BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 61 OF 2022

Direction of Hon'ble High Court, Bombay in W.P. No. 3242 of 2022
In the matter of excess billing

Mehr-Dad Co-operative Housing Society Ltd.……. ……..…….. Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking …… …….. Respondent
Customer Care (A Ward) (BEST Undertaking)

Appearances:

Appellant : 1.Taheer A. Khan, Representative
2. Subhan T. Khan, Representative

Respondent : 1.D. N. Pawar, Divisional Engineer, Customer Care (A ward)
2. Smt. K.M. Jarode, Supdt.(CC A)

Coram: Vandana Krishna(Retd I.A.S.)

Date of hearing: 14th June 2022

Date of Order : 15th July 2022

ORDER

This Representation is filed on 11th May 2022 as per the Order dated 24th March 2022 passed by the Hon'ble High Court, Bombay in Writ Petition (W.P.) No. 3242 of 2022.

2. The Appellant Society initially approached the Electricity Ombudsman (Mumbai) in Representation No. 60 of 2021 in Case of Mehr Dad Co-operative Housing Society Ltd. V/s. BEST Undertaking which was heard on the admissibility of the Representation. This representation was rejected being time barred by order dated 28.10.2021 as per the Maharashtra

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020. Thereafter, the Appellant approached the Hon'ble High Court, Bombay in W.P. No. 3242 of 2022 for waival of limitation period.

3. The Hon'ble High Court, Bombay passed the following order on 24.03.2022 which is reproduced as below: -

> *"(a) The order pronounced on 28th October 2021 by the Electricity Ombudsman is quashed and set aside;*
> *(b) the delay is condoned;*
> *(c) the Ombudsman shall hear the parties and pass an order in accordance with law within four weeks from the date of this order is uploaded. The order shall be a reasoned order dealing with all submissions made by the parties;*
> *(d) within two weeks from today, petitioner shall deposit a sum of Rs.10 lakhs with respondent. It will be open to petitioner to agitate with even this amount was not payable and if petitioner succeeds before the Ombudsman and if Ombudsman directs a refund or adjustment in future billing, then he may also consider whether petitioner should be granted any interest on the amount deposited in excess than what according to the Ombudsman was due and payable.*
>
> *It is made clear that if this amount is not deposited within the time mentioned above, the representation before the Ombudsman will stand dismissed without any further reference to anybody.*
>
> *(e)all rights and contentions are kept open.*"

4. The Appellant Society has filed the present Representation on 11.05.2022 as per the Hon'ble High Court, Bombay. Both the parties was heard on 14.06.2022. Its submissions while deciding the Rep. No. 60 of 2021, submissions in Rep. No 61 of 2022 and arguments in brief are as below: -

(i) The Appellant is a consumer (No. 220-205-049) under Residential category having Sanctioned Load (SL) of 33.790 KW at Plot No. 64, Mehr-Dad Building, G.D. Somani Marg, Cuffe Parade, Mumbai 400005. The said connection is used for common use of the Society.

(ii) The Respondent replaced the old meter No.907157 by a new meter No. M186951 on 22.10.2018. The Respondent issued a supplementary bill of Rs. 21,96,494/- for wrong billing for the period from August 2012 to October 2018. The Appellant

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

gave a written complaint of high billing on 16.07.2019. However, the Respondent did not revise the bill.

(iii) The Appellant had received a letter dated 14.08.2019 from Customer Care A-Ward of the Respondent claiming that the supplementary bill of Rs.21,96,494/- is correct. The said demand of the Respondent is illegal and unjust.

(iv) The Respondent has converted the defective meter case into wrong billing case. As an afterthought, the Respondent generated wrong billing I.D. and they made claim for 6 years from August 2012 to October 2018 with average of 2400 units per month and generated the supplementary bill of Rs.21,96,494/- and the amount is debited in its regular billing.

(v) The Appellant filed the grievance in Internal Grievance Redressal Cell (IGRC) on 16.12.2019. The IGRC, by its order dated 31.01.2020 has rejected the grievance.

(vi) The Appellant received letter from the Respondent dated 14.08.2019 which states that there was no defect in the meter. The same was upheld by the IGRC vide its order dated 31.01.2020. However, considering the following substances, the meter was defective.

(a) Meter reader did not count the last digit of reading, which is not a valid justification, because meter readers of the Respondent are not new persons, they are expert persons. Not only one reader has taken readings, but 3 other readers had taken readings in the last more than 6 years.

(b) The Respondent has stated that the meter display digit cannot be seen, but this is not true because the meter was not burnt, nor smoky, so how could not they read all the digits of the meter. The submission of the Respondent that the meter is in order, is not true.

(c) Considering approximately 2400 units per month, the meter will reach 00 reading after 35 years. The consumer ledger shows average of 1900 to 2500 units' consumption per month. The Respondent did not check the system of meter reading for a period of six years and therefore, it is not the fault of the Appellant. It is also not understood why the meter was replaced when it was in order. Why the meter was not checked in the presence of Appellant, and how did the Respondent declare the meter in order without checking. The

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Respondent failed to detect the mistake of the meter readers in reading the meter for 6 years.

(d) The Respondent stated that on the request of the Audit department, the meter was replaced, which is not true because Audit department do not request to directly replace the meter.

(e) It is informed jointly by the Appellant's Society Manager, water pump operator and Society's electrician that some officers of the Respondent visited the premises twice and did some testing and discussed within themselves about the improper working of the meter. When the Respondent came to replace the meter, at that time also the officer informed the Society Manager and water pump operator that the meter is defective, and then they came to replace the meter.

(f) Meter being defective, as per Regulations of the Commission, recovery for only three months could be made.

(g) The submission of the Respondent that the Appellant used more power for six years is not true. The Appellant states that it has used less electricity for a long time because the Gym was not functioning at all due to some dispute among the society members.

(h) Thereafter, the Appellant approached the Forum on 04.03.2020. The Forum, by its order dated 05.11.2020 dismissed the grievance. The Forum failed to understand the basic issue of the case.

(i) The Judgment dated 20.08.2009 in W.P. No. 7015 of 2008 of Hon'ble Bombay High Court in case of Rototex Polyester & Anr V/s. Administrator, Administration of Dadra and Nagar Haveli (U.T.) Electricity Department, Silvassa and Others referred by the Forum is not applicable in this case.

(j) The Appellant referred the case of CPRA garden at Cuffe Parade Mumbai where the meter was not read for seven years and the Respondent raised the bill for seven years, however, the Hon'ble Bombay High Court has directed to revise the bill for three years.

(k) The Appellant referred another very old case of defective meter of Laffan Showroom at Rustom building, Peer Nariman Road, Fort, Mumbai 400001.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Here BEST Undertaking, A-ward issued high bill for average billing. The consumer approached the High Court and the High Court had given order in favor of BEST Undertaking, therefore the consumer approached the Supreme Court and the Supreme Court gave order in favour of consumer.

(l) The Appellant argued that the allegation of the Respondent that the System generated average billing for more than six years is not correct. The Respondent did not check the system average when the system has generated average billing as per record of three months. Why did they wait for about six years? when the guidelines as per Supply Code Regulations of Maharashtra Electricity Regulatory Commission (the Commission) are for three months.

(m) The Appellant also further argued that the meter was replaced without showing the final reading to the Appellant. Respondent did not test the meter and hence was not able to confirm whether it is defective or not. The Meter was defective. The consumption recorded in the Meter was in the range of 200 to 250 units per month. Respondent has converted this case of defective meter into wrong billing when this meter (No. 907157) was replaced by a new meter (No. 186951) on 22.10.2018. The Appellant was issued high bill on 16.07.2019 and at that time only, the Respondent realized the so-called mistake and made claim of Rs.21,96,494/- for six years from August 2012 to October 2018, with average of 2400 units per month, and this claim was debited in monthly bill.

(n) The Appellant prays that the Respondent be directed to revise the supplementary bill as per the rules and regulations of the Commission, and Clause 21.4, 21.5 and 19.1 of the Conditions of Supply of the Respondent.

5. The Respondent has filed its reply by email dated 02.06.2022 stating in brief as under:

(i) The Appellant Society is a consumer (No. 220-205-049) under Residential category having Sanctioned Load of 33.790 KW. The said connection is used for office and common use of the Society.

(ii) The Appellant has disputed the additional charges in the bill of October 2019, which was not levied previously from August 2012 to October 2018. The

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

Appellant was billed with Old Meter No. 907157 for the said period which was an electromechanical meter. At present there is a new Meter No. M186951.

(iii) This is an "escaped billing" case, wherein the consumer was not charged as per actual units consumed by the meter by mistake. The said meter was working in order, but due to human error (wrong recording of the displayed meter reading), it was under billed during this period. In the billing month of April 2012, meter counter was progressive with current reading as 993670 KWH. In the next bill i.e. May-2012, the meter reader did not record the reading properly (the first digit from right side was not recorded) which resulted in insertion of improper reading in the system. In other words, the last digit on the meter was got stuck, and the meter readers left it out by mistake. This was clarified during the hearing. The billing system has charged based on average unit consumption till the bill of July-2012, resulting in appropriate billing. However, in July-2012 the meter counter was in overflow due to crossing of reading 999999 KWH, and the counter digit became zero. Further readings noted in the Ramcram System were directly taken by the system as actual reading, which resulted in drastic fall in consumption from the bill of Aug-2012. The actual reading which should have been recorded was around 410 KWH in billing month of July 2012, however it was recorded as 41 KWH. The unit digit on the right hand side was missing. In the subsequent month i.e. August-2012. The current reading was recorded 287 KWH with missing of unit digit, which resulted in charging of 246 units in place of 2460 units. Accordingly erroneous progressive readings were recorded up to decimal of ten digit and missing of unit digit. The Appellant was charged less units per month till the meter replacement i.e. on 22.10.2018.

(iv) An example is given for understanding as follows:-

If the actual consumption was 2590 KWH, it was recorded as only 259 KWH up to ten digits by the meter reader. However, the unit digit of '0' KWH was missing, which resulted in the Appellant being billed only for 259 KWH(Units) even though the Appellant had actually consumed electricity of 2590 KWH.

(v) The anomaly was noticed in July 2018, when ID was registered under "low consumption", where meter was inspected, and further action was initiated. The

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

old electro mechanical meter (No. 907157) was replaced by a new meter (No. M186951) on 22.10.2018. Further the consumption on the new meter was monitored for six months in consultation with the Appellant. The new meter showed higher billing. Thereafter, a proposal for "escaped bill" on meter No. 907157 was prepared, and the same was audited, and a supplementary bill amounting to Rs. 21,96,494/- was intimated to the Appellant vide letter dated 14.08.2019.

(vi) The Secretary of the Appellant Society submitted a complaint to the Respondent for high billing vide its letter dated 15.07.2019, stating that till Nov-2018 the meter reading was around 252 KWH, and the bill amount was very less, but from Nov-2018, it suddenly increased to 2564 KWH and more, therefore he demanded refund of additional amount. The Respondent replied to the said query in detail, vide its letter dated 14.08.2019.

(vii) The Appellant filed grievance application with the Internal Grievance Redressal Cell (IGRC) on 16.12.2019. The IGRC by its letter dated 31.01.2020 replied point wise to the Appellant explaining the facts.

(viii) The Appellant has complained that the Respondent has converted a "defective meter" case into "wrong billing" case. This is not true. The Appellant was mistakenly not charged on actual units consumed, due to human error, i.e. wrong meter reading. He was under-charged/billed for the period from August 2012 to October 2018 as the reading of the meter was wrongly interpreted and entered, and hence wrong bill was generated. The Appellant complained of high bill vide his letter dated 15.07.2019, after its meter No. 907157 was replaced with meter No. M186951 on 22.10.2018 and correct reading was recorded, and bill was generated as per the actual units consumed by the Appellant.

(ix) There are no guidelines from any Authority in case of undercharged billing due to wrong reading inserted in the system arising out of human error. It is a clear fact that electricity was consumed by the Appellant, however, the Appellant was under billed. This was not a case of meter defect, but wrong reading and punching of meter reading due to which the Appellant was billed inaccurately

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai
M.E.R.C.

during the period from August 2012 to October 2018 and hence the meter was replaced.

(x) In IGRC, it was already mentioned that Meter No. 907157 was replaced by Meter No. M186951 on 22.10.2018. Further, the consumption on the new meter was monitored for six months. Thereafter the proposal for "escaped bill" on meter No. 907157 was prepared, and the same was audited, and a supplementary bill was finalised of Rs. 21,96,494/-. Before debiting this amount in the bill, the Appellant was given one month period vide letter dated 14.08.2019 to settle this, issue during which the Appellant did not respond. Hence the amount was debited in his regular bill presuming that it had no further issue.

(xi) The consumption on the old meter prior to May 2012 is comparable with the consumption on the new meter, which proves that the old meter was OK.

(xii) The point should be noted that as per MERC guidelines the bills are amended for three months in the case of meter found defective (display not visible), where either the reading is stuck up or not visible (error code). There is no such issue as regards meter No. 907157.

(xiii) This is not a defective meter case but an escaped billing case which was prepared after observing consumption on the new meter and calculations are made with slab benefit.

(xiv) It was the wrong punching of meter reading due to which the consumer was billed inaccurately during the period. As per the judgement of Bombay High Court in the matter of M/s. Rototex reported in 2009(5) ALL MR 579 and the judgement reported in AIR 2016 Jharkhand 98 in the matter of Sheno Shakti Cement, "*Clerical mistake can be always corrected*". Similarly, this is a punching mistake by the Meter Reader and can be corrected, hence the recovery is not barred under the Electricity Act, 2003.

(xv) As per the bill raised for the month of May 2022, the outstanding amount is Rs.21,68,880/-.

(xvi) The Appellant has requested to give relief as per Commission's rule and clause 21.4, 21.5 and 19.1 of the Conditions of Supply of the Respondent. In this context it is to mention that the clause 21.4 states that "*subject to the provisions*

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

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' period to the month in which the dispute has arisen. The adjustment would be in accordance with the results of the test taken, subject to furnishing the test report of the meter alongwith the assessed bill. In case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of tampering the assessment would be carried out as per Section 126 of Section 135 of the Act, depending on the circumstances of each case and the Supply Code Regulations". Hence this clause does not apply to the Appellant.

(xvii) Clause No. 21.5 also does not apply to the Appellant because the clause mentions 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 period to the month in which the billing is completed*."

(xviii) Clause No. 19.1 states that *"the Undertaking shall be responsible for the periodic testing and maintenance of all consumer meters*." Accordingly, the meter was inspected, and the conventional meter was replaced.

(xix) The bill was amended for units consumed but not accounted during the period August 2012 to October 2018. There was no additional charge levied. It is just the demand raised for electricity consumed but not accounted on this account. Further, it is also clarified that meter was not defective, as insisted by the Complainant.

(xx) In view of the above, the request of the Appellant to withdraw the billing of Rs.21,96,494/- cannot be considered as this amount is arrears of the 6 years wrong billing.

(xxi) In view of above, the Respondent prays that the representation be dismissed.

6. During the hearing, it was suggested to the parties for a settlement through conciliation or mediation as per Regulation 17.11 (a) of the CGRF Regulations & EO 2020.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

"17.11 (a) The Electricity Ombudsman may, in the first instance, endeavour to promote a settlement of the representation received through conciliation or mediation.

Both the parties agreed to settle the case, however, the Respondent requested for more time so as to facilitate a proposal of settlement before its competent authority.

7. The Appellant vide letter dated 18.06.2022 agreed to settle on the following terms and conditions.

"We the Managing Committee of MEHR – DAD C.H.S. LTD. is ready to settle the case in 50% of Principle Amount as discussed in Chamber of Electricity Ombudsman on dated 14/06/2022.
1. Principle Claim Amount Rs.21,96,493.27
2. 50% of Claim Amount is Rs.10,98,246.64
3. Amount paid as deposit to BEST Rs.10,00,000/-
4. Balance we will pay to BEST Rs. 98,247/-"

8. However, the Respondent vide letter dated 08.07.2022 stated that the competent authority has rejected the proposal. Hence, the representation is not tenable for any settlement. The Respondent also referred the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. and requested that the Representation be decided on merit.

Analysis and Ruling

9. Heard the parties and perused the documents on record. A proposal for settlement was suggested during the hearing. However, the Respondent is not willing for any settlement. Hence, I proceed with the order on merit.

10. The Appellant Society is a consumer under Residential Tariff Category having Sanctioned Load of 33.79 KW. The said connection is used for office and common use of the Society having nineteen floors multistorey building.

11. I have noted the following important points in this case:

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

(a) Prior to August 2012, the Appellant was billed as per the actual reading and for a consumption of about 2000 to 2500 units per month. Inter-alia, consumption was in 4 digits. The Appellant did not raise any issue with respect to this billing.

(b) After October 2018 (after replacement of the meter), the Appellant was billed as per the actual reading and for a consumption of about 2119 (lowest) to 3083 (highest) units per month during November 2018 to August 2019. Inter-alia, consumption was again in 4 digits and the consumption pattern was similar to the pattern prior to 2012. The Appellant did not say anything on this, nor did it contest this consumption post October 2018.

(c) However, it is only during August 2012 to October 2018, that the Appellant was billed for very much lower consumption of 188 units (lowest) and 537 units (highest). Inter-alia, consumption during this period was in 3 digits and about 1/5th of the earlier consumption.

12. It is clear that the consumption pattern of the Appellant for common facilities is in 4 digits, ranging in general, from 2000 to 3000 units. It can, therefore, be conclusively said that the Appellant was underbilled during August 2012 to October 2018. Ongoing through the initial and final readings of the meter for July 2012, it is seen that the meter reading counter has completed the first round as the Appellant was billed for 2001 units (initial reading 998040 and final reading 41). Thereafter, till October 2018, monthly consumption was shown in 3 digits only.

13. The Appellant being a Cooperative Housing Society is a law-abiding society. The meter installed at the Appellant's premises for the disputed period was an electromechanical meter No. 907157. It is observed that the Appellant regularly consumed electric power, however, the readings were mistakenly taken only up to the place value of ten digits and not of last place value, unit digit, due to a technical reason of the gear mechanism getting stuck up in the meter. The Respondent has sent a photograph for clarity of such type of meter having display of six digits, where the first digit (left side) is in lakhs and last digit (right side) is in units/ones. It cannot be said that the meter was defective merely because it was not tested after replacement. Each and every meter is not tested after replacement. However, when such a huge pending bill

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

was claimed by the Respondent, it was duty bound to protect and keep this meter as evidence till the issue got settled. However, the Respondent failed to do so. This is a serious lacuna in the working on the part of the Respondent.

14. It is necessary to examine the period for the recovery of supplementary bill. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

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

The Section 56 (2) of the Act 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."

This Section 56 (2) of the Act has been 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. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

The Larger Bench of Bombay High Court by its Judgment dated 12.03.2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following views for the Section 56 (2) of the Act which is reproduced as below: -

"76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression "when such sum became first due" appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading,

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. *Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the*

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai
M.E.R.C.

amount claimed and no bar or period of limitation can be read, though provided by sub-section (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

As a result of the above discussion, the issues referred for our opinion are answered as under:

(A) ***The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.***

(Emphasis added)

(B) As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.

(C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment."

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 mistake or bona fide error. It did not however, empower the licensee company to

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

(Emphasis added)

……"

15. The Respondent cited the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. The relevant paragraphs are quoted as below:-

"22. In fact, even before going into the question of Section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that the recourse taken by the licensee for recovery of the amount, can be put to test in terms of Section 56. If the case on hand is tested on this parameter, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

*23.Coming to the second aspect, namely, the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Subsection (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "**where any person neglects to pay** any charge for electricity or any some other than a charge for electricity due from him".*

*24. Sub-section (2) uses the words "no sum due from any consumer **under this Section**". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with **the negligence on the part of a person to pay any charge for electricity** or any sum other than a charge for electricity. **What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee**.*

*25. 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).*

*26. The matter can be examined from another angle as well. Subsection (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person "neglects to pay any charge for electricity". The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in **Rahamatullah Khan** and Section 56(2) will not go to the rescue of the appellant."*

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.

16. Considering the depth of the grievance, the ratio of the Judgement of Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. is not applicable in this case.

17. In view of the above discussions and considering various issues of limitations and the Judgment of the Supreme Court in Civil Appeal No. 1672 of 2020 dated 18.02.2020 in Case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah Khan alias Rahamjulla and Larger Bench of Bombay High Court, we hold that the Respondent can recover tariff difference only for 24 months retrospectively.

18. In the instant case, the Respondent has first time claimed the supplementary bill of Rs.21,96,494/- by its letter dated 14.08.2019. Hence, the Respondent is liable to recover the under billing from 14.08.2017 retrospectively (24 months).

19. However, Section 56(2) does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in the case of a mistake or bona-fide error. It does not, however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand**.**

20. The Respondent is a Public Undertaking. It is necessary to protect the interest of the Respondent and as well as of the Appellant. The Respondent has a limitation to recover the entire due amount as per Section 56 (2) of the Act. The tool of disconnection under Section 56(1) of the Act will be allowed only for enforcing recovery for a period of two years retrospectively from the date of the supplementary bill raised to the Appellant. In the interest of justice and to strike a balance between the interests of both the parties, it would be just and proper that out of the disputed amount of Rs. 21,64,494/- for the period from August 2012 to October 2018, the Respondent is allowed to recover only 50% i.e., Rs. 10,82,247/- from the Appellant.The settlement proposal sent by the Appellant is accepted.

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai
M.E.R.C.

21. In view of the above, I pass this order by directing the Respondent to recover only 50% of the bill of Rs.21,96,494/- i.e., Rs. 10,82,247/- from the Appellant. Hence, the Forum's order is quashed and set aside.

22. The Representation is disposed of accordingly.

23. There is a delay of about one and a half months for deciding this representation, as one month's time was given to both the parties for arriving at a mutual settlement. Also, the undersigned is holding additional charge of Electricity Ombudsman (Nagpur) in addition to this office work.

24. The secretariat of this office is directed to refund the amount of Rs.25000/- taken as deposit to the Appellant.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.