

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 42 OF 2023

In the matter of retrospective recovery towards under billing

Achiles Knitwear Pvt Ltd. Appellant

V/s.

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

Appearances:

Appellant: 1. Samar Choudhary
2. Suraj Chakraborty, Representative

Respondent: 1. R.G. Bele, Executive Engineer, Vashi Circle Office
2. Pranav Chakravarty, Dy. Executive Engineer.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing : 20th June 2023

Date of Order : 28th June 2023

ORDER

This Representation was filed on 10th April 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 dated 9th February 2023 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum).


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2. The Forum, principally rejected the grievance application in Case No. 17. The operative part of the order is as below:-

“2. The Respondent Utility is entitled to recover the total bill amounting to Rs.6, 55,679/- against R phase CT saturation.

3. The Respondent may grant suitable installments for payment of the pending dues if the Applicant so desires.”

3. The Appellant has filed this Representation against the above order passed by the Forum. The e-hearing was held through video conference on 20th June 2023. Parties were heard at length. The submission and arguments of the Appellant are as below:-

- (i) The Appellant is a HT Industrial Consumer (No.000149025040) from 01.06.2001 having Sanctioned Load (SL) of 225 KW and Contract Demand (CD) of 150 KVA at A 472, Mahape, MIDC, Navi Mumbai. The Appellant runs a cold storage plant.
- (ii) The Respondent inspected the premises of the Appellant on 09.12.2020. During inspection, the Respondent observed that R phase CT was saturated. . The meter was under recording by 45.64 %. The Respondent, by its letter dated 28.04.2021, issued a supplementary bill of Rs. 6,55,679/- towards less recording of the meter for the period from 19.10.2019 to 11.02.2021. The supplementary bill is not correct and is based on an imaginary assumption.
- (iii) On receipt of the bill, the Appellant visited Vashi Circle office with a request to withdraw the bill, but they refused to revise the bill.
- (iv) The Appellant filed a grievance application with the Forum on 27.05.2021. The Forum, by its order dated 09.02.2023 rejected the basic grievance. The operative part of the order is taken at Para 2. The Forum failed to understand the basic issue that if one of phase CT was not functioning, the meter would record less by 1/3rd and not by 45.64 %.
- (v) It is the prime duty of the Respondent to maintain the meter in order, which it failed to do. The meter reading is taken on a monthly basis, downloading the data of the meter by MRI which the Respondent should have checked.


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- (vi) The metering installation is defective as R phase CT was not working. The CT is part and parcel of the meter and hence the meter is defective. In the circumstances, the Respondent should bill as per Regulation 15.4.1 of Supply Code Regulations 2005.


“15.4 Billing in the Event of Defective Meters

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 along with the assessed bill.”

- (vii) The supply of the Appellant was disconnected without any notice in the month of June 2021. The Appellant was compelled to pay outstanding dues under protest and requested for reconnection. Though the supply of the Appellant was reconnected, there was harassment to the Appellant due to illegal disconnection of supply.
- (viii) The Appellant prays that the Respondent be directed to declare the meter as defective and revise the supplementary bill for a period of only three months **from the date of defect of R phase CT, i.e., 19.10.2019 along with interest and DPC levied.**

4. The Respondent filed its reply on 04.05.2023. Its submission and arguments are as below:

- (i) The Appellant is HT Consumer as mentioned in para 3 (i). The supply of the Appellant was released on 22 KV Voltage Level.
- (ii) The metering of the consumer was outdoor type with two Current Transformers, and three potential transformers (2CT-3PT) metering arrangement. The CT ratio of the consumer was 5/5A and PT ratio was 22000/110 V respectively.
- (iii) As per Commercial Circular no. 291 dated 29.06.2017 Regular Meter testing of HT/ EHV consumers is carried out as under:
- up to 1000 kVA- Yearly
 - above 1000 kVA to 3000 kVA- Half yearly
 - Above 3000 kVA- Quarterly


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- (iv) Thus, the Appellant's premises are liable to be inspected annually. This was being done. Testing Division, Vashi of the Respondent visited the premises of the Appellant to carry out routine inspection of the consumer on 05.11.2018 and 08.09.2019 respectively for annual load test, but no abnormalities were observed in metering. However, during the annual load test on 09.12.2020, it was observed that 'R' phase current found was very low. **The MRI data of the meter was downloaded. On verifying it, it was found that the current of 'R' Phase was missing from 19.10.2019 @00.49 hrs.**
- (v) Testing Division vide letter no. 827 dated 11.02.2021 informed that primary injection of current of R phase CT was carried out and R Phase CT was found to be saturated. The results of the primary current injection are tabulated below:

Primary Injection Test Result				
R Phase CT Primary Current injected (A)	R Phase CT Secondary current observed (A)	CT Secondary Current as per therotical value (A)	Remarks	% Error of saturated 'R' Phase CT
1	0	1	R phase CT found saturated	100
2	0.26	2		87
3	0.31	3		89.67
4	0.41	4		89.75
5	0.5	5		90
Avg. under Recording of R phase of the meter				91.28


Due to under recording of 'R' phase CT, the overall phase wise recorded consumption is calculated as below:

CT Details of R & B Phase	Theoretical Contribution of recording (%)	Formula for calculations (%)	Actual recording of consumption (%)	Under Recording of consumption (%)
'R' phase	50	50%-(91.28% of 50%)	4.36	45.64
'B' Phase	50	50%	50	nil
	100	Total	54.36	45.64


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- (vi) On 05.02.2021, Testing Division Vashi replaced 'R' phase saturated CT and introduced new 'Y' phase CT to convert the metering arrangement of the Appellant from outdoor 2CTs-3PTs to 3CTs-3PTs Indoor Metering Kiosk, and thereafter the consumer's metering was normalized.
- (vii) The assessment for the period 19.10.2019 to 05.02.2021 is correctly calculated for overall under billing of 45.64 % as shown above.
- (viii) The Competent Authority of the Zone office vide its letter dated 19.04.2021 granted its approval for retrospective recovery due to under billing of Rs. 6,55,679/- (Rs. Six Lakhs Fifty-Five Thousand Six Hundred & Seventy-Nine only). Accordingly, the Appellant was informed vide letter No. 2440 dated 28.04.2021 to pay the retrospective recovery of Rs. 6,55,679/-.
- (ix) The Appellant vide its letter dated 23.06.2021 agreed to pay the amount of this bill in 6 instalments, and accordingly paid the same under protest to this office. The digital notice of disconnection as per Section 56 (1) was issued by SMS on the registered mobile of the Respondent. Hence, there is no irregularity in issuing the disconnection notice and the temporary disconnection. Immediate reconnection was done as per the commitment of the Respondent.
- (x) The Appellant approached the Forum on 26.05.2021. The operative part of the Forum's order dated 26.05.2021 is reproduced in Para 2. The Forum principally allowed the retrospective recovery of Rs. 6,55,679/- for the period from 19.10.2019 to 05.02.2021 as per MRI report.
- (xi) The Respondent argued that the metering arrangement of the aforesaid consumer is 2CT and 3PT, and out of these 2CTs, 'R' Phase CT is saturated. In healthy condition the load current measured by the 2 CTs would have been shared 50% equally. But in this case the 'R' phase CT is saturated and is recording 4.36% and 'B' phase is recording 50%. So the total load recorded by 'R' & 'B' phase is 54.36%. Hence the overall slowness in recording by the meter is $(100-54.36\%) = 45.64\%$. Hence, the calculated amount is correct.


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- (xii) The Appellant was billed based on the data retrieved by MRI for 'R' phase current which was recording less from 19.10.2019 to 05.02.2021 (date of CT replacement) for 17 months . The retrospective recovery due to R phase saturation is within the prescribed period of 2 years, and hence it is within the ambit of provision of Section 56(2) of Electricity Act, 2003. Therefore, the respondent is entitled to recover the assessment amount of Rs. 6,55,679/- retrospectively for the period of 17 months.
- (xiii) The meter's accuracy was tested by Testing Division as per MSEDCL rules and regulations and was found in order. The Appellant in his grievance stated that this case comes under Regulation 15.4.1 of the MERC (Electricity Supply Code & Conditions of Supply) Regulations, 2005. The above regulation is applicable only in case of defective/ stuck/stopped/burnt Meters. But in this case the meter itself was found to be in order during testing, but was recording less energy consumption due to not getting proper R phase current, which can be calculated in a scientific way. As soon as the R phase current was extended correctly (after replacement of R phase CT), the meter started recording correctly. This is a technical phenomenon; as such the meter was not defective.
- (xiv) Data retrieval of the meter by the MRI is a universally accepted technology for analysing the working of the meter to see the data history and tamper events. It has also been accepted by various judicial pronouncements. Hence the MRI data retrieved is correct, and as per regulation, the bill for non-recorded units was issued to the consumer.
- (xv) The Respondent cited the Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017, and contended that the Judgment is squarely applicable in the instant case, as meter itself was found in order, but there was less current received from R Phase which resulted in less recording.
- (xvi) The Respondent referred to the Judgement dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited


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& Anr. V/s. Rahamatullah Khan alias Rahamjulla in support of retrospective recovery which is less than 24 months.

- (xvii) In view of the above, the Respondent requested to reject the Representation of the Appellant.

Analysis and Ruling:


5. Heard the parties and perused the documents on record. The Appellant is a HT Industrial Consumer as mentioned in para 3 (i).

6. The metering of the consumer was outdoor type with two 2CTs-3PTs metering arrangement. The CT ratio of the consumer was 5/5A and PT ratio was 22000/110 V. During annual load test on 09.12.2020, it was observed that 'R' phase current was very low. On verifying the MRI Data, it was found that the current of 'R' Phase was missing from 19.10.2019 at 00.49 hrs., after the previous testing which was carried out on 08.09.2019. The primary injection of current of R phase CT was carried out and R Phase CT was found saturated. The results of the primary current injection are tabulated in Para 4 (v). The technical calculation provided by the Respondent is found in order. The meter was under recording by 45.64 %. A 3 CTs/3 PTs metering Kiosk indoor type was installed on 05.02.2021. The outdoor 2CTs-3PTs was converted to 3CTs-3PTs Indoor Metering Kiosk, and thereafter the consumer's metering was normalized.

7. The assessment for the period 19.10.2019 to 05.02.2021 is calculated for overall under billing of 45.64 % as per testing report dated 11.02.2021. The meter itself was found to be in order.

8. The Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable in the instant case. The relevant part of the Judgment is reproduced below:

"33 it is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the


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electrician in wrongly attaching the wires to the R, Y & B phases. I am, therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to a defect in the meter. Consequentially, due to the under-recording of the meter, the Appellant has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under-recording.

34. *Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as per the prescribed rates. The Appellant, therefore, has to pay full charges for the electricity actually consumed.*

35. *In the Municipal Corporation case (supra), this court has sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.”*

This Judgment is applicable in the instant case. As such the meter was not defective; however, the meter was receiving less current with the result that the meter was under recording for the period from 19.10.2019 to 05.02.2021.


9. The Section 56(2) of the Act permits the distribution licensee to assess retrospective recovery up to 24 months in case of deficiency in service. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(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 arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

10. The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a


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mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.”

In the instant representation, the retrospective recovery period was 17 months. This Section 56 (2) of the Act was interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with other Writ Petitions. The Court has allowed 24 months’ recovery retrospectively in cases of mistake or oversight. Also, in the Judgment dated 18.02.2020 of the Hon’ble Supreme Court of India in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla, retrospective recovery was found in order.

11. The Forum’s order is principally upheld.
12. The Representation is rejected and disposed of accordingly.

Sd/-
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Electricity Ombudsman (Mumbai)


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