

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 36 of 2023

In the matter of application of wrong Multiplying Factor

Karandikar Laboratories Pvt. Ltd.Appellant

V/s.

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

Appearances:

Appellant : Ajit Karandikar, CEO

Respondent : 1. Dilip Khanande, Superintending Engineer, Vasai
2. Swapnil Gharat, I/c Ex.Engr (Admin)
3. Narendra Sangepu, Dy.Ex.Engr, Boisar(R) Sub-Dn.
4. Rajiv Vaman, Asst. Law Officer

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 5th June 2023

Date of Order : 7th June 2023

ORDER

This Representation was filed on 21st 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

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dated 10th March 2023 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum).

2. The Forum, by its order dated 10.03.2023, partly allowed the grievance application in Case No. 11 of 2023. The operative part of the order is as below:

- “2. The Respondent shall revise supplementary bill issued in February 2023, for period from September 2020 to February 2023 considering multiplying factor as 20 (Twenty) instead of 1 (One) without interest and DPC.*
- 3. Respondent shall grant three equal monthly installments 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. The Respondent shall adjust the excess amount paid by the consumer if any, in future ensuing bills.”*


3. The Appellant filed this representation against the order of the Forum. The e-hearing was held on 05.06.2023 through Video Conference. Both the parties were heard at length. The Appellant’s written submission and arguments in brief are stated as below: -

- (i) The Appellant is an industrial consumer (No. 003659033320) from 10.10.2008 with Sanctioned load of 105 KW and Contract Demand of 87 KVA at Gat No. 142, Boisar – Chillar Road, Village – Betegaon, Boisar. The Appellant is using only about 35 KVA CD against the CD of 87 KVA.
- (ii) The Appellant is a nationally and internationally accredited test and calibration laboratory working in the fields of electro-technical, temperature and pressure.
- (iii) The consumption of the Appellant is normally in the range of 8000 to 12000 units per month, with billing in the range of Rs. 80, 000/- to 1,20,000/- per month, which is the main input cost which determines the sale price to the end customer.


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- (iv) The Appellant installed a 30 KW solar energy generating system with net metering as per approval of the Respondent in June 2020. The system was commissioned on 04.09.2020 and energy is exported to the grid through net metering. The monthly bills reduced to Rs.15,000/- per month from September 2020 from Rs. 80,000/- to 1,20,000/-per month. Due to this reduced input cost, the Appellant's competitiveness increased in the market. This cost reduction also helped the Appellant to survive the difficult times of Covid -19 pandemic.
- (v) The Respondent inspected the premises of the Appellant on 14.02.2023, and found that the Appellant was being wrongly billed with Multiplying Factor 1(one) instead of 20 (twenty). The Respondent issued a supplementary bill of Rs. Rs. 17,74,590/- to the Appellant in the month of February towards recovery of Multiplying Factor (MF) from 1(one) to 20(twenty) for the period of June 2020 to Feb. 2023 i.e., 33 months. The Appellant was shocked to see such a huge supplementary bill. This supplementary bill was later revised to Rs.13,48,091/- for the period from Sept. 2020 to Feb. 2023. The MF demand note covers past years' arrears.
- (vi) It should be noted that during this period, the Appellant was charging services to its customers at lower energy input costs. This amount is now non-recoverable and is a total loss to the Appellant.
- (vii) The Appellant filed its grievance application before the Forum on 22.02.2023. The Forum, by its order dated 10.03.2023 allowed the recovery for two and a half years. The operative part of the order is captured at Para 2.
- (viii) The Appellant has been paying energy bills regularly since the connection was granted. The Appellant has never defaulted in payment, and therefore feels that the recovery bill is unjustified.
- (ix) The Appellant cannot be saddled with arrears of past years, as it was not the Appellant's fault. The retrospective demand applicable from Sept. 2020 is totally


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illegal. The Appellant cannot be held responsible for the mistakes done by the Respondent. This is nothing but a deficiency in-service.

- (x) In view of the above, the Appellant prays that the Respondent be directed to set aside the supplementary bill of Rs. 13,48,091/- for the period from Sept. 2020 to Feb. 2023.and to issue a fresh bill.

4. The Respondent, by its letter dated 06.04.2023 has submitted its written reply. The written submissions along with its arguments are stated in brief as below: -


- (i) The Appellant is an industrial consumer (No. 003659033320) from 10.10.2008 with Sanctioned load of 105 KW and Contract Demand of 87 KVA at Gat No. 142, Boisar – Chillar Road, Village – Betegaon, Boisar.
- (ii) The Appellant had applied for 30 KW Solar Rooftop Net Metering connection in December 2019. Accordingly, the Respondent sanctioned 30 KW Solar Rooftop Net Metering connection in June 2020. After sanction, the Appellant purchased the necessary owner meters required for net metering connection which was tested at MSEDCL Vasai Testing Laboratory in September 2020.
- (iii) The connection was released by replacement of the meter in July 2020. The bill for the new (replaced) meter was generated in the month of September 2020.
- (iv) The Respondent inspected the electric installations of the Appellant on 14.02.2023 in the presence of the Appellant, and it was found that the net meter was installed of HPL make (Sr. No. 4000847) of poly phase having 5/5 A capacity, whereas the external Current Transformers (CTs) are connected having ratio of 100/5 A. The Appellant was being mistakenly billed with MF 1(One) instead of 20(Twenty). The MF in this case is calculated as below:-

$$MF = \text{External CT Ratio} / \text{Meter CT Ratio} = (100/5) / (5/5) = 20$$


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- (v) Accordingly, the Appellant is liable and under obligation to pay the difference amount of electricity consumed which was grossly under billed by 95% due to wrong applicability of MF 1(one) instead of MF 20 (twenty). This is “escaped billing” from Sept. 2020 to Feb. 2023. This mistake of MF was rectified, and the new MF 20 was fed in the Billing System from March 2023.
- (vi) The Respondent issued a supplementary bill of Rs. 17,74,590/- to the Appellant in February 2023 for the period of June 2020 to Feb. 2023. However, this period was reconsidered as follows. The newly purchased CTs by the Appellant were tested on 03.09.2020 and CTs were installed at the Appellant’s premises on 04.09.2020. Hence, the supplementary bill of plain recovery was revised to Rs.13,48,091/- for the period from Sept. 2020 to Feb. 2023 and issued on 11.03.2023, as the Appellant was correctly billed up to August 2020.
- (vii) The Appellant approached the Forum on 22.02.2023. The Forum, by its order dated 10.03.2023 has principally rejected the grievance application considering escaped billing, however allowed three installments and directed to withdraw accumulated interest and delayed payment charges.
- (viii) The Respondent cited the Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support of recovery of escaped billing. The present case is a case of escaped billing and not deficiency in service. The Appellant has consumed the electricity. Hence, the Respondent should be allowed for retrospective recovery from the date of cause of action i.e. from Sept. 2020 to Feb. 2023.
- (ix) In view of above, the Respondent requested to reject the Representation of the Appellant and to allow MSEDCL to recover the supplementary bill of Rs. 13,48,091/-


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Analysis and Ruling

5. The Appellant is an industrial consumer (No. 003659033320) from 10.10.2008 with sanctioned load of 105 KW at Gat No. 142, Boisar – Chillar Road, Village – Betegaon, Boisar. The Appellant is a nationally and internationally accredited test and calibration laboratory working in the fields of Electro-technical, Temperature and Pressure which is primarily concerned with testing and evaluation of hazardous area, electrical/electronic and non-electrical equipment.

6. The Appellant had applied for Solar Rooftop net metering connection in December 2019. Accordingly, the Respondent sanctioned 30 KW Solar connection in June 2020. After sanction, the Appellant purchased the necessary owner meters required for connection which was tested at MSEDCL Vasai Testing Laboratory in September 2020. The said connection was released by replacement of the meter in June 2020. The bills for the new (replaced) meter were generated from September 2020.

7. On 14.02.2023, the Respondent inspected the premises of the Appellant and noticed that the meter installed at site is 5/5A which was connected to 100/5 A CTs, and MF for billing was “1” instead of “20”. Hence, plain recovery was proposed considering the actual MF as “20” from the date of installation of the new meter, and a provisional recovery bill of Rs.17,74,590/- was issued to the Appellant in February 2023 as per actual recorded consumption of meter.

8. During the hearing, when asked how the mistake happened, the Respondent informed that due to human error of the concerned Sectional Engineer, the wrong Multiplying Factor was fed into the system, but this was a bona-fide mistake. The new meter CT ratio was selected as 100/5 A instead of 5/5 A while feeding online meter replacement report, due to which MF “1” was applied in the upcoming bill instead of actual MF “20” having the external CT Ratio as 100/5 A. (The MF is calculated as: $MF = \text{External CT Ratio} / \text{Meter CT Ratio} = (100/5) / (5/5) = 20$.) The CT testing date was 03.09.2020 and CT was installed at the Appellant’s premises on 04.09.2020,


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so the bill calculation sheet was revised by considering MF 1 till 04.09.2020. Accordingly, the recalculated and reduced bill of Rs.13,48,091/- was issued to the Appellant on 11.03.2023 as per the order of the Forum.

9. The Respondent cited the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of escaped billing. The important paras of this Judgement are reproduced below:

“3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.

4. After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption “short assessment notice”, claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

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6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of “escaped assessment” and not a case of “deficiency in service”. Aggrieved by the said Order, the appellant is before us.

.....

21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.

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Secretary

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22. In fact, even before going into the question of section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

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It is important to note that in the above Judgment, the assessment period for escaped billing towards recovery of multiplying factor is applied for about three years. In the instant case, the Respondent has issued supplementary bill towards application of wrong multiplying factor for the period from September 2020 to February 2023 which is 2½ years.

10. The Judgment of the Hon'ble Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. refers the Section 17(1) (c) of the Limitation Act, 1963. The said Section of the Limitation Act, 1963 is reproduced as under: -


“17. Effect of fraud or mistake. — (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, —

.....
(c) the suit or application is for relief from the consequences of a mistake; or

.....
the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it.”

THE SCHEDULE
PERIODS OF LIMITATION
[See sections 2(j) and 3

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD


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113. Any suit for which no period of limitation is provided elsewhere in this Schedule Three years When the right to sue accrues

The Respondent discovered the mistake of under billing when the premises were inspected on 14.02.2023 in the presence of the Appellant and the supplementary bill was issued in February 2023. The cause of action itself arose on 04.09.2020 when the CTs were installed. Subsequently, the Respondent issued the revised supplementary bill for Rs.13,48,091/- to the Appellant on 11.03.2023 as per the order of the Forum. The Limitation Act, 1963 describes that a suit can be filed within 3 years from the date of cause of action. In the instant case, a suit has not been filed; however, it applies similarly that action has to be taken at least within the prescribed period of limitation of three years. In this case, action has been taken within the prescribed period.

11. In the instant case, the Appellant had installed 30 KW Solar Rooftop panel in June 2020. He was earlier being billed within the range of 8000 to 12000 units per month up to August 2020 as per the Consumer Personal Ledger. The CTs were replaced on 04.09.2023. Ideally, the consumption pattern should have dropped by 1/3rd, as Solar Rooftop generation compensates for nearly 1/3rd of the total consumption. Thus, the consumption ought to have been in the range of 6000 to 8000 units per month after installation of solar panels. However, it dropped to as low as 200 to 400 units per month, which the Respondent failed to analyze through its Managerial Information System (MIS) or physical checking on site. We recommend that it is necessary to fix responsibility for wrong feeding of MF at the Respondent's level. The Appellant also preferred to remain silent on this under billing issue.

However, it is a fact that the Appellant has consumed the electricity as per MF 20, and it is binding on the Appellant to pay the charges for consumed electricity. This is nothing but escaped billing for 30 months. The order of the Forum is principally upheld, however is modified to the extent below.


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12. The Respondent is directed: -

- (a) To waive of the interest and DPC if any from the date of cause of action i.e. 04.09.2020 for crediting supplementary bill of Rs.13,48,091/-.
- (b) To allow the Appellant to pay the revised bill in 10 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and the Respondent has liberty to take action as per law.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellant are rejected.

13. The Representation is disposed of accordingly.

14. The secretariat of this office is directed to refund Rs.25000/- taken as deposit with the Respondent by adjusting in the Appellant's ensuing bill.

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


(Dilip Dumbre)
Secretary
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