

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 69 OF 2022

In the matter of billing

Mrunal Madhukar KanekarAppellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Vasai (MSEDCL).....Respondent

Appearances:

Appellant : Santosh S. Parkar, Representative
Respondent : 1. A. S. Mirza, Addl. Executive Engineer
2. V. M. Gokhale, UDC

Coram: Vandana Krishna (Retd. I.A.S.)

Date of hearing: 15th July 2022

Date of Order : 5th August 2022

ORDER

This Representation was filed on 25th May 2022 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 6th May 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum).

2. The Forum, by its order dated 06.05.2022 has partly allowed the grievance by directing the Respondent as below:

“2. Respondent shall grant 6 installments for payment of accumulated consumption bill of Rs.34,410/- and installments shall be paid by consumer along with current energy monthly bill.



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Secretary

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3. *MSEDCL shall, on payment of 1st instalment and reconnection charges and other statutory charges required if any, reconnect the existing supply.*”


3. The Appellant has filed this Representation being not satisfied with the order of the Forum. The hearing was held physically on 15.07.2022 where both the parties were present. The written submission of the Appellant along with his arguments are stated in brief as under:

- (i) The Appellant is a residential consumer (No. 001840674581) from 31.10.2007 with Sanctioned Load of 1 KW at B-402, Viva Complex -1, Near Shalimar Hotel, Waliv, Vasai (East), District Palghar. The Appellant’s premises are occupied by her relative namely Shri Santosh S. Parkar who is residing there from the year 2011.
- (ii) The Appellant’s supply was permanently disconnected by the Respondent on 17.03.2017 without any intimation. The Appellant paid the outstanding amount of Rs.560/-, however did not follow up for restoration of supply, as the premises was not in use from March 2017 onwards.
- (iii) As per the requirement of electric supply, the Appellant applied through online portal on 24.02.2022 for a new electricity connection in coordination with Sagar Enterprises, the electrical contractor. The Respondent did not process the application within the time frame as per Standards of Performance. On enquiry, the Appellant got to know that there is PD Final Bill of Rs.34,410/- with remark as “Not for Reconnection”.
- (iv) There are no arrears up to January 2022 as per the online portal of the Respondent, but only Rs.330/- was shown as a credit balance. Therefore, Appellant stated that the PD final bill of Rs. 34,410/- is a fictitious bill.
- (v) The Appellant made a written complaint on 21.03.2022 with the Nodal Officer, Vasai Circle for compensation in respect of non-receipt of new electricity connection on time. However, the A1 application for new electricity connection was rejected with a remark that “*Consumer Not Interested in connection (Reject Application)*”. The above action of the Respondent is illegal, and in violation of the standards of performance and the Electricity Act, 2003 (the Act).

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- (vi) The Respondent did not act on the complaint of the Appellant; therefore, the Appellant approached the Forum on 12.04.2022.
- (vii) Prior to this issue, the Appellant had filed a grievance application pertaining to the period May 2012 to October 2013 with the erstwhile Kalyan Forum on 09.10.2013 and that Forum had disposed of the case vide its order dated 11.02.2014 in favour of the consumer.
- (viii) The Appellant was billed as per actual reading of 2160 kWh on meter No.9812318891 up to December 2016. However, the Appellant was wrongly billed under 'faulty' status with an average consumption of 44 units for January 2017 and February 2017. Hence, it was informed by the Appellant vide letter dated 17.03.2017 to the Dy. Executive Engineer that the meter is faulty.
- (ix) On the same day i.e., on 17.03.2017, the Respondent disconnected the supply without any prior notice. A written complaint in this regard was given vide letter dated 18.03.2017. After that the said connection was shown as PD. The Respondent adjusted the arrears from security deposit and shown credit of Rs.280/- in April 2017 bill. The premises was not in use since April 2017 onwards, therefore, the Appellant did not approach the Respondent for restoration of supply.
- (x) The Appellant lodged a complaint several times orally and despite giving written complaint to the Deputy Executive Engineer vide letter dated 11.09.2017, no action has been taken on it. There was no use of the premises, since the occupier of the premises was at its native place for about 4 years, hence the Appellant did not follow up further with the Respondent.
- (xi) The Forum, by its order dated 06.05.2022 partly allowed the grievance by directing the Respondent to grant 6 instalments for payment of accumulated consumption bill of Rs.34,410/- and to reconnect the supply.
- (xii) The Forum did not understand the basic issue that the meter was PD and the Appellant's flat was not in use. The Appellant has objected to the Forum's observation that the Appellant has not made any complaint for reconnection of supply or new connection since 17.03.2017 to February 2022. The Appellant


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states that vide letters dated 18.03.2017 and 11.09.2017 the Appellant requested to restore the supply.

- (xiii) Similarly, the Forum wrongly observed that *“the consumer has not paid bill of Rs. 560 for month of January 2017 and February 2017, therefore Respondent has disconnected supply of Consumer and fed PD report in IT system. The supply reconnected on 17.03.2017 after payment of Rs. 560/-. But Respondent has forgotten to make entry of meter as ‘live’ in system, though meter was live physically at site. In month of Feb.2022 when licensee found said connection as live, they should have made it live in system instead of PD.”* This observation is totally wrong since the due date of the bill was 27.03.2017 and payment was made immediately on 17.03.2017 when the meter was removed. This is substantiated by his letters dated 18.03.2017 and 11.09.2017 made to the Respondent.
- (xiv) The Appellant objected to the alleged inspection done by the Respondent that there was a meter, and the meter reading was 5378 kWh till February 2022. This is an afterthought. The Appellant further stated that the application for a new connection was submitted on 24.02.2022 and the Representative / Occupier’s wife had taken a photo of the meter cabin on 18.02.2022 showing that there was no meter on site. Therefore, it is proved the report given by distribution licensee is false on purpose to harass and to charge the Appellant to pay previous calculation.
- (xv) The Forum’s observed in its order that *“Due to this, the consumer enjoyed the supply from March 2017 to February 2022 without paying single rupees as billing was stopped due to PD report submitted in IT system of Respondent in March 2017.”* This observation is wrong and imaginary.
- (xvi) The Forum has not taken into account the remarks on PD Final Bill *“Not for Reconnection”*.
- (xvii) The Appellant also pointed that the A1 form for new connection was rejected with a remark *“Consumer not interested for connection (Rejected Application)”* which is quite contrary to the subject matter of the case where PD final bill for



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5378 units of Rs.34,410/- is issued illegally for the month of February 2022 with a remark “*Not for Reconnection*”.

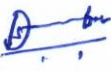
- (xviii) The Judgments referred by the Forum of the Hon’ble Supreme Court of India in Civil Appeal No. 7235 of 2009 and Hon’ble Bombay High Court, Bench at Aurangabad in WP No. 8613 of 2017 does not apply to this case.
- (xix) In view of above, the Appellant prays that the Respondent be directed as follows:
- (a) to cancel the bill of February 2022 of Rs.34,410/- in the name of PD final bill.
 - (b) to release new electricity connection along with new meter.
 - (c) to compensate for mental and physical harassment, and the expenses incurred.
 - (d) to compensate suitably for the non-use of the premises due to non-availability of electricity supply.
 - (e) Any other order that deems fit in the circumstances.

4. The Respondent filed its reply dated 21.04.2022. Its written submission as well as its arguments are stated in brief as below:

- (i) The Appellant is a residential consumer (No. 001840674581) from 31.10.2007 with Sanctioned Load of 1 KW at B-402, Viva Complex-1, Near Shalimar Hotel, Waliv, Vasai (East), District Palghar.
- (ii) The Appellant requested to restore the supply by providing a New Connection in the same premises and to withdraw the bill amounting to Rs.34,410/-.

History of the Case:

- (iii) The Appellant requested to replace the faulty Meter No. 2318891 of Flash make, and hence it was replaced by a new meter No.03461826 of Pal Mohan make on 27.12.2016. The Appellant was billed on average of 44 units per month by faulty status in January 2017 and February 2017. It is noticed that the new meter reading of 26 kWh and 66 kWh is clearly seen on the photo of the meter on the bills of January 2017 and February 2017. It means that the Appellant used supply by the new meter from January 2017 onwards. The Appellant was in arrears for Rs.560/-. The Appellant’s supply was permanently disconnected due to financial year closing.


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For this, the Appellant self-submitted photocopy of meter removed at site. Then after payment of bill Rs.560/- on 17.03.2017, the supply was restored but in the system, PD to Reconnection was not fed, so the Appellant remained unbilled from March 2017 onwards, and is 'live' at site physically.

- (iv) Now the Appellant has approached for a New Connection through electrical contractor, Sagar Enterprises on 24.02.2022 by Application ID No. 39090572. Before this new connection can be released, a survey was done by Waliv Section office. It is noticed that a meter No.03461826 which was installed in December 2016 is still physically present at site, and on that meter, reading was 5378 kWh till up to February 2022. The Respondent issued PD final bill for 5377 units amounting to Rs.34,410/- to contractor person and also debited in March 2022 billing cycle month. That the said bill amount is liable to be paid by the Appellant because supply is consumed by him.
- (v) The Respondent has stated that it is a case of 'escaped billing' of accumulated consumption of 5377 which is recorded by the meter till February 2022. Hence, as per Regulation 4.4.1 of the Supply Code & SOP Regulations 2021, the Respondent is authorized to recover charges for electricity supplied.

"4.4.1 The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariffs as may be fixed from time to time by the Commission."

- (vi) The Respondent has also referred the Judgments of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017. This is in favour of utility for recovery of charges for electricity actually supplied. The relevant portion of the Judgement is reproduced below:

"33. Consequentially, due to the under recording of the meter, the consumer has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under recording.

34. Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as per the prescribed rates. The consumer, therefore, has to pay full charges for the electricity actually consumed."



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Further, the Hon'ble Supreme Court of India in its Judgment in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. & Others has differentiated application of Section 56 of the Electricity Act, 2003 for escaped assessment and held that :

“23. Coming to the second aspect, namely, the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Subsection (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words “where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him”.

24. Sub-section (2) uses the words “no sum due from any consumer under this Section”. Therefore, the bar under Subsection (2) is relatable to the sum due under Section 56. This naturally takes us to Subsection (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.

25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, “no sum due from any consumer under this Section”, appearing in Sub-section (2).

26. The matter can be examined from another angle as well. Subsection (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person “neglects to pay any charge for electricity”. The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahmatullah Khan and Section 56(2) will not go to the rescue of the appellant.”

The present case is a clear case of ‘escaped billing’ due to a bonafide mistake, therefore, in view of above observation, the supplementary bill towards unclaimed electricity charges is payable by the Appellant. It is, therefore, prayed to dismiss the Representation of the Appellant.



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Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is occupier of the premises at B-402, Viva Complex -1, Near Shalimar Hotel, Waliv, Vasai (East), District Palghar having electric connection bearing Consumer No. 001840674581.

6. The Respondent contended that the electric supply of the Appellant was permanently disconnected by the Respondent on 17.03.2017 against the outstanding dues as a special drive for the closing financial year. The Appellant paid the outstanding amount, and hence the meter was reinstalled. However, the Appellant remained 'permanently disconnected' in the system by mistake and was supposed to be made Live. Therefore, he remained unbilled. Then on 24.02.2022, the Appellant applied for a new connection. Thereafter, Respondent visited the site and observed that the meter No.03461826 was physically on site, and on that meter, reading was 5378 kWh till up to February 2022. Hence, the Respondent issued PD final bill for 5377 units amounting to Rs.34,410/- and also debited in March 2022 billing cycle month. Hence, it is a case of escaped billing of accumulated consumption, and the Respondent is authorized to recover charges for electricity supplied.

7. The Appellant reiterated that the Respondent did not fix the meter after permanently disconnecting the connection in March 2017 despite the payment of outstanding dues. The occupier was at his native place for about 4 years and the premises was not in use. Hence, electricity supply was not necessary for that period. Later on, the Appellant applied for a new connection on 24.02.2022. The Respondent rejected the application for the new connection since there were alleged arrears of Rs. 34080.92 for 5377 units. The Appellant requested to withdraw these alleged arrears and release the new connection.

8. From the above discussion, it is observed that the Respondent replaced the faulty Meter No. 2318891 of Flash make by a new meter No.03461826 of Pal Mohan make on 27.12.2016. The Appellant was billed wrongly with 'faulty' status of 44 units per month in January 2017 and February 2017 on the old faulty meter No. 2318891 in the system. However, the photo of counter display of meter on the bills of January 2017 and February 2017 shows the reading as


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000026 and 000062 respectively on the new meter No.03461826 of Pal Mohan make. This clearly establishes that the Respondent replaced the meter, but it was not updated in the system. The Appellant was in arrears of Rs.558.79 as per bill of February 2017. The Respondent wrongly disconnected the supply of the Appellant for such a small amount of arrears and also entered 'PD' in its system. Many similar cases have come up before this Forum, wherein the consumer has taken advantage of the wrongful 'PD' status by enjoying electric supply without being billed for it.

9. On close scrutiny of the letter dated 11.09.2017 of the Appellant to the Respondent, the Appellant submitted that the old faulty meter is not replaced, and unnecessarily it is shown as PD, and it should be regularized. This indicates that some meter was fixed on site. The Appellant applied on 24.02.2022 for a new connection and as per this application, the Respondent inspected the site. During this inspection, it was found that the meter No. 03461826 of Pal Mohan make was on site with an accumulated reading of 5378 kWh.

10. I am of the opinion that the Appellant has approached the grievance redressal mechanism with an ulterior motive for taking advantage of the poor-quality functioning of the Respondent for not updating the system and making the consumer 'live'. The case fits into the maxim '*He who seeks Equity must do Equity*'. The Forum has rightly observed that the Appellant has not approached the grievance redressal mechanism with clean hands.

11. Regulation 12.5 of the Supply Code & SOP Regulations 2021 speaks about the liability of outstanding dues on the premises is to be cleared. The said Regulation is quoted as below:

"12.5 Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Consumer or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be."



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12. The order of the Forum is a reasoned and speaking one. The Forum has rightly analysed the case, hence, there is no necessity to interfere with its order.

13. The secretariat of this office is directed to refund Rs.17,205/- taken as deposit from the Appellant by adjusting in the PD bill.

14. The Representation is disposed of accordingly.

15. The Secretariat of this office is directed to send a copy of this order to the Chief Engineer, Kalyan Zone for taking appropriate action in the functioning of the Respondent.

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



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

