

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 15,16,17,18 & 19 OF 2022

In the matter of change in tariff category and retrospective recovery

- | | |
|---------------------------------------|---|
| 1. Mohammadiya Tibiya College | (Rep. No. 15 of 2022) |
| 2. Mohammadiya Tibiya College | (Rep. No. 16 of 2022) |
| 3. J.M.E.S. Farmacy College | (Rep. No. 17 of 2022) |
| 4. The Chairman Maulana Mukhtar Ahmed | (Rep. No. 18 of 2022) |
| 5. Jamiya Mohammadiya Educations | (Rep. No. 19 of 2022) Appellants |

V/s.

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

Appearances:

Appellant : Mahmoodal Hassan, Representative

Respondent : J.K. Bhamare, Executive Engineer

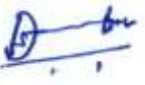
Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 8th April 2022

Date of Order : 22nd April 2022

ORDER

These five Representations are filed individually on 23rd February 2022 under Regulation 19.22 (d) of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020).


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Secretary
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Preamble

The Appellants had initially filed the grievances in Consumer Grievance Redressal Forum Nashik (the Forum) on 17.11.2021. However, the Forum not being operational due to vacancy of Chairperson and Independent Member, the grievances could not be heard for more than 60 days. The Appellants, therefore, filed these Representations individually under Regulation 19.22 (d) of CGRF & EO Regulations 2020.

2. The Appellants have filed these five representations individually. Since the cases are represented jointly, the issues being common, the Respondent being same, and all submissions and arguments being common, these five Representations are clubbed together for the purpose of this order.

3. The Appellants stated in their individual Representations which are taken in brief as under: -

(i) The details of Appellants are tabulated as below: -

Table 1: -

Rep. No.	Consumer No.	Name of Consumer	Date of Connection	Address as per bill	Purpose	Sanctioned Load(KW)
15/2022	065748000261	Mohammadiya Tibiya College	15.05.1990	Chadanpuri	Ayurvedic College	5 HP
16/2022	065748004542	Mohammadiya Tibiya College Assuyan H	24.04.2001	Gut No. 638, Chadanpuri	Hospital (Paralysis, dialysis etc.)	15
17/2022	065740010837	JMES, Farmacy College (Arshad Muktar)	20.04.2017	Gut No. 635, at Mansoor, Chadanpuri	School	9.8
18/2022	065740006333	The Chairman Maulana Mukhtar Ahmd	23.04.2012	Gut No. 632,633,634,635/A, 635/B,636/557, Nadvi Technical Campus, Chadanpuri	Engineering College	29.84
19/2022	065748000202	The Jamiya Mohammadiya Education	02.12.1987	Chadanpuri	Common Water Pump & Lighting Load of Trust Complex	5



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(ii) The Appellants stated the information/irregularities noted in some of the Representations which are summarised as below: -

(a) Rep. No. 15 of 2022 (Cons. No. 065748000261):

- The Appellant was billed with LT: 37.10 Tariff Code (Industrial) till July 2015. Then, it was changed to LT: 73.07 Tariff Code in Aug. 2015 for single month.
- It was again changed to LT: 17.07 Tariff Code from Sep. 2015 to Jun. 2021.
- It was further changed to LT: 73.52 Tariff Code (Public Services - Others) from Jul.2021 onward.
- All these changes in Tariff Codes were done without any application.
- The meter installed in the premises is same and working with progressive readings. However, the billing staff has changed the Meter Codes and Serial Numbers in some months and afterwards it is reverted. The Appellant questioned the intention of Billing Staff for such changes.

(b) Rep. No. 16 of 2022 (Cons. No. 065748004542):

- The Appellant was billed with LT: 37.10 Tariff Code (Industrial) till July 2015. Then, it was changed to LT: 73.07 Tariff Code only for Aug. 2015 for single month.
- It was again changed to LT: 17.07 Tariff Code from Sep. 2015 to Jul. 2021.
- It was further changed to LT: 73.02 Tariff Code from Aug. 2021 onward.


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- All these Tariff Code changes were done without any application.
- In the year 2015, the Respondent issued 'Tariff Rate Difference Bill' of Rs.1,31,000/-. When the Appellant has highlighted that it has paid higher rate of tariff category, it was revised further in the year 2018.
- It is seen that billing staff is misguiding the Officials of the Respondent.


(c) Rep. No. 17 of 2022 (Cons. No. 065740010837):

- The Appellant was billed with LT: 17.06 Tariff Code from the April 2017 to June 2021 as per CPL Report.
- It was further changed to LT: 73.52 Tariff Code from Jul. 2021 onward.
- All these Tariff Code changes were done by the Respondent without any application.

(d) Rep. No. 18 of 2022 (Cons. No. 065740006333) :

- The Appellant was billed with commercial tariff category from the year 2012 to June 2018 as per CPL Report.
- It was changed to LT: 18.07 Tariff Code from Jul. 2018 to Jun. 2021.
- It was further changed to LT: 88.52 Tariff Code from Jul. 2021 onward.
- All these Tariff Code changes were done by the Respondent without any application.

(e) Rep. No. 19 of 2022 (Cons. No. 065748000202):



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- The Appellant was billed with LT: 37.10 Tariff Code (Industrial) till July 2015. Then, it was changed to LT: 73.07 Tariff Code in Aug. 2015 for single month.
- It was changed to LT: 17.07 Tariff Code from Sep. 2015 to Jul. 2021.
- It was further changed to LT: 73.52 Tariff Code from Aug. 2021 onward.
- All these Tariff Code changes were done without any application.
- It is seen that billing staff is misguiding the Respondent.

From the above information, the Appellants state that the change in Tariff Categories were done by the Respondent unilaterally without any applications. Hence, there is no *locus standi* for recovery of tariff difference and hence requested to cancel the recovery. However, there was no response from the Respondent and Appellants were compelled to file these grievances.

- (iii) The Appellants initially filed their grievance applications with IGRC in Oct. 2021. However, the Respondent informed them to apply their complaints online in the portal of Internal Complaint Redressal System (ICRS) of the Respondent. The Appellants registered their complaints online on 31.10.2021. The ICRS did not provide any remedy.
- (iv) Thereafter, the Appellants approached the Forum on 17.11.2021. The Respondent disconnected the power supply of the Appellants when the applications were pending with the Forum. The Forum was not functioning, however, the Technical Member/ Secretary of the Forum by its letter dated 26.11.2021 has directed the Appellants to pay 50 % amount of assessed bill.


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After payment of 50 % amount, the Respondent has to reconnect the supply and not to disconnect the supply till the grievance is decided on merit. Accordingly, the Appellants paid 50 % amount and the Respondent restored the supply of all these representations.

- (v) No remedy was provided by the Forum within time frame prescribed in Grievance Redressal Mechanism, hence, the Appellants filed this Representation under Regulation 19.22 (d) of CGRF & EO Regulations 2020.
- (vi) There is no appropriate reason /document for assessment of tariff difference with retrospective effect for about 43 to 56 months.
- (vii) Hence, the Appellants pray that outstanding dues towards tariff difference be quashed totally. If the recoveries are to be done as per rule, the same be recovered from the concerned staff of the Respondent who were involved for malpractices for changing tariff code without any applications.

4. The Respondent, by letters dated 30.03.2022 has submitted reply individually which are taken in brief as below:-

- (i) The details of all these five Appellants submitted by the Respondent is already captured in Table 1 of Para 3(i) of the order.
- (ii) All these five Appellants are owned and managed by the Trust known as Maulana Mukhtar Ahmad Nadvi Trust.
- (iii) The Flying Squad of Nashik (R) of the Respondent has carried out detailed inspection of the Appellants in July 2021. During inspection, it was observed that all these five electric connections are for educational institutions and hospital in the common premises of the Maulana Mukhtar Ahmad Nadvi Trust. The tariff categories of the Appellants were changed as per Inspection Report



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of Flying Squad. The assessment was carried out retrospectively towards tariff difference from LT VII (A): Public Services (LT-Government Educational Institutions and Hospitals) to LT VII (B): LT-Public Services-Others and the supplementary bills were issued to the Appellants. The Flying Squad checking, and Assessment is tabulated as below.

Table 2 : Flying Squad Checking and Assessment Details

Rep. No.	15/2022	16/2022	17/2022	18/2022	19/2022
Consumer No.	065748000261	065748004542	065740010837	065740006333	065748000202
Name of Consumer	Mohammadiya Tibiya College	Mohammdiya Tibiya College Assuyan H	JMES, Pharmacy College (Arshad Muktar)	The Chairman Maulana Mukhtar Ahmd	The Jamiya Mohammadiya Education
Purpose	Aurvedic College	Hospital (Paralysis,dialasis etc.)	School	Engineering Co	Common Water Pump & Lighting Load of Trust Complex
Date of Flying Squad Checking	06.07.2021	06.07.2021	14.07.2021	14.07.2021	13.07.2021
Sanctioned Load(KW)	5 HP	15	9.8	29.84	5
Tariff Category billed	LT VII(A): Public Services :LT Government Educational Institutions and Hospitals				
Tariff Category to be billed	LT VII(B): LT Public Sevices-Others				
Assessment Period	Dec 2016 to Jun 2021	Dec 2016 to July 2021	April 2017 to Jun 2021	Dec 2016 to June 2021	Dec 2017 to June 2021
Total Months	55	56	51	55	43
Assessment Amount (Rs.)	35595.43	242606.16	199654.25	513171.21	317274.20



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(iv) The Appellants approached the Forum on 17.11.2021. The Technical Member/ Secretary of the Forum, by letter dated 26.11.2021 has directed the Appellants to pay 50 % amount of assessed bill and directed the Respondent not to disconnect the supply of the Appellants till the grievance was decided on merit. Accordingly, the Appellants paid 50 % amount of assessed bill.

(v) In view of above, the Respondents pray that the Representations of the Appellants be rejected.

5. Hearing was held on 08.04.2022 through video conferencing. The Appellants argued in line with their written submissions. The Appellants stated that the five Representations comprises of educational institutions like school & colleges and hospital which is owned and managed by Maulana Mukhtar Ahmad Nadvi Trust. All of them are on the same premises owned by the Trust which admeasures about 50 acres. A map of this campus is also kept on record. Initially, these five consumers were given Industrial tariff category. However, the Respondent unilaterally changed the tariff category of these five consumers. In the instance of Representation No. 18/2022, the Respondent changed the tariff category from Industrial to Commercial up to June 2018 and then changed to Public Services. The Appellants further argued that the change in Tariff Categories were done by the Respondent unilaterally without any applications. Apart from this, the meter numbers and meter codes were also changed despite the meter being the same which was then reverted after some intervals. The Appellant argued that in the year 2015, the Respondent issued 'Tariff Rate Difference Bill' of Rs.1,31,000/- in Rep.16 of 2022. When it was pointed out that the Appellant paid bill of Commercial tariff category of higher rate, then it was revised, and credit bill was given in the year 2018. This shows the working of the Respondent. There is no transparency in calculations of supplementary bills. The Appellants further argued that the Respondent changed the tariff codes in the five Representations several times which are already captured



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in the written submission, hence not repeated here. There is no appropriate reason for assessment of tariff difference with retrospective effect for the period of 43 to 56 months. Hence, the Appellants pray that outstanding dues towards tariff difference be quashed totally or be restricted for three months. If the recoveries are to be done as per rule, the same be recovered from the concerned staff of the Respondent who were involved in malpractices for changing tariff code without any applications.

6. The Respondent, on the other hand, argued in line with its written submission. It further argued that all these five electricity connections were wrongly billed under 'LT X (A): LT - Public Services' Tariff Category instead of 'LT X (B): LT - Public Services – Others' tariff category. This tariff category was introduced first time by the Commission in its Tariff Order dated 26.06.2015 in Case No. 121 of 2014 which was effective from 01.06.2015. This was continued in the successive orders of the Commission in Case No. 48 of 2016 dated 03.11.2016, in Case No. 195 of 2017 dated 01.09.2018 and Case No. 322 of 2019 dated 30.03.2020. The same category is continued till date.

7. The Respondent further argued that such educational institutions, hospitals and its allied activities like common lighting, water pump, etc. come under Public Services –Others Tariff Category which are run by Charitable Trusts. In the instant case, the Charitable Trust is Maulana Mukhtar Ahmad Nadvi Trust. The Flying Squad has rightly pointed out in its inspection in July 2019, that the wrong tariff categories were applied to the Appellants. The assessments of retrospective recovery carried out towards tariff difference for change in tariff category are correct. The Respondent argued that if the Appellants want any clarification for calculations carried out in retrospective recoveries, the calculations as well as meaning of tariff code will be explained to the Appellants as part of transparency. The Respondent has developed online computerised software for revision of bills. All calculations were done through online software which can be shared with the Appellants.


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8. As per direction of the Electricity Ombudsman, the Respondent submitted the Tariff Code used for billing, which is tabulated as below:


Tariff code	Description	Remarks	Tariff code	Description	Remarks
17	LT Public Service 0-20 KW	LT X AI	52	LT Commercial < 20 KW	LT-II A
18	LT Public Service 20 to 50 KW	LT X AII	70	LT Commercial 20 to 50 KW	LT-II B
19	LT Public Service >50 KW	LT X AIII	71	LT Commercial >50 KW	LT-II C
36	LT industrial above 27 HP	LT -V B II	73	LT Public Services-Others 0 to 20 KW	LT-X B I
37	LT industrial upto 27 HP	LT -V B I	88	LT Public Services-Others 20 KW to 50 KW	LT-X B II
			89	LT Public Services-Others > 50 KW	LT-X B II

Analysis and Ruling

9. Heard the parties and perused the documents on record. Representations No. 15 and 16 of 2022 are owned and managed by Al. Jamiatul Mohammadiya Al. Khairiya Trust and Representations No. 17, 18 and 19 of 2022 are owned and managed by Maulana Mukhtar Ahmad Nadvi Trust as submitted by the Appellant. The purpose of these Appellants are for Ayurvedic College, Hospital (Paralysis, dialysis etc.), School, Engineering College, and Common Water Pump & Lighting Load of Trust Complex in Representations No. 15,16,17,18 & 19 of 2022 respectively. The Appellants stated that the salaries of staff are paid as per the Government norms and regulations for which Government provides financial aid. Though Government aid is provided, the appointing authority of the staff is the Trust, and the overall control and management of these organisations is of the Trust.

10. The Appellants in Representations No. 15, 16, 18 & 19 of 2022 are the consumers of the Respondent prior to the year 2012 whereas the date of connection in Representation No. 17 of 2022 is 17.04.2017.

11. It is necessary to examine the creation of 'Public Services' tariff category.


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- I. The Commission, in its Tariff Order dated 16.08.2012 in Case No. 19 of 2012 which was effective from 01.08.2012 introduced a new Tariff category for 'Public Services'. The relevant portion of the said tariff order is as below:

"LT X: LT-Public Services:

Applicability

This Tariff shall be applicable to education institutes, hospitals, dispensaries, primary health care centres, pathology laboratories, Police Stations, Post Offices, Defence establishments (army, navy and airforce), Public libraries and Reading rooms, Railway except traction (shops on the platforms/railway station/bus stands will be billed under Commercial category as per the respective slab), State transport establishments; Railway and State Transport Workshops, Fire Service Stations, Jails, Prisons, Courts, Airports (only activities related to aeronautical operations) 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 exclusively meant for the students / patients of such Educational Institutions & Hospitals."


- II. The Commission then further issued Tariff Order dated 26.06.2015 in Case No. 121 of 2014 effective from 01.06.2015 wherein for the first time, 'Public Services' category was divided into two subcategories. These are as below: -

(A) LT X (A): LT - Public Services - Government Educational Institutes and Hospitals

(B) LT X (B): LT - Public Services – Others.

The LT X (B): LT - Public Services – Others reads as follows: -

"Applicability


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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.” (Emphasis added)

III. Subsequently, on the same basis, the Commission issued Tariff Orders in Case No. 48 of 2016 dated 03.11. 2016, in Case No. 195 of 2017 dated 01.09.2018.

IV. The Commission, in its Tariff Order dated 30.03.2020 in Case No. 322 of 2019 which is effective from 01.04.2020 has categorised Public Services as below:

LT VII (A):LT-Government Educational Institutions and Hospitals

LT VII (B):LT-Public Services - Others

“Applicability:

This tariff category is applicable for electricity supply at Low/Medium Voltage for:



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- a. *Educational Institutions, such as Schools and Colleges; Health Care facilities, such as Hospitals, Dispensaries, Clinics, Primary Health Care Centres, Diagnostic Centres, Blood Banks, Laboratories; Libraries and public reading rooms - other than those of the State or Central Government or Local Self-Government bodies such as Municipalities, Zilla Parishads, Panchayat Samitis, Gram Panchayats, etc. (Emphasis added)*
- b.”

In view of the above tariff orders of the Commission, the tariff category of all these five representations is categorised under the ‘Public Services – Others’ tariff category. In fact, the said tariff category is effective from 01.06.2015 as per the tariff order of the Commission in Case No. 121 of 2014 and further subsequent tariff orders which is in force till date. The Respondent failed to implement the tariff order in time and also irrelevantly billed the Appellants under industrial / commercial tariff category initially and up to the year 2015. This is a serious lacuna on the part of the Respondent.

12. The Flying Squad of the Respondent carried out inspection of the Appellants in July 2021. During inspection, it was observed that all these connections are for educational institutions / hospital in the common premises owned and managed by two Charitable Trusts. Hence, as per the Commission’s Tariff Orders, the activities of the Appellants are covered under Public Services – Others tariff category.

13. The Respondent changed the tariff categories of the Appellants from LT VII (A): Public Services to LT VII (B): Public Services - Others. The assessment of tariff difference from LT VII (A) to LT VII (B) was carried out retrospectively and supplementary bills were issued to the Appellants for the period from Dec 2016 to Jun 2021(55 months) in Rep. No.15, 17, 18 of 2022, for Dec 2016 to July 2021 (56 months) in Rep. No. 16 of 2022, and April 2017 to Jun 2021(43 months) in Rep. No.17 of 2022 respectively. All these assessment periods varied from 43 to 56 months.


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14. It is necessary to examine whether these assessment periods fulfils the statutory requirement of the Section 56(2) of the Electricity Act, 2003 (the Act).

The Section 56 (2) of the Act is reproduced below:


“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This 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.

The Larger Bench of Bombay High Court by its Judgment dated 12.03.2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following views for the Section 56 (2) of the Act which is reproduced as 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 concurred 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


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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


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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 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.**

(Emphasis added)



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Secretary

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- (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.”*

The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.


The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

(Emphasis added)

.....”

In view of the above discussions, the Judgments of the Supreme Court and Larger Bench of Bombay High Court, the Respondent can recover tariff difference only for 24


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months retrospectively. However, Section 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.


15. In view of the above, the Respondent is directed as under: -

- (a) To recover the amount towards tariff difference for the period from July 2019 to June 2021 for Rep. No.15, 17,18 & 19 of 2022 and for the period from Aug 2019 to July 2021 for Rep. No. 16 of 2022 without any interest and DPC, levied if any.
- (b) To allow the Appellant to pay the above amount in 5 monthly instalments along with current bill without any interest and DPC. In case of default, the interest, DPC shall be levied.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellants are rejected.

16. The secretariat of this office is directed to refund the amount of Rs.25000/- deposited by the Appellants by way of adjustment in the ensuing bills.

17. The Representation is disposed accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

