

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 48 OF 2023

In the matter of refund of outstanding dues

Mehul Joshi.....Appellant

V/s.

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

Appearances:

- Appellant : 1. Mehul Joshi, Consumer
2. Vinay Vaze, Representative
- Respondent : 1. Girish Bhagat, Addl. Ex. Engineer, Vasai (E) Sub-Dn.
2. Vinay Singh, Addl. Ex. Engineer, Flying Squad Unit, Vasai
3. Sunil Mane, Dy. Manager, Vasai
4. Ashish Varma, Asst. Accountant, Vasai (E) Sub-Dn.

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

Date of hearing: 27th September 2023

Date of Order : 3rd November 2023

ORDER

This Representation was filed on 25th April 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 21st February 2023 in Case No. 078 of 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL Vasai (the Forum). The Forum has rejected the grievance of the Appellant



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by observing that the Appellant, being the present owner / occupier of premises, is legally obliged to pay the outstanding dues of the previous consumer, as per Regulation 16.9.3 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021) which is reproduced as below:

“In case of premises which are permanently disconnected or demolished for reconstruction, the liability of the arrears, if any, shall be passed on to the owners/occupiers.”

2. Aggrieved by the order of the Forum, the Appellant has filed this Representation. The e-hearing was held through video conference on 27th September 2023. Parties were heard at length. The submissions and arguments of the Appellant are as below :-

- (i) The Appellant had purchased four galas No. 12, 13, 14 & 15 for running a factory at Saraswati Industrial Estate, Sativali, Vasai (East) from M/s. Rexnord Electronics and Controls Pvt. Ltd. on 23/12/2021. There was one common existing electric connection with Consumer No. 002170268825 from 29.04.1987 in the name of Gandhi Tubes Pvt. Ltd., and the existing load in Contract Demand (CD) was 33 kVA.
- (ii) The Appellant was in need of additional load for day-to-day work of his factory. Hence, he took an additional load of 154 kVA i.e. enhanced the load from 33 kVA to 187 kVA CD and Connected load of 200 HP in the month of Feb. 2022 after complying with the statutory formalities of load extension, as per the prevailing procedure of the Respondent.
- (iii) The Appellant also applied for Change of Name on 15/02/2022 as per prevailing procedure, from the existing name of “Gandhi Tubes Pvt. Ltd.” on the bill to their own name as Mr. Mehul P. Joshi & Mrs. Bhakti Mehul Joshi, which was done immediately by the Respondent.
- (iv) The Appellant started their business and kept paying the bills regularly and punctually. In the month of Sept.2022, MSEDCL employees visited their



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premises and removed an old meter which was lying there in their premises. The meter was in idle condition without any wiring. The Appellant has never used any load on the said meter.


- (v) After a few days, the Respondent served the Appellant with a bill of Rs.2,58,116/- which pertains to that said removed meter with Consumer No. 002170268833 in the name of M/s. Royal Enterprises. MSEDCL threatened to disconnect the Appellant's main supply for those arrears which the Appellant had no connection with. Hence, the Appellant immediately approached the Forum and paid 50% amount of the said recovery amount under protest. The Appellant totally denied any liability to pay this claim with a request before the Forum to quash the entire recovery amount.
- (vi) The Respondent has sent to the Appellant the Consumer Personal Ledger (CPL) of the said Consumer No. 002170268833. According to them, the recovery amount pertains to the period of 44 months from Jan 2019 to Aug 2022. The amount also was added automatically by the system when the Respondent processed the Final Reading of 80475 kWh. The Appellant's contention is that **they have purchased the said gala in December 2021, then how can they be liable to pay the arrears which pertain to the period before that?**
- (vii) The date of connection is 1987, and the final reading on the meter as per the Respondent was 80475 kWh. The Appellant also requested the Respondent to test this meter and to share with them the test report, along with the meter photograph. If MSEDCL fails to do so, they should not be allowed to recover the amount from the Appellant.
- (viii) Basically, this meter might exist from the times when industrial lighting was considered as commercial, and there used to be a separate connection for the said purpose. Then there came the rule of "one premises, one connection". MSEDCL was supposed to remove this meter from the premises immediately, but they failed to do so.



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- (ix) The Respondent was duty bound to take the monthly readings of the disputed meter regularly as per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (SOP Regulations 2014). However, the Respondent failed to do so.
- (x) When the Appellant applied for load extension in February 2022 up to 200 HP, the Respondent should have inspected their premises and identified this disputed meter before releasing this heavy load. At that time, this meter was in the premises and was not connected. They should have removed the meter and raised the bill at that time. But they failed again.
- (xi) While issuing this huge bill of Consumer No. 002170268833, they should have tested the meter for its correctness and should have produced the spot inspection report with the actual meter/ site photos, which would have proved that there was no use of the meter, but they failed to do so.
- (xii) Taking all the above points into consideration, the Appellant requested the Forum that the Appellant should not be penalized for such inefficiency of the MSEDCL for years and for no fault of the Appellant. Hence the recovery amount be quashed completely. **However, the Forum disposed of the complaint as per Regulation 16.9.3 of Supply Code & SOP Regulations 2021, which applies to cases of permanently disconnected or demolished premises. In this case, neither were the premises demolished nor was the connection made PD when the Appellant approached the Forum. Hence regulation 16.9.3 does not apply in the present case.**
- (xiii) The Forum did not consider the excessive recovery period of 44 months which is contradictory to Section 56(2) of the Electricity Act, 2003 where the recovery period allowed is 24 months.
- (xiv) **The meter was in an industrial premises while MSEDCL is recovering units at commercial rates, which is wrong.**


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- (xv) In view of the above, the Appellant prays that the Respondent be directed to quash the recovery amount and to refund the amount paid under protest in the ensuing bill of the Appellant.


3. The Respondent by its letter dated 22.08.2023 has filed its reply. Its submissions and arguments are as under:

- (i) The Appellant (Mr. Mehul P. Joshi & Mrs. Bhakti Mehul Joshi), is a LT Industrial Consumer (002170268825) at Tungareshwar Industrial Complex, Satali Industrial Estate, Satali, Vasai, having sanctioned load of 200 HP and CD of 187 kVA at present. The date of original supply was 29th April 1987. Basically, 4 Galas numbered 12, 13, 14 & 15 of this Industrial estate are owned by the Appellant.
- (ii) There were two electric connections in these four Galas. The details of the same are tabulated as below:

Table 1:

Consumer No.	Name of Consumer	Address on Bill	Supply Date	Category	Remarks
2170268833	M/S Royal Enterprises	Tungareshwar Ind. Complex Satali Ind Estate	29.04.1987	Commercial	Disconnected on Oct. 2022
2170268825	Mr. Mehul P. Joshi & Mrs. Bhakti Mehul Joshi	Tungareshwar Ind Complex Satali Ind Estate	29.04.1987	Industrial	Purchased the premises in the year 2021 and change of name and extension of load was done up to 200 HP and 187 KVA subsequently.

- (iii) The meter reading of Consumer No.002170268825 was taken regularly by Automatic Meter Reading System; and the bills are issued as per actual readings of the meter and the Appellant is paying the same regularly.
- (iv) However, the meter of the Consumer No.002170268833 was inside the said gala, therefore, it was not possible to take its readings and the **consumer was being billed**


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on average basis from the month of Jan 2019 to July 2022 which includes the Covid-19 Pandemic period from 22.03.2020 to Dec. 2021.

- (v) In the month of March 2022, the Appellant applied for change of name for the Consumer No.002170268825 and accordingly it was done. However, he did not apply for a change of name for Consumer No.002170268833.
- (vi) **During routine checking of the Appellant's premises in July 2022, it was noticed that there was an accumulation of 26474 units on meter No.0206734 in respect of Consumer No.002170268833. Therefore, a bill for 26474 units of Rs.2,52,550/- was served for the period of Jan. 2019 to Aug. 2022 in the energy bill of Aug 2022. The Appellant did not pay the same, so the supply of the other Consumer No.2170268825 was disconnected on 26th September 2022 after giving a disconnection notice, as both these connections are in the same premises.**
- (vii) The Appellant approached the Forum on 27.09.2022 for interim relief. As per the Forum's direction, the Appellant paid 50% outstanding amount i.e., Rs. 1,28,100/- on 27.09. 2022. The supply was immediately reconnected. The balance outstanding amount of Rs. 1,38,320/- was paid on 30.03.2023.
- (viii) The two connections were found on the same premises, therefore the supply of Consumer No. 002170268833 was temporarily disconnected in Oct. 2022 and permanently disconnected in June 2023.
- (ix) The Respondent referred to the Supreme Court Judgment dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in Case of Prem Cottex V/s. Utter Haryana Bijli Vitran Nigam Ltd. & Others. The Judgment is squarely applicable in the present case. The Respondent is entitled to recover all consumed units which were under billed. The accumulated consumption is a case of escaped billing, and therefore the charges are recoverable.
- (x) The connection of this consumer (No. 2170268833) was temporarily disconnected in the month of Oct. 2022 and permanently disconnected in June 2023. The Respondent referred to the Supreme Court Judgment dated 19.03.2023 in Civil Appeal No.2109-2110 of 2004 K. C. Ninan V/s Kerla State Electricity Board & Others. It has



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categorically held that **an incoming consumer is liable to pay old electricity dues of the previous consumer. Therefore, the Appellant is liable for the payment of electricity charges of the PD Consumer No.002170268833 for an amount of Rs.2,52,550/-.**


- (xi) In view of the above, the Respondent requests to reject the Representation of the Appellant.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The contents of para 2 (i) (ii) and (iii) are admitted. It transpires that there were originally two electric connections in these four Galas. However, the Appellant claims that he was unaware of the existence of the second meter (Connection No. 002170268833) as it was lying unused and unconnected. On the other hand, the Respondent claims that this second meter was connected, and was being billed on 'average basis' as mentioned in para 3 (iv). The details of the same are tabulated in Para 3 (ii). Both these connections (one for commercial purpose and the other for industrial purpose) existed from 29.04.1987.

5. The Appellant enhanced his industrial load by 154 kVA of Consumer No.002170268825 in the month of Feb. 2022. He also got the connection changed to his name. The Appellant is billed regularly as per the actual reading, and he pays the bills of this connection regularly. He contends that the second meter should have been identified and billed at this time when he enhanced his load and got the change of name. But the Respondent failed to do so.

6. The meter of the Consumer No.002170268833 was inside the gala which was billed under commercial tariff category. While perusing the CPL of the consumer, it was observed that the said meter was not read properly. The previous consumer was being billed with an average basis of 484 units per month from Dec. 2017 to Nov. 2018 with Reading Not Taken



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(RNT) / Locked/ Inaccessible Status. The then owner of the premises had paid all these bills. The last paid bill was on 15.12.2018. It seems that the Appellant was wrongly billed with 'Normal' Status in Dec. 2018 for only 1006 (54001- 52995) Units for accumulated consumption for 13 months from Dec. 2017 to Dec. 2018. Based on the previous consumption pattern, the expected consumption for 13 months would have been around 6292 units. The possibility of connivance between the then consumer and the meter reading agency to manipulate the bill cannot be ruled out. As a result of this wrong billing, the consumer seems to have undeservedly got a net credit bill of Rs. (-) 51,381.13.

7. The Appellant was again billed with RNT/ Locked/ Inaccessible Status from January 2019 to July 2022 for 43 months. During this period only 2 to 83 units per month were billed, probably with the connivance of the concerned parties. Since there was a (wrongly shown) credit of Rs.(-) 51,381/- in the name of the consumer, he did not have to pay these bills, while the credit amount kept getting adjusted month after month from January 2019 to July 2022. Meanwhile the previous consumer sold the premises in December 2021, obviously without revealing this background to the new owner, viz. the Appellant. The Appellant was billed under "Credit bill", which slowly reduced from (-) Rs.51,381/ to (-) Rs. 5,558.97.

8. When the actual reading was finally taken in Aug.2022, accumulated (and unbilled) consumption of 26474 units over the last 44 months was revealed. The details of billing are tabulated as below:


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Connection No. 002170268833

Month	Initial Reading (kWh)	Current Reading (kWh)	Units Billed /month	Status	Remarks
Dec.-17 to Nov.-18	52995	52995	484	Billed on Avg. basis with RNT/Locked/ Inaccessible status	The Connection was on.
Dec.-18	52995	54001	1006	Shown as 'Normal' (accumulated consumption of 13 months)	Credit bill was wrongly issued by the System of Rs. (-) 51381.13
Jan. -19 to March-20	54001	54001	83	Billed on Avg. basis with RNT/Locked/ Inaccessible status	The earlier Credit bill issued by the System [Rs. (-) 51381.13 was being adjusted and reducing monthly against current bills]
20-Apr	54001	54001	2		
May-20 to Jul.-20	54001	54001	8		
Aug.- 20 to Jul.- 22	54001	54001	83		
Aug.-22	54001	80475	26474	Normal	Accumulated consumption for 43 months
Sep.-22	80475	80475	0	Normal	Part Payment of Rs. 1,28,100/-made on 27.09.2022
Oct. -22	80475	80475	0	Normal	Temp. Disconnected

Note : The Appellant paid the balance amount of Rs. 1,38,320/- on 30.03.2023 and the consumer was permanently disconnected in Oct. 2023.



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9. The previous consumer, and then the Appellant was being wrongly billed on 'average' basis with only 2 to 83 units per month from January 2019 to July 2022 by showing RNT/Locked/ Inaccessible status. The Respondent finally generated the bill of actual consumption for 26474 units of Rs.2,52,550/- in the month of August 2022 by which time the Appellant had entered the picture as the new consumer, by purchasing the property in December 2021. The supply of the Appellant was temporarily disconnected in the month of October 2022 due to non-payment of the bill of Rs. 2,52,550/-.

10. From the facts mentioned above, it seems that the previous consumer manipulated the bills through connivance, leading to a huge accumulated unpaid bill. Meanwhile he sold the property to the current consumer, the Appellant, most probably without disclosing his previous liability. In other words, the Appellant seems to be either cheated by the previous consumer, or the parties agreed to the liability. It is impossible to determine which of these possibilities actually happened. However legally, even if the Appellant was cheated by his predecessor, or even if the outstanding dues relate to the period of his predecessor, he is still liable to pay the previous dues.

The Appellant was billed for the disputed second connection (Consumer No. 002170268833) as per the actual accumulated consumption for 26474 units of 44 months in Aug. 2022. The period of accumulation was from Jan. 2019 to Aug. 2022. The Appellant approached the Forum on 27.09.2022 when the second connection was live. The Consumer (No. 002170268833) was temporarily disconnected later in Oct. 2022 and permanently disconnected in June 2023. At the time when the accumulated bill of Rs.2.58 lakhs was issued in September 2022, the above said disputed connection was still live, as per available records. This is not a matter of **escaped billing**, rather **deficiency in service**. The ratio of the Judgement of Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of Prem Cottex V/s Uttar Haryana Bijli Nigam Ltd and others decided on 5th October 2021 is not applicable to the present case.



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However, Section 56(2) of the Act permits the distribution licensee to assess retrospectively only for 24 months in case of deficiency in service. The assessment period of 44 months of accumulated consumption does not fulfil the statutory requirement of Section 56(2) of the Act. 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 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.

Considering the legal provision of Section 56(2) of the Act, the Respondent can demand payment for the accumulated consumption of only 24 months, from Sept. 2020 to Aug. 2022, instead of 44 months from Jan. 2019 to Aug. 2022.

11. This is the case of a consumer whose second connection was live, when the Appellant registered the grievance with the Forum on 17.09.2022. It was only afterwards that the said consumer was temporarily disconnected for non-payment of the outstanding dues and was permanently disconnected in June 2023. Hence, the Appellant was beyond the scope of Regulation 12.5 which relates to recovery of outstanding dues of permanently disconnected consumers. Regulation 12.5 of the Supply Code & SOP Regulations 2021 does not apply in the instant case.

12. Since the Appellant’s connection was live during the grievance redressal mechanism, the ratio of Judgment dated 19th May 2023 of Hon’ble Supreme Court in Civil Appeal No 2109-2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Ors., is not applicable.


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13. The accumulated consumption of 26474 units for 44 months was for the period of Jan. 2019 to Aug. 2022. The monthly average consumption comes to 602 units per month.

14. In view of the above, I hereby direct the Respondent as below: -

- a) to revise the accumulated consumption bill of 44 months of Aug. 2022, considering the average consumption of 602 units per month, for 24 months retrospectively from September 2020 to August 2022. The interest and delayed payment charges levied if any be withdrawn waived of totally from the bill of August 2022 till further.
- b) to refund the amount of SD to the Appellant.
- c) to adjust the credit of (a) and (b) on the live Consumer No. 002170268825 of the Appellant.
- d) Compliance to be submitted within two months from the date of issue of this order.
- e) Other prayers of the Appellant are rejected.

15. The representation of the Appellant is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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