

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 182 OF 2019

In the matter of assessment billing

Shankar Prabhakar Gade ..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Mulshi (MSEDCL)..... Respondent

Appearances

For Appellant : 1. Shankar Gade  
2. Vaibhav Sadavarte, Representative

For Respondent : R.S. Bundele, Executive Engineer

**Coram: Deepak Lad**

Date of Order: - 25<sup>th</sup> November, 2019

**ORDER**

This Representation is filed on 17<sup>th</sup> October 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 23<sup>rd</sup> August 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum has partly allowed the grievance. Operative part of the order is as below: -

*“2. The less consumption of units i.e. 40988 units bill amounting to Rs.3,84,400/- shall be recovered from the consumer due to “Y phase PT missing events occurred for the period 25.05.2016 to 06.01.2018 & this recovery is permissible which is within 24 months from the date of detection i.e. 18.6.2018.*

*3. No interest & DPC & penalty shall be charged against the consumer.*

*4. The consumer shall pay the said arrears amount of unit consumption bifurcated in 8 equal monthly installment alongwith current bill.”*

3. The Appellant, in his representation submitted as below: -

(i) The Appellant is a three-phase 50 HP industrial consumer having Consumer No. 182920023798 and meter No. 065-05804420 (40-200 ampere) of Genus Power Infrastructure Ltd. is installed.

(ii) The Respondent on 25.05.2016 sanctioned the load of 50 HP with Contract Demand of 37.30 KVA.

(iii) The premises of the Appellant are inspected by the Flying Squad of the Respondent on 18.06.2018.

(iv) The Respondent in the month of January 2019 issued bill of Rs.3,84,400/- towards missing of Y phase PT.

(v) This bill is for period of

(a) 11.05.2016 to 05.06.2016

(b) 07.06.2016 to 20.07.2017 and

(c) 20.07.2017 to 06.01.2018

(vi) If the Respondent has given connection on 25.05.2016 then bill cannot be from 11.05.2016 which is 14 days prior to release of connection. The Respondent failed to answer this anomaly.

(vii) Respondent has not given all relevant documents despite specific request except meter testing report and MRI report. Moreover, meter testing report does not bear Appellant's or his representative's signature which is essential when the premises is inspected, and the meter is tested.

(viii) MRI report given to the Appellant is not downloaded on date of inspection.

- (ix) The Appellant then filed complaint in IGRC on 14.03.2019 which conducted the hearing and issued order on 10.05.2019. However, the IGRC Authority did not call both the parties on the same day for hearing.
  - (x) The Appellant not satisfied with the order of the IGRC, filed grievance with the Forum which issued order on 23.08.2019. The Forum did not properly appreciate the facts on record and therefore the Appellant filed this representation.
  - (xi) Consumer Personal Ledger (CPL) shows that consumption for
    - 1. June 2016 is 10 units
    - 2. July 2016 is 4309 units
    - 3. August 2016 is 8670 units
    - 4. September 2016 is 1467 unitsThis does not match with the MRI report of the meter drawn by the Respondent and it has manipulated the consumption and prepared a false report.
  - (xii) The Appellant is not satisfied with the bill issued by the Respondent as such a huge amount cannot be appropriated against the product being sold by him in the market. This amount cannot be loaded now on the future products of the Appellant as it will become non-competitive.
  - (xiii) The bill issued by the Respondent be quashed and set aside.
4. The Respondent MSEDCL has filed its reply by letter dated 06.11.2019 stating as under:-
- (i) Shri Shankar Prabhakar Gade is 3 Phase 50 HP consumer from 25.05.2016 with Genus Make meter having capacity 40/200 ampere installed to his premises at Post Urawade, Tal- Mulshi, Dist. Pune for industrial purpose.
  - (ii) The Addl. Executive Engineer, Flying Squad, Ganeshkhind visited his premises for spot inspection on 18.06.2018 with remark that 'Y' phase PT supply was missing from 11.05.2016 to 05.06.2016, from 07.06.2016 to 20.07.2017 and from 20.07.2017 to 06.01.2018. Hence, calculated the additional consumption of 40988 units.
  - (iii) The bill for additional consumption of 40988 units of Rs.384400/- on account of missing Y phase PT is issued.
  - (iv) Aggrieved with this bill, the Appellant filed complaint with the IGRC on 14.03.2019 which is registered as Case No. 08 / 2019.

- (v) IGRC issued order on 10.05.2019 to reassess the bill only for calculation of missing PT event. Not satisfied with this order, the Appellant filed grievance at the Forum which issued order on 23.08.2019. Not satisfied with this order of the Forum, the Appellant filed the instant representation.
- (vi) The assessment bill issued to the Appellant is legal, just and proper. Therefore, the representation needs to be rejected and Appellant be directed to pay the bill.

5. Heard both the parties during the hearing held on 14.11.2019. Both the parties argued in line with their respective submissions. The Appellant argued that assuming without admitting that the Y phase PT is missing due to which it is alleged that the meter recorded less consumption, it will be very impossible to load the amount of this additional bill on the ongoing production of the Appellant. This will make them non-competitive in the market. In addition, the Appellant argued that his or his representative's signature has not been taken by the Respondent on spot verification report which is normally the practice. Moreover, as per the bill, the connection is released on 25.05.2016 and the Respondent assessed the bill from 11.05.2016 which is highly impossible. No explanation, whatever, for this lapse has been offered by the Respondent.

6. The Respondent argued that the bill has been issued as per rules and the Respondent is supposed to pay it as it has consumed the energy as per the load but the meter did not record the consumption due to absence of Y phase PT voltage. The MRI data also validates the event of Y phase PT voltage missing.

### **Analysis and Ruling.**

7. Many similar cases have been dealt by the undersigned and suitable orders have been passed. There is a standing provision under Section 56 (2) of the Electricity Act, 2003 (the Act) which is reproduced below:

*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 provision of the Act has been interpreted in the Judgment dated 12.03.2019 of the Larger Bench of Bombay High Court in W.P. No. 10764 of 2011 & Others. It is a settled position of law with respect to Section 56 (2) of the Act. This has been relied upon by the undersigned in the orders passed. The relevant portion of the Judgment is reproduced 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 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 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.*

*(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.”*

8. The premises have been inspected by the Flying Squad on 18.06.2018 as could be seen from the Spot Inspection Report of the Flying Squad and is also confirmed through letter No. 448 dated 22.02.2019 issued under RTI to the Appellant. However, the Respondent in its submission has mentioned the date of inspection as 18.06.2018. Bill is dated 18.12.2018 which

is for additional consumption of 40988 units for Rs.384440/-. Therefore, the period of assessment shall be maximum two years prior to 18.12.2018 on which the bill is issued. Therefore, the period of assessment will be from 18.12.2016 to 18.12.2018, however, the Respondent has assessed the Appellant till 06.01.2018. Hence, the Appellant can only be billed from 18.12.2016 to 06.01. 2018. Further, the question of the Appellant as to how the Respondent has assessed him from 11.05.2016 when his connection is released on 25.05.2016, becomes non cognisable as the assessment period starts from 18.12.2016.

It is noted from the MRI report submitted by the Respondent that PT missing with respect to certain phases did occur in the month of July, August and September 2018. It is not understood as to how the Respondent failed to notice this important tamper event which is evident from the Tamper Data Report.


Further, it is not understood when the inspection is carried out on 18.06.2018, why the Respondent took six months to issue the assessment bill.

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

- (a) The Respondent shall assess the Appellant for the period of missing PT voltage only during the period 18.12.2016 to 06.01.2018 and revised bill should be issued.
- (b) The order of the Forum is modified to the extent above.
- (c) Rest of the order of the Forum is upheld.
- (d) The Respondent to comply this order within one month from the date of issue.

10. The secretariat of this office is directed to refund Rs.25000/- deposited by the Appellant immediately.

Sd/-  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

