

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 185 OF 2022

In the matter of change of Tariff Category and refund thereof

Atul K. Patil. .... Appellant  
(Aayush 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, Kharghar Sub. Dn.


**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 19<sup>th</sup> January 2023

Date of Order : 31<sup>st</sup> January 2023

## ORDER

This Representation was filed on 5<sup>th</sup> 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 6<sup>th</sup> October 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).

  
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2. The Forum, by its order dated 06.10.2022 has dismissed the Grievance Application in Case No.157 of 2022.

3. The Appellant filed this representation against the order of the Forum. 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 is a LT Consumer (No. 029471080096) from 01.04.2019 with Sanctioned Load (SL) of 19 KW at Plot No. 112, Sector 30, Kharghar.
- (ii) The Appellant (Dr. Atul Patil) is a registered Medical Practitioner operating a hospital namely "Aayush Hospital". The Appellant put on record a Certificate of Registration under Bombay Nursing Home Registration Act 2005 in respect of Aayush Hospital situated at the above address, and a certificate of Maharashtra Pollution Control Board (MPCB)] for disposal of Bio-Waste, etc. with effect from 01.04.2019.
- (iii) The Appellant has also taken the necessary permission to operate the Hospital / Nursing Home at the said premises from Panvel Municipal Corporation from 1<sup>st</sup> April 2019.

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. The Commission further sub-categorized "Public Services" into "LT X (A): LT - Public Services - Government Educational Institutes and Hospitals" and "LT X (B): LT - Public Services – Others" as per the Tariff Orders issued by the Commission from time to time which are listed below:

- I. Case No. 121 of 2014 dated 26.06.2015
- II. Case No. 48 of 2016 dated 03.11.2016
- III. Case No. 195 of 2017 dated 01.09. 2018
- IV. Case No. 322 of 2019 dated 31.03.2020

  
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Hence, the Appellant was entitled to be billed under “Public Services-Others” tariff category from the date of connection i.e., April 2019.

- (iv) The Appellant referred the Regulation 8.2, 8.2.1, 8.2.2 and 8.3.4 of MERC - General Conditions of Distribution Licence 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.***


***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."***

- (v) The Appellant referred Regulation 13 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulation 2005) which is reproduced below:

***"13. Classification and Reclassification of Consumers into Tariff Categories***


***The Distribution Licensee may classify or reclassify a consumer into various Commission approved tariff categories based on the purpose of usage of supply by such consumer:"***

However, the Respondent failed to apply the “Public Services-Others” tariff category from 01.04.2019, and continued to bill the Appellant with a higher tariff of “Residential” 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.

  
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- (vi) The Appellant made an online application on 15.01.2021 for change of tariff category from Residential to Public Services-Others with retrospective effect from 01.04.2019. The Respondent did not take any action for change in the tariff category. The Appellant made another online application on 18.10.2021.
- (vii) The Respondent inspected the premises of the Appellant on 08.12.2021. The tariff category of the Appellant was changed from LT I to LT VII (B) Public Services-Others only from December 2021 onwards.
- (viii) Not satisfied with the remedy provided by the Respondent, the Appellant filed a grievance application before the Forum on 27.12.2021. The Forum, by its order dated 06.10.2022 dismissed the Grievance Application. The Forum failed to understand the basic issue that the hospital is running from the date of release of supply i.e.,01.04.2019.
- (ix) 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.
- (x) The Appellant referred the 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.
- (xi) The Appellant has filed a rejoinder by email on 18.01.2023 at 18.04 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) 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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- (c) Respondent's Commercial Circular No.319 dated 28.06.2019 for 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.
- (xii) In view of the above, the Appellant prays that the tariff category of the Appellant be changed to "Public Services-Others" from April 2019, and to refund the tariff difference along with interest.


4. The Respondent, by its letter dated 10.01.2023 has submitted its written reply. The hearing was held on 19.01.2023. The written submission along with its arguments are stated in brief as below: -

- (i) The Appellant had made an application on 11.01.2019 for a new connection with ID No. 17560148 of 5 KW load under "Residential" tariff category for the premises bearing Plot No. 112, Owe Village, Sector 30, Kharghar. If he was running a hospital, he should have applied under "Public Services – Others" category, which was created from 01.06.2015 by the Commission as per tariff order in Case of 121 of 2014. However, he did not do so.
- (ii) The connection was released on 01.04.2019 for residential purpose vide Consumer No. 029471080096. Thereafter the Appellant, on 16.07.2020, applied for load enhancement up to 19 KW again for residential purpose, and the same was sanctioned and released on 20.07.2020. Again, he had this opportunity to apply for "Public Services – Others" category, but he did not do so.
- (iii) On 06.08.2020, the Appellant applied for renewable energy sources (solar), again under "Residential" category, and the same was approved and the connection was released on 11.11.2020.
- (iv) The Appellant, for the first time, made an online application only on 15.01.2021 for change of tariff category from LT-1(B) Residential to LT VII (B) Public Services- Others, and that too **without attaching the required documents of change of**

  
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- purpose.** This application was kept pending for required documents as per Supply Code Regulations 2005, however, no such documents were submitted. The hard copy of the same was not submitted, which is needed for availing concessional tariff for hospital activity.
- (v) The Additional Executive Engineer of the Respondent, during his routine round in the first week of Oct. 2021, visited the premises of the Appellant and advised the Appellant to submit the required application along with the necessary documents. Subsequently, the Appellant made another online application on 18.10.2021 vide ID No-35281100 for change of tariff category. This time, the Appellant submitted hard copies of the required documents vide letter dated 20.10.2021 such as Medical Council Certificate, Master of Surgery Certificate from Mumbai University, Certificate of Registration from Municipal Corporation etc. received on 01.11.2021 by MSEDCL, and also requested for refund of tariff difference from 20.11.2019.
- (vi) After receipt of the online application and the required documents, the Respondent carried out a spot inspection of the consumer's premises on 11.11.2021 for confirmation of the activity for applying the proper tariff as per the usage. During the inspection, it was observed that the activity of the consumer is running a private Hospital.
- (vii) The proposal for tariff change was forwarded to the competent authority on 23.11.2021 for further approval. The competent authority gave the approval for change of tariff category i.e. LT-1 (B) Residential to LT VII (B) Public Services-Others with effect from November 2021.
- (viii) The Appellant again applied for additional load up to 20 KW on 01.02.2022 under Public Services -Others category and the same was released on 23.03.2022.
- (ix) The effect of tariff change was given to the consumer from the billing month November 2021 onwards till date. This was the month when the online application was received with all required documents.


  
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- (x) Being aggrieved with the same, the Appellant approached the Forum on 27.12.2021 for the refund of tariff difference from 01.04.2019 to 15.01.2021 which was the date of his first online application, but without the required documents. The Forum, by its order dated 06.10.2022 has rightly dismissed the grievance application.

**Reply on Merits:-**

- (xi) The said electric connection was initially released for “residential” purpose as per the request application of the Appellant. Thereafter the load of the consumer was enhanced from 5KW to 19 KW as per his own request, again for residential purpose. Then the consumer applied for solar power connection of 19 KW which was also applied for residential purpose, and the same was approved and released. At the time of site visit in July 2020 for confirmation of feasibility for load enhancement and solar system commissioning, the purpose of the usage of power supply was found to be residential only. **The use of the premises was never found to be for hospital purpose during every site visit, i.e., on site visits in July 2020 & Aug. 2020. Therefore, it is clear that the activity of the Appellant was residential and not hospital.** On this ground alone, the representation of the Appellant for refund of tariff difference ought to be rejected.
- (xii) While making the application for a new connection on 11.01.2019, the Public Services- Others tariff category was already in force from 01.06.2015 as per tariff order of the Commission in Case No. 121 of 2014. But the Appellant applied specifically for Residential Tariff, hence the connection was approved in residential tariff category as per the consumer’s own request. Hence the benefit of Public Services-Others tariff cannot be given to the consumer from the date of connection i.e., 01.04.2019.
- (xiii) The connection was released in the name of the individual person, and not in the name of the hospital. Thus, the application, or the order of connection, or the database at that time does not provide any idea as to the exact activity being carried out in the premises. Therefore, it would be difficult for the Respondent to suo-moto identify such individual cases where the use is for hospital purpose and to apply the appropriate tariff unless brought to notice by the consumer. It was the responsibility of the consumer to inform

  
(Dilip Dumbre)  
Secretary  
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about the change in purpose of electricity usage, and to apply for the appropriate tariff as per their usage.

- (xiv) The Appellant applied online properly only on 18.10.2021, and the required documents were submitted only on 01.11.2021 to the Respondent. Thereafter, the change of tariff was promptly done by the Respondent from the next billing cycle i.e. November 2021.
- (xv) **On verifying the consumption pattern of the consumer from CPL, it appears that the consumption of the consumer for the period April 2019 to October 2020 was in the average range of 600-700 units per month till November 2020. This was the consumption even at the time of application for additional load in July 2020 as well as installation of solar system in August 2020, and the consumer had still not applied for change of purpose.** From all the above facts, an inference can be drawn that at the time of new connection and thereafter the consumer himself was not using the electricity for hospital purpose. Hence, at this later stage, the Appellant consumer cannot claim for refund of tariff difference on account of his own mistake or negligence.
- (xvi) In view of above, the Respondent requested to reject the Representation of the Appellant.

### **Analysis and Ruling**

5. Heard the parties and perused the documents on record. The Appellant (Dr. Atul K. Patil) is a LT Consumer (No. 029471080096) from 01.04.2019 with SL of 19 KW at Plot No. 112, Sector 30, Kharghar. The Appellant is a registered Medical Practitioner operating a hospital namely "Aayush Hospital". The Appellant had made an application on 11.01.2019 for a new connection under Residential category and the Respondent sanctioned the same. The Appellant later enhanced his sanctioned load to 20 KW in July 2020 and installed solar rooftop system in August 2020. However, both these applications continued to be made under "Residential" Category. According to the Appellant, the supply is used for hospital purpose from the date of connection i.e., 01.04.2019.

  
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6. 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 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.

7. The Appellant applied for a new connection on 01.04.2019 under “residential” tariff category. The connection (Cons. No. 029471080096) was released on 01.04.2019 for residential purpose. Thereafter, the Appellant applied for load enhancement on 16.07.2020 up to 19 KW again for residential purpose and the same was sanctioned and released on 20.07.2020 by the

  
(Dilip Dumbre)  
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Respondent. On 06.08.2020, the Appellant again applied for renewable energy sources (solar) under residential category and the same was approved and released on 11.11.2020.

8. It is the argument of the Appellant that applying the appropriate tariff to various consumers is the duty of the Respondent. In other words, it was the duty of the Respondent to find out from among lakhs of its consumers, which consumers were running hospitals, even if the applied category was “residential”. The Respondent failed in its duty to apply the appropriate tariff category to the Appellant. However, it is equally true that the sub-category of Public Services- Others for private hospitals was created in 2015, yet the Appellant failed to apply for this category till 2021. Yet he expects the Respondent to somehow have this information that the Appellant was running a hospital.


Confusingly, the title of the Consumer on the electricity bill till the present is as below:

ATUL K PATIL

LIFT, SC, WP, PLOT NO 112 SECTOR 30.

9. During the hearing, the Appellant contended that while making the original online application on 11.01.2019 for a new connection, the online format did not have any category of “Public Services – Others”; therefore, he had no option but to apply under residential category. This aspect was checked by the office of the Electricity Ombudsman (Mumbai). We found that the online application did indeed have a clear category “Public Services – Others”. Therefore, the contention of the Appellant does not have any merit. Not only that, it is not understood why the Appellant, if he was indeed running a hospital, applied for the connection under his personal name “Atul K. Patil”, without even a mention of the name of the hospital and further, applied for the connection for “lift, staircase and water pump”. Thus, his application gave no indication that it was meant for hospital purpose.

Further, any new service connection application is normally accompanied with a “Test Report” of the authorized Licensed Electrical Contractor. Nowhere is there any mention that this test report identified hospital activity.

  
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10. In other words, nowhere is the name or activity of the hospital expressly written / seen / notified. There is merit in the Respondent's argument that there was no mention of the hospital activity, either in the original application of the Appellant, or in its load enhancement / solar application; or in the site visit reports, or in any other database of the Respondent. 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 01.04.2019 has no merit.

11. The Forum, by its order dated 06.10.2022 has observed that:

*"The Applicant applied online for change of tariff on 15.01.2021 but the required documents were not submitted at that time. After submission of the required documents on 01.11.2021, the Respondent has changed the tariff immediately in November 2021. Considering all above, the Forum is on the opinion that, as per the documents filed on the record, it is now established that, at the time of inspection carried out by the Respondent on 11.11.2021, the Nursing Home/ Hospital is running in the premises, therefore the tariff category is already changed to Public Services others from the date of application of the consumer and submission of required documents i. e. from November 2021. Hence the grievance filed by the Applicant is hereby rejected."*

12. 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  
Electricity Ombudsman Mumbai

