

# BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

## REPRESENTATION NO. 90 OF 2022

In the matter of billing in Net Metering of Roof Top Solar PV System

Anand Mohan Dubey .....Appellant

V/s.

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

Appearances:

Appellant : Ramchandra Pandey, Representative

Respondent: 1. Pratap H. Machiye, Executive Engineer, Palghar Dn.  
2. Sanjay P. Kolhe, Deputy Executive Engineer, Palghar S/Dn.

**Coram: Vandana Krishna (Retd. IAS)**

Date of hearing: 15<sup>th</sup> July 2022

Date of Order : 17<sup>th</sup> August 2022

## ORDER

This Representation was filed on 24<sup>th</sup> May 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 25<sup>th</sup> February 2022 and Review Order dated 2<sup>nd</sup> May 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum). The deposit notice of Rs. 25000/- was served to the Appellant in terms of Regulation 19.21(h) on 30<sup>th</sup> May 2022, The Appellant has confirmed that there are no dues pending, and hence, the Representation is registered on 6<sup>th</sup> June 2022.




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2. The Forum, by its Order dated 25.02.2022 and Review Order dated 02.05.2022 has dismissed the grievance application in Case No. 87 of 2021 and in Case No. 23 of 2022 respectively.

3. The Appellant has filed this representation against the order and review order of the Forum. The hearing was held on 15.07.2022. The Appellant attended the hearing physically, The Respondent was present for hearing 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 residential consumer (No. 003100392789) at House No. 68, Pukhraj Bungalow, near Zila Parishad Marathi School, Village Veoor, Palghar (W), Dist. Palghar from 17.04.2003.
- (ii) The Appellant installed a Solar Rooftop Net Metering in his premises. The Solar Rooftop Net Metering of the Appellant was finally commissioned on 25.06.2018 with the Net Meter (No. 3369403) and Generator Meter (No.74986534) after proper testing of the Net Meter and Generator Meter.
- (iii) The Appellant pointed out that Consumer Personal Ledger (CPL) history of the Appellant is improper from November 2017 to April 2021 which is indicative that the billing is not proper.
  - Meter No. 7640923097 was replaced on 25.06.2018 with a Net Meter of Roof Top Solar PV System (Net Meter) having Sr. No.3369403 at site after testing it in MSEDCL laboratory on 18.06.2018. However, CPL shows that the old Meter No. 7640923097 was existing till December 2020. The Appellant was billed with various status of meter replacement, Reading Not Taken (RNT), Faulty, and also in Normal Status in March 2019 and May 2019. The solar Net Meter was shown in the CPL only from January 2021.
  - The Net Meter (No.3369403) got burnt in October 2020, but the CPL displayed it in January 2021 to March 2021.
  - The burnt Net Meter (No.3369403) was replaced with a new Net Meter No. 52843889 on 25.02.2021. But CPL shows that the said Meter No. 3369403 was existing in April 2021.

  
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(iv) The Appellant stated that the cause of dispute arose due to the failure of Respondent's obligation for not taking proper entry of meter replacement and readings thereof.

**(a) Readings:-**

- Net Meter No.3369403 was burnt in Oct 2020, and it was not read from the date of installation till Oct. 2020. However, the Section Engineer of the Respondent claimed that he has taken an Import Reading of 18686 kWh on 28.08.2019 of a blurred / opaque photo, and ignored Export Readings of Net Meter.
- The claimed reading of 28.08.2019 is in question; it may be of before Oct. 2020 or just after the meter got burnt, because no evidence is put on record to qualify the reading on merit basis as per procedure laid down by the Maharashtra Electricity Regulatory Commission (the Commission). The reading was not shown/witnessed by the Appellant.
- The Respondent reads the meter and sends the meter reading report to its IT Department. However, the reading report is not kept on record even though it was requested many times.

**(b) Billing: -**

- ❖ Respondent issued a bill for the period June 2018 to Aug 2019 as per the reading (18686 kWh) on 28.08.2019 of blurred / opaque photo of Net Meter No. 3369403. It cannot be considered as the reading is not properly visible. On the basis of this average, the Respondent calculated an assessment for the period of Sep. 2019 to Dec.2020 which is not as per rules framed by the Commission and against the Section 56 (2) of the Electricity Act, 2003 (the Act).
- ❖ The Respondent issued a handwritten supplementary bill of Rs.4, 21,840/- on 04.03.2021 along with notice for disconnection.
- ❖ The Appellant protested this bill dated 04.03.2021 and issued a legal notice to the Respondent on 16.03.2021. However, the Respondent did not take cognizance of this notice and further threatened to disconnect the supply on 24.03.2021.
- ❖ The Respondent illegally disconnected supply on 26.03.2021 violating Section 56 (1) of the Act. The Appellant had no option but to pay the outstanding dues

  
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of Rs.4,21,840/- under protest. The Appellant also paid reconnection charges Rs.236/- to restore supply.

- (v) Appellant again made a request on 26.04.2021 to the Respondent for bill revision, feeding new meter details in the system and refund of extra paid bill in compulsion for electricity restoration.
- (vi) The Appellant approached the Forum on 06.09.2021. The Forum, by its Order dated 25.02.2022 dismissed the grievance application. The Appellant filed his review application on 04.03.2022. The Forum by its Review Order dated 02.05.2022 also dismissed the review application. The Forum failed to understand the basic issue.
- (vii) The nature of relief sought by the Appellant is as under:
- (a) Justification of blur opaque photo reading 18686 kWh of Net Meter and its date and style of import reading taken by JE and ignoring export reading, itself shows that something is wrong and hence the same cannot be taken on record.
- (b) Justification of Respondent's emails to its IT on March 2019 and January 2020.
- (c) Justification of average billing period and its revision in view of Regulation 15.4.1/16.4.1 of Supply Code Regulations 2005/2021 and consumption pattern of new Net Meter: The Appellant be billed as per Regulation 15.4.1/16.4.1 of Supply Code Regulations 2005/2021.
- (d) Justification of restricted bill of more than 24 months on average basis (no merit and no reading) & wrong bill recovered against law by disconnecting the supply.
- (e) To revise the bill as indicated above and refund the extra amount paid by the Appellant under protest with interest as per Section 62 (6) of the Act.

4. The Respondent filed a reply by its letter dated 21.06.2022. The hearing was held on 15.07.2022 where both the parties were heard. The Respondent's submission and arguments in brief is as below: -


- (i) The Appellant is a residential consumer (No. 003100392789) from 17.04.2003, at Pukhraj Bunglow House No. 68, near Zila Parishad Marathi School, Village - Veoor, Palghar (East), Tal: & Dist. Palghar.
- (ii) The Appellant installed a Solar Rooftop Net Metering in his premises as per sanctioned letter dated 24<sup>th</sup> May 2018. The Net Meter (No. 3369403) and Generator

  
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Meter (No.74986534) was tested by the Testing Team on 18<sup>th</sup> June 2018. The Solar Rooftop Net Metering was commissioned in the month of June 2018.


- (iii) The Appellant was billed as per meter reading of 2995 kWh on the earlier Meter No. 40923097 up to the month of April 2018. Thereafter, he enhanced his load from 2 KW to 6 KW in Apr. 2018. The Net Meter (No. 3369403) and Generation Meter (No. 74986534) were installed on 01.06.2018. The details of the Net meter were fed in “NC Module” of the system at the relevant time, but it was not accepted into the system due to some technical error. This fact was revealed from the correspondence of Field Officer with its “IT Department” on 28.08.2019. During the hearing, it came to light that the solar net metering system, being new, was going through initial technical glitches. Apparently in this case, the proper meter readings were not being taken in the system.
- (iv) The Asst. Engineer of the Respondent’s Section Office inspected the premises on 28.08.2019. During inspection, it was observed that the Import Reading of Net Meter was 18686 kWh and Generator Meter Reading was 5966 kWh, however, both the readings were not reflected in the billing system. In the month of Oct. 2019, though the connection was physically live, a TD report was wrongly fed in the system. Thereafter, the said mistake was corrected in the month of Jan. 2020. In the month of April 2020 again, though the connection was physically live, a TD Report was wrongly fed in the system; thereafter this mistake was corrected in the month of Nov. 2020.
- (v) The premises of the Appellant was again inspected in Nov. 2020. During inspection, it was observed that the Net Meter was found burnt. The MRI data retrieval system of the meter was also found burnt. Hence, MRI data could not be downloaded. It was clear from the record that the Appellant was being billed with only minimum charges during the aforesaid period, as compared to the actual consumption. Therefore, MSEDCL billed the Appellant with the available data of average (as per reading data of Net Meter and Generation meter on 28.08.2019) for the period from May 2018 to Dec.2020 (33 Months) in Jan.2021. From the discussion in the hearing, it seems that the Respondent was forced to rely on the one reading taken on 28.08.2019, as no other readings were available for the entire period from June 2018 to December 2020, due to technical faults in the system.

  
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- (vi) The said Net Meter was purchased by the Appellant. The Net Metering System is new and Net Meters was purchased only by the beneficiary.
- (vii) The Appellant never made any complaint about the defect of the meter or regarding receipt of only minimum bill during the period from May 2018 to Dec.2020. The said burnt Net Meter was thereafter replaced on 28.02.2021. The Net Meter was purchased by the Appellant, and hence, the Appellant was duty bound to bring a new Meter for replacement of the burnt meter. It could not be considered that the meter was faulty.
- (viii) In view of the above elaborate discussion, the meter reading dated 28.08.2019 should not be doubted. MSEDCL is entitled to and has rightly charged for consumption of electricity for the period of Jun. 2018 to Dec.2020. The Reg.15.4.1 of MERC Supply Code, 2005 and subsequent Regulations will not apply to this case.
- (ix) The mistake of under billing and not charging as per actual meter readings came to light only on 28.08.2019. The period of two years from the detection of mistake on 1st occasion would expire on 28.08.2021, whereas the Respondent has charged for the under billing in Jan 2021; therefore, the recovery is within two years from the date of detection of mistake. The meter reading of Net Meter and Generation meter on 28.08.2019 is available with the Respondent, and it was proved on the basis of the photograph of the meter. Therefore, this is a clear case of **escaped billing**. The subsequent billing for the period of Sept.2019 to Dec.2020 has been also based on the average monthly consumption during the period of Jun. 2018 to Aug. 2019, out of which the reading of solar Generation meter was subtracted. As such the licensee has properly charged the Appellant. The Appellant happily enjoyed the benefits of being under-billed till December 2020 due to the technical faults in the newly established solar net metering system. The Appellant has accepted the liability of consumption and paid the bills to the Respondent.
- (x) The Hon'ble Bombay High Court, Bench at Aurangabad in Writ Petition No. 8613 of 2017 has given decision in favour of utility for recovery of charges for electricity actually supplied. The relevant portion of the judgment is reproduced below:

  
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“33. Consequently, 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 charges as per the prescribed rates. The Appellant, therefore, has to pay full charges for the electricity actually consumed.”

- (xi) Further, the Hon’ble Supreme Court of India in its Judgment in the matter of Prem Cottex ... Appellant; Versus Uttar Haryana Bijli Vitran Nigam Ltd. and Others ... Respondents. Civil Appeal No. 7235 of 2009 Decided on October 5, 2021 has clearly differentiated application of Section 56 of Electricity Act for escaped assessment versus deficiency in service has held that :

“23. Coming to the second aspect, namely, the impact of Sub-section (1) on Subsection (2) of Section 56, it is seen that the bottom line of Subsection (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words “where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him”.

24. Sub-section (2) uses the words “no sum due from any Appellant under this Section”. Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. 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 Appellant under this Section”, appearing in Sub-section (2). 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 Appellant to neglect to pay any charge for electricity. Subsection (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 Appellant 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



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*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.”*

- (xii) In view of the above, the instant case is a case of “escaped billing” due to a bonafide system mistake of MSEDCL and therefore Section 56 (2) of the Act is not applicable for this case. There were some technical faults in the newly installed solar net metering system. The Appellant cannot claim benefit for that.
- (xiii) The Forum has addressed all issues. The Forum’s order is reasoned and speaking, and it rightly rejected the alleged grievance.
- (xiv) In view of above it is requested to reject the Representation.

### **Analysis and Ruling**

5. Heard the parties. Perused the documents on record. The Appellant is a residential consumer from 17.04.2003, at Pukhraj Bungalow, House No. 68, Village -Voor, Palghar (East).


6. The Appellant installed a Solar Rooftop Net Metering in his premises as per sanctioned letter dated 24<sup>th</sup> May 2018. The Net Meter (No. 3369403) and Generator Meter (No.74986534) was tested by the Testing Team on 18<sup>th</sup> June 2018. The Solar Rooftop Net Metering was commissioned in the month of June 2018.

7. The Appellant entered into an Agreement of Connectivity to the Distribution network of MSEDCL for Appellant’s installing solar PV projects/systems below 1 MW on Rooftop in their premises under the MERC (Net Metering for Roof-top Solar Photo Voltaic Systems) Regulations, 2015: Procedure for Application, methodology for Metering & Billing, etc. The relevant portion of the Commercial Settlement is reproduced as below:

#### ***“Commercial Settlement:***

*8.1. The commercial settlements under this Agreement shall be in accordance with the Net Metering Regulations.*

*8.2. The Licensee shall not be liable to compensate the Eligible Consumer if his Rooftop Renewable Energy Generating System is unable to inject surplus power generated into the Licensee's Network on account of failure of power supply in the grid/Network.*

  
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8.3. *The existing metering System, if not in accordance with the Net Metering Regulations, shall be replaced by a bi-directional meter (whole current/CT operated) or a pair of meters (as per the definition of 'Net Meter' in the Regulations), and a separate generation meter may be provided to measure Solar power generation. The bi-directional meter (whole current/CT operated) or pair of meters shall be installed at the inter-connection point to the Licensee's Network for recording export and import of energy.*

8.4. *The uni-directional and bi-directional or pair of meters shall be fixed in separate meter boxes in the same proximity.*

8.5. *The Licensee shall issue monthly electricity bill for the net metered energy on the scheduled date of meter reading. If the exported energy exceeds the imported energy, the Licensee shall show the net energy exported as credited Units of electricity as specified in the Net Metering Regulations, 2015. If the exported energy is less than the imported energy, the Eligible Consumer shall pay the Distribution Licensee for the net energy imported at the prevailing tariff approved by the Commission for the consumer category to which he belongs.”*

8. The Respondent contended that there is no dispute that the Net Meter of Solar Roof Top System was commissioned in June 2018. MSEDCL developed and introduced a software for taking the import and export solar meter readings and for generating net bills, the System Analyst Programme (SAP) System, which had some teething trouble in the beginning. There were some difficulties in feeding of net meter readings in the System. It was necessary to consult experts in the field and to overcome these difficulties. In the instant case, the Meter Replacement Report of the solar Net Meter was finally accepted into the System only in Feb.2021 as per CPL Report. Therefore, an average had to be taken for billing for the period till then. It seems that there was no option but to rely on assumed average consumption based on whatever readings were available. This Net meter was burnt somewhere between Aug. 2019 to Dec. 2020. The said Net Meter was purchased by the Appellant. Hence, it was the responsibility of the Appellant to bring a new Net Meter and to report the burning of the previous meter. The Net Metering System was new, and as per the policy, Net Meters were supposed to be purchased only by the beneficiary.

9. The Appellant contended that Net the Meter reading of 28.08.2019 is questionable, being blur and opaque. The reading shows an average of 1246 units per month as import readings. However, it was not tallied with the recent average established by the new Net Meter which was installed on 25.02.2021, which shows a consumption pattern of only 700 to 1000 units per

  
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month. The old meter was defective from Aug. 2019; hence, the Appellant has to be billed as per the defective meter only for three months consumption as per Regulation 15.4.1/16.4.1 of Supply Code Regulations 2005/2021 and consumption pattern of new Net Meter.

10. The following statement is derived to understand the billing of the Appellant and assessment done after the Net Meter was burnt.

Calculations of units billed from Jun. 2018 to Dec.2020								
Period	Months	Net Meter Reading	Installation Date	Initial Reading(IR) kWh	Current Reading Date	Current Reading(CR) kWh	Diff.(CR-IR) kWh	Remarks
June 2018 to Aug.2019	15	Net Meter No. 3369403	01.06.2018	1	28.08.2019	18686	18685	As per Actual Reading(1246 units per month)
		Generation Meter No. 74986534	01.06.2018	1	28.08.2019	5966	5965	As per Actual Reading(398 units per month)
		Net Units billed for 15 months(18685-5965)						12720
Sep. 2019 to Dec. 2020	16	Net Meter No. 3369403	28.08.2019	18686	30.12.2020	Meter Burnt	19932	#Assessed as per consumption pattern of Jun2018 to Aug. 2019( 1246 units per month)
		Generation Meter No. 74986534	28.08.2019	5966	30.12.2020	11200	5234	As per Actual Reading(327 units per month)
		Net Units billed for 16 months(19932-5234)						14698
Remarks	# Assessment considering (18685/15) multiplied by 16 months= 145.73x 16= 19932 Units							

The consumption pattern was derived from the Appellant's bill available on Web Portal of "View and Pay" of the Respondent.

  
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New Replaced Net Meter No.52843889					
Month	Date of Reading	Import Meter Reading (kWh)	Import Cons. (Units)	Export / Gen. Cons. (Units)	Net Cons. Billed (Units)
Aug-21	05.08.2022	14719	927	225	702
Sep-21	06.07.2022	13792	1050	290	760
Oct-21	03.06.2022	12742	950	186	764
Nov-21	07.05.2022	11792	991	267	724
Dec-21	05.04.2022	10801	1129	333	796
Jan-22	28.02.2022	9672	699	672	27
Feb-22	05.01.2022	8973	481	458	23
Mar-22	07.12.2021	8492	835	730	105
Apr-22	08.11.2021	7657	801	328	473
May-22	01.10.2021	6856	1118	756	362
Jun-22	05.09.2021	5738	943	155	788
Jul-22	11.08.2021	4795			

From the above chart, it is seen that the consumption pattern (import units in the range of 900 to 1100 units) was a little less after the meter replacement and normal billing is going on. However, for the period of the old Net Meter, the Appellant was considerably under billed from June 2018 to December 2020. For the period May 2018 to March 2019, the consumption was shown as only 388 units for 11 months. For the period April 2019 to January 2021, the billing was done in the range of only 0 to 35 units per month. Hence, the assessed consumption shown by the Respondent cannot be ruled out.

11. The Net Meter was purchased by the Appellant when it was installed in June 2018. The said Net Meter was burnt between the period from Sep. 2019 to Dec. 2020. No exact date is available from the record. The said Net Meter was replaced on 25.02.2021 and at present the billing is as per actual Net Meter reading.

12. The Respondent billed the Appellant with the available data of average (as per reading data of Net Meter and Generation meter on 28.08.2019) for the period from May 2018 to Dec.2020 (33 Months) in Jan.2021.

13. 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:

  
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“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)

In view of the above Judgment of the Hon’ble Supreme Court, we hold that the Respondent can recover the escaped billing only for 24 months retrospectively from January 2019 to December 2020.

The Section 56(2) of the Act does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in case of a mistake or bona-fide error. However, it does not empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.


14. In view of the above, the order of the Forum is modified to the extent mentioned above. The Respondent is directed to revise the bill for 24 months for the period from January 2019 to December 2020.

15. Other prayers of the Appellant are rejected.

16. Compliance to be submitted by the Respondent within two months from the date of this order.

17. The Representation is disposed of accordingly.

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

  
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