

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 103 OF 2023

In the matter of temporary disconnection and billing

S.B. EnterprisesAppellant
(Consumer No. 011184052336)

V/s.

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

Appearances:

Appellant : 1. Ranjit Singh S. Mankoo
2. Rajendra Ingole, Representative

Respondent: 1. Pravin Sute, Executive Engineer, Vasai
2. Avinash Katakwar, Asst. Engineer


Coram: Vandana Krishna [I.A.S.(Retd.)]

Date of hearing: 12th January 2024

Date of Order : 23rd January 2024

ORDER

This Representation was filed on 4th October 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order


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dated 10th August 2023 in Case No. 035/23 passed by the Consumer Grievance Redressal Forum, Kalyan (the Forum). The Forum by its order has dismissed the grievance application, by observing that the grievance is time barred as per Regulation 7.8 of CGRF & EO Regulations 2020, as the cause of action had occurred on the date of Permanent Disconnection i.e. on 09.01.2021; however, the Complainant approached the Forum on 26.05.2023, i.e. after two years and four months.


2. Aggrieved by the order of the Forum, the Appellant has filed this representation. The hearing was held on 12th January 2024. The Appellant physically attended the hearing and the Respondent joined through Video Conferencing. Parties were heard at length. The Respondent filed a reply vide its letter dated 23rd October 2023. For easy understanding, the Respondent's submissions and arguments are stated first as below:

- (i) The Appellant is an industrial consumer running a quarry and stone crushing unit from 16.09.2016 having the following details of sanctioned load, contract demand etc.:

Table 1:

Appellant	Consumer No.	Address	Sanctioned load	Contract Demand (KVA)	Date of Supply	Activity	Remarks
S.B. Enterprises	11184052336	Washote Taluka: Wada	67 HP (Initially)	62	16.09.2016	Quarrying of stone, sand & clay	Load enhancement under DDF Scheme in May 2018
			133 HP (Add)	124	03.05.2018		
			200 HP	186			


- (ii) The Appellant by his letter dated 08.04.2019 (original Letter in Marathi language) requested "to stop levying the charges temporarily in his bill, as the Appellant was not utilizing/operating his crusher machine, till further intimation of use." [Note: During the hearing, the Appellant explained that he was forced to shut down his unit as he received a notice from the Revenue authorities that this was government / forest land, on which quarry / stone crusher activity was not allowed.] A plain reading of the Marathi letter of the Appellant clearly establishes that this was merely an


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intimation of temporary non-use of installation, and not a request for final disconnection.


- (iii) As per this application, it was necessary to disconnect the supply temporarily, and feed the TD entry on 08.04.2019, but there was an outstanding bill of Rs. 25210/- for the month of May 2019, which was paid by the consumer on 20.05.2019. The meter of the consumer showed consumption of 3 units in June 2019, due to which a bill was generated and showed arrears as Rs. 25,859/-. It was therefore required that the Appellant should first pay this bill, and only then would he be liable for disconnection/stoppage of bills on request. *[Note: This indicates that the connection should have been temporarily disconnected in June 2019, or at the most in July 2019.]* The said connection was temporarily disconnected on 17.10.2019; till then bills with only fixed charges were generated. *(Note: -The CPL shows that the temporary disconnection was done in Nov.2019.)* Arrears as of Oct 2019 were showing Rs. 1,13,971.64. Even after temporary disconnection, bills of fixed charges continued to be generated as per the tariff order of the Maharashtra Electricity Regulatory Commission. *[Note: The Respondent was directed to submit proof / documents of sending the monthly fixed charges bills by SMS to the Appellant.]* These fixed charges are statutory charges. This continued till Dec. 2020. By that time the arrears rose to Rs. 4,33, 846.69. (Since the load of the consumer is high, fixed charges are generated to the tune of approx. Rs.21000/- to 22000/- per month). The Appellant's supply was finally permanently disconnected on 09.01.2021 for non-payment of arrears.
- (iv) The Appellant is disputing these charges, by claiming that his letter dated 08.04.2019 amounted to a request for permanent disconnection; and that no fixed charges should have been levied thereafter. Firstly, it was necessary that the Appellant should have clearly applied for permanent disconnection, if he wanted complete stoppage of bills, after the final payment of the Jun. 2019 bill. Secondly, the Appellant had the option to reduce his contract demand to its minimum level **for reduction in fixed charges,**


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but he did not do so. Thirdly, the Appellant has to approach the Respondent for further follow up. Every month, a bill (of fixed charges) was generated and sent to the Appellant on his billing address as was the usual practice, till the consumer's supply was permanently disconnected in Jan. 2021. (Note :The Appellant is denying receiving these bills.) There is no practice to take the consumer's signature on LT consumers' bills after delivery of bill. Each and every consumer was intimated regarding his monthly bill through SMS on his registered mobile phone through the System. This practice is followed everywhere in the State for the last many years. The Respondent has strengthened its Information Technology Base, and consumers were intimated at every stage of billing. The outstanding arrears, if any, for defaulter consumers were also intimated through the System under Section 56(1) of the Electricity Act, 2003 (the Act). A sample format of this activity is kept on record. The Commission as well as the Judiciary has accepted this digital form as an official way of communication.

- (v) In the present case, the Appellant's monthly bills were generated from May 2019 till Jan. 2021 and sent to him via many sources, **including physical bill distribution on the address of the bill, auto notification via SMS** to the Appellant on the registered mobile in the bill, email etc. The Appellant was never bothered about the rising arrears.
- (vi) Finally, the Respondent filed a case in the Lok Adalat, Wada in the year 2023 for recovery of PD arrears of the Appellant, for which the Lok Adalat issued a notice on 24.04.2023. The Respondent tried for an amicable settlement for recovery of PD arrears on 30.04.2023. However, the Appellant did not respond. The stand of the Appellant that "the first communication (notice of recovery) with the Respondent was done only on 23.04.2023 when he received the Lok Adalat's notice" is totally wrong. The MSEDCL conducts PD and TD verification drives every month without fail, thereby approaching each and every TD/PD consumer.


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(vii) **The most important fact is that the Appellant approached the Forum on 26.05.2023 after a period of 29 months from when the Appellant's supply was permanently disconnected on 09.01.2021, i.e. beyond the time limit of two years as per Regulation 7.8 of CGRF & EO Regulations 2020. Hence, the grievance is time barred.** The said Regulation is reproduced as below.


“Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen”

(viii) Various citations referred by the Appellant are irrelevant in the present case, and the ratio of these citations is not applicable directly or indirectly in this case. The Hon'ble Electricity Ombudsman in its various orders has taken a similar stand on the cause of action.

(ix) The Forum by its order dated 10.08.2023, has dismissed the grievance application. The Forum has already considered and addressed all issues and passed a reasoned order. Therefore, it is necessary to uphold the Forum's order. In view of the above submissions, the Respondent prays that the representation of the Appellant be rejected.

3. The Appellant's submissions and arguments are as below:

- (i) The Appellant is an industrial consumer running a stone crushing unit from 16.09.2016 with sanctioned load, contract demand etc. as tabulated in Table 1. The Appellant enhanced his sanctioned load from 67 to 200 HP & from 62 to 186 KVA in May 2018 under Dedicated Distribution Facility (DDF) scheme, by installing a distribution transformer Centre with its accessories at its premises. These were supposed to be installed by the Respondent.
- (ii) The Forest Officer, Javhar issued a “stop work notice” to the District Collector, Thane on 05.04.2019 for quarrying work in forest areas, as per the concerned


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Section of the Indian Forest Act, 1927, and a notice to acquire private forests in the State as per the Maharashtra Private Forests (Acquisition) Act, 1975. The Revenue authorities directed the Appellant to stop the stone crushing activity.

- (iii) Accordingly, the Appellant submitted an application to the Respondent on 08.04.2019. The contents of the letter were as below:

“ विषय: क्रशर मशीन बंद असल्याकारणाने तात्पुरत्या स्वरूपात वीज मीटरवरील आकारणी बंद करणे बाबत_


उपरोक्त विषयाने विनंती अर्ज करतो सादर करतो कि, आमची मौजे-वाघोटे, तालुका: वाडा, जिल्हा: पालघर येथे मेसर्स एस.बी. इंटरप्राईजेस या नावे स्टोन क्रशर असून, त्याचा ग्राहक क्रमांक: ०१११८४०५२३३६ असा असून, सद्यस्थितीत आमची क्रशर मशीन बंद असल्याकारणाने जोपर्यंत मशीन पूर्ववत सुरु होत नाही तोपर्यंत वीज मीटरवरील वीज आकारणी बंद करण्यात यावी ही विनंती "

- (iv) This letter and its intent / interpretation were discussed during the hearing. Prima facie, the intent seems to be temporary disconnection; till the stone crushing operation starts again. However, the Appellant claims that his meaning and intent was for permanent disconnection; so that no fixed charges could be levied. At the same time, he used the phrase “till the machine is restarted” as he is fighting the case regarding closure of his unit against the authorities and hopes / expects that the unit can be restarted in future. He has invested a considerable amount in the infrastructure, and would not like it to go to waste, or to be taken over by the Respondent. The Appellant also contended that his use of the phrase “stop billing on the meter” indicates that all billing, including fixed charges, should have been stopped.
- (v) However, the Appellant claims that no action was taken by the Respondent till 23.04.2023. Suddenly, the Appellant received a Lok Adalat Notice dated 24.04.2023 for recovery of arrears of Rs. 3,34,480/-.


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- (vi) The Appellant filed a grievance application with the Respondent's Superintending Engineer, Executive Engineer, Dy. Executive Engineer on 30.04.2023 for withdrawal of the fictitious billing. However, the Respondent failed to address the said grievance.
- (vii) The Appellant then filed a grievance application in the Forum on 26.05.2023. The Forum by its order dated 10.08.2023 rejected the grievance application. The Forum failed to understand the basic issue regarding cause of action. The Forum has applied the cause of action when the permanent disconnection was done, i.e., Jan. 2021. This interpretation is totally wrong. **In fact, the cause of action arose when the Lok Adalat sent a notice to the Appellant, i.e. on 24.04.2023.**
- (viii) A plain reading of letter dated 08.04.2019 of the Appellant shows that the Appellant had requested the Respondent to stop his supply for the time being, as his crusher machine was not in operation. Further, the consumer requested the Respondent **not to bill him** till he was not using his crusher machine.
- (ix) However, the Respondent stated that, the consumer's supply was temporarily disconnected on 17.10.2019; that the Appellant has not paid the accumulated bill after 20.05.2019. The outstanding dues increased to Rs.4,33,846/-. *[Note: it is not clear how the outstanding dues increased from Rs.25,859/- in June 2019 to Rs. 1.13 lakh in Oct.2019 to Rs. 4.33 lakh in Dec.2020.]* The supply of the Appellant was permanently disconnected on 09.01.2021. The Respondent adjusted the Security Deposit of Rs. 1,60,000/- from the arrears amount after permanent disconnection of supply. The final arrears came to Rs.3,34,480/- The Respondent sent a notice dated 24.04.2023 to the Consumer for appearing before the Lok Adalat, Wada for settlement of PD arrears.
- (x) The Appellant stated that there was no communication from the Respondent to the Appellant after 8.04.2019 when the Appellant had submitted a letter to the Respondent for stoppage of bill, till the Respondent communicated the notice of


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Lok Adalat dated 24.04.2023. There was no communication from the Respondent to the Appellant between 08.04.2019 and 30.04.2023. The Appellant claimed that an amicable settlement could not be arrived at during the Lok-Adalat hearing at Wada on 30.04.2023, as the Respondent had put up wrong billing information to the Lok- Adalat.


- (xi) The Forum erroneously rejected the grievance by considering it as time barred. There are two ways to prove that the grievance is well within limitation period of two (2) years:-
- a. The cause of action should be considered as 24.04.2023, when the Appellant received Lok Adalat notice.
 - b. Supreme Court decision highlighted in MERC Case No. 131 of 2021 regarding exemption period of Covid-19 tenure for filing a grievance.
- (xii) The Appellant argued that he did not mention anywhere to disconnect the supply “temporarily”. He only mentioned stopping the billing. The Appellant did not find any provision for “temporary disconnection” to stop the billing anywhere in the Act or in any of the MERC regulations. The Forum also has not mentioned any Section, Clause, Sub clause of the Act or Regulations wherein such a provision exists.
- (xiii) On the contrary, there is a provision in the Regulations regarding closing of billing by terminating the Agreement. In the present case, the application dated 08.04.2019 should be interpreted as a letter for termination of Agreement, to disconnect the supply permanently. There is no other provision in the Act or Regulations to stop the billing except to terminate the Agreement by permanent disconnection. Some of the Licensees in India have prescribed a Proforma for Permanent Disconnection / stoppage of billing etc. However, MSEDCL have not prescribed any proforma for Permanent Disconnection/ stoppage of billing etc. Such a prescribed proforma is also not available in MSEDCL's Conditions of


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Supply framed under MERC Regulations. Hence **there is no alternative except to submit an application for stoppage of bills/Permanent Disconnection in the language and words best known to the consumer.** The contents and language in the application is left to the discretion of the consumer as per his best wisdom. Naturally in such circumstances, the Licensee and the Forum should interpret the consumer's meaning in the interest of natural justice, or should reply to his application, if needed.

- (xiv) The Respondent belatedly prolonged the permanent disconnection, thereby behaved against regulations. There would not have been any dispute at all if the Respondent had stopped the billing as per Regulations or replied for any discrepancy.
- (xv) As the bills were to be stopped with effect from 08.05.2019 as per his application dated 08.04.2019, the question of paying further bills does not arise.
- (xvi) Hence the question of issuing bills with effect from June 2019 does not arise. If the disconnection was kept pending due to arrears of the said connection, then a mandatory notice under Section 56 of the Act should have been issued for payment of arrears before disconnecting the supply. *[Note: The Respondent contends that the regular monthly bills, which were being sent to the Appellant, amount to the required notice.]*
- (xvii) The Appellant pointed out during the hearing that there is a specific time to MSEDCL to finalize/dispose of billing / other complaints within the next billing cycle, as per Standard of Performance Regulations 2014.
- (xviii) Actually, there should have been a mandatory communication from the Respondent to the Appellant after submission of his application dated 08.04.2019 in view of the then Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution licensees, Period of Giving Supply and Determination of Compensation) Regulations, 2014, that complaints be resolved in the second


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billing cycle. However, the Respondent failed to act accordingly and violated the SOP Regulations 2014.

- (xix) The Appellant referred to Regulation 6 of SOP Regulations 2005 regarding the Agreement.

“ 6.1 The distribution Licensee may require the applicant to execute an agreement for obtaining a new connection, for change of name and for enhancement of sanctioned load:

6.5 The agreement shall be deemed to be terminated upon permanent disconnection of the consumer or where the consumer remains disconnected for a period of more than 6 months.


Provided that the termination of agreement is without without prejudice to the rights of the distribution licensee or of the consumer under the Act for any amount due under the agreement

6.6 A consumer may terminate the agreement after giving a notice of thirty (30) days to the Distribution Licensee:

6.7 Whenever an agreement is terminated by notice given by the consumer; the Distribution Licensee shall give a written intimation to the consumer within 14 days after termination failing which it shall be construed that such intimation has been given to the consumer:”

The Appellant submitted the application on 08.04.2019 for “permanent disconnection”; hence the Agreement should get terminated after 30 days i.e., on 07.05.2019) This termination of Agreement dated 07.05.2019 was supposed to be intimated in writing by MSEDCL within 14 days i.e. before 21.05.2019.

In this Case, the 14 days’ notice was not issued by MSEDCL regarding termination of Agreement. Hence as per Regulation 6.7, such a notice is deemed to have been



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issued, confirming permanent disconnection and termination of the Agreement on 07.05.2019.

As the agreement itself was terminated on 07.05.2019, the Appellant did not owe any bills/ arrears to MSEDCL after 07.05.2019.

- (xx) In view of the above, the Appellant prays that the Respondent be directed :
- a) to withdraw all the arrears/bills from June 2019 i.e. arrears bill of Rs.3,03,052/- and interest of Rs. 1,57,115/-, total Rs.4,60,167 as shown in the letter of Lok Adalat dated 24.04.2023.
 - b) to withdraw the amount of Rs1,60,000/- which is shown as credit adjustment entry against arrears in the books of accounts of MSEDCL in the month of February 2021, and any other pending amount in books of accounts.
 - c) to refund the security deposit of Rs.160000 with interest (say at 7 %) as per MERC regulation and MSEDCL rules.
 - d) to waive all the interest and unnecessary bills charged from June 2019 onwards till the finalization of this case.
 - e) to issue a fresh bill / No due bill/ credit bill as the case may be for the month of June 2019, after waival of all the interest and arrears charged from June 2019 onwards.
 - f) to issue us a NO DUE CERTIFICATE for future reference.
 - g) to initiate necessary disciplinary action against the errant, negligent and lethargic staff/ employees who are responsible for not taking action for stoppage of bills in time.
 - h) to compensate Rs. Rs.1,00,000/- towards abnormal delay for disconnection, harassment and mental torture.


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Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant is an industrial consumer from 16.09.2016 with sanctioned load, contract demand etc. as tabulated in Table 1. The Appellant enhanced his sanctioned load from 67 to 200 HP & from 62 to 186 KVA in May 2018 under Dedicated Distribution Facility (DDF) scheme. The Forest Officer, Javhar issued a notice to the District Collector, Thane on 05.04.2019 for 9 cases, including the Appellant's, for stoppage of quarrying as per the Indian Forest Act, 1927, and to acquire private forests in the State as per the Maharashtra Private Forests (Acquisition) Act, 1975. Accordingly, the Appellant closed down production of his quarry activity in April 2019.

5. The Appellant submitted an application to the Respondent for stoppage of billing on 08.04.2019. The contents of the letter are already captured in Para 3(iii). The Appellant contended that this letter is nothing but a request for permanent disconnection. We have examined this letter. We find that, by no stretch of imagination can this letter be construed as a request for permanent disconnection. This letter is a request to stop billing due to nonuse of installation / machinery **till such time as the machine is restarted**, and at best this application can be treated as a request for temporary disconnection.

6. The Appellant cannot expect the fixed charges to be stopped, and at the same time keep the connection open / live "in case the unit is restarted in future". Under different circumstances, had the Appellant succeeded in restarting the unit, he would have strongly objected to a permanent disconnection, and would have taken the support of his words "till our machine is restarted, kindly stop billing through the meter."

The letter can also be viewed as a request for only temporary disconnection from another angle. The words "kindly stop billing through the meter" indicates consumption charges, as fixed charges are billed independent of the meter readings.


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7. The Respondent's contentions are already captured earlier. We find several loopholes and lacunae in the Respondent's arguments too. The rapid escalation of arrears, as captured in para 3 (ix) has not been explained satisfactorily by the Respondent. Even if we hold that the letter of the Appellant dated 08.04.2019 was a request for temporary, and not permanent disconnection, it still does not explain the long and unnecessary delay in making the permanent disconnection, which led to the levy of fixed charges, which is the basis of the current dispute. The temporary disconnection should have been effected by 08.05.2019. A deposit of Rs. 1,60,000/- was in the hands of the Respondent, hence there was no need to wait for payment of any pending bill before effecting the disconnection. It was actually made PD only on 09.01.2021. The Respondent temporarily disconnected the supply of the Appellant in the month of Nov. 2019 as per the record of CPL. The Respondent was duty bound to make the consumer permanently disconnected within a period of six months as per Regulation 6.5 of Supply Code Regulations 2005. The said Regulation is produced as below:


*“6.5 The agreement shall be deemed to be terminated upon permanent disconnection of the consumer or **where the consumer remains disconnected for a period of more than six (6) months:**”*

8. The following issues are framed for determining the grievance.

➤ **Issue 1:** Whether the Respondent should withdraw the excessive billing in view of Regulation 6.5 of Supply Code Regulations 2005?

The answer is in the AFFIRMATIVE.

The Appellant applied for “stoppage of billing” on 08.04.2019. The supply of the Appellant was disconnected temporarily in the month of Nov. 2019 as per Consumer's CPL. The billing status of the Appellant is tabulated below:


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Month	Previous Reading (KWH)	Current Reading (KWH)	Consumption With MF =3 (Units)	Status	Month	Previous Reading (KWH)	Current Reading (KWH)	Consumption With MF =3 (Units)	Status
Apr-19	2865	3711	2536	Live	Apr-20	3723	3723	0	T.D.
May-19	3711	3720	28	Live	May-20	3723	3723	0	T.D.
Jun-19	3720	3723	9	Live	Jun-20	3723	3723	0	T.D.
Jul-19	3723	3723	0	Live	Jul-20	3723	3723	0	T.D.
Aug-19	3723	3723	0	Live	Aug-20	3723	3723	0	T.D.
Sep-19	3723	3723	0	Live	Sep-20	3723	3723	0	T.D.
Oct-19	3723	3723	0	Live	Oct-20	3723	3723	0	T.D.
Nov-19	3723	3723	0	T.D.	Nov-20	3723	3723	0	T.D.
Dec-19	3723	3723	0	T.D.	Dec-20	3723	3723	0	T.D.
Jan-20	3723	3723	0	T.D.	Jan-21	3723	3723	0	P.D.
Feb-20	3723	3723	0	T.D.	Feb-21				P.D.
Mar-20	3723	3723	0	T.D.	Mar-21				P.D.

It is not clear why the status was kept 'live' from July 2019 to Oct.2019, and why the status was kept 'TD' from May 2020 to Dec. 2020 unnecessarily.

The Respondent was duty bound to keep the supply 'TD' for at the most 6 months, i.e. at the most from July 2019 to Dec. 2019, and thereafter to disconnect the supply permanently in the month Jan. 2020 as per Regulation 6.5 of considering Supply Code Regulations 2005. The fictitious billing generated from Jan. 2020 onwards needs to be withdrawn. The answer to Issue 1 is in the AFFIRMATIVE.

The Respondent has argued [para 2 (iii)] that fixed charges of Rs.22,000/- per month were applicable. If that is so, total fixed charges for 6 months of TD would be Rs.22,000 x 6 = Rs.1.32 lakhs. The bill needs to be restricted to this amount.

➤ **Issue 2:** When did the cause of action arise and whether the grievance is time barred?


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The Appellant contends that he did not get any bills of Fixed charges or accumulated arrears up till the Lok Adalat notice on 24.04.2023, hence the cause of action arose on that date. On the other hand, the Respondent contends that regular monthly bills were being issued right from May 2019 onwards, and the connection was made PD on 09.01.2021, hence the cause of action arose on that date. After examining all the circumstances of the case, we hold that the cause of action was continuous right from May 2019 onwards, as the monthly bills (of Fixed charges) were being issued in this period physically and through SMS. The Appellant had adequate time to approach for grievance redressal even before the pandemic lockdown started in March 2020. However, even giving him the benefit of doubt, the period can be relaxed at the most till Jan.2023, by which time the pandemic / lockdown was completely lifted. The Appellant actually approached the Forum only on 26.05.2023. Hence the grievance is technically time barred. At the same time, the Respondent cannot be allowed over-billing beyond the statutory 6 months 'TD' period.


9. In view of the above, the Forum's order is modified to the extent below:-

- a) The Respondent is directed to withdraw the excessive billing from Jan.2020 onwards.
- b) The Respondent is directed not to levy interest and DPC on the revised PD arrears.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) Other prayers of the Appellant are rejected.

10. The Secretariat of this office is directed to refund the amount of Rs.25000 taken as deposit to the Respondent for adjustment in PD arrears.

11. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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Secretary
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