

**GUJARAT ELECTRICITY REGULATORY COMMISSION  
BEFORE THE ELECTRICITY OMBUDSMAN, GUJARAT STATE  
Polytechnic Compound, Barrack No.3, Ambawadi,  
Ahmedabad-380015**

**CASE NO. 19/2019**

**Appellant :** M/s. Vijay Sales,  
Shop No.101 to 111 and 201 to 216  
M-Cube Mall, Jetalpur Road, Sudhanagar,  
Vadodara-390005.

**Represented by:** Shri Alpeshbhai C. Limbachiya, S.M.  
Shri Chandreshbhai Ashar, Authorized representative.  
Shri G.R.Darji, Authorized representative

**V/s.**

**Respondent:** Executive Engineer  
Madhya Gujarat Vij Company Ltd.,  
Vishwamitry (West) Division, Old Padra Road  
Vadodara-390007

**Represented by:** Shri N.A.Shah, EE, MGVCL, Vishwamitry(W) D.O.  
Shri V.B.Rana, Sr.Asstt., MGVCL, Vishwamitry(W) D.O.

**:::PROCEEDINGS:::**

**1.0.** The Appellant had submitted representation aggrieving with the order No. 37 dated 20.02.2019 passed by the Consumer Grievances Redressal Forum, Madhya Gujarat Vij Company Limited, Vadodara, in case No. MG-IV-20-2018-19. The representation was registered at this office as Case No.19/2019. The hearing of this case was kept on 26.03.2019.

**2.0.** The case is represented by Appellant as under.

**2.1.** Appellant is having LT connection under LTMD tariff, bearing consumer No.15105/02254/8, having contracted load of 90 KW.

**2.2.** Appellant has presented parawise comments against CGRF order as under.

Para 2.3 of CGRF order is related with notices dated 21.10.2016 to 11.05.2017.

Appellant stated that notices are not as per prevailing Supply Code,2015 but the sections quoted are of repealed Supply Code,2015, hence the action taken are not tenable.

The demand was recorded more than 110 KW i.e. the limit of LTMD tariff of 100 KW and relaxation of 10% of contract demand approved by Commission), which shows the violation of GERC Supply Code Section 8.3.4. In this connection Appellant was informed to take HT connection. Appellant was served notice by Respondent.

2.3. Para 2.5 of CGRF order is related with estimate issued.

It is submitted that Respondent had issued estimate on 20.07.2017 amounting to Rs. 7,96,006/- which was paid by Appellant on 27.09.2017. As per Section 4.27 the metering site is to be fixed in consultation with consumer is not followed by Respondent in this case. Appellant has referred section 4.27. It is submitted that before issue of estimate nobody had contacted prior to survey or at the time of survey.

Thus the issue of site is raised from the date of survey as no safe and sound extra space is available for HT installation. The space for transformer centre for M Cube Mall is already provided.

2.4. Para 2.10 of CGRF order is related with execution of an agreement and space constrain.

The estimate was paid by Appellant but did not execute an agreement and notice was served lastly for execution of the same on 09.01.2018. Appellant has executed an agreement on 10.02.2018. Appellant had followed with all concern offices regarding the issue of space constraint, in person and with request letters also. For amicable solution Appellant met Chief Engineer (Project) and as guided by him, Appellant got examined the availability of specific required system so as to control his demand within contracted limit. Appellant has shown his readiness for modifying the installation by changing existing Halogen lighting system by LED lamps, conversion of 4 No. of Air Conditioner unit each of 17 Ton capacity by 11 Ton capacity along with load controller panel, and requested in writing for time

limit for execution of modification. By end of November,2018, Appellant has completed the modification as per discussion and guidance given by Chief Engineer(Project). It was also assured to first execute an agreement as connection is deemed released from June,2018 and thereafter agreement can be terminated or reduce the load after payment of short fall amount of remaining period.

Accordingly, Appellant has executed an agreement on 10.12.2018. Thereafter only the request letter to CE(Project) dated 22.11.2018 was accepted on 11.12.2018 in which Appellant incorporated the matter of executed agreement and termination of agreement as instructed by Chief Engineer.

- 2.5. Para 2.11 of CGRF order is to allow period for modifications reducing the connected load.

Appellant has requested that he will control the load within contract demand as per notices served earlier, by reducing the size of 4 No. of Air Conditioners of 17 Ton capacity to 11 Ton, change of Halogen lamps by LED lamps and installation of load controller panel.

The proposal as per guidance and negotiation at Corporate Office of Respondent was given in writing which was neither replied to accept the proposal nor rejected the proposal. Considering it as approved, as request was made after negotiation, Appellant has completed the work of modification before end of November,2018.

- 2.6. Para 2.12 of CGRF order is regarding deemed release of connection.

The notice was served on 13.04.2018 to avail HT supply and on completion of notice period, the connection was deemed released as HT connection from 12.06.2018, without execution of any physical works by Respondent. The HT connection was deemed released without carrying out of any physical work by Respondent or by Appellant.

- 2.7. Para 2.13 to 2.17 are regarding disconnection notice.

Even after deemed released HT connection as said above, the notice was served by Respondent on 21.07.2018 and 27.08.2018 and 03.11.2018 to install transformer within 15 days, 3 days and 7 days

respectively, else supply will be disconnected. How far such notice is valid when it is deemed released and no dues were pending.

- 2.8. Para 2.18, 2.19, and 4.11 is regarding verification of site through Corporate Office of Respondent.

On representation by Appellant for constraint in sparing the land and likelihood of hazards and violation of using the parking land for HT installation against laid down norms of local authority i.e. Vadodara Mahanagar Seva Sadan, and considering past instance of fire and land sliding of side by open land during monsoon, the work of HT installation will be at cost of safety and it cannot be compensated in any way.

However, in past there was single owner and had availed HT supply for entire M Cube Mall in his name. Later it was being sold to various owners and now all have individual connection and space allotted for parking to them. As such Appellant has no spare land for HT installation. Land is already spared for transformer centre which is being existing at present and it has been augmented to 500 KVA and supply is given to another society and LT connections and obliged them by Respondent to the users i.e. other than M Cube Mall consumers, for sparing land for transformer centre and way leave for their requirement of power.

Thus the so called open land south west part of the building is shed of parking and as per Respondent, Appellant has to demolish it first and make space for HT installation and forced to violate the notices of local authority VMSS. Hence to resolve issue with amicable solution Appellant guided for an alternative to reduce the capacity of existing load in consultation with Corporate Office of Respondent so as to restrict contract demand.

Sr. No.	Connection No.	Contracted load in KW	Site at M Cube Mall
1	15105/01926/1	3.5	GF-3
2	15105/01927/0	10.0	GF-4
3	15105/01965/2	7.5	GF-5
4	15105/01925/3	8.0	GF-1-2
5	15105/02392/7	15.0	Shop No.11
6	15105/01928/8	25.0	Common
7	15105/02175/4	20.0	301 to 320

8	15105/02391/9	7.5	Shop No.12
9	15105/02176/2	20.0	401 to 411
10	15105/01964/4	10.0	GF-6
11	15105/02254/8 Vijay Sales	90.0	Shop No.101 to 116 and 201 to 216

2.9. Appellant had approached Hon'ble Commission with Petition. It was found by Appellant that the following sections of Supply Code, 2015 are not observed in this case for issue of estimate and additional bills. Appellant has referred the Electricity Supply Code and Related Matters Regulations Notification No.4 of 2015, Section 4.95 and others.

2.10. Regarding estimate, Appellant has made following observations:

(1) Estimate is not in line with Regulations:

(a) On 20.07.2017, Appellant had been served with an estimate of 120 KVA Demand under Suo motto as if Appellant is a fresh/new prospective HT consumer, which itself violates Respondent's own laid down procedure/norms/rules and terms/conditions of the estimate Para No.14 and 15. The case of Respondent falls under conversion from LT to HT connection. Thus the estimate served for 120 KVA was false one and liable to dismiss, even though it was paid by Appellant on 27.09.2017.

(b) Being the LT consumer of 90 KW, i.e. 90/0.9 mandatory PF = 100KVA, enhancement of load is only 20 KVA. Thus load to be regularized/enhanced to 20KVA only. Instead of 20 KVA the charges for 120 KVA are levied in estimate is nothing but merely violations of rules/regulations and Act on part of Respondent.

(c) The Security Deposit demand in estimate is not in line with the Section 4.4 and Section 4.5 of Security Deposit Regulation Notification No.8 of 2005 and not in line with the Section 4.84 of Supply Code, 2015. The existing deposit of Rs. 104279/- is not given adjustment.

Appellant has commented that the subject matter of the estimate dated 20.07.2017 reads out as under:

“... Estimate for catering new 120 KVA of 11KV High Tension power to your unit supply at 11KV power system to your unit located in M-Cute Mall, Jetalpur Road, Alkapuri, Vadodara, under V.West Division.....”

In Appellant's case this is not true. Appellant is existing consumer of Respondent, having contracted demand of 90 KW.

In the subsequent notice dated 04.08.2017, the subject matter is as under:

“..... Conversion of existing LT connection in to HT connection by Suo motto procedure and payment of estimate charges thereof....”

The estimate contains the security deposit of Rs.505258/- for 120 KVA demand instead of 20 KVA of additional load. The existing SD of Rs.104279/- is not subtracted.

The Security Deposit is not worked out as per Chapter 4, Section 4.4a and 4.5 of the Security Deposit Regulation 2005, Notification No.8 of 2005 and Section 4.84 of load enhancement of Security Electricity Supply Code and Related Matters Regulations, Notification No.4 of 2015.

This is either ignorance or deliberated violation of regulation for fetching more security deposit amount from the Appellant. There is no breakup of line charges in the estimate. Neither cost data rates are available even on website of Respondent nor the quantity in the estimate to get it check for amount.

GETCO prorata charges are levied for 120 KVA instead of 20 KVA enhancement as Appellant's 90 KW = 100 KVA load is already in system is existing.

Likewise, service connection charges are levied for 120 KVA HT connection without deducting the charges paid earlier for 90 KW.

2.11. Regarding additional bill and HT bills from June,2018, Appellant has stated as under:

- (1) Appellant has been served additional bills for the period Sept.2016 to June, 2017 for 10 months (it is for the difference of HTP-1 tariff and LTMD tariff) amounting to Rs.1,18,748.04 on 06.07.2017 without any breakup for 10 months' bills which were paid by Appellant. Again the identical bill for the period July,2017 to November,2017 for five months (it is for the difference of HTP-I tariff and LTMD tariff) amounting to Rs.47850.87 was served on 06.01.2018, which was also paid by Appellant. Since June, 2018 till February,2019 Appellant was served bill under HTP-I tariff as deemed released HT connection as stated in comments of Para 2.12 as above.

Comment: HT bills are served by enhancing the recorded consumption by 8.73%. Also in bills from June,2018 to February,2019, the PF rebate is not accounted as per tariff order. Thus bills are not in order as per tariff.

- (2) The recorded consumption in LT metering enhanced by @8.73%. Though P.F. is above 95% the PF rebate is not considered in the bills. The bill of November,2018 the KVAH is recorded less than KWH, which is never possible according to electrical engineering. This is only possible with erratic working of meter which is as under:

Month of bill 2018	Date	Recorded KWH in LT meter	Recorded KVAH in LT meter	Av. PF % in bill	Conu. For HTP-I tariff	Actual PF in%	comments
May,18	31/5	17390				97.83	LTMD bill
June,18							
July,18	19/7	20071	20210	94.5%	21991	99.31%	The HTP tariff quantify is enhanced by 8.73% and erratic meter.
Aug.18	19/8	23116	23198	94.6%	25327	99.65%	
Sept.18	19/9	22119	22141	94.8%	24235	99.81%	
Oct.18	19/10	24938	25030	94.5%	27323	99.60%	
Nov.18	19/11	23866	19516	123%	26149	122.0%	

Comment: As said above the estimate and additional bills are to be revised suitably as per regulation and tariff and from the paid amount of bills and balance amount to be refunded back with interest as per Section 30.3 of MYT Regulation,2016.

Para 3.7 of CGRF order: Appellant has referred Section 4.102 and 4.88 of Supply Code,2015 and stated that Respondent had served notice for HT power supply and simultaneously served additional bills for the period September,2016 to June,2017 (10 months) and July,2017 to November,2017 (5 months) (Tariff difference HTP-I to LTMD) and from June,2018 till February,2019 served HTP-I bills considering deemed released. Thus Appellant has been served HTP-I bills for  $10+5+9 = 24$  months, i.e. for entire agreement period. Hence Appellant may be allowed to remain under LTMD tariff.

It is stated that an agreement was executed on 11.12.2018 and given confirmation for payment of short fall amount of tendered agreemental period.

2.12. Appellant has referred following cases and requested to decide the present issue of him.

- (1) The case No.MG-II-42-2012-13 registered before CGRF, MGVCL was of reduction of contracted load and printing of S.D. amount in the energy bills.
- (2) The case No.MG-IV-74-2010-11 registered before CGRF, MGVCL was of extension of contracted load and for that consumer had paid estimated amount and later on requested to cancel the extension of load under HT supply due to cancellation of project of Appellant, and CGRF has opined that after completion of works and issue of release order, cancellation of extension of load attract estimate relates expense and minimum charges for the period of two years as an agreement executed between parties.
- (3) Appellant had referred case No.56/2017 of Electricity Ombudsman and relied upon the provision No. 4.102 of Supply Code, 2015.

2.13. Appellant has submitted rejoinder vide letter dated 09.04.2019 and stated as under.

- (1) It is stated that estimate under Suo moto proceedings was paid on 27.09.2017. TMN was served by Respondent without carrying out any work as per scope of estimate and billing was started under HTP-I tariff from 13.06.2018. Appellant has shown his willingness to bear and pay minimum charge bill for the shortfall period of agreement which was executed forcefully, referring to Clause 4.102 of Supply Code,2015.
- (2) For an estimate related issue and recovery of cost, Appellant has referred Section (viii) and (xiii) of Chapter-VII of Notification No.9 of 2005.
- (3) Regarding additional bill and HTP-I bill, Appellant has further stated that Circular No.75 of Respondent got clarified. HTP-I tariff bills served as regular HT consumer, enhancing by 8.73% which has no regulatory support or any support from tariff.
- (4) In reply to submission made by Respondent, Appellant has stated as under:
  - (i) Estimate given is not for a new HT connection but it is for conversion of LT to HT connection.
  - (ii) Line charges recovered in estimate is not tenable.
  - (iii) Recovery of Security Deposit is not as per norms.
  - (iv) Joint inspection of site and previous HT connection issue and place of transformer is different one as presently 11 No. of owners shared with premises.
  - (v) Connected load of Appellant was reduced by reducing the size of AC plants + lighting system + installing maximum demand controller.
  - (vi) Previously space for 500KVA transformer had been provided by Appellant and from that Respondent had tapped nearby electric connection of society area.

Looking to the above grounds, grievance of Appellant may be decided neutrally.

2.14. Appellant has prayed as under.

- (1) Respondent to be restricted from disconnecting the power till the order made in this appeal.
- (2) Order may be made to Respondent to give breakup of additional bills and working of same before hearing of the case.
- (3) The working of existing meter to be ascertained for correct recording as it is observed erratic in working.
- (4) Estimate may be treated as cancelled and Appellant may be allowed to remain under LTMD tariff as he has modified the installation and reduced connected load and also installed load controller to restrict excess drawl than contracted demand.
- (5) Amount paid against estimate may be refunded with interest as per Section 30.3 of GERC MYT Regulation, 2016,
- (6) Bills served with enhancement of losses and not as per proper applicability of tariff may be revised and excess recovery made may be refunded with interest as per Section 30.3 of GERC MYT Regulation,2016.

**3.0.** The case is represented by Respondent as under.

- 3.1. Appellant was provided L.T. supply of 90.0 KW under LTMD tariff vide consumer No.15105/02254/8 on 30.05.2014 at Shop No.101 to 116 and 201 to 216 of M-cube mall, situated at Jetalpur road within the jurisdiction of Alkapuri sub-division.
- 3.2. During meter reading for the month of March,2016, April,2016, May,2016, July,2016, August,2016, September,2016, October,2016, November,2016 and December,2016 the recorded maximum demand of the said connection was found exceeded to the tune of 101 KW to 135 KW than the contracted demand of 90.0 KW.
- 3.3. Respondent had issued notices to Appellant vide letter No.3344 dated 21.10.2016, letter No.202 dated 18.01.2017 and letter No.1708 dated 11.05.2017 to regularize his contracted demand.
- 3.4. Final notice was issued by Respondent to Appellant vide letter No.2308 dated 04.07.2017 and Suo moto process initiated as no response was received from Appellant in this regard.

- 3.5. In Financial Year 2017-18, the actual demand of appellant increased to the tune 108 KW to 139 KW in the month of May,2017 and August,2017. Therefore, an estimate amounting to Rs. 7,97,006/- was issued by Respondent vide letter dated 05.08.2017 for conversion of his LT connection to HT connection.
- 3.6. Appellant, vide his letter dated 01.08.2017 informed Respondent that he has reduced his load and requested not to convert his LT connection in to HT connection.
- 3.7. Respondent vide letter dated 05.08.2017 informed Appellant to pay necessary estimated amount within stipulated time to regularize his excess drawl as per GERC Supply Code, Clause No.8.3.4, or otherwise it will be debited to his energy bill.
- 3.8. Appellant, vide his letter dated 04.09.2017 requested to Corporate Office of Respondent for reconsideration of conversion of LT to HT connection and waiving the charges included in the bill towards HT connection and also assured if error of similar kind occurs, he will abide the then rules towards HT connection and shall support in full cooperation.
- 3.9. Respondent, vide letter dated 14.09.2017 informed Appellant that his request cannot be considered and again requested to pay the estimated amount failing which it will be debited to his energy bill.
- 3.10. Respondent, vide letter dated 05.10.2017, 27.10.2017 and 09.01.2018 requested Appellant for execution of an agreement as payment of estimated amount made on 27.09.2017.
- 3.11. Appellant, vide his letter dated 15.01.2018 informed Respondent that he has reduced his load by disconnecting 2 Duct ACs and requested not to convert his LT connection to HT. He also ensured for using power within the limit of 90.0 KW.
- 3.12. Two Month notice was issued to Appellant for submission of Test Report and necessary approval from concerned Electrical Inspector for release of HT connection vide letter dated 13.04.2018 and accordingly connection was released on 12.06.2018 by TMN.

- 3.13. Vide letter dated 21.07.2018, notice was issued to Appellant regarding installation of transformer within 15 days otherwise supply will be disconnected as per Clause No. 8.3.3 of Supply Code. Appellant had given consent on 06.08.2018 for installation of transformer within ten to fifteen days and requested to reconnect the power supply.
- 3.14. Again notice was issued by Respondent vide letter dated 27.08.2018 to Appellant regarding installation of transformer within three days and execution of an agreement, otherwise power supply would be disconnected.
- 3.15. Appellant, vide letter dated 30.08.2018, represented regarding lack of space and high risk factor at the space in the said building stating the reason that (i) soil is refilled soil and it is too weak to bear load of transformer (ii) the corporation drainage line and drainage area overflows under the same area and is a concern for every rainy season and (iii) required space is not suitable for future maintenance.
- 3.16. Vide letter dated 03.11.2018 final notice was issued by Respondent regarding installation of transformer within seven days and execution of an agreement, otherwise power supply would be disconnected.
- 3.17. As instructed by competent authority of Respondent, Dy. Engineer(HT) of Corporate Office was deputed on 13.11.2018 for joint visit with reference to Appellant's representation regarding space constraint for installation of transformer and associated electrical infrastructure to avail HT supply. Joint visit was carried out in presence of Superintending Engineer, Baroda City Circle, Executive Engineer, Baroda City Circle, Deputy Engineer, Vishwamitry Division and Deputy Engineer, Alkapuri sub-division. As per the joint inspection report, space of 8 mtr. x 8 mtr. is available in south-west part of the building where transformer and switchgear were installed for previous permanently disconnected HT connection.
- 3.18. Again final notice was issued by Respondent vide letter dated 28.11.2018 to Appellant regarding installation of necessary equipment to avail HT supply within seven days and execution of an

agreement otherwise supply will be disconnected. It was also informed to Appellant regarding availability of clear-cut 8 mtr. X 8 mtr. Space in South-West part of the building where transformer and switchgear were installed for previous HT connection, which is presently covered by temporary shed.

- 3.19. Appellant has filed petition in GERC for (1) interim injunction of cancelation of the notice for LT to HT under Suo moto proceedings (2) permission of three months to curtail the LT demand and (3) cancellation of supplementary bills given in HT tariff.
- 3.20. An agreement was executed by Appellant on 10.12.2018 but no action was taken by him regarding installation of transformer and associated electrical infrastructure to avail power at HT consumer.
- 3.21. The LT supply of Appellant was temporarily disconnected on 04.01.2019.
- 3.22. Appellant has applied before CGRF on 28.01.2019 mentioning following points:
  - (1) Soil is refilled soil and it is too weak to bear load of transformer. The corporation drainage line and drainage area overflows under the same area and is a concern for every rainy season. Required space is not suitable for future maintenance.
  - (2) Appellant had already made some modifications to control his demand by (i) Demand Controller or Panel (2) removing and fitting of 100 led lights in place of halogens in his existing stores and (iii) removing of 4 Ductable Air Compressors of 17 tons to 11 tons.
  - (3) VMSS has served a notice towards parking and any type of illegal construction in that area.
  - (4) The residents of nearby area have complained for the parking issues of vehicles coming at Appellant i.e. Vijay Sales.
  - (5) During the year 2010, there was HT connection given for M-cube Mall and till 2013 only two occupants/owners of entire building were there.

- (6) Presently during 2019, eleven connections are existing of Respondent and there is a multiple ownership. On 3<sup>rd</sup> and 4<sup>th</sup> floor, there are chances that they can ask for new HT connection.

3.23. Forum has passed interim order after hearing the matter on 30.01.2019 directing Respondent for immediate reconnection of power supply of Appellant and accordingly it was reconnected on 30.01.2019.

3.24. The next date of hearing was fixed by CGRF on 15.02.2019 and in this regard it is stated by Respondent as under.

- (1) The demand recorded in financial year 2018-19 for the month of May,2018 to July,2018 found to the tune of 106 KVA to 143 KVA which is much higher than the earlier contract demand of LTMD connection of 90.0 KW.
- (2) In spite of sufficient period of time span i.e. since 31.10.2016 when the first notice is served by Respondent, Appellant neither took concrete corrective action to control his contracted demand nor tried to install transformer and switch gear to avail HT supply.
- (3) As argued by Appellant “soil is refilled soil and it is too weak to bear load of transformer” is not supported by any structural engineer certificate. When building is constructed from basement, the argument of the soil near building at ground floor is too weak to bear load of transformer, is not found convincing.
- (4) In response to the space constraint by Appellant, it is said that earlier HT connection was situated in the Mall for M-cube Mall and space for installation of infrastructure is there. Hence said argument of Appellant is not correct. “MGVCL side it was presented that in past, during 2010 (which was also mentioned by the Appellant) there was HT connection for M-Cube Mall.
- (5) Installation of transformer was on the South-West corner of the building and there is a trench and pipe facility to bring the

cable from CTPT side (The DP of the CTPT is already erected on the South East corner of the building by Respondent).

- (6) As per provisions of Supply Code,2015, Clause No. 4.36, “if licensee is of the opinion that provision of supply requires installation of a distribution transformer within the applicant’s premises, the applicant shall make available to the licensee a suitable room or portion of land within his premises for installation of distribution transformer.” In this case, being HT consumer, Appellant has to provide suitable place for transformer and other equipment in his premises to avail HT power supply.
- (7) Joint visit dated 13.11.2018 was carried out by officials of Respondent and as per the joint inspection report, 8 mtr. X 8 mtr. Space is available in South West part of the building where transformer and switchgear were installed for previous permanently disconnected HT connection.
- (8) Again site was visited by EE, Vishwamitry(W) on 30.01.2019 and photographs of space to be utilized for erection of transformer were taken and submitted with representation.
- (9) Regarding problem of parking space of M-Cube Mall/Appellant, it was conveyed by Respondent that the same is logistic problem and have to manage by the occupied only.
- (10) After final hearing in the matter on 15.02.2019, CGRF has passed the order as under:  
“The forum has come to the conclusion that complainant M/s. Vijay Sales, M-Cube Mall, Jetalpur Road, Alkapuri, Vadodara has to install transformer and its accessories to avail HT connection in his premises at suitable place and inform concern MG/VCL to inform complainant M/s. Vijay Sales, to submit necessary test certificates, NOC of Electrical Inspector, Vadodara, Test Report etc., as per prevailing norms.”

3.25. Against Forum order, Appellant has represented the case before Electricity Ombudsman for getting justice. The action of Respondent is as per norms.

**::: ORDER :::**

**4.0.** I have considered the contentions of the Appellant and the contentions of Respondent and the facts, statistics and relevant papers, which are on record, and considering them in detail, my findings are as under.

4.1. The issue emerged in this representation is related with action of Respondent to change the category of connection based on the excess drawl of contracted demand even after intimation conveyed to control contracted demand within limit under LT category connection i.e. LTMD tariff to HT category. For availing electric supply under HT category, Appellant has to erect necessary infrastructure, including switchgears and other electric equipment subject to provisions of Supply Code, 2015.

Appellant is having business of selling electric appliances in M-cube Mall and as per recorded maximum demand in previous period Respondent had suggested to opt HT supply based on the average maximum demand recorded for the previous period. Initially appellant had paid the estimated amount for the same, and later on objected to opt HT category supply.

Here it is to note relevant portion of Regulation in this regard. Clause 3.2 of Supply Code,2015 states as under.

Category	System of Supply
For all installations exceeding 6 KW of connected load (motive power load exceeding 2 HP and up to 150 HP in the aggregate) and up to 100 KVA/KW of contracted demand.	400V – Three phase
For all installations with contracted demand exceeding 100 KVA/KW and up to 4000 KVA/KW.	11KV and 22KV- Three phase

*The consumer may opt for higher profile of supply even though the contracted load is less than the specified limit under higher profile of supply, if so desires.*

*In case of existing consumers drawing power at lower voltage, if due to the additional requirement they cross the threshold limit of load, in such cases the licensee may, as far as possible, make commercially viable offer to the consumers so that he opts for the next higher voltage of supply. The commercial offer may be framed taking into consideration the following-*

*(a) Likely reduction in Transmission and Distribution Losses;*

*(b) Load reduction on transformers of licensee's system and their availability for meeting new requirements.*

Therefore, looking to the above provisions and as per records of maximum demand of Appellant under LTMD category, action of Respondent to transfer the class of supply of Appellant from LT to HT 11KV system seems to be correct.

4.2 Regarding issue of notices served by Respondent it is observed that notices dated 21.10.2016 and 11.05.2017 served by Respondent are not in accordance with prevailing Supply Code, 2015, but was issued mentioning provisions of Supply Code, 2005. On observation of said documents, Respondent had mentioned Clause No. 8.3.4 and Clause No. 3.1.2 of Supply Code, 2005, while issuing notice to Appellant, vide letter dated 24.10.2016, 18.01.2017, 11.05.2017 and 04.07.2017. In the said notices, it was intimated to Appellant to control his contracted demand within limit under LT connection or to avail HT connection, otherwise his connection would be disconnected without any further notice.

Thereafter, Suo moto estimate for 120 KVA contracted demand was issued to Appellant on 20.07.2017 mentioning the above notices previously issued but no action to control the contracted demand was taken by Appellant.

In the whole process of intimation to Appellant to control his contracted demand in LT category connection, it is necessary to read existing Supply Code, 2015 and relevant provisions with this issue i.e. Clause No.4.95. While Respondent had taken action as per Clause No.8.3.4, Clause No. 3.1.2 and Clause No. 3.5.1 of repealed

Supply Code, 2005. Here it is to note that after enactment of Supply Code,2015 on 24.09.2015, Supply Code, 2005 became repealed. Therefore, Respondent should have to act with the help of relevant provisions of Supply Code,2015 in this present case, but relevant provisions were not utilized by Respondent while issuing notices to Appellant.

In this context, it is required to read above provisions which are as under:

Clause 8.3.4 of Supply Code,2005:

*The Consumer shall not exceed the contracted load beyond 10% limit without the specific permission of the Distribution Licensee. The Consumer shall not add, alter, and / or extend the electrical installation beyond the agreed contract demand without the permission of the Distribution Licensee.*

Clause 3.1.2 of Supply Code,2005:

3.1.2 The rated voltage of the AC supply should be as follows:

(b) 400V - Three Phase

*For all installations (other than motive power) exceeding 6 KW*

- *up to 100 KVA of Contracted Demand for GEB and TPSL*
- *up to 100 kW of Contracted Demand for TPAL*

*For motive power installations exceeding 2 HP*

- *up to 125 HP in the aggregate subject to maximum demand not exceeding 100 KVA for GEB and TPSL*
- *up to 150 HP in the aggregate subject to maximum demand not exceeding 100 KW for TPAL*

*11 kV, 22kV and 33 kV Three Phase*

- *For all installations with Contract Demand exceeding 100KW and up to 4000 KVA for unbundled Distribution Licensee of erstwhile GEB and TPSL.*

Clause 3.5.1 of Supply Code,2005.

*If it is found that a Consumer has been classified in a particular category erroneously, or the purpose of supply as mentioned in the distribution service Agreement has changed or the consumption of power has exceeded the limit of that category or any order of reduction or enhancement of Contract Demand has been obtained, the Distribution Licensee may reclassify him under appropriate category after issuing notice (with minimum notice period of 30 days) to him to execute a fresh Agreement on the basis of the altered classification or modified Contract Demand. If the Consumer does not take steps within the time indicated in the notice to execute a fresh Agreement, the Distribution Licensee may, subject to the provisions of the Acts, Rules and Regulations for the time being in force, after issuing a clear 21 days show cause notice and after considering his explanation, if any, disconnect the supply of power. Further, the Distribution Licensee shall dispose of all such applications for change of tariff class by a Consumer within maximum period of seven days after receipt of such application regarding the change of tariff class or communicate the reasons for not changing the tariff class, as applicable. In case of any dispute, the matter shall be referred to Forum for redressal of consumer grievances.*

Clause 4.95 of Supply Code,2015 effective from 24.09.2015.

*In case of HT, EHT and Demand Based LT connections, if the maximum demand was recorded to be in excess of contract demand by 5% or more for at least four times during last financial year, the licensee shall issue a 30-day notice to the consumer for submitting an application form for enhancement of load. If there is no response from the consumer by the end of the notice period, the licensee shall start the procedure for enhancing the consumer's contract demand to the average of four recordings of maximum demand shown by the consumer's MDI meter in the last financial year.*

*In such case, the consumer shall be liable to pay all applicable charges as per provisions of this Code for regularization of the enhanced demand. The enhanced demand will be considered as revised contract demand on receipt of such charges and all provisions of agreement shall be applicable to such consumers for revised contract demand.*

*In case of non-Demand Based LT connections, review of Contracted Load/ Sanctioned Load shall be carried out once in a financial year and if it is found that connected load on such type of connection is 25% or more than the Contracted Load/ Sanctioned Load in case of Residential Consumers and 10% or more than the Contracted Load/ Sanctioned Load in case of other categories of consumers, the licensee shall issue a 60-day notice to the consumer for submitting an application form for enhancement of load. If there is no response from the consumer by the end of the notice period, the licensee shall start the procedure for enhancing the consumer's Contracted Load/ Sanctioned Load to the load found at the time of inspection. In such case, the consumer shall be liable to pay all applicable charges as per provisions of this Code for regularization of the enhanced load. The enhanced load will be considered as revised Contracted Load/ Sanctioned Load on receipt of such charges and all provisions of agreement shall be applicable to such consumers for revised Contracted Load/ Sanctioned Load.*

Thus, existing provisions 4.95 of Supply Code,2015 is applicable to act with in the above scenario, but Respondent had acted with help of repealed Supply Code, 2005 in issuing notices to Appellant. In comparison with contents of relevant provisions of both Supply Codes i.e. Supply Code, 2005 and Supply Code,2015, it is seen that in case of excess drawl of contracted demand, licensee has to intimate the consumer to control his contracted demand within permissible limit or otherwise has to apply for additional load, which is common in both Code. In case of non-response of notices by Appellant/consumer, licensee has to process Suo moto proceedings to issue an estimate as per excess drawl of contracted demand four times in a financial year with help of MDI meter as suggested in supply Code,2015.

Respondent had intimated Appellant for availing additional load demand in existing LT connection as per records of excess maximum demand recorded. Notices for intimation show provisions 8.3.4 and 3.1.2 and 3.5 of Supply Code,2005 which is repealed regulation,

while action initiated with help of provisions of Supply Code,2015. Therefore, issue of estimate under Suo moto proceedings with help of Clause 4.95 of Supply code,2015, is relevant process and action taken seems to be correct.

- 4.3. Before CGRF, Appellant had filed grievance and prayed to reconnect electric supply. The second issue raised under grievance before CGRF was regarding installation of infrastructure including transformer for HT connection which is not feasible in premises of Appellant's Mall on ground of weak soil and required space not suitable for installation of transformer and for its maintenance. While dealing with above issues, CGRF had directed to reconnect the electric connection as per prayer of Appellant.

In dealing with second issue regarding installation of transformer for HT connection under Suo moto proceedings initiated by Respondent, CGRF has directed to install transformer for HT connection at the premises of Appellant.

Thus, above two issues were dealt with by CGRF.

Aggrieved with CGRF order, Appellant had made representation and prayed as per Para No. 2.14.

- 4.4. This is a case in which as per Para 4.6 of CGRF order, records of excess drawl of Maximum Demand for the financial year 2016-17, 2017-18 and 2018-19 are shown and from the records it is proved that Appellant is continuously violating the conditions specified under LTMD tariff. Even after applicable provision of Supply Code, 2015, which came into force w.e.f. 24.09.2015, Appellant had not made any efforts to control his contracted demand after receipt of notices from Respondent. Even after giving assurance to avail electric supply within contracted demand vide letter dated 15.01.2018, Appellant had not maintained his contracted demand within permissible limit. Therefore, it is proved that assurance given by Appellant to keep contracted demand within limit and subsequently violated the same. Based on prevailing provisions of Supply

Code,2015, Suo moto proceedings carried out by Respondent for issue of estimate under HT category, is as per norms.

- 4.5. Appellant has filed present representation and pointed out argument for space constraint in his premises (Mall), soil is refilled soil and too weak to bear load of transformer center. In this context, Respondent had stated that as per Clause 4.36 of Supply Code,2015, and being HT category consumer, Appellant has to provide suitable space for installation of equipment to avail HT supply. Further it is stated that joint visit was also carried out at site for installation of equipment/ transformer centre in premises of Appellant to avail HT supply. Respondent has contended that earlier HT connection was given to Mall in the year 2010 and at that point of time transformer was erected at a place inside premises and presently said place is suitable for installation of infrastructure to avail HT supply to Appellant. Looking on said issue, argument for not developing infrastructure for availing HT supply under drawl of excess maximum demand under LT category connection is not justified.
- 4.6. In all three cases as referred by Appellant as per Para No.2.12, the relevant cases are related with individual nature and merits. These cases are not related with the present nature of grievance as under excess load of demand under respective category of connection, Respondent had initiated action under review of contract demand. Thus grounds narrated with reference to above cases are not in accordance with present issue which is related to change of class of supply and erection of electrical equipment under relevant class of supply of voltage.
- 4.7. The arguments represented by appellant in Para 2.10 and Para 2.12 are related with issues of estimate for HT category connection and additional bills related respectively. These issues are not represented by Appellant before CGRF, and hence not decided these issues by CGRF. Above issues are directly represented before Ombudsman along with present representation against CGRF order. Hence, for these issues Appellant has to first approach before CGRF and

aggrieving by order of CGRF, Appellant may file representation before Ombudsman. Hence these issues are not decided.

- 4.8. From the contentions presented by Appellant regarding Suo moto proceedings initiated by Respondent for HT category connection and to avail HT supply, necessary infrastructure needed to be installed in the premises of Appellant. It is seen that Appellant is continuously violating specified condition under LTMD tariff and escaping from creating necessary infrastructure including installation of switchgear and transformer in his premises. Appellant has submitted that he had installed M.D. controller and taken steps for controlling contracted demand within limit and referred Clause 4.102 of Supply Code,2015 and requested to accept minimum charge for the shortfall agreemental period of two years under the Suo moto proceedings for HT connection.

In whole process of accepting HT category supply under Suo moto proceedings, at first instant Appellant had paid estimated amount on 27.09.2017, but not executed an agreement. Later on an agreement was executed on 10.12.2018 but necessary infrastructure erection including transformer and switchgear work was not carried out by Appellant. The power supply was disconnected by Respondent on 04.01.2019, and it was reconnected on 30.01.2019 as per interim order dated 30.01.2019 of CGRF and as per consent of Appellant for erection of necessary infrastructure in his premises.

- 4.9. The issue herein is to continue LTMD tariff of appellant for the billing purpose as Appellant does not want to opt for HT tariff due to installation of infrastructure for HT category connection having space constrain.

It is seen that Appellant had drawn excess demand in the month of May,2018- 106 (LTMD), in June,2018-114 (LTMD), in July,2018- 143 (HTP-I), previously in the year 2016-17 and 2017-18 excess demand had been drawn by Appellant also.

Under Suo moto proceedings, estimate was paid by Appellant on 27.09.2017 but agreement was not executed which was later on

executed after more than one year i.e. on 10.12.2018. During the period, Appellant had drawn excess contracted demand in term of LT category under LTMD tariff. After execution of agreement, necessary infrastructure had not been erected to opt HT category connection. Now Appellant is raising various contentions to avoid erection of necessary infrastructure in his premises for HT category connection. It is true that Appellant had drawn excess maximum demand and opted HT category connection with payment of estimated amount and made agreement with Respondent, and based on that Respondent had deemed released the HT connection of Appellant.

- 4.10. Suo moto proceedings estimate was issued after observing contracted demand of Appellant on 05.08.2017 and it was paid by Appellant on 27.09.2017 and agreement was also executed on 10.12.2018. Two months' notice was issued to Appellant on 13.04.2018 and HT connection was deemed released w.e.f. 12.06.2018 by Respondent. It is open for Appellant to apply with help of contents of Clause 4.102 of Supply Code, 2015. In view of Clause 4.102 of Supply Code, if Appellant opts for reduction of load, in that case necessary action for reduction of load would be taken by Respondent observing necessary norms along with previous records of maximum demand to justify usage of contracted demand in respective category of class of supply as per Supply Code, 2015 and tariff schedule published by GERC.
- 4.11. While arguing for space constrain in premises of Mall, Appellant has stated that total 11 No. of owners - share in the building at M-Cube Mall, but Appellant had not produced any documentary evidence for the same. Originally, HT connection was asked and released earlier by Respondent at this premises i.e. Mall. Space for transformer which was earlier situated for HT connection is now vacant and available at present as stated by Respondent as per site visit, but Appellant had shown reasons of weak soil issue as well as ownership issue of Mall, and denied for commissioning of infrastructure of electric network along with transformer.

Respondent had earlier released HT supply in the said premises after observing necessary formalities including NOC from Electrical Inspector regarding previously commissioned electric network. Therefore, looking to that ground Appellant has to provide space and develop necessary infrastructure for erection of electric network pertaining to HT supply on the ground of excess drawl of contracted demand.

- 4.12. From the above observations, as Appellant has paid estimated charges and made an agreement with Respondent to avail HT category connection as per the Suo moto proceedings as per Clause 4.95 of Supply Code, 2015 and Respondent deemed released the HT connection. Therefore, Appellant has to commission necessary infrastructure of electric equipment in his premises to avail HT supply physically.

Therefore, action taken by Respondent in accordance with Clause 4.36 of Supply Code, 2015 directing to provide space for erection of electrical equipment including transformer, is as per norms.

Prayers made by appellant as per Para 2.14(2), (3), (5), (6), (7) are not made before CGRF and not decided by CGRF, hence not maintainable to decide.

- 4.13. I order accordingly.  
4.14. No order as to costs.  
4.15. With this order, representation/Application stands disposed of.

(Dilip Raval)  
Electricity Ombudsman  
Gujarat State

Ahmedabad.  
Date: 03.05.2019.