

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 102 OF 2022

(REVIEW OF ORDER IN REPRESENTATION NO. 53 OF 2022)

In the matter of retrospective recovery

Kaushalya Gurumukhdas Motwani. ....Review Applicant

V/s.

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

Appearances: -

Review Applicant : 1. Ganesh Datey, Representative

Respondent : 1. Nitin Kale, Executive Engineer, Ulhasnagar Dn. I  
2. R. J. Swamy, Addl. Executive Engineer  
3. R.S. Jamkhere, Asst. Accountant


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

Date of hearing: 16<sup>th</sup> September 2022 &  
19<sup>th</sup> September 2022

Date of Order: 22<sup>nd</sup> September 2022

### ORDER

This Review Application is filed on 15<sup>th</sup> July 2022 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the

  
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Order dated 16<sup>th</sup> June 2022 in Representation 53 of 2022 passed by the Electricity Ombudsman (Mumbai).

2. The Electricity Ombudsman (Mumbai), by order dated 16.06.2022 has rejected the Representation No. 53 of 2022 on merit and imposed a cost of Rs.2000/- upon the Applicant towards forged signature on the prescribed Schedule B form.

3. Aggrieved by this order dated 16.06.2022, the Applicant has filed this Review Application. The e-hearing was held on 16<sup>th</sup> September 2022 through Video conference. The Applicant was not present on the rescheduled time. The Respondent was heard. However, an opportunity of hearing was again given to the Applicant on 19.09.2022. Both the parties were heard. The Applicant's written submission and arguments in brief is stated as below: -

- (i) The Applicant is an industrial consumer (No.021510790909) from 15.11.1997 having sanctioned load (SL) of 67 HP and Contract Demand (CD) of 56 KVA near Barrack No. 969, Sukhdav Compound, near Lal Silk Mills, Ulhasnagar 3.
- (ii) The Applicant received a supplementary bill of recovery of Rs. 3,01,071/- for the period from March 2018 to June 2018 on 28.02.2021 which is time barred as per Section 56(2) of the Electricity Act, 2003 (the Act).
- (iii) The original Schedule B was signed by Shri. Chander Gurumukhdas Motwani, the son of Smt. Kaushalya Gurumukhdas Motwani.
- (iv) The irrevocable general Power of Attorney dated 07.03.2022 between Shri. Chander Gurumukhdas Motwani and Smt. Kaushalya Gurumukhdas Motwani is in existence and hence the Review Applicant (Shri. Chander Gurumukhdas Motwani) is authorized as per law. Therefore, there is no forged signature on the Schedule B. The same objection was also raised by the Respondent during the hearing of the Forum, and the Forum was satisfied as per the produced documents. However, it is not fair to raise the

  
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same objection repeatedly at the Appellate level. Hence, the cost of Rs.2000/- towards forged signature is unwarranted and needs to be withdrawn.

- (v) The supplementary bill of March 2018 to June 2018 was issued after 32 months when the cause of action arose in March 2018. The period of 15.03.2020 to 14.03.2021 was excluded due to Covid-19 pandemic in the original order. The cause of action occurred on 01.03.2018, hence, the period is beyond 2 years by 15 days i.e., from 15.03.2020. Hence, the recovery is time barred.
- (vi) The Applicant referred Section 56 of the Electricity Act, 2003 and cited the Judgment dated 10.07.2013 in W.P. No. 1650 of 2012 of Hon'ble Bombay High Court, Nagpur Bench which is specific on the issue of limitation and relevant to the present case. Hence, the supplementary bill of the Respondent is time barred on all angles of the rules and regulations.
- (vii) The Applicant has paid the full amount of supplementary bill being under the threat of disconnection as per provision of Section 56 (1) of the Act. This does not mean that the Applicant made the payment willfully. The Applicant also paid Rs.472/- as reconnection charges which clearly established that the supply was disconnected.
- (viii) In view of the above, the Applicant prays that the Respondent be directed to cancel the supplementary bill of Rs.3,01,071/- along with the imposed cost of Rs.2000/- considering natural justice in the case.


4. The Respondent filed a reply by its letter dated 02.08.2022. The Respondent attended the hearing on 16.06.2022 and 19.09.2022 through Video Conference. The Respondent's submission and arguments in brief is as below: -

- (i) The present Review Application filed by the Applicant is wrong, baseless, and not maintainable as per law. The Applicant is not a consumer of MSEDCL and there is no relation between him and MSEDCL in the capacity of Consumer and Distribution Licensee. The Applicant has no right and Locus Standi to file this representation.

  
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- (ii) A review can be filed in case of discovery of new evidence or detection of an error in the order of Hon'ble Ombudsman. There is no error or mistake in the order of Hon'ble Ombudsman as well as there is no discovery of new evidence in present case. Hence, the review filed by Applicant is not maintainable and may kindly be dismissed with costs.
- (iii) The Applicant submitted some case laws along with the representation, but the case laws are not relevant to the facts of present case.
- (iv) The Original Consumer Smt. Kaushalya Gurumukhdas Motwani did not have any grievance. She paid the entire recovery bill of Rs.3,74,040/- on 08.07.2021 without any protest. The Respondent referred Regulation 7.9 (d) of CGRF & EO Regulations 2020 for maintainability of grievance as the present case is not maintainable. The relevant Regulation is quoted as below: -
- “7.9 The Forum shall reject the Grievance at any stage under the following circumstances:  
(d) In cases of recovery of arrears where the bill amount is not disputed;”*
- (v) The bill amount was never disputed by the consumer at any time before the payment, and the original consumer paid the entire recovery without any protest, hence, as per above referred regulation, the present case is not maintainable.
- (vi) The Applicant is an industrial consumer (No. 021510790909) from 15.11.1997 having SL of 67 HP and CD of 56 KVA near Barrack No. 969, Sukhdav Compound, near Lal Silk Mills, Ulhasnagar 3. The Consumer No. 021510790909 stands in the name of Smt. Kaushalya Gurumukhdas Motwani and the present review application is filed by some unknown person without submitting valid registered Power of Attorney from Smt. Kaushalya Gurumukhdas Motwani, relating to the above premises.
- (vii) The bill amount was never disputed by the consumer at any time before the payment and original consumer paid the entire recovery without any protest, hence, as per above referred regulation, the present case is not maintainable.
- (viii) The present representation is filed by a third party, who is not an affected party; hence


  
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the Representation is not maintainable on the point of Locus-Standi (Right of Party to appear in court). The present representation may kindly be dismissed as per Regulation 19.25 of CGRF & EO Regulations 2020. Since, it is false, frivolous, vexatious, malafide and filed without any sufficient cause. There is no prima facie loss or damage, or inconvenience caused to the original consumer, the bill is issued to consumer as per her actual consumption, which is proper and legal and it is noteworthy that, the bill is paid by original consumer without any protest.

- (ix) The Flying Squad of the Respondent inspected the meter and metering equipment of above consumer on 08.10.2020. The Respondent observed that B phase of Meter of consumer was missing and proposed the recovery for 13979 Units amounting of Rs.72,959/-.
- (x) The Flying Squad further observed that, the consumer was regularly enjoying the electric supply; however, the meter was wrongly shown as Permanently Disconnected (PD) in the System for the period from March 2018 to June2018, hence the Flying Squad proposed the recovery for actual consumed units for the 4 months' period for 85806(556805-470999) Units for Rs.3,01,071/-. These units were inadvertently missed from billing. This is a case of short billing only.
- (xi) Both the above-mentioned recoveries are paid by the original consumer without any protest. The recovery charged for the short billing is legal, proper and bill issued for the purpose of recovery of legitimate revenue of MSEDCL.
- (xii) 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. The relevant para-No. 25 is reproduced as below:

*“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*

  
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*consumer under this Section, appearing in Sub-section (2) of Section 56.”*

- (xiii) The Respondent argued that the Applicant submitted a Power of Attorney between Kaushalya Gurumukhdas Motwani and Chander Gurumukhdas Motwani which is not a registered document. This is only a notary document dated 07.03.2020 which is not legal in the Court of Law. Apart from this, the address of the gala for Power of Attorney and the address of the consumer on the electricity bill is totally different. The said addresses are produced below:


Address of Gala on Power of Attorney document

Situated on CTS No. 16352 admeasuring total area of 2700 sq.ft. from which area of 250 sq.ft. is a patra shed room constructed. The remaining area of 2450 sq.ft. is open plot closed by a compound wall. This plot is near BK No. 957, Station Road, Ulhasnagar – 3.

Address on the electricity bill

Near Barrack No. 969, Sukhdav Compound, near Lal Silk Mills, Ulhasnagar 3.

- (xiv) The Respondent also stated that the Hon’ble Supreme Court of India passed its judgment on 23.03.2020 in *Suo Moto Writ (Civil) No. 3 of 2020* with reference to Cognizance for Extension of Limitation with IA No.48411/2020. In view of the subsequent order of the Hon’ble Supreme Court dated 08.03.2021 in *Suo Motu Writ Petition (Civil) No.3 of 2020* regarding cognizance for extension of limitation wherein the Hon’ble Supreme Court has extended limitation up to 15.03.2021 due to lockdown situation of Covid 19 Pandemic.
- (xv) The Respondent further argued that the Applicant did not discover any new and important matter or evidence which was not within the knowledge when the original order was passed.
- (xvi) The Respondent argued that consumption of 01.03.2018 to 31.03.2018 was the bill period for March 2018. The bill was issued to all consumers in the first week of April 2018. Hence, the cause of action started from April 2018. Hence, the supplementary

  
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bill issued to the Applicant is not time barred as per the Judgment of the Supreme Court for extension of limitation wherein the Hon'ble Supreme Court has extended limitation up to 15.03.2021 due to lockdown situation of Covid 19 Pandemic, and 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. The Applicant did not say that she was not receiving the bills of March 2018 to June 2018; on the contrary the Applicant was consuming the electricity. A law binding precedent must be followed by both the parties. The Applicant was also duty bound to inform the Respondent that it was not receiving the bills for 4 months, however, it failed to do so.

- (xvii) In view of the above, the Respondent prays to dismiss the present Review Application being not maintainable.

### **Analysis and Ruling**

5. Heard the parties and perused the documents on record. The Applicant is an industrial consumer from 15.11.1997 having SL of 67 HP and CD of 56 KVA near Barrack No. 969, Sukhdav Compound, Ulhasnagar. After a careful reading of the Review Applications, it is seen that the Review Application has repeated what already has been brought on record in the original Representation No. 53 of 2022 which is under review.

6. The Schedule B of the original representation was not signed by the consumer. The Applicant claimed that it was signed by her son, Chander Gurumukhdas Motwani. Even if it true that the consumer's son signed Scheduled 'B', it is clear from the document that he signed under his mother's name which is mis-leading. Even if we consider that he signed for his mother as her power of attorney, this document itself seems to relate to some other premises. The Applicant pointed out that the Power of Attorney dated 07.03.2020 between Kaushalya Gurumukhdas Motwani and Chander Gurumukhdas Motwani is a notary document. More importantly, the address of gala for Power of Attorney and address of consumer on the electricity bill is different.

  
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The details are already captured in Para 4(xiv). Hence, the document of Power of Attorney does not support the submission of the Applicant.

The argument regarding when the cause of action arose has already been taken into consideration in the original representation.

7. The scope of Review under the Regulation 22 of the CGRF & EO Regulations 2020 is very limited. The said Regulation is quoted below: -

*“22 Review of Order of Electricity Ombudsman*

*22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:*

*(a) Where no appeal has been preferred;*

*(b) on account of some mistake or error apparent from the face of the record;*

*(c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.*


*22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.*

*22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.*

*22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.*

*22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”*

8. I am of the opinion that all important issues in sum and substance have already been covered in the original order. The review application is nothing but a repetition of the original representation. The Applicants are trying to seek appeal under the guise of review which is not

  
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permitted. The scope of review is very limited. The alleged mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at first glance. The undersigned has power to review its ruling to correct a patent error and not a minor mistake of inconsequential import. In the matter of review of the order, the following Judgments of the Supreme Court are reproduced below: -

In the matter of Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -


*“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”*

In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

*“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”*

9. In view of the above, I am of the view that there is no substance in this Review Application, and therefore it is rejected and disposed of accordingly.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
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