

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 165 OF 2019

In the matter of retrospective recovery

Shri Inayat Umarji Patel (Consumer)..... Appellant
Dhiraj Karamshi Patel (User)

V/s.

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

Appearances

For Appellant : 1) D. K. Patel, User
2) V. K. Vaze, Representative

For Respondent : 1) S. S. Kinnur, Executive Engineer, Vasai
2) V. M. Gokhale, LDC

Coram: Deepak Lad

Date of Order: - 14th October 2019

ORDER

This Representation is filed on 9th September 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (*CGRF Regulations*) against the Order dated 03.07.2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (*the Forum*).

2. The Forum, by its Order dated 03.07.2019 has partly allowed the application of the consumer in Case No.128/ 1913 of 2019. The operative part of the order is as below: -

“2) Bills are sustained.

3) Distribution Licensee to grant instalments as per MSEDCL Circular.”

3. Not satisfied with the order of the Forum, the Appellant has filed this representation stating as below: -

- (i) Connection is in the name of Shri Inayat Umaraji Patel and Dhiraj Karamshi Patel is the actual user and occupier of premises.
- (ii) The Appellant is low tension (LT) industrial consumer (No. 001943830173) having sanctioned load (SL) of 49.98 kW and Contract Demand (CD) of 62 kVA from 15.03.2016 at Gala No.1, S.No. 333, Behind Sky Way Hotel, Pelhar, Vasai (east).
- (iii) The premises of the Appellant was inspected by the Respondent on 12.02.2019 and reported under remark column as 'R' Phase voltage found zero on meter due to loose connection between meter PT screw and incoming cable 'R' Phase. After tightening the PT screw, voltage appeared normal. This problem has resulted in 33.33 % slowness of the meter.
- (iv) The Respondent thereafter issued a supplementary bill of Rs.1,74,880/- for 22074 units on 13.05.2019 to the Appellant towards under recording of the consumption by 33.33 % for the period from 03.08.2018 to 12.02.2019.
- (v) The Appellant filed the grievance application in the Forum on 12.06.2019. The Forum by its order dated 03.07.2019 has rejected the main grievance of withdrawal of the supplementary bill by citing the Judgement of the Bombay High Court in Writ Petition No. 3614 of 2013. The Forum erred the definition of the meter.
- (vi) The Appellant referred the definition of the meter as per the Regulation 2.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Others Conditions of Supply) Regulations, 2005 (Supply Code Regulations) which is reproduced as below :-

“2 Definitions

2.1. In these Regulations unless the context otherwise requires:

(q) "Meter" means a set of integrating instruments used to measure the amount of electrical energy supplied or the quantity of electrical energy contained in the supply in a given time, which include whole current meter and metering equipment such as current transformer, capacitor, voltage stabilizer, potential or voltage transformer with necessary wiring and accessories.”

As per the said definition, loose wiring of the meter is integral part of the meter. Therefore in the instant case the meter is defective and the recovery towards slowness of meter should be only for a period of three months as per Regulation 15.4.1 of the Supply Code Regulations.

- (vii) The Appellant prayed that the Respondent be directed to revise the supplementary bill towards slowness of meter for a period of three months as per Regulation 15.4.1 of the Supply Code Regulations.

4. The Respondent MSEDCL filed reply by its letter dated 30.09.2019 stating as below: -

- (i) The Appellant is LT Industrial Consumer (No.001943830173) of the MSEDCL having SL of 49.98 kW and CD of 62 kVA from 15.03.2016. The 3 phase 40-200 Amp of Genus Make Meter (No.5791381) was installed.
- (ii) The Respondent checked the metering installation of the Appellant on 12.02.2019 when it was found that 'R' Phase voltage was showing zero value on display of the meter due to loose connection between Voltage Screw and Incoming 'R' phase. Voltage of 'Y' and 'B' phase was found correct on the meter display. After tightening the voltage screw of 'R' phase properly, 'R' phase voltage appeared correctly on the meter display. This was reflected as voltage restored on 12.02.2019 in Meter Reading Instrument (MRI) report.
- (iii) The data of Cumulative Tamper Status Report was retrieved through the MRI. It was found that 'R' phase voltage was missing from 03.08.2018 (18.57.51 hrs.) to 12.02.2019 (15.20.24 hrs.).
- (iv) Since the meter was in order, it was recording only 2/3rd consumption during the above period. Therefore, the Appellant was additionally billed for 1/3rd

consumption. During above period of about 6½ months the Appellant was billed for 44154.92 units (2/3rd consumption) only and hence recovery due to under recording recovery was initiated for 22074.15 units as per Section 56.2 of the Electricity Act 2003(the Act).

- (v) The supplementary bill of Rs.1,74,880/- for 22074 units was issued vide letter dated 13.05.2019 to the Appellant towards under recording of the meter by 33.33 %.
- (vi) The consumption of the Appellant was in the range of 5000 to 7000 units per month during the voltage missing period. The same increased to 11000 to 15000 units per month after restoring the 'R' phase voltage. The previous consumption on the meter, prior to loose connection of 'R' phase was also about 11000 to 12000 units per month.
- (vii) The Forum had rightly dismissed the grievance.
- (viii) The Respondent prayed that the representation of the Appellant be rejected.

Analysis and Ruling

5. Heard the parties. During the hearing on 10.10.2019, Both the Parties argued in line with its written submission. The Appellant argued that the meter screw is part and parcel of the meter. Meter includes the necessary wirings and accessories. Meter was not getting voltage due to loose screw connection of 'R' phase individually. Hence, in the instant case, whatever be the reason, the meter was defective. The Respondent has to assess the bill as per the provision of Regulation 15.4.1 of the Supply Code Regulations which provides that in case the meter has stopped recording, the consumer will be billed for maximum period of three months based on metered consumption for twelve months preceding three months.

6. The Respondent argued that the meter was tested and found in order. The evaluation of all test reports conclude that meter was recording 33.33% less of the total actual consumption. There is, therefore, no case of assessment as per provision of Regulation 15.4.1. The MRI data has been retrieved from the meter which has also been analysed on various parameters. It was observed that 'R' Phase voltage was found missing from 03.08.2018 (18.57.51 hrs.) to 12.02.2019 (15.20.24 hrs.). The meter is working properly at

present. Hence, the assessment period was considered accordingly as per Section 56.2 of the Act.

7. I perused the documents on record. I noted that the meter was in order. However, as the Appellant argued that the meter was not tested in their presence, the Respondent was directed to test the meter in the presence of the Appellant. In pursuance of these directives the Respondent tested the meter on 11.10.2019 and the report is received vide e-mail dated 11.10.2019. The report indicates that the meter is in order.

8. In view of the above I framed following issues:

Issues

- (a) Whether the meter is defective and Regulation 15.4.1 is applicable?
- (b) Whether Section 56 (2) of the Act is applicable?

Issue (a)

Whether the meter is defective and Regulation 15.4.1 is applicable?

Documents and the data produced by the Respondent show that it had checked the metering installation in presence of the Appellant. During testing it was found that the voltage of 'R' phase was missing on the meter. This was due to loose connection of the screw with the 'R' phase cable which is tapped for getting voltage for the meter.

The Appellant contended that this entire arrangement falls under the definition of the meter. Not getting proper voltage at the meter for whatever reason renders the meter faulty and therefore only three months consumption, calculated on average basis for the past one year, needs to be charged as per the provisions of Regulation 15.4.1 of the Supply Code Regulations. The Regulation 15.4.1 is reproduced as below: -

"15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in

accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill.

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further 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 prior to the month in which the billing is contemplated."

In this regard, the Hon. High Court of Mumbai, Bench at Aurangabad in W.P. No. 8613 of 2017 in similar case has observed as below :-

- "33. It is, therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. An under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, Y and 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 consumer 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 consumer, 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."*

Moreover if the meter as such is faulty no data apparently is available for fair assessment of consumption and therefore Regulation 15.4.1 comes into play. However, in the instant case meter as such is not faulty. It has simply recorded less consumption as it did not get correct input in the form of voltage from 'R' phase. In view of this discussion as MRI data of meter is available for fair assessment, provisions of Regulation 15.4 of the Supply Code Regulations does not apply. There is,

therefore, no propriety for assessment as per the said Regulations. Therefore, the Issue (a) is answered in Negative.

Issue (b)

Whether Section 56 (2) of the Act is applicable?

As Issue (a) is answered in negative, the question for period of recovery needs to be decided in light of Section 56 (2) of the Act which is reproduced as below: -

“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:”

The Larger Bench of Bombay High Court by its judgment dated 12th March 2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following view on 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, 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 amount claimed and no bar or period of limitation can be read, though provided by subsection (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.”

79. 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.*

(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.”

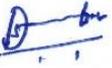
The said judgment is squarely applicable to the instant Representation. The Respondent is entitled for issuing supplementary bill for 24 months prior to the first time the bill was issued to the Appellant. In this case the period of the supplementary bill is about 6 and half months. Therefore Issue (b) is answered accordingly.

Incidentally the Appellant has also filed Representation No 164 of 2019 on the same day on which the instant Representation is filed. The issues are almost same except the fact that in 164 of 2019 'R' and Y phase voltage was missing. Another noticeable feature is that both the connections are in the same building, one being at ground floor and the other at upper floor. It is hard to believe that the voltage missing phenomena is mere a coincidence.

9. The Forum has rightly passed the order hence it is not necessary to interfere in the order of the Forum.

10. The Representation is therefore rejected with no order to cost.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

