

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 53 OF 2022

In the matter of retrospective recovery

Kaushalya Gurumukhdas Motwani.....Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Respondent
Ulhasnagar I (MSEDCL)

Appearances:

Appellant : Chander Motwani, Son of Smt. Kaushalya Motwani

Respondent: Nitin Kale, Executive Engineer, Ulhasnagar I


Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 7th June 2022

Date of Order : 16th June 2022

ORDER

The Representation is filed on 19th April 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 9th March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).


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2. The Forum, by its Order dated 09.03.2022 has partly allowed the grievance application in Case No. K/E/1779/2210/ of 2021-22 by giving following directions:

- “2. The recovery bill of Rs.72,959/- for B phase missing is set aside and quashed, hence this amount to be refunded to the consumer by crediting the amount in next month bill.*
- 3. The Distribution licensee is entitled to recover bill of Rs.3,01,071/- towards escape billing, hence this amount need not be refunded to the consumer.”*

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is an industrial consumer (No.021510790909) from 15.11.1997 having sanctioned load (SL) of 67 HP and Contract Demand (CD) of 56 KVA near Barrack No. 969, Sukhdav Compound, near Lal Silk Mills, Ulhasnagar 3.
- (ii) The Respondent has not sent any bill for the period from March 2018 to June 2018. The Respondent started issuing bill from July 2018 onwards.
- (iii) The Respondent's Flying Squad visited the premises on 28.09.2020. The Representative of the Appellant was not conversant with electricity bill issue, hence, did not understand the inspection report of the Flying Squad.
- (iv) The Appellant received the supplementary bill of recovery for the period from March 2018 to June 2018 on 28.02.2021 which is time barred as per Section 56(2) of the Electricity Act, 2003 (the Act).
- (v) The Appellant filed the grievance with the Forum on 18.06.2021. The Forum, by its Order dated 09.03.2022 has partly allowed the grievance. The Forum has set aside and quashed the recovery bill of Rs.72,959/- for B phase missing and directed to refund by crediting the amount in next month bill. However, the Forum allowed the recovery bill of Rs.3,01,071/-. The Forum failed to understand the Section 56(2) of the Act.
- (vi) The Appellant was aggrieved with the order of the Forum connected with recovery of the bill from March 2018 to June 2018, but never disputed the order of the Forum regarding slow of meter.
- (vii) The Appellant prays that the Respondent be directed
- (a) to cancel the supplementary bill of Rs. 3,01,071/- of recovery which is not as per Section 56 (2) of the Act.


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(b) to pay compensation as per Standards of Performance of Regulations which are in force.

(c) to pay Rs.50,000/- towards compensation for mental agony and expenditure towards filing the representation.

4. The Respondent filed its reply dated 25.05.2022 stating in brief as under: -

Preliminary Submission:


- (i) The Appellant is an industrial consumer (No. 021510790909) from 15.11.1997 having SL of 67 HP and CD of 56 KVA near Barrack No. 969, Sukhdav Compound, near Lal Silk Mills, Ulhasnagar 3.
- (ii) The present Representation is filed by some unknown person without submitting any valid Power of Attorney from Smt. Kaushalya Gurumukhdas Motwani.
- (iii) The present Representation is filed without any consent and without any authority from Original Consumer which is not maintainable as per the applicable Laws and Regulations. Hence, it is necessary to be dismissed on preliminary stage.
- (iv) The Original Consumer Smt. Kaushalya Gurumukhdas Motwani did not have any grievance. She paid entire recovery bill of Rs.3,74,040/- on 08.07.2021 without any protest. The Respondent referred Regulation 7.9 (d) of CGRF & EO Regulations 2020 for maintainability of grievance as the present case is not maintainable. The relevant Regulation is quoted as below:-

“7.9 The Forum shall reject the Grievance at any stage under the following circumstances:

(d) In cases of recovery of arrears where the bill amount is not disputed;”

The bill amount was never disputed by the consumer at any time before the payment, and the original consumer paid the entire recovery without any protest, hence, as per above referred regulation, the present case is not maintainable.

- (v) The present representation signed and submitted by one Jagansinh R Rajput (Consumer Representative), is not maintainable, which is filed without the consent of actual consumer.
- (vi) In maximum cases under their jurisdiction, Jagansinh R Rajput is appearing on behalf of various consumers as their representative and it appears that he is getting


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remuneration from consumers for filing cases in bulk quantity before Hon'ble CGRF and Hon'ble Ombudsman. The Respondent hereby submit their strong objection and humble request that, kindly do not allow Jagansinh R Rajput to appear in the present case.

- (vii) The present representation is filed by a third party, who is not an affected party and so the representation is not maintainable on the point of Locus-Standi (Right of Party to appear in a Court). The present representation may kindly be dismissed as per Regulation 19.25 of CGRF and Ombudsman Regulations 2020 since it is false, frivolous, vexatious, malafide and filed without any sufficient cause. There is no prima facie loss or damage or inconvenience caused to the original consumer, the bill is issued to consumer as per her actual consumption, which is proper and legal and it is noteworthy that, the bill is paid by original consumer without any protest.

Submission on Merit:


- (viii) The Flying Squad of the Respondent inspected the premises of the Appellant on 28.09.2020. During the inspection, firstly it was observed that B phase Voltage of Meter of Appellant was missing on display of the meter. This is due to loosening of screw where B phase voltage was tapped from the cable. The meter was found to be under-recording by 33%. Hence it was assessed for 13979 Units of under recording of the meter for Rs.72,959/-. The meter, as such was found in order; however B phase Voltage was not extending to the meter.
- (ix) Secondly, the Flying Squad further observed that, the consumer was regularly enjoying the electric supply; however, the meter was **wrongly** shown as Permanently Disconnected (PD) in **the System** for the period from March 2018 to June 2018, hence the Flying Squad proposed the recovery for actual consumed units for the 4 months' period for 85806(556805-470999) Units for Rs.3,01,071/-. These units were inadvertently missed from billing. This is a plain recovery of actual consumption of consumer, that too without any penalty. This is a case of short billing only. The Appellant had also not pointed out that she did not receive the bill for the period from March 2018 to June 2018. Fortunately, the meter was working on site and recording the actual consumption.


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- (x) The above mentioned both recoveries are already paid by original consumer without any protest. The recovery charged for the short billing is legal and proper, and bill issued for the purpose of recovery is of legitimate revenue of MSEDCL.
- (xi) The Respondent referred the Judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No.7235 of 2009 in Case of M/s Prem Cottex V/s Uttar Haryana Bijli Vitaran Nigam Ltd., it is decided and declared in Para No. 25 that,
- “In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub- section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, no sum due from any consumer under this Section, appearing in Sub- section (2) of Section 56.”*
- (xii) The Article 141 of the Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.
- (xiii) In view of the above, considering the settled law as per Regulation no. 7.9 (d) of CGRF and EO Regulations 2020 and to safeguard the legitimate revenue of MSEDCL, it is requested to dismiss the present Representation as it is not maintainable on legal as well as merit, and allow recovery of under billing due to missing of B Phase Voltage.

5. The e-hearing was held on 07.06.2022 through video Conference. During hearing, the Appellant's representative argued in line with his written submission. The Appellant argued that the Respondent's Flying Squad visited the premises on 28.09.2020 and pointed out the alleged irregularities for the period of March 2018 to July 2018. Subsequently, the Respondent issued the supplementary bill for recovery for the period from March 2018 to June 2018 on 28.02.2021 which is issued after 32 months. It was supposed to be issued within 24 months from date of cause of action, hence, it is time barred as per Section 56(2) of the Act. The Appellant was aggrieved with the order of the Forum connected with recovery of the bill from March 2018 to June 2018, but


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never disputed the order of the Forum regarding slowness of meter by 33%. In view of above, the Appellant prays that the Respondent be directed to cancel the supplementary bill of Rs. 3,01,071/- of recovery which is not as per Section 56 (2) of the Act.

6. The Respondent argued in line with its written submission. It has pointed out that the Appellant, Kaushalya Motwani, did not herself sign the Representation, nor did she give any power of attorney. The signatures on Schedule B and Pan Card totally differs. Hence, the instant Representation is not maintainable. The Respondent further argued on merit, stating that this consumer (No. 021510790909) was mistakenly shown as “permanently disconnected” on record as per Consumer’s Personal Ledger (CPL) from March 2018 to June 2018; however, the meter was live on site. This was a mistake on the part of the Respondent. The Appellant was using power supply on site which was recorded by the meter. There were unbilled actual consumed units of 85806 amounting to Rs.3,01,071/- for the 4 months’ period from March 2018 to June 2018. This is nothing but under / escape billing. The Appellant was also duty bound to ask for the bills during the above period, however, she never requested for the said bills.

7. The Respondent argued that the ‘escape billing’ came to notice only on 28.09.2020 during the visit of the Flying Squad. However, this period was affected by the lockdown. There was complete lockdown in the first wave of Covid -19 for the period from 23rd March 2020 to June 2020. Thereafter, to some extent the restrictions were lifted for essential work. However, the pandemic continued for the year 2020 /21 for the second and third wave, which badly affected various activities in the state including the Respondent ’s day to day working and billing. The Respondent was duty bound to maintain the power supply during Covid-19 pandemic, being essential service. The Respondent started its actual meter reading on site from July 2020 onwards. Considering the restrictions almost for two years during Covid-19 pandemic, the recovery for the period of March 2018 to June 2018 is not time barred as per Section 56 (2) of the Act.

8. The Respondent argued that the Forum has not allowed recovery of 33% underbilling due to missing of B phase Voltage of Meter due to loosening of screw where B phase voltage was tapped. The MRI Report of the meter was not kept on record during the hearing of the Forum while deciding the case. It was subsequently coordinated with Flying Squad Team. The same may be taken on record and be considered in the hearing.


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Analysis and Ruling

9. Heard the parties and perused the documents on record. The Appellant is an industrial consumer from 15.11.1997 having SL of 67 HP and CD of 56 KVA near Barrack No. 969, Sukhdav Compound, Ulhasnagar.

10. The consumption pattern of the Appellant before some months of the disputed period of March 2018 to June 2018, and consumption up to December 2018 is tabulated as below:

Cons. No. 021510790909 :Meter No. MHD00719					
Sr. No.	Month	Previous Reading (KWH)	Current Reading (KWH)	Difference (KWH)	Remarks
1	Nov-17	395523	411518	15995	
2	Dec-17	411518	429334	17815	
3	Jan-18	429334	449541	20207	
4	Feb-18	449541	470999	21458	
5	Mar-18	Nil	Nil	Nil	Accumulated Consumption 85806 Units (Final reading Feb. & initial reading of July 2018) for the PD
6	Apr-18	Nil	Nil	Nil	
7	May-18	Nil	Nil	Nil	
8	Jun-18	Nil	Nil	Nil	
9	Jul-18	556805	556805	0	
10	Aug-18	556805	584946	28141	Accumulated Consumption for two months
11	Sep-18	584946	602522	17576	
12	Oct-18	602522	620276	17754	
13	Nov-18	620276	640061	19785	
14	Dec-18	640061	652216	12155	

It is seen from the above table that the Appellant was PD on record from March 2018 to June 2018; however, the Appellant actually consumed 85806 (556805-470999) Units during these 4 months' period (March 2018 to June 2018). These units were carelessly missed from billing. The Appellant also did not point out that she was not receiving the bills for the period from March 2018 to June 2018 despite her use. The same meter was working on site and recording the actual consumption till date.


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11. It is necessary to examine the restriction period of Covid-19 pandemic for day-to-day activities. The chronology in this regard is as below:

- The GoM issued order on 18.03.2020 prohibiting movements of people at large, and attendance at various offices, etc. Subsequently, the GoM issued notification on 20.03.2020 vide which all workplaces, excluding essential services and public transport, in Mumbai, Mumbai Metropolitan Region, Pune, Pimpri-Chinchwad and Nagpur were ordered to be closed until 31.03.2020 which was subsequently extended up to 31.05.2020.
- The GoM dated 31.05.2020 eased out restrictions and started phase wise opening of lockdown [Mission Begin Again (MBA)]. MBA Phase 1 started from 03.06.2020. and subsequently MBA Phase II and Phase III was continued.
- However, a second wave and third wave of Covid-19 arose in 2020 and 2021, and hence restrictions were continued.

Hon'ble Supreme Court of India passed its judgment on 23.03.2020 in Suo Moto Writ (Civil) No. 3 of 2020 with reference to Cognizance for Extension of Limitation with IA No.48411/2020. In view of the subsequent order of the Hon'ble Supreme Court dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.3 of 2020 regarding cognizance for extension of limitation wherein the Hon'ble Supreme Court has extended limitation up to 15.03.2021 due to lockdown situation of Covid 19 Pandemic.

12. Considering the above referred orders of Hon'ble Supreme Court of India, the 24 months' time limit for recovery as per Section 56(2) came to be extended, and hence the supplementary bill of Rs.3,01,071/- is not time barred. Hence, the Representation of the Appellant does not stand on merit.

13. As regards 33% under-recording of the meter due to missing B phase Voltage to the meter, the Respondent cannot raise this issue before the Electricity Ombudsman now as the Appellant has not raised this issue in the current representation. If the Respondent had additional documents to submit on the face of record, it had an opportunity to submit them to the Forum at the appropriate time, as per Regulation 10 of the CGRF & EO Regulations 2020. The Respondent did not act accordingly and hence it cannot raise this issue now.


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14. It is also seen that the signature of the Appellant in Schedule B does not tally with the signature on Pan Card. In the instant Representation, it is a fact that somebody who is not authorized on record has signed on behalf of the Appellant. This is a serious offence. Mr. J.S.Rajput was the representative before the Forum as well as in many correspondences with the office of the Forum and Electricity Ombudsman. He has already been barred in Representation No. 40 of 2022. Hence, it is once again ordered that Mr. J. S. Rajput is barred to act as representative for any Appellants, unless the original Appellants are personally present physically or through e-hearing.

15. The Representation of the Appellant does not stand on merit, and also is not maintainable on the above-mentioned grounds, hence the Representation is rejected.


16. In view of the above, I am of the opinion that a cost of Rs.2000/- be imposed upon the Appellant towards forged signature on the prescribed Schedule B form. This cost should be paid at the office of the Electricity Ombudsman within one month through NEFT.

17. It is observed that in many cases, the consumers are made PD "on record" i.e., only on paper, whereas their meters remain on site, and these consumers are enjoying power supply. More such cases are found in Ulhasnagar area. Had the Flying Squad of the Respondent not approached and inspected the premises, the consumption of the power supply of this Appellant would have never come on record. This is to be taken seriously by the Respondent to avoid such occurrences in future.

18. The secretariat of this office is directed to send a copy of this order to the Chief Engineer, Kalyan Zone for appropriate and necessary action.

19. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

