

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 43 OF 2020

In the matter of billing and retrospective recovery

Mercantile Plastic Pvt. Ltd. Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Thane – I (MSEDCL)Respondent

Appearances

For Appellant : 1. Tulshiram Mane, Consumer Representative
2. G. N. Bansode, Consumer Representative

For Respondent : 1) Raman B. Datunwala, Acting Ex. Engineer, Thane – I
2) Anand Rathod, Addl. Ex. Engineer, Gadkari Sub Dn.


Coram: Deepak Lad

Date of Hearing: - 23rd July 2020

Date of Order: - 28th July 2020

ORDER

This Representation is filed on 11th March 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 14th January 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone.


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2. The Forum, by its order dated 14.01.2020 has partly allowed the grievance application in Case No. 40 of 2019 and the operative part of the order is as below: -


“2. The respondent is hereby directed to recover the bill from the applicant consumer as per applying MF-02 for a period of 24 months prior to February 2019.

3. Enquiry may be held the respondent is hereby directed to issue appropriate enquiry and action as deem fit against the erring officer for lack of supervision and committed such loss and caused harassment of important commercial consumer within 3 months.

4. The Respondent MSEDCL shall do needful to adjust the refund in future bills.”

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


- (i) The Appellant is a Special LT Consumer (No. 400000100461) from 01.01.1987 having current Contract Demand of 92 KVA and Connected Load of 148 KW at Huzuri Road, opposite Murphy Radio, and LIC building, Naupada, Thane. The Appellant entered into the construction business and has started its construction activity. The Appellant has paid the monthly bills regularly till March 2019.
- (ii) The Appellant received a supplementary bill of Rs.85,34,958/- from the Respondent vide its letter dated 18.04.2019 claiming retrospective recovery towards wrong multiplying factor (MF) from MF-1 to MF-2 for the period February 2015 to February 2019.
- (iii) The Appellant, vide its letter dated 25.04.2019, has protested the same and requested to withdraw the supplementary bill as the Appellant is paying regular monthly bills. However, they did not give any relief. The Respondent vide its letter dated 22.05.2019 has stated to pay the supplementary bill immediately.
- (iv) The Appellant filed the grievance application with Internal Grievance Redressal Cell (IGRC) on 22.05.2019. The Appellant has requested vide its letter dated 23.05.2019 to the Respondent to issue only current bill for payment, however the Respondent refused to do so.
- (v) The IGRC, by its order dated 26.07.2019 has rejected the grievance. The IGRC did not follow any rules and regulations.
- (vi) The Respondent disconnected the supply of the Appellant on 31.07.2019 without any statutory notice of 15 days as per Section 56(1) of the Electricity Act, 2003


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(the Act). The Respondent pressurised the Appellant to pay part payment of Rs.20,00,000/- or otherwise the supply will remain disconnected. Finally, the Appellant has given undertaking that the Appellant will pay Rs.20,00,000/- on or before 02.08.2019. After submitting undertaking, the Appellant has paid reconnection charges of Rs.236/- on 31.07.2019 as per direction of the Respondent. On payment of reconnection charges, the Respondent restored the power supply. The Appellant has paid Rs. 20,00,000/- on 02.08. 2019 towards part payment.

- (vii) Not satisfied with the order of the IGRC, the Appellant approached the Forum on 05.08.2019. The Forum, by its order dated 14.01.2020 has partly allowed the grievance and directed the Respondent to recover the retrospective bill from the Appellant only for 24 months prior to February 2019. The effect should be given in next billing cycle.
- (viii) In this circumstance, the Appellant raised following points as
- a) Feeding the MF in the billing system is the work of the Respondent. The mistake was done by them only. The Respondent is responsible for its act of omission, and not the Appellant. The Appellant should not be penalised in the matter.
 - b) The Appellant is a special LT consumer of high consumption and important consumer. Normally, special LT consumers are checked periodically by the Respondent, Testing Team, Operation and Maintenance team, and Flying Squad Unit. They frequently visited the Appellant's premises in four years. The mistake was not pointed out by any visiting team of the Respondent.
 - c) The Respondent vide its letter dated 18.04.2019 informed the Appellant, about the recovery due, however, the Respondent did not bother to explain about the huge bill that was served to the Appellant. The supplementary bill was added in the current bill.
 - d) The Respondent did not implement the order of the Forum till date.
- (ix) It was necessary to consider the retrospective recovery for the period of 24 months as per Section 56(2) of the Act. However, the Respondent failed to implement Section 56(2) of the Act.
- (x) In view of the above, the Appellant prays that the Respondent be directed



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- (xi) to revise the bill as per order of the Forum and grant 12 instalments for payment of revised supplementary bill as per guidelines of Respondent's Commercial circular dated 18.07.2009.
- (xii) to refund the interest on paid amount of Rs.20,00,000/-from 2.08.2019 to 14.01.2020 as per RBI rate.
- (xiii) to compensate Rs.25,000/- towards loss suffered by the consumer for mental agony due to disconnection without notice as per Section 56(1) of the Act.

4. The Respondent filed its reply by letter dated 26.06.2020 stating in brief as under: -

- (i) The Appellant is a LT Consumer (No. 400000100461) from 01.01.1987 having current Contract Demand of 92 KVA and Connected Load of 148 KW at Huzuri Road, opposite Murphy Radio, and LIC building, Naupada, Thane.
- (ii) The Respondent, Testing Division, Thane carried out spot inspection of the premises on 27.03.2019. During inspection, it was observed that the MF for the said electrical installation was found MF-2(two), however the Appellant was wrongly billed with MF-1(one).
- (iii) As per spot inspection report, the Respondent has changed MF from 1(one) to 2(two) in the computerised billing system in the billing month of March 2019. Therefore, the Appellant was assessed for Rs.85,34,958/- towards retrospective plain recovery on account of change of MF for the period February 2015 to February 2019. Accordingly, B80 (Format of the Respondent) of retrospective recovery was fed to the billing system in the month of April 2019 after approval from the Competent Authority of the Respondent. The Respondent vide its letter dated 18.04.2019 informed the said recovery to the Appellant and on next day, i.e. on 20.04.2019 visited the Appellant's office for detailed explanation of recovery bill.
- (iv) The Appellant vide its letter dated 25.04.2019 denied to pay the recovery bill and requested to issue current bill. The Respondent, by its letter dated 16.05.2019 has requested to pay the recovery bill and cooperate in the matter.
- (v) The Appellant filed its grievance in IGRC on 22.05.2019, the IGRC, by its order dated 28.07.2019 has rejected the grievance.



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- (vi) Then the Appellant approached the Forum on 05.08.2019. The Forum, by its order dated 14.01.2020 has partly allowed the grievance application and directed to recover the retrospective bill from the Appellant towards wrong MF for the period of 24 months prior to February 2019.
- (vii) Accordingly, bill revision in Format B80 was prepared for revised amount of Rs.41,35,134/- for the period February 2017 to February 2019 and the proposal was forwarded for approval to the Respondent's Competent Authority vide letter dated 22.01.2020. The approval is still awaited.
- (viii) The Respondent is in process to implement the Forum's order. Considering all these facts, the Respondent prays for rejection of the representation.

5. The hearing could not be conducted due to onset of Covid-19 epidemic and non-receipt of the reply from the Respondent in time. The conditions due to the epidemic were not conducive for conducting the usual hearings through physical presence, the hearing was scheduled on 23.07.2020 on e-platform after the consent from the parties. During the hearing, the Appellant and the Respondent argued in line with their respective written submissions. The Appellant argued that the Respondent is habitual in exceeding its power and threatened for disconnection without any proper notice many times. When the grievance was registered in the grievance mechanism, the Respondent was expected to wait for the decision of quasi-judicial authority before taking any action. The Appellant registered the grievance in the office of the Electricity Ombudsman (Mumbai) on 11.03.2020, however, the Respondent threatened to disconnect at the end of March 2020. At last the Appellant paid Rs.5,00,000/- to avoid the disconnection. The Appellant prayed that the Respondent be directed to revise the retrospective recovery as per the order of the Forum without interest and DPC till date of the order and to allow 12 equal monthly instalments.

6. The Respondent stated that the 15 days' notice of disconnection as per Section 56(1) of the Act was served to the Appellant from time to time to recover the dues. There is no ill intention to disconnect the Appellant. The Appellant started its activity of construction. However, it was not intimated to the Respondent. The Appellant was assessed for Rs.85,34,958/- for retrospective plain recovery for the period from February 2015 to February 2019 towards wrong MF from 1 (one) to 2 (two). The plain recovery bill is raised for consumed


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units. There is a mistake in MF which was pointed out by the Testing Team on 27.03.2019. This mistake was rectified in March 2019 by feeding the correct code in the billing system and communicated verbally that the retrospective recovery will be shortly issued. Accordingly, the Respondent vide letter dated 18.04.2019 informed the Appellant to pay the recovery dues and cooperate in the matter. The Respondent pointed out that it had visited the Appellant's premises on 20.04.2019 to explain the details of the bill, however the Appellant was reluctant to cooperate and did not respond. The Appellant has made part payment only after issue of notice as per Section 56(1) of the Act. The Forum, by its order dated 14.01.2020 has allowed the grievance application and directed to recover retrospectively towards wrong MF for the period of 24 month prior to February 2019. Accordingly, bill revision in B80 Format was prepared for revised amount of Rs.41,35,134/- for the period Feb-2017 to Feb-2019 and the proposal is put up for approval to the Competent Authority of the Respondent. It is being followed up and relief will be extended shortly. Considering all these facts, the Respondent prays that the representation of the Appellant be rejected.

Analysis and Ruling

7. Heard the parties and perused the documents on record. It is an admitted position that the Appellant was billed with incorrect MF- 1 instead of MF-2 from February 2015 to February 2019. The Testing team pointed out the irregularity of wrong MF during inspection dated 27.03.2019. The MF-2 was corrected in the bill of March 2019. Pursuant to this change of MF-2 instead of MF-1, the Respondent raised plain retrospective bill of Rs.85,34,957.64 first time vide its letter dated 18.04.2019 for the period February 2015 to February 2019 followed by reminder dated 16.05.2019.

8. The Appellant prays for relief as per the order of the Forum who has considered recovery as per Section 56 (2) of the Act for 24 months. The 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.


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Section 56 (2) of the Act is reproduced as 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.”

The Larger Bench Judgment dated 12.03.2019 of the Bombay High Court 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


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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 to 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.”

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.


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- (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 sub-section (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.*


9. The Respondent served the supplementary in the month of April 2019 hence retrospective recovery shall be for a period of 24 months prior to April 2019 i.e. from April 2017 to March 2019 as per Section 56 (2) of the Act.

10. I noted that the Respondent's competent authority has approved recovery of Rs.85,34,958/- within a span of 15 days whereas the approval for the revision of the bill as per the order of the Forum is still pending when the same was sent to it on 22.01.2020 by the Sub-division in charge.

11. In view of the above, I pass the following order: -

The Respondent is directed as under: -

- (a) To recover the amount towards MF-1 to MF-2 as per Section 56(2) of the Act for the period from April 2017 to March 2019 without DPC and interest.
- (b) The revised bill shall be issued within 30 days from the date of the order without waiting for the approval of the Competent Authority of the Respondent. The amount already paid by the Appellant towards arrears shall be adjusted.
- (c) To allow the Appellant to pay the balance amount in 10 monthly instalments along with current bill. In case of default, the interest, DPC shall be levied.
- (d) To pay an amount of Rs.2000/- towards cost of litigation which shall be adjusted in the immediate ensuing bill of the Appellant.
- (e) The Respondent's Competent Authority may decide on the action that could be taken against the concerned for the lapse in applying wrong MF and thereby resulting in monetary loss for the period from February 2015 to March 2017.
- (f) Compliance with respect to (e) above and revision of bill to be submitted within two months from the date of issue of this order.


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12. The order of the Forum is revised to the above extent. Other prayers of the Appellant are rejected.

13. The Representation is disposed of accordingly.

14. The secretariat of this office is directed to adjust the amount of Rs.25000/- deposited by the Appellant, in its billing account in the ensuing bill.

15. The secretariat of this office is further directed to send copy of the order to the Chief Engineer, Bhandup Urban Zone for necessary action so that such mistakes are avoided.

Sd/-
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Electricity Ombudsman (Mumbai)


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Secretary
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