

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 5 OF 2021

In the matter of billing

Gustad K. Irani..... Appellant

V/s.

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

Appearances:

For Appellant : 1. Gustad K. Irani
2. Dipesh R. Porwal, Representative

For Respondent : 1. S. R. Garud, Executive Engineer, Rajgurunagar
2. Umesh S. Chavan, Addl. Ex. Engineer, Lonavala S/Dn.


Coram: Deepak Lad

Date of hearing: 16th March 2021

Date of Order : 25th March 2021

ORDER

This Representation is filed on 12th February 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 27th January 2021 passed by the Forum.


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2. The Forum, by its order dated 27.01.2021 has partly allowed the grievance application in Case No.22 of 2020. The operative part of the order is as below:

“2. The Respondent utility is entitled to recover the energy bill in arrears for the accumulated units of 51854 with aggregate energy bill amounting to Rs.6,87,740/- for the period Dec.2016 to Sept.2018.


3.The consumer is directed to pay the first installments of Rs.87,740/- within the period of seven days from the date of this order and the balance amount of Rs.6,00,000/- to be paid in five equal monthly installments of Rs.1,20,000/- each, together with the current bills.

4.The utility is directed to restore the electricity supply of the consumer immediately when the consumer produces the evidence of payment of first installments of Rs.87740/-.

5.The utility is directed not to recover any interest, DPC and penalty from the consumer, for the disputed bill amount.”

3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating as under: -


- (i) The Appellant is a senior citizen having LT-II Commercial electric connection (Consumer No.181012933881, Meter No. 5350023554) at CTS No.2/12, M.P Road, near Lucky Hardware, Lonavala.
- (ii) The Appellant was billed with consumption of 76 units per month from August 2017 to July 2019.
- (iii) It is not possible for the Appellant to visit the office of the Respondent every month for paying the bills as a Senior Citizen for health reasons. Hence, the Appellant has paid in advance an amount of Rs.90,000/-. The amount of the monthly bill gets deducted from the advance amount and the outstanding amount is shown credited with the Respondent.
- (iv) The Appellant received an exorbitant bill of Rs.6,67,560/- for 52688 units consumption in the month of August 2019. The Appellant was scared and rushed to the Respondent's office by seeing this huge amount and gave an oral intimation. The Respondent affirmed him orally that there were mistakes in most of the bills issued and hence the Appellant will get a revised bill on the previous month reading.
- (v) The bill of August 2019 is totally wrong, which can be seen from the plain reading of the bill itself. The previous reading was mentioned as 3860 units and current


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reading has mentioned as 56548 units which resulted 52688 units consumption for 32 months, which is totally false as the Appellant is getting bills monthly for 76 units and the amount due is getting deducted from the advance amount deposited.


- (vi) The advance accrued before the month of August 2019 was Rs.(-)48,092.47. The Respondent issued the bill for Rs. 6,19,460/- in August 2019 after deducting the amount of advance.
- (vii) The Appellant has not received a revised bill or any reduction in the bill. The Appellant received bill for Rs.3945/- of 327 units for the month of September 2019 along with previous arrears.
- (viii) From the month of October 2019 onwards, the Respondent billed the Appellant on average basis for 3036 units which is wrong. The Appellant's average consumption is only 76 units from the past record.
- (ix) The Appellant filed an application with the Respondent for checking the meter. The Respondent officers had come to his premises on 04.11.2019 for the inspection of the meter. The Appellant paid testing fees of Rs.944/-. The Respondent carried out the inspection and stated that the meter is okay.
- (x) As there was no communication for the reduction in the bill, the Appellant then filed a complaint with the Respondent on 05.11.2019 for the excess bill issued in August 2019.
- (xi) The Respondent induced the Appellant to pay an initial amount as instalment, so that the electricity connection to the premises will not be disconnected. Hence, the Appellant deposited an amount of Rs.50000/- with the Respondent on 11.11.2019. The Appellant also signed a paper given in Marathi by the Respondent for the payment of instalment. The Appellant did not understand the content of the letter as he is poor in Marathi, and he had faith in Respondent.
- (xii) After the inspection of the meter on 04.11.2019, the Appellant was daily monitoring the meter. It came to the notice of the Appellant that the meter is not working. The Appellant then filed an application on 20.11.2019 for change of meter. The Respondent inspected the premises of the Appellant on 25.11.2019 and


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prepared a verification report about the electronic appliances used by the Appellant in the premises. From the report, 14 tube lights, 1 Bulb, 1 Freeze, 7 Fan and 1 mixer is used. No copy of the inspection report was provided by the Respondent. The Appellant had informed the Respondent that there are no changes in the appliances in the premises for the past three to four years and hence the electricity consumption must be only 76 units per month.


- (xiii) The Appellant received bills of 3036 units consumption under faulty status in November and December 2019.
- (xiv) The same instance happened when he received a handwritten electricity bill for the month of September 2018, which was issued on 26.10.2018 stating the bill amount for Rs.6,85,740/- for the consumption of 51854 units. It was then later rectified and revised for 76 units.
- (xv) The Appellant again filed an online complaint on 06.02.2020 as there was no reply for the complaint filed on 05.11.2019.
- (xvi) The Respondent disconnected the supply of the Appellant on 25.02.2020 before deciding the issue.
- (xvii) The premise was always given by the Appellant on Leave & License basis as he is of very old age and cannot look after the business activities. First the premise was given for residence and there afterwards from the month of December 2018 it was given for Commercial purpose meant for Lodging. As per the general terms of Leave & License Agreement the electricity charges are to be paid by the Licensee and not by the Licensor (Appellant).
- (xviii) The Appellant approached the Forum on 28.02.2020 for reconnection of supply and revision of bill. The Forum, by its order dated 27.01.2021 has partly allowed the grievance merely waiving interest and delayed payment charges (DPC) and further granting instalments for payment of entire bill.
- (xix) The Forum did not appreciate that the bill was always issued on average basis for a period of 32 months. In fact, the Forum has not understood the fact that the bill was for 32 months and in the impugned order it is mentioned as 22 months, the average reading was taken for 32 months and not for 22 months. This seems that


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the order passed is not referring to the documents filed by the Appellant.

- (xx) The Forum did not appreciate that the Appellant has deposited a lumpsum amount of Rs.90, 000/- to the Respondent in the year 2016. From the amount of the deposit, the amount of the bill was being adjusted and the bill of the Appellant was always in negative from the month of Dec 2016 till the month of July 2019.
- (xxi) The Forum failed to appreciate that the bill was never more than 76 units per month. Even from the CPL submitted by the Respondent, it can be seen, the highest consumption of electricity for a month was 511 units. Then how come the Appellant can receive a bill of 52688 for 32 months which means that the average consumption per month is 1646.50 units which is unbelievable. Such amount of electricity consumption is still not been used from the date of supply.
- (xxii) The Forum failed to appreciate that the bill from the month of September 2019 was issued on average basis taking into consideration the huge bill for the month of November 2019 for consumption of the highest units i.e. 3036 units. Then how the Appellant will pay such bills issued. The Respondent states that they are ready to provide instalments to the Appellant. It means they are hammering the person and then ready to provide medicines.
- (xxiii) The Forum failed to appreciate that the Respondent in their reply has stated that in the month of October 2018 a provisional bill was issued to Appellant which was as per reading of 51854 amounting to Rs. 6,87,740/- as per manual calculation for the period (Dec 2016 to Sept 2018). Hence, once the bill was issued was for 51854 units then how come in the subsequent months the bill was issued for 76 units with no mention of the 51854 units. The Respondent is totally irresponsible in carrying out its duties.
- (xxiv) The Forum failed to appreciate that if at all the reading is taken for granted that in the month of September 2018 it was 51854 units and then the disputed bill was issued in the month of August 2019 for 52688 units, the average reading for 11 months comes to 76 units per month. Then how come the Appellant is asked to pay the bill for 52688 units for 32 months which comes to average of 1646.5 units per month. The Respondent does not have any submission to it.



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- (xxv) The Forum failed to take into consideration that the electricity in the premises of the Appellant has been disconnected from 25.02.2020 and since then the Appellant is in dark and there is no business on account of no power. Since then, there is no Lessee on the said premises causing huge losses to the Appellant.
- (xxvi) The Forum failed to appreciate that the premise was only used for Lodging from 2018 and the premise was never used for Bakery purpose. The Respondent has misled the Forum on this ground. In fact, when the Respondent inspected the premises on 25.11.2019 and prepared a verification report about the electronic appliances being used which indicates 14 tube lights, 1 Bulb, 1 Freeze, 7 Fan and 1 mixer. No copy of the inspection was provided. The Lessee, Mr. Virendra Pandey took a photo of the report in his mobile.
- (xxvii) In view of the above, the Appellant prays that the Respondent be directed to :-
- to reconnect the supply.
 - to issue revised bill from August 2019 to till the disposal of grievance.
 - to install new meter.
 - to credit Rs. 50.000/- which is deposited with the Respondent.
 - to pay the cost and compensation for the mental torture.


4. The Respondent MSEDCL filed its reply dated 26.02.2021 stating in brief as under: -

- The Appellant is a LT-II Commercial Consumer (No.181012933881) from 23.10.2013 having sanctioned load of 6.23 KW at present, at CTS No.2/12, M.P Road, near Lucky Hardware, Lonavala.
- The said premises was verified by the Respondent's Addl. Ex. Engineer, Lonavala and found that the electric connection was used for commercial purpose mainly bakery products and lodge since last 2 to 3 years. The fact was also confirmed from nearby locals verbally.
- A manually calculated provisional bill of Rs.6,87,740/- was issued to the Appellant in the month of October 2018 for reading of 51,854 units for the period of 22 months from December 2016 to September 2018. However, the Appellant did not pay the same.


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- (iv) Afterwards the bill for the month of August 2019 was generated for Rs.6,19,457.78 for 52688 (56548-3860) units for the period of 32 months from December 2016 to August 2019 giving credit of previous average billing of Rs.14470.62 and the bill of August 2019 was issued to the Appellant and requested to pay the same, however, the Appellant did not pay the same.
- (v) The Appellant requested for paying the bill in instalments on 04.10.2019 and subsequently requested to test the said meter. Accordingly, the meter was removed for testing purpose on 04.11.2019. The said meter was tested in Testing Laboratory in presence of representative of the Appellant on the same day. The test results were found in order as per Testing Report and the same meter was therefore reinstalled on the same day. Copy of the Testing Report was handed over to the Appellant for information and is kept on record.
- (vi) Considering all the above-mentioned facts, the Appellant was convinced to pay the bill which was correct as per reading. The Respondent extended facility of the instalments for the payment of the bill of Rs.50,000/- per month along with current bill as per request of the Appellant. Accordingly, the Appellant has paid Rs.50,000/- as first instalment on 11.11.2020.
- (vii) Thereafter, the Appellant did not pay the second instalment in December 2019. Hence, the Respondent has intimated the Appellant on 16.01.2020 to pay the same along with current bill of December 2019 to avoid disconnection of supply. But, the Appellant failed to pay further instalment amount, the supply of the Appellant was therefore disconnected for arrears on 25.02.2020.
- (viii) The Appellant approached the Forum on 28.02.2020 whereas he was supposed to have approached the Internal Grievance Redressal Cell (IGRC) as a first step to resolve the grievance. The Forum, by its order dated 27.01.2021 has partly allowed the grievance. The Forum admitted that the Respondent is entitled to recover the provisional energy bill in arrears of Rs. 6,87,740/- for the accumulated reading of 51854 units for the period Dec.2016 to Sept.2018. The Forum further directed to pay the first instalment of Rs.87,740/- within the period of seven days from the date of Forum`s order and the balance amount to be paid in five equal monthly


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instalments together with the current bills. The Appellant failed to pay the first instalment and hence, the supply of the Appellant was not restored.

- (ix) Now the Appellant has paid first instalment of Rs.87,740/- on 25.02.2021. The supply of the Appellant is reconnected on 25.02.2021.
- (x) The Respondent requested to consider the facts and situation mentioned above.


5. The hearing was scheduled on 12.03.2021 through video conferencing due to Covid-19 epidemic. However, it was postponed as per the request of the Appellant for physical hearing as he is not accustomed with e-conference. Hence, routine physical hearing was held on 16.03.2021 at MSEDCL Rest House, Lonavala.

6. During the hearing, the Appellant argued that the premises was given let out on Leave & License basis for Lodging Purpose. As per Leave & License Agreement, the electricity charges are to be paid by the Lessee and not by the Lessor (Appellant). The Respondent inspected the premises of the Appellant on 25.11.2019 and found that 14 tube lights, 1 Bulb, 1 Fridge, 7 Fans and 1 mixer is used as per report. It is not possible to record consumption in the range of 1646.50 units per month. The Appellant received bills of 3036 units consumption under faulty status in November 2019 to February 2020 even though the Appellant had requested to replace the faulty meter on 20.11.2020. The Appellant`s supply was disconnected on 25.02.2020 and after one year the supply was reconnected on 25.02.2021. The Appellant referred following Judgements in support of its argument.

- a. The Judgement of the Supreme Court dated 15.02.2018 in Civil Appeal No. 3370 of 2007. It is stated that:

“21) In these circumstances, if the Board initiates any action against any person /consumer, then such action must be brought to its logical end in accordance with the procedure presubscribed under the Act after affording an opportunity to such person/consumer.”

- b. The Judgement of the Supreme Court dated 14.08.2007 in Case of 2846 of 2006 of the Maharashtra Electricity Regulatory Commission V/s Reliance Energy Ltd. & Ors. The Electricity statutes (in the past and at present) provide inter alia that, in case of metered consumers, energy consumption charges have to be billed on the


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basis of meter readings, or having such meters replaced where necessary. Thus, no “amendment” bills of the kind referred to above can be raised, and any additional billing has to follow due process and the provision of law.

- c. The Judgement of the High Court, Bombay dated 09.06.2020 in Case of 10536 of 2019.
- d. Various commercial Circulars of the Respondent having No. 200 dated 05.07.2013, 56 dated 21.06.2007, 224 dated 05.07.2014, 254 dated 07.12.2015 and 13811 dated 03.06.2017.

The Appellant prays that the Respondent be directed to revise bill of August 2019 and further bills till the reconnection of the meter without any interest and DPC, allow to pay bill by installments and grant suitable compensation for the mental torture.

7. The Respondent argued that the meter installed at the premises was readable initially even though it was at about more than 7 feet height. However, it became inaccessible due to some physical changes at the premises. A provisional manual bill of Rs.6,87,740/- was issued to the Appellant in the month of October 2018 for reading of 51854 units for the period of 22 months from December 2016 to September 2018. This was due to introduction of central billing system in November 2018 and there were some systemic issues that were being faced by the field officers at large while feeding the information similar to that of the instant case. This continued till July 2019. The Respondent is having all readings in M-30 format with it which could not be fed due to systemic issues. Afterwards, the electric bill for August 2019 was generated in the computerized billing system for Rs.6,19,457.78 of 52688 units for the period of 32 months from December 2016 to August 2019. The Appellant requested instalment facility for payment on 04.10.2019 and requested to test the said meter. Accordingly, the said meter was tested in Testing Laboratory on 04.11.2019 in presence of the Appellant. The meter was found in order.

8. The Respondent extended the facility of instalment of Rs. 50,000/- per month along with current bill as per request of the Appellant. The Appellant paid Rs.50,000/- as first instalment


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on 11.11.2019. Thereafter, the Appellant did not pay the second instalment in December 2019. Hence, the supply of the Appellant was disconnected for arrears on 25.02.2020 after giving due notice.

9. The Appellant approached the Forum on 29.02.2020. The Forum, by its order dated 27.01.2021 has partly allowed the grievance. The Forum admitted that the Respondent is entitled to recover the provisional energy bill in arrears of Rs.6,87,740/- for the accumulated reading of 51854 units for the period Dec.2016 to Sept.2018. The Appellant has paid first instalment of Rs.87,740/- on 25.02.2021. The supply of the Appellant is reconnected on 25.02.2021. The average bill of RNA / faulty status for the month of October 2019 to February 2020 will be revised as per average consumption as the said meter was working till 04.11.2019 which subsequently failed due to faulty display. The Respondent requested that the representation of the Appellant be rejected.

Analysis and Ruling

10. Heard the parties and perused the documents on record. The Appellant is LT-II Commercial Consumer (No.181012933881, Meter No. 5350023554) having sanctioned load of 6.93 KW. The Appellant`s reading, consumption and status of the billing from December 2016 onward as per CPL is tabulated below:


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Billing Abstract of the Appellant as per CPL									
Month	Initial Reading	Final Reading	Consumption	Billing Status	Month	Initial Reading	Final Reading	Consumption	Billing Status
Dec-16	3791	3860	69	Normal	Aug-18	3860	3860	76	Lock
Jan-17	3860	3860	76	RNA	Sep-18	3860	3860	76	Lock
Feb-17	3860	3860	76	RNT	Oct-18	3860	3860	76	Repl
Mar-17	3860	3860	76	INAC	Nov-18	3860	3860	76	RNT
Apr-17	3860	3860	76	RNT	Dec-18	3860	3860	76	RNT
May-17	3860	3860	76	RNT	Jan-19	3860	3860	76	INAC
Jun-17	3860	3860	76	INAC	Feb-19	3860	3860	76	Lock
Jul-17	3860	3860	76	RNT	Mar-19	3860	3860	76	RNT
Aug-17	3860	3860	76	RNT	Apr-19	3860	3860	76	INAC
Sep-17	3860	3860	76	RNT	May-19	3860	3860	76	RNT
Oct-17	3860	3860	76	RNT	Jun-19	3860	3860	76	RNT
Nov-17	3860	3860	76	Lock	Jul-19	3860	3860	76	RNT
Dec-17	3860	3860	76	Lock	Aug-19	3860	56548	52688	Normal
Jan-18	3860	3860	76	Lock	Sep-19	56548	56875	327	Normal
Feb-18	3860	3860	76	Lock	Oct-19	56875	56875	3036	RNT
Mar-18	3860	3860	76	Lock	Nov-19	56875	56875	3036	Faulty
Apr-18	3860	3860	76	INAC	Dec-19	56875	56875	3036	Faulty
May-18	3860	3860	76	Lock	Jan-20	56875	56875	3036	Faulty
Jun-18	3860	3860	76	RNT	Feb-20	56875	56875	3036	Faulty
Jul-18	3860	3860	76	RNT	Mar-20	Temporary disconnected on 25.02.2021			

Note:

(a) RNT - Reading Not Taken (b) RNA - Reading Not Available (c) INAC - Inaccessible (d) Repl - Replacement

(i) Reading in Dec 2016 3860


(ii) Reading in Oct 2018 51854 (Provisional bill issued but not paid by the Appellant)

(iii) Reading during Inspection on 11.01.2019 : 52425

(iv) Reading in Aug 2019 56548

From the above table and other relevant records such as Testing Report, Inspection Report, I noted the following important points.

- The premises was not used by the Landlord himself as it was let out under Leave & License Agreement.
- The power supply was used for Commercial purpose.
- The Appellant was billed on average basis of 76 units from January 2017 to July 2019 (31 months). It is therefore a case of accumulated consumption for whatever reason.
- Actual reading for the month of December 2016, October 2018, January 2019, and August 2019 was available. All these readings are progressive in nature.
- The meter was tested on 04.11.2019 and was found in order. Thereafter, its display counter was declared faulty. It means that up to 04.11.2019, meter was in order.



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- Appellant was billed with RNT / faulty status at the average of 3036 units in October 2019 to February 2020 which the Respondent agreed to revise.

Other important events in the case are as below:-

- Respondent issued the provisional energy bill in October 2018 of Rs.6,87,740/- for the accumulated reading of 51854 units for the period Dec.2016 to Sept.2018. It means during the entire period of January 2017 to August 2019 (32 months), the Respondent issued provisional bill at the intervening period of October 2018. But the Appellant did not pay.
- Inspection of the premises was done on 11.01.2019 when the Meter reading was found to be 52425 KWH. Therefore, this recording of consumption cannot be denied. Inspection report also recorded that the premises was used for Bakery, and Dhananjay Guest House. Therefore, from January 2017 to 11.01.2019, total consumption recorded by the meter is (52425 – 3860) 48745 units. Thus, it is for approximately 24 months with the average of 2031 units per month.
- The bill for August 2019 was generated in the system for Rs.6,19,457.78 of 52688 units for the period of 32 months from January 2017 to August 2019 after taking care of all adjustments by virtue of average billing.
- Appellant requested for instalments on 04.10.2019 and paid Rs.50,000/- in November 2019 towards first instalment. However, he did not pay the second instalment.
- Appellant requested for meter replacement on 20.11.2019 as meter was not found working.
- Letter issued by the Respondent for non-payment of arrears on 16.01.2020.
- Supply temporary disconnected on 25.02.2020.
- Supply reconnected after payment of Rs. 87,740/- on 25.02.2021 as first instalment as per the Forum's order.
- There is no entry of payment of Rs.90,000/- made by the Appellant and further, he has not produced any money receipt on account of having paid the said amount. On the contrary, the Respondent agreed that Rs.90,000/- is shown as credit in the


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CPL of the amount by virtue of various adjustments on account of improper reading.


11. It is an admitted position that the meter was not faulty till 04.11.2019. The Appellant was billed on average basis from January 2017 till July 2019. In the meantime, centralised billing system was introduced by the Respondent which for some technical glitches prevented the Respondent to enter the factual data of the Appellant in the system. Therefore, the Respondent issued manually prepared provisional bill in October 2018 for Rs. 6,87,740/- for 22 months to the Appellant which he did not pay.

12. The argument of the Appellant that the consumption cannot be so high, is not sustainable as it has absolutely no control over the manner the tenant uses power for its business. This is pretty, obvious as the premises is let out by the Appellant.

13. The Appellant took the plea that the Respondent cannot issue bill for 32 months from January 2017 to August 2019 in August 2019 in accordance with Section 56 (2) of the Electricity Act, 2003 (the Act). Here, the Appellant is right in interpreting Section 56 (2) had the Respondent not issued the bill, may be provisional, in October 2018 for 22 months to him. Therefore, the period of 32 months is not a continuous period so as to attract the Section 56 (2), but it has been broken into two parts of 22 months and 10 months. The purpose behind issue of provisional bill of 22 months is on account of systemic issues which the Respondent has plainly admitted.

14. The Section 56 (2) of the Act is interpreted in Larger Bench Judgment dated 12.03.2019 of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions which is quoted below: -

Section 56 (2) of the Electricity Act, 2003


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“(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.”

Relevant portion of the Larger Bench Judgment

“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


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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. (Emphasis added)**
- (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


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than two years provided the condition set out in subsection (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.

15. The Appellant also cited the Judgement in Writ Petition No.10536 of 2019 dated 09.06.2020 of the Hon'ble Bombay High Court in Case of MSEDCL V/s Principal, College of Engineering, Pune. However, the context of the case is totally different from the instant case and therefore, the ratio of this judgement cannot be applied blindly. More importantly, 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:

“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)

.....”

16. The ratio of the Judgment is that the licensee company can recover energy bill by way of additional supplementary demand for a period of two years for the bona fide error. However, as explained above, the Respondent issued bill in two tranches, one in October 2018 and the second in August 2019. The August 2019 bill includes the October 2018 bill as the Appellant has not paid the provisional bill amount.

17. The other Judgments cited by the Appellant are of no relevance as the ratio in it has already been drawn and applied in his case for the obvious reason that the Appellant has been heard and the bill has been issued as per rules for the energy consumed by the Appellant.

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


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- (a) To recover the amount towards accumulated reading from January 2017 to August 2019 without any interest and DPC if any levied and appropriate credit given towards average billing.
- (b) To revise the bill for the month of October 2019 to 04.11.2019 as per actual reading and from 04.11.2019 till February 2020 on the average basis of preceding three months. No DPC and interest shall be levied.
- (c) To grant eight instalments to the Appellant for payment of the balance amount along with the current bill. In case of default, the interest, DPC shall be levied.
- (d) To pay Rs.2000/- towards cost to the Appellant which shall be adjusted in the ensuing bill.
- (e) To fix the meter at the appropriate place in coordination with the Appellant so as to take the readings easily.
- (f) Compliance to be submitted within two months from the date of issue of this order.

19. The Forum's order is therefore revised to the above extent. Other prayers of the Appellant are rejected. The Representation is disposed of accordingly.

20. The secretariat of this office is directed to refund the amount of Rs.25000/- (deposited by the Appellant) to the Respondent for adjusting it against the Appellant's ensuing bill.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

