

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 47 OF 2020

In the matter of billing

Data Print Solution..... Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. (Vashi)..... Respondent

Appearances

For Appellant : 1. Suresh Kabra
2. Giriraj Kabra

For Respondent : Ramesh Rathod, Additional Executive Engineer, Vashi

Coram: Deepak Lad


Date of Hearing: 9th & 23rd Sept. 2020

Date of Order : 7th October 2020

ORDER

This Representation is filed on 20th March 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 20th February 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).

2. The Forum, by its order dated 20.02.2020 has partly allowed the grievance application in Case No. 57 of 2019 and the operative part of the order is as below: -


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“2. The utility shall recover actual consumption of electricity charges by calculating the slow of meter -55.67% for the disputed period of 21 month approximate without any penalty, interest or DPC.”

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating that it is a LT industrial consumer (No. 000070077337) from 21.03.2012 having Connected Load (CL) of 100 HP and Contract Demand (CD) of 134 KVA at Shivshakti Nagar, House No.823, Turbhe Store, Navi Mumbai. The Appellant has raised following issues in the grievance which are as below: -

a) Defective Meter Recovery Issue: -

- (i) The Respondent has issued a supplementary provisional bill of Rs.4,95,820/- towards slowness of meter by -55.67% due to B Phase PT missing. This bill is issued without any prior notice to the Appellant and without any justification for the amount calculated. Technically, each phase of meter carry 33.33% current then how the recovery is worked at 55.67 % for one phase PT missing only. This aspect is also not explained by the Respondent. This recovery is illegal and without any basis.
- (ii) The recovery of Rs.4,95,820/- is wrongly calculated on random basis, without applying mind and without observing the past consumption and prospective consumption. The Appellant claimed that the consumption is same before and after the disputed period. There is no change in the consumption pattern in general and the bill amount remained the same of about Rs.30000/- per month.
- (iii) The Appellant quoted an example that if the monthly bill with two phases of the meter working is considered to be Rs.30000/-, then less recording of 1/3rd consumption of the meter will be about Rs.15000/- per month. Total bill recovery should be tentatively in the range of Rs.15000 X 21 months = Rs.3,15,000/-. Hence, the recovery of Rs. 4,95,820/- is wrong, baseless and illegal.
- (iv) The supply of the Appellant is disconnected without serving disconnection notice as per Section 56 (1) of the Electricity Act, 2003 (the Act). The Appellant requested to restore the power supply immediately.


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- (v) The Appellant referred the judgement dated 18.02.2020 of Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 in Case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah Khan alias Rahamjulla. The Hon'ble Supreme Court noted following observation in above order:-

“In the present case, the period of limitation would commence from the date of discovery of the mistake i.e. 18.03.2014. The licensee company may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under sub-section (2) of Section 56 of the Act”.

- (vi) The Article 141 of Constitution of India provide that the law declared by Supreme Court shall be binding on all Courts within the territory of India. It provides that in order to do complete justice, Supreme Court will have power to pass any judgment, decree or order as is necessary. In view of the above, the Respondent cannot disconnect the supply of the Appellant for recovery of additional demand. As per Article 141 of Constitution of India, the Judgement of Supreme Court is binding.
- (vii) The Appellant referred the Regulation 15.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (the Supply Code Regulations). As per the provision of Regulation 15.4.1 bill can be issued only for a period of three months, where the meter is defective. As meter is defective, the recovery for excess period than 3 months is illegal and not maintainable.
- (viii) The definition of meter as per Regulation 2.1 (q) of the Supply Code Regulations is as below: -

“2.1 (q) “Meter” means a set of integrating instruments used to measure, and / or record and store the amount of electrical energy supplied or the quantity of electrical energy contained in the supply, in a given time, which include whole current meter and metering equipment, such as current transformer, capacitor voltage transformer or potential or



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voltage transformer with necessary wiring and accessories and also includes pre-payment meters;”


As stated hereinabove and as per the definition, the meter includes the CT/PT. The defect in CT/PT means the meter is defective.

- (ix) The Appellant referred following Judgments / Orders of various Courts / Forums. In above orders, it is clearly and specifically interpreted that, the CT/PT is part of meter and defect in CT/PT can be termed as defect in meter:-
- I. Judgement dated 18.02.2020 of the Hon’ble Supreme Court of India in Civil Appeal No. 1672 of 2020.
 - II. Judgement dated 20.01.1998 of the Hon’ble Supreme Court of India in Case of U.P.S.E.B V/s. Atma Steels and others.
 - III. Judgement dated 18.04.2011 of the Hon’ble Allahabad High Court in Case of U.P. Power Corporation Ltd. V/S Rakesh Doneria & Others.
 - IV. Judgement dated 04.07.2013 of the Hon’ble Bombay High Court in Case of MSEDCL V/S CGRF and Others.
 - V. Order dated 19.07.2018 of CGRF Bhandup in Case No. 121 of 2018 of M/s. Nirmal Lifestyle Ltd V/S MSEDCL.
 - VI. Order dated 03.03.2017 of CGRF Pune in Case No. 7 of 2017.
 - VII. Order dated 17.08.2010 of the Hon’ble Electricity Ombudsman in Case No. 100 of 2010.
 - VIII. Order dated 17.07.2019 of the Hon’ble Electricity Ombudsman in Case No. 126 of 2019.
- b) The Appellant filed the grievance in Internal Grievance Redressal Cell (IGRC). The IGRC by its order dated 22.06.2019 has rejected the grievance of supplementary bill however allowed to refund the eligible amount of Non-DDF CCRF Scheme.
- c) The Appellant approached the Forum on 19.09.2019. The Forum, by its order dated 20.02.2020 has waived interest and delayed payment charges, however, did not consider the meter as defective and not given any relief towards supplementary bill.


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- d) Non-Compliance of IGRC Order regarding Refund of Non-DDF Cost Issue: -
- (i) The Respondent has sanctioned and released the power supply to the Appellant in the year 2012 under Non-DDF CC & RF Scheme. As per the scheme, the Appellant has executed the work under Non-DDF CC & RF Scheme and incurred the expenditure of Rs.10,47,939/- in the year 2012 and handed over the asset to the Respondent.
 - (ii) As per the Non-DDF CC & RF Scheme and the Judgement dated 25.02.2019 of Hon'ble Bombay High Court in Writ Petition No.14215 of 2018, Page No.7, Condition No.14, the cost of actual quantity of material used as per the estimated rate only be refunded through energy bill.
 - (iii) In spite of clear and specific guidelines in Non-DDF CC & RF Scheme, the Respondent has not refunded the infrastructure cost of Rs. 10,47,939/-. In several cases, the Respondent has not refunded the infra cost under Non-DDF CC & RF Scheme with interest.
 - (iv) The IGRC Vashi allowed the said grievance on this point and directed MSEDCL to refund the infrastructure cost under Non-DDF CC & RF Scheme. However, the Respondent has not refunded and hence the order of the IGRC is not complied despite several reminders and personal follow up.
- e) The Appellant prays in short that: -
- a) An interim relief be granted to stay the disconnection till disposal of above appeal.
 - b) The Respondent be directed to revise the supplementary bill as per the provision of Regulation 15.4.1 for a period of three months in view of the Judgement of the High Court as CT/PT is part of meter.
 - c) To grant 3 equal monthly instalments for payment of the revised bill as per Regulation No.15.4.1 in accordance with MSEDCL H.O. Circular no. PR-3/Tariff/24156 dated 18.07.2009 without levy of interest and DPC.
 - d) The Respondent be directed to comply the IGRC Order regarding refund under Non-DDF- CCRF Scheme with interest.


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e) The Respondent be directed to provide interest on Security Deposit from the date of connection which was not given till.

4. The Respondent filed its reply by letter dated 22.07.2020 stating in brief as under: -

(i) The Appellant is a LT industrial consumer (No. 000070077337) from 21.03.2012 having Connected Load (CL) of 100 HP and Contract Demand (CD) of 134 KVA at Shivshakti Nagar, House No.823, Turbhe Store, Navi Mumbai. The activity of the Appellant is printing and packaging.

(ii) The premises of the Appellant was inspected by the Dy. Executive Engineer (Testing) of the Respondent on 28.03.2019. During inspection it was observed that 'B' phase voltage is missing due to PT cable found cut and meter is under recording the consumption. The metering installation was tested and found 55.67% slow. The Meter Reading Instruments (MRI) data of the meter was retrieved. As per MRI data, 'B' phase voltage found missing from 20.06.2017 at 01.37 hrs. onwards. The Appellant refused to sign the site checking and testing report.


(iii) The Respondent thereafter issued a supplementary bill of Rs. 4,95,818.33 of 62563 units towards 55.67% under recording of the consumption by the meter on 05.04.2019 for the period from June 2017 to March 2019.

(iv) System generated 15 days' notice under Section 56 (1) of the Act was served through SMS to the consumer on registered mobile No.9769254807.

(v) The IGRC by its order dated 22.06.2019 has rejected the grievance of supplementary bill however allowed to refund the eligible amount of Non-DDF CC & RF Scheme.

(vi) The Appellant approached the Forum on 19.09.2019. The Forum, by its order dated 20.02.2020 has waived interest and Delayed payment charges, however it has rightly dismissed the complaint of the consumer considering less recording of meter by 55.67 %.


(vii) Reply on Merits,


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- a) Defective Meter Recovery: -
- Supplementary bill is raised as per spot inspection report dated 28.03.2019 of the Dy. Executive Engineer Testing Division Vashi and finding therein that the 'B' phase voltage is missing to the meter. As a result, the meter was recording 55.67% less consumption from 20.06.2017.
 - Details regarding the matter of adding the assessed amount in the bill was explained to the consumer representative, present while inspection.
 - Assessment proposed is authentic and as per the provisions within the framework of the prevailing rules and law in force.
 - Documents such as inspection report, MRI Report, Temper Event Data is put on record.
- b) Non-compliance of IGRC order regarding refund of NON DDF cost: -
- For refund of Non-DDF CC&RF Scheme, the Respondent has requested the Appellant for submission of original receipts / bills against the work executed for further necessary action. However, the Appellant has not yet submitted the original receipts / bills for further office work. Therefore, this issue is in process.
- c) In view of the above, the Respondent prays that:
- (i) Assessment is proposed on the basis of actualities and hence, the grievances of the Appellant be rejected.
 - (ii) The refund of Non - DDF CC & RF Scheme amount against the work executed by the Appellant is under process and after completion of the paper formalities the same will be adjusted through monthly energy bill.

5. The hearing could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence, hearing was scheduled on 26.08.2020 on e-platform through Video Conferencing. The



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Appellant requested to postpone the hearing. Accordingly, hearing was scheduled on 09.09.2020.

6. During the hearing, the Appellant argued that meter includes CT and PT as per definition of the meter. It was also stated that as per the Regulations, testing and maintenance of meters is the responsibility of the licensee. Meter should record 1/3rd less consumption if one phase voltage is missing at the meter terminal. Therefore, the claim of the Respondent that meter was not recording 55.67% is not correct. There is no difference in consumption prior to event occurred and after the meter is replaced. Considering all these issues, the meter shall be held defective and the consumer should be charged only for a period of three months as per Regulation 15.4.1 of the Supply Code Regulations. The Respondent did not share the MRI data of the meter and consumption pattern on which the Respondent relied for supplementary bill. The supply of the Appellant is illegally disconnected, and the Appellant has to run from pillar to post for reconnection of the supply. The Appellant also prayed that the Respondent be directed to comply with the IGRC Order regarding refund under Non - DDF CC & RF Scheme with interest.

7. The Respondent argued that the testing team has carried out inspection of the Appellant's installation on 28.03.2019. It observed that there is drop in voltage at the meter terminal even when primary voltage available at the premises is in order. Data of the meter was retrieved through MRI. It was clearly established by MRI data that B Phase Voltage was missing at the meter terminal from 20.06.2017. The consumption recorded by the meter was only 44.33%.and consumption unrecorded was 55.67%. The meter was found recording less consumption due to absence of B phase voltage. Accordingly, supplementary bill was correctly issued. The IGRC and the Forum have rightly rejected the grievance and it is not the case of Regulation 15.4.1 of the CGRF Regulations as the meter was found in order. The data retrieval of the meter by MRI is universally accepted technology for analysing the working of the meter to see data history and tamper events. It has also been accepted in various judicial pronouncements. The approach of the Appellant is not correct and justified as the Appellant has utilized the energy. The Respondent prayed that the Representation be rejected. As regard the refund of Non -DDF CC & RF Scheme amount against the work executed by the Appellant is under process and


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after completion of the paper formalities the same will be adjusted through monthly energy bill shortly. All record pertaining the tamper event data of the meter was already handed over to the Appellant. There is no illegal disconnection as notice through SMS was issued to the Appellant.

8. The Appellant in its arguments said that the Respondent has not shared MRI data. Therefore, the Respondent was directed to hand over all relevant data of retrieved through MRI to the Appellant within one week. The Appellant also submitted that the second hearing be scheduled so that it will prepare its defence properly based on the data. Therefore, the second hearing was scheduled on 23.09.2020 and notices were also served to both the parties.


9. During the hearing on 23.09.2020, the Appellant and the Respondent more or less reiterated their earlier submissions. The Respondent stated that the meter was replaced in September 2019 by smart meter with Automatic Meter Reading (AMR) facility. The Appellant installation is under observation.

Analysis and Ruling

10. Heard the parties. Perused the documents on record. The Appellant has specifically said that if one phase voltage is missing, it should result in under recording by the meter to the extent of 1/3rd consumption. Therefore, its billing towards under recording to the extent of 55.67% is totally wrong. While on one hand, it is debating on what the meter should record in absence of one phase voltage, on the other hand, it simultaneously argued that its case is fit to be dealt under Regulation 15.4.1 of the Supply Code Regulations as CT/PT is a part of meter as per definition. Regulation 15.4.1 provides as under: -

“15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective 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 alongwith the assessed bill.

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried


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out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.


Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.”

11. The Forum, by its order dated 20.02.2020 has observed that meter was not defective but was recording less consumption by 55.67 % as per testing of the Respondent dated 28.03.2019. This is due to non-availability of B phase voltage at the meter mainly due to cutting of wire of B phase voltage outside the meter. The Respondent retrieved the meter reading data through MRI. While analysing the tamper event data of MRI, B phase voltage was found missing at the meter from 01.37 hrs. on 20.06.2017 onwards. However, there was no issue with the meter as such. In other words, intrinsically the meter was in order. The assessment on the basis of tamper event of MRI Report is upheld by the Forum.

12. While perusing the site testing report of the Testing Team which the Appellant refused to sign, I noted that voltage on meter display as V_{RN} 204V, V_{YN} 202V and V_{BN} 0V while on Zera kit (meter testing kit) 239.6V, 240.5V and 242.1V respectively. Probably, availability of voltages at the V_{RN} 204V, V_{YN} 202V and V_{BN} 0V culminated into an under recording to the extent of 55.67% vis-à-vis Zera kit. Therefore, the Respondent calculated under recording consumption to the extent of 55.67% and billed the Appellant accordingly.

13. The Respondent in its entire submission and argument has not at all touched upon as to why V_{RN} 204V and V_{YN} 202V is less than the declared one. It has only harped on non-availability of B-Phase voltage at meter terminal.

14. In view of the above, it is crystal clear that the meter per se is in order, however, voltage parameters to be made available at the respective phase terminals were less than the standard one. The testing report also exhibits that seal on the MTC and CT chamber unit are found torn (missing). Therefore, there is reason to believe that this can be attributed to mischief being


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played at the premises. It is not understood as to why the Respondent has not dealt this case accordingly.


15. As the meter is intrinsically in order, the provision of Regulation 15.4.1 is not applicable. This view is substantiated by the Judgment of the Hon'ble High Court of Bombay, Bench at Aurangabad in W.P. No. 8613 of 2017 which is quoted below: -

- “33. It is, therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. An under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, Y and 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 consumer 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 consumer, 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.”

16. The Respondent submitted the recorded consumption data of the meter which is tabulated as below:

Month	Consumption (units)	Month	Consumption (units)
Jun-16	5356	Jan-17	4748
Jul-16	3720	Feb-17	5344
Aug-16	3888	Mar-17	4816
Sep-16	3364	Apr-17	5916
Oct-16	3188	May-17	7840
Nov-16	5260	Nil	Nil
Dec-16	4596	Total 12 mths	58036
		Average per month	4836

While analysing the said data, it clearly shows that average consumption recorded prior to one year of the event (i.e. before June 2017) from June 2016 to May 2017 was 4836 units


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per month. However, the average consumption recorded by the meter was found 2218 units per month when B Phase Voltage missing tamper event was continued for the assessment period from June 2017 to March 2019. According to the Respondent, there was no fault or defect in the meter. However, the external B Phase voltage was not extended due to cutting of wire. The meter was replaced in September 2019 by new meter having AMR facility. Considering all these aspects and consumption pattern prior to one year when B Phase voltage missing event occurred, it is more rational to consider under recording as 33% less instead of 55.67 %.

17. The Appellant has cited various Judgements/orders. However, I perused two Judgments of the Hon'ble Supreme Court cited by the Appellant.


(a) Judgement dated 18.02.2020 of Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020

The Appellant has quoted the Clause with respect to limitation and disconnection. The case of the Appellant squarely fits in the provision of Section 56 (2) of the Act as the assessment is less than for 24 months, therefore, it is well within limits. Therefore, the ratio of this Judgment is not applicable.

(b) Judgement dated 20.01.1998 of the Hon'ble Supreme Court of India in Case of U.P.S.E.B V/S Atma Steels and others.

This is with respect to CT/PT being part and parcel of the meter. There is no quarrel on this issue. In the instant case, intrinsically, meter is in order and where this is the case, the Hon'ble High Court of Bombay, Bench at Aurangabad has upheld the assessment in case of wrong connections of the CT/PT. The Judgment cited by the Appellant is prior to enactment of the Electricity Act, 2003. Moreover, Regulation 15.4.1 of the Supply Code Regulations deals with only meters. Drawing parallel from this Regulation to the definition of meter in the Act will be perverse and it will defeat the provision of Supply Code Regulations. Therefore, the analogy sought to have been applied in the instant case by the Appellant is not correct. Therefore, the ratio of the Judgment is not applicable.

The Judgment of the Hon'ble High Court of Bombay, Bench at Aurangabad squarely applies to the instant case. The said Judgment is quoted above.


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18. The Appellant has simply prayed for payment of interest on Security Deposit, however, no narrative in this regard has been submitted and argued by the Appellant. The Respondent probably, therefore, has not submitted its response.

19. As regards the prayer of the Appellant with respect to refund of cost under Non-DDF CC & RF scheme, the Respondent has submitted that paper formalities are under process and it will be refunded in due course.


20. In view of the above discussion, assessment of consumption in the event of one phase voltage missing at the meter terminal, it will be highly logical and rational to assess the Appellant on the basis of 33% under-recording instead of 55.67%. Therefore, the Respondent is directed as under: -

- (a) To revise the supplementary bill considering the 33% under-recording by the meter instead of 55.67 % for the period from 20.06.2017 to March 2019. DPC and interest on tariff differential amount levied, if any, shall be withdrawn.
- (b) To allow the Appellant to pay the balance amount in reasonable monthly instalments along with the current bill as the Appellant has already paid major amount. In case of default, the interest and DPC shall be levied.
- (c) Compliance to be submitted within two months from the date of issue of this order.

21. The Forum's order is therefore revised to the extent above. The Representation is disposed of accordingly.

22. The secretariat of this office is directed to refund the amount of Rs.25000/- by transferring it to the Respondent for adjusting it against the ensuing bill of the Appellant.

Sd/-
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Electricity Ombudsman (Mumbai)


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