

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 49 OF 2020

In the matter of change of tariff category

Nawany Construction Co. Pvt. Ltd. .... Appellant

V/s.

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

Appearances

For Appellant : Harshad Sheth, Representative

For Respondent: 1. Sidharaj S. Kinnur, Executive Engineer, Vasai  
2. A.S. Mirza, Addl. Executive Engineer, Vasai Road (E) Sub. Dn.  
3. Rajiv Vaman, Asst. Law Officer

**Coram: Deepak Lad**

Date of Hearing: - 19<sup>th</sup> August 2020


Date of Order : - 16<sup>th</sup> September 2020

## ORDER

This Representation is filed on 27<sup>th</sup> February 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 3<sup>rd</sup> February 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone.

2. The Forum, by its order dated 03.02.2020 has partly allowed the grievance application in Case No.1981 of 2019-20 and the operative part of the order is as below: -


- “2) Respondent utility to change tariff from Commercial to Industrial with immediate effect. Respondent utility to refund the tariff difference on account of not giving effect to change of tariff in the second cycle after receipt of application from the consumer.
- 3) Claim for retrospective refund of tariff difference prior to the application of the consumer is rejected.”

  
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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.001840601931) from 02.08.1997 for common electricity use of the Industrial Estate having Sanctioned Load of 4 KW (mentioned on bill) at Tirupati Udyog Nagar, St. lighting, B & A, Waliv, Vasai (East). Initially, the Appellant was billed with commercial tariff category. At present, the Appellant is billed with industrial tariff as per the order of the Forum.
- (ii) The Industrial Estate of the Appellant is fully occupied by gala holders for industrial use. The Appellant has taken power supply for gala holders for their common use of electricity like streetlights, passage lightings, water pumps, etc. The Appellant was billed under LT II A: Commercial tariff for their common usage previously.
- (iii) The Appellant filed the grievance application with Internal Grievance Redressal Cell (IGRC) on 11.10.2019 for change of tariff category from Commercial to Industrial and refund of tariff difference for two years. The IGRC did not conduct the hearing within 60 days.
- (iv) The Appellant approached the Forum on 11.12.2019. The Forum, by its order dated 03.02.2020 has partly allowed the grievance application and directed the Respondent to change the tariff category from Commercial to Industrial with immediate effect and to refund the tariff difference considering the change of tariff carried out in the second billing cycle after receipt of application from the consumer. However, claim for retrospective refund of tariff difference for 24 months prior to the application of the Appellant is rejected.
- (v) The Appellant relies upon the order of Kalyan Forum dated 02.05.2019 in Case No. 1827 of 2018-19 in this regard wherein the Forum has confirmed that when it is an Industrial Estate and the use is for industrial purpose, the common supply for lift, water pumps and common lightings should be categorized under Industrial tariff. The Forum in that case has also directed to refund tariff difference for 24 months from the date of application made to the Distribution Licensee.

  
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- (vi) The Appellant referred the order of the Bhandup Forum dated 26.11.2019 in Case No. 269/2019, orders of Electricity Ombudsman (Mumbai) in Rep. No. 42 of 2019 dated 26.03.2019, in Rep. No. 91 and others dated 24.05.2019 and in Rep. No. 138 of 2019 dated 19.08.2019 for retrospective recovery.
- (vii) The Appellant referred the judgment of the Hon'ble Supreme Court of India dated 12.02.2016 in Civil Appeal No. 3699 of 2006 in case of Rashtriya Ispat Nigam Ltd. V/s Prathyusha Resources & Infra Pvt. Ltd for cause of action. The Hon'ble Court has held that
- "We shall now consider the settled law on the subject. This Court in a catena of Judgment has laid down that the cause of action arises when the real dispute arises i.e. when one party asserts and other party denies any right"*
- (viii) The Appellant referred the Judgment dated 10.02.2020 of the Hon'ble High Court Bombay in Writ Petition No. 8712 of 2018 & 8731 of 2018 in which it upheld the order of the Forum and retrospective recovery. The contention of MSEDCL that the change of tariff can be effected from the date of application is rejected.
- (ix) The Appellant, therefore, prays that the Respondent be directed to refund tariff difference from commercial tariff to industrial tariff category for 24 months prior to first date of application along with interest as per Section 62(6) of the Electricity Act, 2003 (the Act).
4. The Respondent filed its reply by letter dated 26.07.2020 stating in brief as under: -
- (i) The Respondent MSEDCL denied all contentions raised in grievance except those explicitly admitted herein.
- (ii) The Appellant is a Consumer (No.001840601931) from 02.08.1997. The Application of the Appellant was sanctioned for commercial purpose at Tirupati Udyog Nagar, St. lighting, B & A, Waliv, Vasai (East) and Meter No.03269096 of Genus make is installed to the Appellant.
- (iii) The electric supply is in the name of Nawany Construction Co. Pvt. Ltd. which was sanctioned and utilized for common utility such as water pump, passage, street lighting, etc. The Industrial Estate of Appellant is not owned by Government of Maharashtra and local body. It is a private Industrial estate run for commercial

  
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purpose for earning profit. The Industrial tariff is applicable where power supply is used for manufacturing as well as processing of product. The supply of the Appellant was not utilized for Industrial activity. Hence, Industrial tariff could not be applicable to the Appellant.

- (iv) As far as applicability of tariff to water supply in Industrial area is concerned, the Forum has gone through the Commercial Circular No. 175 dated 05.09.2012 based on tariff order of the Maharashtra Electricity Regulatory Commission (the Commission) dated 16.08.2012 in Case No. 19 of 2012, in which applicability of Industrial tariff is mentioned as follow:

*“LT V (B): LT-Industry – General*

*This tariff shall also be applicable for use of electricity / power supply for administrative office / Time officer, Canteen, Reservation hall / Sport Club/Health Club/ Gymnasium/Swimming Pool exclusively meant for employees of the Industry, lifts, water pumps, fire fighting pumps premises (security) lighting, Research and Development units, etc. provided that all such facility are situated within the same industrial premises and supplied power supplied power from the same point of supply.”*

- (v) Also in Commercial Circular No. 243 dated 03.07.2015 based on tariff order of the Commission dated 26.06.2015 in Case No. 121 of 2014 says that:

*Tariff to water supply to Industrial Premises*

*“Water works or water supply schemes for self-consumption by Industrial complexes / premises of individual in the Industrial tariff category.”*

- (vi) The Commission also in its tariff order dated 26.06.2015 in Case No. 121 of 2014 effective from 1st June 2015 has held as under:


*“Water Supply to Industrial premises*

*MSEDCL’s submission*

*6.36.1 It has been suggested that the water works/supply in small private industrial complexes or premises may be billed as per the PWW Category, as in case of water works in Maharashtra Industries Development Corporation (MIDC) Areas. In response, MSEDCL has submitted that water works or water supply schemes owned by private industrial complexes or premises which are being used for self- consumption by such complexes or premises may be billed as per the Industrial category. However, water supply schemes not owned by the them should continue to be billed under the Commercial category.*

*Commission’s Ruling*


*6.36.2 The Commission has earlier ruled in its Order in Case No. 19 of 2012, that such activity may have commercial motives if it is not completely under the ownership, operation and maintenance of a Government body or local authority. However, the Commission is also of the view that water supply exclusively for industrial purpose should not be covered under the Commercial category. Therefore, the Commission has decided*

  
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*that water works or water supply schemes for self-consumption by industrial complexes/premises of individual private industries shall be included in the Industrial tariff category.”*

- (vii) After perusal of various circulars including Commission’s Tariff Order, the Forum has reached to the conclusion that supply / Common lighting used for Industrial area should be categorized under Industrial category only. Hence, the Forum has directed to change tariff of consumer from Commercial to Industrial from his application dated 11.10.2019. Accordingly, as per order of the Forum, the tariff of Appellant was changed from billing month of May 2020 and tariff difference for the retrospective period from November 2019 onwards till prior to application of tariff to the Appellant in the system has been credited in next billing cycle. This amount comes to Rs. 46,760/-.
- (viii) Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees. Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations) provides for change of tariff on the application of the consumer within the second billing cycle. This change of tariff category is prospective in nature and not retrospective therefore, there is no question of refund for two years prior to the date of application. The Forum has issued the appropriate order which has been implemented.
- (ix) Basically, the connection was released as per the application of the Appellant with Commercial Category. It is difficult for the Respondent to ascertain, whether the two years period for which the Appellant is asking refund, electricity was used for commercial purpose or otherwise. Therefore, grant of retrospective refund is not justified.
- (x) In view of the above, the Respondent prays that the representation of the Appellant be rejected.
- (xi) In respect of contention of consumer for refund of tariff difference for 2 years from date of application with interest as per section 62 (6) of E.A. 2003.
- (xii) It is admitted facts that the consumer was being charged under commercial tariff since the date of connection. On 11.10.2019 consumer gave an application for change of tariff from commercial to Industrial tariff. As per MERC (SOP) Regulation 2014, 8 (ii)' the period for change of tariff is second billing cycle from the date of application. This being so consumer asks for refund of tariff difference

  
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for preceding two years. As to how MSEDCL be able to exercise our right of inspection retrospectively. Tariff is always changed prospectively even where the Distribution Licensee on inspection finds for any consumer that actual tariff applicable is on a higher side. No retrospective refund of difference in tariff can be granted to consumer in this case, when the right to inspection of the Distribution Licensee, for the retrospective period stands prejudiced. The Forum in case No.1981 as consider all aspect and accordingly partly allowed case and rejected the prayer of retrospective tariff difference.

In view above, this representation of Appellant may be please rejected.


5. The hearing could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence, the hearing was scheduled on 19.08.2020 on e-platform after the consent from the parties.

6. During the hearing, the Appellant and the Respondent argued in line with their respective written submissions and reiterated the same. The Electricity Ombudsman (Mumbai) has directed both the parties to submit the complete case history as to how that building in which the Appellant is housed came into being.

7. Post hearing, as per the directions of the Electricity Ombudsman, the representative of the Appellant submitted additional information through email dated 21.08.2020 that the connection is being utilised for common use since August 1997. There are 80 industrial units (galas) in three buildings namely A, B and C having Ground and first floor. All these units are sold, and a deemed society is formed.

8. Similarly, the Respondent submitted additional arguments through email dated 26.08.2020 as below:


- (i) In the year 1997, the present premises was nothing but open land and the existing building and Galas were not in existence. Initially, there was no industrial estate as such in the year 1997. The electric supply was required for development and construction of industrial estate. Hence, electric supply for commercial purpose was applied by the consumer and the same was sanctioned and supply was released on

  
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02.08.1997 vide Consumer No. 001840601931 for commercial purpose/construction purpose.

- (ii) Thereafter from 1997 to 2019 on progressive development of industrial estate other electric connections for industrial & commercial use has been applied and sanctioned during passage of time. On verification of record and perusal of date of supply of other connections, this fact is very much clear. Date of connection of consumer No. 001840601931 of M/s. Nawany Construction is 02.08.1997 and other connections are released thereafter from year 1998 till year 2019.
- (iii) The case of consumer is simply a case of change of use by consumer himself. The supply of Consumer No.001840601931 was initially used for construction and development of Industrial Estate. As there was no Industrial use and no Industry activity was carried thereon, there was no propriety of the Appellant being billed at industrial tariff. When this industrial estate and galas therein started their industrial activities, individual industrial connections were released. It was only after this, power supply which was used under Commercial tariff was used for common use for water pump, street lighting and common passage. Therefore, it was consumer who must apply to MSEDCL for change of tariff due to change in use and hence he is not entitled for retrospective effect of tariff difference.
- (iv) In this Industrial Estate of Nawany Construction, there is the mixture of consumer i.e. Industrial and Commercial therefore it was difficult for MSEDCL to ascertain the usage of power supply of consumer No. 001840601931 in past.
- (v) The case of consumer is not case of application of wrong tariff and case of reclassification of tariff by the Commission and therefore the judgment of the Hon. ATE and the Commission referred and relied upon by the Appellant would not be applicable in the present case.
- (vi) This is not a case of wrong application of tariff. The onus to apply for change of tariff lies with the Appellant if the original purpose for which the connection was released is changed. The citation of Hon. High Court and Supreme Court and Order of the Electricity Ombudsman is not applicable in present case. In view of above, the representation of the Appellant may please be rejected.

  
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## Analysis and Ruling

9. Heard the parties and perused the documents on record. I noted the following points as it fell from the written submissions and the arguments:

- (a) The Appellant is a developer of the industrial estate where the connection has been released.
- (b) The connection applied for by the Appellant was commercial. The Respondent released the connection with the commercial tariff.
- (c) The Appellant paid the bill under Commercial tariff without any demur for considerable time.
- (d) The Appellant applied for change of category with the Respondent as well as filed grievance with the IGRC on 11.10.2019 and requested for grant of retrospective refund for 24 months prior to October 2019.

10. The Appellant demanded a Commercial connection after due stock taking of its requirement and nature of work. Similarly, the Respondent after due verification released the connection on 02.08.1997 and applied commercial tariff. It inter alia means that the Appellant and the Respondent were on the same page as far as purpose of the connection and application of commercial tariff is concerned. This is more so clear as the Appellant paid all the bills from the date of connection at the commercial tariff without any demur. It is an admitted position that it is not the case that the building to house the various industrial units was already in existence without any initial supply for construction or otherwise, and majority of the galas were running with industrial units and then the present connection was released for common usage of street light, water pump and passage and was billed at a tariff other than what was envisaged in the appropriate Tariff Order of the Commission. On the contrary the facts of the case are that the Industrial estate was being constructed by the developer on a parcel of land and the Appellant applied for connection in furtherance of the construction that was being undertaken by it. Therefore, it was incumbent upon the management of the industrial estate to have applied for application of appropriate tariff once it ceased to use power for the purpose it was released for. After completing the construction of the Industrial estate and the galas occupied, the Appellant probably would have been entitled for application of appropriate tariff for common facilities in the Industrial complex in accordance with tariff order of the

  
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Commission in force at the point of time provided the order of the Commission envisages that particular tariff.


11. When the Appellant was convinced that the connection now needs to be billed on an industrial tariff for the common facilities as per the order of the Commission which was in force from 2012, it applied for the same with the IGRC on 11.10.2019. It is only after the order of the Forum that the Respondent changed the tariff prospectively.

12. The Respondent argued that the Appellant filed an application for grant of industrial tariff with retrospective effect that too for two years. It is not understood as to how this period of two years has come up and the logic behind the same. The Appellant has not cited any justifiable reason for retrospective applicability of the tariff. Even if, the Respondent intends to go back in time to check and verify, it is not possible for it to ascertain as to the actual purpose for which the power was used by the Appellant in a period of two years prior to the date of application. Moreover, this is not a case of wrong application of tariff. The entire onus to apply for appropriate tariff for its use lies with the Appellant if there is change of purpose other than what was previously existing and there is a totally different tariff envisaged in the tariff order of the Commission.

13. Without any proper justification, the Appellant is trying to seek retrospective relief for two years prior to the date of application for change of tariff. It has also cited the orders of the Forum which for the obvious reasons are not considered by me. As regards other orders /judgments cited by the Appellant, I am of the view that the ratio of the orders /judgments cannot be blindly applied, as the context in the instant case is totally different. Moreover, I also noted the Respondent has implemented the order of the Forum in letter and spirit.

14. In view of the above, I do not find it necessary to interfere with the order of the Forum. The representation is disposed of accordingly with no order as to cost.

Sd/-  
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Electricity Ombudsman (Mumbai)

  
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