BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION No. 57 OF 2021

In the matter of retrospective recovery of tariff difference

Balaji International…… …… …… …… …… Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Kalyan (MSEDCL) .... Respondent

Appearances:

For Appellant : B.R. Mantri, Representative

For Respondent : 1. D. D. Rathod, Executive Engineer
2. Yadav, Addl. Executive Engineer
3. Shilpa Bangde, Asst. Law Officer

Coram: Deepak Lad

Date of hearing: 13th August 2021

Date of Order : 15th September 2021

ORDER

This Representation is filed on 24th June 2021 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020) against the Order dated 28th April 2021 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).

During scrutiny, it was observed that the Appellant has not paid a deposit of Rs. 25000/- as per Regulation 19.22 (h) of the CGRF Regulations 2020. Therefore, notice was served on 01.07.2021 for payment of deposit. The Appellant paid the deposit of Rs. 25,000/- by NEFT on 13.07.2021, hence, the Representation is registered on 13.07.2021.

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2. The Forum, by its order dated 28.04.2021 has partly allowed the Appellant's grievance in Case No. 2053 of 2020-21. The operative part of its order is given below: -

"1) Consumer application is partly allowed.
2) Utility entitled to recover 12 months arrears prior to date of inspection in the month of July-16.
3) The arrears bill shall be recovered in 6 equal months without charges, DPC, Penalty & without taking coercive action."

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

(i) The Appellant is a LT Consumer (No. 020101196551) from 17.01.2009 having business of Lodging & Boarding at Mohane Road, Shahad, Kalyan (West).

(ii) The Respondent has billed the Appellant as per Commercial tariff category from the date of release of power supply. The Appellant has paid electricity bills regularly from time to time. However, the Respondent has issued the bill for the month of June 2020 with debit bill adjustment of Rs.1,95,963.57 without any details. When the Appellant has enquired for this debit bill adjustment, the Respondent informed that the Appellant was billed under Industrial tariff category instead of Commercial tariff for the period from July 2015 to July 2016 wrongly. Hence, the Respondent has prepared a supplementary bill of tariff difference of Rs.1,95,963.57 for the period July 2015 to July 2016 and debited in the bill of June 2020 after receipt of approval from higher authority.

(iii) The Respondent changed the tariff to Commercial tariff category from August 2016 without any intimation to the Appellant.

(iv) Recovery towards Commercial tariff category was due from July 2015 to July 2016. The Respondent never raised any supplementary bill towards tariff difference for the next two years, from July 2015 to July2016, however, raised first time in June 2020. The due becomes time barred as per Section56 (2) of the Electricity Act, 2003 (the Act).

(v) The action of the Respondent in recovery of old dues without any notice and hearing amounts to breach of principles of natural justice.

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(vi) The Forums and the Electricity Ombudsman in their various orders have allowed the recovery only for two years prior to the date of issue of supplementary bill / debit bill as per Section 56 (2) of the Act.

(vii) The Appellant referred the Judgment of Larger Bench dated 12.03.2019 of the Bombay High Court in W.P. No.10764 of 2011 with Other Writ Petitions which held that

"The distribution licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of first demand of such charges."

(viii) Such stand has been taken by the Electricity Ombudsman (Mumbai) in the following orders which are kept on record.

(a) Representation No. 6 of 2020 dated 27.04.2020

(b) Representation No. 10 of 2020 dated 27.04.2020

(ix) Hence, as per the Larger Bench Judgment and the orders of the Electricity Ombudsman (Mumbai), it was not open for the Respondent to raise recovery / supplementary bill retrospectively in June 2020 for the earlier period of July 2015 to July 2016.

(x) The Appellant had complained to the Respondent on 22.07.2020 for withdrawal of debit bill adjustment, however, the Respondent did not take any action. Then the Appellant filed the grievance application with Internal Grievance Redressal Cell (IGRC) on 06.08.2020 and its order was issued on 14.09.2020.

(xi) As the Appellant was not satisfied with the order of the IGRC, the Appellant approached the Forum on 25.09.2020. The Forum, by its order dated 28.04.2021 has rejected the main grievance of retrospective recovery. The Forum did not give justice and hence, the Appellant filed this Representation.

(xii) In view of above, the Appellant filed the instant Representation with a prayer to give direction to the Respondent to withdraw the debit bill adjustment of Rs.1,95,963.57 against differential tariff recovery raised first time in the billing month of June 2020 for the earlier period of July 2015 to July 2016.

4. The Respondent filed its reply by email dated 30.07.2021 which is as given below in brief:

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(i) The Appellant is a LT Consumer (No.020101196551) since 17.01.2009 for the purpose of hotel (Commercial use) with Connected Load of 19 KW at Mohane Road, Shahad, Kalyan (West).

(ii) The Appellant was billed as per Commercial tariff category from the date of connection till June 2015. However, during routine checking in the month of July 2016, it came to the notice of the Respondent that the Appellant was billed under Industrial tariff category for the period July 2015 to July 2016, due to some error in the billing system.

(iii) Hence, the Appellant's tariff category was changed back to Commercial from August 2016 onwards. Also debit B80 (ID 4391002) for recovery of Rs.1,95,963/- towards tariff difference was done for the period July 2015 to July 2016 on 06.08.2016, the same was verified on 07.08.2016 but due to some reason, the division office approved the same on 17.05.2020. Subsequently, it was debited in the Appellant's bill of June 2020.

(iv) The Respondent referred the Judgment dated 18.02.2020 of Hon'ble Supreme Court in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla which has held that the liability of the consumer to pay the energy bill arises on the consumption of electricity and the obligation to pay the bill arises when the energy bill is issued to the consumer specifying the charges to be paid. At para 6.6 of the Judgment the Hon'ble Supreme Court has held that:

"The liability to pay arises on the consumption of electricity. The obligation to pay would arise when the bill is issued by the licensee company, quantifying the charges to be paid. Electricity charges would become first due only after the bill is issued to the consumer even though the liability to pay may arise on the consumption of electricity."

(v) It is further submitted that, on the issue of limitation of two years provided by Section 56 (2) of the Act, the Hon'ble Supreme Court has held that, this provision only restrict licensee to disconnect electricity supply due to non-payment of dues, unless such sum continuously shown to be recoverable in the energy bill as arrears for the past period. Section 56 (2) does not preclude the

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licensee from raising additional or supplementary demand after the expiry of the limitation period in case of mistake or bona-fide error.

(vi) In the instant case, the Respondent has issued the energy bill to the Appellant in June 2020 by showing debit bill adjustment for the recovery of tariff difference during the period July 2015 to July 2016 due to wrong application of tariff which has been first due in June 2020. Therefore, the Appellant is under obligation to pay the energy bill which he has already consumed. The relevant portion of the above Judgment of the Hon'ble Supreme Court is reproduced as under:

"9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

As per Section 17(1)(c) of the Limitation Act, 1963, in case of a mistake, the limitation period begins to run from the date when the mistake is discovered for the first time.

In Mahabir Kishore and Ors. v. State of Madhya Pradesh,5 this

Court held that :—

*"**Section 17(1)(c) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff had discovered the mistake or could with reasonable diligence, have discovered it.** In a case where payment has been made under a mistake of law as contrasted with a mistake off act, generally the mistake become known to the party only when a court makes a declaration as to the invalidity of the law. Though a party could, with reasonable diligence, discover a mistake off act even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law. " (**Emphasis added**)*

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. "

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(vii) The change in tariff category of the Appellant occurred due to some error in the system. Therefore, the contention of the Appellant that the Respondent has changed the tariff category on its own for the period July 2015 to July 2016 is denied.

(viii) The Respondent stated that the Appellant is also duty bound to inform the licensee that it is receiving bill under wrong tariff. The Appellant was underbilled monthly for about Rs.12,000/- to Rs.15,000/- from July 2015 to July 2016. However, the Appellant did not inform the facts to the licensee and enjoyed the electricity at lower rate for about one year. The Appellant has actually consumed electricity at lower rate hence is liable to pay the differential amount arising out of applicability of wrong tariff. The Appellant cannot take the recourse of being the layman, because he is very aware that he is receiving the bills at lower rate than usual rate which it was billed in the past.

(xiii) The Appellant filed the grievance in IGRC on 06.08.2020. The IGRC vide its order dated 14.09.2020 has rejected the grievance. The Appellant approached the Forum on 25.09.2020. The Forum, by its order dated 28.04.2021 has partly allowed its grievance in concern with payment facility of 12 installments. The Forum has rightly observed in its Order that *"the consumer was silent while taking benefit of receiving wrong tariff bill prior to date of inspection. Even after date of inspection, consumer remained silent for considerable long period & not made prayer for correction in bill till date of demand. Hence consumer cannot benefited to take benefit of his own wrong*".

(xiv) The Hon'ble Supreme Court in Civil Appeal No.1672 of 2020, has ascribed the meaning of the term " First Due" in Section 56 (2) of the Act, at Para No. 6.6. It clearly held that " Electricity Charges would become first due only after the bill is issue to the consumer, even though the liability to pay may arise on the consumption of electricity."

(xv) While discussing the second issue as to whether the period of limitation of two years provided in Section 56(2) would be applicable to supplementary demand. The Hon'ble Supreme Court has held at Para No. 8 of the Judgment as under:

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"Sec.56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues, after the period of limitation of two year has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand."

In the present case, the Respondent is not taking recourse of disconnection of electricity.

It is submitted that the Judgment of the Hon'ble Supreme Court in C.A. No. 1672 of 2020 is squarely applicable to the facts of the present case. Hence it supersedes the orders and Judgment of the lower Courts. Article 141 of the Indian Constitution provides that, "*The law declared by the Supreme Court shall be binding on all courts within the territory of India.*"

Therefore, considering the ratio of the Hon'ble Supreme Court in the Judgment supra, it is requested to the Hon'ble Electricity Ombudsman to reject the Representation of the Appellant and upheld the debit adjustment made by licensee for recovery of tariff difference for the period June 2015 to June 2016.

5. The Appellant has filed rejoinder by email dated 13.08.2021 against the Respondent's reply which is stated as under:

(i) The Appellant referred the following Judgments:

a. Supreme Court Judgment dated 18.02.2020 Civil Appeal No.1672 of 2020.

b. Bombay High Court Full Bench Judgment dated 12.032019 in W.P. No. 10764 of 2011.

c. Bombay High Court Judgment dated 09.06.2020 in W.P. No.10536 of 2019

d. Bombay High Court Judgment dated 13.12.2019 in W.P. No.7149 of 2019.

a. Hon`ble Supreme Court order in Civil Appeal No.1672 of 2020 dated 18.02.2020 in the matter of Ajmer Vidyut Vitran Nigam Limited vs Rahamatullah Khan:

- In this case, Distribution Licensee (DL) has issued the additional demand for tariff recovery for the period of July 2009 to September 2011 on 18.03.2014.
- Consumer has approached the District Consumer Forum and raised the objection under Section 56(2) of 2 years limitation for recovery, DL has

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appealed to State Commission, Consumer has appealed to National Commission. Neither Consumer nor DL has raised other points except 56(2). So, no other points have been discussed in this case such as Power of State Commission, order of APTEL, MERC.

- National Consumer Disputes Redressal Commission has set aside the recovery and held that the additional demand was barred by limitation under Section 56(2) of the Electricity Act, 2003.
- Distribution Licensee has appealed to the Hon'ble Supreme Court against this order. Supreme Court has not set aside the NCDRC order on which appeal has been made. Supreme Court upheld the decision of NCDRC and held that

  "The licensee company raised an additional demand on 18.03.2014 for the period July 2009 to September 2011. The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

  Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

  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."

As per the Respondent's reply, the Hon'ble Supreme Court Judgment quoted by it, the same tariff recovery has not been allowed under Section 56(2) which is limited for 2 years. As per Respondent submission, Tariff category "Commercial" is due from July-2015 but billed for the first time in June-2020. For the next two years from July-2015, Respondent has never raised any bill. Even after two years no such bills were issued.

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As per the Appellant's earlier quoted Hon'ble High Court Judgments and Electricity Ombudsman's orders, it was not open to the Respondent to raise the recovery / supplementary bill retrospectively in June 2020 (first Demand) for the earlier period of July 2015 to July 2016.

6. The hearing was held on 13.08.2021 on e-platform through video conferencing due to Covid-19 epidemic and the conditions arising out of it.

7. During hearing, the Appellant argued in line with its written submission and stated in brief the background of the case that the Appellant is a running lodging and boarding hotel with electricity connection sanctioned under Commercial tariff category initially. The said tariff category was later changed by the Respondent on its own to Industrial tariff category from July 2015 to July 2016. It was again changed back to Commercial tariff from August 2016. The Respondent issued supplementary bill in June 2020 for recovery of tariff difference for the period from July 2015 to July 2016. As per Section 56(2) of the Act, the Respondent is empowered to recover supplementary bill for 24 months prior to the date of issue of bill. However, this supplementary bill is served after four years which is time barred. The Appellant prays that the supplementary bill be quashed and set aside.

8. The Respondent argued that, initially, the Appellant was sanctioned load under Commercial tariff category with CT operated meter and bills were also issued as per Commercial tariff category up to June 2015. However, from July 2015, by mistake, in the IT system, tariff category was changed to Industrial tariff category. The mistake was rectified in July 2016. The Appellant was again billed under Commercial tariff category from August 2016 onwards. The supplementary bill of Rs.1,95,963.57 of tariff difference for the period from July 2015 to July 2016 was added in the Appellant`s bill of June 2020. The Respondent admitted that this was a grave mistake on its part. However, the Appellant has consumed the electricity under Commercial tariff category and hence it is liable to pay the same.

9. Considering the gravity of the case, it was directed to the Respondent to write a letter to the IT Department asking them that how the tariff was changed and clarify the same to the Secretariat of this office on or before 23.08.2021.

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10. Post hearing, the Respondent submitted its reply as per the directions given during the hearing which is stated briefly:

(i) The Respondent was directed to submit the clarification regarding how the tariff category of the Appellant was changed from Commercial to Industrial for the period of July 2015 to July 2016.

(ii) A letter was written to System Analyst, IT Centre, Kalyan Circle I on 13.08.2021. As per its reply, the tariff of the Appellant was changed as per the static data file received from subdivision itself on 11.07.2015 named B30_ DATA. LTIP.

(iii) Since the file was received on email to IT Department, it is unable to give the name of concerned staff, who has carried out this activity. There is no such record available in hard copy with IT, Kalyan Circle I, or subdivision office to support the activity of tariff change.

Analysis and Ruling

11. Heard the parties and perused the documents on record. The delay is condoned. The Appellant is in the business of lodging & boarding. This activity is billed under Commercial tariff category as per the tariff orders of the Commission. The Appellant was billed under Commercial tariff category from the date of connection till June 2015. However, the Respondent changed the tariff category to Industrial for the period July 2015 to July 2016 by mistake. The Respondent rectified the same and again changed the tariff category to Commercial from August 2016. Recovery of Rs.1,95,963/- towards tariff difference was therefore prepared for the period July 2015 to July 2016 on 06.08.2016. The same was debited in the Appellant's bill in June 2020 after about four years.

12. The Respondent quoted the Hon'ble Supreme Court Judgement dated 18.02.2020 in Civil Appeal No.1672 of 2020 and argued that it is entitled to recover the amount of supplementary bill raised in June 2020 for the period July 2015 to July 2016. It has further argued that the Hon'ble Supreme Court in this Judgment has stated that Section 56(2) of the Act does not preclude it from recovery of arrears. The Appellant on the other hand has argued

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that the Respondent cannot recover amount of supplementary bill for July 2015 to July 2016 debited in bill of June 2020 in view of Section 56(2) of the Act.

13. I perused the Judgment of Hon'ble Supreme Court cited by the Respondent. I am the opinion that the Respondent has not properly read and appreciated the said Judgment. There cannot be two opinions on the fact that Section 56 (2) of the Act does not preclude the Respondent from recovery of said arrears. However, it has neglected the important lead that the Respondent cannot recover the arrears by disconnecting the supply of the Appellant and at the same time it has also forgotten the limitation period of two years. The Respondent has conveniently forgotten the noting of the Hon'ble Supreme Court Bench in its Judgment on page No. 15 which is quoted below: -

> *"The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok-Sabha, opined that Section 56(2) of the 2003 Act is based on Section 24 of the 1910 Act.*
>
> ***The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers unless the arrears have been continuously shown in the bills.*** *Justifying the addition of this restriction, the Ministry of Power submitted that*
> ***"It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings."" (emphasis added)***

14. From the above it is clear that limitation given in Section 56(2) of the Act needs to be observed in letter and spirit. As there is no preclusion for recovery of arrears under Section 56(2) of the Act, the other modes of recovery left with the Respondent are filing the proper suit in the appropriate Court of law or by way of settlement or by any other mode available to it under the law. The Forum or Electricity Ombudsman are not the appropriate platforms for such type of recovery because these platforms are available to the Appellant / Complainant and not the Distribution Licensee.

15. For the sake of argument if the plea taken by the Respondent is assumed to be correct (as per its own interpretation of the Hon'ble Supreme Court Judgment) then the pertinent question that would arise is, retrospective recovery for how many years, will it propose to recover notwithstanding the year of debit of the said recovery. Simply put in example, can a Distribution Licensee raise a debit bill in the year 2021 for recovery for the escaped billing, on account of some genuine mistake, during the period 2010 to 2015 in case of a particular

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consumer? The answer to this question would be negative in view of Section 56(2) of the Act and the Hon'ble Supreme Court Judgment. It is a different matter if the Distribution Licensee in its own wisdom prefer to file Suit in appropriate Court of law. In the instant case the Respondent has proposed recovery for the period from July 2015 to July 2016 which is debited in the bill of June 2020. It has elapsed a period of almost four years from July 2016 for debiting the recovery. It cannot be argued that this is a reasonable period for due diligence on its part. Therefore, it cannot recover the amount toward tariff difference for the period of July 2015 to July 2016. It goes without saying that the Respondent is at liberty to approach the appropriate Court of law for the same.

16. Moreover, the Larger Bench of Bombay High Court in its Judgment dated 12.03.2019 in W.P. No.10764 of 2011 with Other Writ Petitions has interpreted Section 56(2) of that and passed a suitable Judgment. The relevant portion of the said Judgment and Section 56(2) of that 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 relevant part of the Larger Bench Judgment dated 12.03.2019 in WP No. 10764 of 2011 with Other Writ Petitions: -

"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

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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 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

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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.

(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 sub-section (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.

In view of both these Judgments the matter becomes crystal clear, and the order of the Forum needs to be set aside as it suffers from proper adjudication. There is no need to delve into the other citations made by both the parties. The undersigned issued orders in similar cases considering the interpretation of Section 56(2) of the Act as explained above.

During the hearing the undersigned directed the Respondent to inform as to how the tariff of the Appellant changed from Commercial to Industrial in July 2015 when the purpose (Lodging and Boarding) for which power was used did not change. The Respondent in its submission as well as in the hearing informed that, it was a mistake on its part. However, its submission post hearing tells a different story. The IT department of the Respondent has expressly communicated that the tariff was changed by submitting data in a suitable IT format file by the sub-division office. This primarily appears to be with mala-fide intention on the part

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of concerned individual official of the Respondent because there was no specific request from the Appellant for the change of purpose. If at all such request is there, it has not been brought on record. Even if such request is there, the Respondent ought to have subsequently inspected the premises after change of tariff to ascertain whether the purpose for which the tariff has been changed is genuine or otherwise. The Respondent's higher authorities may enquire into the matter and take action as deemed fit.

17. In view of above, I pass the following order.

(a) The Respondent is directed to withdraw the supplementary bill of Rs.1,95,963.57 against differential tariff recovery from Industrial to Commercial tariff category for the period July 2015 to July 2016, along with interest and DPC levied, if any.

(b) The secretariat of this office is directed to refund the amount of Rs.25000/- (deposited by the Appellant) to the Respondent for adjusting it against ensuing bills of the Appellant.

(c) The Respondent to submit compliance within two months from the date of issue of this order.

(d) The order of the Forum is set aside.

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

(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

Electricity Ombudsman Mumbai M.E.R.C.