

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 39 OF 2022

In the matter of retrospective recovery towards under billing of the meter

Anjana Ganeshram Suthar... ..Appellant

V/s.

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

Appearances:

Appellant : Darshit Sheth, Occupier

Respondent : 1. G. K. Gadekar, Executive Engineer, Vasai
2. Anis Mirza, Addl. Executive Engineer, Vasai

Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 5th July 2022

Date of Order : 13th July 2022

ORDER

The Representation is filed on 17th March 2022 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 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL Vasai (the Forum).

(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



2. The Forum, by its Order dated 21.02.2022 has disposed off the grievance application in Case No. 78 of 2021. The Forum observed that *on analysis of the consumption of complainant recorded after rectification of the error and during R Phase missing it is revealed that after rectification of error the average monthly billed consumption between December 2020 to December 2021 is 4232 units per month and during the period of R phase missing period (27th August 2018 to 13th October 2020) the average monthly billed consumption is 2987 units per month. This means that the customer appears to have charged for less consumptions during period of R Phase missing.*

3. The Appellant filed this instant Representation against the Forum's order dated 21.02.2022. The Appellant and the Respondent was heard on 05.07.2022 through Video Conference. The Appellant's submission and arguments in brief are as below: -

(i) The Appellant is a LT consumer (No.002123335379) from 01.10.2017 having sanctioned load (SL) of 100 HP and Contract Demand (CD) of 93 KVA at S. No. 164, Plot No. A52 & A53, Royal Industrial hub, Near Jain Mandir, Poman, Kolhi, Vasai. The Appellant is in manufacturing of Lighting Fixtures of the well-known brand 'Nirvana'.

(ii) The Respondent visits the premises every month for taking monthly meter reading. Regulation 14.3 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005(the Supply Code Regulations 2005) specifies that it is the prime responsibility of the Respondent to take correct reading along with important parameter. MSEDCL being Licensee is responsible for periodic testing of the Meter installed, The Regulation 14.4 of the Supply Code Regulations 2005 specifies that

"14.4 Testing and Maintenance of Meter

14.4.1 The Distribution Licensee shall be responsible for the periodic testing and maintenance of all consumer meters."

(iii) The Respondent inspected the premises on 10.11.2020. It was informed that R Phase Voltage was zero. Thereafter, the Appellant received a supplementary bill of Rs.3,24,770/- on 03.11.2020 for the period 27.10.2018 to 13.10.2020 without



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



any supporting calculations. The Appellant has never defaulted in any bill payments. Such assessment for 2 years was arbitrary and incorrect. Thereafter, MSEDCL disconnected the supply on 24.02.2021. Further, the Appellant approached the Respondent for clarification of the bill and requested to revise the bills, However the Respondent did not consider the request. The supply was only restored after payment of part bill. There was a loss of production and wasted manpower. The Appellant suffered financial loss.

- (iv) As per the Regulations 15.4 of the Supply Code Regulation 2005, in event of the billing in event of defective meter, the assessment should be restricted to 3 months prior to the month in which dispute has arisen. However, the Respondent has given assessment for more than 2 years. The relevant extract of the Regulation is reproduced below:

"15.4 Billing in the Event of Defective Meters

*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 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." **Emphasis Added.***

- (v) The Appellant filed the grievance before the Forum on 23.03.2021. The Forum, by its Order dated 21.02.2022 disposed of the grievance application without any relief. The Forum failed to understand that the meter was defective.
- (vi) The Appellant stated that it should be compensated for failure of performance as per Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014 (Standards of Performance Regulations 2014).
- (vii) In view of the above, the Appellant prays that the Respondent be directed
- to quash the supplementary bill of Rs. 3,24,770/- and to issue a revised bill considering that the meter is defective, as per Regulation 15.4.1 of Supply Code Regulations 2005.
 - to compensate towards failure of Standards of Performance.
 - to pay a suitable compensation for physical and mental harassment.



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



4. The Respondent filed its reply dated 23.06.2022. Both the parties were heard on 05.07.2022 through Video Conference. Their submissions and arguments in brief are as below:

-

- (i) The Respondent denies all contentions raised in the above representation except those admitted herein below.
- (ii) The Appellant is a LT consumer (No.002123335379) from 01.10.2017 having SL of 100 HP and CD of 93 KVA at S. No. 164, Plot No. A52 & A53, Royal Industrial hub, Near Jain Mandir, Poman, Kolhi, Vasai. The Appellant has an Industrial connection which is billed under LT-V (B II) Tariff Category.
- (iii) The Respondent installed 3 Phase Meter (Sr. No. 05796083) of Genus make having 40-200 A Capacity at the above premises.
- (iv) The Assistant Engineer (Quality Control) [(AE (Q &C))] of the Respondent inspected the premises of the Appellant on 13.10.2021. During inspection, it was observed that the R phase Voltage was missing in the metering unit due to a loose connection, during the period 27th August 2018 to 13th October 2020, as per Data retrieved through MRI. It was noticed that the consumption recorded was only two third of actual consumption. The Respondent simply tightened the loose connection of R Voltage where it was tapped externally. The display of all phases immediately started appearing on the meter. It is possible that some tampering took place leading to under – recording of electricity consumption. Hence, it was necessary to assess the under billing which had happened due to missing of R Phase Voltage. The MRI Report with events related to Voltage and Current of the meter are kept on record.
- (v) The Respondent issued a supplementary bill for 38770 units of Rs.3,24,770/- on 03.11.2020 based on data retrieved from MRI for the above period.
- (vi) The argument of complainant, that R phase voltage of the meter was not recording the consumption properly, and hence the meter may be declared as defective in view of Regulation 15.4.1 of the Supply Code Regulations 2005, is not acceptable at all.

(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



- (vii) In this case, the meter intrinsically was not faulty; however, voltage at the R phase terminal of the meter was missing or showing some random nonstandard values. In a similar case, the Judgment of the Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable which allows the Respondent to assess the consumption for such technical issues. Therefore, recovery on account of the missing voltage of R-Phase of RYB terminology at the meter terminal is justified.
- (viii) As per Regulation 4.4.1 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) that The Distribution Licensees authorized to recover charges for electricity supplied in accordance with such tariff as may be fixed from time to time by the Commission.
- (ix) That, regarding period of recovery, Section 56(2) of the Act allows such recovery for the entire period with certain limitation in case of escape billing, or in case of unbilled consumer. The electricity charges become first due when the bill is issued for the first time for such charges.
- (x) Further, the Hon'ble Supreme Court of India in its Judgment dated 5th October, 2021 in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana BijliVitrans Nigam Ltd. and Others has clearly differentiated application of Section 56 of Electricity Act, 2003 in case of escaped assessment. The relevant paras are reproduced below:

“23. Coming to the second aspect, namely, the impact to Sub-section (1) on Sub section (2) of Section 56, it is seen that the bottom line of Sub section (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 deal 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.



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



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 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."

In the instant case, the Appellant was under billed during the period 27th August 2018 to 13th October 2020 due to missing R Phase. The above mistake was detected on 13.10.2020, and therefore on 03.11.2020, a supplementary bill for 38770 units of Rs.3,24,770/ was issued for unbilled/escaped units of during said period. Therefore, the bar of limitation is not applicable in the present case in view of the case law cited supra.

- (xi) Further, on analysis of the consumption pattern of the Appellant recorded after rectification of the error and during R Phase missing, it is revealed that after rectification of error the average monthly billed consumption for the period of December 2020 to December 2021 was 4232 units per month. On the other hand, during the period of 27th August 2018 to 13th October 2020 when the R phase voltage was missing, the average monthly consumption was 2987 units per month. This means that the Appellant appears to have been charged for 1/3rd less consumption when R Phase voltage was missing.
- (xii) The Forum in its order dated 21.02.2022 has addressed all the facts and issued a reasoned order.



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



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

Analysis and Ruling

5. Heard the parties and perused the documents on record. It is the case of the Appellant that the PT Voltage of R Phase was not extended to the meter for the period from 27.08.2018 to 13.10.2020. This period is calculated from the MRI data downloaded by the Respondent.

6. The Appellant contended that the meter should be treated as defective as per Regulation 15.4.1 of Supply Code Regulations 2005. On the other hand, the Respondent argued that since only R Phase PT Voltage was not extended to the meter, the meter as such cannot be termed as faulty; and therefore Regulation 15.4.1 of Supply Code Regulations 2005 is not attracted. There are many Judgments and orders of the Hon'ble Electricity Ombudsman, Mumbai in similar cases. On the other hand, the Appellant argued that as per the definition of the meter, if any of the equipment included in the definition goes faulty the meter is treated as faulty; and therefore Regulation 15.4.1 of the Supply Code Regulations 2005 needs to be applied, and the consumer should be charged only for three months as per the provisions of Regulation 15.4.1. The Respondent contended that the Appellant has been charged, considering that the meter was under-recording by 33% as per MRI data. The meter was showing voltages of Y and B Phase on meter display. As soon as the screw of the PT Tapping point of R phase was tightened, the meter display started showing R phase Voltage, in addition to Y and B Voltage. When the Voltage of the R Phase was not available to the meter, the meter recorded only 66% of its actual consumption.

7. 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. The relevant part of the Judgment is quoted 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,

(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



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.”

8. The assessment period towards under recording of consumption is 26 months. It is necessary to examine whether this assessment period fulfils the statutory requirement of the 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. 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 said Judgment 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



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



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



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



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.

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



(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai



case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

(Emphasis added)

.....”

In view of the above discussions, the Judgments of the Supreme Court and Larger Bench of Bombay High Court, the Respondent can recover tariff difference only for 24 months retrospectively. 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 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.

9. The ratio of the Judgment dated 5th October 2021 in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others which is referred by the Respondent does not apply to the instant Representation.

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

- a) to revise the supplementary bill of Rs.3,24,770/- towards, under billing for the period from 13.10.2018 to 13.10.2020 instead of 27.08.2018 to 13.10.2020, waiving of interest and DPC levied on this supplementary bill of Rs. 3,24,720/-, if any.
- b) Other prayers of the Appellant are rejected.
- c) Compliance to be submitted within two months from the date of issue of this order.

11. The Forum's order is modified to the extent as above.

12. The Representation is disposed accordingly.

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

(Dilip Dumbre)
Secretary

Electricity Ombudsman Mumbai

