BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 65, 66 & 67 OF 2020

In the matter of change of tariff category and retrospective recovery

1) Shrivardhan Biotech Pvt. Ltd. (Rep. 65 of 2020)
2) Shrivardhan Biotech (Rep. 66 of 2020)
3) Smt. Sampada Nitin Desai (Rep. 67 of 2020) …….... Appellants

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Jaysingpur (MSEDCL)…… Respondent

Appearances

For Appellant : Haribhau Khapre, Representative

For Respondent : 1) M.D. Awalekar, Executive Engineer, Jayasingpur
2) A.A. Attar, Incharge SDO

Coram: Deepak Lad

Date of Hearing: 7th October 2020

Date of Order :20th October 2020

ORDER

All these three Representations are filed on 19th August 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the common Order dated 9th March 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone.

2. The Forum by its common order dated 09.03.2020 (in Marathi language) by majority has partly allowed the grievance applications in Case No.26 of 2019-20 and allowed tariff

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differential to be paid retrospectively for 24 months from September 2016 onwards in all three cases.

3. Aggrieved by the order of the Forum dated 09.03.2020, these three Appellants have filed their representations separately on 19.08.2020. The issues in all these representations are similar in nature, and common grounds are raised in the representations. Therefore, for the purpose of this order, all these three representations are clubbed together. The individual details are as follows: -

1) **Representation No. 65 of 2020 - Shrivardhan Biotech Pvt. Ltd**

The Appellant is basically an agricultural consumer (No.253030169722) from 20.03.2008 and utilizing power for Green House purpose. At present, its sanctioned load is 105 HP at Gat No.57/59, Kondigre, Post- Jaysingpur, Dist – Kolhapur.

2) **Representation No. 66 of 2020 - Shrivardhan Biotech**

The Appellant is basically an agricultural consumer (No.253030011223) from 14.08.2000 and utilizing power for Green House purpose. At present, its sanctioned load is 65 HP at Gat No. 113 - Kondigre, Post – Jaysingpur, Dist – Kolhapur

3) **Representation No. 67 of 2020 Smt. Sampada Nitin Desai**

The Appellant is basically an agricultural consumer (253030619353) from 28.04.2004 and utilizing power for Green House purpose. At present, its sanctioned load is 63 HP at Kondigre, Post – Jaysingpur, Dist – Kolhapur.

Common Grounds

(i) In all these three cases, power supply was sanctioned for Green House / cultivation of flowers. The Appellants are in the same business from the date of supply and the purpose of usage of power supply is same throughout. The Appellants were billed under agricultural meter tariff from the date of connection in accordance with then tariff in force.

(ii) The Respondent carried out spot inspections of the Appellants in the month of June 2018. It is written in the inspection report that the activity of the Appellants is

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covered under Agriculture-Others tariff category though the Appellants are billed under Agriculture Metered tariff category. Tariff of the Appellants is required to be changed from Agriculture Metered to Agriculture-Others tariff category.

(iii) The Respondent debited the amount of supplementary bill in the bill for the month of June 2019.

a. Rs.11,87,671/- in Representation 65 of 2020

b. Rs.17,85,060/- in Representation 66 of 2020

c. Rs.13,52,487/- in Representation 67 of 2020

These amounts are towards retrospective recovery of tariff difference from LT IV (B) to LT IV(C) for the period from June 2015 to June 2018. The Respondent claims that these provisional bills are issued in the month of July 2018 through its letters. This is totally incorrect as no such letters have been served to the Appellants.

(iv) The Appellants came to know from the Respondent that the Commission issued the Tariff Order dated 26.06.2015 in Case No. 121 of 2014 effective from 01.06.2015, and the Tariff Order dated 03.11.2016 in Case No. 48 of 2016 effective from 1.11.2016. Accordingly, the Respondent issued commercial circulars based on these tariff orders.

(v) The Appellants approached the Respondent for their grievance; however, the Respondent did not give any relief. The Appellants filed the grievance applications with Internal Grievance Redressal Cell (IGRC) on 18.07.2019. The IGRC, by its common order dated 14.10.2019 has rejected the grievances.

(vi) Not satisfied with the order of the IGRC, the Appellants approached the Forum on 07.01.2020. The Forum, by its common order dated 09.03.2020 has partly allowed the grievances by majority and directed to recover the amount towards tariff differential between LT IV (C): LT – Agriculture – Others and LT IV (B): Agriculture Metered, for period of 24 months from September 2016. The proper tariff Code of LT IV (C) was fed in the quarterly billing of September 2018. The Forum has withdrawn tariff differential recovery for the earlier period of June 2015 to August 2016, however not given relief for withdrawing retrospective recovery totally.

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(vii) As per Regulation 13 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) for classification & reclassification of tariff category, the distribution licensee is to decide tariff category based upon usage by the consumer. Tariff category charged till August 2018 was of LT IV (B): Agriculture Metered which was then changed to LT IV (C): LT – Agriculture – Others without any prior intimation/ notice by the Respondent. The prospective tariff change is accepted but the retrospective recovery towards tariff difference due to sudden/ abrupt change is not as per various regulations and ruling of the Commission.

(viii) The Appellants referred the Judgment of Larger Bench of Bombay High Court in W.P. 10764 of 2011 along with other Writ Petitions on Section 56 (2) of the Electricity Act, 2003(the Act). The appeal made by the Respondent in Hon. Supreme Court against this judgement of Larger Bench was dismissed on 14.02.2020. The recovery by the Respondent was not shown continuously and hence it is time barred.

(ix) The Appellants referred the Judgment of the Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 where recovery which is not continuously shown is time barred. In this case, the recovery from June 2015 which was shown in the bill of June 2019 is time barred as per Section 56(2) of the Act.

(x) The Appellants cited the Judgment dated 13.12.2019 of Bombay High Court in W.P. 7149 of 2019 of MSEDCL V/s. Shri Mohammad Haji Sardar in which prospective change of tariff is allowed.

(xi) The demand of June 2015 onwards was first time raised in the bill of June 2019 and not continuously shown and hence the demand of retrospective recovery is time barred.

(xii) The Forum, by its order dated 06.03.2020 has rightly disallowed the claim of the Respondent as per Judgement dated 20.08.2009 in W.P. No. 7015 of 2008 of Rototex Polyester (Supra).

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(xiii) The Appellant, therefore, prays that the delay in filing the Representations be condoned. The Appellants have made various highly elaborated prayers. In nutshell, the Appellant prays that the Respondent be directed: -

a. to show the receipt of its letter dated 23.07.2018 through which the supplementary bill has been issued to the Appellants.

b. to set aside the order of the Forum allowing retrospective recovery for 24 months in view of various Judgments of the High Court and Supreme Court.

4. The Respondent filed its replies by its letters dated 01.10.2020. The individual details of all three Appellants are tabulated as below:

Rep No.	65 of 2020	66 of 2020	67 of 2020
Name of the Appellant	Shrivardhan Biotech Pvt. Ltd.	Shrivardhan Biotech	Smt. Sampada Nitin Desai
Consumer No.	253030169722	253030011223	253030-619353
Date of Supply	20.03.2008	14.08.2000	28.04.2004
Sanctioned load	105 HP	65 HP	63 HP
Date of inspection	19.06.2018	19.06.2018	24.06.2018
Inspection Done by	A.E.E. Flying Squad	A.E.E. Flying Squad	A. E. Quality Control
Retrospective recovery amount (Rs.)	11,87,671/-	17,85,060/-	13,50,487/-
Outward No. and date of issue of provisional bill	EE/Jaysingpur letter No.02112 dated 23.07.2018	EE/Jaysingpur letter No. 02113 dated 23.07.2018	EE/Jaysingpur letter No. 02114 dated 23.07.2018

(i) The replies filed by the Respondent before the Forum in the earlier main matter may be treated and considered as part and parcel of the present replies.

(ii) It is admitted fact that, said connection is utilized for the purpose of Green House. On 06.06.2015 the Commission issued tariff order in Case No. 121 of 2014 thereby classifying the Agricultural category in three sub-categories being

(a) LT IV(A) for Agricultural unmetered Pump sets

(b) LT IV (B) for metered Agricultural Pump set and

(c) LT IV (C) for Agricultural- Others

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LT IV (C) basically covers the usage of electricity for High Technology Agriculture activities i.e. Green House etc.

(iii) Subsequently on 03.11.2016, the Commissioned issued another tariff order in Case 48 of 2016 which is applicable from 01.11.2016 wherein the same classification is continued except that the tariff rates were changed.

(iv) In the month of June 2018, the Respondent visited the premises of all three Appellants for spot inspection. During inspection, it is found that Appellants used power for green house. However, the tariff being charged was LT IV (B) as opposed to LT IV (C), which should have been charged.

(v) Therefore, the Respondent MSEDCL has issued supplementary bills on 23.07.2018 to the Appellants for the tariff difference from June 2015 to June 2018.

(vi) It is submitted that as per Regulation 13 of the Supply Code Regulations 2005, the distribution license may classify or reclassify a consumer into various commission approved tariff categories based on the purpose of supply. Accordingly, considering the usage of electricity by the Appellants for Green House, the Respondent changed their tariff category as per the tariff order from LT IV (B) to LT IV (C) and issued the supplementary bill dated 23.07.2018 as per actual usage of electricity.

(vii) It is kindly submitted that Hon'ble Supreme Court of India in Civil Appeal No.1672 of 2020 (Asst. Engineer Ajmer Vidyut Vitaran Ltd V/s. Rahamatullah Khan alias Rahamjulla) has upheld that, Section 56(2) does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of supplementary demand.

(viii) The Forum vide its order dated 09.03.2020 has partly allowed the complaint relying on Section 56 (2) of the Act and the Judgment dated 12.03.2019 passed by Hon. High Court in W.P. No. 10764 of 2011 and Other batch of

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Writ Petitions. It held that MSEDCL is entitled to recover the amount of two years preceding the date of tariff change i.e. September 2018.

(ix) Without prejudice to its right to recover full amount and right to defend, it is pertinent to note that, Appellants have admitted in its present petition that Licensee is eligible to recover 2 years from date of detection of error as per Section 56(2) of Act. The Forum has held that MSEDCL is eligible to recover tariff difference of last two years from date of detection or mistake.

(x) Without prejudice to the rights of MSEDCL to recover the whole supplementary bill for the entire period, it is submitted that the Forum failed to consider that the Respondent in June 2018 for the first time detected that the Appellants were being applied wrong tariff and thereafter MSEDCL issued the tariff difference supplementary bill on 23.07.2018. Therefore, the Forum ought to have held that amount become first due on 05.06.2018 or 23.07.2018 and ought to have allowed the recovery for two years preceding the date of 05.06.2018 or 23.07.2018.

(xi) It is humbly submitted that, the effect of supplementary bill raised was shown from the bills of June 2019 as the proposal of said bill effect was sent to approval of Regional office. The delay caused to show actual effect of supplementary in quarter ending June 2019 (April 2019 to June 2019) was administrative delay and nothing much. However, it does not preclude MSEDCL to recover supplementary bill from consumer as supplementary bill was already given in the month of July 2018 to the consumer and consumer was well aware of said supplementary bill. Thus, considering the above facts/ information, the LT IV(C) tariff applied to the consumer and supplementary bill given is as per MERC tariff orders and relevant MSEDCL circulars and recovery against tariff difference is correct.

(xii) In view of the aforesaid facts and decisions it is kindly requested the present petition is not having any merit factually as well as lawfully. Therefore, it may kindly be dismissed.

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5. Due to the Covid-19 epidemic and subsequent situations arising out of it, the hearing was held on e-platform through video conferencing on 07.10.2020.

6. During the hearing, the Appellants argued in line with their written submissions. Site Inspections were done in June 2018 when it was observed that the applied tariff was wrong. The Respondent issued supplementary bill for retrospective recovery for the period June 2015 to June 2018 for the tariff difference between LT IV (B): LT – Agriculture Metered and LT IV (C): LT – Agriculture – Others. The Appellant relied on the Judgement of Writ Petition No.10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune. Considering the various citation advanced in the hearing, the Appellant argued that the Respondent, in case of escaped billing, can only prospectively bill the Appellant. The supplementary bills were not delivered to the Appellants on 23.07.2018. The Respondent did not show the receipts of the acknowledgments. The Forum failed to understand the basic issue and hence, the order of the Forum need to be quashed. The Appellant prayed that the Respondent be directed to withdraw supplementary bill of tariff difference for the period from June 2015 to June 2018 without interest and DPC.

7. The Respondent argued during the hearing that the activity of the Appellant is Green House. The tariff category applicable to the Appellant is LT IV (C): LT – Agriculture – Others, as per tariff order dated 26.06.2015 in Case No. 121 of 2014 effective from 01.06.2015 and 03.11.2016 in Case No. 48 of 2016 effective from 01.11.2016. The Respondent correctly billed under LT IV (C): LT – Agriculture – Others tariff category from July 2018 and the bill was issued quarterly in September 2018. It was supposed to be billed from June 2015. This mistake was noticed by the Respondent and pointed to the Appellant during inspection in June 2018. The Respondent issued supplementary bills towards retrospective recovery by letters dated 23.07.2018. Though the letter indicates unauthorised use of power, it is a plain recovery and not penal recovery. It was added in the bill for quarter ending June 2019(April 2019 to June 2019). It also argued on the Judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 which allows retrospective recovery. Considering all these facts, the Respondent prays for rejection of the representation.

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Analysis and Ruling

8. Heard the parties and perused the documents on record. The Appellants were correctly applied agricultural tariff in the very beginning when the supply was released. However, the Commission issued order dated 26.06.2015 in Case No. 121 of 2014 which was effective from 01.06.2015 introduced a third sub-category in the erst while Agricultural tariff category. The Commission also issued subsequent tariff order dated 03.11.2016 in Case No. 48 of 2016 effective from 1.11.2016. Both these orders have following tariff sub-categories for agricultural consumers.

> ***"LT IV: Agriculture** applicability which reads as……*
> *LT IV (A): LT - Agriculture Un-metered – Pump sets*
> *……*
> *LT IV (B): LT – Agriculture metered – pump sets*
>
> *Applicability: This tariff category is applicable for motive power supplied for Agriculture metered pumping loads, and for one lamp of wattage up to 40 Watt to be connected to the motive power circuit for use in pump-houses at Low/Medium Voltage.*
>
> *It is also applicable for power supply for cane crushers and/or fodder cutters for self-use for agricultural processing operations, but not for operating a flour mill, oil mill or expeller in the same premises, either operated by a separate motor or a change of belt drive.*
>
> *…… …… …… ……*
>
> ***LT IV (C): LT – Agriculture – Others ……..***
>
> *Applicability: This tariff category is applicable for use of electricity / power supply at Low / Medium Voltage for:*
> *a) ……..*
> *b) ……*
> *c) High-Technology Agriculture (i.e. Tissue Culture, Green House, Mushroom cultivation activities), provided the power supply is exclusively utilized for purposes directly concerned with the crop cultivation process, and not for any engineering or industrial process;*
> *d) Floriculture, Horticulture, Nurseries, Plantations, Aquaculture, Sericulture, Cattle Breeding Farms, etc;*

9. The Respondent ought to have changed the tariff category of the Appellants from the effective date i.e. 01.06.2015 of the Commission's order in Case No. 121 of 2014. However, it did not do so. This anomaly continued till the inspection carried in the month of June 2018

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by the Respondent. The Respondent after discovery of the mistake, changed the tariff category of the Appellants from July 2018 for which bill is issued in quarter ending September 2018. Inter alia, the Respondent changed the tariff category for the quarter ending September 2018 covering all the three months of the quarter. Retrospective recovery was calculated from June 2015 to June 2018 however, the amount towards retrospective recovery was debited in the bill of quarter ending June 2019 (April 2019 to June 2019).

10. The Appellant cited the Judgment of the Bombay High Court in Writ Petition No.10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune and the Judgment dated 13.12.2019 of Bombay High Court in W.P. 7149 of 2019 of MSEDCL V/s Shri Mohammad Haji Sardar in which prospective change of tariff is allowed. While on one hand, it has cited these Judgments, on the other, it cited Larger Bench Judgment of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions and Hon. Supreme Court Judgment in Civil Appeal No.1672 of 2020.which allows retrospective recovery. It is indicative of the fact that the Judgments are quoted without any thought process by the Appellants and without properly appreciating its contents. It tried to get into legal rigmarole and confuse the undersigned and the Respondent.

11. Section 56 (2) of the Act has been interpreted in the

(a) Judgment dated 09.05.2008 of ATE in Appeal No. 74 of 2007.

(b) Judgment dated 12.03.2019 of the Larger Bench of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions.

(c) Judgment dated 18.02.2020 of the Hon. Supreme Court in Civil Appeal No .1672 of 2020.

All these three Judgments has clearly interpreted Section 56 (2) of the Electricity Act, 2003. The relevant portion of these three Judgments is quoted below:

(a) Judgment dated 09.05.2008 of ATE in Appeal No. 74 of 2007,

"Bar of Section 56(2) Electricity Act :

30) The Commission has found that the claim for the period of July 2002 to August 2003 is barred by section 56(2) of the Electricity Act 2003. The appellant on the other hand says that the period

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of two years under section 56(2) starts running after the first bill is raised. I feel that neither the Commission nor the appellant has properly understood the import of section 56(ii) of Electricity Act 2003.

31) Clause (1) & (2) of 56 have to be read together to understand the import of the second sub section. The Section is extracted below:

> *"56. Disconnection of supply in default of payment. –(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*
>
> *Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*
>
> *(a) an amount equal to the sum claimed from him,*
>
> *or*
>
> *(b) the electricity charges due from him for each month calculated n the basis of average charge for electricity paid by him during the preceding six months,*
>
> *whichever is less, pending disposal of any dispute between him and the licensee.*
>
> *(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."*

32) Section 56 has the caption "Disconnection of supply in default of payment". Section 56 is not prescribing the period of limitation. It is prescribing a procedure of disconnection of supply in default of payment. It is a tool of recovery of dues. 56(1) says that the dues towards electricity supply can be recovered by a licensee or a generating company by disconnecting electric supply line. This procedure is without prejudice to the right of licensee or the generating company to recover such charge by the legal process of filing a suit. The consumer can save himself such consequences of default by making the payment as prescribed in (a) and (b) to the proviso to

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56(1). if the electricity company intends to file a suit it will have to file a suit within the time prescribed by the Limitation Act. However, even without resorting to a suit, the company is allowed to use the coercive method of disconnection of electricity to force the consumer or purchaser of electricity to make the payment.

33) The sub section (2) then proceeds to say that this coercive method shall not be available if after the sum has become due the same has not been shown for two years continuously in the bills. For this purpose it will be proper to dissect section (2) as under:

i) notwithstanding anything contained in any other law for the time being in force,

ii) no sum due from any consumer,

iii) under this section shall be recoverable after a period of two years from the date when such sum became first due,

iv) unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and

v) licensee shall not cut off the supply of electricity.

34) The second sub section has to be necessarily read with the first sub section. This is the general rule of interpretation. However, in this case it is all the more important because the second sub section has the words "under this section". 56(1) is not creating any dues. It is creating a method of recovery. This method of recovery is disconnection of supply albeit after 15 days notice. 56(2) says that this process of recovery is subject to certain restrictions. So we can find the first important part of section 56(2) namely no sum due from any consumer, under this section shall be recoverable after the period of two years. It is important to notice the comma after the word consumer and absence of the comma after the word section. So "under this section" has to relate to the subsequent words "shall be recoverable" and not to "no sum due". Therefore, it follows that sub section (2) says that no sum shall be recoverable under this section after two years under this section.

35) The two years period starts when such sum became 'first due' which is another important term to notice here. Now the protection given to a consumer (not to others purchasing electricity) is that the electricity shall not be disconnected for recovery of dues which are more than two years old or after the lapse of two years from the time the sum became first due. Now this has to be read with the interest of the consumer in view. Vis-à-vis a consumer a sum becomes due towards his electricity consumption when a bill is raised by the distributing company. In that sense, the words "first due" may be read to mean when the sum was first billed.

36) However, there is another exception which is for the protection of the distribution company which comes from the following words "unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied". In another words, if the sum has been

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shown continuously as arrears of charges for electricity supplied then the method of recovery given in 56(1) can be used even after the lapse of two years.

37) The last words "and the licensee shall not cut off the supply of electricity" has to be read with the first clause of the sentence i.e. "no such …. shall be recoverable". The sub section, thus, says that the licensee shall not cut off electricity after a lapse of two years from the date the sum became due unless the dues have been continuously shown for two years.

38) When the two sub sections are read together we find that for recovery of dues from a consumer 15 days clear notice will have to be given but at the same time a bill should have been raised specifying the amount due.

39) The section 56 read as a whole does not at all give any period of limitation for recovery of dues in the usual legal process which is through a civil suit. Limitation of two years is only for the method of recovery given in section 56(1). This does not mean that the distributing company can raise a bill even after the dues have become barred by limitation. Nor does it say that limitation vis-à-vis the distributing company or the creditor, will start running only after the bill is raised. The appellant however, says that only after November 2005 when it raised the bill, the limitation shall start running.

40) The appellant seeks support to its view the judgment rendered by this Tribunal in the case of Ajmer Vidyut Vitran Nigam Ltd. Vs. M/s. Sisodia Marbles & Granites Pvt. Ltd. Appeal No. 202 & 203 of 2006, decided on 14.11.2006.

41) I have carefully gone through the judgment. The judgment in appeal No. 202 and 203 have been passed by applying the opinion expressed by the High Court of Delhi in the case of H.D.Shourie Vs. Municipal Corporation of Delhi 1987 Delhi 219. This judgment of the High Court, rendered in the case of H.D.Shourie Vs. Municipal Corporation of Delhi, was subject to a letter patent appeal and the Division Bench of the High Court dismissed the appeal (which is reported in 1994(1) AD Delhi 105).

42) That judgment deals with three sections which are as under:

(i) Section 455 of the Municipal Corporation of Delhi Act

(ii) Section 24 of the Indian Electricity Act 1910 and

(iii) Section 26(6) of the Indian Electricity Act 1910.

None of these sections have anything similar or analogous to the provisions of sub section 92) of section 56 of Electricity Act 2003. …… …… ……. ……..has now become due on account of the bill being raised and therefore take the coercive method of recovery as arrears of tax unless the Corporation was prevented, by some reason, from raising the bill on time.

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43) In the judgment in the appeal, the DB of the High Court said that the liability to pay may arise when the electricity consumed by the consumer nevertheless it becomes due and payable when the liability is quantified and a bill is raised. This was said in the context of the case which was one of defective meter. The bill for the connection could be raised only after the defect was detected and the arrears assessed. The period of limitation starts running only when the fraud on mistake could, with reasonable diligence, have been discovered by the creditor. This principle is incorporated in section 17 of the Limitation Act which is as under:

> *"17. Effect of fraud or mistake. – (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, -*
>
> *(a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or*
>
> *(b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or*
>
> *(c) the suit or application is for relief from the consequences of a mistake; or*
>
> *(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him;*
>
> *the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:*
>
> *Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which-*
>
> *(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or*
>
> *(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or*
>
> *(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.*

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(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order.

Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be."

44) Section 24 of the Indian Electricity Act 1910 has a caption "Discontinuance of Supply to consumer neglecting to pay charge". This section also gives power to a licensee in respect of supply of energy to cut off supply after giving seven days clear notice. This also prescribes that this right to disconnect for the purpose of recovery of its charges will be without prejudice to its right to recover dues through a civil suit. No time limit is prescribed therein. The Section 24 is reproduced below:

"24. Discontinuance of supply to consumer neglecting to pay charge.-

[(1)] Where any person neglects to pay any charge for energy or any [sum, other than a charge for energy,] due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer."

45) Section 26(6) prescribes a time limit for raising a revised bill in case the meter was defective. This period is six months. The relevant provision is extracted below :

"26. Meters.- (1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) Where any difference or dispute arises as to whether any meter referred to in subsection (1) is or is not correct, …….. …… in the absence of fraud, be conclusive proof of such amount or quantity;

(7) ..."

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46) This provision is merely about revision in a bill. ……, extracted in the judgment of this Tribunal in the aforesaid appeal No.202 & 203 of 2006:

> *"The maximum period for which a bill can be raised in respect of a defective meter under S. 26 (6) is six months and no more. Therefore, even if a meter has been defective for, say, a period of five years, the revised charges can be for a period not exceeding six months. The reason for this is obvious. It is the duty and obligation of the licensee to maintain and check the meter. If there is a default committed in this behalf by the licensee and the defective meter is not replaced, then it is obvious that the consumer should not be unduly penalized at a later point of time and a large bill raised. The provision for a bill not to exceed six months would possibly ensure better checking and maintenance by the licensee".*

47) The judgment in the case of H.D.Shourie Vs. Municipal Corporation of Delhi 1987 Delhi 219 first says that the provisions of section 455 would come into play after detection of the defect and consequent submission of the bill for electricity charges and not earlier.

48) The appeal No. 202 & 203 of 2006 was also a case of defective meter. The meter was replaced but the bill for the dues had not been immediately raised. The bill was raised after two years. Till then the claim of the Electricity Distributing Company had not become barred by limitation on account of application of section 17 of the Limitation Act. Therefore, the appeal deserved to be allowed. This Tribunal did allow the appeal although on a different analysis. It will not be correct to say that the judgment in Appeal Nos. 202 & 203 of 2006 lays down a law that the period of limitation shall not run even if the DISCOM is negligent in raising the bill and allows three years to pas even after the defect in the meter was discovered.

49) Applying the above analysis to our case the amount claimed by the AVVNL is subject to the general law of limitation and anything falling due prior to three years from the date on which the claim is made would be barred by limitation as prescribed by the Limitation Act 1963."

(b) Judgment dated 12.03.2019 of the Larger Bench of the Hon'ble Bombay High Court in W.P. No.10764 of 2011 with other Writ Petitions,

"76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression "when such sum became first due" appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply

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is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible

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that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

As a result of the above discussion, the issues referred for our opinion are answered as under:

(A) ***The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.***

(Emphasis added)

(B) *As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*

(C) *The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment."*

(c) Judgment dated 18.02.2020 of the Hon. Supreme Court in Civil Appeal No. 1672 of 2020.

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. (Emphasis added)

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……. ……."

The context of the issues in the Judgment cited by the Appellant in W.P. No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune being different, it cannot be blindly applied to the instant representation.

The ratio of all these three Judgments, relevant portion of which is just quoted above is that the licensee company can recover energy bill by way of additional supplementary demand for a retrospective period of two years for the bonafide error of the licensee. In the instant case, the Respondent has debited the amount of supplementary bill in the bill issued for quarter ending June 2019 (April 2019 to June 2019) though it has applied the tariff for regular billing from July 2018 for quarter ending September 2018. Considering the fact that the amount of the supplementary bill is raised from April 2019, the Respondent is entitled to recover the amount towards it 24 months prior to April 2019. It means it can recover from April 2017 to March 2019 as per the Section 56 (2) of the Act. However, the Respondent has billed the consumer for regular billing with the new tariff from July 2018 onwards, therefore, it is entitled for recovery from April 2017 to June 2018. This is the settled position of law as far as Section 56 (2) is concerned.

12. The Respondent is trying to seek recovery for 24 months prior to July 2018 on the strength of the letter dated 23.07.2018 purported to have been issued to the Appellants. The Appellants have denied the receipt of the same. I perused this letter submitted by the Respondent. Prima facie, content of the letters shows that it is for unauthorised use of power. When the matter of showing the acknowledgement was raised, the Respondent argued that its staff has been transferred and the acknowledgments are not traceable. Even if it is assumed without admitting that the letter is served, there is no reason why the Respondent debited the amount of the supplementary bill for retrospective recovery in quarter ending June 2019 bill (April 2019 to June 2019). Therefore, I am of the opinion that this letter cannot be taken on record for consideration.

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

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(a) To recover the amount towards tariff differential between **LT IV (C): LT – Agriculture – Others** and **LT IV (B): Agriculture** for the period from April 2017 to June 2018. DPC and interest on tariff differential levied, if any, shall be withdrawn.

(b) To grant three instalments to the Appellant for payment of the balance amount along with the current bill. In case of default, the interest, DPC shall be levied.

(c) Compliance to be submitted within two months from the date of issue of this order.

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

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

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

(Dilip Dumbre)
Secretary
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