

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 190 OF 2022

In the matter of retrospective refund for tariff difference

BVG India Ltd... Appellant

V/s.

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

Appearances:

Appellant : 1. Suhas Karandikar, General Manager
2. Santosh Apsingekar, Electrical Engineer.

Respondent : 1. D.S. Sali, Executive Engineer, Pimpri Dn.
2. B. R. Balgude, Addl. Executive Engineer, Sanghavi Sub.Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 27th January 2023

Date of Order : 7th 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 18th October 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Pune (the Forum).


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2. The Forum, by its order dated 18.10.2022 has dismissed the Grievance Application in Case No.61 of 2021.

3. Aggrieved by the order of the Forum, the Appellant filed this representation on 15^h December 2022. The e-hearing was held on 27.01.2023 through Video Conference. Both the parties were heard at length. The written submission and arguments of the Appellant are stated in brief as below: --

(i) The Appellant is a consumer (No.170658895152) from 24.03.2014 having Sanctioned Load of 100 KW and Contract Demand of 125 KVA at its Call Centre situated at 2nd floor, Aundh Chest Hospital, Aundh, Pune. The Appellant was billed under “Commercial” Tariff Category from April 2014 to March 2021, and “Public Services- Others” tariff category from April 2021 onwards.


(ii) The facts of the case are as follows.

a. The Appellant has been awarded a contract to Develop and Operate Maharashtra Emergency Medical Services (MEMS) Project by the Directorate of Health Services, Government of Maharashtra in March 2013, which was in a Public Private Partnership Mode. The Appellant runs Ambulance Services with all types of medical technologies in the whole state operated with an emergency helpline No. 108 on behalf of the Government of Maharashtra (GoM). The calls on this helpline No. 108 are coordinated by this Call Centre and diverted to the concerned Ambulance.

b. The Appellant applied for a new electric connection to the Respondent on 28.08.2013. In the prescribed A1 Form of the application, in column 5, it was clearly mentioned as follows:-

*“5) Name & address of the Owner: NRHM, Government of Maharashtra.”
(If not self-owned)*


NRHM stands for National Rural Health Mission.


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The following documents were enclosed along with the new connection application.

- A. Letter dated 10.04.2013 from Directorate of Health Services of GoM to BVG India Ltd. confirming award of the MEMS Contract to BVG India Ltd.
 - B. Letter dated 04.04.2013 from Commissioner cum Director, NRHM to Medical Superintendent, Pune Chest Hospital to give possession of the second floor to BVG India Limited.
 - C. Letter dated 12.08.2013 from Pune Chest Hospital providing No Objection Certificate (NOC) to install a separate electricity meter.
 - D. Letter dated 04.05.2013 from Deputy Director, Health Services to Executive Engineer, Electrical Department, PWD for disconnection of power for shifting electrical board.
 - E. Letter dated 24.04.2013 from Superintendent, Pune Chest Hospital to Executive Engineer to obtain NOC for addition and alteration at the second floor of Pune Chest Hospital.
 - F. Letter dated 13.05.2013 from Pune Chest Hospital to BVG India Limited granting possession of the second floor to BVG India Limited for this project.
 - G. The Central Government Notification on service tax, where this activity was exempted from service tax vide Clause 25(a) of this notification.
- (iii) From the above, it is clear that the purpose of use for the connection was for Public Services under the project initiated by Government of Maharashtra. The Respondent was completely aware of this fact. However, the Respondent applied "Commercial" Tariff Category, thereby earning an unjust enrichment of around Rs.2 crores through excess billing from the date of connection i.e., 24.04.2014 till March 2021.
- (iv) The Maharashtra Electricity Regulatory Commission (the Commission) had created a new tariff category, "Public Services", as per its Tariff Order dated 16.08.2012 in Case


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No. 19 of 2012 for Educational Institutes, Hospitals and Dispensaries, and subsequent tariff orders issued by the Commission from time to time.

- (v) The Respondent issued a Commercial Circular No. 175 on 5th September 2013 based on the Tariff Order dated 16.08.2012 in Case No. 19 of 2012. It was mentioned under ‘Action Plan’ head that

“The field officers are directed to ensure that where ever the tariff category is redefined or newly created by the Commission, the existing prospective consumers should be properly categorized by actual field inspection immediately and the data to be immediately updated in the IT data base”.

It was the responsibility of the Respondent to accurately apply appropriate categories to all existing and prospective customers. However, the Respondent failed to categorize the purpose of the Appellant as “Public Services”.


- (vi) The Appellant first came across this issue of overcharging in March 2019, when the Respondent sent an exorbitant bill of over Rs.10 lakhs, citing a mistake in applying the correct electricity duty. The Appellant was paying regular bills with complete trust in the Respondent and had never felt the need to study the bills or look into any technical details of the same. So, in 2019, the Appellant challenged this additional recovery of electricity duty, and the matter came up before the Electricity Ombudsman in March 2020, where the Respondent informed that since the connection is being used for a healthcare service, ideally there should be no electricity duty, as the Respondent already has a LT-X Public Services category, which has lesser rate as well as no electricity duty, and advised to raise a fresh grievance.
- (vii) During the Covid lockdown, the grievance was raised on the MSEDCL portal, and followed up with officials from August 2020.
- (viii) After normalization of Covid-19 Epidemic, in February 2021, the Appellant raised a fresh grievance with a request that the tariff category be changed from “Commercial” to LT-VII (B) “Public Services- Others” from the date of connection, and to refund the excess amount charged with interest. The Appellant kept following up with the


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Respondent, however, the Respondent neither sent any reply, nor did they give any information on the phone. In October 2021, the Appellant came to know that the Respondent had silently changed the tariff category to “Public Services-Others” in April 2021, without any information to the Appellant. The Appellant has given a copy of the letter sent by Additional Executive Engineer, Sanghvi Subdivision, to the Superintending Engineer on 4th March 2021, recommending change of tariff category to LT-VII (B) Public Services-Others from the date of request. This was done in a clandestine manner, without informing the Appellant.

- (ix) The Appellant filed a grievance application before the Forum on 09.11.2021. The Forum held the hearing on 13.09.2022 after a period of one year, wrapped up the hearing within 5 minutes, refused to hear or read any submissions from its side. The Forum, by its order dated 18.10.2022 dismissed the Grievance Application. The Forum failed to understand the basic issue of the case that the Appellant has applied for public services for Emergency Medical Services Project, by the Directorate of Health Services, Government of Maharashtra, which is a Public Private Partnership Model
- (x) The Respondent failed in its obligation to apply the correct tariff category as “Public Services – Others”. It also enriched itself unlawfully by charging higher charges from the Appellant to the tune of Rs.74,96,762/- by way of energy charges plus Rs.39,84,980/- by way of electricity duty. The total interest due on this extra recovery is Rs.56,22,545/- calculated at the bank rate as per the provision of the Electricity Act, 2003. The total refund comes to Rs. 1,71,04,287/- (Rupees one crore seventy-one lakh four thousand two hundred and eighty-seven) as per calculations kept on record.
- (xi) In view of the above, the Appellant prays that the Respondent be directed
- a. to refund Rs. 1,71,04,287/-, the tariff difference from Commercial to Public Services – Others tariff category from the date of connection i.e., 24.04.2014 to March 2021 along with interest as per bank rate.



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- b. to pay SOP compensation for wrong classification of tariff category as per the applicable rules for MSEDCL.

4. The Appellant submitted a rejoinder by its email dated 24.1.2023. This is nothing but a repetition of the original submission. The main points of submission in brief are taken on record as below:-

- There are only two check boxes available on the prescribed A1 Form. One is for residential purpose and the second is “Non-Domestic/ Non-Industrial (Commercial)” purpose. As the connection was required for non-residential purpose, the Appellant was compelled to tick on the second checkbox of “Non-Domestic/ Non-Industrial (Commercial)”. Hence, it is an incorrect claim by the Respondent to state that the Appellant applied for commercial purpose.
- Tariff Category is based on the purpose of the use, and not on the legal status of the consumer. The Appellant is running ambulances and a call center, namely the Maharashtra Emergency Medical Services Project, of the Directorate of Health Services, Government of Maharashtra and National Health Mission. The medical emergency infrastructure comprises of over 1,400 well-equipped and well-maintained ambulances and a highly qualified and experienced emergency medical response team. The Appellant created the emergency response helpline No.108 to enable people in need of emergency services to connect with the concerned response teams. Hence the Appellant claims that the purpose is medical, and hence the correct tariff category is Public Services-Others.
- The Appellant did not submit an application for change of tariff category on 08.02.2021. This application was a grievance registered for the error made by the Respondent in classification of Tariff Category. The letter referred from Director Projects, NHM dated 13.08.2020 as referred by the Respondent, contains no new information than what was available with the Respondent. Moreover, this letter is of general information not specially directing the Respondent to change the tariff category.


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- The action of the Respondent for billing the Appellant in Commercial Tariff Category is a mistake and denying the benefit of classification as Public Services – Others retrospectively from the date of connection is bad in law and against the principle of natural justice.

5. The Appellant by its e-mail dated 27.01.2023 has replied to the contentions raised by the Respondent in the hearing, as below:

Contention: The power connection is being used for an office of the Appellant.


The power connection is not being used as an office but for running a Call Centre of Maharashtra Emergency Medical Services of the Govt of Maharashtra, and its activities connected to emergency services, and nothing else. The Respondent have visited this place multiple times since the date of connection, and they are completely aware of these activities. The Government has given the space for the Call Centre at no cost, and this specific activity is also not charged Service Tax or GST.

Contention: The Respondent has changed the classification, only temporarily.

The Respondent has changed the classification after the Appellant raised the grievance. The Respondent has not communicated about any temporary change to the Appellant anywhere. This claim of ‘temporary change’ was an afterthought on the spur of the moment in the hearing, which is clearly evident from the fact that the Respondent has not moved any file so far about the same, as informed to the Electricity Ombudsman, by the Respondent.

Contention: The Appellant had already approached the Electricity Ombudsman for the same issue in Case No. 8 of 2020 and the Electricity Ombudsman has ruled against the Appellant in the same.


The said case was completely different, the cause of action was different, and the prayer was different. The Electricity Ombudsman in that case had said that the particular case was not maintainable before it, because it was only related to charging of electricity duty.


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6. The Respondent filed its reply by its letter dated 30.12.2022. The Respondent's submission and arguments in brief is as below: -

- (i) The Appellant is a consumer (No.170658895152) from 24.03.2014 (as per consumer's application dated 01.07.2013 for commercial activity) having Sanctioned Load of 100 KW and Contract Demand of 125 KVA at 2nd floor, Aundh Chest Hospital, Aundh, Pune. The connection was released in the premises of Aundh Chest Hospital, Pune, by installing a separate transformer DP structure nearest to the HT Kiosk provided for metering of the existing hospital. The consumer was billed under Commercial Tariff Category for the period from April 2014 to March 2021. The Appellant is now billed under Public Services-Others tariff category from April 2021 onwards as per Appellant's application dated 08.02.2021.
- (ii) The Appellant is carrying out the activity of Call Centre for toll free No. 108 for providing ambulance services. The Appellant is engaged in the commercial business of providing ambulance in emergency cases, in line with the contract of the State Government. Commercial Tariff was correctly applied at the time of release of connection, as the Appellant is neither a government subsidiary enterprise nor a Government Undertaking company, and is totally a private Ltd. company conducting business.
- (iii) The Appellant submitted an application for change of tariff category from Commercial (LT- II C) to Public Services-Others (LT- VII B) on 08.02.2021, along with a letter of Director Projects, EMS National Health Mission Mumbai dated 13.08.2020. The change of tariff category was approved from (LT- II C) to Public Services (LT- VII B) by Competent Authority of MSEDCL Viz. Superintending Engineer, Ganeshkhind, and billing is done as per LT-VII B with effect from the billing month April-2021 onwards.
- (iv) The Appellant filed a grievance application on 13.10.2021 with the Internal Complaint Redressal System (ICRS) for change of tariff category from Commercial (LT-II C) to


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- Public Service -- Others (LT- VII B) from the date of connection i.e. 24.03.2014. As the Consumer had submitted his application for change of Tariff category only on 05.02.2021, the category of the Appellant was changed with effect from April 2021 onwards. Hence, the application of the Appellant is unjustified for change of category with retrospective effect.
- (v) The Respondent argued that the activity of the Appellant is commercial in nature, which includes running a Call Centre, IT Server and allied works. The Appellant has extended the supply to Vodafone tower for commercial purpose without knowledge of the Respondent. This is a serious type of irregularity. It is time to review the applicability of “Public Services –Others” tariff category to the Appellant. The issue will be taken up with the Competent Authority for further decision in the matter.
- (vi) The Appellant had earlier approached the Electricity Ombudsman (Mumbai) by its Representation No. 8 of 2020 in the matter of Electricity Duty. At that time the tariff of the Appellant was Commercial, but the Appellant did not agitate this issue of Commercial tariff category. Hence, the Appellant’s approach to this Authority is only an afterthought and not with clean hands. In the present case, “Public Private Partnership Model” is based on commercial terms and conditions following a tender procedure. Hence, it is very difficult to apply Public Services-Others tariff category hence a review is necessary with the Competent Authority.
- (vii) In this case, the cause of action arose around 2014 when the category of “Public Services – Others” was made applicable. Yet the Appellant did not raise this grievance for another 7 years or so. The Respondent argued that the applicability (or not) of “Public Services-Others” tariff category is currently under review, and will be decided at the policy level after a thorough checking of the electrical installation and after considering the Commission’s Tariff order philosophy. This case will be reviewed and appropriate Tariff will be applied only after getting the approval of the Higher Authorities, to avoid further complication in the matter.


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- (viii) Hence, it is requested to dismiss the application of the Appellant for change in tariff category from the date of connection.

Analysis and Ruling

7. The Appellant runs Medical Ambulance Services on behalf of the Government of Maharashtra and operates its Call Centre for coordination of the day-to-day work of providing Ambulance Services through a Public Private Partnership (PPP) Mode. A toll-free No. 108 is provided for ambulance services. The details of the terms and conditions of the PPP were briefly discussed in the hearing. The Appellant went through a competitive bidding process while making its bid, which presumably took into account all anticipated expenses including electricity bills and other expected future costs. The Appellant has entered into a contract with the State Government, under which the State Government pays the Appellant a certain amount per ambulance per month to cover all its expenses. These expenses are expected to cover electricity bills too. For many years, i.e., from April 2014 till March 2021, the Appellant continued to receive its contractual payment and to pay the regular electricity bills without raising any grievance. Presumably, the contractual payment that it was receiving from the Government was sufficient to cover all these expenses. The Appellant is engaged in the commercial business of providing ambulances in emergency cases, in return for contractual payment by the State Government. The Appellant being a private entity, has taken a separate electricity connection by erecting a separate transformer DP structure, instead of taking the load from the existing Government HT connection, by enhancing the contract demand of the said Government HT connection. We, thus, hold that the Appellant is neither a government subsidiary nor a government undertaking company, but is a private company conducting the business of providing ambulance services.

8. Earlier, the Appellant had filed a representation (No. 8 of 2020) before the Electricity Ombudsman (Mumbai) for waiver of electricity duty related to the same Consumer No.170658895152, since it runs Ambulance Services on behalf of the Government of Maharashtra. The prayer of the Appellant of under Rep. No. 8 is reproduced below: -


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*“The Appellant prays that the Respondent be directed: -
(i) to set aside the charging of ED on its connection, and
(ii) to refund the entire amount of over Rs.26 lakhs charged by MSEDCL towards ED from
March 2014 till date.”*

This Representation of the Appellant was disposed on 3rd March 2020.

9. It is noteworthy that at the time of making that representation, the tariff category was Commercial but the Appellant did not agitate on the issue of tariff category.

10. The Regulatory Framework does not allow application of a lower tariff category with retrospective effect. The Appellant approached the Respondent only on 08.02.2021 for change of tariff category. The Regulation 7.8 of CGRF & EO Regulations 2020 does not allow entertaining a grievance which is older than two years, which is reproduced below: -


“7.8 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

11. In view of the above, we find that the Representation of the Appellant does not have any merit and is thus rejected.

12. The Respondent is advised to take up this issue with the appropriate Government Authority for taking a policy decision in the matter.

13. The Secretariat of this office is also directed to send a copy of this order to the Chief Engineer, MSEDCL, Pune Zone for further necessary action in the matter.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

