BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

Review Application No. 4 of 2020

in

Representation No. 220 of 2019

In the matter of billing

Maharashtra State Electricity Distribution Co. Ltd. Jalgaon (MSEDCL)…… Applicant
(Original Respondent)

V/s.

Jain Irrigation Systems Ltd …… ……. …… ……. ……. Respondent
(Original Appellant)

Appearances

For Applicant : 1. Mohd. Farooque Shaikh, Superintending Engineer
2. Satyajit Pawar, Legal Advisor
3. Ravindra F. Pawar, Dy. Ex. Engineer

For Respondent : 1. Rajendra N. Rane, Manager, Jain Irrigation System
2. Satish Shah, Representative
3. T.N. Agrawal, Representative

Coram: Mr. Deepak Lad

Date of e-hearing: 8th July 2020

Date of Order : 17th July 2020

ORDER

This Review Application has been filed through email dated 24th April 2020 due to Covid-19 epidemic, under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) for review of the order dated 13th February 2020 passed in Representation No. 220 of 2019. This Review Application has been registered as Review Application No.4 of 2020.

2. The operative part of the order dated 13th February 2020 in Representation No. 220 of 2019 is as below: -

> *" (a) The retrospective recovery period shall be from May 2017 to April 2019 only as against December 2015 to December 2017.*
> *(b) The amount already deposited by the Appellant pursuant to the Forum's order needs to be adjusted in total recovery.*
> *(c) DPC and interest, levied if any, is waived of. On the same line, no interest shall be paid to the Appellant if refund becomes due."*

3. The Review Applicant (Respondent in original Representation) has filed this Review Application for review of order passed in Representation No. 220 of 2019 stating in brief as under: -

(i) The Review Applicant's flying squad has inspected the electrical installation on 22.11.2017. During the inspection, it was noticed that the consumer was billed on HT-VI Group Housing tariff category instead of LT-1 Residential tariff. Accordingly, the tariff category was changed to LT-I Residential tariff from the bill of January 2018 as LT-I residential tariff category is also applicable to consumers who are supplied power at high voltage for residential purpose.

(ii) Accordingly, a supplementary bill of Rs.181.92 lakh for tariff difference recovery from HT VI – Group Housing to LT-1 Residential for the period December 2015 to December 2017 was sent to the consumer on 18.04.2019 as per Section 56(2) of the Electricity Act, 2003 (the Act).

(iii) The Electricity Ombudsman while passing the order in the original Representation No. 220 of 2019 has partly allowed the grievance and restricted recovery towards tariff difference from May 2017 to April 2019 only as against December 2015 to December 2017.

(iv) There is an error apparent from the face of record of the judgement given by the order dated 13.02.2020 of the Electricity Ombudsman (Mumbai) in Representation No. 220 of 2019, for interpretation of retrospective recovery and Section 56 (2) of the Act.

(v) The Applicant filed the review application as per Regulation 19 of CGRF Regulations. There is delay in submission of review due to Covid-19 epidemic as

there was lockdown/partial working etc. The delay for submission was unavoidable and hence request to condone it.

(vi) In support of review, the Applicant referred to the judgement of Hon'ble Supreme Court of India dated 18.02.2020 in Civil Appeal No. 1672/2020 in Case of Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah alias Rahamjulla). The Respondent requested to consider the said judgement and principle that the judgement establishes. Considering the ratio decidendi of the judgment, the order in Representation No. 220 of 2019 be reviewed in favour of the Applicant.

(vii) The Applicant prays that the review application be allowed, and the Applicant be allowed to recover retrospective recovery for the period December 2015 to December 2017 as per the supplementary bill of Rs.181.92 lakh towards tariff difference recovery from HT VI – Group Housing to LT-1 Residential tariff.

4. The Respondent (Appellant in original Representation), has filed the reply on 06.07.2020 stating in brief as below: -

(i) The review application filed by the Applicant is illegal and untenable in the eyes of law. All the contents narrated by the Applicant are untrue and baseless. No case is made out by Applicant for review of order passed by Hon'ble Electricity Ombudsman in Representation No. 220 of 2019. Review of order is a serious step and resorting to it is proper only when a glaring omission or patent mistake or like grave error has crept in the earlier order issued by the Adjudicating Authority. The wrong decision can be subjected to appeal to a higher Forum, but a review is not permissible on the ground that Court proceeded on wrong proposition of law. It is not permissible for erroneous decision to be "re-heard and corrected." There is clear distinction between an erroneous decision and an error apparent on the face of the record. In Lily Thomas v. Union of India (AIR 2000 SC 1650), Hon'ble Supreme Court held that:

> *"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise.""*

(ii) It is made clear as per the Regulation 19 of the CGRF Regulations that a review is allowed only upon discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of litigant or could not be produced by him when the order was passed on account of some mistake or error apparent from the face of record. Present Review Applicant, however, does not place any new set of facts or matter or evidence. Review Application does not talk about any mistake or error apparent from the face of record of the judgement and therefore, the review with the given reasons is not tenable at all.

(iii) Review Application is filed by Executive Engineer, MSEDCL, Jalgaon whereas the Superintending Engineer, MSEDCL, Jalgaon was the Respondent in the original Representation. Both are certainly different entities, offices, authorities with different powers. The present application filed by Executive Engineer is not tenable in view of the facts that Executive Engineer was never a party to the impugned order. Third party has no right to file such kind of Review Application. The Applicant, MSEDCL, through Executive Engineer who is third party to the preceding has no locus to file Review Application. Scheme of the act allows consumers to file Review Application and there is no provision for filing of review by distribution utility. Hence, the Review Application is bad in law and is untenable and is required to be dismissed. Hon'ble Supreme Court in Haryana State Industrial Development Corporation Ltd. V/s. Mawasi and Ors. Etc. reported in 2012 AIR SCW 4222, has laid down the principles how the power of review can be exercised. It is apt to reproduce paragraphs 9 of the said judgment hereunder:

> *"9. At this stage it will be apposite to observe that the power of review is a creature of the statute and* ***no Court or quasi-judicial body or administrative authority can review its judgment or order or decision unless it is legally empowered to do so****."…..* ***(Emphasis added)***

(iv) Review Application is not tenable in view of Regulation 19 of the CGRF Regulations. The said Regulation does not give any right to the Review Applicant to file this Review Application.

(v) Review Application is filed on 24.04.2020, impugned order was passed on 13.02.2020. Thus, there is delay of almost 45 to 60 days in filing the Review Application. The reason cited by Applicant for delay is the outbreak of Covid-19 epidemic, however it is required to note that 30 days' limitation for filing Review

Application has expired on 13.03.2020, on this said date there was no outbreak of Covid-19 epidemic or lock down or curfew. Therefore, the reason cited for delay is illegal, baseless and onto is required to be rejected.

(vi) It is also important to note that, after passing of impugned order, a letter was forwarded by the Applicant to its legal officer seeking opinion about the same. The said letter was sent immediately on 27.02.2020, however, said reference was answered by legal officer only on 18.04.2020 i.e. almost after 2 months. Even reply to the reference by legal cell of Applicant do not speak about delay due to outbreak of Covid-19 epidemic. No rational answer or explanation is provided for the delay from legal officer is mentioned in present Review Application and therefore, given in the said circumstances, present Review Application is required to be dismissed.

(vii) It is, thus, clear that there is enormous delay in filing Review Application and Hon'ble Electricity Ombudsman has no power / jurisdiction to condone the delay as such, therefore, the Application is required to be dismissed at its threshold.

(viii) It is further contended by Applicant that review is filed on the basis of the decision of Hon'ble Supreme Court in Civil Appeal No.1672 of 2020. Order of Hon'ble Supreme Court is of 18.04.2020. Review Application is filed on 24.04.2020 that is almost after 60 days of passing the order on Representation 220 of 2019. Even on this count, Application is not tenable and shall be dismissed.

(ix) The Review Application is solely based on Hon'ble Supreme Court's order in the case of Ajmer Vidyut Nigam Limited verses Rahmatullah Khan. No other reason is cited by Applicant for filing of Review Application. This Application is nothing but a frustrated attempt of Review Applicant to give shortcut to the available legal remedy of challenging the impugned order before High Court under Original Writ jurisdiction. Some new ratio of law laid down by Judicial Authority is not discovery of new fact or evidence. Review Application cannot be based upon subsequent order of any Court. Powers of review are very limited and shall be sparingly used. Jurisdiction to hear a party under review is provided only to meet the ends of justice and is not provided to accord relief to any litigant using shortcut. Present review Application is not at all tenable on the basis of recent Hon'ble Supreme Court Judgment. Verdict of Hon'ble Supreme Court is passed under Original Jurisdiction under the Constitutional Authority. Respondent relies on the law laid down by Hon'ble Supreme Court in :-

A. Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Hon'ble 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 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 Hon'ble Supreme Court held as under: -

> *"11. So far as … 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 reApplication 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."*

Above ratio of law is well within the knowledge of Hon'ble Electricity Ombudsman and have been used extensively in number of cases in the past.

(x) Hon'ble Electricity Ombudsman is not a Constitutional Authority or Court but is a quasi-judicial Forum created under CGRF Regulations. The present review Application on the basis of recent Hon'ble Supreme Court Judgment is not tenable in the given facts and therefore is required to be dismissed.

(xi) The Review Applicant cited the Judgment of the Hon'ble Supreme Court in C.A. No.1672 of 2020. The said Judgment is passed in different set of facts. This Judgment is passed by the Hon'ble Supreme Court under its Constitutional Jurisdiction by comparing various enactments like Electricity Act (old and new) and that of Limitation Act. Hon'ble Electricity Ombudsman is working under CGRF Regulations and cannot go beyond the said regulations. Hon'ble Electricity Ombudsman has no powers to check various provisions of different laws. Hon'ble Electricity Ombudsman cannot interpret orders of Hon'ble Supreme Court as such. If at all Applicant wishes to challenge impugned order passed by Hon'ble Electricity Ombudsman in Representation No. 220 of 2019, the only way or legal remedy left to Applicant is to challenge the impugned order before Court of competent jurisdiction.

(xii) Impugned order passed by Hon'ble Electricity Ombudsman in Representation No. 220 of 2019 is based on Hon'ble Bombay High Court Judgment in Writ Petition No.10764 of 2011 with other Writ Petitions. The said order of division bench is still a good case law and applicable in the present circumstances. While Hon'ble Supreme Court in C.A. No.1672 of 2020 passed different ratio of law which is not at all applicable in the present case. Said order speaks about rights of distribution utility to recover dues of electricity by taking recourse to any other remedy available in law. Order passed by Hon'ble Electricity Ombudsman in the present matter is in line with the said observations and no case is made out by Applicant for review at all.

(xiii) Even otherwise, for the sake of moment, if it is considered that Hon'ble Supreme Court's Judgement referred by Applicant is applicable to the present case even then no justification for review is made out for the simple reason that Hon'ble Electricity Ombudsman cannot go beyond the provisions of CGRF Regulations.

Said Judgment of Hon'ble Supreme Court gives option to distribution utility to opt for recovery suit under Civil Procedure Code. If at all Applicant wishes to press recovery of dues beyond the period of 2 years, Applicant is required to file a civil suit for recovery of areas before competent Civil Court and the same cannot be done by filing a review Application.

(xiv) Present Review Application is nothing but a cheap, baseless, illegal and shortcut exercise adopted by Applicant to seek the recovery of alleged dues at the hands of review orders. Applicant is at liberty to challenge the order of Hon'ble Electricity Ombudsman in appeal or any other form of Application before the competent Court, however, at any stretch, Review Application is not tenable under the given circumstances. Therefore, it is humbly prayed that, Review Application is lacking new discovery of facts, evidence and without showing any error or mistake of law in order being devoid of merits be dismissed in toto.

5. The hearing could not be conducted due to onset of Covid-19 epidemic. Since then the conditions were not conducive for conducting the usual hearings through physical presence, hence the hearing was scheduled on 08.07.2020 on e-platform after the consent from the parties. During the hearing, the Review Applicant argued in line with its written submission and it stressed on the ratio of the Judgment of the Hon'ble Supreme Court in C.A. No. 1672 of

2020. However, the Respondent in this application was not able to argue due to poor connectivity at its end though its representatives were available during the hearing on e-platform. Therefore, the Review Applicant was directed to submit its written arguments through email by 15.07.2020. The Respondent in this Review Application was also allowed to file its rejoinder before 20.07.2020.

6. The Review Applicant's written arguments are received in this office on 15.07.2020 by email. The salient features of the same are as below: -

(i) The question before the Hon'ble Supreme Court in said judgment are as under,

1) What is meaning to be ascribed to the term "first Due" in section 56 (2) of the Electricity Act-2003?
2) In the case of wrong billing tariff having been applied on account of mistake, when would the amount become "First Due"?
3) Whether recourse to disconnection of electricity supply may be taken by Licensee company after the laps of 2 years in case of mistake?

(ii) These 3 questions before the Hon'ble Supreme Court are exactly applicable to the issues raised in the present matter in hand. The Hon'ble Supreme Court in Para No. 1.9 of its Judgment had made it clear that the applicant corporation would not be entitled to recover the additional demand from the Respondent in this case and only the question of law would be determined. By the said Para it is understood that applicant in that case can approach any other forum or court of law for recovery of its dues.

(iii) The period of limitation for recovery of dues of money start from the day when it became due, but many a times the very facts about some amount becoming due may not be known due to a mistake. Hence, when the mistake is discovered, the period of limitation starts from the date on which the mistake is discovered for the first time. For example, if the amount was falling due on 01.01.2017, ideally the period of limitation should have been started on that very day but if by bonafide mistake it was discovered on 01.01.2020 and a bill was given on 01.01.2020 in that case the period of limitation will start from 01.01.2020. since by issuing the bill the amount become "*First due*"

(iv) Two causes of Action

a) For Disconnection b) For Recovery

(v) This can be noticed from the judgment of Hon'ble Supreme Court in Swastic Industrial "*I would thus be clear that the right to recover the charges is one part of it and right to disconnect supply of electrical energy to the consumer who neglects to pay the charges is another part of it*". Section 56 of Electricity Act 2003 is based on Section 24 of 1910 Act.

(vi) The Hon'ble Supreme Court in para 6.6 has answered the question "*First due*" as under.

Electricity Charges would become "*First due*" only after the bill is issued to the consumer, even though the liability to pay arises on the consumption of electricity''.

(vii) The Hon'ble Supreme Court in para 7.4 of judgment has stated that the period of limitation would commence from the day on which the electricity charges become "First Due" under Sub section (2) of section 56. The provision restrict the right of the Licensee company to disconnect electricity supply due to non-payment of the dues by the consumer. Unless such sum has been shown continuously to be recoverable as arrears of electricity supply, in the bills raised for the period. If the Licensee Company is to be allowed to disconnect electricity supply after the expiry of the limitation period of 2 years after the sum become "first Due", it would defeat the very object of Section 56(2).

(viii) Therefore, it can be very well seen that the limitation period as prescribed in section 56(2) is only for disconnection and not for recovery. At this juncture, it is to be seen that the limitation for disconnection is different and limitation for recovery is different. What is prescribed in section 56 (2) is the limitation for disconnection of supply, in case consumer failed to pay the amount due and not the limitation for period of recovery.

(ix) The Hon'ble Supreme Court in para 8 of judgment has said that section 56(2), however, does not preclude the Licensee company from raising the supplementary demand after the expiry limitation period of 2 years. What is restricted is only disconnection after period of 2 years. It is further made clear that other modes of recovery which may be initiated by the licensee company for recovery of supplementary demand are not restricted.

The facts of Ajmer Vidyut Vitran Nigam the Hon'ble Supreme Court are as under.

- Internal audit of the department on 18.03.2014 noticed the mistake in application of tariff.
- The department issued show cause notice on 18.03.2014 demanding difference in arrears on account of tariff.
- The period for which wrong tariff was applied is July 2009 to September 2011.
- The bill for amount of Rs.29604/- was raised on 25.05.2015.

(x) In this case the mistake was discovered on 18.03.2014. The limitation period under section 56(2) for disconnection would have been from Sept-2011 till Sept-2013 and in this case it can be seen that the limitation period of 2 years for disconnection for non-payment has expired. Since the bill was never raised as a result, the amount did not become due. But the fact that billing is done under the wrong code was noticed only on 18.03.2018 and therefore the period of limitation for recovery will begin to run from 18.03.2018. According to the provisions of Section 17(1) (C) of the Limitation Act, 1963, the Supreme Court has made it clear at Para No. 9 of its judgment that the licensee company may take recourse to any remedy available in law for recovery of additional demand, but is barred from taking recourse of disconnection of supply of electricity under Section 56 (2) of the Act. Considering this interpretation of Supreme Court, the licensee company can file the civil suit for recovery of the supplementary bill with the limitation starting from 18.03.2014 as is seen the schedule for periods of limitation act. The period is 3 years. So in this case the suit for recovery can be filed till 18.03.2017 but the action of disconnection cannot be taken.

(xi) The facts of the case before Hon'ble Supreme Court and in the case before Hon'ble Ombudsmen are identical.

(M/s Jain Irrigation Systems Limited Consumer No. 110019001550)

- Flying Squad Inspection took place on 22.11.2017.
- Supplementary bill for Rs.181.92 Lakhs issued on 18.04.2019.
- The period of recovery was the period Dec-2015 to Dec-2017.

Here the bill period is Dec-2015 to Dec-2017. In fact by wrongly interpreting section 56, the MSEDCL had rectified the bill period form the period Dec-2015 to Dec-2017 only where's the supplementary bill should have been from the dates on which by MERC order LT-I tariff was made applicable to HT residential users. i.e. in this case from 01 Aug 2012 As per Tariff order Commercial Circular No. 175 Dtd.05.09.2012. The period of limitation for disconnection begin from Dec-2019 for 2 years and the recourse for disconnection is taken well within the time that is Dec-2017 to Dec-2019. For the purpose of recovery since the mistake of application of wrong tariff will start running from 22.11.2017 and considering the Limitation Act provisions, MSEDCL can file a suit for recovery up to 22.11.2020.

(xii) The Hon'ble Ombudsman, by its order has considered the retrospective recovery period for May-2017 to Apr-2019 only and thereby the recovery of rest of the period is quashed and there the said order closes the doors for the licensee to take recourse to any alternate remedy available in law for recovery of the supplementary bill. In the present case, in hand, there no dispute about the applicability of tariff and considering the dates above in Table-2, the licensee MSEDCL can very well approach the civil court for recovery of supplementary bill. In fact all appropriate steps were taken by MSEDCL and it was well within the rights of MSEDCL to take recourse of disconnection u/s 56(2) since the bill was two years limitation i.e. 22.11.2017 to 22.11.2019.

(xiii) Therefore, it is humble request of the review applicant that the order dated 13.02.2020 be kindly reviewed in light of Hon'ble Supreme Court judgment dated. 18.02.2020 and the recovery of the supplementary bill kindly be allowed in the alternative the right of the MSEDCL to take recourse to the remedy available for recovery of the supplementary bill before the Civil Court make kindly be restored.

7. The Respondent vide email dated 16.07.2020 submitted that their response to the Review Application filed by the Review Applicant should be treated as final and it does not intend to file any rejoinder per se.

Analysis and Ruling

8. I perused the documents on record and heard the Review Applicant on e-platform. This review has been filed by the Applicant under Regulation 19 of CGRF Regulations. Regulation 19 is reproduced below: -

> *"Review of order*
>
> *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, there view of which is applied for."*

9. The Review was filed through email dated 24.04.2020 against the order dated 13th February 2020 passed in Representation No. 220 of 2019. In addition, the Review Applicant vide its letter No.1656 dated 17.04.2020 which is received by this office on 07.07.2020 through post has requested that it has decided to file appeal against the said order shortly and the time limit for the same be extended by two months.

10. The Respondent in this Review Application submitted that the Review Applicant should have filed the Review Application within 30 days from the date of the order as per the

CGRF Regulations which expired on 13.03.2020. It further says that there was no Covid-19 epidemic from 13.02.2020 to 13.03.2020 hence, the reason cited by the Review Applicant is wrong and the Review Application needs to be rejected.

11. Moreover, the Respondent argued that this application does not stand scrutiny in light of the provisions of review under the CGRF Regulations. Considering the procedural issues in a public utility and then subsequent outbreak of Covid-19 epidemic, I condone the delay in filing the Review Application in exercise of the powers as per Regulation 17.2 of the CGRF Regulations which allows the Electricity Ombudsman to condone the delay in filing the appeal against the order of the Forum. The same powers are exercisable by the Electricity Ombudsman in condoning the delay in filing the Review Application.

12. Generally, review is filed by the Appellant (consumer) aggrieved by the order of the Forum. However, the Regulation No. 19.1 of the CGRF Regulations opens with the word "***any person***" which is defined in the Act in Section 2 (49) which is reproduced below: -

> *""person" shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person"*
>
> Moreover, Regulation 2.2 of the CGRF Regulations states that
>
> *"Words and expressions used and not defined in these Regulations but defined in the Act shall have the meanings respectively assigned to them in the Act."*

In view of the above provisions, it goes without saying that the Respondent in the original Representation can very well apply for review of the order of the Electricity Ombudsman.

13. Now, I proceed with deciding the Review Application on merits.

(a) The Review Applicant, in its submission, has cited and argued on the ratio in the Judgment dated 18.02.2020 in C.A. No. 1672 of 2020 of the Hon'ble Supreme Court. In the Review Application, it prayed for applicability of the ratio of the Supreme Court Judgment and allow recovery for the full period as calculated by it. On the contrary, in the written argument, it prays for allowing the Review Applicant to avail the alternate remedy by approaching appropriate Civil Courts which it thinks that the undersigned has specifically barred.

(b) The contention of the Review Applicant is that the undersigned in the order dated 13.02.2020 in Representation No. 220 of 2019 has estopped it from approaching the appropriate Civil Courts for recovery of arrears as calculated by it. Inter alia, it also says that the undersigned has closed the doors for the Review Applicant to approach the appropriate Civil Courts. The order in Representation 220 of 2019 has simply stipulated in its operative part that the recovery should be for a particular period as against that demanded by the Respondent (in original Representation). However, as a matter of fact, nowhere, the order bars the Respondent (in original Representation) from approaching any Authority to recover its dues.

(c) I failed to understand as to why the Review Applicant, when it thinks that the Judgement of the Hon'ble Supreme Court allows it to avail the alternate remedy for recovery of dues, filed the instant Review Application with the undersigned.

(d) The Hon'ble Supreme Court in its Judgment at various paras has recorded as below:

Para 1.9

"It was further directed that the Appellant Corporation would not be entitled to recover the additional demand from the Respondent in this case, and only the question of law would be determined."

Para 7 page 15

"The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 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.""*

Para 8

"Section 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 years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand."

Para 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 of fact, 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 of fact 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 supplied)

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."

The Hon'ble Supreme Court at para 1.9 has clearly directed that the Appellant Corporation would not be entitled to recover the additional demand from the Respondent in this case. Similarly, at para 7, it has recorded the observations of the Standing Committee with respect to recovery wherein it is said 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. The Hon'ble Supreme Court at para 8 has clearly recorded that Section 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 years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand.

Therefore, there are two takeaways from the Judgment of the Hon'ble Supreme Court:

(i) Recovery cannot be made for arrears pertaining to the period prior to two years from consumers unless the arrears have been continuously shown in the bills.

(ii) Section 56(2) does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years.

14. I note that the undersigned issued the order in Representation No. 220 of 2019 on 13.02.2020 whereas the Judgment of the Hon'ble Supreme Court is issued on 18.02.2020. Therefore, there is no question of review of the order dated 13.02.2020 in light of the Judgment issued at the later date i.e. on 18.02.2020. The Regulation 19 of the CGRF Regulations cannot be invoked in this case.

15. In view of the above discussions, there is no need to review the order in Representation 220 of 2019 as it is devoid of merits. Further, I also do not find it necessary to indulge in other issues raised by the Respondent in this Review Application.

16. The Review Application is disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)