

**BEFORE THE ELECTRICITY OMBUDSMAN**  
**(For the State of Goa and Union Territories)**  
**Under Section 42 (6) of the Electricity Act, 2003**  
**3<sup>rd</sup> Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,**  
**Gurugram (Haryana) 122015,**  
**Phone No.:0124-4684708, Email ID: [ombudsman.jercuts@gov.in](mailto:ombudsman.jercuts@gov.in)**

**Appeal No.144 of 2021**

**Date of Video Conferencing: 05.08.2021**

**Date of Order: 16.08.2021**

Shri. Raymond Fernandes  
Goa

**.... Appellant**

**Versus**

The Chief Electrical Engineer,  
Electricity Department,  
Goa & others

**.... Respondents**

**Parties present:**

**Appellant(s)**

1. Ms. Snehal Fernandes-Advocate  
Appellant's representative

**Respondent(s)**

1. Shri Paulito J. Viegas  
Executive Engineer
2. Sh.Paul Francisco D'Souza  
Assistant Engineer



**Date of Order: 16.08.2021**

The Appellant has preferred an Appeal against the order of the Learned CGRF-Goa in order no.- CC -21/2021/30 dated-15.04.2021 filed by Shri. Raymond Fernandes. The Appeal was admitted on 14.06.2021 as Appeal No.144 of 2021. Copy of the same as received was forwarded to the respondents with a direction to submit their remarks/ counter reply on each of the points. A copy of counter reply was supplied to the Appellant as required.

**Settlement by Mutual Agreement**

Both the parties appeared before the Electricity Ombudsman through Video Conferencing as scheduled on 05.08.2021 and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

**(A) Submissions by the Appellant:**

**Appellant submitted the brief facts as under: -**

**1. FACTS OF THE CASE**

(i). In brief, the Appellant submitted that he has a domestic electricity connection (LTD) since 1983 under CA no. 60001741788. The installation was availed at his residence for domestic purposes and no commercial activity was ever carried out in the premises. Under mistaken belief that he was paying the electricity bills for domestic tariff (LTD), he used to pay the bills regularly.

(ii). The Electricity Department, replaced the old meter with an electronic meter on 27.01.2016. However, the meter displayed abnormal readings and he complained to the Electricity Department that the bill for Rs. 50807/- was exorbitant. In April 2018, he received a bill for Rs. 4340/- including arrears of March that seemed to be exorbitant. Thereafter, between April 2018 to June 2018, the meter reading was wrongly taken as 30431 instead of 3431 units and he was erroneously charged Rs. 1,84,647/-. A complaint was lodged on 18.05.2018 to change the defective meter. Subsequently, the bill for the period June 2018 to July 2018 with meter reading 32776 was issued for a sum of Rs. 201332/-.

(iii). The Appellant again represented to the Respondents on 27.08.2018 regarding excess billing. He requested under a RTI application to furnish copies of all bills issued from 1983 till date, however only bills between April 2017 to November 2019 were furnished. He paid a sum of Rs. 10000/- under protest and requested to rectify the errors and issue bills under domestic category. However, no action was taken by the Electricity Department.



(iv). Therefore, the Appellant approached the Consumer Conciliation Committee in the department of Civil Supplies & Consumer Affairs at Panaji/Goa on 27.09.2019. It was only then that the complainant was informed by his advocate that he was being charged under commercial tariff (LTC) since 2010.

(v). The Appellant received a disconnection notice on 12.10.2020 demanding Rs. 3,29,061/- within 15 days. He even applied to change the tariff category from commercial to domestic (though he never misuses) on 20.10.2020. But was told to pay Rs. 2,30,000/- to clear the outstanding dues first. Unable to meet the demand, the complainant paid a sum of Rs. 30,000/- on 30.01.2021 under protest.

(vi). The Appellant stated that he was wrongly and illegally charged under commercial tariff (LTC) from 2010 without his consent. No Notice was ever served to give reasonable opportunity to explain his position, due to which arrears started piling up. No commercial activity was/ is carried out in H. no. 325 under billing dispute. He is running a restaurant known as "Newton Restaurant" in another premises under H. no. 10/325 which has a separate commercial meter. He claims that he is entitled for readjustment of excess amount paid under commercial tariff from 2010 till date and for change of the billing back to domestic tariff (LTD).

(vii). He has taken various grounds to challenge the order of Ld. CGRF-Goa.

**(B) Submissions by the Respondents :**

Shri Paulito J. Viegas, Executive Engineer on behalf Respondent/Electricity Department-Goa, vide his email dated-23/7/2021 submitted the counter reply.

(a) In brief, the Respondents submitted that an inspection was carried out in 2010 by the then concerned Junior Engineer and meter reader and it was found that the installation was being used for commercial purposes, hence bills were issued under commercial tariff (LTC). The bills were paid regularly without any objection or protest. Bills were issued based on actual consumption/reading; however, the consumer was not paying the monthly bills and the arrears started accumulating. Erroneous billing in April 2018 was admitted and the error was rectified. The meter was replaced on 11.06.2019 and the old meter was sent for Meter Testing Laboratory. The old meter was found OK and copy of test report was also supplied to the consumer.

(b) The Appellant applied on 20.10.2020 for change of tariff from commercial to domestic. The copy of the inspection report conducted on 20/11/2020 is enclosed herewith as previous inspection report of 2010 is not traceable in this office, as per then prevailing departmental process. The billing was issued based on the consumer usage of power for commercial activity as per the inspection report of then Meter reader/Junior Engineer and as per the Conditions and Miscellaneous Charges for Supply of Electrical Energy 1964 section no 37 (d) and prevailing section no 7.1 (IV) of 2012.



(c) The Appellant represented before the Consumer Conciliation Committee, Directorate of Civil Supplies and Consumer Affairs- Panaji and a refund of Rs. 117266/- (DPC) was allowed and fresh bills for March 2021 was issued. However, the consumer only paid an amount of Rs. 30,000/-.

(d) That both premises i. e, H. No-325 and H. No-10/325 are adjacent to each other. Since then, the consumption for both premises were only on installation no 5000190107. And hence bills were issued based on commercial tariff as the consumer was utilizing power for commercial activity. subsequently the said consumer had availed separate connection for commercial tariff during September 2018. The Appellant has applied for change of tariff 20.10.2020 after availing separate connection for commercial tariff, but the Appellant did not clear the outstanding arrears and department could not process for change of tariff from commercial to Domestic in SAP System.

(e) Hon'ble CGRF, Vasco has issued order after verifying thoroughly from the both parties. The order issued by CGRF- Vasco is justified.

(f) In view of the above submission, the request of Appellant may not be considered.

**(C) CGRF-Goa Order in CC-21/2021/30 dated 15/04/2021 , preferred for Appeal:**

(i) Ld. CGRF-Goa, has passed the following order in the complaint no-21/2021/30: -

**Order.**

In view of the foregoing, I pass the following order:

- (1) The complaint is partly allowed.
- (2) The amount of Rs. 209054/- raised by the Department in bill dated 11.03.2021 is fair and reasonable and has to be paid by the complainant. However, the balance amount against the said bill shall be recovered from the complainant in equal installments over the next 12 (twelve) billing cycles without DPC.
- (3) Department shall process and grant the complainant's application for change in category made on 20.10.2020 within 15 days from receipt of this order, on condition that the same complies with rules in force.
- (4) Department shall report compliance of the order to the Registry of this Forum within 30 days.
- (5) The complaint stands disposed accordingly.

**(D) Deliberations during Video hearing on 05.08.2021:**

**1. Appellant's Submission:**

- a. Ms Snehal Fernandes- Advocate, the Appellant's representative reiterated her version as submitted in the Appeal, Rejoinder
- b. As deliberated during VC hearing, the Appellant was requested vide mail dated-05.08.2021, to file the following documents within 7 days in the interest of justice, failing which the Final order will be issued on the basis of available documents and pleadings of the parties: -



- i). Affidavit that no commercial activities were being carried out by the Appellant, since-2010 either in the H. No-325 or H. No-.10/325 till September,2018, when a new connection for commercial purpose was taken for H. No-10/325.
  - ii). Copy of Rules/Regulations/Judgements which support the case of Appellant to claim the refund of excess tariff paid for more than 10 years.
  - iii). Copy of all the Licensees of bar/other commercial activities, issued since 2010 for the H. No-325 or H. No-.10/325.
- c. As deliberated in VC hearing, the Appellant vide her mail dated-11.08.2021 has submitted the additional documents/judgement of Apex court titled Assistant Engineer vs Rahamatullah Khan in Civil Appeal No-1672 of 2010 and Mahabir Kishore vs State of Madhaya Pradesh in 1990 AIR 313,1989 SCR (3),596, to support her case.She has also submitted an affidavit that at no point of time any Commercial activities was carried out either in the H. No-325 or H. No-.10/325, She also submitted a copy of Licence No-T/o/6060 dated-12.02. 2016.. She further stated that Appellant commenced the Commercial activities in 2018 only after obtaining a separate meter. She further submitted that for the first time they came to know of charging of a wrong tariff in the year 2019.

## 2. Respondent's Submission:

- a. Sh. Alvito Fernandes, reiterated his version as submitted in reply to the appeal.
- b. The Respondents was also requested vide mail dated-05.08.2021 to file the following documents within 7 days in the interest of justice, failing which the Final order will be issued on the basis of available documents and pleadings of the parties: -
  - i). Copy of the Application and Agreement form along with attached documents as submitted by Appellant for commercial connection in the same premises, as alleged during VC hearing.
  - ii). Name and designation of the person, who assisted the Executive Engineer during VC hearing.
  - iii). Notification/order issued by Electricity Department/Govt. of Goa regarding appointment of Assessing Officer under Section-126 of Electricity Act -2003.
  - iv). Notification/order issued by Electricity Department /Govt. of Goa, regarding appointment of Appellate Authority under Section-127 of Electricity Act -2003.
  - v). Any record/document which establishes that Appellant was carrying out commercial activities since-2010, in H. No-325 or H. No-.10/325, as deliberated during VC hearing.
- c. As deliberated in VC hearing, the Respondent vide their mail dated-12.08.2021 has submitted the additional documents. They now submitted a copy of Bill Ledger to prove that as per the report of Meter Reader, that Appellant was "using light for shop", the tariff was changed from domestic to commercial in October,2004. They also relied on Sale Deed of 2015 to substantiate that the premises(ie-H.no-325) comprises of residential cum business premises for several years. They also supplied notifications issued regarding appointment of Assessing Officer and Appellate Authority, in 2008 and 2011 respectively. However, no document was



produced to substantiate that proper inspection/ procedure was followed by authorized person as per Electricity Act/Regulations notified, for fair and natural justice.

**(E) Findings & Analysis: -**

1. I have perused the documents on record, CGRF orders and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The issues which have arisen for considerations in the present Appeal are as under: -
  - i. Whether the Electricity Department/Respondents had followed the correct procedure as per Electricity Act-2003, Rules and Regulations notified by the Hon'ble Joint Electricity Regulatory Commission (JERC), for misuse of domestic connection for commercial purposes, while converting Domestic tariff (LTD) to Commercial tariff (LTC)?
  - ii. Whether the Electricity Ombudsman has jurisdiction to hear this case of Misuse of domestic connection for commercial purposes?
  - iii. Whether the Appellant is entitled to relief/refund as claimed since 2010?
4. Regarding issue no 3(i) as above, as to whether the Electricity Department/Respondents had followed the correct procedure as per Electricity Act-2003, Rules and Regulations notified by the Hon'ble Joint Electricity Regulatory Commission (JERC), for misuse of domestic connection for commercial purposes?
  - (a) Following provisions have been provided in the Electricity Act-2003 which is effective from 26.05.2003: -

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**PART XII**

**INVESTIGATION AND ENFORCEMENT**

**Section 126: (Assessment): ---**

- (1). *If on an inspection of any place or premises or after inspection of the equipment's, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*
- (2). *The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
- (3). *The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment*



*within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.*

*(4). Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*

*(5). If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*

*(6). The assessment under this section shall be made at a rate equal to [twice] the tariff rates applicable for the relevant category of services specified in sub-section (5).*

*Explanation. - For the purposes of this section, -*

*(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*

*(b) "unauthorised use of electricity" means the usage of electricity –*

*(i) by any artificial means; or*

*(ii) by a means not authorised by the concerned person or authority or licensee; or*

*(iii) through a tampered meter; or*

*(iv) for the purpose other than for which the usage of electricity was authorised;*

*or*

*(v) for the premises or areas other than those for which the supply of electricity was authorized. "*

***" Section 127. (Appeal to Appellate Authority): ---***


*(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.*

*(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3[half of the assessed amount] is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.*

*(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.*

*(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.*

*(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.*



*(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent, per annum compounded every six months."*

(b) The following provisions have been provided in the Supply Code Regulations- 2010, notified by the Hon'ble Commission notified on 19.05.2010: -

*"CHAPTER -10:*

*UNAUTHORISED USE OF ELECTRICITY AND THEFT OF ELECTRICITY*

**10.1 Unauthorized Use of Electricity**

*(1) The following acts on the part of consumer are to be considered as unauthorized use of electricity for the purpose of assessment under the provisions of Section 126 of the Act;*

*(i) Use of electricity by any artificial means: or*

*(ii) Unauthorized use of electricity by means without the permission of the concerned person or authority or licensee; or*

*(iii) Use of electricity through a tampered meter; or*

*(i) Use of electricity for the purpose other than for which the supply of electricity was given; or*

*(ii) Use of electricity for the premises or areas other than those for which the supply of electricity was authorized*

*(iii) Use of Electricity in the premises where supply is disconnected by the licensee.*

*(2) The following acts on the part of the consumer shall also be considered as unauthorized use of electricity and shall also be dealt with for assessment under the provisions of Section 126 of the Act;*

*(i) Increase in connected or contracted load in excess of the sanctioned load as per the agreement;*

*(ii) Extension of power supply beyond the permitted area of use as in the agreement;*

*(iii) Shifting of location of meter or unauthorized alterations in the installation;*

*(iv) Disconnection of neutral; or*

*(v) Tampering with meter or equipment's associated with metering provided by the licensee and not reported to the licensee.*





### **10.2 Authorized officer of Licensee**

*The licensee shall publish the list of authorized officers for various areas / divisions / districts to conduct inspections and issue identification cards to such authorised officers to enable easy identification by the consumers.*

### **10.3 Procedure for Inspection, Provisional Assessment, Hearing and Final Assessment in case of unauthorized use of electricity**

#### **(a) Inspection**

*(i) Assessing Officer as appointed by the appropriate Government under Section 126 of the Act on receipt of reliable information of unauthorized use of electricity, promptly conduct inspection and search of place or premises where unauthorized use occurred with due diligence.*

*(ii) The Assessing Officer, if required to do so, shall produce his Photo identity card to the Consumer / person in occupation or possession or in charge of the place or premises before entering the premises. Persons accompanying the Assessing officer shall also carry their photo Identity Cards.*

*(iii) The access to premises shall be in accordance to Regulation 4.12 of these regulations and the occupant of the place or premises of inspection or any person on his behalf shall remain present during the inspection.*

*(iv) An inspection report shall be prepared at site giving details of connected load, condition and details of old seals and resealing done, working of meter, details of new seals, etc. The report shall mention specific irregularity noticed which has led to indulgence of unauthorized use of electricity in the format given in Annexure-4.*

*(v) The report shall clearly indicate whether or not conclusive evidence substantiating the fact that Unauthorized Use of Electricity was found. The details of such evidence should be recorded in the report. The report shall be signed by the Assessing officer and a copy of the report shall be served on the person in occupation or possession or in charge of the place or premises as per regulation 11.3 below.*

*(vi) Within 3 working days of the date of inspection, the Assessing Officer shall analyze the case after carefully considering all the evidence including the consumption pattern wherever available. If it is concluded that no unauthorized use of electricity has taken place, no further action shall be taken.*

#### **(b) Provisional Assessment and Notice to the Consumer**

*(i) If the Assessing Officer comes to the conclusion that Unauthorized Use of Electricity has been taken place in the premises, he will serve a provisional assessment order upon the consumer / person in occupation or in-charge of the premises under proper receipt, giving*



7 days' time for filing objections, if any, against the Provisional Assessment Order and fixing a date of hearing. The assessment shall be done as per guidelines provided in Annexure-7 appended to these regulations.

(ii) Any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the Licensee within seven days of service of such provisional assessment order served upon him. Such payment made shall be subject to the final order to be passed by the competent authority.

**(c) Hearing & Final Assessment**

(i) On the date of hearing, the Assessing Officer shall hear the consumer / person in occupation or possession or in-charge of the place or premises. The Assessing Officer shall give due consideration to the facts submitted by such person and pass, within 7 working days, a speaking order as to whether the case of Unauthorised Use of Electricity is established or not. The order shall contain the brief of inspection report, submissions made by such person in his written reply and also during hearing.

(ii) A copy of the order shall be served to such person under proper acknowledgment and in accordance with regulation 11.3 below. (iii) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection. (iv) The assessment under

(iii) above shall be made at a rate equal to twice the tariff applicable for the relevant category of service.

**(d) Appeal to Appellate Authority Against the Final Assessment**

(i) Any person aggrieved by a final order made under Regulation 10.3(c) above, may, within thirty (30) days of the said order, prefer an appeal to the Appellate Authority designated by the Commission.

(ii) No appeal against the order of assessment under Regulation (i) above shall be entertained unless the Consumer / person deposits one half of the amount assessed by the Assessing Officer in cash or by way of bank draft with the licensee and encloses documentary proof of such deposit.

(iii) The licensee shall not take any action for recovery of assessed amount within the period of thirty (30) days, mentioned in Regulation (d)(i) above, where the assessed consumer / person intimates the Assessing Officer, of his intention of filing an appeal to the appellate authority.

**(e) Default in Payment of Assessed Amount or Instalments thereof**



*(i) In case of default in payment of the assessed amount or any installment granted or agreed by the competent authority, the Licensee shall, after, giving a 15 days' notice in writing, disconnect the supply of electricity, by any suitable means such as disconnection from pole/ transformer, removing meter, electric line, electric plant and other apparatus, as the case may require. The reconnection shall be carried out as per the provisions of reconnection laid down in Regulation 9.3 of these regulations.*

*(ii) When a consumer / person defaults in making payment of assessed amount, he shall be liable to pay an amount of interest at the rate of 16% (sixteen percent) per annum with effect from the date of expiry of 30 days from the date of order of assessment, in addition to the assessed amount, compounded every six months."*

As per reply submitted by the Respondents, they have not provided any document/report of meter reader/Junior Engineer, on whose Inspection Report the commercial tariff was levied for misuse of domestic connection. Only a remark on Bill Ledger of October, 2004 was produced which do not substantiate that proper procedure was followed. No notice/Show cause was issued/produced so that appellant can file his objections. As per information supplied vide letter dated 19/11/2019 (as submitted by the Appellant) the Assistant Engineer Sub Div. III(M), under the RTI Act has confirmed to the Appellant, that the tariff from Domestic to Commercial was changed on Jan. 2014, on the report of then meter reader and Junior Engineer. However, as per abstract of bills supplied, Commercial Tariff (LTC) was levied since 08.04.2010. No other document was produced to substantiate the tariff conversion to some other date/year. The purpose of page 474-475 of Gazette Notification dated-12/7/2012, as supplied by the Respondents is not clear, as the Electricity Act-2003/Regulations/Tariff notified by the Hon'ble JERC are required to be followed by the Respondents, being a deemed licensee. However, this notification also partially indicates the same provisions as contained in the said Act/Regulations. The copies of two pages as supplied by the Respondents regarding "Conditions and Miscellaneous Charges for Supply of Electrical Energy" effective from 1/5/1964 are also not applicable, after the enactment of Electricity Act-2003 and Rules/Regulations/Tariff notified by the Hon'ble JERC.

Whether it is the year 2004, 2010 or 2014, the Electricity Act-2003/Supply Code Regulations -2010 notified by the Hon'ble JERC were already enforceable and therefore these Act/Regulations along with amendments were applicable on the dates (i.e.-2004/2010/Jan.2014) of alleged Inspection by the Meter Reader/Junior Engineer. The misuse/unauthorized use of domestic connection for commercial purposes was covered under Section-126 of the Electricity Act-2003 and clause 10. (1)(iv) of said Regulations. Further as per clause 10.3(a) of the said Regulations, only the **Assessing Officer** as appointed by the Govt. of Goa, under Section-126 of the Electricity Act-2003, was competent for inspection, passing of Provisional assessment order/ notice to the Appellant and passing of Final order after giving a reasonable hearing. Thereafter, the Appellant had a right to Appeal to the **Appellate Authority** as appointed by the Govt. of Goa, under Section-127 of the Electricity Act-2003. No other Rules/Regulations notified by the Hon'ble JERC was produced which empowered the Respondents to change the tariff unilaterally, without following a proper procedure and bypassing the natural justice. The provisions notified by the Electricity Act/Hon'ble JERC were not followed by the Respondents and everything was done at



the back of the Appellant. The Appellant is not only deprived of reasonable hearing during provisional assessment under Section -126 but he was also deprived of his right to Appeal under Section-127. The Respondents had completely bypassed the provisions of the Electricity Act-2003 and Regulations notified by the Hon'ble JERC and natural justice. Therefore, in my opinion the action of the Respondents in converting the domestic tariff to Commercial tariff was harsh, arbitrary and illegal and is required to be set aside in the interest of justice.

(5) Regarding issue no 3(ii) as above, as to whether the Electricity Ombudsman has jurisdiction to hear cases of Misuse of domestic connection for commercial purposes?

As deliberated in para 4 above, the Respondents have not applied the provisions of Section 126 of Electricity Act-2003 and the Regulations notified by the Hon'ble Regulatory Commission in this regard. Therefore, the present grievance of the Appellant has not arisen out of application of Sections 126. Accordingly, the Appeal has been accepted for adjudication, as the grievance/complaint/Appeal is not due to application of Section-126.

(6) Regarding issue no-3(iii) as above, as to whether the Appellant is entitled to relief/refund as claimed since 2010?

(a). The Appellant has submitted the copy of electricity bill due on 18/11/2010, in which the Tariff shown is LTC i.e. Commercial and on this basis, he is claiming refund of excess amount paid since 2010. He further submitted that he came to know of charging of a wrong tariff in the year 2019. He has never represented until the meter was changed in 2016 with electronic meter. He submitted a representation dated-15/6/2016, for the first time, in which he has requested to verify the correctness of the amount with regard to the electricity consumed by him as per old meter reading. But the Respondent never intimated him the correctness of bill or working of meter or converting of Domestic tariff (LTD) to Commercial tariff (LTC). He made various representation on 18/05/2018, 27/08/2018, 17/10/2018, 28/09/2018, 31/10/2018, 06/08/2019, 30/09/2019, 11/11/2019, 20/10/2020 and 25/01/2021. Thereafter, he approached the Consumer Conciliation Committee, Department of Civil Supplies and Consumer Affairs-Panaji. Finding no resolution to his grievance, he finally approached to the CGRF-Goa.

I have perused all the documents submitted by the Appellant. Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 tilted Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited vs Rahamatullah Khan has observed the following in para-9 and relevant part is reproduced below:

*"As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.*

*In Mahabir Kishore and Ors. v. State of Madhya Pradesh, this Court held*

*that: –*

*"Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the*

*plaintiff had discovered the mistake or could with reasonable diligence, have discovered it. In a case where payment has been made under a mistake of law as contrasted with a mistake of fact, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law.” (emphasis supplied)*


In view of the law laid down by the Apex Court, in my considered view, in the present case the period of limitation would commence from the date of representation/complaint made to the Respondents for the first time i.e.- 15/6/2016 regarding correctness of the bill. Respondents never sincerely tried to redress the grievance of the Appellant despite many representations even after 15/6/2021 also. Therefore, in my opinion, the Appellant is entitled to be charged under the Domestic Tariff (LTD) since-15/6/2016, as no evidence/document on record was produced by the Respondents to prove that Appellant was misusing the domestic connection for commercial purposes and proper procedure was followed for Unauthorized Use of Electricity as per Electricity Act/Regulations.

#### **(F) DECISION**

- (i) For the reasons discussed above, the appeal of the Appellant is allowed with no order as to the costs. The Order in Complaint No-21/2021/30 dated-15/4/2021 passed by Learned CGRF-Goa is set aside.
- (ii) The Respondents should revise the electricity bill of the Appellant as per the applicable domestic tariff (LTD) since 15/6/2016 and Revised bill should be supplied to the Appellant under proper acknowledgement within 15 days from the date of issue of this order by email, after adjusting the payment already made by the Appellant. No surcharge should be levied in the Revised bill from 15/6/2016 till the date of issue of revised bill.
- (iii) In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
- (iv) The Electricity Department/Licensee should submit a compliance report to the office of Electricity Ombudsman on the action taken in this regard within **30 days** from the issuance of this Order by email.



- (v) Non-compliance of the orders of the Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Commission under the provisions of the Electricity Act, 2003.
- (vi) The appeal is disposed of accordingly.



16/8/2021

(M.P. Singh Wasal)  
Electricity Ombudsman  
For Goa & UTs (except Delhi)

**Dated 16.08.2021**