

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 11 OF 2020

In the matter of billing

Damayantiben B. Chheda. Appellant

V/s.

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

Appearances

For Appellant : 1. Harshad Sheth, Representative
2. Vinit H. Sheth, Representative


For Respondent : A. S. Mirza, Addl. Executive Engineer

Coram: Deepak Lad

Date of Order: - 30th April 2020

ORDER

This Representation is filed on 30th December 2019, it was incomplete due to nonpayment of deposit as required under the Regulations. Subsequently, this Representation, which is complete in all respect, is registered on 20th January 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 2nd December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan Zone (the Forum).



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2. The Forum, by its order dated 02.12.2019 has dismissed the consumer complaint No.K/E/1613/1949of 2019-20.

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is a LT Industrial Consumer (No.001590469790) from 17.12.1997, having Contract Demand of 61 KVA, at Gala No.13, Rajmilan Industrial Complex, Chinchpada, Vasai (East).The Appellant has paid all the bills raised by the Respondent from time to time.
- (ii) The Respondent has issued a wrong supplementary bill of Rs. 3,70,120/- for 42,649 units in June 2019 under adjustment head. The Appellant paid Rs.1,80,000/- under protest against this bill due to threat of disconnection.
- (iii) The Appellant was billed as per actual reading of 187909 KWH in July 2018. Thereafter, the display of the meter has gone in August 2018. The Respondent did not replace the said meter about for 11 months and the Appellant was billed either zero or fictitious consumption for 11 months. The Appellant has paid all these bills under threat of disconnection.
- (iv) Finally, the Appellant has brought the meter with own cost and then the old meter of 'No Display' was changed in April 2019.
- (v) The reading of the Appellant's meter is taken by downloading the data of the meter by Meter Reading Instrument (MRI). The Appellant requested MRI Report for last 12 months, however, it was not given. The Appellant requested to test the old meter No. 05791467 for MRI report or otherwise send the old meter to meter manufacturer for getting MRI data.
- (vi) However the MRI data was not retrieved and was not given to the Appellant. It clearly shows that the said meter is defective. The assessment therefore should be made as per the provisions of Regulation 15.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).
- (vii) The Appellant filed its grievance application in Internal Grievance Redressal Cell (IGRC) on 29.06.2019 for withdrawal of illegal recovery and meter be


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sent to Manufacturer for testing, if it was found defective, assessment be revised for three months only as per Regulation 15.4 of the Supply Code Regulations. The IGRC, by its order dated 16.09.2019 has rejected the grievance.

- (viii) Then, the Appellant approached the Forum on 24.09.2019. The Forum, by its order dated 02.12.2019 has dismissed the grievance. The Forum did not understand the main basic issue that there is nothing on record that the meter is working. The Appellant has brought its meter by own cost for replacement and hence the integrity of the Appellant is not questionable. The order of the Forum is bad in law and requested to be set aside.
- (ix) Documents show that the meter is defective and as per Regulation 15.4 of the Supply Code Regulations, the Respondent can recover three months assessment only.
- (x) The Appellant cited the orders of the Electricity Ombudsman, Mumbai in Representation No. 119 of 2019, 126 of 2019 and 121 of 2018 in support of the Case.
- (xi) The Appellant therefore, prays that the Respondent be directed
- to quash the supplementary bill of Rs. 3,70,120/- for 42,649 units in June 2019 along with interest and delayed payment charges
 - to issue bill only for a period of 3 months considering the meter is defective as per Regulation 15.4 of the Supply Code Regulations.
 - to refund excess amount paid with interest as per Section 62 (6) of the Electricity Act, 2003 (the Act) and be adjusted in the bill.

4. The Respondent filed its reply by letter dated 10.02.2020 stating in brief as under: -


- (i) The Appellant is a LT Industrial Consumer (No.001590469790) from 17.12.1997, having Contract Demand of 61 KVA and Connected Load of 65 HP at Gala No. 13, Rajmilan Industrial Complex, Chinchpada, Vasai (East).
- (ii) The Appellant was billed as per actual meter reading of 187909 KWH in month of July 2018 having consumption of 9149 units for July 2018. The


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Appellant was billed with zero unit in Aug-2018 and Sept- 2018. There was acute shortage of meter. The Meter of the Appellant was therefore not replaced. Afterward the Appellant was billed with 3000, 5000, 10000, 15000, 12000,12000,15000 units and zero unit for the months Oct-2018, Nov- 2018, Dec- 2018, Jan-2019, Feb-2019, Mar-2019, April-2019, and May 2019 respectively, as per Consumer's Personal Ledger(CPL).

- (iii) The Appellant made complaint of stop meter and requested to replace the stop meter only in April 2019. As per complaint of the Appellant, the Respondent visited the premises of the Appellant. During visit, it was found that there was 'No Display' to the Meter (No.05791467) even if the industrial Gala was working. The Appellant was aware that there is acute shortage of the meter. The Appellant bought its meter as per discussion. After duly testing the new meter, the old meter No.05791467 was replaced by new meterNo.19208660 on 26.04.2019. The MRI data of the meter was not retrieved. Hence, the old Meter (No.05791467) was sent to the Meter Manufacturer 'GENUS' for retrieving MRI Data for the period from 02.08.2018 to 26.04.2019. But 'Genus' Company also gave MRI Data up to 01.08.2018 only.
- (iv) While going through detail analysis of the CPL, the Appellant was billed as per actual reading and the monthly average consumption is in tune of 11951 units per month for the period of Sept- 2017 to July- 2018. After meter replacement, the average consumption was 10552 units per month.
- (v) The Appellant was billed on average basis during the period of August 2018 to May 2019 for 72000 units i.e the Appellant was billed with average of 8000 units per month. As such, considering previous average consumption of 11951 units per month before the 'No Display' of the meter and considering the consumption after replacement of meter of 10552 units per month, the Appellant was necessary to be billed for 119510 units, as against the Appellant was billed for 72000 units only. As such less billing of 47510(119510-72000) units need to be assessed as per consumption pattern. However, the Respondent has issued a supplementary bill of Rs. 3,70,120/- for 42649 units



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(instead of 47510 units) in the bill of June 2019 towards less recording during 'No Display' period i.e August 2018 to May 2019.

- (vi) After adjustment of recovery of 42649 units, average monthly consumption during period of August 2018 to May 2019 comes to 11465 units per month which is less than the previous average consumption of 11951 units per month.
- (vii) The Appellant did not complaint regarding the 'No Display' of the meter from August 2018 to April 2019. The Appellant made complaint first time in April 2019 of 'No Display' of the meter. The Appellant enjoyed 'No Display' Status for under billing and remained silent and not made any complaint for considerable long time.
- (viii) Therefore, the case of the Appellant does not come under Regulation 15.4.1 of the Supply Code Regulations.Undue advantage of this Regulation should not be given to the Appellant. The Forum, by its order dated 02.12.2019 has rightly rejected the grievance.
- (ix) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

5. During the hearing on 27.02.2020, both the parties argued at length and reiterated their respective submissions. The Appellant argued that the meter display was not functioning from August 2018 till date of replacement i.e. 26.04.2019.This new meter has been purchased by the Appellant at his own cost. The MRI Data was not retrieved for the old meter. The meter manufacturer has also not given any MRI data for units consumed from August 2018 to 26.04.2019 when the same was sent to them for retrieval. This clearly means that meter stopped recording due to some fault and ultimately, proves that meter was defective. As per Regulation 15.4.1 of Supply Code Regulations, in case if the meter is defective, the consumer is to be billed for maximum period of three months based on the average of previous twelve months. The Respondent has also charged interest and DPC.The Appellant therefore prayed to quash the supplementary bill and to issue bill only for a period of 3 months without any interest and DPC.


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6. The Respondent argued during the hearing that the reading is taken by its meter reading agency through MRI. There was no display of the meter from August 2018. There are large number industrial consumers in Vasai area. The Appellant was billed with zero unit for August 2018 and September 2018 and afterward, it was also underbilled in subsequent months. The Appellant never complained against No Display of the meter and average bill for the period August 2018 to March 2019. The Appellant complained only in April 2019 for the first time. There is an acute shortage of meter due to cancellation of meter tender. The meter replacement action is immediately taken in April 2019 by taking the consumer's meter. This is not the case where the meter was not replaced even if the Appellant has complained. Regulation 15.4.1 has separate angle and there is no question of applicability of Regulation 15.4.1 of Supply Code Regulations. The Appellant was silent when it was underbilled. The energy was consumed during the disputed period by the Appellant. The IGRC and the Forum have therefore rightly rejected the grievance as far as the applicability of Regulation 15.4.1.


Analysis and Ruling

7. Heard both the parties and perused the documents on record. It is the case of the Appellant that the meter was not showing any display and no MRI data was available for the period from August 2018 till the date of meter replacement i.e. 26.04.2019. The meter stopped recording hence the meter is defective and the consumer should be charged only for three months as per the provisions of Regulation 15.4.1 of the Supply Code Regulations. Regulation 15.4.1 provides as under: -

15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer's bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter alongwith the assessed bill.

Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for


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twelve months immediately preceding the three months prior to the month in which the billing is contemplated.

The Appellant has been charged on average basis for the long period from August 2018 to April 2019. The Forum, in its order dated 02.12.2019 has observed in its Reasoning paragraph that

.....
“It appear from the dispute that the consumer was receiving bill for the supply use admittedly for Industrial purpose. The connecting load is 65 HP whereas consumer was under bill for the units on the basis of average consumption for considerable long period till he makes complaint first time to the utility in the month of Apr-2019. In the month of April’19 the premises was visited by the Responsible officer by utility. The status of meter was verified, the old meter was found not display and new meter is installed. The meter replacement report dtd. 26/04/2019 file by utility supports this contention.”

.....
“It is seen from the record that no display status at the premises was found since July -2018 but till the month April-2019 no grievance was raised by the consumer. It appears that consumer enjoyed no display status and enjoyed the benefit of under billing. Actual consumption is used by him was higher but he remain silent and not made any complaint for considerable long time. In the month of April the meter was checked and found no display. It is incumbent on part of consumer to raise the dispute since July-2018 when no display status was seen by him, but it was no done so. The complaint which is filed by the consumer claim three months assessment period on the basis of report of laboratory testing available which is much letter at the time of hearing of the dispute on 16 Nov-2019. Therefore the consumer cannot avail the said benefit and cannot plead so, when the meter testing was required to be done immediately. The interpretation of 15.4.1 required to be made in positive sense in order to prevent loss of revenue.”

8. It is clearly established that the meter of the Appellant was faulty. The Appellant was billed on average basis from August 2018 to April 2019. The argument of the Respondent that the Appellant complained only in April 2019 does not hold good because every month the Respondent’s officer/ agency takes the reading . In fact, it has served bill for zero consumption in some months. In addition, the Appellant is an industrial consumer with contract demand of 61 KVA. It ought to have paid more attention to such subsidings


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consumer. It is not the case of the Respondent that it was not aware of issues of the said meter. There is utter negligence on the part of the Respondent. It is the Appellant which purchased the meter from the market and wired up after due testing. The Respondent could have done this by requesting the Appellant to purchase the meter at the initial stage itself as it was having knowledge of inventory of the meter. Therefore, there is no substance in the argument of the Respondent that the Appellant has enjoined the benefit of the faultiness of the meter and it has complained only in April 2019. If the argument of the Respondent that the Appellant has complained only in April 2019 is to be believed, does it mean to say/suggest that it would not have replaced the meter indefinitely. Therefore, arguments of the Respondent do not invoke any confidence. Moreover, the Respondent is also aware of the Regulatory provisions with respect to defective / faulty meter and issue of bill on average basis. For these very reasons, I do not agree with reasoning of the Forum and therefore pass the following order in view of Regulation 15.4.1 second proviso.

9. The Respondent is directed to revise the bill of the Appellant for August 2018 to April 2019 keeping in view the second proviso to Regulation 15.4.1 quoted above within 60 days from the date of this order. DPC and interest charged, if any, for the period is waived of.

10. Compliance of the order be sent within one month thereafter.

11. The Secretariat of this office is directed to refund the amount of Rs.25000/- to the Appellant immediately.

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Electricity Ombudsman (Mumbai)


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