievance Redressal Cell (IGRC) on 29.08.2018.
- (vii) Thereafter, credit bill revision ID 9987402 was fed in the system for withdrawal of debit B80 (as above as per discussion with Chairperson IGRC dt. 13.02.2019 finalized dispute in above matter but the same was neither verified not approved in the system. In this matter no written order could be found on record).
- (viii) In the meantime, from May 2017 onwards, tariff Code of LT – X (B) Public Services -Others was not updated in the Computerised Billing System. Even though it was fed in NC Module with ID No. 15451741 in August 2018. The computerised billing system was under process of centralisation billing at Corporate Office Mumbai. There was trouble teething for NC Module during the transit period of centralised billing. It was successfully fed to the system only in October 2019.
- (ix) Bill revision of Rs.72,946.85 was put up with revision ID 9987420 for the period May 2018 to January 2019 and Rs.65973.28 with revision ID 10649260 for the period February 2019.
- (x) The details of tariff difference recovery is tabulated as below: -

Period	Revision ID No	Amount of Debit in Rs.	Approved	Remarks
June 2015 to April 2018	8624496	3,17,251/-	20.07.2018	In the bill of July 2018
May 2018 to Jan 2019	9987420	72,946/-	22.01.2020	In the bill of Feb 2020
Feb 2019 to Sept 2019	10659260	65,973/-	22.01.2020	In the bill of Feb 2020


- (xi) The Appellant approached the Forum and case was registered on 05.10.2019. The Forum, by its Order dated 19.11.2019 has rightly dismissed the case and allowed Appellant to pay principal arrears in 10 equal monthly instalments without charging DPC and penalty.


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- (xii) The Appellant is utilizing the power supply for Prakrutik Chikitsa Yoga Kendra Hospital for nature care treatment even before June 2015. However, the retrospective period for recovery is taken as 24 months prior to cause of initiation of action.
- (xiii) As per the order dated 11.03.2003 of the Commission in Case No. 24 of 2001 and as per Respondent's Commercial Circular 377 dated 02.07.2003, the Commission has restricted the then Board from claiming retrospective recovery of arrears based on abrupt reclassification of consumer. This is not abrupt reclassification and tariff is claimed as per tariff order of the Commission in force and as per provision of Section 56(2) of the Act.
- (xiv) The Respondent referred the order in Case No. 447 dated 19.11.2019 of the Kalyan Forum and the order of the Electricity Ombudsman (Mumbai) in Representation No.142 of 2019 where it was permitted retrospective recovery for 24 months as per Section 56(2) of the Act.
- (xv) The order of the Forum is implemented, and the revised bill was issued by letter dated 22.11.2019 to the Appellant for payment of first instalment. Accordingly, the Appellant has paid Rs.1,50,000/- on 30.11.2019 towards first instalment and paid Rs. 75000/- against second instalment. At present, the Appellant is having balance principal arrears of Rs.1,38,920/- and interest arrears of Rs. 47,335/- Total amount Rs. 1,86,255/-.
- (xvi) The Respondent prays that the Representation of the Appellant be rejected.

5. During the hearing on 27.02.2020, the Appellant and the Respondent argued in line with their respective written submissions. During the hearing when the Appellant was confronted with its inconsistent prayer, the Appellant submitted that the matter may not be remanded to the Forum. The Appellant further argued that recovery as proposed by the Respondent is not in line with the order of the Commission in Case No. 24 of 2001 and ATE Judgement in Appeal No. 131 of 2013. Therefore, the retrospective recovery of Rs. 3,17,250.90 is illegal and deserves to be set aside. The Respondent argued that it has implemented the Forum's order completely for recovery of tariff differential from Industrial to Public Service – Others for the period of 24 months. Retrospective recovery for 24


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months is in line with the provision of Section 56(2) and the settled position of law in this regard in view of Larger Bench Judgment of Bombay High Court in Writ Petition No. 10767 of 2011 dated 12.03.2019. Therefore, nothing remains in the case and be decided accordingly.


Analysis and Ruling

6. Heard both the parties and perused the documents on record. The Respondent's Flying Squad carried out spot inspection of the premises on 11.05.2017. The Respondent issued bill of Rs.3,17,251/- towards retrospective tariff differential for the period June 2015 to April 2018 in the bill of July 2018. The Forum, in its order dated 19.11.2019 observed that the Respondent is entitled to recover arrears of bill for 24 months prior to the date of detection of error i.e. 11.05.2017. The Appellant in its representation has prayed for withdrawal of recovery of Rs.3,17,251/- which is issued in the bill of July 2018. The Respondent is entitled for recovery of tariff differential for period of 24 months prior to the month in which the bill has been issued. In the instant case, the Respondent has raised the bill of retrospective recovery in the month of July 2018. Therefore, it is entitled for recovery for a period of 24 months prior to July 2018. This is in line with Section 56 (2) of the Act.

7. Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges. In this case, the Respondent has raised the bill towards tariff difference for the first time in the month of July 2018. The relevant portion of the Larger Bench Judgment dated 12.03.2019 interpreting Section 56 (2) of the Act is quoted below: -

“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.


77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench


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concluded in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision


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would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.”

As a result of the above discussion, the issues referred for our opinion are answered as under:

- (A) The issue No. (i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.
- (B) As regards issue No. (ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.
- (C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.

8. The Appellant has, however, referred the Commission’s order in Case No. 24 of 2001 and ATE Judgement in Appeal No. 131 of 2011 which stipulates prospective recovery. However, the position of law is settled by the Judgment of the Larger Bench quoted above. Therefore, the citations of the Appellant are no more relevant.

9. In view of the above discussions and Larger Bench Judgment, the Respondent can recover retrospective recovery for 24 months prior to July 2018 i.e. from July 2016 to June 2018 only as the dues were raised for the first time in the month of July 2018.


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10. It is important to note here that the Respondent has applied the appropriate tariff of LT – X (B) Public Services -Others in the month of October 2019. The reason for apparent delay is that tariff Code of LT – X(B) Public Services -Others was not getting timely updated in the Computerised Billing System despite efforts on their parts from August 2018. The same was also not updated in computerised billing system due to technical issues as the billing system was centralised at corporate office of the Respondent. Because of these persisting systemic issues, the tariff was fed into the system in October 2019. Therefore, keeping these issues in mind, period of retrospective recovery is considered as July 2016 to June 2018.


11. In view of above, I, therefore, pass the following order: -

The Respondent is directed

- (a) to revise the bill towards tariff differential from Industrial to Public Services - Others tariff category for the period from July 2016 to April 2018 as recovery for May 2018 and June 2018 has already been done by the Respondent, without any DPC and interest.
- (b) to allow the Appellant to pay this amount in suitable monthly instalments, if it so desires. In the event of default on payment of instalment along with the current bill, DPC and interest shall be levied.
- (c) Compliance to be submitted within two months from the date of issue of this order.

12. The Forum's order is therefore revised to the above extent. The Representation is disposed of accordingly.

Sd/
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