

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 60 OF 2021

Admissibility of the representation in the matter of excess billing

Mehr-Dad Co-operative Housing Society..... Appellant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking Respondent
Customer Care (A Ward) (BEST Undertaking)

Appearances:

Appellant : Subhan T. Khan, Representative

Respondent : G.G. Chandankar, Dy. Chief Engineer, Customer Care (South)

Coram: Deepak Lad

Date of hearing: 26th October 2021

Date of Order : 28th October 2021

ORDER

This Representation is filed on 16th September 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 5th November 2020 passed by the Consumer Grievance Redressal Forum, BEST Undertaking (the Forum) in Grievance No. S-A-408-2020.


2. The Forum, by its order dated 05.11.2020 has dismissed the grievance application.


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3. Aggrieved by the order of the Forum, the Appellant has filed the representation which is stated in brief as under: -

- (i) The Appellant is a consumer (No. 220-205-049) under Residential category having Sanctioned Load of 33.790 KW at Plot No. 64, Mehr-Dad Building, G.D. Somani Marg, Cuffe Parade, Mumbai 400 005. The said connection is used for common use by the Society.
- (ii) The Respondent has replaced the old meter No. 907157 by new meter No. M186951 on 22.10.2018. The Respondent has issued the supplementary bill of Rs 22,37,680/- for wrong billing for the period from August 2012 to October 2018. The Appellant has given written complaint of high billing on 16.07.2019. However, the Respondent did not revise the bill.
- (iii) The Appellant had received a letter dated 14.08.2019 from Customer Care A-Ward of the Respondent claiming that the supplementary bill of Rs 22,37,680/- is correct. The said demand of the Respondent is illegal and unjust.
- (iv) The Respondent has converted the defective meter case into wrong billing case. Afterthought, the Respondent generated wrong billing I.D. and they made claim for 6 years from August 2012 to October 2018 with average of 2400 units per month and generated the supplementary bill of Rs 22,37,680/- and the amount is debited in its regular billing.
- (v) The Appellant filed the grievance in Internal Grievance Redressal Cell (IGRC) on 16.12.2019. The IGRC, by its order dated 31.01.2020 has rejected the grievance.
- (vi) The Appellant received letter from the Respondent dated 14.08.2019 which states that there was no defect in the meter. The same was upheld by the IGRC vide its order dated 31.01.2020. However, considering the following substances, the meter was defective.
 - (a) Meter reader did not count last digit of reading which is not true because meter readers of the Respondent are not new persons, they are well expert persons. Not only one reader has taken reading, but 3 other readers had taken readings in last more than 6 years.


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- (b) The Respondent has stated that meter display digit cannot be seen is not true because meter was not burnt, nor smoky, so how could not they read all the digits of the meter. The submission of the Respondent that the meter is in order, is not true.
- (c) Considering approximately 2400 units per month, meter will reach 00 reading after 35 years. The consumer ledger shows average of 1900 to 2500 units consumption per month. The Respondent did not check the system of meter reading for a period of six years and therefore, it is not the fault of the Appellant. It is also not understood why the meter was replaced when it was in order. Why the meter was not checked in presence of Appellant and how the Respondent declared the meter in order without checking. The Respondent failed to detect the mistake of the meter readers in reading the meter for 6 years.
- (d) The Respondent stated that on request of Audit department meter was replaced which is not true because Audit department do not request to directly replace the meter.
- (e) It is informed jointly by the Appellant's Society Manager, Water pump operator and Society's electrician that some officers of the Respondent visited the premises twice and did some testing and discussed within themselves about the improper working of the meter. When the Respondent came to replace the meter, at that time also the officer informed the society manager and water pump operator that meter is defective and then they came to replace the meter.
- (vii) Meter being defective, as per Regulations of the Commission, recovery for three months could only be made.
- (viii) The submission of the Respondent that the Appellant used power for six years is not true. The Appellant states that it has used less electricity for a long time because the Gym was not functioning at all due to some dispute among the society members.
- (ix) Thereafter, the Appellant approached the Forum on 04.03.2020. The Forum, by its order dated 05.11.2020 has dismissed the grievance. The Forum failed to understand the basic issue of the case.



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- (x) The Judgment dated 20.08.2009 in W.P.No. 7015 of 2008 of Hon'ble Bombay High Court in case of Rototex Polyester & Anr V/s. Administrator, Administration of Dadra and Nagar Haveli (U.T.) Electricity Department, Silvassa and Others referred by the Forum is not applicable in this case.
- (xi) The Appellant referred the case of CPRA garden at Cuffe Parade Mumbai where the meter was not read for seven years and the Respondent raised the bill for seven years, however, the Hon'ble Bombay High Court has directed to revise the bill for three years.
- (xii) The Appellant referred another very old case of defective meter of Laffan Showroom at Rustom building, Peer Nariman Road, Fort, Mumbai 400001. Here BEST A-ward given high bill for average billing. The consumer approached the High Court and Court given order in favor of BEST Undertaking, Therefore the consumer approached in The Supreme Court and the court given order in consumer favor.
- (xiii) The Appellant prays that the Respondent be directed to revise the supplementary bill as per the rules and regulations of the Commission.

4. The Respondent has filed its reply by email dated 25.10.2021 which is stated in brief as under:

- (i) The Appellant is a consumer (No. 220-205-049) under Residential category having Sanctioned Load of 33.790 KW. The said connection is for common use of the Society.
- (ii) The Forum, by its order dated 05.11.2020 has rejected the grievance of the Appellant. Then the Appellant has filed the instant representation on 16.09.2021 which is almost after 10 months. Regulation 19.1 of the CGRF Regulations 2020 mandates filing of appeal within 60 days from the date of the order of the Forum. However, the Appellant is giving the excuse of Pandemic conditions for delay in filing this Representation. It is to point out that the Appellant had insisted for physical hearing and not through video conferencing before the Forum. In view of this, the case was heard on 29.10.2020 before the Forum during which lockdown restrictions were relaxed to some extent. The order was issued on 05.11.2020.



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Hence, the Appellant ought to have filed this instant representation against the Forum's order on or before 05.01.2021, during which the Pandemic restrictions were highly relaxed. Hence, the reason cited for delay in filing the instant representation by the Appellant may not be considered.

- (iii) In the month of April 2012, meter counter was progressive with then current reading as 993670. The meter reader has not recorded reading properly from May 2012 onwards (the first digit from the right side was not recorded).
- (iv) In the present Representation and before the Forum, the Appellant has insisted that meter was defective. It is already clarified and established that it is a case of escaped billing wherein the Appellant was not charged with actual units consumed and shown by the meter during period August 2012 to October 2018. The meter was not defective. Prior to August 2012, average consumption recorded was around 2500 units per month and no complaint of high bill / meter defective received from the Appellant for the same. During August 2012 to October 2018 the Appellant was charged around 250 units per month till meter was replaced. After meter replacement, actual consumption again switched over to what it was prior to August 2012. It means that monthly consumption of the Appellant in fact was in the range of 2500 units per month. This has triggered the Appellant to file a complaint. The clarification was given to the Appellant vide reply letter dated 14.08.2019.
- (v) Therefore, the bill was revised for the period August 2012 to October 2018 for escaped consumption thereby rectifying the error of the meter reader. There was no additional charge levied. It is important to note that there was nothing wrong with the meter during the impugned period which is disputed by the Appellant.
- (vi) In view of the factual position and delay in filing, the Representation may not be admitted.

5. The admissibility hearing on e-platform was held on 26.10.2021. At the outset, when the representative of the Appellant was asked whether he has the authorisation to represent, he said that the authorisation is in the name of his father, Mr. Tahir A. Khan. He was therefore directed to submit authorisation in his name (Subhan T. Khan) immediately after the hearing is over.


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6. During the hearing, the Appellant argued in line with his written submission covering all points mentioned above. Similarly, the Respondent argued various points covered in its submission. The main submission of the Appellant is that the meter is defective and therefore, the Respondent cannot issue supplementary bill for more than 3 months as per Regulatory provisions. On the contrary, the Respondent argued that it is not a case of defective meter but a mistake on the part of the meter readers in taking readings to the extent that they missed the Unit digit of the reading counter of the meter. This is post completion of one full round of the reading counter which means starting the counter again from 00. It also argued that before the reading counter achieved a status of 00 for all digits, consumption of the Appellant is very much comparable with that of replacement of meter and thereby detection of mistake. This error of not considering the Unit digit of the reading counter unfortunately continued for a period of 6 years. Therefore, the Appellant remained underbilled which is rectified by way of passing debit for the underbilled consumption in the bill of November 2019 with due intimation to the Appellant from time to time.

Analysis and Ruling

7. Heard the parties and perused the documents on record. The representative of the Appellant submitted his authorisation. I noted following important points in this case:

- (a) Prior to August 2012, the Appellant was billed as per the actual reading and for a consumption of about 2000 to 2500 units per month. Inter-alia, consumption was in 4 digits. The Appellant did not raise any issue with respect to this billing.
- (b) After October 2018 (after replacement of meter), the Appellant was billed as per the actual reading and for a consumption of about 2119 (lowest) to 3083 (highest) units per month during November 2018 to August 2019. Inter-alia, consumption was again in 4 digits. The Appellant did not say anything on this, nor did it contest this consumption post October 2018.
- (c) However, it is only during August 2012 to October 2018, the Appellant was billed for a consumption of 188 units (lowest) and 537 units (highest). Inter-alia, consumption during this period was in 3 digits. For obvious reasons, the Appellant did not raise any issue.


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8. It is therefore clear that the consumption of the Appellant for common facilities is in 4 digits, ranging, in general, from 2000 to 3000 units. It therefore can be conclusively said that the Appellant was underbilled during August 2012 to October 2018. Ongoing through the initial and final readings of meter for July 2012, it is seen that the meter reading counter has completed the first round as the Appellant was billed for 2001 units (initial reading 998040 and final reading 41). Then afterwards till October 2018, monthly consumption is in 3 digits only.

9. The Forum passed the order on 05.11.2020 which inherently mentions that if the complainant is not satisfied with the order of the Forum, he can file an appeal with the Electricity Ombudsman (Mumbai) within 60 days from the date of the order. Not only this, but it did also mention the address of the office of the Electricity Ombudsman (Mumbai). The entire set of information forms the part of the order.

10. To cap it all, the office of the Forum sent its order through a covering letter bearing No. 128 dated 09.11.2020 which also mentions that the appeal against the order of the Forum can be made within 60 days from the date of its order to the office of the Electricity Ombudsman (Mumbai). Therefore, there was no scope for the Appellant to have not noticed this information which has been exclusively mentioned.

11. The Forum passed the order on 05.11.2020. The appeal period expires on 05.01.2021. The Appellant filed the instant Representation on 16.09.2021. The Appellant attributed the delay in filing the representation to Covid-19 epidemic and conditions arising out of it. It has, therefore, become necessary to examine it in this backdrop.

12. In view of the Hon'ble Supreme Court Judgments with respect to limitation period due to Covid-19 epidemic, and the fact that Government of Maharashtra issued various orders with respect to imposition of lockdown and subsequent easing out the same (Mission Begin Again), the lockdown has practically ended on 30.06.2020. However, the Hon'ble Supreme Court vide its order dated 08.03.2021 has further extended the limitation period up to 15.03.2021. Even with this logic, the Appellant could have well filed this Representation by 15.03.2021 but the


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Appellant filed the instant Representation on 16.09.2021. Therefore, here also, it is delayed by 6 months without any cogent reasons.

13. The Hon'ble Supreme Court in its Judgment dated 13.03.2019 in Civil Appeal No.2960 of 2019 has laid down that there is no necessity to go on merits and the plaint can be rejected if it is clearly barred by limitation.

14. Regulation 17.2 of the CGRF Regulations 2006 is reproduced below: -

“17.2 Any consumer, who is aggrieved by the non-redressal of his Grievance by the Forum, may make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the order of the Forum.

Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he is satisfied that there was sufficient cause for not filing it within the said period.”


Regulation 19.1 of the CGRF Regulations 2020 is reproduced below: -

“19.1 Any Complainant, who is aggrieved by the non-redressal of his Grievance by the Forum, may, either directly or through his duly authorised representative, make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the Order of the Forum:

Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he/she is satisfied that there was sufficient cause for not filing it within the said period.”

15. Considering the entire sequence of events, including the orders of the Hon'ble Supreme Court, I do not find any substantial reason whereby the prayer of the Appellant for condonation of delay can be considered. Therefore, the delay is not condoned, and the Representation is rejected not being admissible.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

