

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 115 OF 2022

In the matter of retrospective recovery towards Multiplying Factor

Gopinath Silk Mills.....Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Wagle Estate, Thane (MSEDCL) Respondent

Appearances:

Appellant : 1. Vijay Bhore,
2. S.P. Tiwari, Representative

Respondent : 1. Anil Patil, Executive Engineer, Wagle Estate Dn. Thane
2. Shirish Gangurde, Addl. Executive Engineer, Wagle Estate Sub.Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing : 24th August 2022

Date of Order : 20th September 2022

ORDER

This Representation is filed on 26th July 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 29th June 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Urban Zone (the Forum). The Appellant deposited Rs. 25,000/- in terms of Regulation 19.21(h) on 29th July 2022, hence, the Representation is registered on 29th July 2022.


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2. The Forum, by its Order dated 29.06.2022 has partly allowed the grievance application in Case No. 102 of 2021 which is taken as below:

- “2. *The Respondent is entitled to recover the supplementary bill in arrears amounting to Rs.33,82,830/-.*
3. *The Applicant consumer is granted ten equal monthly installments for payment of supplementary bill arrears. The monthly installments granted for the payment of supplementary bill are to be paid along with the current bills being issued by the Respondent from time to time till entire supplementary bill is fully paid by the consumer.*
4. *If the Applicant consumer fails to deposit the monthly installment along with the current bill amount, then the Respondent has authority to disconnect the electrical supply as per MSEDCL rules & Regulations.*
5. *The Respondent utility is directed that, not to recover any Interest, DPC & Penalty from the consumer, for the disputed bill amount.”*

3. The Appellant filed this representation against the order of the Forum. The hearing was held on 24.08.2022 through Video Conference. Both the parties were heard. The Appellant’s written submission and arguments in brief is stated as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 000010209803) from 08.12.1986 having Sanctioned Load (SL) of 67 HP and Contract Demand (CD) of 56 KVA at Plot No. A-65, Road No.21, Wagle Industrial Estate, Thane (W). The Appellant is carrying out the activity of manufacturing of spares of textile machinery.
- (ii) The Respondent inspected the premises of the Appellant on 09.11.2020. The Respondent found that the Appellant is billed with Multiplying Factor 1(one) instead of 2 (two).
- (iii) As per inspection report dated 09.11.2020, the Appellant received a huge bill of Rs.33,82,830/- on 08.02.2021 towards retrospective recovery of Multiplying Factor from 1(one) to 2 (two) for the period from July 2011 to October 2020.


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- (iv) The Appellant is ready to pay the MF Recovery for two years (i.e.,24 months) without any interest and delayed payment charges as per provision of Section 56(2) of the Electricity Act, 2003 (Act).
- (v) The Appellant referred the Commercial Circular No. 24156 dated 18.07.2009 of the Respondent where it was specially mentioned that the instalments be granted without any interest and DPC.
- (vi) The Appellant filed its grievance application in Internal Grievance Redressal Cell (IGRC) in Feb. 2021. The IGRC, by its order dated 15.03.2021 has allowed to pay the bill by instalments as per mutual consent.
- (vii) Before the decision of IGRC, the Appellant approached the Forum on 24.02.2021. The Forum, by its Order dated 29.06.2022 has partly allowed the grievance application which is quoted above at para 2.
- (viii) The retrospective recovery of Rs.33,82,830/- is time barred as per provision of regulations in force.
- (ix) In view of the above facts, the Appellant prays that the Respondent be directed to revise the retrospective recovery of Rs.33,82,830/- for the period of 24 months as per Section 56(2) of the Act without any interest and DPC.

4. The Respondent, by its letter dated 12.08.2022 has submitted its written reply. The hearing was held on 24.08.2022. The written submission along with its arguments is stated in brief as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 000010209803) from 08.12.1986 having SL of 67 HP and CD of 56 KVA at Plot No. A-65, Road No.21, Wagle Industrial Estate, Thane (W). The Appellant is carrying out engineering activity of mechanical parts though the supply was sanctioned for silk mills.
- (ii) The Respondent inspected the electric installation of the Appellant on 09.11.2020. During inspection, it was found that the meter was installed having Sr. No. MSD99539, Secure Make of 50/5 Amp. Capacity in July 2011, whereas the external CT is connected having ratio of 100/5 Amp.

Multiplied Factor (MF)=External CT Ratio / Meter CT Ratio = (100/5) / (50/5) = 2



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Hence, the Multiplying Factor (M.F.) should be 2(two). However, the Appellant was billed with MF 1(one) instead of 2(two). The meter was tested by Accucheck and found in order.

- (iii) The actual MF was 2 which was inadvertently fed as 1 while feeding the meter replacement report in July 2011 due to human error. Hence, the Appellant was billed 50% less from July 2011, and the Appellant is liable and under obligation to pay the difference amount of electricity consumed by them from the date of meter replacement.
- (iv) As per the Consumer Personal Ledger (CPL) of the Appellant, the said meter was installed in July 2011, therefore the 50% billing considering the escaped billed units calculated and the bill of Rs. 33,82,830/-was served to the Appellant in 2 parts, as per availability of Appellant billing data from IT section. This was in coordination with the Appellant.
- (v) The Section 56 (2) of the Electricity Act, 2003 does not preclude the Respondent from raising an additional or supplementary demand after the expiry of the limitation period in the case of mistake or bona-fide error. In the present case, the supplementary bill is raised after the detection of mistake or bona-fide error in application of correct MF.
- (vi) 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.

“21 The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factors was wrongly mentioned, cannot amount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a Appellant has been short billed, the licensee is certainly entitled to raise a demand. So long as the Appellant does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the Appellant to claim that there was any deficiency. This is why, the national commission, in the impugned order correctly points out that it is a case of escaped assessment and not “deficiency in service”.”


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(vii) The Supreme Court Judgment in Civil Appeal No.7235 of 2009 has observed

“22. In fact, even before going into the question of section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order”.

The present case is a case of short billing and not deficiency in service. Hence the Respondent should be allowed for retrospective recovery from date of cause of action i.e., July 2011.

- (viii) The Appellant approached the Forum on 24.02.2021. The Forum, by its Order dated 29.06.2022 partly allowed the grievance application. The forum has rightly analysed the case. The Respondent is entitled to recover the supplementary bill in arrears of Rs. 33,82,830/-.
- (ix) The Appellant is granted ten equal monthly instalments for payment of supplementary bill arrears. The monthly installments granted for the payment of supplementary bill are to be paid along with the current bills being issued by the respondent from time to time till entire supplementary bill is fully paid by the Appellant.
- (x) If the Appellant fails to deposit the monthly installments along with the current bill, then the Respondent has authority to disconnect the electricity supply as per MSEDCL rules & Regulations.
- (xi) The Respondent argued that the “Schedule B” is signed by Mr. Vinay Bhore who is not the owner of Gopinath Silk Mills and he has not produced any legal authority letter for filing the representation. Hence, the representation is not maintainable.
- (xii) In view of above, the Respondent requested to reject the Representation of the Appellant and allow MSEDCL to recover the supplementary bill of Rs. 33,82,830/-.

5. Post hearing, the Respondent by its letter dated 30.08.2022 has stated that,


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- a) The Respondent has an objection to the person who has signed the Schedule B at the time of filing this present representation. He is not authorised since he is not the owner of the company.
- b) The Respondent has a strong objection on the number of instalments asked by the Appellant for the payment of assessment bill of Rs. 33,82,830/- i.e. 24 monthly instalments. The Appellant has not paid a single installment till date in spite of 10 instalments granted by the Forum against the outstanding bill of Rs. 33,82,830/-.
- c) The said meter was installed to the Appellant in July 2011, therefore escaped billed units were calculated and the bill served to the Appellant in 2 parts, as per availability of consumer billing data from IT section. First partial provisional bill for the period April 2015 to October 2020 of Rs. 18,79,731.40/- was issued to the consumer. Final assessment bill for the total period i.e. from July 2011 to October 2020 of 33,82,830/- was issued to the consumer on 8th February 2021.

6. Post hearing, the Appellant by its email dated 08.09.2022 sent a copy of Partnership Deed on Rs. 100/- non judicial stamp dated 1st January 2020 between Shri Vinay Bhore, as “Working Partner” and Shri Rajesh Atmaram Udhvani (First Partner) residing at 192, Casablamka Apartment, Wasvani Marg, Cuffe Parade, Colaba, Mumbai. The Partnership Deed was notarised on Rs. 100/- non judicial stamp but not registered with Revenue Authority of Government of Maharashtra.

Analysis and Ruling

7. Heard the parties and perused the documents on record. The Appellant is a LT Industrial Consumer (No. 000010209803) from 08.12.1986 having SL of 67 HP and CD of 56 KVA at Plot No. A-65, Road No.21, Wagle Industrial Estate, Thane (W). The Appellant is in the activity of manufacturing of spares of textile machinery.

8. The Respondent inspected the electric installation of the Appellant on 09.11.2020. During inspection, it was observed that the meter (Sr. No. MSD99539) of Secure Make is of 50/5 A capacity and was installed in July 2011, whereas the external CT of metering installation was connected having CT Ratio of 100/5 A. Hence, the Multiplying Factor by all means should be 2 $[(100/5)/(50/5)]$ for billing


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purpose. However, the Appellant was billed with MF 1(one) instead of 2(two) due to human error. The meter was tested by Accucheck and was found in order. The Appellant was billed 50% less from July 2011 to October 2020. Hence, the Respondent issued the first partial provisional bill dated nil of Rs.18,79,731/- for 220370 units immediately for the period from April 2015 to October 2020 under intimation that the consolidated supplementary bill would be served on top priority as per availability of consumer billing data from IT section. Final assessment bill of Rs. 33,82,830/- for the total period i.e., from July 2011 to October 2020 was issued to the Appellant on 8th February 2021.

9. It is to be noted here that as per Regulation 14.4.1 of Supply Code Regulations 2005, the Respondent is duty bound to inspect the premises of consumers periodically. The said Regulation is reproduced as below:

“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.”

10. The Appellant is an important industrial consumer with contract demand of 56 KVA and sanctioned load of 67 HP (50 KW). Normally the Licensee checks the electric installations of all High Tension consumers annually as per a scheduled programme. The next priority for checking of connections is given for consumers having load more than 20 KW. It is surprising that the Respondent has taken such a long period of nearly 11 years for pointing out the MF irregularities. Hence, the Respondent is also equally responsible for failure of its own duty. As per Section 18(2) of the Central Electricity Authority (CEA) Regulations 2006, electricity distribution companies should test the meter once every five years.

11. 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


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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.

12. 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 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)

13. 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 Vitran Nigam Ltd. for recovery of escaped billing. The important paras of this Judgement are reproduced below:

“3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.

4. After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption “short assessment notice”, claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

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6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of “escaped assessment “and not a case of “deficiency in service”. Aggrieved by the said Order, the appellant is before us.


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11. In *Rahamatullah Khan (supra)*, three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term “first due” in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court held that **though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become “first due” only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in *Rahamatullah Khan (supra)*, that “the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)”. This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in *Mahabir Kishore & Ors. vs. State of Madhya Pradesh*².**

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21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is


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why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

22. In fact, even before going into the question of section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.


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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.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed. ”

(Emphasis added)

It is important to note that in the above Judgment, the assessment period for escaped billing towards recovery of multiplying factor from 5 to 10 is referred **for about three years**.


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In the instant case, the Respondent has issued supplementary bill towards application of wrong multiplying factor as one (1) instead of two (2) for the period from July 2011 to October 2020, which is more than 9 years.

14. 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 Vitran Nigam Ltd. refers the Section 17(1) (c) of the Limitation Act, 1963 which states as under: -

“17. Effect of fraud or mistake. —(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

.....


(c) the suit or application is for relief from the consequences of a mistake; or

.....

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or*
- (ii) (ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or*
- (iii) (iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.”*


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THE SCHEDULE
PERIODS OF LIMITATION
[See sections 2(j) and 3]

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD


113. Any suit for which no period of limitation is provided elsewhere in this Schedule Three years When the right to sue accrues

There is no doubt whatsoever that Section 17(1)(c) of the Limitation Act, 1963 covers both the mistake of fact as well as law. The Respondent discovered the mistake when the premises were inspected on 09.11.2020 in presence of the Appellant. Hence, the cause of action arose on 09.11.2020. Subsequently, the Respondent issued the supplementary bill immediately to the Appellant. The Limitation Act, 1963 describes that **the suit can be filed within 3 years from the date of cause of action.**

15. In the instant case, the Respondent also failed to periodically inspect the meter. Ideally, it should have inspected the premises of its VIP high-end consumers once every 1 to 2 years. Had it done so, the mistake would have come to notice much earlier, and the high amount of retrospective bill could have been avoided. Hence, retrospective recovery towards under billing due to application of wrong multiplying factor as one (1) instead of two (2) should be effected for three years from the date of detection of mistake / cause of action. We hold that in the instant case, the valid recovery period will be three years period retrospectively from 09.11.2020 i.e. **from November 2017 to October 2020.**

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

- (a) To revise the supplementary bill for the period from November 2017 to October 2020 considering multiplying factor as 2 (two) instead of 1 (one) without any interest and DPC, levied if any.


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- (b) to allow the Appellant to pay the revised bill in 10 equal instalments, if the Appellant desires. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and Respondent has 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.

17. The Representation is disposed of accordingly.

18. 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

