

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 113 OF 2023

In the matter of outstanding dues of PD consumers

Dilip Moreshwar Pathare.....Appellant
(Consumer No. 13011181991)

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Thane (MSEDCL)..... Respondent
Torrent Power Limited (TPL), Distribution Franchisee, Bhiwandi

Appearances:

Appellant : 1. Dilip Moreshwar Pathare
2. Adil Punjabi, Representative
3. Nadeem Ansari, Representative

Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, Thane Urban Circle, MSEDCL
2. Hemangi Bhogvekar, Nodal Officer/ Manager, TPL
3. Sameer Desai, Manager, TPL

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 16th January 2024

Date of Order: 29th January 2024

ORDER

This Representation was filed on 30th December 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum &



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Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the original order dated 24th July 2023 and review orders in Case No. 134 of 2021-22 & 80 of 2022-23 respectively passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum). The Forum, in its original & review orders dismissed the grievance. The Forum observed that the grievance is time barred as per Regulation 7.8 & 7.9 CGRF & EO Regulations 2020.

2. Aggrieved by the original and review orders of the Forum, the Appellant filed this representation. A physical hearing was held on 16.01.2024. All the parties were heard at length. The Respondent MSEDCL and its Franchisee, TPL filed their written replies dated 06.12.2023 and 04.12.2023 respectively. For easy understanding, the Respondent's submissions and arguments are stated first as below: -

- (i) Firstly, the Respondent raised an objection to the presence of the consumer representatives, as they mislead their clients, and the Forum has recorded its observations against them. TPL is willing to negotiate directly with the consumer but not with the representatives, as they go around finding cases to raise unnecessary and time barred grievances.
- (ii) The electricity distribution and billing in Bhiwandi was handed over to Torrent Power Limited from 26.01.2007 up to 02.01.2017 as Distribution Franchisee and was extended for further 10 years. The Superintending Engineer (SE) of MSEDCL, Bhiwandi is the Nodal Officer to coordinate with TPL on various issues including recovery from 2007 to 2018. From 2018 onwards, SE (Thane Urban Circe), Thane is the Nodal Officer. Consumers used to approach this Nodal office for resolving billing complaints, and this office resolved grievances about billing complaints for the MSEDCL period.
- (iii) The Appellant and his wife, Dipali Dilip Pathare previously had four service numbers which were permanently disconnected due to non-payment of arrears. The details of consumer nos., addresses, sanctioned load, contract demand, outstanding dues of MSEDCL and TPL etc. are tabulated below:-


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Table 1

Service No.	Name	Address	Sanctioned Load	Date of Supply	Category	Status	MSEDCL Arrears			TPL Arrears (Rs.)	
							Principal (Rs.)	Interest (Rs.)	Total (Rs.)		
13011181991	Dilip Moreswar Pathare	H.No.1367/1, SN 33/2, Kaneri, Adevi Road, Bhiwandi	16 HP	30.01.1998	Powerloom	PD	2,24,692	3,00,258	5,24,950	1,00,760	
13011182008	Dilip Moreswar Pathare	H.No.1367/1, SN 33/2, Kaneri, Adevi Road, Bhiwandi	1 KW	30.01.1998	Commercial (lighting)	PD	90,337	1,22,500	2,12,837	2,712	
13011182016	Dipali Dilip Pathare	H.No.1367/1, SN 33/2, Kaneri, Varaladevi Road, Bhiwandi	16 HP	30.01.1998	Powerloom	PD	2,24,713	3,00,230	5,24,943	1,00,760	
13011182024	Dipali Dilip Pathare	H.No.1367/1, SN 33/2, Kaneri, Varaladevi Road, Bhiwandi	1 KW	30.01.1998	Commercial (lighting)	PD	90,337	1,22,500	2,12,837	2,712	
Total								6,30,079	8,45,488	14,75,567	2,06,944

(iv) The Appellant had filed a grievance before the Forum vide Case No.134 of 2021-22 with prayers as below: -

- a) *To waive off the faulty bills of MSEDCL.*
- b) *To give “no dues pending” certificates for all the four services and a copy of CPL after waiving the faulty bills of all the four services.*

(v) Aggrieved by the order of the Forum which rejected the above prayers, the Appellant filed a review application and a representation before the Electricity Ombudsman with prayers as below: -

- 1 *To waive off the faulty bills of MSEDCL.*
- 2 *To give “no dues pending” certificates for all the four services and copy of CPL after waiving the faulty bills of all the four services.*
- 3 *To refund the security deposit of all four services along with interest right from 1997 till date.*

The Appellant has changed his prayers in Review before the Forum (and Ombudsman) as compared to the original prayers before the Forum. Hence, the grievance is not maintainable.

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Brief History of the Case: -

- (vi) The above four electricity service connections were given to the Appellant's premises where he had two power looms and two lighting connections as mentioned in Table 1.
- (vii) The above connections were disconnected on 26.03.1998 by the erstwhile MSEB at the time of demolition of the entire premises undertaken by the Bhiwandi Nizampur Municipal Corporation. (However, no record is available with the Respondent.) During the hearing, the Appellant stated that the premises were demolished as the land was reserved for school and playground. The said land is still vacant today. From the discussion it seems that the said land was encroached and hence demolished / cleared. The Appellant was billed regularly till then. The area was handed over to TPL Franchisee on 26.01.2007. The Appellant did not raise this matter to any Redressal Cell or the Forum at that time. In 2007, the Respondent TPL informed the Appellant to clear the outstanding dues of MSEDCL. Despite this, the Appellant did not approach the Internal Grievance Redressal Cell of the Respondent.
- (viii) The Appellant filed a complaint first time in the Forum on 06.12.2021. The Forum by its order rejected the grievance, being barred by limitation. The Appellant filed a review on 23.08.2023 which was also rejected by the Forum as there was no merit nor were any fresh facts raised.
- (ix) In this case, the facts clearly establish that the cause of action arose when the premises were demolished, and the electricity supply was disrupted in 1998. The Appellant ought to have approached IGRC or the Forum within a period of two years from the date of cause of action. The next cause of action for approaching the IGRC or CGRF arose in 2003, or at the most in 2007 when the IGRC was established by the Respondent, Torrent Power Ltd. However, he approached the Forum only on 06.12.2021. Thus, the complaint ought to be rejected as per



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Regulation 7.9 (c) of the CGRF & EO Regulations 2020. The Respondent had already established the Internal Grievance Redressal Cell long back since 2007. The cause for the complaint arose way back in August 1998 but the Appellant remained dormant and did not file any complaint before the redressal mechanism. No reason is given by the Appellant for the delay.

- (x) To support the above submission the Respondent relied upon the High Court judgment in W.P. No. 1650/2012 (MSEDCL Vs Electricity Ombudsman and Mukund Salodkar). It held that the cause of the action for damages arose when the complainant suffered loss for non-supply of electricity. The limitation for the complaint for such an action would commence from the date of removal of the electricity supply. The limitation does not start every day, nor is it a case of continuous cause of action.
- (xi) The Appellant's prayer requesting to provide "no dues pending" certificates for the above referred services cannot be entertained as there are outstanding dues on record as mentioned in Table 1. **During the tenure of erstwhile MSEB, before TPL took over in 2007, all the four services were billed with assessed status, as the meters were not made available for reading.** However, the utility is ready to clear the matter if meters of all the above referred services are made available subject to testing for accuracy. Hence, it is requested to kindly direct the concerned either to make the meters available or to clear the electricity dues as mentioned above.
- (xii) With reference to the hearing on 11.09.2023 in the Review Case No.80/2023-24 before the Forum, the consumer had not submitted any additional submissions. The consumer representatives have submitted newspaper articles, photos from Google, etc. relating to a demolition drive conducted by the Corporation.
- (xiii) However, the Hon'ble Supreme Court has passed various Judgments stating that the same newspaper article cannot be considered for evidence. The following Supreme Court Judgments held that newspaper articles/reports are not treated as



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evidence.

- a) The Supreme Court in Laxmi Rai Shetty V/s State of Tamil Nadu. In the said judgment, the Supreme Court has considered the question of admissibility of news items appearing in a press report and opined as follows:

*"We cannot take judicial notice of the facts stated in a news item being in the nature of **hearsay secondary evidence**, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved."*

- b) In the case of Quamarul Islam v. S.K. Kanta (1994) 1 J.T. 452, the Supreme Court has observed as follows:

*a) "Newspaper reports by themselves are not evidence of the contents thereof. Those reports are **only hearsay evidence**. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor, and published, P. W. 4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act."*

- c) In addition there are other decisions of the Supreme Court like Samant N. Balkrishna v. George Fernandez, (1969) 3 SCC 238; Laxmi Raj Shetty v. State of T.N., (1988) 3 SCC 319; Quamarul Islam v. S.K. Kanta, 1994 Supp (3) SCC 5; Ghanshyam Upadhyay v. State of U.P., (2020) 16 SCC 811; Kushum Lata v. Union of India, (2006) 6 SCC 180 and Rohit Pandey v. Union of India, (2005) 13 SCC 702, wherein the Court has observed that

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newspaper articles/reports by themselves do not constitute evidence of the contents and are only hearsay evidence.

- (xiv) The Supreme Court in K C Naina held that the limitation of two years under Section 56(2) of the Electricity Act, 2003 is with reference to the bar on disconnection by the licensee. There is no limitation under Section 56 after the electricity is discontinued for non-payment of dues. Recovery of electricity arrears is not barred by limitation under Section 56(2) of the 2003 Act.
- (xv) All the above-mentioned services are Permanently Disconnected. The Respondent informed that the Appellant can also avail of the benefit under 'Special Amnesty Scheme 2023', under which the consumer will have to pay 110% of the principal amount, and the balance arrears of interest will be waived off.
- (xvi) The Appellant has not disputed the quantum of the bill amount and has only raised allegations regarding limitation. The intention of the Appellant is misleading the Hon'ble Ombudsman. Thus, nothing ought to be granted against the Respondent.
- (xvii) The complaint is barred by Regulation 7.9 of the CGRF & EO Regulation 2020 as the complaint is filed after a long delay. Also, no ground is shown for loss, damage or inconvenience caused to the Appellant. Hence, the present representation be rejected.
3. The written submissions and arguments of the Appellant are stated below: -
- (i) The Appellant and his wife, Dipali Dilip Pathare had four service connections. The details of consumer nos., addresses, sanctioned load, contract demand, outstanding dues of MSEDCL and TPL, etc., are captured in Table 1 above. The above connections were disconnected on 26.03.1998 by the then MSEB as per directions of Bhiwandi Nizampur Municipal Corporation during a drive of demolition. The demolition drive contents published in a local newspaper are kept on record. The four services were removed within a period of 55 days.



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- (ii) The Appellant did not receive any bill for these services till July 1999. The bills were received for the first time in Aug. 1999 after one and a half years. The Appellant by his letter dated 31.08.1999 requested to stop the billing in future and withdraw the fictitious billing till date.
- (iii) The Appellant applied for two new connections in his name and his wife's name on 08.10.2021. The Respondent TPL informed him that there were outstanding dues in his name. The Respondent TPL was reluctant to sanction the new connections. The Appellant ran from pillar to post for getting the new connections. However, the Appellant received the Consumer Personal Ledger (CPL) of his previous PD connections for the period from 01.12.2020 to 31.03.2022. It was clear from the CPL that the services of the Appellant were **permanently disconnected on 30.11.2020. It was established that these services were billed on fictitious average basis on assessed status till Nov. 2020, having outstanding dues which are captured in table 1.**
- (iv) The Appellant filed a grievance application in the Forum on 06.12.2021, with prayers as mentioned in para 2 (iv). The grievance was dismissed by wrong interpretation of the Regulation 6.6 / 7.8 of CGRF & EO Regulations 2020 regarding cause of action and two years limitation. The Regulations states that, the grievance should be filed within a period of two years from when the cause of action has arisen, and not the full period of the grievance.
- (v) The dispute had arisen when the consumer had applied for a new connection i.e. on 05.10.2021. The cause of action arose when the consumer made an application on 04.08.2021, and new connections were applied on 5.10.2021. It was only then that the Franchisee asked the consumer to clear the outstanding dues. How come the Licensee or the Franchisee ask the consumer to pay the outstanding dues after such a long period? The outstanding dues of MSEDCL were demanded after a period of about 17 years, and the outstanding dues of TPL after a period of about 14 years. The Forum itself in its order of 82/2018 has clearly mentioned that dues



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pertaining to a period beyond two years is not recoverable after a period of 8 years and four months. Going by the records of MSEDCL, it is clear that services were given after taking security deposits which have not been refunded to date.

- (vi) Considering the cause of action as 04.08.2021, the consumer has not erred in filing his grievance within the prescribed time frame, regarding recovering dues which are beyond a period of two years.
- (vii) The TPL has assured the Appellant to settle its fictitious claim by mutual discussion, as per its written reply.
- (viii) The Appellant's prayers have already been mentioned in para 2 (v).

Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant and his wife had two power looms and two lighting connections for power loom purpose, the details of which regarding name, address, sanctioned load, outstanding dues etc. are captured in Table 1. The Appellant contended that the above connections were disconnected on 26.03.1998 by the erstwhile MSEB as per the directions and demolition drive organized by Bhiwandi Nizampur Municipal Corporation. The demolition drive contents are published in a local newspaper. The four services were removed within a period of 55 days. The bills were received for the first time in Aug. 1999 after one and a half years. The Appellant by his letter dated 31.08.1999 informed the Respondent that the Respondent's Field Engineer disconnected the service of the Appellant on 26.03.1998 and report (no. 1329) was sent on 17.12.1998 for further action in the matter, and requested to stop the future billing and withdraw the fictitious billing till date. These services were billed on fictitious average basis till Nov.2020 with increasing interest, and have outstanding dues which are captured in Table 1.

5. The Appellant applied for two new connections in his and his wife's name at a different address on 08.10.2021. The Respondent TPL has released these connections subsequently. Hence at present there does not seem to be any grievance pending. Despite the PD connection



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dues, the Appellant has got the other new connections where he currently resides. The previous PD connections are not needed at this instant, as the premises were demolished and the land still stands cleared, being under reservation for the purpose of school and playground. However, in the course of release of the new connections, the Respondent TPL informed that there were outstanding dues in the name of the Appellant and his wife Dipali. We have examined the CPL from which it is clear that the services of the Appellant were permanently disconnected on 30.11.2020 and not on 26.03.1998. For all these years, the Appellant was aware of the accumulating arrears of his PD connections, yet he did not raise any grievance except one or two letters of 1998 / 99. When asked the reason for raising the grievance now for “no dues certificate”, the Appellant reluctantly revealed during the hearing that in future, there might be a possibility of change in reservation or redevelopment on the land which was cleared, and the Appellant might gain if he can produce a “no dues certificate”. **He admitted that his new connections have been granted; hence there is no cause for a grievance in that regard. The Appellant has not shown any loss, damage or inconvenience caused to him by the accumulating arrears of the PD connections. In fact, he has ignored these dues for almost 25 years without any consequence.**

The Respondent has claimed that the recoverable arrears were continuously shown in the running / monthly bills dispatched to the Appellant, at least from 2007. The Appellant has himself admitted that he received the bills in July / August 1999 [para 3 (ii)]. Yet, other than writing a letter to the Respondent, the Appellant did not raise any grievance till 2021.

The Appellant claims that the cause of action arose on 04.08.2021 when he applied for the new connections. This is not logical, as these new connections have already been granted. In fact it is not clear what grievance stands, and it seems that the TPL’s allegation against the consumer representatives is true, that they have dug out old and time barred cases for raising unnecessary grievances.

6. The Electricity Act 2003 came in force in the year 2003. The Maharashtra Electricity Regulatory Commission introduced a Consumer Grievance Redressal Mechanism in the year


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2003 itself. At that time, the Appellant had an opportunity to approach the internal redressal system of the Respondent with his grievance within a period of two months. If no remedy had been provided within this period, the Consumer could have submitted the grievance to the Forum within twelve months from the date of the original intimation to the Distribution Licensee, as per the then Consumer Grievance Redressal Forum and Ombudsman Regulations, 2003. The said Regulation 6.2 /6.3 is reproduced below: -

“6.2 Any Consumer with a Grievance shall intimate the Distribution Licensee of such Grievance in the form and manner and within the time frame specified by the Distribution Licensee in its rules and procedures for redressal of Grievances. 6.3 Unless a shorter period is provided in the Act, in the event that a Consumer is not satisfied with the remedy provided by the internal redressal system of the Distribution Licensee to his Grievance within a period of two (2) months from the date of intimation or where no remedy has been provided within such period, the Consumer may submit the Grievance to the Forum. Provided that the consumer shall submit his Grievance to the Forum no later than twelve (12) months from the date of original intimation to the Distribution Licensee.”

The Commission amended these Regulations and issued new revised Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 on 20.04.2006. The relevant portion is reproduced below:-

“6. Procedure for Grievance Redressal

6.1 The Distribution Licensee shall have an Internal Grievance Redressal Cell to record and redress Grievances in a timely manner. The IGR Cell of the Distribution Licensee shall have office(s) in each revenue district in the area of supply. Provided that where the area of supply is the city of Greater Mumbai and adjoining areas, the IGR Cell of the Distribution Licensee shall have at least one (1) office for the area of supply. The Distribution Licensee shall endeavour to redress Grievances through its IGR Cell.

6.6 The Forum shall not admit any Grievance unless it is filed within two (2) years from the date on which the cause of action has arisen.”

7. While perusing a bill of July 2009 of Service No. 13011181991 for the period from 19.06.1999 to 17.07.1999, it was observed that the supply was unmetered at that time, and the current bill was Rs.3633.87 and the arrears were Rs. 57593/-. This indicates that the bills were being issued to the Appellant but were ignored by him.



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8. The Appellant filed a complaint in the Forum regarding the alleged 'fictitious' billing for the first time on 06.12.2021. TPL was willing to go in for a settlement, but the Appellant (or rather his representatives) was not willing.

9. It is not understood why the Appellant did not knock at the door of the Respondent / Forum at the relevant point of time regarding the issue of average (disputed) billing. The Appellant's interpretation of the cause of action arising in the year 2021 is not acceptable, as it is based on wrong interpretation. The cause of the action happened either when the premises were demolished or made PD i.e. in 1998 or in August 1999 when the Appellant claims to have received the bills for the first time. The Appellant is totally silent on whether he has paid any bill from the date of these connections.

10. The Forum has given a reasoned order. There is, therefore, no reason to interfere in the order of the Forum and the Representation of the Appellant is rejected and disposed of. Costs of Rs.3000/- are imposed on the Appellant for the reasons mentioned above.

11. The Secretariat of this office is directed to refund the net amount of Rs. 22000/- (taken as deposit of Rs. 25000/-) to the Appellant.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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