

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 77 OF 2023

In the matter of retrospective recovery towards under billing

Reliance Corporate IT Park Ltd..... Appellant

V/s.

Maharashtra State Electricity Distribution Co, Ltd. Panvel(R) Dn. (MSEDCL). ..... Respondent

#### Appearances:

Appellant : 1. Samir Rekhi  
2. H.A. Kapdia, Representative

Respondent: 1. Haridas Chonde, Executive Engineer (Adm), Pen Circle  
2. Ganesh Latpate, Executive Engineer, Panvel(R)  
3. Anil Jivnani, Dy. Ex. Engineer, Pen Circle  
4. Satish Gadheri, Dy. Ex. Engineer, Khopoli Sub. Dn.


**Coram: Vandana Krishna [IAS (Retd.)]**

Date of hearing: 29<sup>th</sup> August 2023

Date of Order : 10<sup>th</sup> October 2023

### ORDER

This Representation was filed on 3<sup>rd</sup> August 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 5<sup>th</sup> July


  
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2023 passed by the Consumer Grievance Redressal Forum, Kalyan (the Forum). The Forum dismissed the grievance application in Case No. K/E/022 of 2023.

2. The Appellant has filed this Representation against the above order passed by the Forum. The e-hearing was held through video conference on 29<sup>th</sup> August 2023. Parties were heard at length. The submissions and arguments of the Appellant are as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 030942114091) from 23.01.2016 having Sanctioned Load (SL) of 35.81 KW and Contract Demand (CD) of 4.8 KVA at Shop No. 115 to 119, Sable Saipuram. Shantinagar, Khopoli. The Appellant runs a Jio Digital System which belongs to Jio Infocomm Ltd.
- (ii) The Asst. Engineer, Khopoli (R) Section of the Respondent inspected the premises of the Appellant on 14.02.2023. During inspection, the Respondent observed that B phase PT voltage to the meter (Sr. No. MHD 005541 of Secure Make of 40-200 A Capacity) was missing. The meter was recording only 66.6 % of the consumption, i.e. recording less by 33.3 % due to non-availability of B phase voltage to the meter. The meter as such was found in order.
- (iii) The Dy. Executive Engineer, Khopoli Subdivision issued a plain retrospective recovery of Rs.6,10,191/- towards under recording of consumption for the period from Oct. 2018 to February 2023 i.e. 4 years and 4 months, without testing the meter. The supplementary bill is not correct and is based on a hypothetical assumption.
- (iv) The energy meter belongs to the electricity distribution company and the responsibility of maintaining it lies solely with the electricity distribution company. In fact, as per Section 18(2) of the Central Electricity Authority (CEA) Regulations 2006, electricity distribution companies should test the meter once every five years, however, the Respondent never tested the meter at site since the date of installation i.e. from the year 2016.

  
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- (v) A defective meter needs to be replaced as per Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 (Supply Code & SOP Regulations 2021). As the meter was found defective, the Respondent was duty bound to test the meter after replacement as per regulation 15.6.1 and 15.6.2 which are reproduced as below:


***“15.6 Testing of Defective Meter***

*15.6.1. The Distribution Licensee shall have the right to test any meter and related apparatus at any time if there is a reasonable doubt about accuracy of the meter.*

*15.6.2. The Consumer may, upon payment of such testing charges as may be approved by the Commission under Schedule of Charges can request the Distribution Licensee to test the accuracy of the meter by applying to the Distribution Licensee:*

*Provided that the Distribution Licensee may get the meter tested at its own laboratory or any other facility as may be approved by the Commission: Provided further that if a Consumer disputes the results of testing carried out by the Distribution Licensee, the meter shall be tested at a National Accreditation Board for Testing and Calibration Laboratory (NABL) accredited laboratory chosen by the Consumer at the cost of the Consumer:*

*Provided further that in case of testing on the Consumer's request, if the meter is found to be beyond the limits of accuracy prescribed in the Central Electricity Authority (Installation & Operation of Meters) Regulations, 2006 as amended from time to time, the Distribution Licensee shall refund the test fee along with interest for the period the fees has been held by the Distribution Licensee, at a rate equivalent to the Bank Rate of the Reserve Bank of India to the Consumer by adjustment in the subsequent bill:*

  
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*15.6.4. Before testing a Consumer's meter, the Distribution Licensee shall give advance notice through written communication by hand delivery or post or courier or any digital means of communication of atleast Two (2) working days, intimating the date, time and place of testing so that the Consumer or his authorised representative may be present at the testing: .....”*

However, the Respondent violated the said provision and issued an assessment bill of Rs.6,10,191/- towards under recording of consumption without testing the meter.

- (vi) Meters having 40-200 Amp capacity record energy consumption on the basis of CTs. The PT Source is taken by puncturing the cable by way of the provided screws. However, even if one phase shows missing, the meter records the consumption correctly. Considering this technical aspect of a Smart Meter, it was necessary to test the correctness of the meter. It needs to be clarified from the manufacturer whether the said meter was a smart meter or otherwise.
- (vii) The Respondent made various irregularities as pointed above, which are deficiency of services. The Respondent issued a supplementary bill of Rs.6,10,191/- towards under recording of consumption for a period of 52 months from August 2018 to Feb. 2023. As per Section 56(2) of the Electricity Act, 2003 (the Act), the assessment should be restricted for 24 months only. This is not escaped billing but billing of deficiency of service. Hence, the Judgement dated 5<sup>th</sup> October 2021 in Civil Appeal No. 7235 of 2009 in the case of Prem Cottex V/s Uttar Haryana Bijli Nigam Ltd and others is not applicable in this case.
- (viii) The Appellant referred to the following Judgments/orders in support of its grievance.
  - a) Orders in Rep. No. 45/2018, 172/2022 of Electricity Ombudsman (Mumbai) dated 20.04.2018 and 21.02.2023 respectively.


  
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- b) Judgement of Supreme Court dated 18.04.2020 in Civil Appeal No. 1672/2020.

In many such Judgements/orders, the authorities have restricted the retrospective recovery period to only 24 months.


- (ix) The Appellant filed a grievance application with the Forum on 12.04.2023. The Forum dismissed the grievance application on the basis of physical non-appearance. The Forum failed to understand that the Licensee is not permitted to recover retrospectively for more than 24 months as per Section 56(2) of the Electricity Act, 2003 (the Act) due to deficiency in service.
- (x) It is the prime duty of the Respondent to maintain a meter in order. The Respondent failed to do so. The meter reading is taken on a monthly basis, downloading the data of the meter by MRI. Then why was the Respondent not aware about any technical issue of one phase voltage missing? It is the prime responsibility of the Respondent to check and maintain the connections of the meter, and tapping of voltage screws to check if they are well tightened. The inspection report dated 14.02.2023 shows that even after tightening of the screw of B phase of cable tapping point, the meter voltage of B phase was not extended to the meter. This aspect be taken into consideration.
- (xi) The Appellant had requested to hand over a copy of the MRI report of the meter based on which the assessment was proposed. The report has not been handed over till now.
- (xii) The Appellant prays that the Respondent be directed:
- 1) To test the meter in the presence of the Appellant.
    - a) If the meter is found defective, the assessment bill be issued as per the relevant Supply Code & SOP Regulations 2021.
    - b) If the meter is found in order, the recovery period be restricted to only 24 months as per Section 56 (2) of the Act.
  - 2) To compensate suitably towards mental and physical harassment.

  
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3. The Respondent filed its reply on 18.04.2023. Its submissions and arguments are stated in brief as below:

- (i) The Appellant is a LT Industrial Consumer as mentioned in para 2 (i). The existing meter of the consumer is of Secure Make (Sr. No. MHD 005541) having Type- 3ph 4w, 40-200 Amp Capacity.
- (ii) The Section Officer of the Respondent visited the premises of the Appellant on 14.02.2023 to carry out a routine inspection. During inspection, it was observed that “B Phase Voltage” was missing on meter display. The voltage of B Phase was not extended due to loosened screw of Potential Terminal (PT) tapping point of the cable. It was found that the meter was recording less energy consumption by 33.3%. The meter as such was in order; however, B Phase voltage was not being extended to the meter. The inspection was carried out in the presence of the Appellant.
- (iii) The MRI data of the meter was downloaded. As per MRI data report, the occurrence of B Phase Voltage to the meter was found missing from 16.38 hrs. on 26.10.2018 onwards.
- (iv) Even after the tightening of the screw of B Phase where it was tapped from the cable, it was found that B phase voltage was still not extended to the meter correctly. Therefore, it was necessary to replace the entire meter box along with its cable. However, there was a shortage of meters, and the meter will be replaced in due course. Hence, the Respondent issued a supplementary bill of plain recovery of Rs.6,10,191/- towards under recording of consumption for the period from Oct. 2018 to February 2023 for 34,905 units, based on the data retrieved from MRI for the period from 26.10.2018 to 14.02.2023 in the month of February 2023.
- (v) The Appellant stated that this case comes under Regulation 16.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 which is reproduced below:-


  
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*"Billing in the Event of Defective/ stuck/stopped/burnt Meters,*

*16.4.1. Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective stuck/stopped/burnt meter, the amount of the Consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill."*

- (vi) The above regulation is applicable in case of defective/ stuck/stopped/burnt Meters. But in this case the meter itself was found in order, but was recording less energy consumption due to not getting B phase voltage due to a loose screw connection. This is a technical phenomenon; as such the meter was not defective.
- (vii) Data retrieval of the meter by MRI is a universally accepted technology for analyzing the working of the meter to see the data history and tamper events. It has also been accepted by various judicial pronouncements. Hence the MRI data retrieved is correct, and as per regulation, the bill for non-recorded units was issued to the consumer.
- (viii) The Respondent cited the Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017, and contended that the Judgment is squarely applicable in the instant case.
- (ix) The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli. This is a case of escaped billing as the consumer has consumed energy which is recoverable for such under recording. Therefore, full recovery on account of missing voltage of B phase of RYB terminology at the meter terminal is justified.
- (x) In view of the above, the Respondent requested to reject the Representation of the Appellant.

  
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4. During the hearing, the Respondent was directed:
- a) to submit MRI data for cumulative events of Meter. (Sr. No. MHD 005541 of Secure Make of 40-200 A Capacity) which was not on record.
  - b) to replace the said meter by a new meter and test the old meter in the presence of the Appellant.
  - c) Confirmation of non-availability of Smart PT feature to the said meter should be put on record.

**Analysis and Ruling:**

5. Heard the parties and perused the documents on record. The Appellant is a LT Industrial Consumer (No. 030942114091) from 23.01.2016 having Sanctioned Load (SL) of 35.81 KW and Contract Demand (CD) of 4.8 KVA. The Appellant runs a Jio Digital System. The existing meter (Sr.No. MHD 005541 of Secure Make of 40-200 A Capacity) of the consumer is of Secure Make of 3 phase 4 wire 40-200 Amp capacity.

6. The Respondent inspected the installation of the Appellant on 14.02.2023. During inspection, it was observed that “B Phase Voltage” was missing on the meter display which was not extended to the meter terminal connection due to a loosen connection of the screw where it was tapped from the main cable. Hence, the meter was recording less energy consumption by 33%. The “B Phase Voltage” was not extended to the said meter as per the MRI report dated 20.01.2023 for the period as below:

  
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<b>Meter No. MHD 005541 of Secure Make of 40-200 A</b>			
<b>Cumulative events read on 20-01-2023 @ 18:44:46</b>			
<b>Event type</b>	<b>Occurrence date &amp; time</b>	<b>Restoration date &amp; time</b>	<b>Duration / Status</b>
Missing potential - Start on L3	26-10-2018 @16:38:00	Nil	Yet not restored

The Respondent issued a supplementary bill of plain recovery of Rs.6,10,191/- towards under recording of consumption for the period from Oct. 2018 to February 2023 for 34905 units based on the data retrieved from MRI. The Respondent by its email dated 10.02.2023 had asked the Secure company whether the Meter. (Sr.No. MHD 005541 of Secure Make of 40-200 A Capacity) has Smart PT feature or not. The Secure company by its reply on the same day has confirmed that the said meter does not have smart PT feature. The meter was replaced by the Respondent on 31.08.2023 post hearing. The old meter was tested in the testing laboratory on 10.10.2023 and the meter test report was found in order.

7. The Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable in the instant case. The relevant part of the Judgment is reproduced below:

*“33 it is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R,Y & B phases. I am, therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to a defect in the meter. Consequentially, due to the under-recording of the meter, the Appellant has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under-recording.*

34. *Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as*

  
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*per the prescribed rates. The Appellant, therefore, has to pay full charges for the electricity actually consumed.*

35. *In the Municipal Corporation case (supra), this court has sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.”*

This Judgment is applicable in the instant case. As such the meter was not defective; however, B Phase was not extended to the meter, and the same meter was still functioning on site up to 31.08.2023 (without B-phase voltage). The meter was finally replaced on 31.08.2023 on the instructions of the Electricity Ombudsman. At the same time, the Respondent did not fulfil its duty to regularly check and analyze the MRI data. Had it done so in time, the technical lapse would have come to notice much sooner.

8. The assessment period towards under recording of consumption is 52 months (26.10.2018 to 14.02.2023). However, this is not a matter of escaped billing, rather deficiency in service. The ratio of the Judgement of Hon’ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of Prem Cottex V/s Uttar Haryana Bijli Nigam Ltd and others decided on 5<sup>th</sup> October 2021 is not applicable to the present case. However, Section 56(2) of the Act permits the distribution licensee to assess retrospective recovery up to 24 months in case of deficiency in service. The assessment period for 52 months does not fulfil the statutory requirement of Section 56(2) of the Act. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:


*“(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.”*

  
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This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court has allowed 24 months' recovery retrospectively in cases of mistake or oversight.


9. In view of the above, the Respondent is directed as under: -
- To revise the supplementary bill for only 24 months retrospectively from 14.02.2021 to 14.02.2023. The interest and delayed payment charges levied be withdrawn from the date of issue of the supplementary bill till the date of this order.
  - To allow the Appellant to pay the revised supplementary bill in four equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will accrue, and the Respondent has the liberty to take action as per law.
  - Compliance to be submitted within two months from the date of issue of this order.
  - Other prayers of the Appellant are rejected.
10. While parting with this order, we note that the Forum dismissed the grievance for default taking into consideration the continuous absence of the Appellant during the hearings. The Forum should have taken note of Regulation 8.14 which is reproduced below:
- “Where the Complainant or the Licensee or their representative fails to appear before the Forum on the date fixed for hearing, the Forum may decide the Grievance ex-parte:”*
- This means that the Forum had all the documents submitted by the Appellant, and on the basis of those documents, the grievance should have been decided ex-parte on merit in the absence of the Appellant. However, the Forum failed to do so. This may be noted for future reference.
11. The Representation is disposed of accordingly.

  
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12. The secretariat of this office is directed to refund Rs.25000/- taken as deposit to the Respondent for adjusting in the Appellant's ensuing bill.

Sd/  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
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