

# **BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

## **REPRESENTATION NO. 66 & 67 OF 2023**

In the matter of arrears of MSEDCL prior to TPL Franchisee

Rajendra Textiles (Milind Govankar).....Rep.66/2023 (C. No. 13542258661) }  
Rajendra .....Rep. 67/2023 (C. No. 13092264771) } ...Appellants

V/s.

Maharashtra State Electricity Distribution Co. Ltd.Thane (MSEDCL)..... Respondent  
Torrent Power Limited, Distribution Franchisee at Bhiwandi (TPL)

### **Appearances:**

Appellant : Shakeel Ansari, Representative

Respondent: 1. Ajay N. Bhasakhetre, Addl. Ex. Engineer, TUC, MSEDCL  
2. Rajesh Shanbaug, AGM, TPL  
3. Sameer Desai, Manager, TPL

**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 10<sup>th</sup> October 2023

Date of Order: 19<sup>th</sup> October 2023

## **ORDER**

These Representations were filed on 27<sup>th</sup> June 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Orders dated 3<sup>rd</sup>

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February 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).

2. The Forum partly allowed the grievance applications in Case No. 99 /21-22 and 100 /21-22 for Consumer No. 13542258661 and 13092264771 respectively. The contents in both the orders are common in nature which are quoted as below:

*“2. The Respondent is entitled to recover the pending dues along with interest from the Appellant consumer.*

*3. The Appellant consumer is granted ten equal monthly installments for payment of the pending dues. The monthly installments granted for the payment of pending dues are to be paid along with the current bills being issued by the Respondent from time to time till entire pending dues are fully paid by the consumer.*

*4. If the Appellant consumer fails to deposit the monthly installment along with the current bill amount, then the Respondent has authority to disconnect the electrical supply as per MSEDCL rules & Regulations.”*

3. The Appellants filed review applications against the orders of the Forum which were dismissed by the Forum, by its orders dated 08.06.2023.

4. The Appellants have filed these representations against the above orders of the Forum. The facts and circumstances of both these representations are the same and hence they are clubbed for the purpose of a common order. The physical hearing was held on 10.10.2023. The parties were heard at length. The submissions and arguments of the Appellant are as below: -

- (i) The Appellants are 3 phase Power looms Consumers. The details of consumer nos. sanctioned load, addresses, date of connections, purpose, MSEDCL dues etc., are tabulated as below:



  
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Table 1

Rep. No.	Name of Consumer	Consumer No.	Address	Purpose	Sanctioned Load (HP)	Date of Connection	Arrears payable to MSEDCL	
							Amount (RS.)	Month
66/2023	Rajendra Textile (Milind Govankar)	13542258661	H.No. C/17, Khoni, New Power Comp, Opp. Asara Hotel, Meeth Pada, Bhiwandi	Powerloom	27	10.07.1997	8,72,147.15	May-23
67/2023	Mr. Rajendra	13092264771	H.No. B/7, Mithpada, Shelar, Kedi Comp, Bhiwandi	Powerloom	26	25.09.1997	7,51,675.01	May-23

- (ii) The Appellants had MSEDCL outstanding dues of Rs. 8,72,147.15 and Rs. 7,51,675.01 as per the bill of May 2023 for Consumer No. 13542258661 and 13092264771 respectively. The outstanding dues are increasing every month as interest is added in the bills. These outstanding dues are fictitious billing, when the Billing of Bhiwandi area was handed over to Torrent Power Limited as a Franchisee of MSEDCL from 26.01.2007 onwards.
- (iii) The meters of these both services were replaced in the year 2007 by TPL. The Respondent was duty bound to test the replaced meter in Testing Laboratory immediately as per the Electricity Act, 2003(the Act); however the Respondent never tested these meters after replacement.
- (iv) The Appellants referred to the Central Electricity Authority (Installation and Operations of Meters, Regulations dated 17<sup>th</sup> March 2006, Point no. 15 (e), that *“The defective meter should be immediately tested and calibrated.”* But the Respondent TPL did not follow the above Regulations. The TPL replaced many meters under its “Mass Meter Replacement Scheme,” and did not test the replaced meters. The TPL have mentioned in the Franchise Agreement with MSEDCL that, all meters in Bhiwandi area were defective.
- (v) The Appellant referred to the following documents in support of their claims for withdrawal of fictitious billing.
- a. MSEDCL’s Circular No. 65 dated 20.10.2007 for issue of average/supplementary/amended bills to the consumers.

  
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- b. Case No. 36 of 2022 dated 23.01.2004 of the Commission where the erstwhile MSEB stated that substantial meter replacement work was involved and a program for replacement of faulty meters was started.
- c. Judgment dated 14.08.2007 of Hon'ble Supreme Court in Civil Appeal No. 2846 of 2006 regarding amendment bills of the Licensees.
- (vi) Considering all important citations, **the Appellant cannot be billed for more than three months on average basis for defective meters** as per Regulation 15.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulation 2005). The said Regulation is reproduced below: -

*“15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill.*

*Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.*

*Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.”*

Hence, the billing of the Appellants should be done only for three months.

  
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- (vii) The Appellant prays that the Respondent be directed:
- a) to revise the bill for the year 2007 for a period of three months.
  - b) to compensate Rs.5000/- per representation towards cost of the expenses.

5. The Respondent MSEDCL and its Franchisee, TPL filed their written replies dated 28.08.2023 and 22.08.2023 respectively. Their submissions along with their arguments on 10.10.2023 are as below: -

- (i) The Electricity Distribution Network Assets and Billing in Bhiwandi area was handed over to M/s. Torrent Power Limited (TPL) as the Franchisee of MSEDCL for a period of 10 years from 26.01.2007 and further extended for 10 years till date.
- (ii) The Appellants are power loom consumers having Service No. 13542258661 and 13092264771. The details of consumer numbers, sanctioned load, addresses, date of connections, purpose, MSEDCL dues etc., are tabulated in Para 4(i). The said connections were released by MSEDCL on 10.07.1997 i.e. prior to take over of TPL as a Franchisee.
- (iii) The said service connections (No. 13542258661 and 13092264771) are live and billed every month as per the readings obtained from the meters. The bills are raised as per the prevailing tariff guidelines received from the Commission from time to time. **The old MSEDCL dues have been shown continuously and demanded regularly in all the monthly bills over the years.** However, the Appellants have neglected to pay the same. The actual arrears of MSEDCL are as below:

Table 2:

Rep. No.	Name of Consumer	Consumer No.	Arrears of MSEDCL				Remarks
			Month	Principal Amount (Rs.)	Interest (Rs.)	Total Arrears (Rs.)	
66/2023	Rajendra Textile (Milind Govankar)	13542258661	Apr-07	5,17,732	2,24,971	7,42,703	Principal amount was revised due to bill revision by MSEDCL.
			Sep-23	1,64,505	7,15,958	8,80,463	
67/2023	Mr. Rajendra	13092264771	Apr-07	1,81,810	59,653	2,41,463	Principal amount was revised due to bill revision by MSEDCL.
			Sep-23	1,78,264	5,83,541	7,61,805	

  
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- (iv) The TPL replaced various meters under its Mass Meter Replacement Scheme in the year 2007, but it was not possible to test all the replaced meters. Hence, it is not possible at this stage to provide the meter testing report of the Appellants' meters.
- (v) The Appellants filed the grievance applications with the Forum on 28.09.2021 for withdrawing all MSEDCL dues. After hearing the case, the Forum dismissed the grievance on 03.02.2023 as per Regulation 7.8 & 7.9 of CGRF & EO Regulations 2020, which is reproduced as below:


*7.8 "The 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"*

*7.9 "The Forum shall reject the Grievance at any stage under the following circumstances".*

- (vi) However, the Forum allowed the Appellant to pay the arrears in ten equal monthly installments. The Forum has rightly disposed of the grievances. The Appellants filed review applications which were also dismissed.
- (vii) The Respondent is ready to grant installments for settlement of dues as per MSEDCL circular no. CE/B&R/installment Policy/19409 dated 13.11.2020.
- (viii) In view of the above, the Representations be rejected with heavy costs.

### **Analysis and Ruling**

6. Heard the parties and perused the documents on record. The Appellants are power loom consumers in Bhiwandi from 1997. The details of consumer numbers, sanctioned loads, addresses, date of connections, purpose, MSEDCL dues etc., are already tabulated in Para 4(i). The Appellants were the consumers of the erstwhile MSEB (now MSEDCL) up to 2007 and were billed as per meters installed by it. In due course, 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 work on behalf of MSEDCL as its extended

  
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hand. After taking over as the distribution franchisee, the TPL replaced many meters under its “Mass Meter Replacement Scheme”. However, according to TPL, it was not possible to test all the replaced meters nor is it necessary to do so. The accuracy of the meters was never challenged in all these years when the current bills were being paid by the Appellants. The TPL is billing its consumers as per actual reading of the new meters installed by TPL. The initial outstanding dues which are tabulated in Table 2 in Para 5(iii) have now reached to Rs. 8,80,463/- for Service No. 13542258661 and Rs. 7,61,805/-for Service No. 13092264771 in September 2023. These dues are being continuously shown in the Appellants’ monthly bills. The Appellants pay only the current bills but neglect to pay the accumulated outstanding dues of MSEB / MSEDCL right from the year 2007.

7. The following issues are framed to address the points raised: -

Issue No. 1: Whether the TPL is within its legal right to recover the live outstanding dues of MSEDCL which were standing on the consumer’s account?

It is necessary to study the provision of the Section 56(2) of the Act which is reproduced below: -

*Section 56 (2) of the Electricity Act, 2003*

*“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due, **unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied**, and the licensee shall not cut off the supply of the electricity.”*

The Larger Bench Judgment dated 12.03.2019 of the Hon’ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions has interpreted Section 56 (2) of the Act. Electricity supply was continuously used by the Appellant during the MSEB period. A meter was provided for recording the consumption. The bills were raised by the then MSEB on a month-to-month basis. These bills included two parts: -

A) Current monthly bill

B) Previous accumulated arrears



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The Appellant did not pay the accumulated bills of arrears within time, which resulted in accumulation of outstanding dues. The TPL took over the area under a Franchisee agreement. The TPL has also continuously shown these outstanding dues on each monthly bill. Since the Appellant failed to pay the outstanding MSEDCL dues, interest accrued on these live arrears which resulted in progressive increase in the accumulated outstanding dues. The billing is done by the TPL at present, and the same is recoverable. The cash collection mechanism is established by TPL; however, the recovered amount goes to MSEDCL's account. We hold that TPL has the legal right to recover this amount as per Franchisee agreement in force. Hence, Issue No. 1 is answered in the Affirmative.

Issue No. 2: When did the cause of action arise?

Records show that TPL took over all the distribution network records of the Bhiwandi area in the year 2007. These records included the records of the Appellants showing accumulated arrears along with the current monthly bills. The Appellants have not disputed the fact that TPL continued to issue the monthly bills along with the previous accumulated arrears right from 2007 onwards. Thus, the Appellants were fully aware of the arrears which were not disputed at that point of time.

MSEDCL has pointed out that **the Nodal Officer, Bhiwandi was issuing notices to consumers having MSEDCL arrears from 2007. Now it is very difficult to trace the notice to a particular consumer. There was a mechanism available for bill correction at the Nodal Office since 2007. The consumer could have approached the office, and the bill would have been rectified at that time itself if needed. The MSEDCL dues were continuously shown on monthly bills issued by TPL, but the consumer never raised any grievances regarding the MSEDCL arrears at that time.** We hold that the cause of action arose around 2007.

  
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One of the prayers of the Appellant is that he should be provided the CPL of MSEDCL prior to 2007. However, at this stage, after a lapse of 16 years, these old records are not available. The record shows that the TPL has already provided the CPL from 2007 onwards. This CPL clearly shows the accumulated arrears of the previous unpaid bills in each monthly bill.

The Commission had introduced a Consumer Grievance Redressal Mechanism in the year 2003 itself. At that time, the Appellant had an opportunity to approach the internal redressal system of the Respondent with its grievance within a period of two months. **If no remedy had been provided within this period, the Consumer could have submitted the Grievance to the Forum within twelve months from the date of the original intimation to the Distribution Licensee, as per Consumer Grievance Redressal Forum and Ombudsman Regulations, 2003.**

The said Regulation 6.2 /6.3 is reproduced below:-

*“6.2 Any Consumer with a Grievance shall intimate the Distribution Licensee of such Grievance in the form and manner and within the time frame specified by the Distribution Licensee in its rules and procedures for redressal of Grievances.*

*6.3 Unless a shorter period is provided in the Act, in the event that a Consumer is not satisfied with the remedy provided by the internal redressal system of the Distribution Licensee to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the Consumer may submit the Grievance to the Forum. Provided that the consumer shall submit his Grievance to the Forum no later than twelve (12) months from the date of original intimation to the Distribution Licensee.”*

The Commission has amended these Regulations and issued new revised Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 on 20.04.2006. The relevant portion is reproduced below: -

**“6. Procedure for Grievance Redressal**

*6.1 The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office(s) in each revenue district in the area of supply.*

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*Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall endeavour to redress Grievances through its IGR Cell.*

*6.6 The 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."*

It is not understood why the Appellant did not knock at the door of the Forum at the relevant point of time, if there was any issue of billing. The cause of action first arose in 2007 when the monthly bills issued by TPL showed previous accumulated arrears. The Appellant was fully aware of these arrears, yet chose to neglect them, neither did he challenge them before the Forum. The limiting date for the Forum to have admitted the case of the Appellant would have been two years from the cause of action. However, the Appellant approached the Forum only on 28.09.2021 for withdrawal of MSEDCL dues, which is a long delay much beyond the limitation period.

Even the Judgments dated 10<sup>th</sup> July 2013 and 21.08.2018 of the Bombay High Court, Nagpur Bench in W.P. No. 1650 of 2012, and Bombay High Court, Bench at Aurangabad in W.P. No. 6859, 6860, 6861 and 6862 of 2017 respectively have explicitly upheld the provision under Regulation 6.6 of the CGRF & EO Regulations 2006 (at present Regulation 7.8 of CGRF & EO Regulations 2020). In view of these Judgments, Regulation 6.6/7.8 remains valid and untouched. In a recent judgment, the Hon'ble Supreme Court in Civil Appeal No. 2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if the suit is clearly barred by limitation.

Therefore, this provision of Regulation 6.6 / 7.8 is a settled position in law. If Regulation 6.6 is ignored, then the entire pyramid of the grievance redressal mechanism will collapse, and the field will be open to all to contest a claim irrespective of the period elapsed from the cause of action. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

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It is a settled position in law that if a matter is decided on limitation, there is no need to go into the merits of the case. In view of the above discussions, it is clear that the case of the Appellant in the instant representation is time barred. The Forum has rightly decided the case in light of the Regulation 6.6 of the CGRF Regulations 2006.

Issue No. 3: Whether the bills raised (prior to 2007) are fictitious in nature?

Since the matter is time barred, I do not find it necessary to delve into the merits of the case and need not go into this issue at this stage.


8. While parting with the order, I am constrained to take cognizance of the manner in which the Appellant has submitted irrelevant and inapplicable arguments for a case which is time barred by at least 14 years.

9. The Forum has rightly analyzed the cases and hence no interference is needed in the orders of the Forum. The Forum's orders are upheld. The instant Representations are rejected by imposing a cost of Rs.2000/- (Rs. 1000/-+ Rs. 1000/- for each representation) on the Appellant with a warning to avoid such unnecessary litigation in future.

10. The instant Representations are disposed of accordingly.

11. The Secretariat of this office is directed to refund the balance amount of Rs.24000/- each [Rs. 25000/- each taken as deposit, and deducting Rs. 1000/- each as cost imposed] to the Respondent for adjustment in the Appellants' ensuing bills.

Sd/  
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