

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 16 OF 2023

(REVIEW OF THE ORDER IN
REPRESENTATION NO. 158 OF 2022)

In the matter of change of tariff category

Shrikant Vishnupant Deshpande Review Applicant

V/s

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

Appearances:

Review Applicant: Nitin Shejal, Representative

Respondent : Manish Suryavanshi, Executive Engineer, MSEDCL, Parvati


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 3rd April 2023

Date of Order : 12th April 2023

ORDER

This Review Application was received on 20th January 2023 by email under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 20th December 2022 in Representation 158 of 2022 passed by the Electricity Ombudsman (Mumbai).


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Secretary
Electricity Ombudsman Mumbai




2. The Electricity Ombudsman, Mumbai, by its order dated 20th December 2022 disposed of Representation No.158 of 2022 with the following directions: -

“11. Considering the circumstances and events as recorded above, it is ordered that Interest and DPC be waived of for the period from 05.04.2021 to the date of this order. Other prayers of the Appellant are rejected.

12. The order of the Forum stands modified to the extent above.”

3. Aggrieved by this order of the Forum dated 20th Dec. 2022, the Applicant has filed this Review Application. The e-hearing was held on 3rd April 2023 through Video Conference. Both the parties were heard at length. The Applicant’s written submissions and arguments in brief are as below:

- (i) The Applicant is an industrial consumer (No. 170575502744) at Shed No. 4, Sr. No. 26.5, Near CMS IT Services, Narhe Industrial Area, Narhe -Dhayri Road, Pune. The Applicant has an engineering workshop.
- (ii) The Applicant has discovered new and important evidence to support this review application. The Executive Engineer, Parvati Division has sent a letter dated 17.10.2022 to his Addl. Executive Engineer, Vadgaon Sub. Division directing that the case be referred to the Forum for seeking clarity regarding “Interest and Delayed Payment Charges (DPC)” waiver for the period from Dec. 2016 to June 2020. However, AEE has not taken any clarity from the Forum till date. The Interest and DPC were waived of by the Forum in its Review Order dated 27.09.2022, but they have still not been credited in the Appellant’s account till date.
- (iii) The Applicant was billed with “Reading Not Taken (RNT)” status for 29 months on average basis of 929 units per month. The Applicant was billed with accumulated consumption of 52188 units for Rs. 5,05,000/- in Dec.2019 under Commercial tariff category. The Applicant should be billed only for 24 months on proportionate basis as


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Electricity Ombudsman Mumbai




per Section 56(2) of the Electricity Act, 2003 (the Act); however, the Applicant was billed for 29 months. Hence, 4 months billing should be waived of.

- (iv) The Applicant paid Rs. 555/- online for meter testing charges on 06.01.2022 for testing of the meter of the Applicant; however, the said meter has not been tested till date.
- (v) The Applicant then filed a Review Application before the Forum on 13.09.2022. The Forum, by its review order dated 27.09.2022 directed the Respondent to waive off interest and DPC for the period from December 2016 to June 2020. However, the Respondent did not comply with this direction of the Forum till date. It is necessary to direct the Respondent to comply with the said direction.
- (vi) In view of the above, the Applicant prays that the present Review Application be allowed as per Regulation 22 of CGRF & EO Regulations 2020 in the interest of justice, and that the Respondent be directed.
 - a. to waive off total DPC and Interest on arrears form the date of connection till date.
 - b. The bill be revised for only 24 months instead of 29 months prior to Nov. 2019.
 - c. to take action against the concerned staff responsible for issuing RNT bills and average bills.


4. The Respondent MSEDCL filed its written reply dated 06.03.2023. Its written submissions along with its arguments on 3rd April 2023 are stated in brief as below: -

- (i) The Applicant was a commercial consumer (No. 170575502744) at Shed No. 4, Sr. No. 26.5, Near CMS IT Services, Narhe Industrial Area, Narhe -Dhayri Road, Pune from 01.12.2016 to 04.02.2020, and is an industrial consumer from February 2020 onward.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (ii) The Applicant filed a grievance before the Electricity Ombudsman, (Mumbai), who, by its order dated 20th December 2022, disposed of the grievance by allowing withdrawal of interest and DPC which had accumulated during the period of Grievance Redressal Mechanism as per CGRF & EO Regulations 2020. The Electricity Ombudsman has principally rejected the core grievance.
- (iii) The Applicant was perforce billed with average consumption for 29 months, as the Applicant had shifted his metering point without the knowledge of the Respondent. The Applicant did not allow the concerned metering staff to enter this metering point. The Applicant was thus under billed with average consumption of 929 units per month; however, the actual consumption per month was on the higher side. The Applicant was finally billed with accumulated consumption of 52188 units for Rs.5,05,000/- in December 2019 for 29 months from August 2017 to December 2019 by giving appropriate credit of average basis.
- (iv) There was a facility to consumers for sending the readings online through “Mobile App” specially designed for this purpose only. However, the Applicant did not send any readings on his own, and thus he was under billed on average basis.
- (v) The Applicant paid the testing charges online on 06.01.2022 but has not updated the Field Officer for further testing. The Applicant’s meter is a digital meter, hence, there is very little likelihood of it being inaccurate. There was a miscommunication. The Respondent will test the meter shortly and will take a decision as per the test report.
- (vi) The Respondent argued that the Applicant has not pointed out any new evidence or discovery of new points which can affect the original order of the Ombudsman. In other words, the Applicant has failed to show any error in the order on the face of the record. The points raised by the Applicant are nothing but a repetition of the original submissions, which were already on record for deciding the original Representation by the Electricity Ombudsman (Mumbai). The Applicant filed the review on 3rd April 2023 against the order of the Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



dated 20th December 2020 after 3 months and 13 days. A review is to be filed within thirty (30) days from the date of the order of the Electricity Ombudsman. As such the present review is not maintainable considering the provision of Regulation 22 of the CGRF & EO Regulations 2020.


- (vii) In view of the above facts, the Respondent prays that the Review Application of the Applicant be rejected with cost.

Analysis and Ruling

5. Heard both the parties and perused the documents on record.

6. During the course of the hearing, an issue was raised by both the parties regarding implementation of the Forum's review order. It was stated by the Respondent in the original order dated 20.12.2022 in Para 4 (v) that ***"the refund of interest and DPC for the period from December 2016 to June 2020 as per Review order of the Forum is under process."*** However, it seems that the same has not been implemented by the Respondent till date.

7. During the discussion it was revealed that the order of the Electricity Ombudsman dated 20.12.2022 as mentioned in para 2 was misunderstood by the Respondent, to mean that interest and DPC should be waived off **only** for the period from 05.04.2021 to 20.12.2022, and not the previous period as mentioned by the Forum in its order, i.e., from December 2016 to June 2022. In other words, the Respondent misunderstood the order of the Electricity Ombudsman to mean that the Forum's order was cancelled, which was not the case. The Electricity Ombudsman then clarified that the relief given by the Electricity Ombudsman is **in addition** to the relief given by the Forum, and **not a substitute** to the relief given by the Forum. In other words, the directions issued in the Forum's review order for waiver of interest and delayed payment charges from December 2016 to June 2020 was not changed or cancelled by the Electricity Ombudsman, and still remains valid. **In addition to that**, this Authority had waived off interest and DPC for the subsequent period from 05.04.2021 to 20.12.2022 (the date of the order), i.e., the period for which the grievance was pending in the Grievance Redressal Mechanism.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



8. The issues raised by the Applicant of “Reading Not Taken” status and billing for 29 months instead of 24 months were discussed at length. All these issues and facts were already on record and were taken into consideration when the original order in Representation 158 of 2022 was passed. The request for 24 months’ recovery was denied, being time barred. The Review Application has not brought out any new issue which has not been dealt with in the impugned order, which is the primary requirement for considering review of an order under Regulation 22 of the CGRF & EO Regulations 2020.

9. Provision with respect to review of orders passed by the undersigned is given in Regulation 22 of the CGRF & EO Regulations 2020. The relevant provision is quoted below: -

“22 Review of Order of Electricity Ombudsman

22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

- (a) Where no appeal has been preferred;*
- (b) on account of some mistake or error apparent from the face of the record;*
- (c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.*

22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.


22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

10. The Applicant filed the review on 3rd April 2023 after 3 months and 13 days when the original order was issued on 20.12.2022. Thus, the review application was delayed by 2 months


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




13 days. A review is to be filed within thirty (30) days from the date of the order of the Electricity Ombudsman. As such the present review is time barred and not maintainable, considering the provision of Regulation 22 of the CGRF & EO Regulations 2020. Further, we are of the opinion that all important issues in sum and substance have been covered in the original order. The review application is nothing but a repetition of the original representation barring a few exceptions regarding interpretation of the order. The Applicant is trying to seek an appeal under the guise of review which is not permitted. The scope of a review is limited. The Applicant did not raise any new issue which can influence the decision of the original order. However, there seems to be a misunderstanding regarding the true meaning and intention of the Electricity Ombudsman's order which has been explained and clarified above in para 7. The Respondent is therefore expected to comply with the order in toto **without discounting the relief provided by the Forum.**

11. In view of the above, the Review Application of the Applicant is rejected. The Respondent is directed to comply with the Electricity Ombudsman's orders as clarified above.

12. The Secretariat of this office is directed to refund Rs. 25000/- by way of adjusting in the ensuing bill of the Applicant.

13. The representation is disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

