

THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO.10 OF 2020

IN

REPRESENTATION NO.69 OF 2020

In the matter of billing

Sawant Pandharinath Dinkar.....Review Applicant

V/s.

Maharashtra State Electricity Distribution Co. Ltd., Bhiwandi (MSEDCL).....Respondent
Torrent Power Limited (TPL)

Appearances: -

For Review Applicant : Adil Akhtar Punjabi, Representative

For Respondent : 1. Ajay N. Bhasaketre, Addl. Ex. Engineer, MSEDCL
2. Rajesh Shanbag, AGM, Torrent Power Ltd. (TPL)
3. Hemangi Mayekar, Asst. Manager


Coram: Mr. Deepak Lad

Date of hearing: 14th January 2021

Date of Order : 27th January 2021

ORDER

This Review Application is registered on 11th November 2020 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) for review of the order dated 29th October 2020 passed in Representation No. 69 of 2020.



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Secretary
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2. The Electricity Ombudsman (Mumbai) vide its order dated 29.10.2020, has rejected the Representation 69 of 2020.


3. Aggrieved by this order, the Review Applicant has filed this Review Application stating in brief as below: -

- (i) There was miscommunication between the Applicant and his representatives hence being unaware of the scheduled hearing of the original Representation 69 of 2020, the representatives were unable to remain present during the hearing. The representatives had collected some new evidence in subject matter for review of the order in Representation 69 of 2020.
- (ii) The important facts are as below: -
 - (a) As per TPL, it is seen that the consumer having Service No.13892288032 and 13892288041 has made payment of Rs.21,713/- and Rs.1902/- for the respective Services on 15.04.2013.
 - (b) As per TPL, the Review Applicant applied for new connection vide Service No. 13895570219 on 18.03.2013 at H. No. 1182/08, Gala 8, Narpoli-2, Kariwali Road, Bhiwandi and the connection was released on 15.04.2013 by installing the meter.
 - (c) MSEDCL has also disconnected the Services No.13892288032 and 13892288041 on 15.04.2013. It is evident that on 15.04.2013 when the consumer of Service No.13892288032 and 13892288041 was making the payment then why was his services were being disconnected.
- (iii) Again, if it is assumed that the premises of all the 3 Services, 13892288032, 13892288041 and 13895570219 are all under the same roof then, when the Service No.13895570219 was being installed before noon and disconnection of the two meters was being done in the afternoon, why the TPL officials did not notice the other meters. Further, if the 2 meters were disconnected before noon by MSEDCL officials then why the officials of TPL install the new meter. Why not the TPL officers object to the two disconnected meters? This clearly shows that the installation and disconnection of the Services were in two different premises and not in one as claimed by TPL.


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Secretary
Electricity Ombudsman Mumbai




- (iv) The TPL carried out Joint verification of site on 16.12.2019 and 08.01.2020 in the presence of consumer's representative Mr. Sajid Ansari, where he has objected the survey reports wherein the consumer numbers were mentioned as written on the wall near the meter. It is a practice of the Contractors of TPL to write the consumer numbers in the meter box and not on the wall for which Applicant has put on record the photograph of the neighbouring consumers where it is clearly visible that nowhere the contractors have written the consumer numbers on the wall. TPL has written it on the wall to prove the same to create evidence.
- (v) As per TPL, MSEDCL has disconnected the two services on 15.4.2013 and had removed the network along with the meter on 28.06.2013. Then having a look at the new evidence produced by TPL namely the electricity bill of April 2018, one will notice that the consumption for Service No.13892288032 for the month of May 2013 is 5962 units and for August 2013 is 4781 units. Similarly, the consumption for Service No.13892288041 is 483 and 475 units, respectively. If the services were disconnected on 15.04.2013 and the network was removed on 26.06.2013 then how come the readings were obtained. This clearly shows that the disconnected services were being used in two different premises and the new meter was installed on 15.04.2013 in a different premise. Hence, as claimed by TPL regarding notices and bills, question arises as to where they were sent? The bills of Service No.13895570219 were being received by the Appellant and regular payments were done. Only on 18.07.2018, the Appellant received the notice pertaining to the arrears of the above two Services in the name of Sohilkumar R. Shah which were to be transferred on to Applicant's live service. If TPL has sent the notices and bills pertaining to recovery then they should produce the acknowledged notices before the Forum and secondly, they should produce the duplicate bills from the month of May 2013 onwards.
- (vi) Timely notices and regular bills were not generated for the disconnected two Services from 2013 to March 2018. No acknowledgments were produced before the Forum. The bill for April 2018 was just being fabricated to claim that the recovery of arrears is not time barred under Section 56 (2) of the Electricity Act, 2003 (the Act).


(Dilip Dumbre)
Secretary
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- (vii) As far as Section 56 (2) is concerned, nowhere it is stated that the amount recoverable can be recovered from the consumer, if it is shown continuously in the books of accounts or CPL to be more precise. The Law of Limitation clearly states that if an amount is due and / or recoverable should be recovered from the person who has defaulted and not merely by showing his outstanding in the books of record. The books of record are with the licensee or its franchisee and its copy is not available with the consumer. It is the duty of the licensee / franchisee to inform the consumer about his dues in writing on monthly basis.
- (viii) The Applicant referred the Forum's order dated 10.04.2018 in Case of Abhishek Jain V/s MSEDCL (No. 82 of 2018). In its submission having reference no. TPL/CGRF/B/18/03, TPL had mentioned on page 2 para 6 which reads as
- “Further, in respect of consumers claim regarding non recovery of dues by TPL u/s.56(2) is not tenable and illogical, as the outstanding dues of the consumer are continuously reflected in consumers CPL account.”*
- The Forum in its order dated 10.04.2018 on page no. 7 para 14 clearly states which read as
- “We have heard both sides. It is clear from the averments and submission made on either side that the arrears bill raised for an amount of Rs.2262295.37 pertains to a period prior to 2009. Obviously therefore the claim made by D.L. Torrent Power under the impugned letter / notice is barred by limitation.”*
- Hence, the Forum, in its order has quashed the said arrears bill.
- (ix) In the appeal against the order in Case No.82 of 2018, the Electricity Ombudsman in its Representation No.78 of 2018 has confirmed the order of quashing the arrears of 2262295.37 on the point of limitation and has not agreed to the claim of TPL which states that the amount is recoverable even if it is shown in the books of account or CPL.
- (x) The amount due to Mr. Sohilkumar R. Shah on Service Nos.13892288032 and 13892288041 having dues of Rs.10,00,555/- and Rs.96,434/- pertaining to MSEDCL and amount Rs.1,29,030/- and Rs.11,840/- respectively is stated as outstanding on 15.04.2013. Now this amount which TPL is trying to recover for Service Nos.13892288032 and 13892288041 pertains to the period 15.04.2013 and they are recovering on 18.07.2018 (date of notice) which is after a period of 5 years and 3 months. It is evident that the said dues are not recoverable.



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- (xi) The Appellant has requested for physical hearing considering the complexity of the case.
- (xii) The Applicant prays that the review be considered in the interest of natural justice in his case.


4. The Respondent, TPL filed its reply by email dated 01.12.2020 stating in brief as under:-

- (i) The grievance of the Applicant was heard before Hon'ble Electricity Ombudsman and the relevant order has been passed. Please note that the company totally relies on the order passed by the Hon'ble Electricity Ombudsman dated 09.01.2020 in Representation 69 of 2020.
- (ii) It was observed that the Review Applicant has not raised any new submission nor had submitted any new relevant evidence in support for Review Application as per Regulation 19.1 of the CGRF Regulations 2006 and hence it is deserved to be rejected as per the Regulation 19.3 of the CGRF Regulations 2006.
- (iii) It is to state that all the issues of the Applicant are rightly addressed by TPL in its submission vide letter dated 21.09.2020 and was also presented during the hearing held on 07.10.2020.
- (iv) The hearing schedule was conveyed to Applicant and Utilities well in advance. There was no miscommunication regarding the same however the Applicant and his representative is misleading the Authority by making false statements.
- (v) Further, regarding facts of disconnection of old service numbers 13892288032 and 13892288041 and release of new connection vide service number 13895570219 was already mentioned in the submission vide No.TPL/OMBD/B/20/03 dated 21.09.2020 and also was discussed in the hearing held on 07.10.2020.
- (vi) The Applicant is raising the issue regarding the submission of the copy of Joint survey report dated 08.01.2020 where Mr. Sajid Ansari has objected to the survey and put his dissatisfaction on the survey report. Please note that the said copy was already submitted in the written submission via email dated 25.09.2020 and the same was also mentioned at the time of hearing. The TPL has not suppressed any evidence, hence the allegation raised by the Applicant's representative is denied.


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Secretary
Electricity Ombudsman Mumbai




- (vii) Further, as the Applicant's representative have raised the point regarding consumption for the service numbers 13892288032 and 13892288041 till the month of May 2013. Kindly note that as stated in the submission vide TPL/OMBD/B/20/03 dated 21.09.2020 that the meter was first disconnected on 15.04.2013. Further, the service again disconnected on 26.06.2013 and meter was removed from site. The Applicant was using electricity up to meter removal date. The bills of the Applicant were raised as per the final meter reading obtained from the meter at the time of meter removal.
- (viii) The bills for the service numbers 13892288032 and 13892288041 were raised till April 2018 to raise the claim of arrears form the Applicant. Hence, TPL had rightly followed the process of recovery by way of dues transfer being same premise and by keeping the liability on the premise.
- (ix) Here, it is to specifically to point out that the Applicant is misleading the Authority by diverting the issue on the grounds of different house number of the premise under discussion and which is not the part of Original application filed with the Hon. Electricity Ombudsman. Merely by changing the house number of the premise does not change the identity of the premise which the Applicant had purposely not disclosed in his original application with the intention best known to him. The said facts were already discussed and rightly recorded by the Authority also. Hence, the said argument of the Applicant is totally baseless, invalid hence cannot be considered.
- (x) The reference given by the Applicant of the Forum's Case No.82 of 2018 is totally irrelevant and nothing to do with this present grievance.
- (xi) The Applicant's representative has again failed to raise any new or important matter or evidence before the Authority and has approached with malafide intention.
- (xii) The above facts clearly show the intention of Applicant is misleading the Hon'ble Electricity Ombudsman. Hence, all allegations made by the Applicant are denied making the application baseless and false. Thus, nothing ought to be granted against the utility. It is respectfully requested to your Hon'ble Electricity Ombudsman to kindly dismiss the said grievance.


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5. The Respondent MSEDCL has submitted its reply dated 13.01.2020 by email stating as under: -

- (i) It is humbly submitted that since 26.01.2007, the electricity distribution and billing in Bhiwandi has been handed over to M/s. Torrent Power Limited (TPL) for a period of 10 years and from 02.01.2017 for further 10 years along with the assets of Distribution Network.
- (ii) The submission made hereunder is as per the records available and documents submitted by the Applicant.
- (iii) The connection bearing service number 13895570219 is in the name of Mr Pandarinath Dinkar Sawant (Review Applicant). The date of connection is 15.04.2013.
- (iv) As per TPL, the Applicant applied for new connection vide Service No.13895570219 for Commercial purpose on 18.03.2013 at H. No. 1182/08, Gala 8, Narpoli-2, Kariwali Road, Bhiwandi. The connection was released on 15.04.2013. The Applicant further applied for extension of load from 5.36 KW to 27 HP on 12.09.2013.
- (v) As per TPL, at the time of survey, it was observed that there were two services which were missing at the same premises.
- (vi) Joint verification of site was done on 08.01.2020 in the presence of consumer's representative in which it was clearly established that the above two connections were in the same premise. The Applicant is trying to mislead the Authority.
- (vii) Hence, the application is liable to be rejected under Regulation 6.9 (a) of the CGRF Regulations 2006 which stipulates that the
"Forum may reject the Grievance at any stage if it appears to it that the Grievance is frivolous, vexatious, malafide"
- (viii) Further, the MSEDCL and TPL arrears are to be recovered as per Section 170 of Electricity Act 2003 which states that
"Any penalty payable by a person under this Act, if not paid, may be recovered as if it were an arrear of land revenue."


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




- (ix) Further, as per the guidelines mentioned by MSEDCL in Circular No.19021 dated 06.07.2013, the Applicant is liable to clear the dues as PD service is found in the same premises.
- (x) It is to bring to notice that though the meter was removed, the bills were generated and issued at the premises on monthly basis. Still the applicant ignored to pay the bills.
- (xi) Regarding both the service connections in grievance, TPL has continuously shown MSEDCL arrears as recoverable dues on the monthly bills of the consumer as per Section 56(2) of the Act to maintain the claim of MSEDCL on the arrears.
- (xii) Considering the above submission, the Hon'ble Electricity Ombudsman may please dismiss the appeal.

6. The physical hearing in this Review Application is held on 14.01.2021 on the specific request of the Review Applicant citing complexities in the case with due precautions as envisaged under guidelines of Covid-19 Mission Unlock.

7. The Applicant's representative argued on behalf of the Applicant and reiterated the facts in the Review Application. He further stated that disconnection of so-called old services / connections, payment of past arrears and release of connections to the Review Applicant happened on 15.04.2013 which is not explained by the Respondent. He further argued that to settle the issue, the Applicant took a stand of clearing the dues in light of Section 56 (2) of the Act.

8. The Respondent argued that all the issues in the Review Application are already dealt with in the Original Order. The Review Applicant has not brought out any thing new that he was not aware of at the time of original proceeding nor did he pointed out the patent error on the face of the record in the order. It also submitted that the release of Commercial connection in the attic part of the same premises was a mistake on its part while it is true that there were two connections which were in arrears. It has also been brought on record that the premises is same, however, the identification numbering in the records of the Municipal Corporation is different. It is also not correct that the premises is outside the geographical jurisdiction of the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Municipal Corporation of Bhiwandi. The Review Application is, therefore, not sustainable in view of the regulatory provisions for review.

Analysis and Ruling

9. Heard the parties and perused the documents on record. This Review Application is filed under Regulation 19 of the CGRF Regulations 2006 which is reproduced below:


19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.

19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application. Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.

10. The Respondent specifically pointed out that the application for new service / connection submitted by the Review Applicant mentions the nearest service as 13892288041. The Review Applicant contested this as 'what is meant by nearest service'. In addition, he argued that the handwriting in which the nearest service number written in the A1 form is different. I noted that the fact with respect to the nearest service has also been elaborately brought out by the undersigned in the Analysis and Ruling part of the Original Order. Surprisingly, this stand of what is meant by nearest service and the issue of different handwriting was not raised by the Applicant in the original proceedings. The Review Applicant argued as to how service / connection in the name of the Review Applicant is released when there were already two connections which were in arrears. On this, the Respondent argued that the connection was


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



released for Commercial purpose in the specially created separate part (attic) in the same premises which was subsequently converted into Power loom connection within a short time. The Respondent specifically agreed that it was a mistake on its part to have released this connection in the attic part of the same premises.


11. In view of the above, the Review Application is nothing short of repetition of the original representation. Review is maintainable when the Review Applicant discovers new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record. However, no such thing has been pointed out by the Review Applicant. It is trying to seek rehearing in the matter under the guise of appeal. Power to review its ruling is to correct a 'patent error' and not the 'minor mistakes of inconsequential import'.

12. The Review Applicant has cited order dated 05.07.2018 in Representation 78 of 2018 passed by the Electricity Ombudsman, Mumbai. I perused this order and observed that the issue in that order is with respect to assessment and recovery thereof under Section 135 of the Electricity Act, 2003 which deals with theft of energy and it is out of bounds area for the Electricity Ombudsman, Mumbai to adjudicate the case. It has therefore been decided accordingly. Hence, not applicable in the instant Review Application.

13. The scope of the review is limited. The mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has power to review its ruling to correct a patent error and not a minor mistake of inconsequential import. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

(a) Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -

"8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled


(Dilip Dumbre)
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arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”


(b) In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negated. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

14. In view of the above, as the Review Applicant did not raise any new issue which were not considered in the original representation nor did it point out any mistake on the face of record, I am of the considered view that there is no substance in this Review Application and hence is not maintainable and therefore rejected.

15. The Review Application is therefore dismissed and disposed of accordingly.

Sd/-
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Electricity Ombudsman (Mumbai)


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