

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 72 OF 2023

In the matter Refund of Security Demand and Interest thereon

Prism Johnson Ltd.Appellant
[H&R Johnson (India) Ltd. Cons. No 000019010287]

V/s

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

Appearances: -

Appellant : 1. Vikram Cheulkar, Asst. Manager (Administration), Prism Johnson Ltd.
2. Harshad Seth, Representative

Respondent: 1. Sunil Mane, Executive Engineer, Thane Urban Circle
2. Jayesh Hiwale, Senior Manager


Coram: Vandana Krishna [I.A.S. (Retd.)]

Date of hearing: 17th August 2023

Date of Order : 29th August 2023

ORDER

This Representation was filed on 24th July 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 28th June 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum). The Forum dismissed the grievance application of the Appellant


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



by observing that the grievance application was time barred as per Regulation 7.9 of CGRF & EO Regulations 2020.

2. Aggrieved by the order of the Forum, the Appellant filed this representation. The e-hearing was held on 17.08.2023 through video conference. Both parties were heard. The Appellant's written submissions and arguments are as below:

- (i) The Appellant (Cons. No. 000019010287) was an HT Consumer under the name of H&R Johnson (India) Ltd., in Thane Urban Circle of the Respondent. He applied for permanent disconnection of the power supply in the year 2010 as per the decision of management. Accordingly, the Respondent disconnected the power supply permanently on 01.10.2010. The Appellant paid the last bill and there were no outstanding dues at that time of permanent disconnection.
- (ii) The Appellant applied for refund of Security Deposit (SD) with interest on 20.10.2020 and made an online application on 18.12.2020 with the following documents:
 - a) Original Indemnity bond duly notarized for loss of original receipt.
 - b) Original Cancelled cheque.
 - c) Xerox of Aadhaar Card.
 - d) Xerox of PAN Card.
 - e) Resolution from the Company and appropriate documents for change of name of the firm.
- (iii) The Appellant received the SD of Rs. 4,76,236/- on 20.01.2022 by RTGS in its bank account but without accrued interest. Hence, he had further applied for refund of interest on SD on 20.01.2022 as per provision of Commercial Circular No.323 dated 03.04.2020 of the Respondent. The Appellant also sent a reminder dated 22.07.2022 to release the interest. He again submitted an email on 11.11.2022 to the Respondent on this subject matter of similar cases along with a statement of **SD Refund with accrued SD interest** of 16 other HT Consumers of Vashi Circle and 7 HT Consumers of Palghar Circle, where the consumers were permanently disconnected from the year 2004 onwards.

- (iv) Since the Respondent did not take any action on the above correspondence, the Appellant filed a grievance application with the Forum on 22.11.2022.
- (v) The Forum, by its order dated 28.06.2023 dismissed the grievance application of the Appellant by observing that the grievance application is time barred as per Regulation 7.9 of CGRF & EO Regulations 2020. The Forum failed to understand the basic issue that SD is a statutory payment, and whenever it is refunded, the Appellant is entitled to avail the benefit of interest on SD held by the Respondent, as per Circulars issued by the Respondent from time to time.
- (vi) **Grounds:**
- a) After the permanent disconnection of the power supply on 01.10.2010, the Respondent was legally bound to issue the final bill and close the account as per Appendix A of Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2005 (SOP Regulations 2005). The relevant portion of Appendix A is reproduced below:

Table 1:

Appendix A:		
LEVEL OF COMPENSATION PAYABLE TO CONSUMER FOR FAILURE TO MEET STANDARDS OF PERFORMANCE		
<i>Supply activity / event</i>	<i>Standard</i>	<i>Compensation payable</i>
7. Other activities		
<i>Closure of account</i>		
<i>Time period for payment of final dues to consumer from date of receipt of application for closure of account.</i>	<i>Thirty (30) days</i>	<i>Rs. 100 per week or part thereof of delay</i>

The Respondent failed to issue and close the account after adjusting all dues and to refund the SD amount of Rs. 4,76, 236/- within the stipulated period of one month i.e. before 01.11.2010, and thus violated the provision of SOP Regulations 2005.

- b) At last, the Respondent has refunded the SD of Rs. 4,76, 236/- on 20.01.2022 which was due for refund on 01.11.2010, i.e. after a period of 584 weeks (135

months). The Appellant is therefore eligible for compensation of Rs. 100/- per week.

- c) As per directives issued by the Maharashtra Electricity Regulatory Commission (the Commission) in its various Tariff Orders, and as per the provision of MSEDCL's own Commercial Circular No. 323 dated 03.04.2020, it is mandatory for MSEDCL to refund SD along with interest to the consumer, when a consumer requests for permanent disconnection.
- d) The cause of action for refund of SD with interest is a continuous process, and SD is a statutory payment which is the legitimate right of a consumer. Hence, the Limitation Act is not applicable in the present case, and the grievance is not time barred.

(vii) The Appellant prays that the Respondent be directed.

- a. to refund the interest of SD of Rs. 4,76,236/- from 01.11.2010 to the actual date of release of interest.
- b. to pay compensation as per SOP Regulations in force.
- c. to pay suitable compensation for mental agony and harassment.

3. The Respondent by its letter dated 10.08.2023 has submitted its written reply. The written submissions along with its arguments are as below: -

- (i) The Appellant was an HT Consumer (Cons. No. 000019010287) under Thane (U) Circle. The power supply of the Appellant was permanently disconnected on 01.10.2010 as per the request of the consumer.
- (ii) After a long time, the Appellant applied online through Web Self Service (WSS) Portal of the Respondent on 06.11.2020 for the first time for refund of SD. Accordingly, after completing the statutory procedural formalities like KYC, original receipt, etc., the SD of Rs. 4,76, 236/- of the Appellant was refunded on 20.01.2022.
- (iii) The Supply Code & SOP Regulations 2021 mandates the procedure of refund of SD in case of permanently disconnected consumers with an intimation to the Consumer, if different from such person within 7 days.

- (iv) Hence, the consumer is duty bound to apply for refund of SD with statutory requirements like KYC bank details. However, in this case, the Appellant applied online for the first time only on 06.11.2020 for refund of SD. Till that date the Appellant failed to submit the original SD receipt or the KYC/e- KYC Bank details to this office as per the Regulations.
- (v) The Appellant has claimed Interest on SD as per Circular No. 323 dated 03.04.2020. However, in Sr. No. 6 of this Circular, it is clearly mentioned that :
“Such refund shall be made upon a request of the person who gave the security, and with intimation to the consumer if different from such person; and shall be made, at the option of such person, by way of adjustment in the next bill or by way of a separate cheque payment within 30 days from the receipt of such request”
Hence, there is no merit for claim of interest.
- (vi) Moreover, Regulation 7.8 of CGRF & EO Regulations 2020 does not mandate the grievance to be entertained if it is more than two years old.
- (vii) The Forum has rightly dismissed the grievance application of the Appellant by observing that the grievance application is time barred as per Regulation 7.9 of CGRF & EO Regulations 2020. The cause of action in the present case arose in the year 2011. Therefore, the grievance is not maintainable before this Authority.
- (viii) The Respondent prays that the Representation be dismissed as it has applied for interest on SD after 10 years.

Analysis and Ruling:

4. Heard the parties and perused the documents on record. The Appellant was a HT Consumer under name of H&R Johnson (India) Ltd, in Thane Urban Circle. The Appellant had applied for permanent disconnection of power supply and the Respondent disconnected the power supply permanently on 01.10.2010. Both the parties confirmed that there were no outstanding dues at the time of permanent disconnection. The SD held was Rs. 4,76,236/-. The Appellant applied for refund of SD with interest on 20.10.2020 and made an online application on 18.12.2020 with documents which are listed in Para 2(ii) above. The Appellant received SD of Rs. 4,76,236/- on 20.01.2022 by RTGS in its bank account without

accumulated interest. Hence, the Appellant applied for refund of interest accrued on SD on 20.01.2022.

5. The provisions under the relevant Regulations for refund of SD in case of permanent disconnection are summarized below:

- A. Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 provide as below:

11.9 Upon termination of supply, the Distribution Licensee shall, after recovery of all amounts due, refund the remainder amount held by the Distribution Licensee to the person who deposited the security, with an intimation to the consumer, if different from such person.

The above Regulation was in force when the Respondent had disconnected power supply permanently on 01.10.2010. The Respondent was duty bound to inform the Appellant of its final bill and the remainder amount held with the Respondent. The Respondent failed to do so as no corresponding record was put up in its submission and during the hearing.

- B. Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014

Disconnection of supply

6.7 On expiry of 30 days' notice from receipt of an application for termination by consumer, in accordance with the MERC Supply Code Regulations, 2005 amended from time to time, the Distribution Licensee shall disconnect the supply within three (3) days in Class-I cities, within seven (7) days in Urban Areas and within ten(10) days in Rural Areas.

6.8 The Distribution Licensee should intimate the consumer of any amount outstanding against the consumer whose supply has been disconnected within

seven (7) days in Class I cities and Urban Areas, and within ten (10) days in Rural Areas from the date of disconnection.

Provided further that licensee shall remit the credit amount, if any, as per the timeline specified above.

6.9 In case of closure of account (permanent disconnection), refund of credit amount (if any), advance consumption deposits / consumption security and meter security along with “No- Dues certificate” should be made by the Distribution Licensee within thirty (30) days in Class I cities and Urban Areas, and within forty-five (45) days in Rural Areas from the date of application for closure of account.

Provided that in the case where the consumer has outstanding dues to the licensee, the timeline specified above would stand revised to higher of the applicable timeline specified above and seven (7) days or ten (10) days after the date of making payment against such outstanding dues by the consumer in Class I cities/ Urban Areas or Rural Areas respectively.

- C. Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021:

13. Security Deposit

13.9 Upon termination of supply, the Distribution Licensee shall, after recovery of all amounts due, refund the remainder amount held by the Distribution Licensee to the person who deposited the security, with an intimation to the Consumer, if different from such person within Seven (7) days:

Provided that original receipt of payment of Security Deposit need not to be submitted while claiming such refund if the KYC/e-KYC bank details are available with the Distribution Licensee.

Annexure - II: Level of Compensation Payable to Consumer for failure to meet Standards of Performance

<i>Supply Activity/Event</i>	<i>Standard Compensation Payable</i>	<i>Payable Automatic/Manual</i>
7. Other Services		
<i>-Closure of accountTime period for payment of final dues to Consumer from the date of permanent disconnection.</i>	<i>Seven (7) days</i>	<i>Rs 100 per week or part thereof of delay subject to maximum of Rs 500</i>

Considering various Regulations which were in force, the Distribution Licensee is duty bound to intimate the formalities to consumers whose SDs are pending with the Licensee after PD. However, the Respondent failed to do so.

6. The Appellant referred to the Tariff Order dated 30.03.2020 of the Commission in Case No.322 of 2019 and subsequent commercial circular 323 of 2020 dated 03.04.2020 of the Respondent. The relevant portion of the said Tariff Order is reproduced below:

“11) The Distribution Licensee shall pay interest on the amount of Security Deposit in cash (including by cheque or demand draft) at the Bank Rate of Reserve Bank of India as on 1st April of the financial year for which the interest is payable, plus 150 basis points, provided that the amount of such cash Deposit maintained by the consumer is at least Rs. 50/-.

12) Interest on the Security Deposit made in cash shall be payable from the date of its deposit by the consumer till the date of dispatch of the refund by the Distribution Licensee.”

7. The Appellant has contended that the cause of action was continuous, therefore, limitation does not apply in the present case. This argument is upheld in principle for the purpose of refund of basic amount of SD being statutory payment. Accordingly, the Respondent is duty bound to refund the SD which has been done. However, so far as interest is concerned the Appellant had an opportunity to approach the consumer grievance redressal mechanism for non-receipt of interest within the stipulated period from the date of PD. The Regulation 6.6/7.8 of CGRF & EO Regulations 2006/2020 provides as below:

“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 Appellant approached the Forum only on 22.11.2022 i.e., after about 12 years of PD. This long delay cannot be justified for the purpose of claiming interest for this entire period. Hence, the Appellant is entitled to get interest retrospectively for two years from 22.11.2020 onwards as per Regulation 6.6/7.8 of CGRF & EO Regulations 2006/2020.

8. The Appellant referred to the orders of Electricity Ombudsman Mumbai/Nagpur; however, the ratio of these orders is not applicable in the instant case.

9. The Appellant put on record that Vashi and Palghar Circle have refunded the SD with interest for some other cases retrospectively from the year 2004 onwards which causes discrepancy between consumers. The Respondent is advised to take up this issue with its Corporate Office to decide a uniform policy for all consumers of MSEDCL and to review the implementation accordingly.

10. In view of above, the Respondent is directed:-

- (a) To refund the interest on SD from 22.11.2020 onwards till the date of refund within a period of one month.
- (b) Other prayers of the Appellant are rejected.
- (c) The compliance report to be submitted within a period of two months from the date of this order.

11. The representation is disposed of accordingly.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)