

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 14 OF 2025

In the matter of retrospective recovery towards under billing

Priyanshi Fashion Pvt. Ltd..... Appellant
(Con. No. 084532415461)

V/s.

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

Appearances:

Appellant : 1. Ankit Khokar
2. Sachin Chordia, Representative

Respondent : G.M. Patil, Executive Engineer


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 24th April 2025

Date of Order : 7th May 2025

ORDER

This Representation was filed on 20th March 2025 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the order dated 20th January 2025 in Case No. 104 of 2023 passed by the Consumer Grievance Redressal Forum, Nashik (the Forum). However, the Appellant paid the required statutory deposit on 27th March 2025 as per Regulation 19.22(h) of CGRF & EO Regulations 2020. This


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Representation was then registered on the same date. The Forum by its order dated 20th January 2025 has partly allowed the grievance. The operative part of the order is as below:

- “2. As per Electricity Act, 2003, 56(2), Plain Assessment for the period of 2 years prior to the date of detection i.e., 17/01/2023 is to be done by MSEDCL as per above point No.17 observation of forum.*
- 3. No Interest, DPC & Penalty should be charged to consumer (i.e. Only Plain Recovery).*
- 4. Licensee should take action against official responsible as per Service Regulations & the loss occurred due to negligence is to be recovered from concern officer as per SOP Regulations 2021.*
- 5. The other prayers of the Applicant are rejected.*
- 6. Instalments should be given to consumer as per SOP without any cost for remaining amount.*
- 7. After recalculations of bill adjustment of excess payment if any should be adjusted as per Supply Code Regulations 2021 section 15.6.2 “ at a rate equivalent to the Bank Rate of the Reserve Bank of India to the consumer by adjustment in the subsequent bill”.*

2. Aggrieved by the order of the Forum, the Appellant has filed this Representation against the order of the Forum. An e-hearing was held on 24th April 2025 through video conference where both the parties were heard at length. The Respondent filed its reply dated 16th April 2025. The Respondent’s submissions and arguments are as below. *[The Electricity Ombudsman’s observations and comments are recorded under ‘Notes’ where needed.]*

- (i) The Appellant is a power loom consumer (No.084532415461) from 03.04.2017. The details of the electric connection, sanctioned load, retrospective recovery towards R phase voltages missing, etc. are tabulated as below:



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Secretary
Electricity Ombudsman Mumbai



Table 1:

Appellant	Consumer No.	Sanct. Load / Contract Demand	Address	Date of Supply	Date of Inspection	Assessment & month	Reason for Assessment & Period	Purpose
Priyanshi Fashion Pvt. Ltd.	084532415461	95 KW / 89 KVA	G-52, MIDC, Tal. Village Navapur	03.04.2017	17.01.2023	Rs. 17,96,706/- (3,77,244 Units) issued in Feb. 2023	R phase Voltage of the meter(40-200 A) was found missing from 19.09.2020 to 17.01.2023 (about 28 months)	Textile Unit under powerloom Tariff Category


- (ii) The existing meter of the consumer is of Secure Make (No. MHD 11752), Type- 3ph 4W, with a 40-200 Amp capacity, and was operational from 03.04.2017 till 29.10.2024, when the meter was replaced due to “no display” on the meter.
- (iii) In this period MSEDCL decided to install 40-200 Amp. CT Embedded Meters for Low Tension (LT) consumers with connected load above 20 KW. This phased initiative is a part of the “Automatic Meter Reading” Programme, which aims to enhance data delivery to the System Server.
- (iv) The Addl. Executive Engineer, Flying Squad, Jalgaon visited the premises of the Appellant on 17.01.2023 to carry out an inspection. The following observations/irregularities were recorded:


- *This connection was used for power loom purpose.*
- *At the time of meter checking no body and terminal seal found.****
- *Meter checked by Accucheck machine when meter found under recording by 32.21%.*
- *After thorough inspection, it was observed that “R” phase P. T. Terminal Screw was not perfectly touched to the conductor of the cable.*

*(***Note: It was confirmed telephonically that meter body seals found in order, however, meter box seal & terminal seal found missing)*

Current & Voltage parameters were observed as tabulated below:

Table 2:


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



Description	R Phase		Y Phase		B Phase	
	Current (A)	Voltage (V)	Current (A)	Voltage (V)	Current (A)	Voltage (V)
Current & Voltage Parameter Display on Meter	82.19	0.07	85.46	244	81.63	241
Current & Voltage measured at Incoming Supply	82.19	247	85.46	244	81.63	241

After tightening the piercing screws of “R” Phase voltage where it was tapped from the main cable, normalcy was restored on the meter display on the same day.

- (v) The MRI data of the meter was retrieved in which PT Voltage missing events were recorded, and it showed that R Phase Voltage was missing from 19.09.2020 (11.57.39 hrs.) to 17.01.2023 (11.57.14 Hrs.).

The current & voltage parameters on 19.09.2020 were found as below:

Table 3:

R Phase		Y Phase		B Phase	
Line Current (L1)	Voltage (L1)	Line Current (L2)	Voltage (L2)	Line Current (L3)	Voltage (L3)
85.10 A	0.07 V	83.80 A	242.84 V	83.30 A	241.76 V
Note : Missing Potential start on L1 from 11.57.39 Hrs on 19/09/2020					

- (vi) As the 3-phase 40-200 A meter lacks PT Smart Feature, an assessment for the missing R Phase Voltage was carried out. Consequently, the Respondent issued a supplementary bill in Feb. 2023 for plain recovery of Rs. 17,96,706/-for 3,77,244 units towards under-recording of consumption during the above specified period of about 28 months.
- (vii) The consumption pattern from the date of connection till March 2025(2017-18 to 2024-25) was compared. The data is presented as follows:



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 Electricity Ombudsman Mumbai




Table 4:

Year	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Month	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)	Cons. (Units)
Apr	9	38450	50122	692	9630	23472	57863	41138
May	5821	33103	51537	6038	6734	33048	57665	43028
Jun	3586	34089	46884	15615	24726	22045	55931	50447
Jul	697	52401	48706	18850	39608	29614	53817	53482
Aug	9450	51706	50368	45749	32774	29530	51317	49831
Sep	25044	45508	50926	41811	41081	32964	54975	52714
Oct	11570	53596	33969	29775	42434	24223	59265	49734
Nov	16070	12476	32769	24597	3323	15587	16815	19537
Dec	50532	58708	52167	36557	38242	36371	40004	44106
Jan	53559	53551	54283	37471	30559	37919	60347	46259
Feb	50034	54073	51661	34677	36408	46679	53240	46136
Mar	48882	33511	17959	33671	21086	44371	42151	35166
Total	275255	521172	541351	325503	326605	375823	603390	531578
Avg/mth	22938	43431	45113	27125	27217	31319	50283	44298
Note:	(i) The Appellant was billed with "Normal " Status. (ii) The Covid 19 pandemic period was from March 2020 to July 2020, hence consumption was lower. (iii) The meter (No.MHD11752) of the Appellant was replaced by a new meter(No. X2208811) on 29.10.2024 due to meter display failure. (iv) R phase Voltage of the meter(40-200 A) was found missing from 19.09.2020 to 17.01.2023 (about 28 months)							

An analysis revealed that there was a fall in consumption for the period from Oct. 2020 to Jan. 2023 due to R phase voltage missing. The record of MRI also indicates that there was continuous load in R phase, however, R phase voltage was found missing which was not recorded in the meter. The MRI Report is kept on record.

- (viii) The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of escaped billing and contended that the Judgment is squarely applicable in the instant case.
- (ix) The Appellant has referred to the orders & Judgements as listed below:


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai




- the Commission's order dated 11.02.2003 in Case No. 24 of 2001.
- the Appellate Tribunal for Electricity (ATE) Judgment dated 07.08.2014 in Case No. 131 of 2013. The Hon'ble Bombay High Court Judgement dated 09.06.2020 in Writ Petition No. 10536 of 2019 in Case of MSEDCL V/s Principal, College of Engineering, Pune.
- the order of the Pune Forum in Case No.56 of 2021 dated 14.02.2022 & Case No.57 of 2021 dated 14.02.2022.

However, the ratio of these orders / judgments is not applicable in this instant case considering the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd.

- (x) The said meter was under recording 1/3rd consumption from 19.09.2020 to 17.01.2023 due to a loose connection of R Phase PT voltage. This was restored to normalcy after tightening its piercing screw. This same meter was continued in service till October 2024, when it was replaced due to "no display" on the meter. **Hence the said meter was not defective for the above assessed period.**
- (xi) The Appellant submitted a grievance application to the Forum on 27.03.2024. By its order dated 20.01.2025, the Forum partly upheld the grievance and directed a retrospective revision of the bill for the past 24 months period.
- (xii) In view of the above the circumstances, the representation be rejected.

3. The Appellant's submissions and arguments are stated as below:

- (i) The details of the electric connection are outlined in Table 1. The supply is utilized for a Textile Unit classified under the "Power loom" tariff category. The Appellant has consistently paid bills on time and has been billed under the "power loom" tariff category. The electricity expenses, as reflected in the bills, are factored into production cost calculations for the business.
- (ii) The Respondent inspected the premises of the Appellant on 17.01.2023. Subsequently, the Respondent issued a supplementary bill of Rs. 17,96,706/- for 3,77,244 units vide



 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



letter dated 06.03.2023 towards under-recording of consumption towards R Phase PT missing. This supplementary bill is based on a wrong interpretation whereas actually the meter was defective. The Appellant filed a grievance application with the Forum on 27.03.2024. The Forum by its order dated 20.01.2025 partly allowed the grievance of the Appellant by directing to revise the bill for 24 months retrospectively from the date of site inspection i.e.17.01.2023.

- (iii) **The Forum failed to understand that the Respondent ought to have checked the technical data of the meter every month, however, they failed to do so. The Appellant is not responsible for such under recording of the meter. Therefore, the onus of addressing this discrepancy, along with its financial implications, lies entirely with the Respondent. The energy meter is owned by the electricity distribution company, and the sole responsibility for its maintenance lies with them. According to the MERC Supply Code & SOP Regulations 2021, the obligation to conduct ‘Periodic Testing of Meters’ rests with the Respondent. The Respondent failed to fulfill this responsibility by not testing the meter as required. Consequently, the Appellant cannot be held accountable for this lapse. Furthermore, the Appellant's business operations rely on an accurate and detailed summary of all income and expenses incurred by the organization within a specific financial year, prepared on an accrual basis.**
- (iv) The Appellant refers the Commission’s order dated 11.02.2003 in Case No. 24 of 2001. The relevant portion is quoted below:

“No retrospective recovery of arrear can be allowed on the basis of any abrupt reclassification of a consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the Commission will have to be sought as any reclassification of consumers directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




the affected consumer. In all these cases, recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective". (Emphasis added)


- (v) The Appellant also referred the order dated 07.08.2014 of Appellate Tribunal for Electricity (ATE) in Case No. 131 of 2013, wherein it is stated that tariff change is permissible from date of detection of error in tariff classification.

"The State Commission has consistently maintained in the various orders dated 09.01.2008 and 08.10.2009 in case of similar units carrying out filling and packing of oil that they would fall under LT VII (A) – commercial category and that the arrears for difference in tariff could be recovered from the date of detection of the error."

- (vi) In the same vein, the Appellant cited Judgement of Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune. This Judgment is in respect of challenge to the order of the Electricity Ombudsman (Mumbai) withdrawing retrospective recovery.
- (vii) The Appellant referred the order of the Pune Forum in Case of 56 of 2021 dated 14.02.2022 & 57 of 2021 dated 14.02.2022 where the Forum has quashed retrospective recovery in toto.
- (viii) The Appellant prays that the Respondent be directed:
- a) to quash the Suppl. Bill of Rs. 17,96,706/- for 3,77,244 Units for the period from 19.09.2020 to 17.01.2023 (about 28 months)
 - b) to waive off interest and delayed payment charges levied for entire period from Feb. 2023 onwards.
 - c) to provide interest on the amount recovered from the date of Payment till the date of refund, as per sec. 62(6) of Indian Electricity Act at the rate of 9 % per annum.

4. During the course of the hearing, it was clarified that the Appellant is already making payments towards the outstanding dues in accordance with the instalment plan granted by the Respondent. The Appellant further stated that, in 2020, he had submitted an application to the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Respondent requesting for a meter inspection, alleging a possible defect. The Appellant was instructed to provide the acknowledged copy of the application. However, the Appellant failed to submit such letter.


Analysis and Ruling


5. Heard the parties and perused the documents on record. The details of the electric connection, R Phase PT missing from 19.09.2020 to 17.01.2023, retrospective recovery is tabulated in Table 1.

6. The meter of the consumer was of Secure Make (No. MHD11752) having Type- 3ph 4W, 40-200 Amp Capacity. The same meter continued working from date of connection i.e. 03.04.2017 up to 28.10.2024, i.e. after tightening of its screws and restoring it to normalcy after inspection on 17.01.2023. This meter was replaced by a new meter (No. X2208811) only on 28.10.2024 due to a new development, i.e. display not working.

7. The Respondent inspected the installation of the Appellant on 17.01.2023, when it was observed that “R Phase Voltage” was missing on the meter display, which was not extended to the meter terminal connection due to a loose connection of the screws where it was tapped from the main cable. Hence, the meter was recording less energy consumption by 32.21% at the time of inspection. The R Phase Voltage was not extended to the said meter as per the MRI Report.

8. The Appellant contended that the energy meter belongs to the electricity distribution company and the responsibility of maintaining it lies solely with it. The Respondent failed to test the meter periodically and hence the Appellant is not responsible for the same. His business is dependent on the detailed summary of every income and expense incurred by his organization in a specific financial year prepared on an accrual basis. At present, it is very difficult to adjust (recover from customers) such a huge amount. During this period, this meter should be treated as defective and not considered for recovery purpose. The Appellant vehemently relied on the Commission’s order dated 11.02.2003 in Case No. 24 of 2001 and on



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



ATE Judgment dated 07.08.2014 in Appeal No. 131 of 2013 and which prohibits retrospective recovery. In the same vein, the Appellant cited Judgement of Writ Petition No. 10536 of 2019 dated 09.06.2020 in Case of MSEDCL V/s Principal, College of Engineering, Pune. This Judgment is in respect of challenge to the order of the Electricity Ombudsman (Mumbai) withdrawing retrospective recovery. This Judgement also discussed the Judgment of the Larger Bench in W.P. No. 10764 of 2011 and other Writ Petitions of the Bombay High Court interpreting Section 56 (2) of the Act. Considering the various citations advanced in the hearing, the Appellant argued that the Respondent, in case of escaped billing, can only bill the Appellant prospectively. The Appellant prayed that the Respondent be directed to withdraw the supplementary bill of Rs. 17,96,706/- for 3,77,244 Units for the period from 19.09.2020 to 17.01.2023 (about 28 months) along with interest and DPC levied.

9. The Respondent contended that an assessment for PT Voltage missing for R phase was carried out. The Respondent issued a supplementary bill of plain recovery of Rs. 17,96,706/- for 3,77,244 units vide letter dated 06.03.2023 towards the above under-recording of consumption for the period from June 2023 to Feb. 2024. This is based on the data retrieved from MRI. Electricity is a precious and costly commodity. Modern technology like MRI Report of the meter makes it possible to make a highly accurate assessment of under recording of the meter. The Respondent relied on the Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017. The relevant part of the Judgment is reproduced below:

“33. It is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R, R & 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 Appellant has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under recording.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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 Appellant, 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.”


This Judgment is squarely applicable in the instant case. It is established that the meter was not defective, which is evident from the fact that **the same meter was in operation up to 28.10.2024 satisfactorily, after the piercing screw of R Phase was tightened on 17/01/2023**. The said meter was replaced much later on 28.10.2024 due to non-functioning of Display of the meter.


10. The Forum by its order has already considered the under-recording for 24 months as stipulated in Section 56(2) of the Electricity Act, 2003. which fulfils the statutory requirement of Section 56(2) of the Act in case of deficiency in service. The Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“(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.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. The Court permitted retrospective recovery for a period of 24 months in instances involving error or oversight. The pertinent excerpt from the Larger Bench Judgment is quoted below:


“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.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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 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*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




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. (Emphasis added)**
- (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.**

4. The Appellant also cited the Judgement in Writ Petition No.10536 of 2019 dated 09.06.2020 of the Hon’ble Bombay High Court in Case of MSEDCL V/s Principal, College of


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



Engineering, Pune. However, the context of that case is totally different from the instant case and therefore, the ratio of this judgement cannot be applied blindly. More importantly, the Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held:

“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. (Emphasis added)

.....”

The ratio of the Judgment is that the licensee company is entitled to recover energy charges through an additional supplementary demand for a period of two years for a bona fide error. In the instant case, the error on the part of the Respondent is bona fide and hence it is entitled to recover consumption towards under recording of R phase PT Missing for 24 months prior to 17.01.2023, the date of detection of such error, in accordance with Section 56 (2) of the Act.

We had decided many cases relying on the Judgment of the Larger Bench of the Hon'ble Bombay High Court, and Hon'ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla.

11. The Forum has given a reasoned order in reducing the recovery period to 24 months. The Respondent has also complied with this order, by reducing the supplementary bill from Rs. 17.96 lakh to Rs. 14.57 lakh, i.e. from 3,77,244 units to 3,23,352 units on 06.05.2025. Hence, there is no need for interference in its order principally. The Forum's order is modified to the extent as below. The Respondent is directed: -


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (a) To withdraw DPC and interest levied, if any, from Feb. 2023 onwards till the date of this order.
- (b) to allow the Appellant to pay the revised bill in 10 equal monthly instalments without any interest and DPC. If the Appellant fails to pay any instalment, proportionate interest will accrue on the defaulter portion, and the Respondent has the liberty to take action as per law.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellant are rejected.

12. The representation of the Appellant is disposed of accordingly.

13. The secretariat of this office is directed to refund the amount of Rs.25,000/- taken as deposit to the Respondent to adjust in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

