

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION 176 OF 2019

In the matter of retrospective recovery

Indus Tower Ltd., Pune..... Appellant
(C. No. 170013007384)

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Kothrud, Pune (MSEDCL).... Respondent

Appearances

For Appellant : 1. Dhirendra Srivastav
2. D. S. Talware, Representative

For Respondent: 1. A. A. Bartakke, Ex. Engineer, Kothrud
2. S. U. Gavali, Addl. Ex. Engineer
3. A. S. Munshettiwar, Addl. Ex. Engineer
4. S. S. Bhange, Dy. Manager
5. G. J. Pillay, Asst. Accountant

Coram: Deepak Lad

Date of Order: 30th October 2019

ORDER

This Representation is filed on 13th September 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 24th April 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Pune Zone (the Forum).

2. The Forum, by its order dated 24th April 2019 in Case No.01 of 2019 has disposed the application of the Appellant. The operative part of the order is as below: -

- “1. Consumer Complaint of Case No.01 of 2019 stands dismissed.*
- 2. The Respondent Utility is entitled to recover corrected consumption units i.e. additional consumption of unit bill as given in Oct., Nov.- 2018 for the additional units 1,38,925 for amounting Rs.19,31,720/- in equal 6 monthly installments alongwith current bill.*
- 3. The utility shall not charge any Interest, DPC and penalty against the consumer.*
- 4. Consumer is entitled to rebate if earlier installment already paid if any?”*

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

- (i) The Appellant is a LT Consumer (No. 170013007384) for its mobile tower from 26.03.2013 at Shivane, Pune. The activity of the Appellant despite being industrial is billed at LT-II Commercial tariff category.
- (ii) The issue of application of appropriate tariff to such businesses is under adjudication at the Appellate Tribunal for Electricity (ATE) through Appeal No. 337/2016 and batch of matters. In the interim judgment dated 12.09.2017, the Hon. ATE directed that the Appellants (in ATE Appeal) shall pay to Maharashtra State Electricity Distribution Co. Ltd., the tariff in terms of industrial category including all outstanding and current dues, without prejudice to the rights and contentions of all the parties.
- (iii) The Appellant in the instant representation has also filed IA Nos. 1090, 1089 & 1091 of 2017 in DFR No. 3976 of 2017. The ATE passed interim judgment on dated 13.12.2017. In this judgment it is ordered that the judgment dated 12.09.2017 in Appeal No. 337/2016 and batch of matters shall apply to the Appellant in the instant representation. Accordingly, provisional bills are issued by the Respondent at the tariff applicable for LT Industrial and are being regularly paid.
- (iv) The order of the Forum was received late, hence, there is slight delay in filing the representation which may be condoned.
- (v) The Appellant is in the business of telecommunication network infrastructure provider including installation, operation and maintenance without interruption. The

Appellant is having about 13000 + mobile tower sites throughout the State of Maharashtra.

- (vi) The Respondent issued a supplementary bill of Rs.1931720/- for 138925 units vide its letter dated 28.11.2018 for the period from June 2016 to October 2018. The Appellant protested the same through its letter dated 04.12.2018 and 31.12.2018 and requested to withdraw the same.
- (vii) The Appellant paid all the monthly bills received by it as per meter reading till the supplementary bill of Rs.1931720/- for 138925 units. The meter is working correctly from the beginning and was being read regularly. There is no dispute on this issue from either side. This supplementary bill issued by the Respondent is without any support of Law and Regulations.
- (viii) The Appellant filed the grievance in Internal Grievance Redressal Cell (IGRC) for withdrawal of the wrong bill along with interest and delayed payment charges levied and prayed for compensation of Rs.10000/- towards harassment.
- (ix) The Appellant approached the Forum on 29.01.2019 for interim relief against the disconnection notice served by the Respondent in the month of November 2018 towards non-payment of bill of Rs.2820186/-. The Forum, considering the issue of threat of immediate disconnection, passed the interim order on 30.01.2019 with direction to deposit 50% of the bill amounting to Rs.1931720/- in 6 monthly equal instalments along with current bill. Further, the Forum by its order dated 24th April 2019 has dismissed the application of the Appellant. The Forum failed to understand the basic issue of wrong supplementary bill.
- (x) The Appellant referred the Larger Bench Judgment of Bombay High Court, dated 12.03.2019 in Writ Petition (W.P.) No. 10764 of 2011 and Others on the issue of Section 56 (2) of the Electricity Act, 2003 (the Act). The Appellant also referred the order passed by the Nagpur Forum in Case No. 108 /2012 and Aurangabad Forum in Case No. 602 /2016 on the issue of Section 56 (2).
- (xi) The Appellant has therefore prayed that the Respondent be directed:-
 - (a) to revise the supplementary bill as per Regulations of the Maharashtra Electricity Regulatory Commission (the Commission) and provisions of the Act.
 - (b) to withdraw interest and DPC levied till date.

- (c) to compensate as per Regulations 6 (i) of the Maharashtra Electricity Regulatory Commission (Standards of Performance of the Licensees, period of giving Supply and Determination of Compensation), Regulations 2014 (SOP Regulations).
- (d) to award compensation of Rs.10,000/- towards harassment.

4. The Respondent MSEDCL filed its reply by letter dated 01.10.2019 stating as below: -

- (i) The Appellant is LT Commercial consumer (No.170013007384) from 26.03.2013 at Shivane, Pune. The Appellant is billed under Commercial category having connected load of 12 KW initially.
- (ii) The Appellant is billed with actual meter reading up to May 2016. From the month of June, July and August 2016, the Appellant was charged 3086, 4472 and 3777 units respectively. It is observed that meter is considered with five digits in its reading counter instead of six by mistake. From September 2016, the Appellant was charged less whereas its consumption is in the range of 4500 to 5000 units per month.
- (iii) The load of Appellant is enhanced from 12 KW to 22 KW. The Appellant is having load more than 20 KW and therefore billed as per the meter reading data taken through Meter Reading Instrument (MRI). Meter reading was being done through outside agency appointed by the Respondent which failed to take proper reading and therefore, resulted in less billing from September 2016 to September 2018.
- (iv) The meter was considered having five digits instead of six digits. This discrepancy was observed in the month of October 2018. Therefore, naturally there was huge accumulation of consumption. The bill was not generated automatically due to this counting error, but it was issued provisionally in October 2018 for 138925 units for Rs.1931720/-. Before issuing the provisional bill, the Appellant had a dialogue with Appellant's Representative Mr. Venkatesh and Mr. Vasant Kamble and they have accepted and asked to issue printed bill, hence in the month of November 2018 bill is generated through computerised billing system, but due to system bug the bill could not be generated with adjustments of previous paid bills, hence bill is revised to Rs.1940380/- and given to the Appellant.
- (v) Even after continuous follow up, the Appellant was not responding for payment. The Respondent had given MRI data report and billing details (CPL) etc to the Appellant.

Therefore, disconnection notice was issued after 45 days as Appellant has not paid the bill partly or fully.

- (vi) As per grievance letter of the Appellant dated 04.12.2018 and 31.12.2018, the Respondent reciprocated with the Appellant with reasoned reply vide its letter dated 07.01.2019.
- (vii) The bill of November 2018 was generated for 220417 units for Rs.2820186/- which was without considering the adjustments. The bill was therefore not served to the Appellant. Finally, the bill was revised to Rs.1940380/- considering the adjustments of previous paid bills.
- (viii) As per hearing of the Forum dated 27.02.19 and Interim Order of the Appellate Tribunal of Electricity (ATE), Appellant is served the revised bill as per Industrial Tariff instead of Commercial tariff for Rs.958410/- vide letter dated 08.03.2019.
- (ix) The bill served to the Appellant was less because there was error in understanding and noting the reading based on five digits of the counter of the meter since September 2016 to September 2018.
- (x) The Appellant is billed provisionally as per industrial tariff without charging any Interest or DPC.
- (xi) According to MSEDCL guidelines disconnection notice was served to the Appellant but supply was never disconnected till date.
- (xii) Therefore, the Respondent prays for rejection of the representation.

Analysis and Ruling

5. The hearing of this representation was held on 23.10.2019 at the CGRF Pune office. Delay in filing the representation is hereby condoned. During the hearing, the Appellant and the Respondent argued in line with their written statement. The Appellant, at the outset, agreed that it is a mistake in reading and understanding the total digits of the kwh meter counter. There was no disagreement between both the parties on this issue. The Appellant's only argument was that as per Section 56 (2) of the Act, Respondent can bill the consumer retrospectively for not more than 24 months. The Respondent has billed the Appellant for more than 24 months and therefore, the bill to that extent needs to be not considered. Besides this, the Appellant's argument was with respect of non-cooperative attitude of the Respondent officials and hesitation in parting with the

suitable data to get the clarity on the issue. Therefore, for this indifferent attitude of the Respondent, compensation needs to be awarded.

6. The Respondent, on its part, submitted that there is a gross error in proper reading of the meter by the meter reading agency. There are no issues with working of the meter and therefore the Appellant has consumed the energy as per its load but have been billed for less due to blatant error in understanding the total digits provided on the meter. Therefore, it has served bill from September 2016 to September 2018 during which the Appellant was billed for less consumption.

7. While analysing the data of Consumer Personal Ledger (CPL), I was not able to converge and come to definite conclusion as there appears to be some disconnect between the reading taken and the digits on the meter reading counter. To add fuel to this disconnect, it was admitted by both the parties that the meter is of six digits and not of five as was considered and further added that the case is of overflow of meter counter. Therefore, I directed the Respondent officials on 24.10.2019 to visit the site to take and submit the photo of the reading counter of the meter. The photo image was received and after seeing it, I was aghast to observe that the counter of the meter is not having five or six digits, but it is of seven digits. Further, the said photo shows the reading as 0312918 (i.e. seven digits). At this juncture, it is important to note that reading as evident from the CPL for May 2016 is 98934 and in November 2018 is 243549. Moreover, spot checking report of 09.01.2019 shows that the reading is 250398. This clearly indicates that the meter never overflowed as argued. I am at great pains to write that none of the persons from either party actually assessed the site conditions and all arguments were being thrown at in air.

8. In view of the above discussion, I am convinced that the case is of blatantly improper reading throughout the period from September 2016 to October 2018, the accumulation of reading and consumption thereof needs to be billed to the Appellant considering the facts and figures.

9. The question remains as to what extent, the Respondent can bill retrospectively. The Larger Bench Judgment of Bombay High Court dated 12.03.2019 in W.P. No. 10764 of 2011 and others have clearly spelt out the period envisaged under Section 56 (2) of the Act. The undersigned has issued many orders considering the above judgement. In view of this settled

position of law with respect to Section 56 (2), in this case, the supplementary bill is served to the Appellant in the month of November 2018 and therefore, the billing period for the retrospective recovery for 24 months shall be from November 2016 to October 2018.

10. The prayer of the Appellant with respect to compensation under SOP Regulations cannot be accepted as the same was not made at the earlier stages of the grievance redressal mechanism.


11. Hence, I pass the following order: -

- (a) The Respondent is directed to consider the retrospective period of 24 months from November 2016 to October 2018 and revise the bill accordingly.
- (b) DPC and interest levied, if any, during this period on account of this supplementary bill shall stand withdrawn.
- (c) The Appellant though agreed during the hearing that it is ready to pay the supplementary bill for 24 months in one lumpsum, it is at liberty to avail instalments as granted by the Forum. In case, the amount is paid in instalments, same shall be paid with the current bill.
- (d) It goes without saying that the outcome of the appeals at ATE mentioned at 3 (ii) and (iii) above shall apply in the instant case.
- (e) The Respondent is at liberty to investigate the issue and fix the responsibility on the erring officials, if deemed appropriate.
- (f) I direct the Respondent to pay token fine of Rs.1000/- (Rs. One thousand only) to the Appellant for handling the case most negligently during the hearing leave apart the early stages of the case. The same shall be adjusted through its ensuing bill.
- (g) The order of the Forum stands modified to this extent.
- (h) The compliance of this order shall be reported by the Respondent within two months from the date of this order.
- (i) The secretariat of this office is directed to refund Rs.25000/- deposited by the Appellant immediately.
- (j) The representation is disposed of accordingly.

Sd/-

(Deepak Lad)

Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

