

		Date	Month	Year
1	Date of Receipt	25	08	2022
2	Date of Registration	25	08	2022
3	Decided on	21	10	2022
4	Duration of proceeding	57 days		
5	Delay, if any.	—		

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai - 400 001
Telephone No. 22799528

Grievance No. GN-013-2022 dtd. 25/08/2022

SD Infra & MEP Services Pvt. Ltd.
(Shri Manoj Morye)

.....Complainant

V/S

B.E.S.&T. Undertaking

.....Respondent

Present

Chairman

Coram :

Shri S.A. Quazi, Chairman

Member

1. Smt. Anagha A. Acharekar, Independent Member
2. Shri S.S. Bansode, Technical Member

On behalf of the Respondent (1) : 1. Shri S.S. Gawade
2. Shri. D.R. Ingle

On behalf of the Complainant : 1. Shri Manoj Morye

Date of Hearing : 13/10/2022

Date of Order : 21/10/2022



(Signature)
(Milind Kataranjkar)
Secretary
CGRF BEST

(Signature)
(Signature)

Judgment

1.0 The complainant Shri Manoj Gajanan Morye has grievance about Respondent's decision regarding amendment of tariff rates LT-II (A) to LT-II (B) in respect of the electric connection of the complainant as stated in its letter dtd.01/10/2019 demanding Rs. 3,40,273.00 which subsequently came to be reduced to Rs. 35,387.00 by the respondent by its debit note dt.11/06/2022, of addressed to the complainant.

2.0 The following facts may be stated to be not in dispute :

a) The Respondent is supplying the electricity to the premises having address as 1st floor, 108, Allied Industrial Estate, Near Khilani School, Ram Panjwani Marg, Mahim, Mumbai - 400 016. The earlier consumer was M/s Shade Arts bearing a/c no. 639-644-029 and it was having two meters, one for commercial purpose (0925746) and another for industrial purpose (0654550).

b) According to the complainant, he purchased the said premises on or about 25/02/2010 from the said earlier consumer. Thereafter the present consumer / complainant submitted an application dtd.8/09/2012 to the Respondent for change in consumer's name from M/s Shade Arts to the name of the complainant. At the time of this application for change of consumer, the a/c no. of M/s Shade Arts was 202-030-661. Both the parties before this Forum have referred to the copy of the said application and the documents annexed thereto. On the said application, the Respondent changed the name of the consumer from M/s Shade Arts to the name of the complainant Shri Manoj Gajanan Morye soon after the application dtd.18/09/2012. The Respondent also changed the account number from 202-030-661 to new a/c no. 202-030-036.

c) The Respondent has served a letter dtd.01/10/2019 to the complainant. By the said letter, the Respondent has informed to the complainant that the Respondent will be carrying out amendment of tariff rates from LT-II (A) to LT-II (B) and it will be given effect in the ensuing electricity bill. The complainant gave reply to this letter on 23/10/2019 stating that the complainant's load is below 20 kw and therefore the complainant falls within the tariff category of LT-II (A)-consumer and therefore the amendment of tariff as suggested by the Respondent was not warranted. Then on 11/06/2022, the respondent issued credit note for Rs.3,40,273.00 and again on the same date it issued debit note of Rs. 35,387.00

3.0 The case of the complainant as stated by him in his complaint filed and oral submissions made in the course of hearing, before this Forum, may be stated as under:

a) There were two meters attached to the premises, one bearing meter no. 0654550 with tariff LT-III (F) and another meter no. 0925746 with tariff LT-IV (A/F). On the application dtd. 07/06/2011 of the consumer/complainant, the Respondent replaced

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the faulty meter no. 0925746 with the new meter no. P086624. It is further case of the complainant that he surrendered the meter no. 0654550 in the month of December 2012. In the aforesaid circumstances, the complainant had made an application dtd.18/09/2012 to the Respondent for change in the name of consumer. According to the complainant, in the said application, he had mentioned the applicable load of tariff by paying the appropriate fees of Rs. 50/-. In response to the said request, the Respondent had changed the name and tariff but the Respondent has failed to change the applicable load. In this regard, the complainant has relied on the copy of the application for the change of name dt. 18/09/2012 and receipt dtd. 21/09/2012 whereby he paid the amount of Rs. 50/- towards processing charges of said application vide Annexure 'A' & 'F'.

- b) According to the complainant, on 03/08/2015, the Respondent replaced the faulty meter no. P086624. Subsequent to the same, in the documentation, load connection recording of the complainant is mentioned in the BEST's record but no change is done in the tariff of the complainant.
- c) Then the complainant has referred to the Respondent's aforesaid letter dtd. 07/10/2019 and submitted that this was the first time that the Respondent communicated to the complainant regarding change in the tariff rates. According to the complainant, he opposed the said change in the tariff mentioned in the letter dtd. 07/10/2019. This was brought to the notice of the Respondent by the complainant regarding the incorrect load and tariff applied by them. However, the Respondent has failed to take any corrective action on the same. The complainant communicated his response by his letter dtd. 23/10/2019 addressed to the Respondent. In the said letter, the complainant clarified that the new tariff is not applicable to him as connected load to his premises is less than 20 kw and the carpet area is only 500. Along with the said letter dtd. 23/10/2019, the complainant also submitted load details to the Respondent. Thereafter, neither the Respondent replied nor it's officials inspected the site to confirm the facts mentioned in the complainant's letter dtd. 23/10/2019 and the load details mentioned therewith.
- d) The Respondent has raised energy bill to the tune of Rs. 3,40,273.00 without providing any details or break-up of how this figure was derived. The Respondent has also not given any document to justify the said bill. However, when the complainant gave a call and letter to the Respondent's High Value Consumer (HVC) Dept., the officials of the Respondent manually handed over document to the complainant. The complainant has produced copy of his letter dtd. 31/01/2022 addressed to the Respondent.
- e) According to the complainant, on 24/05/2022, the Respondent reduced their claim of Rs. 3,40,273.00 to Rs. 2,89,528.00 without any supporting or giving details of how the said figure was arrived at by their office. The Respondent is regularly threatening to disconnect the electric supply if the said amount is not paid. On 22/02/2022, the complainant received debit note of Rs. 3,40,273.00 and on 11/06/2022, the




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complainant received credit note for Rs. 3,40,273.00 and again on the same date he received debit note of Rs. 35,387.00 without any explanation. There were no calculations or explanation given by the Respondent for issuing debit/credit notes. They are just sending electricity bills, debit/credit notes as per their convenience.

- f) According to the complainant, the electricity consumption for his premises has never gone beyond 6 KVA since the date of purchase of premises by him. The aforesaid behavior of the Respondent is not justifiable according to the complainant. It is also submitted that the complainant, in the application dtd. 18/09/2012, had mentioned the load of 9608 watt, but no change was made by the Respondent in the sanctioned load. The complainant has given all details of the load in his said application but still no inspection has been done by the Respondent at the site to verify the same and no sanctioned load has been changed by the Respondent. The complainant has submitted that in such circumstances the aforesaid amendment in the tariff effected by the Respondent is illegal and without following due procedure. He has submitted that such amendment is done by the Respondent after a period of 10 years to charge the complainant more amount than the Respondent is entitled to recover. The Respondent never informed the complainant that as per his said application dtd. 18/09/2012 the load has not been changed and now after 10 years they are charging for the same, which is illegal. The complainant has submitted that the contention of the Respondent that the said application dtd. 18/09/2012 was only for change of consumer's name and not for change of load, is not acceptable in view firstly that in the said application, the complainant has mentioned the load to be utilized by him and secondly that there is no separate format of application for effecting the change in the sanctioned load and therefore the application given as such was sufficient for changing the load in the year 2012 itself. Referring to all the documents and the pleadings on record, the complainant has submitted that the Respondent be directed to withdraw its order to carry out amendment in the bills for 10 years as suggested by them in their letter dtd. 07/10/2019 and in the debit note dt. 11/06/2022.

4.0 The Respondent has appeared and filed its reply and opposed the aforesaid complaint of the grievance application filed before this Forum. Their case may be stated as under:

- a) According to the Respondent, as per their OLCCS record there was a request from the consumer for changing the tariff from industrial to commercial vide ID no. 1607982 dtd. 12/11/2013. The same was approved on 09/01/2014. In recent past the Respondent has received Municipal Chief Auditor (MCA) query about the applied tariff LT-II (A) instead of LT-II (B) as per sanctioned load above 20 kw. In view of the audit query, OLCCS ID No 6982007 dtd. 22/01/2021 was created for change of tariff from LT-II (A) to LT-II (B) and same was approved on 27/01/2021. The information was also given to Divisional Engineer High Value Consumer (DEHVC) through email dtd. 25/08/2021 to prepare amendment claim. Accordingly, DEHVC has preferred amendment claim of Rs. 3,40,273.29 for the period from 01/01/2013 to 01/01/2021




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and debited the claim amount in the a/c no. 202-030-036 of the complainant. Meanwhile the complainant took objection to the said amendment in claim. Divisional Engineer Customer Care (G/N) (DECC(G/N) had taken cognizance of the complainant's grievance and considered the amendment period from date of change of consumer-name to the change of tariff application. Accordingly, vide note reference dtd.11/03/2022 DECC(G/N) informed DEHVC to correct the amendment period as from 01/01/2013 to 12/11/2013 instead of 01/01/2013 to 01/01/2021.

- b) With regard to the contention of the complainant that in his application dtd. 18/09/2012, for change of consumer-name, he had also requested for change of load, the Respondent has submitted that as per system requirement the consumer had not applied for reduction in sanctioned load, therefore, the sanctioned load remained same i.e. 24 kw as that of previous consumer. The requirement of application for revision of sanctioned load has been specified under the MERC (Electric Supply Code and Other Conditions of Supply) Regulations, 2005 vide clause 6.8 and MERC (Electric Supply Code and Standard of Performance of Distribution Licensees including Power Quality) Regulations, 2021 clause 7.6. As per said provisions, the Distribution Licensee is required to revise, increase / decrease the contract demand and sanctioned load of the consumer only upon receipt of specific application for the same from the consumer.
- c) With reference to the grievance of the complainant about alleged failure of the Respondent to do inspection at the site etc., the Respondent has submitted that their enquiry inspector has visited site on 14/01/2021 and load particulars were obtained. The load was found to be 12.98 kw. However, the consumer has not applied for reduction in the sanctioned load.
- d) According to the Respondent, the complainant has made false allegation in the complaint that no supporting documents were sent to him by the Respondent. According to the Respondent supporting documents were given to the complainant which are produced at pg. 71/c to 75/c with the reply of the Respondent. It is submitted that the Respondent followed the rules and regulations laid down by MERC (Electric Supply Code and Standard of Performance of Distribution Licensees including Power Quality) Regulations, 2021.
- e) According to the Respondent, as the complainant did not specifically applied for reduction in the sanctioned load, his grievances made in the complaint are baseless and false and therefore, the grievance application is liable to be rejected.

5.0 We have heard the submissions of the parties and noted their submissions as above. In view of the above submissions of the parties and case pleaded by them, the following points arise for determination, on which we record our findings as under, for the reasons to follow.




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Sr. No.	Points for determination	Findings
1	Whether the ultimate amendment carried out by the Respondent in the bills of the complainant to demand the amount of Rs. 35,387.77 vide Respondent's letter dtd. 11/06/2022 is legal and valid?	Affirmative
2	What order is required to be passed?	The instant complaint / grievance application is dismissed as is being indicated in the operative order being passed herein below.

6.0 We record reasons for aforesaid findings recorded on point no 1 as under :

- a) We have noted the contentions of the parties as mentioned by them in their pleadings as well as in their oral submissions. We have also perused the documents submitted by the parties on record in the course of hearing.
- b) We have noted the admitted facts herein earlier. Considering the aforesaid admitted facts as mentioned in para 2.0 herein earlier, it can be said that the complainant purchased the premises in the year 2010 when the premises was having two meters, one for commercial and another for industrial purpose and the bills were made in those days as per the prevailing tariff structure. It is also not disputed that the complaint made an application to the respondent on 18/09/2012 for change of consumer's name from the name of earlier consumer to the name of the present complainant. The change in the consumer-name was accordingly made in favour of the complainant by the Respondent w.e.f. 18/09/2012. However, admittedly the change in the sanctioned load was not done on the basis of that application. The question being raised by the complainant in his grievance application is that, in the same application he had also requested for change of sanctioned load as mentioned by him in his application dtd.18/09/2012 in clause 5(b). In that clause of the said application, it appears that he had mentioned details of his requirement of load to be 9608 watts and in the same clause 5 (b), he had mentioned the category of consumer as commercial. He has also mentioned in his said application that major purpose of use / class of premises as commercial. Pointing out these circumstances in his application, the complainant has submitted before us that this is sufficient to hold that the said application dtd.18/09/2012 was also for the purpose of getting the category of tariff change i.e. industrial to commercial and also for change in the sanctioned load. To this contention of the complainant, the representative of the Respondent has vehemently urged that on the basis of these circumstances alone, the application dtd.18/09/2012 cannot be held to have been submitted for change of load or change of tariff as urged by the complainant. It is submitted that for change of load and tariff, the applicant / consumer is required to submit test report which was not submitted with the said



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application dtd. 18/09/2012. Moreover, in clause 4 of the said application, it is not mentioned that the purpose of this application is also to get the sanctioned load and tariff changed apart from the change in the name of the consumer. To this, the complainant has countered by saying that there is no separate application format for change of tariff and sanctioned load and in the present format of the application, there is no clause for such purpose and hence the consumer cannot be blamed for not making any separate application format for change of tariff and sanctioned load. He has submitted further that in the present format of the application, there is no clause for such purpose and hence the consumer cannot be blamed for not making any separate application or not mentioning in the clause 4 that the application is also for change of load and tariff apart from for the purpose of change of name of consumer. It is submitted that he had applied as such for change of sanctioned load and tariff also and therefore now after a period of about 10 years the respondent cannot treat the electric connection of the complainant for applicability of tariff applicable to LT-II (B) as per sanctioned load above 20 kw.

- c) We have examined the aforesaid submissions of the parties very carefully. We are of the opinion that the aforesaid submissions of the representative of the Respondent carry much weight as compared the submissions of the complainant. There are number of reasons to reject the contention of the aforesaid complaint. Firstly, it may be noted in this regard that the said application for change in consumer-name was submitted on 18/09/2012. Admittedly on this application the Respondent effected only the change of name and not carried out any change in the tariff as well as in the sanctioned load. During the long period from sanctioning of this application for change in consumer-name till 2019, the complainant never took any objection as to why the Respondent did not carry out change in the tariff and load also as per his application dtd.18/09/2012. It means that he had accepted the said decision which was taken the Respondent on the said application dt.18.09.2012. When it is so, now after a long period of about ten years it is not fair and justifiable on the part of the complainant to raise the objection as to why the Respondent did not carry out the change in the sanctioned load and tariff on his said application dt.18.09.2012.
- d) The second reason to reject aforesaid contentions of the complaint is that, he did not mention in his said application dt.18.09.2012 specifically that this application is also for change in the sanctioned load and tariff apart from the purpose of change in name of the consumer. We do not find any substantial force in his submissions that the said application does not have any format regarding request for change of sanctioned load or tariff. He himself stated in the course of hearing that in past he was working as an employee of the BEST undertaking and submitted that there is no separate format of applications for change in consumer-name, change in sanctioned load and tariff etc. It appears that there is no separate format of applications for change in consumer-name, change in sanctioned load and tariff etc. But, from the above submissions of the complainant we can also infer that he appears to be sufficiently aware of matters relating to working of electric licensees and he cannot be considered to be completely a layman who does not know the procedure to make enquiry with the Respondent as to what should be done if there is no clause in the application regarding change of tariff or sanctioned load to be changed. He could have easily enquired with the officials of




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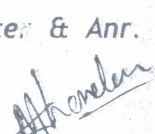



the Respondent as to what type of application he had to make for change of tariff and sanctioned load. Despite knowing that on his said application dt.18.09.2012 the respondent did not change the sanctioned load he kept quite letting the respondent to believe he had accepted the said decision of the respondent. The complainant tried to explain his said long silence for about 10 years by submitting that he did not put his grievance in time because at that time the failure of respondent to change the sanctioned load on his said application was not going to affect him monetarily. However, we do not find this to be a sufficient reason to allow the complainant to raise grievance about a decision of the respondent which it has taken long back i.e. before about 10 years.

- e) Third reason to reject aforesaid contentions of the complaint is that in the aforesaid circumstances, merely mentioning in the said application dt.18.09.2012 about the aforesaid details of load in clause 5 (d) is not sufficient to contend that the said application was also for change in the sanctioned load and tariff. It cannot be allowed more particularly after a long period of about ten years and also after disposal of his application dt.18.09.2012. As per provisions of clause 7.8 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2020, this forum cannot entertain a grievance after lapse of two years from date of cause of action to file grievance application. If the complainant had any grievance about said decision taken in the year 2012 by the respondent, the complainant should have approached to the forum within two years of date of that decision. Now after about 10 years this forum cannot entertain such grievance being barred by prescribed period of limitation. From this point of view also, the grievance about non-consideration of alleged request for change of sanctioned load is not tenable now after about 10 years from the date of the said cause of action.
- f) It may be noted that admittedly the complainant utilized the electric-supply within the category of industrial consumer since the date of purchase of the premises i.e. from 25/02/2010. In spite of this, the applicable tariff was not applied by the Respondent from that date and therefore the amendment was carried out by the Respondent and initially it was amended from 01/01/2013 to 01/01/2021 for Rs. 3,40,373.29. Thereafter, again it was modified as per suggestion of DECC(G/N) vide note no. DECC(G/N)/AAMCC(G/N)/161/2022 dtd.11/03/2022 and the amount was reduced to Rs. 35,387.77 which is only the difference of tariff only for the period from 01/01/2013 to 01/11/2013. This is the ultimate claim of the Respondent now. This ought to have been claimed by the respondent earlier. But it was not charged as such. This was noticed by the respondent in recent past when it received Municipal Chief Auditor (MCA) query about the applied tariff LT-II (A) instead of LT-II (B) as per sanctioned load above 20 kw. From these facts pleaded and supported by documents of correspondence between officials of the respondent, it appears that failure of the respondent to apply the correct tariff and charge had happened due to clerical error as committed by officials of the Respondent. For these reasons, we think that for such clerical errors in applying correct tariff, limitation period of two years as prescribed in Section 56(2) of Electricity Act shall not be applicable. In this regard reliance is placed on the decision of Hon'ble Bombay High Court in the case of *M/s Rototex Polyester & Anr. v/s*




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Administrator, Administration of Dadra & Nagar Havli (U.T.) Electricity Department, Silvassa & Ors. (W.P. no. 7015 of 2008) reported on 2009(5) All MR 579 and also in the decision of Jharkhand High Court in the matter of Sheo Shakti Cement v/s Jharkhand Urja Vikas Nigam Ltd. (AIR 2016 Jharkhand 98). In these decisions it was held that clerical mistake can always be corrected.

- g) The net result of the aforesaid discussion is that we are unable to accept the contention of the complainant that on the basis of his application dtd. 18/09/2012, he has right to dispute the decision of the respondent to carryout amendment in their claim and to charge Rs. 35,387.77 vide Respondent's letter dtd. 11/06/2022. We will have to accept the contention of the Respondent that the complainant was enjoying the tariff applicable to industrial category and if it is so and the Respondent subsequently finds that the said tariff was not changed due to some clerical error, we think that the Respondent is entitled to rectify that error and carry out the amendment in the bills as they have done for the period from 01/01/2013 to 01/11/2013 by demanding the amount of Rs. 35,387.77. Hence the said decision of the respondent is held to be legal and valid. Therefore, we have recorded affirmative findings on point no. (1).
- h) In view of the affirmative findings at point no. (1), we hold that the present complaint/grievance application is liable to be dismissed and accordingly point No(2) has been answered. Hence, we pass the following order.

ORDER

- 1.0 The grievance no. GN-013-2022 dtd. 25/08/2022 stands dismissed.
- 2.0 Copies of this order be given to all the concerned parties.


(Shri. S.S. Bansode)
Technical Member


(Smt. Anagha A. Acharekar)
Independent Member


(Shri S.A. Quazi)
Chairman




(Milind Karanjkar)
Secretary
CGRF BEST

