

## BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

### REPRESENTATION NO. 75 OF 2020

In the matter of billing due to cross connection

Rajendra Sitaram Tendolkar .....Appellant

V/s

Tata Power Company Ltd. (Distribution) ..... Respondent

Appearances: -

For Appellant : Rajendra Sitaram Tendolkar

For Respondent : 1. Prashantkumar, Group Head Regulatory  
2. Ravindra M. Kasarpatil, Head, Revenue Cycle Management

**Coram: Deepak Lad**

Date of Hearing: 28<sup>th</sup> October 2020

Date of Order : 3<sup>rd</sup> November 2020

### ORDER

This Representation is filed on 29<sup>th</sup> September 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 8<sup>th</sup> August 2020 passed by the Consumer Grievance Redressal Forum, Tata Power Company Ltd. (the Forum).



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2. The Forum, by its Order dated 08.08.2020 has disposed the grievance application in Case No. CGRF/03 of 2020 by noting as below: -


*“ In view of the fact that changeover of both the consumer was done on same date i.e. 22<sup>nd</sup> May, 2015 and thereafter no meter activity was done at site, so there is cross connection since May, 2015 during changeover of supply from R-Infra to Tata Power. Only after receiving complaint for onsite meter testing, the Cross Connection was noticed on 19<sup>th</sup> Sep, 2020 and further rectified in presence of both the consumers on 28<sup>th</sup> Sep, 2020.*

*Forum comes to conclusion that there was Cross Connection since changeover of Power Supply in May, 2015 and same was rectified in Sep, 2019 in front of Complainant. So, Complainant Mr. Rajendra Tendolkar had to pay as per the Bills raised by Tata Power.*

*Also, Forum directs Tata Power to Waive OFF Delayed Payment Charges and Interest since May, 2015 till Sep, 2019.”*

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

- (i) The Appellant is a LT residential consumer (No. 9000 0074 9247) at 303, Madhav Apartments, Kastur Park, Simpoli Road, opposite Satra Mall, Borivali (West) Mumbai.
- (ii) The Appellant opted for changeover of supply from R-Infra to Tata Power Co. Ltd. (TPCL). Accordingly, the TPCL installed its meter on 22.05.2015. The Appellant is regular in paying the electricity bills. However, the Respondent informed him that on 23.09.2019, it discovered that Appellant’s designated meter was wired up with the installation of Flat No.1103 of Mr. Kanchan (C.No.9000 0074 9384) in the same society and vice-versa. However, the Respondent said that the cross connection is corrected by swapping the meters on 28.09.2020 and obtained his signature on the report.
- (iii) The Appellant was served supplementary bill of Rs.75873/- showing overdue amount for a period from 22.05.2015 to 05.10.2019.


  
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- (iv) The Respondent orally informed him that this alleged cross connection has occurred from May 2015. However, till filing of this representation, the Respondent has not tendered any proof of so-called cross connection of meters between his connection and that of Mr. Kanchan, Flat No.1103.
- (v) The notice of disconnection dated 27.12.2019 issued by the Respondent was protested vide letter dated 10.01.2020. In response, the Respondent discussed the matter with the Appellant on 15.01.2020 without any fruitful outcome.
- (vi) The Appellant, therefore, filed application with the Internal Grievance Redressal Cell (IGRC) on 02.03.2020. The IGRC, by its order dated 14.05.2020 has not resolved the issue but granted three instalments for payment of supplementary bill. The Appellant, therefore, approached the Forum on 11.06.2020. The Forum, by its order dated 08.08.2020 waived of delayed payment charges (DPC) and interest, however, the main issue remained unresolved. The Forum failed to appreciate the provision of Section 56 (2) of the Electricity Act, 2003 (the Act).
- (vii) Therefore, this representation is filed with prayer that the supplementary bill raised by the Respondent on account of this so-called cross connection be quashed and set aside.

4. The Respondent filed its reply by email on 15.10.2020 stating in brief as under: -


- (i) The Appellant is LT residential consumer (No. 9000 0074 9247) at 303, Madhav Apartments, Kastur Park, Simpoli Road, opposite Satra Mall, Borivali (West) Mumbai.
- (ii) On 11.06.2019, a complaint of high bill was received from Mr. Rama S. Kanchan and Somnath M. Kanchan (Consumer No. 9000 0074 9384) residing at Flat No 1103 in the same Society where the Appellant also has his electricity connection (C. No. 9000 0074 9247) for Flat No.303. On 10.09.2019, Mr. Kanchan, applied for testing of his meter. Therefore, the Respondent's team visited the site on 19.09 2019 and during testing found that there is a cross connection of supply between Flat No. 1103 (Mr. Rama S Kanchan and Somnath M Kanchan) and Flat No. 303 (Appellant, Mr. Rajendra

  
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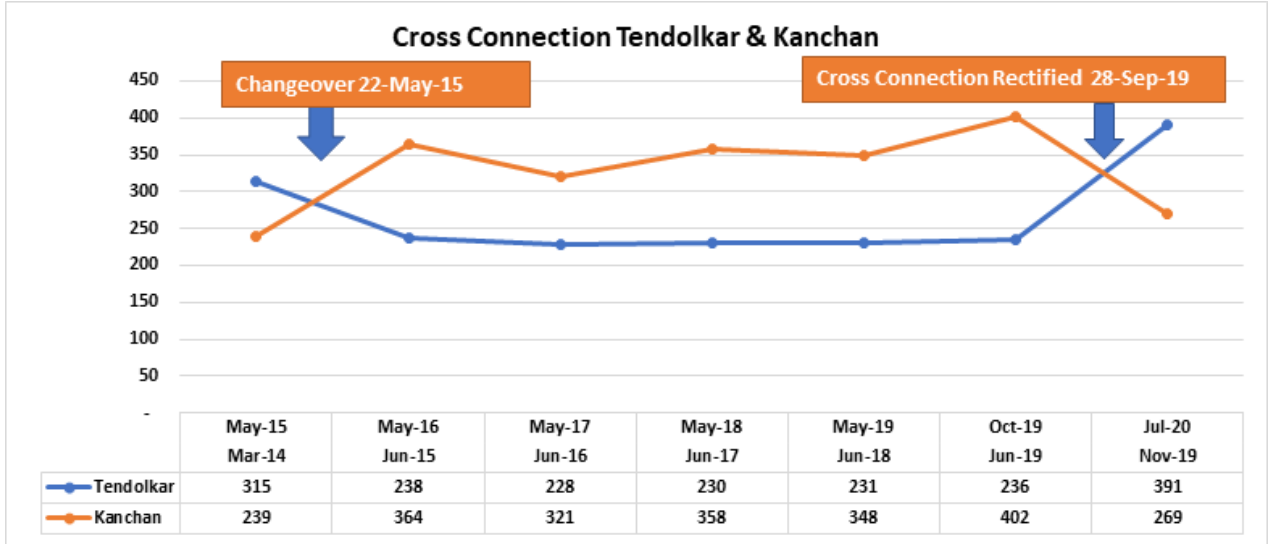
Tendolkar) i.e. for Meter No. ST083197 and Meter No. ST083200 respectively. A meter testing report was shared with the consumer i.e. Mr. Kanchan.

- (iii) On 28.09.2019, the team again visited the site and met both the consumers. After discussing with the consumers and on mutual consent/ settlement, the meters were swapped between the consumers. As informed and confirmed by both the consumers that they shall resolve the billing issue amicably between them, no billing correction was carried out for both the consumers and a memo dated 23.09.2019 is duly signed by both the consumers.
- (iv) However, on 03.10.2019, a letter was received from Kanchan to refund excess amount paid since May 2015 to September 2019. On an outcall to both the consumers, it was informed that they have not agreed to settle the bills amicably and hence Mr. Kanchan sought revision of his bills as per use. Also, the Appellant was not willing for any change in his bills due to such cross connection.
- (v) Thereafter, the consumption captured on both the meters vide meter No. ST083197 (Kanchan) and ST083200 (Appellant) were checked and necessary credit and debit in the bills of both the consumers was passed. A credit bill for Rs.75,121/- for the period 22.05.2015 to 28.09.2019 was given to Mr. Kanchan and a debit of almost similar amount for similar period was passed against the Appellant. A supplementary bill was generated for such amount on 26.11.2019.
- (vi) As a consumer, Mr. Rajendra Tendolkar failed to make payment of dues within the due date, a notice under Section 56 (1) of the Electricity Act, 2003 was issued and served upon him accordingly. Upon receiving the said notice, the Appellant on 2<sup>nd</sup> January 2020 visited the Borivali CRC and sought calculation of the bill. The bill calculation was provided to him on 07.01.2020. The Appellant through his letter sought for bill reversal. The representatives of Tata Power on 15.01.2020 met the Appellant and explained in detail about the bill as well as the cross connection. The representatives also provided 3 instalment facilities to the consumer. In this regard


  
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comparison of consumption of both consumers before Cross connection and after rectification is as below:



- (vii) Therefore, in view of the above it is submitted that the relief sought by the Appellant seeking relief towards the supplementary bill is incorrect and without any basis and the instant representation is liable to be dismissed. It is a settled principle of law that the distribution licensee is entitled to recover the charges for the electricity actually supplied.
- (viii) From the facts as brought out hereinabove, it is clear that the cross connection was rectified in the presence of both the consumers and it was agreed between them at site only that they shall settle the bill amicably between them. As they could not reach the settlement, notice under Section 56 of the Act is served to the Appellant and is appropriate under the law. Both the consumers were paying the bills issued to them during 2015 till 2019. Hence it is submitted and clarified that the provision in Section 56 (2) of Electricity Act, 2003 “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” is not applicable in the present case.


  
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- (ix) Directions of the Forum to waive of DPC and interest are implemented. The amount towards this waiver is Rs. 8,602/-.
- (x) In view of the above submissions, the Representation deserves to be dismissed.

5. The hearing was scheduled on 28.10.2020 on e-platform due to Covid-19 epidemic. Both the parties argued in line with their respective written submissions. However, the Appellant further argued that this so-called cross connection between two consumers is mistake on the part of the Respondent. This mistake as it fell from the Respondent occurred when the Appellant opted to changeover its supply from R-Infra to TPCL in 2015. It is also the Respondent's submission that many flat owners in the same society opted for similar changeover. During this changeover, this cross connection is alleged to have happened and continued till September 2019. It is difficult to understand as to how this went unnoticed by the Respondent. The Appellant paid all the bills served to him and the Respondent is not entitled to recover the amount of the supplementary bill. However, if at all it is decided to recover, it can recover only for two years as per Section 56 (2) of the Act.

6. The Respondent submitted that many consumers including the Appellant in the same society opted for changeover of supply from R-Infra to TPCL. It issued meters to its staff assigning a particular meter to a particular consumer. However, the staff while fixing the meter committed an error in respect of Mr. Kanchan and the Appellant. In short, a meter assigned to Mr. Kanchan and logged as such in the office record is fixed and configured with the wiring of the Appellant and similarly, a meter assigned to the Appellant and logged as such in the office record is fixed and configured with the wiring of Mr. Kanchan. Subsequently, in September 2019, when this was noticed, the meters were swapped and respective consumptions of both these consumers along with the amounts also needed to be swapped. As a result, supplementary bill of Rs.75,121/- was issued to the Appellant towards amount calculated on the difference of consumptions. Section 56 (2) cannot be applied in this case.

  
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## Analysis and Ruling


7. It is an admitted position that the Respondent has grossly erred in fixing the meters when the consumers (Kanchan and the Appellant) have opted for changeover of supply. This went unnoticed for a period of more than 4 years. This proposition translates to a fact that the Appellant was never served a bill for what he has consumed. In other words, the energy consumed by the Appellant was recorded in the meter of Mr. Kanchan. The Appellant had not been served his proper bill during the period of 2015 to 2019. It is only by way of supplementary bill which was issued on 26.11.2019 that the Respondent tried to recover unbilled energy consumption. Therefore, Section 56 (2) of the Act is fully applicable in the instant case. This Section is reproduced below:

*“(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 of Bombay High Court by its Judgment dated 12.03.2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following view while interpreting the Section 56 (2) of the Act. The relevant portion of the said Judgment is quoted below: -

*“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 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*

  
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*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 raised 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 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



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

In view of above Judgments quoted above, it is settled position in law that in such cases, recovery for more than two years prior to the date of issue of bill on detecting an error, cannot be recovered. Therefore, the Respondent’s argument that Section 56(2) of the Act is not applicable, is incorrect.


8. In other words, in this case, as the Respondent has served the bill on 26.11.2019 to the Appellant, the Respondent can recover bill for period from November 2017 to October 2019 for 24 months only.

9. The Forum failed to appreciate the provisions of Section 56 (2) of the Act and the various Judicial pronouncements in this regard. I, therefore, do not agree with the order of the Forum.

10. In view of above, the Respondent is directed: -

- (a) To revise the bill for the period from November 2017 to October 2019 for 24 months only as per Section 56 (2) of the Act.
- (b) Compliance to be submitted within two months from the date of this order.
- (c) The Forum’s order is therefore revised to the above extent.

11. The Representation is disposed of accordingly.

  
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12. The secretariat of this office is directed to refund the amount of Rs.25000/- (deposited by the Appellant) to the Respondent for adjusting it against the Appellant's ensuing bill.

Sd/-  
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Electricity Ombudsman (Mumbai)



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