

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 69 OF 2020

In the matter of billing

Sawant Pandharinath DinkarAppellant

V/s

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

Appearances: -

For Appellant : Pandharinath Dinkar Sawant

For Respondent : 1. Satish Dhope, Addl. Executive Engineer, MSEDCL
2. Rajesh Shanbag, AGM, Torrent Power Ltd. (TPL)
3. Hemangi Mayekar, Asst. Manager

Coram: Deepak Lad

Date of Hearing: 7th October 2020


Date of Order : 29th October 2020

ORDER

This Representation is filed on 3rd September 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 18th August 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The Forum, by its Order dated 18.08.2020 has partly allowed the grievance application by majority in Case No. 65 of 2019. The operative part of the order is as below: -

“2. The applicant shall pay arrears of Mr. Sohil Kumar Shah for 2 electricity connections meter no.13892288032 and 13892288041 without any interest and DPC charges within 3 months.


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3. *The respondent shall issue the new connection as prayed by the consumer applicant on clearance of all the arrears as per law.*”

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant purchased the property of House No. 1182/08, Gala No. 8 Narpoli-2, Kariwali Road at Bhiwandi and applied for commercial electricity connection to TPL on 18.03.2013 along with all relevant documents of ownership. After having thoroughly scrutinized /examined the Consumer Information System (CIS)) by TPL, the new connection (Service No. 13895570219) was sanctioned and released under Commercial tariff category on 15.04.2013.
- (ii) The Appellant has not received any notice/notices towards alleged arrears of electricity bills in the name of Sohilkumar R. Shah having service No.1389228032 (Power loom) and Service No.13892288041(Power loom Lighting) with address as H.No.-29/B Kariwali, Opp J.K. Dyeing, Ramchandra Patil Compound, Bhiwandi during the course of normal working till June 2018.
- (iii) The Appellant states that the TPL has carried out wrong spot inspection report on 17.07.2018 claiming that there are alleged arrears of electricity bills in the name of Sohilkumar R. Shah. The TPL issued notice of recovery of the said arrears on 18.07.2018 in the name of Sohilkumar R. Shah which was delivered in Appellant`s premises. However, the new connection having Service No.13895570219 was installed in the name of the Appellant on 15.04.2013. The house number mentioned in the services in the name of Sohilkumar R. Shah is different from the Appellant`s premises. It, therefore, proves that both the said services were not in Appellant`s premises.
- (iv) The said arrears amount of MSEDCL and TPL on 18.07.2018 was as below:

| | Service No. | Type of Service | MSEDCL (Rs.) | TPL (Rs.) |
|-----|-------------|-------------------------|--------------|-------------|
| (1) | 13892288032 | Power loom Motive Power | 10,00,555/- | 1,29,030/-. |
| (2) | 13892288041 | Power loom lighting | 96,453/- | 11840/- |


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- (v) Not agreeing with the notice of recovery towards alleged arrears dated 18.07.2018, the Appellant has filed his grievance application in Internal Grievance Redressal Cell (IGRC) on 23.01.2019. However, the IGRC, by its order dated 04.07.2019 has dismissed the grievance. The IGRC failed to understand the basic issue.
- (vi) The TPL sent reminder notice on dated 06.02.2019, 07.03.2019, 05.04.2019, 07.05.2019, 07.06.2019, 06.08.2019, 06.09.2019. All these notices have come to the Appellant after admitting the case in IGRC, so all of them are null and void.
- (vii) Aggrieved by the order of the IGRC, the Appellant approached the Forum on 23.10.2019. The Forum, by its order dated 18.08.2020 has directed to issue the revised bill for the two connections 13892288032 and 13892288041 without any interest and DPC within three months. It was on 18.07.2018 a notice bearing Serial No.(TPL/BWD/CR/R/Cr-2/175 dated 18.07.2018 was issued to the Appellant for recovery of dues pertaining to Consumer No.(1) 13892288032 (Power loom) and (2) 13892288041 (Power loom lighting). The arrears shown in the notices are time barred as per Section 56(2) of the Electricity Act, 2003 (the Act). The relevant portion 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 sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

- (viii) The Appellant referred the Regulation 10.5 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations 2005 (Supply Code Regulations) which states that recovery of dues can only be done according to this rule. The Regulation 10.5 is quoted as below:

“10.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as a case may be shall be a charge on the premises transmitted to the legal representatives / successor-in-law or transmitted to the new owner / occupier of the premises as the case may be, and the same shall be recoverable by the


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Distribution Licensee as due from such legal representative or successor – in – law or new owner / occupier of the premises as the case may be :

Provided that except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to as maximum period of six month of the unpaid charges for electricity supplied to such premises. ”

- (ix) Hence, whatever had been the condition during the application or the installation of the new power connection is of no importance and the recovery of dues from him can only be under either Section 56(2) of the Act and/or Regulation 10.5 of the Supply Code Regulations which fits according to the laws.
- (x) The Appellant prays as under: -
- Notice dated 18.07.2018 for payment of arrears standing in the name of Sohilkumar Shah be quashed.
 - Spot inspection report dated 17.07.2018 be declared as null and void.
 - Recovery to be made according to the relevant Section 56(2) of the Act and Regulation 10.5 of the Supply Code Regulations 2005.

4. The TPL on behalf of Respondent filed its reply by email on 21.09.2020 stating in brief as under: -


- The Appellant had purchased the said premise in the year 2011 and applied for about 4 KW new 3 phase commercial connection on 18.03.2013 at House No.1182/08, Gala No.8 Narpoli-2, Kariwali Road, Bhiwandi. New connection (Service No. 13895570219) was applied with different tariff and different H. No. i.e. 1182/08 on first floor with willful intention to avoid paying huge dues with respect to already existing Service No. 13892288032 and 13892288041.
- On receipt of the application for new connection, survey was carried out to check the technical and commercial feasibility of the premises. It is to note that the Appellant himself has mentioned the nearest service number as 13892288041 which is lighting service and has intentionally not disclosed Motive Power Service No.13892288032. Details of dues for service No. 13892288032/ 13892288041 are as under:


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| Service No. | Category | Name | Address | TPL Dues | MSEDCL Dues | LP Date | LP Amount | Status |
|-------------|--------------------|--------------------|---|----------|-------------|------------|-----------|--------|
| 13892288032 | 27 HP PL | Sohilkumar R. Shah | H. No.-29/B Kariwali Opp. J.K.Dyeing, Ramchandra Patil Comp | 157380 | 1150530 | 15.04.2013 | 21713 | PD |
| 13892288041 | 0.4 HP PL Lighting | Sohilkumar R. Shah | H. No.-29/B Kariwal Opp J.K. Dyeing, Ramchandra Patil Comp | 0 | 0 | 15.04.2013 | 1902 | PD |


- (iii) During survey of PD Connection by TPL, it was observed that the new connection having live Service No.13895570219 is released on 15.04.2013 on the premises having PD Service No.13892288032 and 13892288041. The same is also evident from the photographs of the switch board present inside the premises which is clearly mentioning Service No.13892288032 and 13892288041. Later, the same has been confirmed by MSEDCL with joint inspection carried out with TPL.
- (iv) As per the new connection application received on 18.03.2013, the 3-phase commercial connection was released on 15.04.2013. Despite being aware of all facts, the Appellant intentionally preferred to apply for new connection with different tariff in the same premises with different address i.e. on first floor of the premises which clearly shows the malafide intention of the Appellant. Immediately, the consumer had also applied for extension of load from 5.36 KW to 27 HP along with change of tariff from commercial to power loom on 12.09.2013 i.e. within 5 months from new connection and disconnection of previous services. At present, the load is being used on the ground and first floor of the said premises.
- (v) In between the release of new connection on 15.04.2013 and load extension application with tariff change dated 12.09.2013, network along with meter of disconnected service was removed on 28.06.2013. The meter of the disconnected service was removed in presence of MSEDCL representative from the said location on 28.06.2013. Photographs to that effect had been taken and already submitted for clarity.
- (vi) It is to bring to your kind notice that the nearest service number mentioned by the surveyor in the survey report for new connection was also 13892288041 which clearly


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indicates that these services were present in the same premises where the new connection was released.

- (vii) Further, as per directives given by the Forum during hearing dated 10.12.2019, joint inspections along with MSEDCL representative and again with the consumer representative Mr. Sajid Ansari was done on 16.12.2019 and 08.01.2020 respectively. During the said inspections, it was clearly shown to consumer representative that the disconnected Service No.13892288032/13892288041 are written on the main switch board located inside the premises of existing live Service No.13895570219.
- (viii) It is to bring to your kind notice that, in its submission dated 17.12.2019 to the Forum had already submitted the copy of GIS mapping of the drawing available in the system. The TPL would again like to throw light on the other adjoining services in the map of the said compound developed by the land owner Mr. Ramchandra Patil with respect to H. No. 1182, Survey No. 29/B & Survey No. 21/7 so as to have the clarity in the interest of justice. Details of adjoining service in the map of the said compound are available on record from which it is clear that there are no premises with H. No. 29/B which is also confirmed by the local authority.
- (ix) Also, as per direction by Forum in hearing dated 10.12.2019, the matter was referred to local authority for further clarification. Compliance of same has been received from the local authority BNCMC vide their letter No. 21/2020 dated 08.01.2020 stating there is no record related to H.No. 29/B. From this it is evident and crystal clear that during release of new connection to Mr. Sohilkumar Shah (Service No. 13892288032 and 13892288041) in the year 1998, Survey No. 29/B was erroneously recorded as H. No. 29/B.
- (x) Further, as per the prevailing practices adopted by the utilities throughout the state in billing system, the route sequence of the services referred in the case are same from which it is evident that the services under reference were in the same premises although the address on record for live Service No. 13895570219 is H. No. 1182/08.


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- (xi) After necessary investigation and due diligence for recovery of dues and site inspection, the transfer of dues notices for Service No.13892288032 to the live service number 13895570219 was issued to the Appellant vide notice dated 18.07.2018. It is very clear from site survey that both the premises are physically the same. The same has been confirmed by MSEDCL also.
- (xii) The above facts and documents on record viz mention of disconnected service as nearest service by the consumer himself in the new connection application, BNCMC letter, joint inspection report, photographs which clearly mentions numbers of disconnected service on the main switch board inside the premises of live service map, route sequence, documents of adjoining services, recovery notices clearly proves that service under reference were in the same premises although the address on the record are different and timely action has been done by the utility for recovery of TPL as well as MSEDCL dues. The said facts also clearly indicates the willful intention of consumer.
- (xiii) The Appellant has approached this Authority without any merits on the findings of the Forum. Thus, nothing ought to be granted against the utility. It is respectfully requested to kindly dismiss the said grievance on the grounds of facts on merits of the case.
- (xiv) The grievance of the Appellant was heard in detail in IGRC and the Forum and the relevant order has been passed. TPL totally rely upon the order dated 23.08.2019 and 18.08.2020 passed by IGRC and the Forum, respectively.
- (xv) Reply in detail to the Grievance as under
After perusing the papers of the Representation submitted by the Appellant, we would like to submit our written reply as under:
- a) The Appellant had purchased the said premise in the year 2011 and applied for about 4 KW new 3 phase Commercial connection on 18.03.2013 despite already existing working power loom Service No.13892288032 and 13892288041. The Appellant has used the earlier connections from year 2011 to till release a new


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connection in the year 2013, the Appellant had used the said connection for his own use.

- b) Later on, willfully, applied for new connection (service number 138955705219) with different tariff and different H. No. 1182/08 on first floor with intention to avoid paying huge dues with respect to already existing and working Service No.13892288032 and 13892288041. Thereafter, immediately applied for load extension from 5.36 KW to 27 HP with change of tariff from commercial to power loom and using total load of the premise which was previously on above mentioned Service No. in order to avoid paying huge dues with respect to already existing and working Service No. 13892288032.
- c) TPL had timely issued notices and also regular bills were generated for disconnected service no. 13892288032/13892288041 till the month of April 2018. Also, the said amount is being shown continuously in the statement of accounts. Hence, Section 56(2) of the Act is not applicable in the present case.
- d) During application for new connection, it was the duty of the Appellant to clear the dues of existing service as he was already using the said service from year 2011. Hence Regulation 10.5 of MERC Supply Code Regulation is not applicable in the present case.
- e) In similar matter, the Electricity Ombudsman has passed an order in Rep.No. 78 of 2008 and 85 of 2008 which clearly interprets Section 56(1), 56(2) of the Act 2003 “The Respondent not only raised the arrears against that account but has also shown them continuously, on month to month basis in the CPL. Therefore, inspite of the fact that arrears are over two years old, they do not render non-recoverable within the meaning of Section 56(2) of the Act and has also clarified Regulation 10.5 of the Supply Code Regulations thereby empowering for transfer of dues.
- f) Here, it is necessary to bring to the knowledge the Hon’ble Ombudsman that for the first time the Appellant has raised this new issue of section 10.5 of Supply Code Regulation. Here it is also necessary to bring to the knowledge of the


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Hon'ble Ombudsman that earlier Appellant was denying the existence of both services i.e. New and PD before IGRC, TPL Bhiwandi & Hon'ble Forum Appellant.

- g) That the prayer cause of "Recovery to be made according to the relevant section 10.5 of MERC Supply Code Regulation 2005 has been newly inserted which was not in the part of the claim filed by the Appellant before IGRC & CGRF.
 - h) The Appellant has filed this representation to challenge the impugned order, by hiding true facts to produce time and to get away from his liability, without any sufficient cause, without any prima facie loss or damage or inconvenience caused to the Appellant / Consumer. Hence, the Appellant is not entitled for any relief as per prayer clause.
 - i) That the allegation of the Appellant is wholly misconceived, groundless, false, untenable in law besides being extraneous and irrelevant having regard to the facts and circumstances of the matter.
- (xvi) The TPL on behalf of the Respondent prays that the representation of the Appellant be rejected.

5. The Respondent MSEDCL filed its reply by email on 25.09.2020 stating in brief as under:

- (i) It is humbly submitted that since 26.01.2007, the electricity distribution and billing in Bhiwandi has been handed over to M/s. Torrent Power Ltd. for a period of 10 years and from 01.01.2017 for further 10 years along with the assets of Distribution Network.
- (ii) The grievance of Appellant at the Forum was that TPL is claiming dues of Service No.13892288032 and 13892288041 which does not belong to him and are at different premises.
- (iii) In the present case, the connection bearing service number 13895570219 is in the name of Mr. Pandharinath Dinkar Sawant (Appellant). The date of connection is 15.04.2013.



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- (iv) As per TPL, the Appellant applied for new connection vide Service No. 13895570219 for commercial purpose on 18.03.2013 at H. no. 1182/08, Gala 8, Narpoli-2, Kariwali Road, Bhiwandi. The connection was released on 15.04.2013. The Appellant had purchased the said premise in the year 2011. The Appellant has used the earlier connections 13892288032 and 13892288041 from the year 2011 to till release of new connection in 2013 on first floor. The meters of old service connections 13892288032 and 13892288041 were removed on 28.06.2013. The Appellant further applied for extension of load from 5.36 KW to 27 HP on 12.09.2013.
- (v) As per TPL, at the time of survey on 16.12.2019, it was observed that there are two services missing at the same premises. The details are as given below.

| Service No. | Name | MSEDCL dues (Rs.) | Service status |
|-------------|---------------------|-------------------|----------------|
| 13892288032 | Sohailkumar R. Shah | 11,50,530 | Disconnected |
| 13892288041 | Sohailkumar R. Shah | Nil | Disconnected |

- (vi) Joint verification of site was done on 08.01.2020 in the presence of consumer's representative Mr. Sajid Ansari, in which it was clearly established that the above two connections were in the same premise. The Appellant is trying to mislead the Forum.
- (vii) So, the application is liable to be rejected under Regulation 6.9 (a) of CGRF Regulations 2006 which stipulates that the
- “Forum may reject the Grievance at any stage if it appears so it that the Grievance is: frivolous, vexatious, mala fide,”*
- (viii) Further, the MSEDCL and TPL arrears are to be recovered as per Section 170 of the Act which states that
- “Any penalty payable by a person under this Act, if not paid, may be recovered as if it were an arrear of land revenue.”*
- (ix) Further, as per the guidelines mentioned by MSEDCL in Circular No.19021 dated 06.07.2013, the Appellant is liable to clear the dues as PD service is found in the


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same premises. Accordingly, M/s TPL has served “transfer of dues” notice dated 18.07.2018 from PD service 13892288032 to the live service 13895570219.

- (x) It is to bring to notice that though the meter was removed, the bills were generated and issued at the premises on monthly basis still the Appellant ignored to pay the bills.
- (xi) Regarding both the service connections in grievance, TPL has continuously shown the MSEDCL arrears as recoverable dues on the monthly bills of the consumer as per Section 56(2) of the Act to maintain the claim of MSEDCL on the arrears.
- (xii) Further, as per Section 48 of the Act (additional terms of supply)


A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept-

- (a) *any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;*
- (b) *any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied.*

- (xiii) It is clear that the Appellant wants to take undue advantage of the system and is making mockery of the system. The Appellant is engaging the government machinery for his vague demand and is trying to evade the payment of legitimate MSEDCL dues. Therefore, the Respondent prays that the representation of the Appellant be rejected.

6. The hearing was scheduled on 07.10.2020 through e-platform due to Covid-19 epidemic. During the hearing, the Appellant argued that it has nothing to do with the connections in the name of Sohilkumar Shah which are in arrears. These connections were never in existence at his premises where the power loom business is being run. Therefore, these arrears standing in the name of Sohilkumar Shah cannot be recovered from him.

7. The Respondent argued that connections in the name of Sohilkumar Shah were very much in existence at the premises and this is proved beyond reasonable doubt through a spot inspection report conducted post direction of the Forum. Moreover, the Appellant, himself, has quoted


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Service No. 13892288041 as the nearest Service available while applying for a commercial connection which was subsequently converted into power loom. It also argued that this commercial connection was immediately changed into a power loom connection within a short span of six months. It is, therefore, clear that the Appellant has with an ulterior motive initially sought commercial connection at the upper floor and converted it into power loom connection and finally started operating power loom from the upper and the ground floor. This modus operandi is to avoid paying the past arrears on the premises.

Analysis and Ruling

8. Heard both the parties and perused the documents on record. I am amused to see that the Appellant submitted transfer of property documents of how the property has changed hands but the relevant document which shows the ownership of the Appellant is conspicuously absent, for the reasons best known to the Appellant. Secondly, there is substance in the submission of the Respondent that the Appellant while initially taking the commercial connection at the said premises has himself quoted the nearest service available as a connection number against which the arrears are to be paid. Not only this specially quoted by the Appellant as the nearest service number is nowhere available except at the said premises. To supplement this, the service number was seen written on the notice board of the said premises when a joint inspection was carried in presence of the Appellant as per the directions of the Forum. This has been appropriately captured by the Respondent in its submission at Serial No. 4 (vii). The Appellant is taking a plea of different premises from the numbering of the property. The Respondent has confirmed from the Municipal Corporation of Bhiwandi that there is no House No.29 B on its record. This tallies with the submission of the Respondent that it is not House No.29 B but Survey No. 29 B.

9. I have no doubt in my mind that the connections / services having No. 13892288032 and 13892288041 were at the premises where the Appellant is now enjoying power supply. The Appellant with an ulterior motive has taken the commercial connection on the first floor. In fact,


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it is not a first floor. On the contrary, first floor type arrangement is created by partitioning vertical portion of the premises and connecting it through a staircase with the ground. This is very much clear from the sketch shown in the IGRC order dated 23.08.2019 on the bottom of its second page. The IGRC order consists of three pages only.

10. The Respondent should be careful while doing the survey in case of releasing new connections to avoid such things in future.

11. The Forum has issued a reasoned and speaking order and recorded all relevant facts of the case. I, therefore, do not find it necessary to interfere with it. In view of this, the representation is rejected with no cost.

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


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Secretary
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