

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 52 OF 2022

In the matter of retrospective recovery of tariff difference

Mukesh Shyamlal Lachhani.....Appellant

V/s.

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

Appearances:

Appellant : Kisan Lachhani, Representative

Respondent: Nitin Kale, Executive Engineer, Ulhasnagar (I)

Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 7th June 2022

Date of Order : 14th June 2022

ORDER

The Representation is filed on 31st March 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 18th February 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




A Deposit Notice was served on 05.04.2022 for an amount of Rs. 12770/- as per Regulation 19.22(h) of CGRF & EO Regulations 2020. The Appellant paid the deposit on 20.04.2022. Hence, the representation is registered on 20.04.2022.

2. The Forum, by its Order dated 18.02.2022 has rejected the grievance application in Case No. K/E/1845/2291/ of 2021-22 by giving following directions:

“2. Compensation of Rs. 250/- as per SOP Regulations to be credited in next month bill of the consumer.”


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

- (i) The Appellant is a consumer (No. 021513811320) of the Respondent from 10.05.2019 at Shop opposite Barrack No.577 Room No. 12, O.T. Section, Ulhasnagar. The activity of the Appellant is commercial at present.
- (ii) A Leave & Licence Agreement was made on 04.02.2019 between Appellant and his tenant, Shri. Hanumant Sopanrao Birajdar for the period of 01.02.2019 to 31.12.2019, and the same was extended for the period of 01.01.2020 to 30.11.2020. The Tenant allegedly used this premises for industrial purpose of Garment manufacturing. There was no use after completion of agreement.
- (iii) The Appellant for the first time applied for the change of tariff category from industrial to commercial on 05.10.2021. The Respondent's Section office carried out a Spot Inspection of the premises on 29.10.2021.
- (iv) The Respondent issued assessment bill of Rs.25,537.76 in October 2021 for change of tariff category from industrial to commercial with retrospective effect from September 2019 which is wrong. The Respondent has wrongly stated that the Appellant applied for change of tariff category in September 2019. The commercial tariff should be applicable from the date of inspection i.e., 29.10.2021.
- (v) The Appellant has, therefore, prayed that the Respondent be directed


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- a. to cancel the recovery of tariff difference of Rs.25537.76 from September 2019 to October 2021.
 - b. to pay compensation as per Regulations of Standard of performance which were in force.
 - c. to compensate further for Rs. 10,000/- towards harassment, and mental torcher and expenditure for filing the grievance.
4. The Respondent has filed its reply dated 24.05.2022 stating in brief as under: -
- (i) The Appellant is a consumer (No. 021513811320) of the Respondent from 10.05.2019 at Shop opposite Barrack No.577 Room No. 12, O.T. Section, Ulhasnagar. The activity of the Appellant is commercial in nature.
 - (ii) The Appellant has initially taken electric connection for “Industrial” activity. However, he was actually using the power supply for commercial activity. He applied for change of tariff category from industrial to commercial initially through Mobile App on 20.09.2019 and then on 23.07.2021. Similarly, on 05.10.2021 he applied for the same change in tariff category to Consumer Care Facility Centre (CCFC).
 - (iii) These requests were registered on “Online Mobile App” with registered mobile (No. 9922287402) in the billing system which belongs to him. Unfortunately, the Respondent overlooked these two applications dated 20.09.2019 and 23.07.2021, which was a great mistake on the part of the Respondent, otherwise the alleged grievance would never happen.
 - (iv) The Deputy S&E, Officer, Vigilance Department, Kalyan has rightly pointed out these irregularities by its letter dated 13.10.2021 to the Additional Executive Engineer, Ulhasnagar II Sub-Dn. for 13 consumers for not changing the appropriate tariff category as “Commercial”. The content of the letter is reproduced as below:


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Sr. No.	CONSUMER NO.	CONSUMER NAME	IRREGULARITY/DESCRIPANCIES OBSERVED
1	21513811320	MUKESH SHYAMLAL LACHHANI	Consumer applied for commercial tariff but application is submitted stage since 20/09/2019 on NC Portal

- (v) The Respondent's Section office carried out Spot Inspection of the premises on 29.10.2021. During inspection, the use of the Appellant was found commercial.
- (vi) The Appellant submitted his protest application dated 21.12.2021, denying making any application dated 20.09.2019, and submitted a leave and license agreement. The activity mentioned in the letter dated 21.12.2021 is "Readymade Garment Business". This is nothing but an afterthought.
- (vii) The mobile No. 9922287402 of the Appellant was also mentioned in leave and license agreement. The application dated 20.09.2019 on the online web portal is made from the same mobile number. Not only that, the Agreement does not anywhere mention the activity of the garment manufacturing.
- (viii) In view of the above, the Respondent stated that the Appellant himself applied for change of tariff category to "Commercial" in September 2019, therefore, it is correct to recover the tariff difference from September 2019.
- (ix) Thus, the Respondent prays that the Representation of the Appellant be dismissed.

5. An e-hearing was held on 07.06.2022 through Video Conference. During the hearing, the Appellant argued that the premises was given on rent basis for the period from 01.02.2019 to 30.11.2020. The Tenant was using this premises for Garment Manufacturing Industry according to the Appellant. There was no use after completion of this Leave and License Agreement. The Appellant applied on 05.10.2021 to the Consumer Care Facility Centre (CCFC) for change of tariff category which was confirmed by the Respondent on 29.10.2021. There is no question of retrospective assessment bill of Rs. 25,537.76 for change of tariff category from industrial to commercial for the period of 20.09.2019 to 29.10.2021. The Respondent created fabricated documents for tariff change which is not acceptable to the Appellant. The



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Secretary
Electricity Ombudsman Mumbai



Appellant has, therefore, prayed for cancellation of the recovery of tariff difference of Rs. 25,537.76 from September 2019 onwards.


6. The Respondent argued that the Appellant himself applied for change of tariff category on the Mobile App through his registered mobile (No. 9922287402) on 20.09.2019 and 23.07.2021 in the billing system. Admittedly, there was a mistake and delay on the part of the Respondent for not effecting the change of tariff category, otherwise the grievance would never have happened for under billing. The Appellant again applied for change of tariff category on 05.10.2020 at CCFC. The premises was inspected, and tariff change was effected from the date of first application 20.09.2019 onwards.

7. The Respondent argued that there is a Modus of Operandi, particularly in this area where some consumers initially apply for “Industrial” tariff category on vacant premises as the tariff rate is lower for industrial use. When the Industrial connection is released, the consumers normally shift to commercial activities without the knowledge of the Respondent, and just for formality’s sake, apply for change in tariff category to avoid action against unauthorised use and penalty billing under Section 126 of the Electricity Act, 2003. If the Respondent fails to interlink this change of tariff category, the consumers enjoy the commercial activity with lower tariff category.

8. The Respondent further argued that the initial activity of the Appellant from the starting date was “tailoring shop” which comes under Commercial tariff category as per the various tariff orders of the Commission, and not garment manufacturing. Hence, the retrospective assessment is correct. Therefore, the Respondent prays that the representation of the Appellant be rejected.

Analysis and Ruling

9. Heard the parties and perused the documents on record. The Appellant’s premises are located opposite Barrack No.577 Room No. 12, O.T. Section, Ulhasnagar which was


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Secretary
Electricity Ombudsman Mumbai




given on rent for the period from 01.02.2019 to 30.11.2020. The said Leave and License Agreement is kept on record which is only notarised and not registered as per Maharashtra Rent Control Act 1999. It is claimed by the Appellant that the activity of the tenant was garment manufacturing, which comes under “Industrial”. However, no documentary proof is put on record to establish that a garment manufacturing business was indeed being conducted from the premises. Even the Leave & Licence Agreement produced is not a registered document, hence cannot be relied upon to determine either the period or actual use of the premises.

10. On the other hand, the Respondent has placed all documents regarding change of tariff category from Industrial to Commercial on record which is tabulated as below:

Consumer: Mukesh Shyamlal Lachhani (Cons. No. 21513811320)					
Sr. No.	Application No.	Date of Application	Request Details	Source for Application	Reference Mobile for Application
1	22278632	20.09.2019	Change of tariff from Ind. to Commercial	Online Web Portal	9922287402
2	32753943	23.07.2021	Change of tariff from Ind. to Commercial	Online Web Portal	9922287402
3	21950430	05.10.2021	Change of tariff from Ind. to Commercial	Consumer Complaint Facility Centre, Kalyan	9922287402

The mobile No. 9922287402 of the Appellant is the registered mobile number with the Respondent. The same mobile number is also reflected in the Leave & License Agreement on record. Hence, it is crystal clear that the Appellant had initially applied for change of tariff category from Industrial to Commercial on 20.09.2019. The Vigilance Officer Kalyan has rightly pointed out irregularities by its letter dated 13.10.2021 to the Additional Executive Engineer, Ulhasnagar II Sub-Dn. regarding 13 consumers for the Subdivision whose tariff category has not been changed to “Commercial”. Among these 13 consumers, the present Appellant is also included.

11. Unfortunately, and admittedly, the Respondent failed to change the tariff category in time after the first application of the Appellant in September 2019. However, it was


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



effected only after 26 months with tariff difference for an amount of Rs. 25,537.76 from September 2019 onwards. There is no penalty imposed in the retrospective recovery. In fact, Section 56 (2) of the Electricity Act, 2003 permits the Respondent for retrospective recovery only for a period of two years for the errors prior to the date of issue of bill and shown continuously. If the Appellant neglects to pay these charges. the Respondent can implement Section 56 (1) for disconnection of supply by giving 15 days' notice. The recovery of more than two years is a civil liability and can be adjudicated only in a Court of Law. In the instant representation, the two years' period can be counted backwards from October 2021 because the assessment bill was issued in November 2021. Hence, recovery of 24 months from November 2019 to October 2021 is allowed.


12. In view of the above, I pass the following order:

- (a) The Respondent is directed to revise the period of supplementary bill for change of tariff category from Industrial to Commercial. The revised period shall be from November 2019 to October 2021, instead of September 2019 to October 2021, without any interest and delayed payment charges, if any.
- (b) Other prayers of the Appellant are rejected.
- (c) Compliance to be reported by the Respondent within two months from the date of issue of this order.

13. The order of the Forum is modified to the above extent accordingly. The Representation is disposed of accordingly.

14. The secretariat of this office is directed to refund an amount of Rs.12770/- to the Respondent for adjustment in ensuing bill.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

