

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO. 09 OF 2020

IN

REPRESENTATION NO. 31 OF 2020

In the matter of billing

Devendra P. Choudhari.....Review Applicant

V/s.

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

Appearances: -

For Review Applicant : Devendra Choudhari

For Respondent : D.D. Dhurve, Addl.Ex. Engineer, CSD S/dn. Kalyan


Coram: Deepak Lad

Date of hearing: 4th November 2020

Date of Order : 13th November 2020

ORDER

This Review Application is registered on 13th October 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) for review of the Order dated 10th September 2020 passed in Representation No.31 of 2020.


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Secretary
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2. The Electricity Ombudsman, Mumbai in its order dated 10.09.2020 in Representation No. 31 of 2020 has directed as below: -

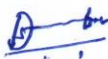
“13. I also noted that while making the connection PD initially, the SD has been adjusted by the Respondent. It is not brought on record as to how the amount of SD is subsequently carved out and entered into the system by the Respondent. If this has not been done, the same should be taken on record appropriately.

14. Considering the gravity of the situation and gross negligence on the part of the officials of the Respondent, I hereby direct the Respondent to pay Rs. 2000/- as additional compensation to the Appellant by way of adjustment in the ensuing bills of the Appellant. If the Appellant refuses to accept the monetary relief awarded by the Forum, the same should also be passed on to the Appellant through his ensuing bills.

15. The other prayers of the Appellant are rejected.”

3. Aggrieved by this order, the Applicant has filed this Review Application stating in brief as under: -


- (i) As per the order dated 10.09.2020, the Applicant came to notice that the Respondent submitted the statement of defence dated 11.03.2020, however, the Respondent did not give copy to the Applicant, who was duty bound to give. The Applicant also pointed out this fact to the office of the Electricity Ombudsman by email dated 07.07.2020. This is injustice to the Applicant.
- (ii) The Applicant submits that as per the order, according to the Respondent, the Applicant has not made any complaint for average billing during the period May 2017 to January 2018. This is wrong information given by the Respondent since the various complaints are filed and kept on record with the review application.
- (iii) As per the Respondent, the Applicant was without power for only 10-11 months i.e. no meter was installed from February 2018 to 04.03.2020 and from 05.03.2020, the Applicant has reconnected power supply unauthorizedly. This is not true. Actually, the Applicant was without power for 29 months, but the order does not say anything about this.
- (iv) The Respondent has stated that the Applicant being connected on paper and in the online system from June 2018 to July 2019 by mistake without meter on site, then how can the Respondent issue bills for 13 units per month continuously for 11 months and whether the Respondent has any system to check such average bills


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issued. The PD report made by the Respondent was illegal. The order did not express these issues regarding serious irregularities of the Respondent.

- (v) The Applicant has never reconnected the power supply illegally without meter, the allegation of the Respondent is totally false and ill motivated to divert the attention of the Appellant Authority. Despite twice false claim of theft of energy on the Applicant, no action is taken against the concerned Respondent officials which is very pathetic.
- (vi) The Applicant has not only filed representation for compensation but has objections regarding the other points placed before the Forum. It was not possible to argue those points during the hearing, therefore, sent it on email on 11.03.2020 which was not considered in the order.
- (vii) Neither in the Respondent's reply nor in the final order is mentioned about refund of Rs.16000/- on which the Applicant's 11 months' alleged bills were debited despite no meter on site.
- (viii) The Respondent did not comply the order of the Forum within time, however, the Appellate Authority has not questioned it for noncompliance.
- (ix) The Respondent did not fix meter on 05.03.2020, however, it was conveyed to the Authority that the meter was fixed on site. However, the meter replacement report was sent on 27.06.2020. During these four months, the Respondent did not issue the correct bills. The Appellate Authority did not question the Respondent.
- (x) The Forum has directed the Respondent to pay compensation of Rs.100/week immediately till the reconnection of the meter as per the SOP Regulations, however, the Respondent failed to do so. The Appellate Authority did not question nor did it fine the Respondent even though the Applicant pointed out these irregularities during the hearing.
- (xi) The Applicant has paid fictitious bills and hence, after revision of these bills, if necessary, credit is passed on to him, however, credit towards interest component does not appear to have been made by the Respondent. This interest should be at RBI rate. Besides, he prays for compensation under SOP but it was not mentioned in the order.


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- (xii) The Respondent has not implemented the Forum's order within a stipulated time. It was brought to the notice of the Appellate Authority. However, no action has been taken by the Appellate Authority.
- (xiii) Even after the order of the Forum and the Electricity Ombudsman, the Applicant is being billed on average basis.
- (xiv) The order of the Appellate Authority is not completely in favour of the Applicant thereby the Respondent officials are inadvertently protected.
- (xv) The Applicant prays that the review be considered in the interest of natural justice in his case.

4. The Respondent filed its reply dated 27.10.2020 by email stating in brief as under:-

- (i) The Respondent stated that its defence statement dated 11.03.2020 could not be sent to the Applicant due to Covid-19 epidemic. Similarly, during the hearing on 27.08.2020, the Applicant did not take any objection for not receiving it, therefore, no discussion regarding this arose.
- (ii) The order dated 10.09.2020 passed by the Hon. Electricity Ombudsman is under compliance.
- (iii) In view of the above, the Review Application filed by the Applicant be rejected.

5. The hearing was scheduled on 04.11.2020 on e-platform through video conferencing due to Covid-19 epidemic. The Applicant argued in line with his written submission. The Applicant stated that he did not receive the statement of defence of the Respondent during the proceeding of the original representation. He got to know this when he received the impugned order. Hence, the Applicant was not able to present his submission as per the Respondent's say. The Respondent submitted wrong information that no complaint was filed for average billing for the period May 2017 to January 2018. The Applicant also submitted that actually the concerned Executive Engineer should appear for the hearing. The Applicant was actually disconnected for 29 months whereas the Respondent states for only 10 -11 months. The meter was not connected on 05.03.2020 as submitted by the Respondent. The Applicant further argued that despite the orders of the Forum and the Electricity Ombudsman, he is being billed on average basis for last six months. The Applicant prays that the Review Application be considered.


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6. The Respondent argued that the statement of defence was not sent to the Applicant by post due to Covid-19 epidemic however, this is an inadvertent mistake. The reply of the Review application was sent by email on 03.11.2020. When the Respondent was confronted as to why the Applicant is still being billed on average basis, post issue of the orders, the Respondent informed that the matter has been taken up with the meter reader agency and necessary action as deemed fit will be taken against the agency. Moreover, bill revision, if any, will be done.

Analysis and Ruling

7. Heard the parties and perused the documents on record. This Review Application is filed under Regulation 19 of the CGRF Regulations 2006 which is reproduced below:

19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, 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 or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.


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

19.3 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.

19.4 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.

8. The Review Application of the Applicant is nothing short of repetition of the original representation. The Applicant has simply made an effort and pointed out that certain issues which he has taken up, are not recorded in the order. Besides this, it has also tried to point out that the undersigned has not taken any action favouring the Applicant despite the glaring


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mistakes of the Respondent. Basically, this is not the purpose of review. Review is maintainable when the Review Applicant discovers 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 or on account of some mistake or error apparent from the face of the record. However, no such thing has been pointed out by the Review Applicant.


9. The main contention of the Applicant is that the Respondent has indulged in forging the documents / records as far as reconnection of meter is concerned. The meter was never fixed on 05.03.2020, however, the Respondent falsified the record. This was already taken note of in the original order and the sum and substance of the entire case was considered and a reasoned and speaking order was passed.

10. As regards sending the copy of defence statement to the Applicant, it is admitted by the Respondent that it failed to send copy of its defence statement due to Covid-19 epidemic. I do not understand when it has sent the same to this office by email, it could have well sent to the Applicant by email. It appears that the Respondent was very casual in dealing with the matter.

11. It is important to note that the Applicant filed the original representation with following prayers: -

- (a) to pay Rs.2500/- per day for the period of disconnection of electricity towards the loss of business of medical practice.
- (b) to grant compensation towards mental agony.
- (c) to compensate as per SOP Regulations.
- (d) to compensate Rs. 8000 per month rent of Shop till reconnection of the supply.
- (e) to refund all money paid by the Appellant.
- (f) to solve security deposit issue.

Considering the submission of both the parties and documents on record in the original proceeding, the undersigned has issued reasoned and speaking order and almost all points have been covered in the order. This would be evident from paragraph 10, 11 and 12 of the original order which is under review.


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12. I am of the opinion that all important issues in sum and substance, has been covered in the original order. The review application is nothing but repetition of the original representation barring few exceptions. The Applicant is trying to seek appeal under the guise of review which is not permitted. The scope of the review is limited. The mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has power to 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.”

In view of the above as the Applicant did not raise any new issue which were not considered in the original representation nor did it point out any mistake on the face of record, I am of the considered view that there is no substance in this Review Application and hence is not maintainable and therefore rejected.



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13. While parting with this order, it is worth mentioning that if the Applicant is of the opinion that the Respondent is not implementing the order of the Forum or that of the undersigned, then it is open for him to file a case for noncompliance with the Maharashtra Electricity Regulatory Commission Mumbai. This has been expressly brought out in the covering letter vide which the order of the undersigned was sent to the Applicant.

14. The Review Application is therefore dismissed and disposed of accordingly.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

