

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 27 OF 2023

In the matter of retrospective recovery towards under billing

Farid Gulam Husain Faquih Appellant

V/s.

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

Appearances:

Appellant: Suraj Chakraborty, Representative

Respondent: 1. Dhananjay Mohod, Executive Engineer
2. Deepak Jadhav, Addl. Executive, Koparkhairane Sub. Dn.
3. Vijay Namdev, Asst. Engineer

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing : 13th June 2023

Date of Order : 16th June 2023

ORDER

This Representation was filed on 6th March 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 6th January 2023 passed by the Consumer Grievance Redressal Forum, Bhandup (the Forum).

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2. The Forum, by its order dated 06.01.2023 has partly allowed the grievance application in Case No. 101 of 2022-23. The operative part of the order is as below:-

- “2. Respondent utility is entitled to recover the provisional bill in arrears amounting to Rs.7,28,760/- for the period from 28.03.2018 to 06.05.2022.
3. The Applicant consumer is granted eight equal monthly installments for payment of bill arrears. The monthly installments granted for the payment of bill arrears are to be paid along with the current bills being issued by the Respondent utility from time to time till entire provision bill is fully paid by the consumer.
4. If the Applicant consumer fails to deposit the monthly installments along with the current bill amount, then the Respondent has authority to disconnect the electrical supply as per MSEDCL Rules and Regulations.”

3. The Appellant has filed this Representation against the above order passed by the Forum. The e-hearing was held through video conference on 13th June 2023. Parties heard at length. The submission and arguments of the Appellant are as below:-


- (i) The Appellant is a LT Industrial Consumer (No.000657268640) from 10.09.2007 having Sanctioned Load (SL) of 69 HP and Contract Demand (CD) of 61 KVA at Excel Cold Storage, H N 162/04, Adivali Bhutali, Mahape Road, Navi Mumbai. The Appellant runs a cold storage plant.
- (ii) The Respondent inspected the premises of the Appellant on 06.05.2022. During inspection, the Respondent observed that Y phase PT voltage to the meter was missing. The meter was recording only 67.13 % of the consumption, i.e. less recording by 32.87 %.
- (iii) The Additional Executive Engineer Koparkhairane, Subdivision issued plain retrospective recovery of Rs.7,28,760/- towards under recording of consumption by 32.787% for the


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period from 28.03.2018 to 06.05.2022. The supplementary bill is not correct and is based on a hypothetical assumption.

- (iv) On receipt of the bill, the Applicant visited Koparkhairane, Sub-Div. and requested to withdraw the bill, but they refused to revise the bill. The supplementary bill was debited in the bill of August 2022.
- (v) The Appellant filed a grievance application with the Forum on 21.09.2022. The Forum, by its order dated 06.01.2023 partly allowed the grievance application. The operative part of the order is taken at Para 2. The Forum failed to understand the basic issue that the Licensee is not permitted to recover retrospective recovery for more than 24 months as per Section 56(2) of the Electricity Act, 2003 (the Act) due to deficiency in service.
- (vi) It is the prime duty of the Respondent to maintain the meter in order. The Respondent failed to do so. The meter reading is taken on a monthly basis, downloading the data of the meter by MRI. Then why is the Respondent not aware about any technical issue of one phase voltage missing? It is the prime responsibility of the Respondent to check and maintain the connections of the meter, and tapping of voltage screws to check if they are well tightened. The Testing Team has confirmed that the seals of the meter were found in order. Hence, the Appellant is not responsible for any loose screw connection. After tightening of the screw of Y phase of cable tapping point, the meter voltage of Y phase was found in order.
- (vii) The Appellant had requested to hand over a copy of the MRI report of the meter based on which the assessment is proposed. The report was not handed over till now.
- (viii) The Forum relied upon the judgement of Prem Cottex V/s Uttar Haryana Bijli Nigam Ltd and others in Civil Appeal No. 7235 of 2009 decided on 5th October 2021, considering the case as one of escaped billing. However, this is not a case of escaped billing, but this grievance falls under “fault, imperfection, deficiency in the quality and performance” which is based on Section 56(2) of the Act. The ratio of this judgement is not applicable to the present case, which comes under deficiency in service and not escaped billing. More than 24 months’ assessment is barred under Section 56(2) of the Act.



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- (ix) The Section 56(2) of the Act has been interpreted by the Larger Bench Judgement 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.
- (x) The Appellant prays that the Respondent be directed:
- to declare the meter as defective **or**
 - to allow recovery as per Section 56 (2) of the Act, for only 24 months.
 - To allow 24 monthly instalments.

4. The Respondent filed its reply on 26.05.2023. Its submissions and arguments are stated in brief as below:

- a) The Appellant is a LT Industrial Consumer as mentioned in para 3 (i). The existing meter of the consumer is of Secure Make (Sr. No. MI-ID04158) having Type- 3ph4w, 40-200Amp Meter.
- b) On 06.05.2022, Teams of Testing Division, Vashi of the Respondent visited the premises of the Appellant to carry out routine inspection of the consumer. During inspection, it was observed that “Y Phase Voltage” was missing on meter display. The voltage of Y Phase was not extended due to loose screw of meter terminal. Testing of total installation was carried out with testing equipment like Zera and Accucheck machines. It was found that the meter was recording less energy consumption by 32.87%. The meter as such was in order; however Y Phase voltage was not being extended to the meter.
- c) The MRI data of the meter was downloaded. As per MRI data report, the occurrence of Y Phase Voltage to the meter was found missing for the period from 28.03.2018 to 06.05.2022 due to a loose connection.


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- d) After the tightening of the screw of Y Phase where it was tapped from the cable, Y phase Voltage was extended to the meter, which started displaying the correct reading from 06.05.2022 onwards.
- e) Hence, the Respondent issued a supplementary bill of plain recovery for Rs.7,28,760/- of 71962 units based on the data retrieved from MRI for the period from 28.03.2018 to 06.05.2022 in the month of July 2022.
- f) The Appellant in his grievance stated that this case comes under Regulation 16.4.1 of the Supply Code & SOP Regulation 2021 which is reproduced as below:-

"Billing in the Event of Defective/ stuck/stopped/burnt Meters,

16.4.1. Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective stuck/stopped/burnt 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 along with the assessed bill."

- g) The above regulation is applicable in case of defective/ stuck/stopped/burnt Meters. But in this case the meter itself was found in order during testing, but was recording less energy consumption due to not getting voltage of Y phase due to loose screw connection. As soon as the screw of the input terminal was tightened, the said voltage was extended to the meter. This is a technical phenomenon; as such the meter was not defective.
- h) The data retrieval of the meter by the MRI is universally accepted technology for analysing the working of the meter to see the data history and tamper events. It has also been accepted by various judicial pronouncements. Hence the MRI data retrieved is correct, and as per regulation, the bill for non-recorded units was issued to the consumer.
- i) The Appellant filed a grievance application before the Forum on 21.09.2022. The Forum, by its order dated 06.01.2023 has partly allowed the grievance application in Case No. 101


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of 2022-23. The operative part of the order is captured in Para 2. The Forum directed the Respondent that the Appellant may be granted 8 equal monthly instalments.

- j) The Respondent cited the Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017, and contended that the Judgment is squarely applicable in the instant case.
- k) The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli. This is a case of escaped billing as the consumer has consumed energy which is recoverable for such under-recording. Therefore, full recovery on account of missing voltage of Y phase of RYB terminology at meter terminal is justified.
- l) In view of the above, the Respondent requested to reject the Representation of the Appellant.

Analysis and Ruling:

5. Heard the parties and perused the documents on record. The Appellant is a LT Industrial Consumer (No.000657268640) from 10.09.2007 having Sanctioned Load of 69 HP and Contract Demand of 61 KVA. The activity of the Appellant is that of running a cold storage plant.

6. The existing meter of the consumer is of Secure Make of 3 phase 4wire 40-200 Amp capacity. The Respondent inspected the installation of the Appellant on 06.05.2022. During inspection, it was observed that "Y Phase Voltage" was found missing on the meter display which was not extended to the meter terminal connection due to a loose connection of the screw where it was tapped from the main cable. Hence, the meter was recording less energy consumption by 32.87%. However, the meter itself was found to be in order.


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7. The “Y Phase Voltage” was not extended to the said meter for the period of 28.03.2018 to 06.05.2022 as calculated from the MRI data retrieved from the meter. After tightening of the screw of Y Phase where it was tapped from the cable, Y Phase Voltage was extended to the said meter which started showing the correct display from 06.05.2022 onwards. Hence, the Respondent issued a plain recovery supplementary bill for 71962 units of Rs.7,28,760/- in the month of July 2022. These 71962 units were actually consumed by the Appellant.


8. 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 reproduced below:

“33 it is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R,Y & 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 Appellant 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 Appellant, 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.”

This Judgment is applicable in the instant case. As such the meter was not defective; however, Y Phase was not extended to the meter, and the same meter is still functioning on site.


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At the same time, the Respondent did not fulfil its duty to regularly check and analyse the MRI data. Had it done so in time, the technical lapse would have come to notice much sooner.


9. The assessment period towards under recording of consumption is 51 months (28.03.2018 to 06.05.2022). However, this is not a matter of escaped billing, rather deficiency in service. The ratio of the Judgement of Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of Prem Cottex V/s Uttar Haryana Bijli Nigam Ltd and others decided on 5th October 2021 is not applicable to the present case. However, Section 56(2) of the Act permits the distribution licensee to assess retrospective recovery up to 24 months in case of deficiency in service. This assessment period for 51 months does not fulfil the statutory requirement of 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. The Court has allowed 24 months' recovery retrospectively in cases of mistake or oversight.

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

- a. to revise the supplementary bill of Rs. 7,28,760/- for only 24 months retrospectively i.e., from **07.05.2020 to 06.05.2022**. The interest and delayed payment charges levied be withdrawn from the date of issue of the supplementary bill till the date of this order.


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- b. to allow the Appellant to pay the revised supplementary bill in eight equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
- c. Compliance to be submitted within two months from the date of issue of this order.
- d. Other prayers of the Appellant are rejected.

11. The Forum's order is modified to the extent above. The Representation is disposed of accordingly.

12. The secretariat of this office is directed to refund Rs.25000/- taken as deposit to the Respondent for adjusting in the Appellant's ensuing bill.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

