

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 49 OF 2024

In the matter of retrospective recovery towards under billing

Kurhade Enterprises (Prop. Gururaj B. Kurhade) Appellant
(Consumer No. 267440002541)

V/s.

Maharashtra State Electricity Distribution Co, Ltd. Kolhapur(R II) Dn..... Respondent
(MSEDCL)

Appearances:

Appellant : Gururaj Kurhade

Respondent: 1. Dattatray Pandurang Bhanage, Executive Engineer, Kolhapur (R2)
2. Digambar Pawar, Dy. Executive Engineer, Hupari Sub. Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 19th March 2024

Date of Order : 22nd March 2024

ORDER

This Representation was filed on 5th February 2024 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


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dated 6th December 2023 in Case No. 79 of 2023 passed by the Consumer Grievance Redressal Forum, Kalyan (the Forum). The Forum has rejected the grievance application. The Appellant paid a deposit of Rs. 25,000/- on 12th February 2024 to this office as per Regulation 19.22(h). Hence, this representation was registered on 12th February 2024.

2. The Appellant has filed this Representation against the above order passed by the Forum. The e-hearing was held through video conference on 19th March 2024. Parties were heard at length. The submissions and arguments of the Appellant are as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 267440002541) from 17.01.2015 having Sanctioned Load (SL) of 100 HP and Contract Demand (CD) of 82 KVA at 703/A, Halswade, Taluka Karvir, Dist. Kolhapur. The Appellant runs a stone crusher unit.
- (ii) The Addl. Executive Engineer, Flying Squad Unit, Kolhapur of the Respondent inspected the premises of the Appellant on 05.06.2023, when it was observed that Y phase PT voltage to the meter (Sr. No. 05799370 of Genus Make of 40-200 A Capacity was missing. As per Accucheck result, the meter was recording only 59.11% of the consumption, i.e. recording less by 40.89% due to non-availability of Y phase voltage to the meter.
- (iii) The Dy. Executive Engineer, Hupari Sub-division issued a notice for plain retrospective recovery of Rs.11,46,289.24 towards under recording of consumption for the period from June 2022 to June 2023 i.e. for 13 months. The Respondent by its letter dated 26.07.2023 issued a revised recovery bill of Rs. 6,69,883/-. The supplementary bill is not acceptable and is based on a hypothetical assumption.
- (iv) The energy meter belongs to the electricity distribution company and the responsibility of maintaining it lies solely with the electricity distribution company.
- (v) The meter reading is taken by MDAS (Metering Data Analysis System) on a monthly basis, and it has a special feature for “tamper data analysis” of the meter. Then why was the Respondent not aware about any technical issue like one phase


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voltage missing? It is the primary responsibility of the Respondent to check and maintain the connections of the meter, and tapping of voltage screws to check if they are well tightened. No responsible officer of the Respondent has pointed out this type of irregularity while processing monthly bills.

- (vi) A defective meter needs to be replaced as per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021). However, the Respondent violated the said provision and issued an assessment bill of Rs. 6,69,883/- towards under recording of consumption, without properly testing the meter.
- (vii) The meter was tested in Meter Testing Laboratory on 21.11.2023. There was a burn-mark on the Y phase terminal of the meter. However, the Testing Division failed to ascertain the period of marking. The Testing Division has reported that “Smart PT feature Meter” was not available at that time. However, the Respondent installed “Smart PT feature Meters” to other consumers who have comparatively less sanctioned load. Why was a “Smart PT feature Meter” not installed to the Appellant? The Respondent made various irregularities as pointed above, which are nothing but deficiency of services. The Appellant is not liable to pay additionally for the mistakes of the Respondent.
- (viii) The Appellant filed a grievance application with the Forum on 28.08.2023. The Forum by its order dated 06.12.2023 rejected the grievance application. The Forum did not give proper opportunity for arguments, and also failed to understand the basic case. Its decision is prejudiced and needs to be set aside.
- (ix) The Appellant made part payment Rs. 3,64,000/- under protest, which may be refunded.
- (x) **The Appellant prays that the Respondent be directed to withdraw the assessment of Rs. 6,69,883/- in toto.**


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3. The Respondent filed its reply on 14.03.2024. Its submissions and arguments are stated in brief as below:

- (i) The Appellant is an LT Industrial Consumer as mentioned in para 2 (i). The meter of the consumer was Genus Make (Sr. No. 05799370). It was LT AC Three Phase Four Wire 3 x 240 volt, 40 - 200 Amp fully static and AMR compatible Tri-Vector Energy Meter of accuracy class 1.0 category B. The complete meter unit i.e. meter, internal CTs are housed in the same enclosure. The meter has a provision so that the supply / service cable of the consumer directly passes through the meter for current measurement. Piercing screws are used in the meter for voltage connection.
- (ii) The Flying Squad Unit, Kolhapur of the Respondent visited the premises of the Appellant on 05.06.2023 to carry out an inspection. During the inspection, it was observed that "Y Phase Voltage" was missing on the meter display. The voltage of Y Phase was not extended due to a loosened screw of Potential Terminal (PT). It was found that the meter was recording less energy consumption by 40.89 %. The meter as such was in order; however, Y Phase voltage was not being extended to the meter. The inspection was carried out in the presence of the Appellant.
- (iii) The MRI data of the meter was downloaded on 05.06.2023 at 17.21.11 hrs. As per the MRI data report, the occurrence of Y Phase Voltage to the meter was found missing from 10.07.2022 onwards.
- (iv) Even after tightening of the screw of Phase where it was tapped from the cable and rusted/ slightly burnt meter terminal, it was found that Y phase voltage was still not extended to the meter correctly. Therefore, it was necessary to replace the entire meter box along with its cable. At that time there was a shortage of Smart PT Feature Meters. After they became available the meter was replaced on 09.08.2023 by giving priority to the Appellant. The period of assessment towards under billing was from 10.07.2022 to 09.08.2023.
- (v) The Dy. Executive Engineer, Hupari Subdivision by its letter dated 18.07.2023 issued a plain retrospective recovery of Rs.11,46,289.24 towards under recording of



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consumption for the period from July 2022 to July 2023 i.e. for 13 months, considering that the meter was under recording by 40.89 %. The same was reviewed at Division office and it was decided to recalculate the assessment considering only 1/3rd under recording of the meter. Accordingly, the Respondent by its letter dated 26.07.2023 revised the said retrospective recovery bill to Rs. 6,69,883/- by considering the period from July 2022 to April 2023, and 33.3% under billing as below:

Table 1:

Month	Units recorded in the meter (66.6 %)	50 % of recorded Units , i.e. 33.3 % of total units	Total Consumption (Units)	Bill Amount of assessed units (Rs.)
1	2	3	4 =2+3	5
Jul-22	5307	2654	7961	53929
Aug-22	13080	6540	19620	96173
Sep-22	6988	3494	10482	58421
Oct-22	9446	4723	14169	74154
Nov-22	9166	4583	13749	65753
Dec-22	10146	5073	15219	71913
Jan-23	8288	4144	12432	67905
Feb-23	6228	3114	9342	55402
Mar-23	7672	3836	11508	60578
Apr-23	7195	3598	10793	65655
Total	83516	41758	125274	669883
Average units/month	8351.6	4175.8	12527.4	
Note	Meter was under recording by 1/3rd, i.e.it was recording only 66.6 % of total consumption.			

- (vi) The assessment was also levied for the next 3 months, i.e., May 2023 to July 2023. Thus, the total assessment period was from July 2022 to July 2023. It can be seen from the above table that the average consumed units came to about 12,500 units per month. The same consumption pattern was also observed later after the meter was replaced on 09.08.2023. This validates the above assessment calculations.


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(vii) The meter of the Appellant was re-tested by the Testing Team of Testing Division Kolhapur on 22.11.2023 in the presence of the Appellant. The following observations were noted in the testing result.

“ 1. Meter of Y phase Terminal found with burn marks.

2. Meter body seals are intact.

3. Meter is not having smart PT feature.

4. The error for normal operations i.e., in presence of all PTs is (-) 0.24 % and while of absence of one PT (Y phase PT missing) is 34.75 %.


5. While observing the meter data it is found that meter Y phase PT is missing from July 2022.”

(viii) Data retrieval of the meter by MRI is a universally accepted technology for analyzing 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 regulations, the bill for non-recorded units was issued to the consumer.

(ix) 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.

(x) The Respondent also put on record the consumption pattern of the Appellant after installation of the new meter, as charted in the following table. The consumption pattern can be seen to be in consonance with assessed billing as shown in Table 1. While the assessment was based on average assumed consumption of about 12,500 units per month, the subsequent actual consumption was about 12,700 units per month.


Table 2:


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Sr. No.	Month	Units recorded in the new meter	Bill Amount (Rs.)
1	Aug-23	15673	212289.42
2	Sep-23	7762	102713.24
3	Oct-23	2283	44123.35
4	Nov-23	8647	150654.19
5	Dec-23	16438	243310.24
6	Jan-24	17438	223205.68
7	Feb-24	20984	259365.19
Total		89225	1235661.31
Average Units p.m.		12746.4	

- (xi) The Respondent stated that the supply of the Appellant was released on 17.01.2015. At that time, there was no “Smart PT feature Meter” available in the market. It was developed subsequently. Hence, the Appellant’s complaint regarding non-installation of “Smart PT feature Meter” is baseless. During the hearing the Respondent explained that initially, a smart meter was installed which had a feature whereby the readings could be taken remotely, without the need for a physical reading. However, if one phase was missing, this meter did not auto correct it. The auto-correction feature was developed subsequently, in the “Smart PT feature meter”.
- (xii) The assessment period of the under recording is 13 months, which is less than 24 months as stipulated in Section 56(2) of the Electricity Act, 2003. Hence, it does not cross any limit.
- (xiii) The Appellant was shown various case studies of similar under recording of meters, and was offered installments for payment without interest. However, the Appellant did not respond and filed the grievance, wasting the time of the Grievance Redressal Mechanism.
- (xiv) The PT circuit of the meter takes comparatively little current. It is an issue for analysis / study as to why the meter terminal of the voltage point got burnt. At this point the Respondent cannot comment on this issue.


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


Analysis and Ruling:

4. Heard the parties and perused the documents on record The Appellant is a LT Industrial Consumer (No. 267440002541) from 17.01.2015 having Sanctioned Load of 100 HP and Contract Demand of 82 KVA at 703/A, Halaswade, Taluka karvir, Dist. Kolhapur. The Appellant runs a stone crusher unit. The meter of the consumer was of Genus Make (Sr. No. 05799370) having Type- 3ph 4w, 40-200 Amp Capacity.

The Respondent inspected the installation of the Appellant on 05.06.2023, when it was observed that “Y Phase Voltage” was missing on the meter display, which was not extended to the meter due to a loosened connection of the screw as well as meter terminal screw. As per the MRI report dated 05.06.2023, the period of assessment started on 10.07.2022 and ended when the meter was replaced on 09.08.2023. The Respondent tested this meter in its Meter Testing Unit of Testing Division, Kolhapur on 21.11.2023 in the presence of the Appellant. The meter test report was found in order. The MRI Report was again downloaded on 21.11.2023:15.46.23. The Tamper Event logging was as under:

Table 3:

Meter (Sr. No. 05799370) of Genus Make of 40-200 A Capacity)			
Event Type	Occurance Date & Time	Restoration Date & Time	Remarks
Missing Potential Start/Stop	10.07.2022: 03.04.15	09.08.2023: 18.19.08	Meter replaced by a new meter on 09.08.2023.


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5. The Respondent, by its letter dated 26.07.2022 issued a revised supplementary bill of plain recovery of Rs. 6,69,883/- being the under recording of consumption by 33.33% for the period from 10.07.2022 to 09.08.2023, for 41758 units based on the data retrieved from MRI. The Respondent billed the Appellant for the above additional consumption from May 2023 to 09.08.2023. The calculations are shown in Table 1 and are found to be in order.


6. 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. We find that the instant case is a case of under-billing due to missing Y-phase. As such, the meter was not defective; however, input voltage was not extended to the meter. 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 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. The assessment carried out by the Respondent is found to be in order.


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7. At the same time, we observe that the Respondent did not fulfil its duty to regularly check and analyze the monthly MRI data. Had it done so in time, the technical lapse would have come to notice much sooner, and the assessment could have been avoided. The Respondent is advised to regularly analyze its MRI data in future, and to issue assessment recovery, if any, well in time.


8. The Forum's order dated 06.12.2023 is found to be a reasoned and speaking one. Hence, it is not necessary to interfere with it principally. However, its order is modified to the extent below:

9. The Respondent is directed as under: -

- a. The interest and delayed payment charges levied be withdrawn from the date of issue of the assessed bill in the monthly bill till the date of this order.
- b. The Appellant be allowed to pay the revised supplementary bill in three equal monthly instalments without any interest and delayed payment charges. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
- c. Other prayers of the Appellant are rejected.
- d. Compliance to be submitted within two months from the date of issue of this order.

10. The secretariat of this office is directed to refund Rs.25000/- taken as deposit to the Respondent for adjusting in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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Secretary
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