

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 97 OF 2022

(REVIEW OF THE ORDER IN REPRESENTATION NO. 42 OF 2022)

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

The Secretary. Review Applicant
(Puj Panchayat Chaliha Sahib Hall)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Ulhasnagar Dn. II..... Respondent
(MSEDCL)

Appearances: -

Review Applicant: Khaildas V. Langani, Vice President

Respondent :1. Pravin Chakole, Executive Engineer, Ulhasnagar II Dn.
2. Vijay Yadav, Addl. Executive Engineer, Ulhasnagar 5 Sub./Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 19th September 2022

Date of Order: 22nd September 2022

ORDER

This Review Application is filed on 24th June 2022 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 30th May 2022 in Representation 42 of 2022 passed by the Electricity Ombudsman (Mumbai).


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




2. The Electricity Ombudsman, Mumbai, by its order dated 30.05.2022 has partially allowed the Representation No. 42 of 2022. The relevant portion of the order is reproduced as below: -

“a) The Respondent to issue revised bill for the period 26.07.2018 to 06.07.2019 and from 07.07.2019 to 31.07.2020 considering the unrecorded consumption of 33%, without any interest and delayed payment charges. Interest and delayed payment charges levied, if any, in the bills, be withdrawn from the date of supplementary bill till the date of this order. This revised bill will not attract any DPC or interest.

b) The Applicant may be granted suitable equal instalments, not more than ten, if the Applicant so desires, without DPC and interest on the component of instalments.”

3. Aggrieved by this order dated 30.05.2022, the Applicant has filed this Review Application. The e-hearing was held on 19.09.2022 through Video conference. Both the parties were heard. The Applicant’s written submission and arguments in brief is stated as below: -

- (i) The Applicant is a LT Consumer (No. 021514297964) from 07.02.1990. It is Puj Jhulelal Mandir (Chaliha Sahib) Trust at Barrack No.1084, Military Talao, at Ulhasnagar Camp 5.
- (ii) The Applicant received a supplementary bill of Rs.8,52,760 /- without any supporting calculations, etc. The bill raised is arbitrary and without any transparency. The Respondent did not issue the calculation sheet and relevant documents. The Applicant approached the Respondent for clarification of the bill. The Respondent intimated that the meter was recording 1/3rd less consumption due to missing of R phase voltage for the 2 years period from August 2018 to June 2020.
- (iii) The Respondent did not provide the Raw Data of monthly Billing for the disputed period. As per Snapshot of Raw Data, the current in ampere was counting though the voltage was low. The Maximum Demand (MD) recorded in billing system and present MD are approximately same.
- (iv) The Applicant did not believe the methodology adopted by the then Additional Executive Engineer for inspection of the electric installation. The basic assumption of


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the Respondent was wrong for calculating the supplementary bill. Hence, the assessment, which is based on wrong assumption, needs to set aside.

- (v) The Respondent cited the Judgment of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 for support of its supplementary bill. However, the ratio of this Judgment is different and not squarely applicable in the instant case.
- (vi) The Applicant sent email dated 16.09.2022. The period of assessment is two years and six days, i.e., 26.07.2018 to 31.07.2020. The period of assessment is more than two years. The Applicant put on record the paper showing as below:

“Law: Electricity Act- Additional Bill Raised by Distributor After Detecting Mistake Not Hit By 2 Years Limitation Under Section 56(2): Supreme Court dated 06.10.2021.”


- (vii) The Applicant sent another email dated 18.09.2022 indicating consumption pattern of the following months.

Sr. No.	Month	Units consumed (Units)	Month	Units consumed (Units)
1	Aug-19	9884	Aug-20	7712
2	Sep-19	6628	Sep-20	5059
3	Oct-19	5698	Oct-20	5067
4	Nov-19	6411	Nov-20	5246

- (viii) In view of the above, the Applicant prays that the Respondent be directed to withdraw the supplementary bill of Rs. 8,52,760/- without any interest and DPC.

4. The Respondent filed a reply by its letter dated 29.07.2022. The Respondent attended the hearing on 19.09. 2020 through Video Conference. The Respondent's submission and arguments in brief is as below: -

- (i) The Appellant is a LT Consumer (No.021514297964) from 07.02.1990 having Sanctioned Load of 48 KW at Puj Panchayat Chaliha Sahib Hall, Ulhasnagar Camp 5. The supply is for a Temple and its surrounding premises. The Respondent inspected the premises of the Appellant on 29.07.2020. It was found that R Phase voltage was missing in the metering unit due to loose connection. The MRI data of the meter was


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




retrieved where it was found that R Phase Voltage was missing from 26.07.2018 to 06.07.2019 and from 07.07.2019 to 28.07.2020. The Respondent issued a supplementary bill of Rs. Rs. 8,52,757/- towards 1/3rd consumption of R Phase Voltage missing from Aug 2018 to Jun 2020 (total 23 months).

- (ii) The present Review Application filed by the Applicant is wrong, baseless, and not maintainable as per law. A review can be filed in case of discovery of new evidence or detection of an error in the order of Hon'ble Ombudsman. There is no error or mistake, as well as there is no discovery of new evidence. Hence, the review filed by Applicant is not maintainable and may kindly be dismissed with cost.
- (iii) The Judgement of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable in the instant case. There was nothing intrinsically wrong with the meter. The same meter is working satisfactory at present on the premises. The meter was under recording by 33% as per retrieved MRI data of the meter. As soon as the screw of the PT Tapping external point of R phase was tightened, the meter display started showing R phase Voltage in addition to Y and B phase Voltage.
- (iv) Calculation sheets along with all relevant papers are given to the Applicant. The meter is not defective. The recovery is legal and proper as per Section 56(2) of the Act.
- (v) The Respondent cited the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support for recovery of escaped billing. The relevant para-No. 25 is referred during hearing which is reproduced as below:

“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 is 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) of Section 56.”

- (vi) The Respondent pointed out that the Applicant's email dated 16.09.2022 is baseless


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




stating that “the period of assessment is two years and six days, i.e., 26.07.2018 to 31.07. 2020”. These dates are the events occurred as per MRI Report. However, the assessment is done for the period of 23 months i.e., August 2018 to June 2020. The dates mentioned are merely the dates of billing. However, the period of assessment is only August 2018 to June 2020, i.e., 23 months. The comments for additional bill raised is in reference to the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. The Applicant failed to understand the language of the reference. In fact, it is supportive to the Respondent’s claim and not Applicant’s submission.

- (vii) The Respondent argued that the Appellant’s comparison of consumption for the period of “Aug. 2019 to Oct. 2019 and Aug. 20 to Oct. 2020” has no meaning. There were various functions held in the Temple during the period from Aug.2019 to Oct. 2019, however, there was no function celebrated in the second period of Aug. 2020 to Oct. 2020 due to Covid-19 pandemic. The present consumption pattern is as below:

Sr. No.	Month	Units consumed (Units)
1	Aug-22	10637
2	Jul-22	8313
3	Jun-22	6,039
4	May-22	7,183
5	Apr-22	6,545
6	Mar-22	6,142

The above table clearly indicates that there was / is considerable consumption of electricity in the temple.

- (viii) In view of the above, the Respondent prays that the Review Application be dismissed.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Analysis and Ruling

5. Heard the parties and perused the documents on record. The Applicant is a LT Consumer from 07.02.1990 having Sanctioned Load of 48 KW at Puj Panchayat Chaliha Sahib Hall, Ulhasnagar Camp 5. The supply is for a Temple and its surrounding premises. The Respondent inspected the premises of the Appellant on 29.07.2020. It is the case of the Applicant that the PT Voltage of R Phase was not extended to the meter from 26.07.2018 to 06.07.2019 and from 07.07.2019 to 31.07.2020. However, Y and B phase Voltage was found in order. This period is calculated from the MRI data of the meter downloaded by the Respondent. The Respondent issued a supplementary bill of Rs. Rs. 8,52,757/- towards 1/3rd consumption of R Phase Voltage missing from Aug 2018 to Jun 2020 (total 23 months).

6. According to the Applicant, the assessment done by the Respondent towards underbilling is for the period of 2 years and 6 days. The Section 56 (2) of the Act provides only for two years as per the Larger Bench Judgment dated 12.03.2019 in W.P. No. 10764 of 2011 and other W.Ps. This means the assessment is valid for 2 years and was only barred for 6 days. The Applicant did not understand the true meaning of legal term. As per Judgment of Supreme Court in Civil Appeal No. 7235 of 2009 dated 05.10.2021 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd., the Respondent's supplementary bill of around three years was allowed, considering escaped billing. Hence, the arguments of the Appellant for 2 years and 6 days is not tenable. The comparison statement of the consumption for the period August 2019 to November 2019 and August 2020 to November 2020 is not valid in view of the Covid 19 pandemic. The Applicant's argument does not stand on the basic parameters of scrutiny.

7. The Review under Regulation 22 of the CGRF & EO Regulations 2020 is limited. The said Regulation is quoted below: -

"22 Review of Order of Electricity Ombudsman


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

(a) Where no appeal has been preferred;

(b) on account of some mistake or error apparent from the face of the record;

(c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.

22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.

22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.


22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

8. I am of the opinion that all important issues in sum and substance have been covered in the original order. The review applications are nothing but a repetition of the original representations barring a few exceptions. The Applicants are trying to seek an appeal under the guise of review which is not permitted. The scope of review is very limited. The alleged mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has powers to review its ruling to correct a patent error and not a minor mistake of inconsequential import. In the matter of review of the order, the following Judgments of the Supreme Court are reproduced below: -

In the matter of Kamlesh Varma v/s Mayawati and Or's reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

9. In view of the above, I am of the view that there is no substance in this Review Application, which is therefore rejected and disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

