

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.111 of 2023

In the matter of two phase missing to the meter and assessment thereof

Ramesh Kurmbila Shetty. Appellant
(Con. No. 003604345269)

V/s.

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

Appearances:

Appellant : Ramesh Kurmbila Shetty

Respondent : 1. Sunil Bharambe, Executive Engineer, Palghar
2. Narendra Sangepu, Dy.Ex.Engr, Boisar (R) S/dn.


Coram: Vandana Krishna [IAS (Retd.)]


Date of hearing: 26th December 2023

Date of Order: 8th January 2024

ORDER

This Representation was filed on 25th October 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



dated 11th September 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum). The Appellant paid the deposit of Rs. 25,000/- in terms of Regulation 19.22(h) on 31.10.2023. Hence, the representation was registered on 31.10.2023. The Forum, by its order dated 11.09.2023, partly allowed the grievance application in Case No. 49 of 2023. The operative part of the order is as below:


- “2. The Respondent shall set aside supplementary bill issued in July 2023 and issue revised supplementary bill restricted to 36 months without interest and DPC.
3. Respondent shall grant six equal monthly installments for payment of revised bill, which shall be paid by consumer along with current monthly bill subject to condition that a single default on the part of consumer will authorize Respondent to recover the dues in lump-sum with applicable future interest.
4. The Respondent shall adjust the excess amount paid by the consumer if any, in future ensuing bills.”

2. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 26th December 2023 through Video Conference where the parties were heard at length. The Respondent filed its reply on 22nd November 2023. For easy understanding, the Respondent’s submissions and arguments are stated first as below:

- (i) The Appellant is a commercial consumer (No. 003659033320) from 10.01.2019 with the following details of sanctioned load, contract demand etc.:-

Table 1


Name on the bill	Consumer No.	Address on the bill	Sanctioned Load (KW)	Contract Demand (KVA)	Date of Supply	Activity	Remarks
Ramesh Kurmbila Shetty	3604345269	Shop No. 874/2, Betegaon, Maan Chillar Road, Boisar – 401 501, Tal. & Dist: Palghar	32.64	45	05.01.2019	Banquet Hall for hosting large social and business events including marriage ceremonies.	First & second floors of the Complex



 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



- (ii) Due to load enhancement to run the banquet hall, the meter of the Appellant was replaced on 05.12.2019 by a new CT Meter (Sr. No. X0941909, Secure Make 3x100 /5 A capacity and CT ratio of 3x100/5 A). After that, the readings of the new meter No. 055-X0941909 were reflected in the bill of January 2020.
- (iii) The team of Boisar Subdivision of the Respondent inspected the electric installation of the Appellant on 31.05.2023 in the presence of the Appellant when it was found that the incoming supply of two phases were directly connected to CT outgoing in the meter box instead of CT incomers. This means that two phases were direct, without metering. Hence only 1/3rd consumption was being recorded in the meter, and 2/3rd consumption was not recorded. Normally, the primary side of CTS are connected in series however in this case, only one CT primary was in series & two CTs were bypassed in the primary supply side.
- (iv) Accordingly, the Appellant is liable to pay the difference of electricity consumed due to two phases being direct, and hence being underbilled by 66.66 %. This is “escaped billing” from Feb. 2020 to May 2023. This mistake of direct connections was rectified immediately. The consumption of one phase was recorded as 43461 units from Feb.-20 to May-23 (40 months).
- (v) The Respondent issued a supplementary bill of Rs. 13,27,747.67 for 86,922 units to the Appellant in Jul.-23 for the period from Feb.-2020 to May-2023 (40 months).
- (vi) The consumption pattern of the Appellant as seen from the CPL is tabulated below:


Table 2


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Month	Initial Reading (KWH)	Current Reading (KWH)	Cons. (Units)	Remarks	Month	Cons. (Units)	Remarks	Month	Cons. (Units)	Month	Cons. (Units)
					Apr-20	1660	Avg.	Apr-21	471	Apr-22	815
					May-20	809	Avg.	May-21	330	May-22	1732
					Jun-20	1889	3 months Cons.	Jun-21	82	Jun-22	1083
					Jul-20	1844		Jul-21	470	Jul-22	890
					Aug-20	524		Aug-21	692	Aug-22	419
Sep-19	0	0	0		Sep-20	405		Sep-21	513	Sep-22	580
Oct-19	0	1	0		Oct-20	318		Oct-21	658	Oct-22	517
Nov-19	1	1	0		Nov-20	773		Nov-21	777	Nov-22	549
Dec-19	1	1	0	New CT Meter installed on 05.12.2019	Dec-20	895		Dec-21	1231	Dec-22	657
Jan-20	0	0	0		Jan-21	857		Jan-22	955	Jan-23	677
Feb-20	0	13812.8	13813	Reading taken on 31.01.2020	Feb-21	577		Feb-22	739	Feb-23	612
Mar-20	13812.8	16183.8	2371		Mar-21	556		Mar-22	879	Mar-23	612
Note:	13813 units consumption occurred from 05.12.2019 to 31.01.2020 which amounts to monthly consumption of 7270 units										
	# Primary CT connections of two phases were made normal & three phase supply to the meter was confirmed & meter functioning was found in order on 31.05.2023.										
	The average consumption was recorded as 2304 (=11522/5) units per month for the period from July 2023 to Nov. 2023.										

- (vii) As seen from the above table, the consumption of the Appellant was in order up to 31.01.2020 (13813 units consumed in 57 days, which amounts to monthly consumption of 7270 units.) However, it dropped considerably from 31.01.2020 onwards till May 2023. In March 2020 it dropped to 2371, in April 2020 to 1660, in May 2020 to 809 and so on. The seal of the meter was found in order as per the report



 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai




of the Inspection Team; however, the outer meter box seal was found missing where CTs are mounted.


- (viii) The load of the Appellant was ACs: 46, Fans: 46, TVs: 16, Geysers: 15, Lift: 1, LEDs: 80 etc., which was considerably on the higher side of the sanctioned load of 32.64 KW. Ideally the sanctioned load should have been about 60 KW.
- (ix) The Inspection Team has mentioned in the report that the case was of pilferage of energy. However, considering various circumstances, it was finally categorized as underbilling, and only plain recovery was done.
- (x) The Appellant filed the grievance application in the Forum on 26.07.2023. The Forum, by its order dated 11.09.2023 partly allowed the grievance application by restricting the recovery to 36 months instead of 40 months. The operative part of the order is quoted in the first para. The supplementary bill of the Appellant was accordingly revised from Rs.13,27,747/- to Rs.8,93,100 /- for 54,556 units as per the Forum's order which was divided into 6 instalments, which was conveyed to the Appellant vide letter dated 13.10.2023. However, the Appellant did not pay any instalment till date.
- (xi) The Respondent quoted the Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in the matter of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. referred to in the Forum in support of recovery of escaped billing. The present case is also a case of escaped billing and not of deficiency in service. The Appellant has consumed the electricity, hence, ideally the Respondent should be allowed retrospective recovery from the date of cause of action i.e. from Feb. 2020 to May 2023. The Forum has already given them relief of 5 months' recovery.
- (xii) In view of the above, the Respondent requested to reject the Representation of the Appellant and to allow MSEDCL to recover the supplementary bill of Rs. 8,93,100 /-

3. The Appellant's submissions and arguments are as below:


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai





- (i) The Appellant is a commercial consumer (No.003604345269) of the Respondent MSEDCCL since 05.01.2019. The details of sanctioned load, contract demand, address etc. are captured in Table1 of Para 2. The Appellant is utilizing this power supply for running a banquet hall rented for the purpose of Marriages / Engagements / Parties. It has the following electric gadgets on the premises: -
- 46 Air-conditions, 46 Fans, LED Bulbs, 15 Geysers, 1 Lift, etc.
 - All these gadgets are mainly installed and commissioned from 1st June 2023 onwards.
 - These gadgets are used occasionally during functions and not used 24x7 on all days.
 - The lift was commissioned in the month of June 2023. All relevant papers for completion & handing over of lift are kept on record.
- (ii) The Respondent sanctioned the enhanced load of 32.64 KW on 19.03.2019 as per application of the Appellant dated 08/01/2019. The Appellant paid the statutory charges.
- (iii) The meter of the Appellant was replaced on 05.12.2019 by a new CT Meter (Sr. No. X0941909, Secure Make 3x100 /5 A capacity and CT ratio of 3x100/5 A).
- (iv) **The Respondent's submission before the Forum clarified that there was no theft or tampering to this meter (No. 055-X0941909) as the meter seal was found in order.**
- (v) The Respondent in its report dated 31.05.2023 has mentioned that the seal was intact. Hence, the Appellant was not assessed under Section 135 of the Electricity Act, 2003 (the Act). The outgoing / incoming connection details in the Inspection Report are based on assumptions and/or presumed figures, or a case of phase missing/ faulty wiring by the then Junior Engineer who had installed the meter. The Respondent itself should be penalised under Section 142 of the Act for wrong wiring.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (vi) This is a case of defective meter, and the Appellant is entitled to get the benefit of Regulation 16.4.1 of the Supply Code & SOP Regulations 2021.
- (vii) The Appellant stated that his business started from 13.10.2019. The period between November 2019 and January 2020 was the only appropriate period for weddings and other activities. Thereafter, the Covid-19 pandemic started with complete lockdown from 20.03.2020 onwards. This lockdown was partially lifted in the month of June 2020. The Appellant was seriously affected financially due to Covid-19 pandemic up to Dec.2021. His business activity had a slowdown and was not doing very well from March 2020 to November 2022.
- (viii) The Appellant argued that fear is created among consumers by such malpractices and by overbilling, by charging Electricity Duty, Wheeling charges, Energy charges, Charges for Extra Demand, Demand Charges, TOD traffic EC, DPC- Delay payment charges.
- Such unknown hidden charges are levied randomly which is unethical, arbitrary and high handed.
- (ix) The Dy. Executive Engineer Boisar issued a plain retrospective recovery of Rs.13,27,770/- on 06.06.2023 towards under recording of consumption for the period from February 2020 to May 2023 i.e. for 40 months. This supplementary bill is not correct and is hypothetical. All the bills were paid as per the meter readings without any delay or default. So how can the Respondent adjust the extra 86,922 units in the meter? The Appellant is liable to pay only for the units consumed and recorded by C.T. Meter, and not the illegal assessment of Rs. 13,27,770/-.
- (x) The energy meter belongs to the Respondent. It is responsible for maintaining it with correct functioning of the meter. In fact, as per Regulation 18(2) of the Central Electricity Authority (CEA) Regulations 2006, electricity distribution companies


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai





should test the meter once in every 5 years, however, the Respondent never conduct any such testing of the meter at site.

- (xi) The Forum directed to revise the bill retrospectively for 36 months. The supplementary bill was revised from Rs.13,27,747/- to Rs. 8,93,100 /- for 54,556 units, which is not admissible. The Forum failed to understand the basic issue that the meter was defective.
- (xii) 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, and downloading of the meter data is done by MRI. Then why was the Respondent not aware about the technical issue of 2/3rd consumption not being recorded. The Appellant is a layman and does not understand the technical issues.
- (xiii) The Appellant prays:
- to revise the bill giving the benefit of 'defective meter' as per Regulation 16.4.1 of the Supply Code & SOP Regulations 2021.
 - to test the meter in the presence of the Appellant and issue a Test Report for the Meter No. 055-X0941909.
 - to take action under Section 142 of the Act against the responsible Jr. Engineer who wrongly connected the cables in the CT meter box.
 - to compensate suitably towards mental and physical harassment.

Analysis and Ruling

4. Heard both the parties and perused the documents on record. The Appellant is a commercial consumer from 10.01.2019. The details of sanctioned load, contract demand etc. are already tabulated in Table 1 of Para 2. The power supply is used for running a banquet hall on the first and second floor of the building at Betegaon, Maan Chillar Road, Boisar.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



5. As per additional load application of the Appellant dated 08/01/2019, the meter of the Appellant was replaced on 05.12.2019 by a new CT Meter (Sr. No. X0941909, Secure Make 3x100 /5 A capacity and CT ratio of 3x100/5 A) due to enhancement of load.

6. The Respondent inspected the electric installation of the Appellant on 31.05.2023 in the presence of the Appellant, when it was found that the incoming supply of two phases were directly connected to CT outgoing in the meter box. This means that two phases were direct without going through the meter. Hence only 1/3rd consumption was recorded in the meter, and 2/3rd consumption was not recorded. The Respondent issued a supplementary bill of Rs. 13,27,747.67 for 86,922 unrecorded units to the Appellant in Jul.-23 for the period from Feb.-20 to May-23. We have examined the calculations of the supplementary bill and find it to be in order. The 66% unrecorded 86,922 units are correctly based on the 33% recorded units of 43461 units.

7. The consumption pattern of the Appellant is presented in Table 2 Para 2 (iv). While perusing the consumption pattern, it is found that the CT meter of the Appellant was installed on 05.12.2019 with 0 kWh reading. The reading was found to be 13812.8 KWH on 31.01.2020. These units were consumed and recorded properly from 05.12.2019 to 31.01.2020. This clearly indicates that the Respondent had originally done the wiring of CT meter correctly. During Dec.2019 and Jan.2020, there was no indication of 2 missing phases or wrong wiring. This problem seems to have suddenly appeared only in Feb.2020. This seems suspicious and points to possible mischief or deliberate manipulation. We have gone through the inspection report of 31.05.2023. Though the seal of the meter itself was found in order, the inspection report was silent on the status of the CT meter box seal. The Respondent contended that it is actually a case of Section 135 of the Act; however due to unstated reasons, the Respondent preferred to bill the consumer with plain recovery of Rs.13,27,747.67 for 86,922 under billed units for the period from Feb.-20 to May-23. If the CT meter box seal was suspected to be tampered with, or if there was a possibility of manipulation in


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




wiring to deliberately avoid recording of 2/3rd consumption, the Respondent should ideally have acted under Section 135. However, it opted for the less stringent action of plain recovery.

8. The Appellant contended that this is a case of ‘defective meter’ and that he should be billed as per Regulation 15.4.1/16.4.1 of Supply Code Regulations 2005/ Supply Code & SOP Regulations 2021 as two phases to the meter were missing. However, no evidence has come forth to indicate that the meter itself was defective. After the wiring defect was rectified, the meter has been working properly thereafter. However, if the Appellant still desires to test the meter, he can do so by paying the statutory testing charges.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”

10. The Forum by its order dated 30.06.2023 has given a reasoned and speaking order. It has already restricted recovery to 36 months thereby giving a benefit of 5 month's consumption to the Appellant. However, the Forum's order is modified to the extent below:


11. The Respondent is directed as under: -

- a) The interest and delayed payment charges levied for the supplementary bill of Rs.13,27,747.67 be withdrawn from the date of issue of this supplementary bill till the date of this order.
- b) To allow the Appellant to pay the revised supplementary bill of Rs. 8,93,100 /- in nine 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.
- c) Compliance to be submitted within two months from the date of issue of this order.
- d) The other prayers of the appellant are rejected.

12. The present Representation is disposed of accordingly.

13. 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
Electricity Ombudsman Mumbai

