

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 34 OF 2023

(REVIEW OF THE ORDER IN REPRESENTATION NO. 170 OF 2022)

In the matter of live arrears of MSEDCL in TPL Franchisee

Ansari Mohd. Ahmed Habbibullah Review Applicant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Bhiwandi (MSEDCL)... Respondent

Torrent Power Limited (TPL), Distribution Franchisee, Bhiwandi

Appearances:

Review Applicant : 1. Mohd. Ahmed
2. Nadeem Ansari, Representative
3. Adil Punjabi, Representative

Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, TUC, MSEDCL
2. Rajesh Shanbhag, AGM, TPL
3. Hemangi Bhogvekar, Nodal Officer, TPL

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 27th June 2023

Date of Order : 28th July 2023

ORDER

This Review Application was filed on 13th March 2023 Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the



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Order dated 24th February 2023 passed in Representation No. 170 of 2022 (the impugned order). This Representation was rejected on merit.

Preamble :

- a) The Applicant is a LT consumer (Service No.13892726374) having sanctioned load of 20 HP at H.No.1099, Near Alfa Hotel, Kariwali, Bhiwandi for running a power loom. The said service connection is live and billed every month as per meter reading. The Applicant is in arrears of MSEDCL dues which have been shown continuously and demanded regularly in all the monthly bills over the years. However, the Applicant has neglected to pay the same except the current bills.
- b) The Electricity Distribution Network Assets and Billing of Bhiwandi area was handed over to Torrent Power Limited as a Franchisee of MSEDCL for a period of 10 years from 26.01.2007, and the franchisee was further extended for 10 years up to 2027. The TPL is authorized to send notices of disconnection on behalf of MSEDCL as an extended hand through Franchisee model as per law.
- c) The TPL has replaced various meters under “Mass Meter Replacement Scheme”. According to TPL, it is not possible to test all the replaced meters under Mass Meter Replacement Scheme, nor is it necessary to do so. The accuracy of the meter was never challenged in all these years when the current bills were being paid by the Applicant. The TPL is billing as per actual reading of the new meters. **The initial outstanding dues of Rs.47,357.55 of MSEDCL as shown on 04.04.2007 have now reached Rs.1,72,322/-.** These dues are being continuously shown in his monthly bills. The Applicant pays only the current bills but neglects to pay the accumulated outstanding dues of MSEB / MSEDCL right from the year 2007.
- d) The Appellant approached the Forum on 05.01.2022 with the prayer of withdrawal of MSEDCL dues of Service No. 13892726374. The Forum, by its order dated 06.10.2022 dismissed the grievance application.



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e) Thereafter, the Appellant filed Representation No. 170 of 2022 against the order of the Forum with the following prayer:-

- to revise the bill as per actual consumption and waive off the MSEDCL arrears of Rs. 1,68,957/- with accrued interest in view of franchisee agreement 2007 and 2016.
- to issue Mechanical /Static Meter Testing Report along with the original meter revamp slip and CPL of MSEDCL.

f) The said Representation No. 170 of 2022 was rejected and the order of the Forum was upheld.

3. Aggrieved by this order dated 24.02.2023, the Applicant has filed this Review Application. The physical hearing was held on 27.06.2023. Both the parties were heard at length. The Applicant's written submissions and arguments in brief are as below:

- (i) The Appellant is a power loom consumer (Service No.13892726374) having sanctioned load of 20 HP at H.No.1099, Near Alfa Hotel, Kariwali, Bhiwandi. The alleged recovery of MSEDCL dues for Service No. 13892726374 is pending for more than 14 years. The Principal Amount in 2007 was Rs.47,357.55 which has now increased to Rs. 1,72,322/- including interest till date. The Appellant is ready to pay the Principal Amount; however, he questions whether the amount was due to defective meter.
- (ii) The Respondent, MSEDCL/TPL did not put on record the Clause of the Franchisee agreement on the procedure of recovery of MSEDCL arrears from live as well as PD consumers.
- (iii) There is another service (No.13892722271) in the adjoining premises in the name of Masud Ahmd. Habibullah Momin (brother). The said connection was disconnected on 11.10.2017 and presently it is PD. The Applicant was threatened by the Respondent TPL for clubbing of the two services (No. 13892726374 & 13892722271) by its letter dated 12.03.2018. The Applicant's brother, Masud Ahmd.

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Habibullah Momin has cleared the MSEDCL dues under the Vilasrao Deshmukh Abhay Yojana (Amnesty Scheme) dated 07.03.2022 and has assured to clear TPL dues. Nowhere has it been written that TPL dues and MSEDCL dues should be cleared in one stroke in the amnesty scheme. There is no provision under law for recovery of dues of a PD consumer by transferring its dues to the live consumer. Both these services have separate identities.

- (iv) TPL has sent a notice dated 08.06.2018 for transferring the PD dues to the live consumer (No. 13892726374) which was bad in law. The Appellant replied suitably. Meanwhile, TPL disconnected the supply of the said service on 12.07.2019 without any notice. The Appellant then filed a grievance with the IGRC immediately. However, TPL forced the Appellant to withdraw his grievance from IGRC and then the supply would be reconnected. Thereafter, the supply was reconnected.
- (v) Almost 95% consumers had heavy outstanding amounts, but this Applicant was the only one targeted for recovery of its outstanding amount.
- (vi) The PD arrears of Rs. 12,57,888/- of Service No.13892722271 were from 11.10.2017, and almost five years have lapsed, hence the recovery is time barred as per the law of limitation. The Respondent TPL is in fault for accumulation of the outstanding dues and not taking action as per Section 56 (1) of the Act.
- (vii) In view of the above, this Review be admitted with the following prayers:
 - a) To grant instalments for payment of the principal amount of Rs.47,357.55/- of MSEDCL dues under Service No.13892726374.
 - b) Not to disconnect the power supply till the time of disposal of the petition.
 - c) To restrain TPL from transferring the TPL dues of Rs.12.57 lakhs of the PD service 13892722271 on to live consumers in the near future for recovery purpose.
 - e) Not to issue notices to consumer u/s 56(1) for recovery of MSEDCL dues after a period of almost 16 years.

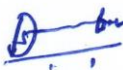
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4. The Respondent MSEDCL and its Franchisee, TPL filed their written replies dated 02.06.2023 and 16.05.2023 respectively. The Respondent's written submissions and arguments in brief are as below:

- (i) The Applicant had approached the Forum vide Case No.170/2022 for Service No. 13892726374 where his prayer was as below: -
 - a) to waive off the arrears with interest of MSEDCL dues of the said service, and to revise the bill as per actual consumption as per agreement 2007 and 2016,
 - b) to provide the MSEDCL Mechanical Static Meter testing report along with original meter revamp slip and Consumer Personal Ledger,
 - c) not to disconnect the power supply till the final order.
- (ii) The grievance of the Applicant was heard in detail by the Hon'ble Ombudsman and the relevant order has been passed on 24.02.2023. Without complying with it, the Applicant has approached this Forum for review which is a total violation of MERC regulations. The Applicant has come up with a New Prayer before the Hon'ble Ombudsman in this review, which is not allowed.
- (iii) The prayers in the present Review Representation No.34 of 2023 are mentioned in para 3 (vii). The Appellate Authority cannot accept a new prayer at this stage which was not taken up in the Forum, specifically prayer (c).
- (iv) The points raised for review by the Applicant were already on record for perusal during the original Representation. This is not a fit case for Review as the Applicant has not pointed out any new discovery in the matter. The Applicant has failed to show any error on the face of the record. As such the present review is not maintainable considering the provision of Regulation 22 of the CGRF & EO Regulations 2020.
- (v) From the review application, it seems that rather than complying with the order, the Applicant is purposely delaying the process to avoid action.


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- (vi) Hence, Respondent (MSEDCL & TPL) pray that the Review Application be dismissed with cost and direct the Applicant to comply with the order with immediate effect.

Analysis and Ruling

5. Heard both the parties and perused the documents on record. The brief history of the Applicant is mentioned in the Preamble above.


6. According to the TPL, there is another service (No.13892722271) in the same premises in the name of Masud Ahmd. Habibullah Momin. The TPL by its email dated 03.07.2023 informed the actual arrears as per directions in the hearing, which are tabulated as below:

Table 1

Present Status of both the services are as below:									
Service No.	Name	Address	Status	Current MSEDCL Dues			Current TPL Dues		
				Principal (Rs.)	Interest (Rs.)	Total (Rs.)	Principal (Rs.)	Interest (Rs.)	Total (Rs.)
13892726374	Ansari Mohd. Ahmed Habibullah	H.No.1099, Near Alfa Hotel, Kariwali, Bhiwandi	Live	43482	128840	172322	nil	nil	nil
13892722271	Masud Ahmd. Habibullah Momin	H.No.1099 Karivali Bhiwandi	PD	nil	nil	nil	836356	421532	1257888

7. TPL issued a notice dated 12.3.2018 to the Appellant for transfer of PD arrears of TPL of Rs.12.57 lakhs. It is seen that both the above connections relate to the same premises with the same address.

8. The Commission introduced a Consumer Grievance Redressal Mechanism in the year 2003 itself. The record shows that the current bills of the Appellant show previous accumulated arrears right from 2007 till date. The Appellant never approached the Grievance Redressal Mechanism which is stipulated in CGRF & EO Regulations. All these issues have been recorded


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in the original order dated 24th February 2023 in Representation No. 170 of 2022, hence, no new evidence is seen to be discovered at this stage.

9. The scope of a Review under Regulation 22 of the CGRF & EO Regulations 2020 is very limited. The said Regulation is quoted below: -

“22 Review of Order of Electricity Ombudsman

22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

(a) Where no appeal has been preferred;

(b) on account of some mistake or error apparent from the face of the record;

(c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.

22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.

22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

10. I am of the opinion that all important issues in sum and substance have been covered in the original order. The current review application is nothing but a repetition of the original representation. The Applicant is trying to seek an appeal under the guise of review which is not



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permitted. The scope of a review is very limited. The undersigned can review its ruling to correct a patent error and not a minor mistake of inconsequential import. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below:

- (a) *Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -*

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

- (b) *In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -*

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

11. In view of the above, I am of the considered view that there is no substance in this Review Application, and it is, therefore, rejected. We also impose a cost of Rs.2000/- on the Appellant for filing a repetitive and inconsequential review.

12. The Secretariat of this office is directed to refund the balance amount of Rs.23000(=25000-2000)/- (which was taken as deposit) to the Respondent.



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13. It is seen that accumulated arrears of MSEDCL are kept unpaid for years especially in Bhiwandi power looms area. Some of these arrears date back to 2007 as in the present case. MSEDCL by its commercial circular no. 98 dated 7th August 2009 has announced a one time settlement scheme for PD consumers which is still in force. It is advised to the Respondent MSEDCL/TPL to extend the benefit of the scheme to consumers for PD arrears for waiver of part/full interest even if the PD arrears were transferred to existing live consumers.

14. The Review of the Applicant is disposed of accordingly.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

