

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 117 OF 2022

In the matter of retrospective recovery towards under billing of the meter

Navi Mumbai Co-operative Bank Ltd.Appellant

V/s.

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

Appearances:

Appellant : 1. Ranjit Patil, Asst. General Manager
2. Ashok Pawar, Sr. Officer
2. Suraj Chakraborty, Representative

Respondent : 1. Shashikant Borse, Executive Engineer, Vashi
2. Ravindra Jadhav, Addl. Executive Engineer, Vashi


Coram: Vandana Krishna IAS (Retd.)

Date of hearing: 4th October 2022

Date of Order : 7th October 2022

ORDER

This Representation is filed on 28th July 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 31st May 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Urban Zone (the Forum).


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2. The Forum, by its Order dated 31.05.2022 has partly allowed the grievance application in Case No. 43 of 2022 which is taken as below:

“2. The Respondent is directed to refund the amount of Rs.1,30,150/- along with the DPC/interest on tariff differential levied thereon, if any, by adjusting the said amount in the subsequent bills.

3. The Respondent is directed to provide the copies of M.R.I report for the period from 2018 till date & the reading photographs to the Applicant.”

3. The Appellant filed this representation against the order of the Forum. The hearing was held on 04.10.2022 through Video Conference. Both the parties were heard. The Appellant’s written submission and arguments in brief is stated as below: -

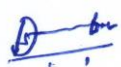
- (i) The Appellant, a Cooperative Bank, is a LT Commercial Consumer (**No. 000074722938**) from 25.07.2017 having Sanctioned Load (SL) of 30 KW and Contract Demand (CD) of 30 KVA at MKT-11, Ph-11 SEC-19B, 1st Floor, Office No T-40 to T-46, Vashi, Navi Mumbai. The total connected load is 14 KW.
- (ii) The Flying Squad Team of the Respondent inspected the premises of the Appellant on 27.07.2018. During inspection, it was found that ‘R’ phase voltage of the meter was missing. The Respondent issued a supplementary bill for 9207 units of Rs. Rs. 1,30,150/- on 18.08.2018 for the past one year, i.e. the period from August 2017 i.e. from the date of connection, to 27.07.2018. The Appellant paid the bill of the said amount on 11.09.2018.
- (iii) The Respondent again inspected the premises of the Appellant on 29.12.2020. During inspection, it was again observed that the R phase Voltage was missing in the metering unit due to a loose connection. As per the inspection report dated 29.12.2020, the Appellant received a huge bill adjustment in bill of Feb. 2021 for 38781 units of Rs. 5,78,315/- for the period from 02.08.2017 to 29.12.2020 towards R phase voltage missing recovery. Thus, the period from August 2017 to July 2018 seems to have been covered twice mistakenly.
- (iv) The Appellant approached the Respondent on 23.03.2021, requesting to withdraw the debit bill amount. The Appellant was ready for payment of assessment for three months as per


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Regulation 15.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005(the Supply Code Regulations 2005). The Appellant also requested not to disconnect the power supply for fictitious outstanding dues. However, there was no positive response from the Respondent.

- (v) The Appellant approached the Forum on 28.06.2021. The Forum, by its Order dated 31.05.2022 partly allowed the grievance application which is quoted above at para 2
- (vi) The Appellant referred to the definition of the meter. The Forum failed to understand the basic issue that the meter was faulty, and the assessment should be done only for three months as per Regulation 15.4.1 of the Supply Code Regulations 2005. The Forum referred to the Judgment of the Hon. High Court of Bombay Bench at Aurangabad in W.P. No 8613 of 2017 which is not applicable in this case.
- (vii) The Appellant argued that, in the spot inspection report of the Respondent dated 29.12.2020, voltage on tong tester was 0, 231, 245 volts on R, Y, and B phase respectively. The current on energy meter was 1.0, 19.6, 6.9 A on R, Y, and B phase respectively, and 0, 232, 243 V on R, Y, and B phase respectively. It clearly establishes that there was no current as well as voltage on R phase. Hence the question of assessment does not arise.
- (viii) The Appellant further argued that the Maximum Demand recorded in KVA is only about 11 to 15 KVA both before and after the spot inspection. There is no variation in KVA MD. The consumption pattern also remained the same before and after the spot inspection. This clearly establishes that the Respondent raised fictitious assessment.
- (ix) The first assessment (Rs. 1,30,150/-) period was Aug 2017 to 27.07.2018, and the second assessment (Rs.5,78,315/-) period was 02.08.2017 to 29.12.2020. **There is an overlap of assessment period from 02.08.2017 to 27.07.2018.** The Forum by its order dated 31.05.2022 directed to refund the first assessment of Rs. 1,30,150/- but the Respondent did not refund the same till date.
- (x) The Respondent did not follow its Corporate Office Circular dated 29.10.2018 regarding the guidelines for proper installation of 40/200 Amp. CT Embedded Energy Meter for avoiding PT missing events. This has resulted in mental torture and financial loss to the Appellant.



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- (xi) The Appellant is a reputed bank and power supply is crucial for bank working. The Respondent threatened disconnection of supply. The Appellant has paid this debit bill adjustment under protest.
- (xii) In view of the above, the Appellant prays that the Respondent be directed
- to quash the supplementary bills of first assessment Rs. 1,30,150/- and second assessment of Rs. 5,78,315/-- and to issue a revised bill considering that the meter is defective, as per Regulation 15.4.1 of Supply Code Regulations 2005.
 - to refund all the disputed amount which was paid under protest.
 - to issue bill under Section 56(2) of the Electricity Act, 2003, as assessment was given for the period from 02.08.2017 to 29.12.2020.
 - to waive off Delayed Payment Charges (DPC) and interest charged.

4. The Respondent, by its letter dated 30.08.2022 has submitted its written reply. The hearing was held on 04.10.2022. The written submission along with its arguments is stated in brief as below: -

- (i) The Appellant is a LT Commercial Consumer (**No. 000074722938**) from 25.07.2017 having SL of 30 KW and CD of 30 KVA at MKT-11, Ph-11 SEC-19B, 1St Floor, Office No T-40 to T-46, Vashi, Navi Mumbai.
- (ii) The Flying Squad of the Respondent inspected the premises of the Appellant on 27.07.2018. During inspection, it was observed that the R phase Voltage was missing in the metering unit due to a loose connection from the date of connection. It was noticed that the consumption recorded was only two third of actual consumption. The Respondent tightened the loose connection of R Voltage where it was tapped externally. Hence, it was necessary to assess the under billing which had happened due to missing of R Phase Voltage. The Respondent assessed provisionally for 9207 units for Rs. 1,30,150/- from August 2017 to July 2018.
- (iii) The Asst. Engineer of the Respondent again inspected the premises of the Appellant on 29.12.2020. It was observed that that the R phase Voltage was again missing in the metering unit due to loose connection. The Respondent again tightened the loose connection of R Phase Voltage where it was tapped externally to R phase of the cable.


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The display of all phases immediately started appearing on the meter. The MRI of the meter was retrieved. **As per the MRI report, the R Phase Voltage to meter was found missing from 02.08.2017 to 29.12.2020.**

- (iv) The Respondent issued a supplementary bill for 38770 units of Rs. 5,78,315/- in the bill of February 2021 based on data retrieved from MRI for the above period. The Appellant has paid the assessed bill when it was explained in detail in a meeting with the Appellant.
- (v) The Appellant requested on 23.03.2021 to review the assessed supplementary bill against the missing R Phase Voltage from 02.08.2017 to 29.12.2020. The Respondent has thoroughly discussed the various issues raised in this letter. The Appellant was convinced totally, and paid the assessment bill, as the Appellant is aware of PT missing of R phase.
- (vi) The argument of the complainant, that R phase voltage of the meter was not recording the consumption properly, and hence the meter may be declared as defective in view of Regulation 15.4.1 of the Supply Code Regulations 2005, is not acceptable at all. In this case, the meter intrinsically was not faulty; however, voltage at the R phase terminal of the meter was missing or showing some random nonstandard values. In a similar case, the Judgment of the Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable which allows the Respondent to assess the consumption for such technical issues. Therefore, recovery on account of the missing voltage of R-Phase of RYB terminology at the meter terminal is justified.
- (vii) As per order of the Forum dated 31.05.2022, the refund of Rs.1,30,150/- is under process, and will be given shortly. The order of the Forum will be followed and complied with in toto.
- (viii) **Prayers; -**
- (ix) In view of above, the Respondent requested to reject the Representation of the Appellant.

Analysis and Ruling

5. Heard the parties and perused the documents on record. The Appellant is a LT Commercial Consumer (No. 000074722938) from 25.07.2017 having Sanctioned Load (SL) of 30 KW and Contract


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Demand (CD) of 30 KVA at MKT-11, Ph-11 SEC-19B, 1St Floor, Office No T-40 to T-46, Vashi, Navi Mumbai. The Appellant is a cooperative bank.

6. The Flying Squad of the Respondent inspected the electric installation of the Appellant for the first time on 27.07.2018. During inspection, it was observed that the meter (Sr. No. 000074722938) of Genus Make is of 50/5 A capacity and was installed on 25.07.2017. The Respondent served the assessment bill of Rs. 1,30,150/- for the period from Aug 2017 to 27.07.2018. The Appellant paid the same assessment on 11.09.2018.

7. The Asst. Engineer of the Respondent again inspected the premises of the Appellant on 29.12.2020. It was observed that that the R phase Voltage was again missing in the metering unit due to loose connection. The Respondent again tightened the loose connection of R Phase Voltage where it was tapped externally to R phase of the cable. The display of all phases immediately started appearing on the meter. The MRI of the meter was retrieved. As per the MRI report, the R Phase Voltage to meter was found missing from 02.08.2017 to 29.12.2020. The Respondent issued a supplementary bill for 38770 units of Rs. 5,78,315/- in the bill of February 2021 based on data retrieved from MRI for the above period.

8. It is surprising to note how the Respondent assessed the consumer **twice** for the period from 02.08.2017 to 27.07.2017. This is totally wrong and not expected from the Respondent. The Forum by its order has rightly directed to refund the same.

9. The Appellant contended that the meter should be treated as defective as per Regulation 15.4.1 of Supply Code Regulations 2005. The Appellant argued that as per the definition of 'meter', if any of the equipment included in the definition goes faulty, the meter is treated as faulty; therefore Regulation 15.4.1 of the Supply Code Regulations 2005 needs to be applied, and the consumer should be charged only for three months as per the provisions of Regulation 15.4.1. On the other hand, the Respondent argued that since only R Phase PT Voltage was not extended to the meter, the meter as such cannot be termed as faulty; therefore Regulation 15.4.1 of Supply Code Regulations 2005 is not attracted. There are many Judgments and orders of the Hon'ble Electricity Ombudsman, Mumbai in similar cases where


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Secretary
Electricity Ombudsman Mumbai



assessment is allowed as the meter per se is not defective, but the Voltage to the meter was not properly extended due to a technical reason like loose connection. As soon as the loose connection was tightened, the meter started working correctly. In the instant case, the same meter is working on site.


10. The Respondent contended that the Appellant has been charged considering the meter as 33% under recording due to missing of R phase Voltage. The Appellant argued that there was minimum load on R phase to the tune of only 1 Amp, i.e. almost Nil, compared to the other two phases, as per Spot Inspection Report dated 29.12.2020. Hence, the question of assessment does not arise at all, even if we assume R phase voltage was missing. Also as per Section 56(2) of the Act for retrospective recovery, only a period of 24 months is allowed.

11. On perusal of MRI data sheets and snapshots submitted by the Respondent, the following observations are made: -

Source	Date and Time	Voltage with respect to Neutral (V)			Current (in Amp)				% of R phase current recording wrt total (in Amp)	% of Y phase current recording wrt total (in Amp)	% of B phase current recording wrt total (in Amp)	% of total current (in Amp)
		R- N	Y-N	B-N	R Phase	Y Phase	B Phase	Total Current (in Amp)				
MRI	01-Dec-2020 12.00.00 AM	0	231	239	6	17	8	31.54	20	55	25	100
MRI	01-Nov-2020 12.00.00 AM	0	221	224	16	32	29	76.96	20	42	38	100
MRI	01-Oct-2020 12.00.00 AM	0	237	245	6	25	5	35.6	15	71	13	100
MRI	01-Sep-2020 12.00.00 AM	0	238	234	18	25	24	67.74	26	38	36	100
MRI	01-Aug-2020 12.00.00 AM	0	237	241	6	23	15	43.71	14	52	34	100
MRI	01-Jul-2020 12.00.00 AM	0	230	239	10	37	11	57.66	17	63	20	100
MRI	01-Jun-2020 12.00.00 AM	0	0	0	0	0	0	0				
MRI	01-May-2020 12.00.00 AM	0	0	0	0	0	0	0				
MRI	01-Apr-2020 12.00.00 AM	0	0	0	0	0	0	0				
MRI	01-Mar-2020 12.00.00 AM	0	215	227	10	40	18	68.19	15	59	26	100
MRI	01-Feb-2020 12.00.00 AM	0	230	238	1	23	14	38.68	4	59	37	100
MRI	01-Jan-2020 12.00.00 AM	0	238	246	9	17	10	36.03	25	47	28	100
MRI	01-Dec-2019 12.00.00 AM	0	216	227	7	27	22	56.69	12	48	39	100
MRI	01-Nov-2019 12.00.00 AM	0	224	229	18	24	27	69.25	26	35	39	100
MRI	01-Oct-2019 12.00.00 AM	0	226	233	16	21	20	57.1	27	37	36	100
MRI	01-Sep-2019 12.00.00 AM	0	227	237	16	22	17	55.16	29	40	31	100
MRI	01-Aug-2019 12.00.00 AM	0	231	247	14	19	16	49.43	29	38	33	100
MRI	01-Jul-2019 12.00.00 AM	0	227	239	17	19	16	52.55	33	36	31	100
MRI	01-Jun-2019 12.00.00 AM	0	222	229	25	21	16	62.56	40	34	26	100
MRI	01-May-2019 12.00.00 AM	0	238	244	1	15	1	17.88	8	85	7	100
MRI	01-Apr-2019 12.00.00 AM	0	220	233	14	13	14	40.59	34	31	35	100
Total		Total Current	209	421	287	917.32	23	46	31	100		

Note: The above data is prepared from MDAS site as per directions of Hon'ble Ombudsman.

Note: The tampered events are recorded whenever the abnormalities occurred.


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 Electricity Ombudsman Mumbai



From the above data which is captured from the snap shots of the events of MRI data of the said meter, it is seen that the average current recorded in R, Y and B phase was 23%, 46% and 31 % respectively. Therefore, it would not be accurate to assume 1/3rd, i.e., 33 % less consumption recorded due to missing of R phase Voltage. A more accurate figure for recording of R phase would be 23 % due to uneven load on R, Y, and B phase. The Appellant is advised to keep the loading balanced as part of standard of performance.

The Section 56 (2) of the Electricity Act, 2003 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.”


This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, 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.

12. The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September, 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.” (Emphasis added)


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In the instant case, the Respondent has issued a supplementary bill of Rs. 5,78,315/- for the period from 02.08.2017 to 29.12.2020 towards R phase voltage missing i.e., recovery for the period from August 2017 to December 2020. However, the Respondent is entitled to retrospective recovery, considering under billing of 23 %, only for a period of 24 months i.e., from January 2019 to December 2020.


13. In view of the above, the Respondent is directed as under: -

- (a) to revise the supplementary bill for the period from January 2019 to December 2020, considering under billing of 23 %, without any interest and DPC levied, if any.
- (b) to refund the excess amount recovered, if any, in the ensuing bills of the Appellant.
- (c) Compliance to be submitted within two months from the date of issue of this order.
- (d) Other prayers of the Appellant are rejected.

14. The Forum's order is modified to the extent above.

15. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

