

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 37 OF 2023

In the matter of billing

Parag Harihar ThakurAppellant
(Cons. No. 003011219437)

Vs.

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

Appearances:

Appellant : Parag Harihar Thakur

Respondent: 1.Narendra Sangepu, Dy. Executive Engineer, Boisar Sub. Dn.
2. Darpan Patil, Asst. Accountant, Boisar Sub. Dn.


Coram: Vandana Krishna, [I.A.S.(Retd.)]

Date of hearing : 25th April 2023

Date of Order : 12th May 2023

ORDER

This Representation was filed on 17th March 2023 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 23rd January 2023 passed by the Consumer Grievance Redressal Forum, Vasai(the Forum).


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2. The Forum, by its order dated 23.01.2023 partly allowed the grievance application in Case No. 105/2022. The operative part of the order is as below:

2. *“Respondent is directed to set aside the bill issued in August 2021 and issue revised bill within seven days making it limited to 24 months with 890 units per month prior to date of detection excluding DPC & Interest and after adjusting payments made by consumer during this period.*
3. *Respondent shall grant six equal monthly instalments for payment of revised bill, which shall be paid by consumer along with current monthly bill subject to condition that a single default on the part of consumer will authorize Respondent to recover the dues in lump-sum with applicable future interest.*
4. *Respondent shall issue new connection against above PD connection after applicant pays first installment and completing the required formalities for new connection.”*

3. The Appellant filed this representation against the above order dated 23.01.2023 of the Forum. An e-hearing was held on 25th April 2023 where the Appellant and the Respondent were heard through video conferencing at length. The written submissions as well as the arguments of the Appellant are as under:


- (i) The Appellant is a residential consumer (No. 003011219437) from 26/01/2010 at flat No.9, ‘Heena Apartment’, Sambhav Nagari, PD Nagar, Behind Ramdev Hotel, Boisar, Tal. and Dist. Palghar.
- (ii) It is pertinent to note that, the Appellant by his letter dated 04.05.2017 had requested to replace the faulty meter, but no cognizance was taken by the Respondent. The Appellant was billed based on either Lock, Reading Not Taken (RNT), Inaccessible or faulty status from the year 2014. The Appellant was regular in payment of electricity bills till August 2020. After that, the Respondent issued credit bills from Sept. 2020 to April 2021. Then, the Appellant received an exorbitant bill amounting to Rs.8598.97 in May 2021. The Appellant visited the office of Assistant Engineer Boisar and brought to his notice that the said bill sent was exorbitant. The Respondent assured for appropriate bill revision, but instead,


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started excessive billing from April 2021 to July 2021. Later, the Respondent admitted their mistake that wrong bills were issued due to oversight from April 2021 to July 2021. The Appellant met various authorities of the Respondent for bill revision; however no bill revision was done.

- (iii) On the contrary, the Appellant suddenly received an exorbitant bill of arrears from January 2014 to August 2021 of Rs.7,82,641.48 in August 2021. The Appellant was shocked to see such a huge bill. The Appellant brought this fact to notice of the Respondent, who assured him that the said bill would be revised. The Respondent issued a provisional handwritten bill of Rs. 5,29,480/-. However, surprisingly, the Respondent disconnected his supply in the month of October 2021 without any prior notice. The Respondent did not restore supply despite repeated requests. The Appellant was unable to pay such a huge exorbitant bill. The Appellant is without power supply from Oct. 2021 till date.
- (iv) The revised bill of Rs.5,29,480/- issued by the Respondent is illegal and violates the provisions of Section 56(2) of the Electricity Act, 2003. Therefore it is necessary to quash it in toto.
- (v) The Appellant by his letter dated 12.10.2021 also requested to waive off the total outstanding bill due to Covid-19 pandemic. However, the Respondent did not take any step to solve the grievance.
- (vi) The Appellant filed a grievance in the Forum on 14th Dec. 2022. The Forum, by its order dated 23.01.2023 partly allowed the grievance application. The operative part of the order is captured in Para 2.
- (vii) The Forum failed to understand the basic issue. The meter reader failed to take monthly readings properly from 2014 till 2021. The Forum was very casual and illegally held that, the reading in January 2017 was 8500 units and the reading in August 2021 was 57452 units.
- (viii) The Appellant referred to the Judgement dated 12/03/2019 of the Hon'ble Bombay High Court in WP No. 10764/2011 wherein it was held that the Distribution Licensee cannot demand electricity charges for more than 2 years preceding the


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date of the first demand of such charge. The Distribution Licensee has to raise the demand by issuing a bill. The bill may include an amount for a period preceding more than two years, provided the condition set out in Section 56(2) is satisfied.

- (ix) Unfortunately, the Forum illegally held that the Respondent to issue a revised bill for 24 months as per average of 890 units per month prior to the date of detection. Accordingly, the Respondent has once again issued an exorbitant and arbitrary bill of Rs.3,19,880/- for the period from September 2019 to August 2021 when there were no such arrears ever shown by the Respondent prior to August 2021.
- (x) The Appellant prays that the order passed by the Forum be set aside and the Respondent be directed :
- a) to revise the bill in view of Judgement of Hon'ble Bombay High Court in Writ Petition 10764/2011 dated 12/03/2019.
 - b) to restore the electricity connection to the Appellant immediately.
 - c) to pay compensation of Rs. One lakh towards mental torture, harassment, physical exertion, and cost.

4. The Respondent, by its letter dated 08.04.2023 has submitted its written reply. Its submission along with its arguments are stated in brief as below:

- (i) The Appellant is a residential consumer (No. 003011219437) from 26/01/2010 having sanctioned load of 0.8 KW at flat No.9, 'Heena Apartment', Sambhav Nagari, PD Nagar, Behind Ramdev Hotel, Boisar.
- (ii) The Respondent inspected the premises of the Appellant on 20.08.2021, when it was found that the Appellant was being grossly under billed. The meter (Genus make Sr. No. 2166515) was working with an accumulated reading of 57631 KWH. Accordingly, the Appellant was billed provisionally in the month of August 2021 for Rs. 7,82,641/- for 48952 (57631-5221) units for the period from Jan 2014 to August 2021.
- (iii) The Respondent revised the said accumulated bill (B – 80 ID 12232454) for the period of Jan. 2014 to Aug. 2021 to give Slab benefit to the consumer. The bill



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was revised for Rs. 5,19,667/- by giving a credit of Rs.2,62,974/- (7,82,641-5,19,667).

- (iv) **The Respondent investigated the reason why the Appellant was being under billed. It was found that the Route Sequence of the other meters of the Appellant's Society and that of the Appellant was different, thereby resulting into non reading of the meter of the Appellant consumer for several months. This was the root cause of the accumulated consumption in the Appellant's meter.**
- (v) The Appellant filed his grievance before the Forum on 14.12.2022. The Forum, by its order dated 23.01.2023 partly allowed the grievance application. The operative part of the order is captured in Para 2. The Respondent complied with the Forum's order, and the bill was further reduced to Rs.3,19,884/- for the period from September 2019 to August 2021 on 23.01.2023. The Respondent issued an automatic disconnection notice through the System for payment of outstanding dues as per Section 56(1) of the Act. The Appellant neglected to pay the dues, so the Appellant was disconnected in September 2021 and permanently disconnected in Nov.2021.
- (vi) The load of Appellant was found to be 2.5 KW against the sanctioned load of 0.8 KW. He was found to be using an Air conditioning Unit. The Appellant was previously billed for some time with one unit only, however, he never complained about the under billing.
- (vii) In view of the above scenario, it is requested to reject the representation of the Appellant.

5. During the course of hearing, interim relief was given to the Appellant, and the Respondent was directed to release the connection to the Appellant on payment of Rs. 50,000/- plus the statutory charges required for the new connection. The meter to be tested in front of the Appellant. In compliance of these directions, the Respondent vide its email dated 03.05.2023 informed that the meter was tested in front of the consumer, and the meter was


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found in order. The Appellant has also paid Rs.50,000/-. The connection will be released shortly after payment of statutory charges.

Analysis and Ruling

6. Heard the parties and perused the documents on record. The Appellant is a residential consumer from 26/01/2010 having sanctioned load of 0.8 KW at flat No.9, Heena Apartment, Boisar. The Appellant was billed on the basis of RNT status from 2014 to 2021. The readings could not be taken during this period because of a mistake in the route sequence of the Appellant's meter. The Respondent inspected the premises of the Appellant on 20.08.2021. During inspection, it was observed that the Appellant was being under billed, and the meter (Genus make Sr. No. 2166515) was working with accumulated reading of 57631 KWH. The Respondent initially issued a provisional bill for Rs. 7,82,641/- of 48952 (FR 57631-IR 5221) units in August 2021 for the period of Jan. 2014 to Aug. 2021. The Respondent subsequently revised this bill to Rs. 5,19,667/- by bifurcating the said bills for the period from Jan. 2014 to Aug. 2021 to give slab benefit.

7. According to the Respondent, a Route Sequence of meter locations in a particular area are normally allotted on building / road basis. In this case, there was a mismatch of the Route Sequence of this consumer, which was not located on the correct route, which resulted in non-reading of the Appellant's meter for several months. This was the root cause of the accumulated consumption in the Appellant's meter. Actually, the consumption of the Appellant was on the higher side due to use of Air Conditioner in his residence, and the connected load was found to be 2.5 KW against the sanctioned load of 0.8 KW.

8. The following data is extracted from the CPL of the consumer:-



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Sr. No.	Description	KWH	Month/Period	Period (Months)	Avg. Cons./month
1	Initial Reading of Jan.2014	5221	Jan-14	37	89
2	Final Reading on Jan.2017	8500	Jan-17		
3	Cons. from Jan 2014 to Jan 2017 (8500-5221=3279)	3279	Jan. 14 to Jan.17		
4	Actual Reading on Aug. 2021	57452	Aug-21	56	874
5	Cons. From Jan 2017 to Aug 2021(57452-8500=48952)	48952	Jan.17 to Aug 21		
6	Cons. From Jan 2014 to Aug 2021(57452-5221=5231)	52231	Jan 14 to Aug 21	92	568

From the above table, it is seen that the long-term average consumption from Jan 2014 to Jan 2017 was 89 units per month. However, average consumption from Jan.17 to Aug 21 was found to be 874 units per month. This is based on the alleged meter readings of 8500 in Jan 2017 and 57452 KWH in Aug 2021. A rounded figure of 8500 KWH in the meter reading of January 2017 raises a doubt about the authenticity of this reading. The Forum, in its order has correctly observed that only 24 months billing can be done retrospectively. However, its assumption or calculation of 890 units consumption per month seems faulty and doubtful. The average taken by the Forum for 24 months of 890 units per month is quite close to the average consumption from Jan 2017 to Aug 2021 (874 units per month), but only if the final reading of Jan 2017 is taken as 8500 KWH. However, the average from Jan 2014 to Jan 2017 was observed to be only 89 units per month, if its final reading is taken as 8500 KWH. It is quite difficult to digest such a huge jump in average consumption from 89 to 890 units per month. Hence, this assumption of the Forum of an average consumption of 890 units is set aside and modified. Considering the Appellant's long-term use and also taking the more reliable meter readings of 5221 KWH and 57452 KWH, it is more practical to consider long term average for the period from Jan 2014 to Aug 2021 which is established as 568 units per month.

The meter of the Appellant was tested and found in order. Hence, the accumulated consumption of 568 units based on this meter's more reliable readings can be considered for 92 months from January 2014 to August 2021. The Appellant has actually consumed these units as measured by the meter. However, the Respondent needs to correct its mistake by


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restricting its retrospective bill to the limitation period of 24 months, as per Section 56 (2) of the Act.

The case needs to be decided in view of the Larger Bench Judgment dated 12.03.2019 of Bombay High Court in W.P. No. 10764 of 2011 with other WPs. The relevant portion of Section 56 (2) of the Act and the Larger Bench Judgment is quoted below.


Section 56 (2) of the Act

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

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

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


77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month-to-month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for


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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 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 to be read like statutes. The Judgments



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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.*
- 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.*


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C. The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.

Secondly the Hon'ble Supreme Court in its Judgment dated 18.02.2020 in Civil Appeal No. 1672 of 2020, Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited & Anr. V/s Rahamatullah Khan alias Rahamjulla has ruled 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.
.....”

Considering the provision of Section 56(2) of the Act and the interpretation of the Larger Bench Judgment dated 12.03.2019 of Hon'ble Bombay High Court in W.P. No. 10764 of 2011 and the Hon'ble Supreme Court Judgment dated 18.02.2020 in Civil Appeal No. 1672 of 2020, the Respondent can recover retrospectively for only 24 months prior to Sept. 2021.

In these circumstances, the Forum's order is modified as below.

9. The Respondent is directed :

- a) to revise the bill for the period of 24 months only from September 2019 to August 2021 considering average consumption of 568 units per month and to withdraw interest and DPC levied, if any.
- b) to reconnect the power supply after payment of the statutory charges as Appellant has already paid Rs.50,000/- as per directions in the hearing.


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- c) to allow the Appellant to pay the balance amount in 6 equal monthly instalments without any interest and Delayed payment charges. If the Appellant fails to pay any installment, the interest would be accrued as per rules and regulations in force.
- d) to submit the compliance report within two months from the date of this order.

10. The secretariat of this office is directed to refund the amount of Rs. 25000/- taken as deposit to the Respondent to adjust in its ensuing bill.

11. The Representation is disposed of in view of above order.

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


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