

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 156 OF 2019

In the matter of billing

M/s. Ankita Industries ..... Appellant  
(Consumer - Siachen India)

V/s.

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

Appearances

For Appellant : 1. Abhinandan A. Doshi, CEO  
2. Tony D Cunha

For Respondent : 1. Rajendra K. Marke, Addl. Ex.Engr, Wagle Estate, Thane

**Coram: Deepak Lad**

Date of Order: 10<sup>th</sup> October 2019

**ORDER**

This Representation is filed on 20<sup>th</sup> August 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 11<sup>th</sup> June 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The Forum by its order dated 11<sup>th</sup> June 2019 has dismissed the grievance application in Case No. 64/2018.

3. Not satisfied with the order of the Forum, the Appellant filed this representation as below:-

- (i) The Appellant is an industrial consumer (No. 000010383463) having sanctioned load of 50 kW and contract demand of 41 kVA at Plot No. D 7/4, Road No. 33, Wagle Industrial Estate, Thane. The Appellant manufactures Gears, Gear Boxes, EOT cranes and stainless-steel fabrication work and get regular orders from various Government sectors like defence, railways, etc.
- (ii) The Appellant clarifies that when the unit was purchased, there was liability of erstwhile MSEB of Rs. 3,30,000/- in the year 2003-04. This amount includes fixed charges for the period of 36 months along with interest, etc. This unit i.e. M/s. Siachen India was under the attachment in the year 2001 and was in the possession of Maharashtra State Finance Corporation (MSFC) and therefore, there was no electricity consumption as such as it was idle. Appellant preferred to pay 50% of the amount as per the order of the Bombay High Court in the year 2004 (WP No. 10756 of 2014).
- (iii) The Appellant was debited approximately Rs. 2,01,730/- with interest towards faulty meter. The Appellant was levied power factor (PF) penalty for more than 16 to 18 months. Since the meter was faulty, power factor recording was not correct, and the Appellant was unnecessarily penalized for that. Once the faulty meter was replaced without replacing the capacitors, automatically this penalty was stopped and in spite of various promises, this amount had not been removed from the bills. The Appellant has to run from pillar to post for purpose of removing this penalty, but no concrete decision was taken except promises.
- (iv) In the year 2014, the Appellant have again filed Writ Petition at Bombay High Court as its grievances remain unsolved. However, this was not a direct remedy as per the Electricity Act, 2003 (the Act) has been enacted. Although the writ petition was filed, out of total arrears of Rs. 8,87,000/- the Appellant preferred to pay around Rs.

5,40,000/- during these proceedings and shown their credentials for making the payment. This was for restoring the electricity so that production of factory should not be hampered. During this process of litigation, an indirect assurance was given by MSEDCL that there will be waiver of about Rs. 2,13,000/- if the Writ Petition is withdrawn. So the Appellant never pressed for Writ Petition. Even during the case before the Hon'ble Judges, advocates from MSEDCL side have informed that the electricity was restored, and this issue would be resolved at the department level in due course of time or at the Internal Grievances Redressal Cell or Ombudsman. Superintending Engineer also shown their inclination of waiver of penalty while replying his letter. Hence, the Honourable Judges passed the Order to approach the Ombudsman. But as the order was passed in the month of June 2015 and till that moment the concerned officers who were handling the subject were transferred, this subject remained unresolved. The total outstanding arrears were Rs. 4,08,980/- as on 14.02.2017 including the principal and interest. When the Appellant approached the Forum, the actual principal arrears were Rs. 2,19,197/- and the remaining part is interest, which includes the disputed amount of Rs 2,01,730/-. At present, outstanding is of approx. Rs 6.75 lakhs and Appellant has already paid Rs 54,000/- on 29.07.2019.

- (v) All these arrears were not of the last six months and the arrears includes arrears of the previous owner and PF penalty of Rs. 2,01,734/- plus interest. Hence, if the Licensee disconnects the electric supply it will be against the natural justice and against Article 21 of the Constitution of India.
- (vi) The Appellant had a lot of discussion with the MSEDCL officers in past and made repayments in stages in the month of December 2014 for reconnection and paying altogether amount of Rs. 5,40,000/-. Hence, the Appellant prays to refund or readjust the excess amount of Rs. 2,01,734/- plus interest which was wrongly charged PF penalty as meter was faulty. Whatever balance amount is there can be paid to MSEDCL. The Appellant has already expressed earlier the reason for not approaching the Electricity Ombudsman directly and hence his claim is a continuous process and is not time barred as ordered by the Forum.

- (vii) The Appellant had purchased this property as Auction Purchaser and initial arrears were of previous owner. Therefore, the present purchaser is not liable for the past arrears.
- (viii) The Appellant had lodged a complaint of defective meter long back from 2009 to 2010 and matter was pursued for more than 18 months and after repeated follow up the meter was replaced, and PF penalty was stopped. This fact has been accepted by various officers of the Respondent, but no concrete steps were taken. The Forum has erred in not appreciating the facts of the case hence the said order deserves to be set aside.
- (ix) After replacement of meter in September 2011, the problem of PF penalty did not arise further. The penalty was due to faulty meter. The Appellant requested for waiver of PF penalty along with accumulated interest.
- (x) The Appellant filed grievance in Internal Grievance Redressal Cell (IGRC) on 03.03.2017. The IGRC, by its order dated 13.06.2017 has rejected the grievance without any proper justification. However, the Appellant got the order copy late and could not approach the Forum till 21.07.2017. Thereafter, due to unavoidable circumstances like all documents being misplaced due to heavy flood in August 2018. In addition, due to GST implementation and unavailability of previous staff members, Appellant could not approach the Forum within stipulated period. Hence, the Appellant made inbuilt application stating that Appellant should be allowed their application with provision of condonation of delay. Factory premises of the Appellant is located in low lying area and at present, there was huge water accumulation and major part of Maharashtra is also affected by flood. The Appellant therefore should be allowed for condonation of delay.
- (xi) The Appellant has made payment of Rs. 51,000/- on 08.01.2017 and made further payment of Rs 51,000/- in 3/4 days and arranged Rs 25,000/- to Rs 50,000/- apart from our regular bills. Meanwhile, the Respondent, Addl. Executive Engineer (AEE) has issued disconnection notice on 23.01.2018 indicating to clear the dues or disconnection will be made.

- (xii) The AEE has sent further disconnection notice on 29.07.2019 for making payment Rs.6,81,193.17 in 15 days or power supply will be disconnected after expiry of 15 days' period without any further relief . While issuing this notice he has not given any reference of the Forum's order, and it has come to knowledge that the said Forum has rejected the application on the ground of Limitation and not rejected on merit. The said notice was not accompanied by the order of the Forum and the said notice was sent over the mail on 13.08.2019.
- (xiii) At present, at least 20-30 people are working in the company and in event of disconnection of electricity by the Licensee, all these people would be rendered unemployed and would also lead to debacle of the organization.
- (xiv) As far as the power supply is concerned under Section 56 of the Act, the recovery will however be subject to bar of limitation as contained in Section 56. Apart from above, the arrears in question are very old and by now have become time barred and hence licensee cannot be permitted to recover the said amount of arrears by exercising power under Section 56, which were not exercised at relevant time. No suit was filed by Licensee and no objections were raised at the time of buying the property or when the advertisement was released for auction of property. But still the Appellant is ready for settlement if the PF penalty of Rs 201730/- plus interest which is approximately more than Rs. 1.5 to Rs 2 lakhs is waived by MSEDCL. Rs.3 Lakhs arrears which is consisting of the interest element of Rs.2,30,275.93 towards the interest and remaining is the principal amount and hence as per the Limitation Act,1963, the AEE cannot proceed under Section 56 of the Act. The Respondent may proceed for recovery either in the Civil Court or the Consumer Court. Although, the High Court passed the order, the Appellant made a continuous follow up with the MSEDCL. Therefore, cannot be termed as time barred. The Limitation Act objection has not been raised by the IGRC and the Forum cannot pass the order on the basis of the Limitation Act as the Appellant had approached the Forum from the IGRC in proper time.
- (xv) The Appellant in short prays that

- (a) Ad-interim relief should be granted for non-disconnection of the electricity towards the old arrears.
- (b) In event of refusal of prayer at (a) above, interest component should be waived of and payment be allowed in 12 instalments.
- (c) To pass any such other relief as deem fit.

4. The Respondent filed its reply dated 03.09.2019 stating as below: -

- (i) Appellant is a LT consumer bearing consumer No. 10383469 from 28.02.1989. Initially this industry was permanently disconnected (PD) in June 2002 due to non-payment of energy bill (arrears of Rs.213060/- + interest Rs. 32078/-). Then the industry got auctioned through MSFC and Mr. Abhinandan Doshi of M/s. Ankita Industries has taken over this industry and requested for reconnection by paying 50% arrears amount.
- (ii) The grievance is relating to the period of February 2010 to September 2011. The Appellant has filed Writ Petition No. 10756 of 2014 at Bombay High Court regarding said billing dispute. The Hon'ble High Court by its order dated 26.06.2015 directed the Appellant to approach the Electricity Ombudsman. However, the Appellant failed to file any representation before Electricity Ombudsman from 26.06.2015 in time.
- (iii) This case is clearly time barred as per Regulation 6.6 of the CGRF Regulations. The grievance must be filed to the Forum within 2 years from the cause of action. The judgment of the Hon'ble High Court of Bombay, Bench at Nagpur dated 10.07.2013 in Writ Petition No. 1650 of 2012 has upheld Regulation 6.6 of the CGRF Regulations.
- (iv) In this grievance the dispute regarding power factor penalty is for the period of February 2010 to September 2011. However, the Appellant filed the grievance in the year 2018 before the Forum. Hence the case is time barred and not maintainable.

- (v) The grievance is regarding power factor penalty which is levied through system as per Tariff Orders of Maharashtra Electricity Regulatory Commission (the Commission). The PF penalty is levied properly in accordance with the parameters recorded in the meter. The meter was working properly and hence PF penalty cannot be withdrawn.
- (vi) The PF penalty / incentive is a function of the load of consumer and adequate capacitors installed at the premises by the Appellant. The working of capacitor is necessary to be monitored routine interval. The quality of capacitors is also important point. All these activities came in the domain of the Appellant and not the Respondent.
- (vii) The Appellant is raising the dispute which is not having any technical base and searching various reasons to avoid payment of arrears and regular energy bill.
- (viii) The Appellant has partly paid the PF penalty and is also partly paying the regular bills, interest and delayed payment charges (DPC) is levied through system on the balance amount. In view of the above, being a time barred grievance, the grievance filed by the Appellant be rejected.

### **Analysis and Ruling**

5. Without going into the merits of the case, the Appellant approached the undersigned through this representation in the year 2019 despite Hon'ble High Court of Bombay directing it to approach in the year 2015. Reasons advanced by the Appellant for approaching the undersigned after a delay of four years is not at all convincing and therefore, cannot be condoned.

6. The grievance of the Appellant is for the period February 2010 to September 2011 and the Appellant approached the Forum on 01.02.2018 (as recorded in the order of the Forum). Regulation 6.6 of the CGRF Regulations specifies period of two years to admit the case by the Forum from the date of cause of action. The said Regulation is reproduced below: -

*“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.”*

The Hon’ble High Court of Bombay, Bench at Nagpur in W.P. No. 1650 of 2012 has upheld the provision under this Regulation. Relevant portion of the judgment is reproduced below: -

*“6. Regulation No. 6.6, which is quoted above, .....The cause of action in the case before the Forum arose way back in 2004 and in when the Cell did not deal with the complaint within the reasonable time.*

*7. Proviso to Regulation No. 6 indeed provides that a complaint made about the grievance to any officer of the petitioner company is a complaint to the Cell. Going by this logic, I am inclined to accept the submission that the complaint made by the respondent no. 2 herein in 2004 and the subsequent complaints he made, were the complaints made to the Cell within time. But, in 2011, when the Cell rejected his complaint, he did not remain present before it. Admittedly, before that date, he had already approached the Forum. The question is, whether the complaint made to the Forum was within time. The answer has to be in negative, because, the cause of action for approaching Forum arose in 2004, or at the most in 2006 when the Forum was established. What happened before the Cell was hardly of any consequence. When the regulations came into force, the respondent no. 2 was aware that his complaint is already delayed and that he could have lodged the complaint directly to the Forum because of such exceptional circumstances. No doubt, in the normal circumstances, a complaint to the Forum would come after the complaint to the Cell. But, this is a case of exceptional nature. The cause of action in the complaint arose in 2003-04, the regulation came into force in 2006, the Forum and Cell were established in 2006, the respondent no. 2 was suffering disconnection since 2003, he was suffering losses because of non supply of electricity since 2003 and so, he could have approached the Forum directly.*

*8. The facts thus indicate that the respondent no. 2 delayed the filing of the complaint before the Forum and the Cell inordinately. Prior to 2006, he had opportunity to file a suit for damages etc. Even that was admittedly not done. In my view, the case initiated by the respondent no. 2 even before the Cell and the Forum was delayed. There is no time limit prescribed for approaching the Cell, but when no time is prescribed, it must be ‘reasonable time’. As stated above, the complaint was inordinately delayed. The explanation is not forthcoming for the delay. In view of this, the case of the respondent no. 2 was hopelessly time barred.”*



Hon. Bombay High Court, Bench at Aurangabad in W.P. No. 6859, 6860, 6861 and 6862 of 2017 in its judgement dated 21.08.2018 has also taken a similar view which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

*“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.*

*38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.*

*39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.*

42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.

44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

*46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”*

In a recent judgment, the Hon. Supreme Court in Civil Appeal No. 2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation.

Therefore, this provision of Regulation 6.6 is a settled position in law and if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. The provision of Regulation 6.6 will be frustrated and there will be complete chaos.

7. The undersigned also issued various orders on the same lines in this regard. The Appellant approached the Bombay High Court for redressal of his grievance which directed it in 2015 to approach the undersigned. There was blatant negligence on the part of the Appellant in approaching the grievance redressal mechanism for the reasons best known to it. The Appellant prayed that if its stand is not held valid by the undersigned, then at least the PF penalty along with interest for the disputed period February 2010 to September 2011 be waived of. In this regard, recording of PF is a function of various parameters recorded by the meter, and if the meter is not faulty, the Appellant will have to pay for it. Moreover, PF improvement is dependent on the adequate capacitors installed at the premises and its quality. This totally falls in the domain of the Appellant and not the distribution licensee and cannot be subject matter of discussion whatever. Even assuming without admitting that the meter was faulty as alleged by the Appellant, it was expected that the Appellant should have approached the licensee and the grievance redressal mechanism available to it. Assurance by the licensee officials to waive of the penalty and interest as submitted by the Appellant are mere conjectures and cannot be accepted. If the cases like the instant ones are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time that has elapsed, no decision will be made at all at any level. The Constitutional Courts, in its judicial pronouncements as mentioned above, has upheld the provision of Regulation

6.6 of the CGRF Regulations which provides time limit of 2 years for it to admit the grievance from the date of cause of action.


Despite direction from the High Court in 2015, the Appellant for its own reasons, approached the grievance redressal mechanism available under the Act / Regulations in February 2018. The delay is totally on account of the Appellant only.

8. The Appellant has raised the issue of Section 56 (2) of the Act, however, the same is not attracted in this case as the arrears were outstanding against the premises and were being continuously shown.

9. In view of the above, I do not find it necessary to interfere in the order of the Forum. However, the Appellant is allowed to pay the amount of arrears in ten equated instalments along with the current bill. No interest and delayed payment charges shall be levied while the instalments are being paid. The order of the Forum is modified to this extent.

10. No order as to cost.

Sd/  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

