

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 63 OF 2020

In the matter of billing

Chhaya N. Raut..... Appellant

V/s.

Tata Power Company Ltd..... Respondent

Appearances

For Appellant : Nandakishor Raut

For Respondent : 1. Prashantkumar, Group Head Regulatory
2. Ravindra Kasarpatil, Head-Revenue Cycle Management

Coram: Deepak Lad


Date of hearing: 10th September 2020

Date of Order : 7th October 2020

ORDER

This Representation is filed on 5th August 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 29th June 2020 passed by the Consumer Grievance Redressal Forum, Tata Power Company Ltd. (the Forum).


2. The Forum, by its order dated 29.06.2020 has rejected the grievance application in Case No. 2/2020. The Forum observed that the monthly bills of the Appellant for April 2017, May 2017 and June 2017 are generated as per the consumption recorded by the meter having Sr. No. ST087801.


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3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below:-

- (i) The Appellant is a 3 phase residential consumer (No. 900000135285) having meter of Sr. No. ST087801 at present at 604, Sunrise View, L.T. Road, Vazira Naka, Borivali (West), Mumbai There are only two members in the family.
- (ii) The Appellant received excess bill in the month of April 2017 (529 units), May 2017 (642 units) and June 2017 (720 units). The bill received during the disputed period is considerably high (61.25% high) as compared with average worked out for the same months during the year 2016, 2018, 2019 and 2020. There was no any specific function in the premises and no electricity gadgets are used more as compared to usual working nor added any new gadgets in the disputed period. The consumption pattern is in normal range. Therefore, the Appellant is eager to know from the Respondent why such abnormal consumption is recorded by the meter during the above three months. This clearly indicates that the meter is not working properly. The Appellant is expecting the proportionate relief of the bill issued to her. The Appellant made various correspondence by way of different communications. The Respondent shared some data of the meter to the Appellant. However, there is a total mechanical working without any positive output. The Respondent failed to find out root cause of the grievance.
- (iii) Hence, the Appellant filed grievance application before the Internal Grievance Redressal Cell (IGRC) on 04.02.2020. The IGRC, by its letter dated 24.02.2020 has intimated that the consumption recorded by meter found in order and the billing has been done accordingly. The IGRC failed to analyse the grievance and hence the Appellant approached the Forum on 03.03.2020.
- (iv) The Forum, by its order dated 29.06.2020 has rejected the grievance. The Forum failed to understand the basic grievance.
 - a. The Forum advised the Appellant that the values of consumption will never be same. The Appellant has not mentioned anywhere that values of consumption should be same, but the consumption should be in the considerable range. Moreover, when the


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- Appellant asked the Forum to provide ISO process followed by Meter Reader on site, they showed their inability.
- b. The Meter Reader is supposed to take photo of readings on meter if the reading is substantially low or high in comparison to average reading. The Respondent and the Forum were refusing to accept it and stated that the Respondent do not have such records. If the Respondent has no records how consumer can believe on the reliability of commitment of the Respondent to serve the consumers. It is hard to believe such excessive consumption recorded by the meter only for two senior citizens in those three months.
- (v) Hence, the Appellant approached the Electricity Ombudsman for the following reasons.
- a. The Appellant received replies from Customer Care of the Respondent which are confusing against her communications by emails, telephone calls, etc. These are causing stress and humiliation. Majority time, the Appellant had to call the Respondent for revert. Customer Care of the Respondent even admitted that it had no clue of excess consumption.
- b. The Respondent during IGRC hearing provided some data which was not discussed and agreed by the Appellant. The IGRC stated that the root cause may be due to weather condition in the year 2017. However, temperature data of the atmosphere is almost similar specially for the months April to June to all years from 2016 to 2020 as per data available on various website.
- c. The consumption of 689 units per month for April, May and June 2017 is higher by 61.25% considering recorded average consumption of 421.92 units per month for the same three months for the years 2016, 2018, 2019, 2020.
- d. The IGRC gave example of consumption from 25.5.2017 to 5.6.2017 which indicates Aircon (A.C) was mainly responsible for higher consumption. It is again hard to believe as the Appellant believe in economic resources usage and do not simply waste energy unnecessarily.
- e. The Customer Care of the Respondent also mentioned initially that the Respondent can extract the data of load survey only within 30 to 45 days' period of previous one and half month and later changed day's value to 60 days. In that case when the


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Appellant lodged her complaint on 28.06.2017 how come Customer Care extracted values for reply in October 2017?

- (vi) Considering the facts mentioned above, the Appellant prays that the Respondent be directed to revise the bill for April 2017 to June 2017 with average consumption of units of similar months for the year for 2016 to 2020 and find out root cause of volatile recording of the meter.

4. The Respondent filed its reply by email dated 14.08.2020 stating in brief as below: -

- (i) The Appellant is a residential consumer (No. 900000135285) having 3 phase supply at 604, Sunrise View, L.T. Road, Vazira Naka, Borivali (West), Mumbai. The meter having Sr. No. ST087801 at present is installed at the Appellant's premises.
- (ii) The Appellant registered her first complaint of high bill in the month of April 2017 (529 units), May 2017 (642 units) and June 2017 (720 units) on 28.06.2017. There are only two members in the family. Average consumption for past 12 months was about 330 units per month. On the basis of the said complaint, the Respondent communicated the load survey of the meter to the Appellant. Thereafter, on 23.07.2017, the meter was tested for accuracy on site and the same was found in order.
- (iii) However, since the Appellant was not satisfied and on the request of the Appellant, meter testing was again carried out on 23.10.2017 on site in the presence of the Appellant. The meter was found in order during testing and hence bill revision was not required.
- (iv) Subsequently, the Appellant once again raised complaints on 13.06.2018 and 14.06.2018. The Respondent promptly replied to the said complaints on 16.06.2018 and provided all requisite details / data to the Appellant.
- (v) Thereafter, from 25.06.2018 till 14.08.2018 the Appellant raised several complaints through different mediums and the Respondent replied to each and every complaint.
- (vi) The Appellant filed a grievance application before the Internal Grievance Redressal Cell (IGRC) on 04.02.2020. The IGRC, by its letter dated 24.02.2020 has intimated


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that the consumption recorded by meter found in order and the billing has been done accordingly.

- (vii) The Appellant approached the Forum on 03.03.2020. The Forum, by its order dated 29.06.2020 has rejected the grievance.
- (viii) It is further pertinent to enumerate the observations of the load survey carried out for the period of May 2017 to July 2019, as below.
- a) Half hourly consumption pattern and Consumer graphical presentation report was shared with the Appellant for the dates wherein the consumption has crossed 25 units per day. The graph indicates the time slots when the consumption was at peak. Further, the daily consumption and half hourly consumption report from 12.05.2017 to 10.07.2017 for the consumer meter ST087801 was also shared with the Appellant.
- b) Maximum units have been consumed from 12.05.2017 to 10.06.2017.
- c) Upsurge in the consumption recorded on 5th June 2017 i.e. units.
- d) Days where consumption has crossed 25 units on daily basis as tabulated below.

Date	Total Units Consumed
18.05.2017	26.97
24.05.2017	25.97
25.05.2017	25.65
31.05.2017	28.58
01.06.2017	31.91
02.06.2017	32.09
03.06.2017	32.09
04.05.2017	31.74
05.06.2017	37.44

- (ix) Therefore, in view of the above, the relief sought by the Appellant seeking relief towards the high billing for the aforementioned 3 months is incorrect and without any basis and the instant representation is liable to be dismissed on this short ground alone.
- (x) The Forum has rightly observed and held that the meter bearing serial number ST087801 was tested and found to be running within the permissible limits and same meter is still in service after the disputed period and had not shown any abnormality. Further, consumption of electricity mainly depends upon the usage of various


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appliances like AC, Fans, Geysers etc. and cannot be completely same when compared with previous or upcoming years.

- (xi) In view of the above, the Respondent prays that the instant Representation of the Appellant be dismissed.


5. Due to the Covid-19 epidemic in India and subsequent situations arising out of it, the hearing was scheduled on 10.09.2020 on e-platform through video/audio conferencing. There was a technical issue in video conferencing, the hearing was conducted on audio conferencing.

6. During hearing, the Appellant argued in line with the written submission. The Appellant raised various queries as regards the abnormal recording of electricity consumption for the period April 2017 to June 2017 as compared to the same period for the year 2016, 2018, 2019 and 2020. There is poor response from the Respondent. Instead of finding out basic root cause of the grievance considering technical issues, the Respondent failed to understand and believes mechanical working in each and every stage of the case. The Appellant prays that the Respondent be directed to revise the bill for April 2017 to June 2017 with average consumption of units of similar months for the year 2016 to 2020 and find out root cause of volatile recording of the meter.

7. The Respondent argued in the hearing as per the written submission. The Respondent argued that each and every complaint of the Appellant is entertained and succeeding action has taken. Meter readings for three months were put to verification for any error, they are found absolutely correct. The meter was tested on 23.10.2017 in the premises of the Appellant by Accucheck. The test result of the meter found in order. Site was visited and confirmed that there is no cross connection. The Appellant is correctly billed. No abnormalities found in load survey of the meter. Therefore, the Respondent prays that the representation of the Appellant be rejected.

Analysis and Ruling

8. Heard the parties and perused the documents on record. The delay in filing the representation is condoned considering the Covid 19 epidemic. The Appellant is a 3-phase residential consumer (No. 900000135285).


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9. According to the Appellant, there are only two members in the family, both are senior citizens. She received excess bills in the month of April 2017 (529 units), May 2017(642 units) and June 2017 (720 units) which are considerably high (61.25% high) as compared with average worked out for the similar months for the year 2016, 2018, 2019 and 2020. There was no specific function in the premises and no electricity gadgets are used more as compared to usual working nor added any new gadgets in the disputed period.

10. According to the Respondent, the old meter (No. 512983 of Elster make, Final Reading: 28182) was replaced by new meter (No. ST087801 of Secure make, Initial Reading 00003) on 21.09.2016. The Appellant is billed for alleged disputed period as tabulated below:

Billing Month	From	To	Days	Closing Mtr. Rdg.	Consumption Units
		09-03-2017		2122	
Apr-17	10-03-2017	10-04-2017	31	2,651	529
May-17	11-04-2017	10-05-2017	29	3,293	642
Jun-17	11-05-2017	10-06-2017	30	4,013	720

Each and every complaint of the Appellant is entertained and succeeding action has been taken. Meter readings are verified for any error, however meter readings for the three months are correct. The meter was tested on 23.07.2017, and then in the presence of the Appellant on 23.10.2017 as per request of the Appellant. The test result of the meter on both the occasions found in order. Site was visited and confirmed that there is no cross connection. No abnormalities found in load survey of the meter. The Appellant is correctly billed. The Respondent prays that the representation of the Appellant be rejected.

11. The record shows that the Appellant did not approach grievance redressal mechanism within time frame of CGRF Regulations. The Appellant approached the IGRC on 04.02.2020. Then approached the Forum on 03.03.2020. It means she approached the Forum about 3 years from the initial cause of action which was in the mid-year 2017. Therefore, the instant case does not fit into the regulatory framework as envisaged under the Regulation 6.6 of the CGRF Regulations 2006 which stipulates that:


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“The Forum shall not admit any Grievance unless it is filed within two years from the date on which the cause of action has arisen.”

The provision under Regulation 6.6 has been upheld in various judicial pronouncements and is a settled position in law. It is expected that the consumer should approach the IGRC in a reasonable period from the cause of action though there is no such limit provided under the Regulations. Regulation 6.6 ultimately puts two years limitation period for the Forum to admit the case from the cause of action. Therefore, period of two years includes period from cause of action to IGRC and then to the Forum.


12. This principle, and logic is upheld in W.P. No. 6859, 6860, 6861 and 6862 of 2017 decided on 21.08.2018 by the Hon. Bombay High Court, Bench at Aurangabad which is very much relevant to the instant Representation. The relevant portion of the judgment is quoted below: -

“37. As such, owing to these distinguishing features in the Electricity Act r/w the Regulations and from the facts before the Hon'ble Supreme Court in the S.S. Rathore case (supra), it becomes necessary to reconcile Regulation 6.2 and 6.4 with 6.6 and 6.7. The Law of interpretations mandates that the interpretation of the provisions of the statutes should be such that while appreciating one provision, the meaning lend to the said provision should not render any other provision nugatory. In short, while dealing with such provisions, the interpretation should lead to a harmonious meaning in order to avoid violence to any particular provision. Needless to state, if it is inevitable, a Court may strike down a Regulation or a Rule as being inconsistent/incompatible to the Statutes. In no circumstances, the rules or the regulations would override the statutory provisions of an enactment which is a piece of parliamentary legislation.

38. While considering the Law of Interpretation of Statutes, the Apex Court has concluded in the matter of Progressive Education Society and another Vs. Rajendra and another [(2008) 3 SCC 310] that while embarking upon the exercise of interpretation of statutes, aids like rules framed under the Statute have to be considered. However, there must be a harmonious construction while interpreting the statute alongwith the rules. While concluding the effect of the rules on the statute, the Hon'ble Apex Court observed in paragraph No.17 that the rules cannot override the provisions of the Act.

39. In the matter of Security Association of India and another Vs. Union of India and others, the Hon'ble Apex Court held that it is a well established principle that there is a presumption towards the constitutionality of a statute and the Courts should proceed to construe a statute with a view to uphold its constitutionality. Several attempts should be made to reconcile a conflict between the two statutes by harmonious constructions of the provisions contained in the conflicting statutes.

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42. I have concluded on the basis of the specific facts of these cases that once the FAC Bill is raised by the Company and the said amount has to be deposited by the consumer to avoid disconnection


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of the electricity supply, the consumer cannot pretend that he was not aware of the cause of action. As such and in order to ensure that Section 42(5) r/w Regulation 6.2, 6.4, 6.6 and 6.7 coexist harmoniously, I am of the view that the consumer has to approach the Cell with promptitude and within the period of 2 years so as to ensure a quick decision on his representation. After two months of the pendency of such representation, the consumer should promptly approach the Forum before the expiry of two years from the date of the cause of action.

43. If I accept the contention of the Consumer that the Cell can be approached anytime beyond 2 years or 5/10 years, it means that Regulation 6.4 will render Regulation 6.6 and Section 45(5) ineffective. By holding that the litigation journey must reach Stage 3 (Forum) within 2 years, would render a harmonious interpretation. This would avoid a conclusion that Regulation 6.4 is inconsistent with Regulation 6.6 and both these provisions can therefore coexist harmoniously.


44. Having come to the above conclusions, I find in the first petition that the FAC Bills for December 2013, February and May 2014, are subject matter of representation of the consumer filed before the Cell on 08/08/2016. In the second petition, the FAC Billing from June to November 2012 are subject matter of the representation dated 27/08/2016. In the third petition, the FAC Bills from January to March 2010 are subject matter of the representation to the Cell, dated 26/06/2016. In the last matter, the representation before the Cell for the second electricity connection is dated 08/08/2016 with reference to the FAC Bills of December 2013, February and May 2014.

45. As such, all these representations to the Cell were beyond the period of two years. The impugned orders, therefore, are unsustainable as the Forum could not have entertained the said grievances under Regulation 6.6 and 6.7 after two years from the date of the consumer's grievance.

46. As such, all these petitions are allowed. The impugned orders of the Forum are quashed and set aside. The grievance cases filed by the Consumer are rejected for being beyond the limitation period.”

13. The Hon'ble Supreme Court in Civil Appeal No.2960 of 2019 dated 13.03.2019 has laid down that the plaint can be rejected if suit is clearly barred by limitation. It is settled position in law that if the matter is decided on limitation, there is no need to go into the merits of the case.

14. Therefore, the provision of Regulation 6.6 is a settled position in law. I, therefore, do not find it necessary to delve into the other aspects of the case because if Regulation 6.6 is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the time period elapsed from the cause of action. If the issues are allowed to be exhumed and dissected on the basis of hindsight and that too with no bar on time elapsed, no decision can be made in the Regulatory Framework. The provision of Regulation 6.6 will be frustrated and there will be complete chaos. In view of the above discussions, it is clear, that the case of the Appellant in the instant representation is time barred.



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15. The Forum has erred in not appreciating the Regulation 6.6 of the CGRF Regulations. I, therefore, do not agree with the order of the Forum considering this case within limitation. The same is therefore set aside.

16. In view of the above discussions, the representation is rejected as being time barred.

Sd/-
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