

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 112 OF 2023

In the matter of new service connection

Shantilal Kajjural Jain Appellant
(New Service No. 13015196186)

V/s.

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

Appearances:

Appellant : 1. Shantilal Jain
2. Adil Punjabi, Representative
3. Nadeem Ansari, Representative

Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, TUC, 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: 10th April 2024

ORDER

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


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Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 30th August 2023 in Case No. 45 of 2023-24 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum). The Forum dismissed the grievance application.

2. The Appellant has filed this representation against the order of the Forum. A physical hearing was held on 16.01.2024. Both the parties were heard at length. The Appellant's written submissions and arguments in brief are as below:

(i) The Appellant has applied for a new connection on 09.05.2023 for 27 HP at House No.2055, 1st Floor, Khoni Village, Near Faiyaz F.T. Office, Bhiwandi.

(ii) The Respondent carried out a site visit for the new connection on 12.05.2023. The Respondent by its letter dated 02.06.2023 and 10.07.2023 informed that:

“Permanent Disconnected service 13542655318 is found on the same premises with pending TPL dues of Rs. 16,20,659/- and MSEDCL dues of Rs. 15,305/-. Therefore, kindly clear the dues as per clause 6.2 & 5.4 of Supply Code & SOP Regulations 2021.


.....

You are hereby informed that aforesaid application is cancelled, & for any further query & assistance you are requested to contact our Customer Care Center.”

(iii) The background is that the above-mentioned dues were challenged by the Consumer, Abhishek Jain (Son of the Appellant), who had filed a grievance application before the Forum. The Forum by its order dated 10.04.2018 had allowed the grievance application. The arrears bill raised by the Respondent TPL of Rs.22, 62,295.37/- was quashed and set aside by the Forum. The TPL reduced this amount to Rs.16,20,659/-. The TPL has challenged the Forum's order in the Bombay High Court, but there is no stay order. Hence, TPL is bound to comply with the order of the Forum.

(iv) The Appellant referred to the Circular of the Respondent dated 28.08.2023 regarding timely compliance of the Forums/Ombudsman's orders.

(v) The Appellant prays as below:


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- A. The circular for compliance of the Forum's order be implemented. The application for a new connection (Order No.10101184807 and BP No.690056305/Service No.13015196186) should be released immediately, with compensation charges as per Section 43 of the Electricity Act, 2003.
- B. Any suitable order the Electricity Ombudsman (M) deems fit.

3. The Respondent TPL filed its written reply on 04.12.2023 which is stated as follows:

- (i) The Appellant had applied for a new electric connection for 27 HP with the Respondent TPL on 09.05.2023 at House No.2055, 1st Floor, Khoni Village, Near Faiyaz F.T. Office, Bhiwandi. Accordingly, the Respondent carried out an inspection of the premises on 12.05.2023 for checking technical and commercial feasibility, when it was observed that the said premises had an old Service No. 13542655318 which was Permanently Disconnected on 16.12.2016 [Note: It is observed that the disconnection was done in Dec.2017 as per the Respondent's revised statement] for non- payment of dues. Details of the old service and the newly applied services are as under:

Table 1:

Sr. No.	Service No.	Name	Address	Category	Status	TPL Dues (Rs.)	TPL Dues after settlement (Rs.)	Remarks
1	Old 13542655318	Abhishek S Jain	H. No. 591/14, Khoni Village	Industrial	PD on 16.12.2016	22,48,280/-	16,20,659/-	Son of Shantilal Jain
2	13015196186	Shantilal Kajjulal Jain	House No.2055, 1 st Floor, Khoni Village	Industrial	New Connection Application			Father of Abhishek Jain
Note:	1:Revised bill of Feb 2018 of Rs. 16,20,659/- was issued to the consumer.							
	2.Though there are different House numbers mentioned in the bill, however, the premises are the same.							


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(ii) The Respondent conveyed to the Appellant regarding the above pending dues vide letter dated 02.06.2023. It is the Respondent's case that the new connection cannot be granted on the same premises where there are large previous outstanding dues. These dues relate to Mr. Abhishek Jain, the son of the present Appellant.

(iii) **Facts in Mr. Abhishek Jain's Case:**

(A) Abhishek S Jain was a LT Industrial Consumer (No. 13542655318), the erstwhile consumer of MSEDCL at House No.591/4, Mulchand comp., Khoni, Bhiwandi from 19.07.2006. The area was handed over to TPL Franchisee on 26.01.2007, and he became the consumer of TPL with outstanding dues of Rs.2,19,890/- pending with MSEDCL, as per the electricity bill of February 2007. As the Meter was faulty, the consumer was billed for 7776 Units/month (based on data received from MSEDCL) from Mar. 2007 (Dues Rs 46,462/-) [Note:- As per CPL]. His approx. monthly bill was of Rs 36,000/- to Rs 40,000/- which varied on a month-to-month basis due to Tariff, FAC, etc. Since 26.01.2007, the consumer Abhishek Jain had not made a single payment to TPL. The TPL arrears increased to Rs.7,24,729/- in the month of Nov. 2008.


Unauthorized use and theft of electricity

(B) A spot inspection was carried out at the premises of the Abhishek Jain on 22.04.2008, when it was found that this consumer was involved in unauthorized use of electricity at his premises. Therefore, a case under Section 126 of the Electricity Act, 2003 was registered against him. There was another spot inspection on 21.11.2008 when Abhishek Jain was again found indulging in theft of electricity and therefore a case was registered under Section 135 of the Electricity Act, 2003. This theft was done by tampering with the internal circuit of the meter. His supply was immediately disconnected on 21.11.2008.


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- (C) Shri. Abhishek S. Jain was assessed for Rs. 5,71,518/- towards unauthorized use of electricity and theft of electricity for the retrospective period of one year from 21.11.2007 to 21.11.2008. The supply of Shri. Abhishek S. Jain was reconnected by installing a new meter on 26.11.2008 as per his consent to pay the assessment amount of Rs. 5,71,518/-. He paid Rs. 3,00,000/- on 29.11.2008, and deposited three (3) post-dated cheques of Rs. 2,71,518/- (Rs.1,00,250/- dated 02.04.2009, Rs.1,00,000/- dated 20.04.2009 & Rs.71,518/- dated 15.05.2009).
- (D) However, after installation of the new meter, he did not allow TPL representatives to take meter readings. So TPL issued average bills for the period between 26.11.2008 to 20.04.2009 (i.e. for 5 months). The outstanding dues increased from Rs. 7,64,108/- in Dec.2008 to Rs.8,90,891/- in April-2009. (with monthly billing between Rs.36,000/- to Rs.40,000/-, with variation due to Tariff, FAC, etc.). The supply was **temporarily disconnected on 20.04.2009** as the cheque of Rs.1,00,250/- dated 02.04.2009 was dishonoured. Subsequently, the other cheques of Rs.1,00,000/- dated 20.04.2009 and Rs.71,518/- dated 15.05.2009 were also dishonoured, resulting into **removal of his meter on 30.05.2009**. *[Note: It seems that despite removal of the meter and so-called temporary disconnection, the record of this disconnection was not entered into the system, perhaps deliberately, and monthly fixed charges continued to be levied for years altogether.]*
- (E) At this juncture, Abhishek Jain was liable for the payment of
- 1. Arrears of theft assessment amount (dishonoured post-dated cheques totaling to the amount of Rs. 2,71, 518/-)**
 - 2. Amount towards electricity consumption from February 2007 to April 2009.**
 - 3. Outstanding dues of MSEDCL prior to 26 January 2007 i.e. Rs.2,18,456/-.**
- (Out of these, payment was finally made for the amounts at point no. 1 and 3. However, the dues for point no. 2 are still pending, and have increased with accumulated interest.)**


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- (F) As per the reading obtained during the process of disconnection on 20.04.2009, a bill of Rs. 1,74,236/- for 43866 units (5 Months period i.e., from Dec '08 to April'09) was raised in the month of May 2009 (Total dues Rs 10,65,127/-). The above observed consumption pattern with an average consumption of 8773 Units/Month (43866 units / 5 months) justifies the initial assessed units of 7776 Units/Month from Feb.2007 onwards.
- (G) After the temporary disconnection on 20.04.2009, the consumer approached for payment and made a cash payment of Rs.1,00,500/- on 15.06.2009, but declined to pay the balance amount of the dishonoured post-dated cheques towards the theft case. Hence a case under Section 138 of the Negotiable Instrument Act was filed on 28.07.2009 against the consumer.
- (H) The final balance payment of Rs 1,72,218/- against theft of electricity was paid in cash only on 09.05.2013. The consumer deposited Rs.8,550/- against Legal Charges filed under Section 138 of the Negotiable Instrument Act on 12.09.2016. Subsequently the said case was withdrawn by TPL on 14.09.2016. Thus, the theft case was finally settled, as mentioned at Point E. However, the consumer refused to pay the energy dues at point 2 which had increased to Rs 16,98,264/- due to Fixed charge, interest and delayed payment charges. Thus the service could not be reconnected.
- (I) On 22.08.2016 TPL issued a notice to the consumer, Abhishek Jain to pay the dues at Point No.2 which had increased to Rs.22,48,280/-, but he neglected to pay the same. Thus, the **said service was permanently disconnected on 16.12.2016 in the system.** The consumer Abhishek Jain chose to pay Rs.2,18,456/- at Point No.3 through cheque on 30.01.2017 to MSEDCL for availing the benefit of its Amnesty Scheme, but still ignored to pay TPL dues at Point No.2.


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- (J) The consumer continued to be billed for Fixed charges from June 2009 (when dues were Rs.10,65,127/-) to Dec. 2017 (by which time the dues had increased to Rs.24,68,447/-). As the premises were accessible at this point, the Network (service cable) & Meter box was removed (the meter had already been removed on 30.05.2009). The service was (finally) tagged PD in the system in Dec. 2017, & the final bill was generated in Jan. 2018 (By this time the dues had increased to Rs. 24,91,658/-).
- (K) A part of these dues was later reduced by giving credit as follows. Benefit of Lock credit for the period Dec.2008 (Dues Rs 7,64,108/-) to April-2009 (Dues Rs.8,90,891/-) amounting to Rs 1,45,518/-, and credit of Fixed charges for the period Jun.2009 (Dues Rs 10,65,127/-) to Dec.2017 (Dues Rs 24,68,447/-) amounting to Rs 7,25,481/- was passed in Jan-2018 (Dues reduced to Rs 16,20,658/-). [*Note: It is not explained why the credit of fixed charges was given of Rs.7.25 lakhs only, when the dues increased only on account of fixed charges from Rs.10.65 lakhs to Rs.24.68 lakhs, i.e. by Rs.14 lakhs.*]
- (L) **The final outstanding dues as on date are Rs 16,20,660/- (Principal Rs 8,17,641/- + delayed payment charges + interest of Rs 8,03,019/-)**
- (M) However, the consumer Abhishek Jain failed to make the payment of the above dues for the period from Feb. 2007 to 2016. The TPL issued several notices of disconnection on 17.05.2014, 18.10.2014, 17.01.2015, 17.06.2015, 18.8.2015, 18.11.2015, 16.02.2016, and 16.08.2016 but the consumer did not clear the outstanding dues of TPL.
- (N) The TPL had been consistently sending the bills to Abhishek Jain for the above-mentioned outstanding dues and had also issued several notices. TPL vide notice dated 22.08.2016 asked him to make the payment of total outstanding dues of Rs. 22,48,280/- within 7 days, failing which TPL would debit the dues to his other electricity connections at the same premises.


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- (O) Since TPL was facing serious issues of interruptions, political pressures as well as local threat of law and order in Bhiwandi, TPL was unable to disconnect the supply of this consumer. However, it continued to show the increasing arrears in its monthly bills.
- (P) Finally, on 22.08.2016, TPL issued a notice to the consumer, Abhishek Jain to pay Rs.22,48,280/- towards the bill of accumulated consumption, but he neglected to pay the same, thus the service was permanently disconnected on 16.12.2016 [Note: - CPL shows billing up to 16.12.2017 with accumulated arrears of Rs.24,58,894.37 as shown in Table 2]
- (Q) The TPL has submitted a copy of the Consumer Personal Ledger of service no. 13542655318, Abhishek Jain. The snapshot of the increase in arrears is tabulated as below:

Table 2: CPL of Abhishek Jain, Consumer No.13542655318

Snapshot of increasing arrears of Abhishek Jain (Service No. 13542655318) as per CPL	
Date	TPL Outstanding Dues (Rs.)
07.01.2008	3,29,545.47
01.01.2009	7,24,729.42
30.01.2010	11,56,086.56
18.01.2011	13,13,180.11
17.01.2012	14,78,603.47
17.01.2013	16,43,575.70
17.01.2014	18,08,829.13
17.01.2015	19,73,848.70
15.01.2016	21,38,417.01
17.01.2017	23,03,437.45
16.12.2017	24,58,894.37
15.01.2018	(-)1,45,518.16#
15.01.2018	(-)7,25,481.37*
15.02.2018	16,09,248.91
17.03.2018	16,20,659.33
* #Note: Credit was given as per settlement request letter of Abhishek Jain dated 17.01.2018	
# The misc. credit was given	
*The interest was withdrawn	

- (R) In February 2017, under the Amnesty Scheme floated by MSEDCL, TPL had waived of the interest and DPC amount on the outstanding arrears of MSEDCL prior to 26 January 2007. The consumer made the payment of the resultant amount of Rs.


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2,18,456/- to MSEDCL under the said Scheme. Thus, the arrears at point no.3 of para (E) were cleared. There are no outstanding dues of MSEDCL at present. However, the TPL arrears are still unpaid.

(S) The consumer, Abhishek Jain, being aggrieved by the notice of the recovery of Rs.22,48,280/- filed a complaint in the Internal Grievance Redressal Cell (IGRC). The IGRC by its Order dated 12.05.2017 observed that the consumer is liable to make the above payment.

(T) Aggrieved by the above order passed by the IGRC, he filed a grievance application before the Forum on 13th March 2018 (Case No. 82 of 2018). The Forum by its order dated 10.04.2018 allowed the grievance application, of which the operative part was as below:


“1. Grievance is partly allowed.

2. The arrears bill raised by the D.L. Torrent Power against the consumer amounting to Rs. 22, 62,295.37/- is hereby quashed and set aside.

3. Prayer for refund of Rs. 5,71,518/- allegedly extorted from the consumer is rejected.”

(U) The Forum had quashed the bill of Rs.22,48,280/- without any clear basis or reasoning, on the alleged ground that the claim of the Respondent TPL is barred by limitation. The Forum failed to consider that it had no jurisdiction or authority to decide the matter in view of the provisions of the relevant CGRF & EO Regulations 2006. As such, the order of the Forum is manifestly illegal and is also violative of the statutory rights of Respondent, TPL to recover dues from defaulting consumers. The Respondent TPL has challenged the Forum's order in the High Court in Writ Petition No. 11391/2018 which is pending for a final hearing.

(V) The consumer, Mr. Abhishek Jain gave a letter dated 27.01.2018 to resolve and settle the matter of the billing dispute. Accordingly, Respondent, TPL has passed on the credit of Rs. 8,70,999.53 (as shown in Table 1) of misc. credit and interest amount.


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(W) After the above credit, the arrears were reduced to Rs.16,20,659/-. A revised bill for the month of Feb 2018 amounting to Rs. 16,20,659/- was issued to the consumer, but he neglected to pay the same. On 15.02.2018 the Respondent, TPL issued a recovery notice of Rs. 16,20,659/-. It is their contention that these dues are still recoverable.


(X) The details of the billing status of Abhishek Jain from March 2007 is tabulated as below: -

Table 3:

Date/Month	Units	Bill Status	Opening bal (Rs.)	Current Bill (Rs.)	Total Due (Rs.)	Remark
Mar-07	7776	Assessed	46,462	42,482	88,944	Assessed billing
Nov-08	7776	Assessed	6,88,256	36,473	7,24,729	Assessed from Mar-2007 to Nov-2008 as the meter was tampered, electricity theft case was booked 21-11-2008 & meter was replaced with Initial KWH
Dec-08	7776	Assessed	7,24,729	39,378	7,64,107	Even after replacement of meter, bills were raised on assessed status as meter was made inaccessible
Apr-09	7776	Assessed	8,80,666	10,225	8,90,891	Assessed billing from Dec-2008 to Apr-2009 as meter was made inaccessible
May-09	43866	Billed	8,90,891	1,74,236	10,65,127	Meter recovered from site, Final KWH reading 43866, consumption of 43866 Units recorded in 6 months (Dec-2008 to Apr-2009) with an average consumption of 7311 KWH units/Month, which justifies the initial average
Dec-17	-	-	24,54,894	13,563	24,68,457	Network recovered and service tagged PD in system.
Jan-18	-	-	24,80,248	11,410	24,91,658	Final bill raised
Credit Passed					-1,45,518	Reversal of assessed bills for the period Dec-2008 to Apr-2009 i.e Lock credit after replacement of Meter
					-7,25,481	Reversal of fixed charges i.e after removal of meter in May-2009.
Total Arrears as on date					16,20,658	

(iv) **Grounds for recovery being valid:-**

- a) The duty of the utility to supply electricity under Section 43 of the Act is not absolute. Section 43 of the Act provides that an Appellant has to fulfil the corresponding obligations, i.e. to pay his dues.
- b) The Electricity Supply Code framed by the Commission is subordinate legislation and has a statutory character. This statutory authority enables the supply Code to provide for the recovery of dues from the defaulter consumer or the new occupier applying for a fresh connection. The right of a distribution licensee to deny electricity connection until outstanding dues are cleared is a continuing right and cannot be said to be extinguished. It can be exercised when the new owner or occupier approaches the licensee for a connection. In view of this, a demand for



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payment of arrears of a defaulter consumer, Mr. Abhishek Jain from his father Mr. Shantilal Jain, is of statutory character. The utility can recover the arrears of electricity dues of the defaulter, consumer or occupier from the new occupant of the property if the statutory rules or terms and conditions of supply which are statutory in character authorize the same by the Commission as per Regulation 6.2 of the Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021). The relevant part of this 6.2 Regulation is reproduced as below:

“6.2 Provided further that if there are any outstanding dues against the premises for which the requisition of supply has been made, new connection shall not be given until the time such dues are paid in accordance with the Regulation 12.5 of this Code.”

- c) The Respondent TPL rely on an observation in Paschimanchal Vidyut Vitran Nigam Limited V/s. DVS Steels and Alloys Private Limited, (2009) 1 SCC 210 where the Hon'ble Supreme Court observed that a licensee or an electricity distributor can insist upon the fulfilment of statutory rules, regulations, or the conditions of supply so long as they are not arbitrary and unreasonable. It was further submitted that the conditions of supply mandating the clearance of the electricity dues of a consumer by a new occupant before electricity supply is restored or a new connection is given to the premises cannot be termed unreasonable.
- d) Notwithstanding anything contrary in the MERC Regulations, if deemed termination of an agreement has taken place, a new service connection can only be provided in the same premises if the outstanding dues against the deemed terminated consumer are cleared along with the connection charges as per the schedule of charges.
- (v) As regards compliance of the Forum's order, the complainant, Mr. Shantilal Jain is very well aware that TPL had challenged the Order of the Forum in the High Court of Bombay,


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and the same is pending for admission. Hence the Forum's Order has not yet achieved finality.

- (vi) Thus the complainant's demand for release of a new connection cannot be processed unless he fulfils the compliances regarding payment of arrears referred to in the TPL letter dated 10.02.2021.
- (vii) The order of the Hon'ble Forum is challenged in a Writ Petition pending in the Hon'ble High Court for the admission stage. Thus, this Hon'ble Electricity Ombudsman should reject this complaint as per Regulation 7.9 of the CGRF & EO Regulations 2020, on the ground that proceedings in respect of the same matter and between the same parties are pending before the Hon'ble High Court.
- (viii) The Appellant, Shantilal Jain gave vague information and hid the facts about pending dues on the same premises relating to his son Abhishek Jain. Shantilal Jain's complaint is misleading and vexatious hence, the complaint needs to be dismissed.
- (ix) The Forum has raised concern that Representatives, Mr. Nadeem Ansari and Mr. Adil Punjabi appeared in a number of cases, especially Bhiwandi area, before the Forum as a 'friend' of the Complainant, consumer. This created a doubt about whether these Representatives are "Friends". Therefore, the Forum had directed Mr. Nadeem Ansari and Mr. Adil Punjabi to give written explanations about their status as friends of all the consumers and complainants. This Hon'ble Electricity Ombudsman should take note of the Forum's order and seek details by both the Representatives present in this case.
- (x) The Respondent has complied with the Regulations of the Commission and has initiated action after observing all legal formalities. Hence, there is no non-compliance on its part, thus nothing ought to be granted against the Respondent.

Analysis and Ruling

4. Heard the parties and perused the documents on record. The Appellant has applied for a new electric connection for 27 HP on 09.05.2023 at House No.2055, 1st Floor, Khoni Village, Near Faiyaz F.T. Office, Bhiwandi.



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5. The Respondent contended that the said premises is in arrears of Abhishek S. Jain (son of Shantilal Jain) as shown in Table 1 of Para 3 (i). Though there are different house numbers on the bills, the premises are the same.

6. A spot inspection was carried out at the premises of the consumer, Abhishek Jain on 22.04.2008. The TPL found that Abhishek Jain was involved in unauthorized use of electricity at his premises. Therefore, a Case under Section 126 of the Electricity Act, 2003 was registered against him. There was another spot inspection on 21.11.2008. Abhishek Jain was found indulging in theft of electricity, and therefore a case was registered under Section 135 of the Electricity Act, 2003. The theft of electricity was done by tampering with the internal circuit of the meter. Abhishek Jain was assessed for Rs. 5,71,518/- towards unauthorized use and theft of electricity. His supply was temporarily disconnected on 20.04.2009. The Consumer showed his willingness to pay the theft charges of Rs. 5,71,518/-, paid Rs. 3,00,000/- immediately and deposited three(3) post-dated cheques of Rs. 2,71,518/-, and then the supply was reconnected. These cheques bounced; however, finally he paid the entire amount in cash on two occasions, firstly Rs.1,00,500/- on 15.06.2009 and then the balance amount of Rs.1,72,218 on 09.05.2013, and then both the cases were closed.

7. The Consumer also paid the outstanding dues of MSEDCL of Rs. 2,18,456/- in February 2017, under the Amnesty Scheme of MSEDCL, by waiving interest and DPC amount on the outstanding arrears which were pending with MSEDCL prior to 26.01.2007. There are no outstanding dues of MSEDCL at present. Thus, the consumer cleared 2 out of the 3 dues pending, as shown in para 3 (iii) (E). However, he did not clear the third part of the dues. He had consumed electricity and was billed by TPL from Feb. 2007 onwards. He failed to pay the current bills of TPL from Feb.2007 to Dec.2017. The arrears increased tremendously over the years, as shown in Table 2.


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8. On 22.08.2016, the TPL issued a notice to the consumer, Abhishek Jain to pay Rs.22,48,280/- towards the accumulated bill for the period from Feb. 2007 to Feb. 2016, but he neglected to pay the same; thus, the said service was permanently disconnected on 16.12.2017. We have examined in detail how the dues increased from Rs.10,65,127/- in April 2009 to Rs.24.91 lakhs in Jan. 2018 and whether this increase is justified. This amount accumulated due to three factors:-

- (i) Actual consumption from 26.01.2007 to 20.04.2009, when the meter was temporarily disconnected and physically removed on 30.05.2009. The bill of the Appellant was Rs.8.91 Lakhs in April 2009 as per the Respondent's revised statement.
- (ii) Fixed charges from May 2009 to Jan.2018 (which fictitiously accumulated from Rs.8.91 Lakhs to Rs. 24.91 Lakhs in Jan. 2018) even after removal of the meter on 30.05.2009, as the disconnection was not recorded in the system, and
- (iii) Accumulated interest and delayed payment charges from May 2009 to Jan.2018.

Dues on account of Point No. (i), i.e. the arrears of Rs. 8.91 Lakhs of April 2009 are justifiable, but this amount drastically increased from Rs. 8.91 Lakhs to Rs. 24.91 Lakhs in Jan. 2018 merely on account of fixed charges even after removal of the meter. We find that the Point No. (ii) i.e. fixed charges are not justified, and credit was not given for the full amount of fixed charges.


Dues on account of accumulating interest have also not been explained satisfactorily. Full credit has also not been given for waiver of interest.

The Respondent has given the following break-up of the final dues of Rs.16.2 lakhs:-

Principal amount Rs 8.91 Lakhs

Fixed Charges with Interest and DPC of Rs. 16.20 -8.91= Rs.7.29 lakhs

The interest and DPC amount seems excessive and has not been justified properly.


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9. Abhishek Jain filed a case in the IGRC. The IGRC, by its Order dated 12.05.2017 observed that he is liable to make the payment of the full outstanding dues Rs.22,48,280/-. The consumer approached TPL for settlement by his letters 27.01.2018 and 09.02.2018. A settlement amount of Rs. 16,20,659/- was offered to Abhishek Jain as shown in Table 1. A revised bill for the month of Feb 2018 amounting to Rs. 16,20,659/- was issued to him, but he refused to pay the same.

10. The Consumer filed a grievance application before the Forum, which, by its order dated 10.04.2018 allowed the grievance application. The operative part is shown in Para 3 (iii) (U). The Forum quashed the entire bill of Rs.22, 62,295.37/-. We find this order of the Forum to be unreasonable and excessive. Though the consumer is no doubt liable to clear his dues, it is notable that the principal amount of the dues is only Rs. 8.91 Lakhs in April 2009. As discussed earlier, the Respondent has not been able to explain how these arrears increased to Rs. 22.48 lakhs, or even to Rs.16.2 lakhs. More particularly, the Respondent has not explained how or why Fixed Charges were levied from May 2009 to Jan. 2018 even after the meter was removed. These charges, along with interest and DPC thereon, need to be dropped. The TPL has challenged the above Order of the Forum in the High Court of Bombay, (W. P. No. 11391 of 2018), and the same is pending for admission.

11. The Appellant Shantilal Jain has also filed a case on 05.07.2021 in the Commission, seeking execution of the CGRF Bhandup Order dated 10.04.2018, and seeking action against TPL under Section 142 of the Act. The Commission observed in its Analysis and Ruling as under:

“13. The Commission notes that M/s TPL has challenged the CGRF Order dated 10 April, 2018 related to the Petitioner’s son, Shri Abhishek Jain, before the Hon’ble Bombay High Court, and has prayed to dismiss the present petition filed by Petitioner till the outcome of Hon’ble the Bombay High Court.

14. As per available record, Hon’ble the Bombay High Court has not accorded any ‘Stay Order/interim relief’ to the implementation of CGRF Bhandup Order and therefore the position as on date is that M/s. TPL has not complied with CGRF Bhandup’s Order dated 10 April 2018 in true spirit.


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15. However, the Commission also notes that the Petitioner was not the party in the said CGRF order dated 10 April 2018. Hence the Commission through the present Order cannot issue any direction for implementation of the said CGRF order dated 10 April 2018.

16. The Commission is in the view that the Petitioner needs to approach the concerned CGRF for the grievance raised in the current Petition (if he wishes to do so). **The Petition cannot seek the compliance of CGRF order of some other matter, to which he is not a party and further which is not directly concerning to him.**

17. The jurisdiction of the Commission under Section 142 and 146 of the Electricity Act is limited to implementation of CGRF Order which in the present case admittedly no such order has been passed by CGRF in favour of the petitioner.”

12. It is necessary to refer to the concerned regulations of the Commission for clarifying the regulatory stand in cases where litigation is pending in the High Court Bombay. CGRF & EO Regulations 2020 states as below:

- “19.22 The Electricity Ombudsman shall entertain a representation only if all the following conditions are satisfied:

(a)

.....


(g) **The representation by the Complainant, in respect of the same Grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority, or a decree or award or a final order has not already been passed by any such court, tribunal, arbitrator or authority;**

.....

Since the matter is pending in the High Court, it cannot be adjudicated upon by the Ombudsman.

- The Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 came in force from 25.02.2021. The Regulation 12.5 of the said Regulations in support of its submissions which is reproduced as below:

"Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Appellant or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises


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transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be.”

Thus, TPL is entitled to recover the correct dues of Abhishek Jain from his father Shantilal Jain, and till these dues are cleared, it can deny a new connection.

- Similarly, the regulation relating to old outstanding dues of permanently disconnected (PD) cases is reproduced below:

16. Billing

16.9.2. No sum due from any Consumer shall be recoverable after the period of Two (2) 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 as per Section 56 (2) of the Act except for permanently disconnected Consumer.

16.9.3. In case of premises which are permanently disconnected or demolished for reconstruction, the liability of the arrears, if any, shall be passed on to the owners / occupier.”


It is clear from the above provision that the Respondent is entitled to recover arrears even beyond 2 years, in the case of a PD consumer.


The electricity dues, where they are statutory in character under the Electricity Act, 2003 and as per the terms and conditions of supply, cannot be waived of in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003. The period of limitation under Section 56(2) is applicable to the sum due under Section 56 for live consumers and not PD consumers.

Hon'ble Supreme Court by its Judgement dated 19th May 2023 in Civil Appeal No 2109-2110 of 2004 in Case of K C Ninan V/s Kerala State Electricity Board & Ors. has concluded regarding the recovery of PD arrears as below:

“ I. Conclusions 328. The conclusions are summarised below:


a. The duty to supply electricity under Section 43 of the 2003 Act is not absolute, and is subject to such charges and compliances stipulated by the Electric Utilities as part of the application for supply of electricity;


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- b. The duty to supply electricity under Section 43 is with respect to the owner or occupier of the premises. The 2003 Act contemplates a synergy between the consumer and premises. Under Section 43, when electricity is supplied, the owner or occupier becomes a consumer only with respect to those particular premises for which electricity is sought and provided by the Electric Utilities;
- c. For an application to be considered as a 'reconnection', the applicant has to seek supply of electricity with respect to the same premises for which electricity was already provided. Even if the consumer is the same, but the premises are different, it will be considered as a fresh connection and not a reconnection;
- d. A condition of supply enacted under Section 49 of the 1948 Act requiring the new owner of the premises to clear the electricity arrears of the previous owner as a precondition to availing electricity supply will have a statutory character;
- e. The scope of the regulatory powers of the State Commission under Section 50 of the 2003 Act is wide enough to stipulate conditions for recovery of electricity arrears of previous owners from new or subsequent owners;
- f. The Electricity Supply Code providing for recoupment of electricity dues of a previous consumer from a new owner have a reasonable nexus with the objects of the 2003 Act;
- g. The rule making power contained under Section 181 read with Section 50 of the 2003 Act is wide enough to enable the regulatory commission to provide for a statutory charge in the absence of a provision in the plenary statute providing for creation of such a charge;
- h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act;
- i. The implication of the expression "as is where is" basis is that every intending bidder is put on notice that the seller does not undertake responsibility in respect of the property offered for sale with regard to any liability for the payment of dues, like service charges, electricity dues for power connection, and taxes of the local authorities; and
- j. In the exercise of the jurisdiction under Article 142 of the Constitution, the Electric Utilities have been directed in the facts of cases before us to waive the outstanding interest accrued on the principal dues from the date of application for supply of electricity by the auction purchasers.
329. Pending applications, if any, shall stand disposed."

13. Thus there is no doubt that the Respondent is entitled to recover the old dues of the PD consumer, Abhishek Jain from his father who is the current Appellant. At the same time, the Respondent must charge the correct amount and not an inflated amount which cannot be justified. In the current case, we find that the interest and DPC amount of Rs.16.20 -8.91 = Rs.7.29 Lakhs has not been adequately explained by the Respondent and seems excessive. Given that an Amnesty


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Scheme of MSEDCL was available for PD consumers, recovery of interest and DPC of 10% (on the principal amount) seems a justifiable and reasonable amount.

14. Both the parties are advised to come to a settlement on the lines as detailed above.

15. In view of the above, the representation is rejected and disposed of accordingly.

16. The secretariat of this office is directed to refund the amount of Rs.25000/- taken as a deposit to the Appellant.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

