

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 2 of 2023

In the matter of wrong application of Multiplication Factor

Casa Royale CHS LimitedAppellant

V/s.

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

Appearances:

Appellant : 1. Pravin Thakkar, Representative
2. Santosh Shinde, Manager

Respondent : 1. Nitin Thite, Executive Engineer
2. Umesh Lele, Addl. Ex. Engineer


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

Date of hearing : 11th April 2023

Date of Order : 21st June 2023

ORDER

This Representation was filed on 5th January 2023 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 29th June 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).


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2. The Forum by its order dated 29.06.2022 partly allowed the grievance application in Case No. 121 of 2021-22 with the following directions:

- “2. The Respondent is entitled to recover the supplementary bills in arrears issued to the consumer.*
- 3. The Respondent is directed that, not to recover any interest, DPC & Penalty from the consumer for the disputed bill amount.*
- 4. The Applicant may be granted ten instalments without DPC, interest & penalty if any.”*

3. Aggrieved by the order of the Forum, the Appellant filed this representation. The Appellant was heard on 11th April 2023 when its representatives were present physically and the Respondent attended through video conferencing. The Appellant’s written submission and arguments are stated in brief as below:

- (i) The Appellant is a registered Cooperative Housing Society Ltd. at Balkum village, Pada No. 03, Saket Road, Opp. Jalaram Bappa Temple, Thane West – 400 608 having LT-I B 3 phase Residential connection from 18.09.2014 with four connections.
- (ii) The billing dispute is regarding Common Utility connections in the said society. The Vikas Subdivision of the Respondent has issued four supplementary bills of plain retrospective recovery for 73 months due to correction in Multiplying Factor (MF). The details are taken in paragraph 4 (i).
- (iii) The supplementary bills were issued due to wrong application of MF as 1 (One) instead of 2 (Two).
- (iv) After receipt of the above bills, the Appellant had regularly corresponded and issued legal notices to the Respondent to withdraw the above wrong, exorbitant and illegal bills, however, it was of no avail.
- (v) MF is a technical issue which a normal consumer cannot understand without help. It is the duty of an expert like the Respondent to see the Meter Ratio, CT Ratio and effects on the bills. As per the Regulations of the Maharashtra Electricity Regulatory Commission (the Commission), it is the duty of the Respondent to undertake proper annual meter inspections and make the required rectifications in


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meter and CT Ratio. The Respondent failed in its duty and is unnecessarily penalising the Appellant for the fault and negligence of their employees.

- (vi) The retrospective MF recovery charged for 73 months is time barred as per the provision of Section 56 (2) of the Electricity Act, 2003 (the Act). The Section 56 (2) is a settled law, and the Respondent cannot issue a supplementary bill for a period of more than 24 months.
- (vii) The Appellant approached the Internal Grievance Redressal Cell (IGRC) on 16.02.2021. The IGRC has rejected its grievance. Thereafter, the Appellant filed its grievance before the Forum on 17.03.2021. The Forum, by its order partly allowed the grievance by allowing the Respondent to recover the supplementary bills without any interest, delayed payment charges (DPC) and penalty.
- (viii) The Appellant then filed the present Representation with the following prayers:
- to withdraw the wrong, illegal and baseless supplementary bills issued for plain retrospective recovery due to change in MF.
 - to withdraw the interest and DPC levied.

4. The Respondent filed its reply dated 28.01.2023. Its submission and arguments are as below:


- (i) The Appellant is a Cooperative Housing Society as mentioned in para 3(i). The details of the sanctioned load, assessed units, recovery amount of the four connections are tabulated below:

Sr. No.	LT Consumer No.	Purpose	Sanctioned Load (KW)	Units consumed	Recovery Amount (Rs.)	Period of MF Recovery	Bill issued on
1	000028385714	Lift, water pump & common utility	80	181298	28,55,560	Oct 2014 to Oct 2020 (73 months)	23.11.2020
2	000028392591	Lifts	80	93606	15,93,340	Oct 2014 to Oct 2020 (73 months)	23.11.2020
3	000028379935	Club House	60	492152	87,84,530	Oct 2014 to Oct 2020 (73 months)	23.11.2020
4	000028379919	Fire fighting	150	1082	8450	Oct 2014 to Oct 2020 (73 months)	23.11.2020
	Total				1,32,41,880		


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- (ii) As the external CT ratio is 200/5 A and the meter CT ratio is 100/5 A, the correct applied MF should be 2. However, the Appellant was mistakenly billed as per MF 1 instead of MF 2 since the date of connection.
- (iii) During inspection on 04.11.2020, Assistant Engineer, Majiwada Section noticed that the Appellant is being wrongly billed as per MF 1 instead of MF 2. The inspection report dated 04.11.2020 is on record. Accordingly, the recovery of difference of the four connections was drawn, and bills were issued vide letter no AEE/Vikas s/dn / Tech/2330, 2332 & 2330 dated 23.11.2020.
- (iv) The Appellant, through advocate Shri Sanjay Joshi, issued a reply to MSEDCL on 27/11/2020, received on 02/12/2020, followed by another letter dated 15/12/2020. Later mutual correspondence details are also mentioned.
- (v) Meanwhile the society through its members met higher authorities of MSEDCL up to the Chief Engineer, Bhandup Zone regarding these additional bills.
- (vi) The Appellant approached the Internal Grievance Redressal Cell (IGRC) on 16.02.2021. The IGRC rejected its grievance. Thereafter, the Appellant filed its grievance before the Forum on 17.03.2021. The Forum partly allowed the grievance by allowing the Respondent to recover the supplementary bills but without any interest, DPC and Penalty.
- (vii) The consumers' meters are now changed for MF as 1 as the CT & Meters are combined in one unit. The consumption trend clearly indicates that consumption has risen 2 to 2 ½ times in 2022 compared to the previous consumption before applying the correct multiplying factor in 2020.


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Consumer No	Month	Units	Month	Units
000028379935/6	Jan-20	7346	Jan-22	15503
	Feb-20	7398	Feb-22	14328
	Mar-20	7035	Mar-22	16090
000028385714/6	Jan-20	2856	Jan-22	4430
	Feb-20	5361	Feb-22	3937
	Mar-20	2448	Mar-22	4896
000028392591/6	Jan-20	2253	Jan-22	3904
	Feb-20	2315	Feb-22	3621
	Mar-20	2045	Mar-22	4170
000028379919/6	Jan-20	0	Jan-22	42
	Feb-20	1	Feb-22	37
	Mar-20	5	Mar-22	44

- (viii) The actual MF is 2 but by mistake or human error, the Appellant was billed as per MF 1, hence 50% lower bills were issued. The Appellant is liable and under obligation to pay the difference, as it has consumed more electricity but paid for less.
- (ix) According to the Regulation 4.4.1 of MERC SOP regulation 2021
“The distribution licensee is authorized to recover charges for electricity supplied in accordance with such tariff as may be fixed from time to time by the Commission.”
- (x) **Section 56 (2) of the Act does not preclude the Respondent from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of mistake or bonafide error. In the present case the supplementary bill is raised after the detection of a mistake/ bonafide error in application of correct MF.**
- (xi) As per judgment dated 05.10.2021 of the Hon’ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd & Ors., the raising of additional demand on the ground that the multiplying factor was wrongly mentioned, cannot amount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand, so long as the consumer does not dispute the correctness of the claim made by the licensee. That


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is why the National Commission in its order correctly points out that it was a case of escaped assessment and not deficiency in service.

- (xii) The Court has also noticed that the period of limitation prescribed under Section 56 (2) will not start running till the bill is raised. The bar for recovery and disconnection will not come into effect.
- (xiii) The Respondent submits that as per the judgment dated 18.02.2020 of the Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 in the matter of Assistant Engineer (D1) Ajmer Vitran nigan Ltd. V/s Rahamatulla Khan alias Rahamjulla and of the Hon'ble Bombay High Court in Rototex Polyester & Anr. V/s. Administrator, Administrator of Dadra & Nagar Haveli (U.T.) Electricity department, Silvassa & Ors. (2010 (4) BCR 456) held that a demand notice with a revised bill, when served to a consumer, becomes due on the date on which it is served, and thus Section 56(2) would not come in the way of recovering such sum. The licensee company may take recourse to any remedy available in law for recovery of additional demand.
- (xiv) **As per Regulation 19.1 of CGRF & EO Regulations 2020 “Any complainant, who is aggrieved by non-redressal of his grievance by the forum, may either directly or through his duly authorized representative make a representation for redressal of his grievance to the Electricity Ombudsman within 60 days from the date of the forum.**

Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period sixty (60) days if he/she is satisfied that there was sufficient cause for not filing it within the said period.”

In this case, the Forum's order is dated 29.06.2022 which is nearly seven months earlier than the date of filing the Representation before the Electricity Ombudsman. Hence, the Representation is not maintainable.

- (xv) The Appellant society consists of 462 tenements or residents. It has three elected members on the Committee such as Chairman, Secretary and Treasurer. On 12.09.2022 a meeting was called by the concerned corporator at his office consisting of MSEDCL representative and chairman of society with 25 other members of the society. The society, on its letter head through its authorized


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signatories i.e. chairman/secretary, had given a letter dated 15.09.2022 clearly stating that the society is willing to pay the outstanding principal amount of Rs. 1,23,53,240/-.

- (xvi) **The society, including its chairman, other elected representatives & society members had approached the Executive Engineer MSEDCL & shown their readiness to pay the bill in parts, provided the clubhouse wrong bill credit is given from the date of issuance of the wrong tariff bill. Hence a bill revision was carried out, giving credit of Rs. 12,57,485/- from the date of handing over the premises to society i.e., June 2015 to January 2017. The credit was issued on 25th November 2022.**
- (xvii) From September 2022 till December 2022, the consumer has regularly paid the disputed bills by instalments through RTGS.
- (xviii) The four bills have been raised to the society. The society during the hearing at the Forum level had agreed and paid the fire pump bill for consumer (no-000028379919) which was smallest bill. Hence, the Appellant Society has in principle agreed that the bills issued are correct and they are liable to pay. Currently the principal arrears are Rs.68,96,504.
- (xix) In view of the above it is prayed to
- direct the Appellant to pay the differential arrears immediately.
 - allow the Respondent to take action as per Section 56(1) of the Act against the Appellant.
 - dismiss the Representation being devoid of merit.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is a Cooperative Housing Society Ltd. known as The Casa Royale CHS Ltd. as detailed in para 3(i).

6. This Representation was filed on 05.01.2023 against the Forum's order dated 29.06.2022. As per Regulation 19.1 of the CGRF & EO Regulations, the Representation was supposed to be filed on or before 29.08.2022, considering the prescribed 60 days' period as per Regulation 19.1 of CGRF & EO Regulations 2020. This Representation has been filed after about 129


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days, far beyond the prescribed period. However, considering that the grievance pertains to a Cooperative Housing Society comprising of 400 members, the delay for filing the representation is condoned.

7. The applicable formula is :- $\text{Multiplying Factor} = (\text{External CT Ratio} \times \text{External PT Ratio}) / (\text{Meter CT Ratio} \times \text{Meter PT Ratio})$. In this case, PT Ratio is 1. As the external CT ratio was 200/5 A and meter CT ratio was 100/5 A capacity hence the MF by all means should be 2 $[(200/5) / (100/5)]$ for billing purpose. In the instant case, the Appellant was wrongly billed as per MF 1 instead of MF 2 since the date of connection i.e. 18.09.2014. During an inspection on 04.11.2020, the Respondent noticed that the Appellant was being billed as per MF 1 instead of MF 2. Accordingly, the recovery bill of difference amount of the four connections was drawn and the bills were issued on 23.11.2020.

8. There is merit in the Respondent's arguments as mentioned in para 4 (xi). The Hon'ble Supreme Court has held that recovery can be made if the consumer was under billed due to application of wrong M.F. Considering the consumption pattern of the Appellant and various records submitted by the Respondent, I am convinced that the Appellant was billed only 50% of the actual due amount from October 2014 to October 2020. The Respondent issued four supplementary bills for the four connections of the society amounting to Rs. **1,32,41,880/-** towards retrospective recovery of MF 1(one) to 2(two) for 73 months.

9. The Appellant is a society known as Casa Royale CHS Ltd. which is a Housing Complex of high-rise buildings having modern amenities like swimming pool, Club house, Senior Citizen cove, Children playing area, etc. Naturally, this Society has considerably high-power consumption for common utilities like lifts, water pump, common lighting, club house etc. These are important consumers who are generally monitored on priority basis. Normally the Licensee gives top priority to and checks the electric installations of all High-Tension consumers annually as per its scheduled programme. The next priority for checking connections is given to consumers having load more than 20 KW and the common use consumers of Tall Building Complexes. It is surprising that the Respondent has taken such a


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long period of nearly six years for pointing out the MF irregularities. Hence, the Respondent is also equally responsible for failure in its own duty, leading to under billing.

10. 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.”


This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Hon’ble 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.

11. The Respondent cited the Judgment of the Hon’ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of escaped billing. The important paras of this Judgement are reproduced below:

“3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.

4. After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption “short assessment notice”, claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

*6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that **it is a case of “escaped assessment “and not a case of “deficiency in service”**. Aggrieved by the said Order, the appellant is before us.*


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21. *The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.*

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 recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, 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.*

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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.*


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27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. ” (Emphasis added)

It is important to note that in the above Judgment, the assessment period for escaped billing towards recovery of multiplying factor is applied for about three years. In the instant case, the Respondent has issued supplementary bill towards application of wrong multiplying factor for the period from October 2014 to October 2020, which is about six years.


The Judgment of the Hon’ble Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. refers the Section 17(1) (c) of the Limitation Act, 1963. The said Section of the Limitation Act, 1963 is reproduced as under: -

“17. Effect of fraud or mistake. — (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, — ”

(c) the suit or application is for relief from the consequences of a mistake; or the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or (ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.”


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(ii)

THE SCHEDULE PERIODS OF LIMITATION

[See sections 2(j) and 3]

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD


113.	<i>Any suit for which no period of limitation is provided elsewhere in this Schedule</i>	<i>Three years</i>	<i>When the right to sue accrues</i>
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The instant case, the Respondent discovered the mistake of under billing when the premises were inspected on 04.11.2020 in the presence of the Appellant. Hence, the cause of action arose on 04.11.2020. Subsequently, the Respondent issued the supplementary bills on 23.11.2020 to the Appellant Society. The Limitation Act, 1963 describes that the suit can be filed within 3 years from the date of cause of action. In the instant case, a suit has not been filed; however, it applies similarly that action has to be taken at least within the prescribed period of limitation of three years.

12. In the instant case, the Respondent also failed to inspect the meter periodically. Ideally, it should have inspected the premises of its high-end consumers once every 2 to 3 years. Had it done so, the mistake would have come to notice much earlier, and the high amount of retrospective bills could have been avoided. Hence, retrospective recovery due to application of wrong multiplying factor as one (1) instead of two (2) should be effected for **three years counting from the date of detection of mistake / cause of action**. We hold that in the instant case, the valid recovery period will be three years period retrospectively from date of checking / cause of action on 04.11.2020. i.e. November 2017 to October 2020 (36 months). The firefighting bills are already paid and it is not necessary to reopen the case of Consumer No.000028379919.

13. In view of the above, the Respondent is directed as under: -

- (a) To revise the supplementary bills for the Consumer Nos. 000028385714, 000028392591 & 000028379935 considering the period from November 2017 to


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October 2020 by applying multiplying factor as 2 (two) instead of 1 (one), withdrawing interest and DPC, levied if any.

- (b) To allow the Appellant to pay the revised bill in 5 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and the Respondent has liberty to take action as per law.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellant are rejected.

14. The Forum's order is modified to the extent above. The Representation is disposed of accordingly.

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

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


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