

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 81 OF 2020

In the matter of defective meter and billing

Prajapati DevelopersAppellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Panvel (U) (MSEDCL)..... Respondent

Appearances:

For Appellant : G. S. Iyer, Representative

For Respondent : H. V. Chonde, Addl. Executive Engineer, Uran S/dn.

Coram: Mr. Deepak Lad


Date of hearing: 11th November 2020

Date of Order : 25th November 2020

ORDER

This Representation is filed on 15th October 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 18th August 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

2. The Forum, by its order dated 18.08.2020 has dismissed the grievance application in Case No. 107 of 2020.



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

- (i) The Appellant (No.025560014468) is a consumer of the Respondent since 16.12.2014 with sanctioned load of 70 KW for construction purpose at Plot No.46-B, Sector-47, Dronagiri, Taluka-Uran, Dist- Raigad. The Appellant till date are paying the bills before time.
- (ii) The Appellant received a bill with debit adjustment of Rs.5,76,957/- In the month of October 2019, the Respondent handed over the bill on its site. The Appellant approached the Respondent regarding the clarity of debit adjustment.
- (iii) Suddenly, in the month of December 2019, the Respondent disconnected the supply without prior notice. As per Section 56 (1) of the Electricity Act, 2003 (the Act), the Respondent should serve minimum 15 days' notice. The Appellant being not a defaulter, the assessment made by the Respondent on assumption is not correct. The Appellant left without any option but had to make interim payment of Rs.1,00,000/- under protest.
- (iv) The spot inspection report is not given nor signed by any of its representative.
- (v) The letter was received from the Addl. Executive Engineer for the assessment from 12.01.2018 to 29.05.2019.
- (vi) The Appellant quoted the definition of Meter which is as below: -

“‘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 voltage transformer with necessary wiring and accessories and also includes pre-payment meters.”
- (vii) The distribution licensee has violated the Regulation 15.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations). The meter is defective in the instant case hence the billing of the Appellant is to be adjusted for a maximum period of three months prior to the month in which the dispute has arisen.



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- (viii) The inspection report is not given, nor the Appellant has got any idea to verify the meter and reading. The said bill raised by the Respondent is wrong as per the previous consumption. Also, the average bill should be withdrawn adjusting with physical reading present in the meter.
- (ix) In November, the Appellant needs to run the batching plant for which three phase connection is needed. The Appellant was shocked when it realized that one of the phase is not working. So, a complaint was raised with Section-in-charge and he has replaced the said meter on 27.11.2019. The fact is that the assessment is of the faulty meter and not for loose stud connection. This incident prove that the one phase is already not present physically though the Respondent has raised the said assessment. Also, the Respondent has made the wrong statement that there is loose connection in one of the CTs. If so, why the meter was replaced the very next month?
- (x) There is no provision for assessment through MRI in the regulations.
- (xi) The Appellant prays as under:
- To withdraw the supplementary bill and revise it as per Regulation 15.4.1 of the Supply Code Regulations.
 - To compensate suitably for harassment meted out to it.

4. The Respondent filed its reply dated 02.11.2020 stating in brief as under:-

- The Appellant is a LT consumer (No.025560014468) since 16.12.2014 with sanctioned load of 70 KW and CD of 13 KVA at Plot No.46-B, Sector-47, Dronagiri, Taluka-Uran, Dist- Raigad.
- The Respondent has carried out the inspection on 29.05.2019. During inspection, it was observed that the Y-Phase voltage was found missing on meter due to loose connection. Hence, the Appellant is billed 33.34% less consumption. The Y-Phase voltage screw was tightened where it was tapped. After tightening the screw, the Y-Phase voltage appeared on the meter display. The Meter Reading Instrument (MRI) data of the meter was retrieved. After analysing the same, it is noticed that the Y-Phase voltage was missing for the period 12.01.2018 to 29.05.2019 which resulted into under


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Secretary
Electricity Ombudsman Mumbai



billing for 38455 units. Accordingly, a supplementary bill amounting to Rs.5,76,957/- dated 14.10.2019 was issued to the Appellant.


- (iii) The Appellant failed to pay this supplementary bill amount within due period. Then the Respondent issued the disconnection notice under Section 56 (1) of the Act through SMS on the registered Mobile number (9892664380) and disconnected the supply after the lapse of notice period in the month of December 2019.
- (iv) Then the Appellant approached the Respondent and requested for restoration of supply by accepting the part payment of Rs.1,00,000/-. The Respondent accepted Rs.1,00,000/- towards part payment of supplementary bill on 30.12.2019 and restored the supply on the same day. Then the Appellant again made the part payment of Rs.50,000/- on 01.02.2020.
- (v) Then being aggrieved with this supplementary bill, the Appellant filed the grievance before the Forum on 30.01.2020 without approaching the Internal Grievance Redressal Cell (IGRC).
- (vi) The Forum, by its order dated 18.08.2020 has dismissed the grievance application. The Forum has rightly decided the case considering MRI data of the meter. However, the Appellant preferred to file this representation.
- (vii) Considering the instant representation, the following issues are to be considered by this Hon'ble Ombudsman:

a. Whether the Respondent is entailed for recovery of supplementary bill amount?

The Respondent submits that a supplementary bill towards under recording of the meter by 1/3rd consumption is first time raised on 14.10.2019 for the period 12.01.2018 to 29.05.2019 to the Appellant. This assessment period is within 2 years and this comes under the ambit or orbit of Section 56 (2) of the Act. Hence, the recovery of this bill is within limitation.

b. Whether the meter is faulty or not?


The Respondent submits that the Appellant's meter is found in order, as the inspection report dated 29.05.2019 shows that the Y-phase voltage to the meter was missing due to loose connection of the screw at the tapping junction by which the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



meter was recording 33.34 % less consumption. Thereafter, when Y Phase lead was tightly screwed at the tapping junction, the Y Phase voltage was extended to the meter and the meter started working for three phases. The meter was in order, however, due to loose connection in external circuit of the Y-Phase voltage, the meter was not receiving the Y-Phase voltage which resulted underbilling of 1/3rd consumption. Therefore, this case is not of faulty meter.

- (viii) The contention of the Appellant is that the copy of spot inspection report is not given to them or not signed by their representative. In this regard, the Respondent submits that the inspection is carried out in the presence of the Appellant's representative, Shri. Pradumn Prajapati and he has duly signed on the inspection report and the copy of the inspection report is also handed over to him on the same day. Hence, this contention is not acceptable.
- (ix) The Respondent submits that the Regulation No.15.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 is not applicable as the meter is found in order and is in working condition for further period.
- (x) The Respondent submits that the supplementary bill raised is correct as that bill is raised as per the inspection report and on the basis of record available in the MRI Report. As per the MRI Report, it appears that the reading on the date 12.01.2018 was 66147.60 KWH and on the date 29.05.2019 was 143032.60 KWH. From these readings it can be concluded that there was 33.34% less consumption recording in the meter due to Y Phase voltage missing.
- (xi) The Respondent replaced the meter by its own on 27.11.2019 by new meter which has the features of Automatic Meter Reading technology as per the Corporate Office policy. This is nothing to do with the Appellant's complaint.
- (xii) The Respondent submits that the supplementary bill is raised as per the inspection report dated 29.05.2019 and that bill is correctly calculated on the basis of non-recorded units in the meter due to the Y Phase voltage missing. Hence, the Respondent have acted as per the rules and regulations of the MSEDCL based on the Commission's


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




directions. Therefore, the question of compensating the Appellant by way of recovery through the officers of the MSEDCL will not arise as prayed by the Appellant.

(xiii) In view of the above, the representation of the Appellant be rejected.

5. The hearing was scheduled on 11.11.2020 on e-platform through video conferencing due to Covid-19 epidemic. The Appellant argued in line with its written submission. The Appellant reiterated that the supplementary bill of Rs.5,76,976/- is totally absurd and cannot be applied to it. The bill says that B-phase was missing and therefore the bill has been issued. However, the spot inspection report carried out by the A.E (Quality Control) on 29.05.2019, Y phase of the meter is found to be loose (stud) and therefore recorded 33.3% less consumption. The Forum has also stated in its order saying that the B Phase is not working. Even the AEE, Chonde (Uran) has written letter to the EE Nodal that Y Phase is not working and in the same letter also mentioned that B Phase is not working. B-80 adjustment report of the Respondent indicates that B Phase is not working. Since inspection was carried on 29.05.2019, MRI report on the basis of which the Respondent says that one phase was less, reveals that all the three voltages are showing voltages. The Appellant did not understand as to how the Forum has come to the conclusion that B Phase is missing? The Appellant prays to withdraw the supplementary bill in view of Regulation 15.4.1 of the Supply Code Regulations.


6. The Respondent argued that during inspection on 29.05.2019, it was observed that the Y-Phase voltage (middle phase of RYB terminology) was found missing on the meter due to loose connection. Hence, the Appellant is being billed 33.34% less consumption. The Y-Phase voltage screw was tightened where it was tapped. After tightening the screw, the Y-Phase voltage was extended to the meter and appeared on its display. The MRI data of the meter was retrieved. As per MRI report, the Y-Phase voltage was missing for the period 12.01.2018 to 29.05.2019 which resulted into under billing for 38455 units. Accordingly, a supplementary bill amounting to Rs.5,76,957/- dated 14.10.2019 was issued to the Appellant. The supply was disconnected by giving notice on SMS. The Respondent reiterated that there are two terms for phase terminology i.e. RYB which is normally in the routine and second is ABC which implies the MRI data or the manufacturer. The Appellant paid Rs.1,50,000/-. Now the supply is reconnected. Meter replacement is done due to the Automatic Meter Reading policy.


(Dilip Dumbre)
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Electricity Ombudsman Mumbai



7. The Appellant filed additional reply by email dated 11.11.2020 in response to the Respondent's statement of defense. This reply is nothing, but repetition of the issues covered in the representation and the arguments made by the Appellant and recorded above. However, other important issues raised by the Appellant are recorded below:-


- (a) In the reply filed before the Forum by the Respondent, in the brief history and facts that inspection was carried out on 29.05.2019 and it is found that the consumer is being billed 33.34% less consumption due to Y-phase voltage missing and as per MRI report it appears that less consumption is recorded for the period 12.01.2018 to 29.05.2019 and hence the recovery bill is issued to the consumer for the above period. But the MRI report MHD 12574 -Events submitted by Respondent which is read on 18.07.2019 indicates that the voltage L1, L2, L3 for the event dated 29.05.2019 (which is the day of inspection by Assistant Engineer (QC) is 240.05 v, 237.66V and 238.18 V and not zero for any of the phases. Then how can they say that Y or B phase was showing zero? Also, there is current on all 3 phases.
- (b) The Respondents themselves do not know and are not sure which Phase was missing (if at all it was missing) and are contradicting their own reports and claims, because they have made a wrong/ false claim from the Appellant.
- (c) Surprisingly, the order passed by the Forum says that "It appears from record that the "B" phase is missing and therefore the bill shown less by 33.33%." In the say submitted by Respondent before the Forum, it has taken a stand that "Y" phase voltage was missing. Then which is the record on the basis of which this conclusion is drawn by the Forum, when there is no any evidence and the say of Respondent is of contradiction, uncertainty and therefore under the cloud of suspicion.
- (d) The spot inspection report of AE (QC) Uran S/Dn does not bear the date of inspection. Also, the new seal numbers 0635113 and 0635114 are cancelled and 635054 and 635080 are affixed on 21.06.2019 as is evidently visible from the report. Now the question is, if the inspection of the premises was done on 29.05.2019 as stated by the Respondent, then how come date 21.06.2019 is mentioned for affixing the seals on a spot inspection report done on 29.05.2019. Everything is suspicious.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (e) The CPL of the consumer indicates the readings for four months from December 2017 to March 2018. The handwritten remarks indicate that average readings have been taken by licensee. The meter is indicated as 1 phase in the CPL, when actually 3 phase meter is installed. The Respondent has not produced entire CPL for the period of claim made by him i.e. Jan 2018 to May 2019 and prior period to both these months.
- (f) The Respondents have conveniently chosen a cut-off date 12.01.2018 for making a claim and have not produced the MRI reports for the intervening period from 12.01.2018 to 29.05.2019. If they are relying on the MRI reports to raise a claim, then the MRI reports for the above period is necessary to determine the events that have occurred to arrive at any conclusion.
- (g) All the documents put and read together go to show that everything is uncertain, doubtful, contradictory and suspicious and there is nothing to raise a supplementary bill against the Appellant. Respondents are not even in position to precisely say and prove as to which phase voltage Y or B of the meter was missing, if at all it was. They have replaced the meter on 27.11.2019 as it was faulty.
- (h) It is the duty of the Licensee to check their meter every month while taking reading. The question of recovery of bill on the basis of such false and reports submitted by Respondents, does not arise and cannot withstand legal scrutiny. Therefore, the question of recovery of the bill falling/ coming under the orbit of Section 56(2) of the Act does not arise. No case is made out to raise a claim on the Appellant.
- (i) The consumer has been paying his regular bills continuously. The above claim made by MSEDCL is totally wrong and not justified and hence it is prayed that the supplementary bill of Rs,576960/- dated 14.10.2019 with interest if any claimed by MSEDCL, should be set aside and justice be done to the Appellant.
- (j) Also it is prayed that responsibility be fixed on all the concerned official for raising such a claim on the consumer on the basis of such false and suspicious documents to harass him and compensation of Rs.10000/- may please be awarded to the Appellant.

Analysis and Ruling


(Dilip Dumbre)
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8. Heard the parties and perused the documents on record. The Appellant in its representation, arguments and rejoinder has pointed out some issues which may, in its opinion, are to be considered while setting aside the supplementary bill issued by the Respondent. These issues are as follows: -

- (a) The Respondent has interchangeably assigned the nomenclature for the missing Phase voltage of 'Y-Phase' and 'B-Phase'.
- (b) CPL shows that the Appellant as a single-phase consumer whereas the bill shows it as a three-phase consumer.
- (c) While the inspection report is carried out on 29.05.2019, how come in the same inspection report, different seal numbers are mentioned striking the first one on 21.06.2019.
- (d) It is not correct that the Y-Phase or so-called B-Phase voltage is zero because it shows some voltage.
- (e) Reasons for considering 12.01.2018 as the cut-off date by the Respondent.
- (f) If the meter is not faulty, why the meter is replaced by the Respondent?

These above issues raised by the Appellant are analyzed below: -

- (a) It is immaterial whether the assigned terminology is B-Phase or Y-Phase because in RYB system of terminology, Y is considered as the middle phase whereas in ABC system of terminology, B is considered as middle phase. Similarly, sometimes L1, L2 and L3, and Phase 1, Phase 2 and Phase 3 terminology is also used. In all these terminologies, vector rotation and their displacement is same in a symmetrical Alternating Current electrical system which is the system adopted pan India. Therefore, this hardly makes any adverse impact on the case technically.
- (b) As regards single-phase or three-phase meter in CPL and at site, it could be a mistake on record but the fact remains that the Appellant is a three phase consumer and meter is three phase, as is very much evident from the MRI report. Therefore, this particular issue also does not make any adverse impact on the case technically.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (c) The document of inspection report submitted with the case by the Respondent does not bear any date and the Appellant is right that the seal numbers previously existing are strikethrough and new seal numbers are written with date as 21.06.2019. When this was raised with the Respondent, it is informed that the document is a zerox copy of the register in which details are recorded when inspection is carried out and the date of 21.06.2019 is the date on which the meter is newly sealed. Therefore, action on the part of the Respondent is a matter of process.
- (d) &
- (e) The Appellant has not understood the technical issues of zero and non-zero voltage properly. If the phase voltage (phase to neutral) to be made available is say 240 voltage, and if voltage available, for example is 0.06 or 1.06 or something like this but not 240, it cannot be said that the voltage is appearing at the terminal. Availability of such voltages hampers the consumption recording of the meter. Therefore, it is absurd to say that there was no zero voltage but voltage at the range of 0.06 or 1.06 was available. Considering all such issues and reading the MRI data harmoniously, the cut off / event occurrence date is fixed as 12.01.2018 at 07:40:54. Therefore, such pick and choose issues cannot be addressed unless entire technical data and the system governing it is properly understood and appreciated in the right way. MRI data is the technical tool available for such analysis and is widely accepted internationally.
- (f) The Respondent replaced the meter so as to enable automatic meter reading possible which was not incorporated in the alleged existing meter. Therefore, this issue also does not hold good.

9. It is the case of the Appellant that the Y phase voltage of the meter was not recording the consumption properly and hence, the meter may be defective. In support of this, it has also quoted the definition of the meter which is captured above. The Appellant, therefore, contended that the consumer should be charged only for three months as per the provisions of Regulation 15.4.1 of the Supply Code Regulations. 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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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 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.

10. The Forum, in its order dated 18.08.2020 has observed that meter was not defective but was recording less consumption due to missing B-phase voltage at the meter terminal. The Forum has held that the meter is tested and found correct and the meter reading data has been retrieved through MRI and accordingly supplementary bill was issued considering 33.33% less recording in the meter for the period 12.01.2018 to 29.08.2019. Hence, the provision of Regulation 15.4.1 is not applicable. The Forum has, therefore, concluded that the Appellant is liable to pay the supplementary bill.

11. Documents and the data produced by the Respondent clearly shows that during the period 12.01.2018 to 29.05.2019, the Y- Phase of RYB / B - Phase of ABC / L2 of L1 L2 L3 voltage was missing which resulted into underbilling to the extent 1/3rd which works out to be 38455 units. Accordingly, a supplementary bill amounting to Rs.5,76,957/- dated 14.10.2019 was issued to the Appellant.

12. As directed during the hearing, the Respondent submitted the MRI data for the assessed period, extract of which is tabulated below:


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




Meter No. MHD12574				
		Parameter Phase 1	Parameter Phase 2 (Y of RYB, B of ABC, L2 of L1 L2 L3)	Parameter Phase 3
Date	Timing	Voltage	Voltage	Voltage
29.05.2019	12:32:12	240.05	237.66	238.18
01.05.2019	14:50:27	253.03	0.41	250.94
02.04.2019	18:23:47	244.61	1.04	242.22
01.02.2019	18:17:08	256.36	0.16	255.01
04.01.2019	18:00:40	255.00	0.68	251.99
29.11.2018	13:28:03	252.40	0.06	248.50
02.03.2018	16:57:13	259.53	0.25	255.95
05.02.2018	11:04:23	246.97	0.06	245.30
12.01.2018	07:40:54	257.18	0.13	146.41
27.12.2017	13:44:25	254.69	254.14	254.22

In this case, meter intrinsically was not faulty, however, voltage at the middle phase terminal of the meter was missing or showing some random nonstandard values. In similar case, the Judgment of the Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is exactly applicable which allows the Respondent to assess the consumption for such technical issues. The relevant portion of the same 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.”

Therefore, recovery on account of missing voltage of Y-Phase of RYB terminology at meter terminal is justified. As regards period of recovery, Section 56(2) of the Act allows such recovery for the entire period with certain limitations. The Larger Bench Judgment dated 12.03.2019 in W.P. No. 10764 of 2011 with other Writ Petitions of the Bombay High Court and, the Supreme Court Judgment dated 18.02.2020 in Civil Appeal No. 1672 of 2020 interprets Section 56 (2) of


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the Electricity Act, 2003 which is very much relevant in the instant case. The relevant portion of the Larger Bench Judgment is quoted below.


Section 56 (2) of the Act

“(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.”

The Larger Bench Judgment dated 12.03.2019 of the Bombay High Court.

“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.”

As a result of the above discussion, the issues referred for our opinion are answered as under:

- (A) The issue No. (i) is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.


(Dilip Dumbre)
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- (B) *As regards issue No. (ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*
- (C) *The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.*

13. The Respondent raised the supplementary bill towards retrospective recovery for the period 12.01.2018 to 29.05.2019 for the first time on 14.10.2019. Therefore, as per Section 56 (2) of the Act, 24 months period prior to 14.10.2019 need to be considered for recovery. However, in this case, the retrospective recovery is for the period from 12.01.2018 to 29.05.2019 which precisely fits into the bracket of 24 months. The Respondent can recover during which the voltage of Y-Phase was missing at meter terminal. I noted that the Appellant has already paid Rs.1,50,000/-. I, therefore, pass the following order: -

- (a) The Respondent is therefore directed to recover the balance amount of the supplementary bill and DPC and interest levied, if any, for this recovery is waived of.
- (b) This balance amount may be allowed to be paid in suitable instalments if the Appellant so desires along with the current bill, failing which DPC and interest shall be levied.
- (c) The Forum's order is modified to the extent above.

14. The secretariat of this office is directed to adjust the amount of Rs. 25000/- deposited by the Appellant by transferring it to the Respondent so that the said amount is adjusted in the Appellant's ensuing bill.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

