

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.9 OF 2021

In the matter of admissibility of the Representation
regarding past electricity dues and transfer thereof

Mussaddik Ab. K. BubereAppellant

V/s.

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

Appearances:

For Appellant : 1. Adil Punjabi, Representative
2. Nadeem Punjabi, Representative

For Respondent : 1. Ajay Bhasakhetre, Addl. Ex. Engineer MSEDCL Bhiwandi
2. Rajesh Shanbhag, AGM, Torrent Power Ltd. TPL
3. Hemangi Mayekar, Asst Manager

Coram: Deepak Lad

Date of hearing: 26th February 2021

Date of Order : 10th March 2021

ORDER

This Representation is filed on 19th February 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 18th March 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Zone (the Forum).

2. The Forum, by its order dated 18.03.2020 has partly allowed the grievance application in Case No.102 of 2020. The operative part of the order is as below:

“The consumer shall pay all the arrears of both the electricity connections to prevent their electricity supply.”


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3. Aggrieved by the order of the Forum, the Appellant has filed this representation stating as under: -

- (i) The Appellant has prayed for delay in condonation in filing the instant Representation which is against the order passed by the Forum on dated 28.03.2020.
- (ii) The Respondent had sent him a notice to transfer the outstanding of a permanently disconnected connection on a live current connection since the consumer's name was same.
- (iii) The Appellant wrote various letters to the Respondent, but it finally permanently disconnected the connection, and its dues were transferred onto the other live connection. This was followed by notice for disconnection under Section 56(1) of the Electricity Act, 2003 (the Act).
- (iv) Hence, it skipped the submission of grievance at IGRC and approached the Forum on 14.01.2020.
- (v) The Forum passed the order on 18.03.2020 and directed that the consumer shall pay all the arrears of both the electricity connections to prevent their electricity supply.
- (vi) The order of the Forum is not proper as it has not considered the fact that the Appellant had given his premises on rent to a third party who used the electricity but defaulted in paying for it which resulted into permanent disconnection (PD) on 24.01.2020.
- (vii) The Respondent transferred these arrears of PD connection on other live connection of the Appellant which is not correct because the connection which was PD was given on rent to a third party who defaulted in paying the electricity bills.
- (viii) The Appellant has delayed in filing this case due to Covid-19 and also due to wrong advice given by the secretariat of the Forum to file a fresh grievance. The Appellant therefore accordingly filed a fresh grievance with the Forum which issued the order on 24.02.2021 dismissing the grievance and imposing cost of Rs.1000/- on the Appellant.


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- (ix) While the Appellant was waiting for this new order of the Forum, it filed the instant representation on 19.02.2021 i.e. before the new order dated 24.02.2021. Hence, there is delay on this account also in addition to that of Covid-19.
- (x) It is, therefore, prayed that the order of the Forum be set aside, and the arrears of the PD connection be directed to be recovered from the person who used the power in that premises by condoning the delay in filing the representation.

4. The admissibility hearing of the Representation was scheduled on 26.02.2021 as it came to be filed on 19.02.2021 though the order of the Forum is issued on 18.03.2020. The notice of this hearing was only given to the Appellant, however, copy of the same was given to the Respondent for information.

5. Due to Covid-19 epidemic, the hearing was held on 26.02.2021 on e-platform through video conferencing. The Appellant explained his case which is, in short, captured above. Though the Respondent was not issued notice, it requested that it be allowed to participate in the hearing.

6. The Appellant filed the grievance with the Forum on 14.01.2020 and the Forum issued the order on 18.03.2020. The Appellant for the best reason known to it, acted at its own volition on the so-called advice of the secretariat of the Forum and filed grievance for the same cause with the IGRC and then the Forum. The Forum imposed cost on the Appellant and dismissed the grievance. Before the Forum issued the second order, the Appellant filed the instant representation. Therefore, this Representation is in response to the order of the Forum passed on 18.03.2020 and therefore needs to be dealt accordingly.

7. The Appellant has cited Covid-19 epidemic and situation arising out of it as the reason for delay in filing the instant Representation. It has, therefore, become necessary to examine it in that backdrop.


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8. The delay in filing the representation being pretty long (9 months considering 60 days to file the appeal) hence various issues such as lockdown and Mission Begin Again (MBA) with respect to Covid-19 Epidemic in Maharashtra and various orders of Government of Maharashtra (GoM) are necessary to be examined. The chronology in this regard is as below:

- (a) The GoM on 18.03.2020 issued order prohibiting movements of the people at large, and attendance at various offices, etc.
- (b) Subsequently, the GoM issued notification समय-२०२०/प्र.क्र.३७/१८(र.व का.) on 20.03.2020 vide which all workplaces, excluding essential services and public transport, in Mumbai, Mumbai Metropolitan Region, Pune, Pimpri-Chinchwad and Nagpur are ordered to be closed until 31.03.2020.
- (c) Vide order dated 02.05.2020 lockdown was extended till 17.05.2020.
- (d) Vide order dated 17.05.2020 it was further extended till 31.05.2020.
- (e) Vide order No. DMU/2020/CR.92/DisM-1, dated 31.05.2020 eased out restrictions and phase wise opening of lockdown (MBA).

The specific quote in this order is as follows: -

“Whereas the State Government is satisfied that the State of Maharashtra is threatened with the spread of Covid-19 Virus, and therefore to take certain emergency measures to prevent and contain the spread of the virus, the Government in exercise of the powers conferred under Section 2 of the Epidemic Diseases Act, 1897, read with all other enabling provisions of The Disaster Management Act, 2005, it is expedient to extend the lockdown in the entire State of Maharashtra further till midnight of 30th June 2020.

Now, therefore, in exercise of the powers conferred under section 2 of the Epidemic Diseases Act, 1897 and the powers, conferred under the Disaster Management Act, 2005, the undersigned, in his capacity as Chairperson, State Executive Committee, hereby issues directions to extend the lockdown, with amendments ,to operationalise MISSION BEGIN AGAIN for easing of restrictions and phase-wise opening, till 30th June 2020 for containment of COVID-19 epidemic in the State and all Departments of Government of Maharashtra shall strictly implement the guidelines issued earlier form time to time.”

Under this notification, in Municipal Corporations of MMR Region including MCGM, Municipal Corporation of Pune, Solapur, Aurangabad, Malegaon, Nashik, Dhule, Jalgaon, Akola, Amravati and Nagpur, following activities are additionally permitted with restrictions in phases as described below except containment zones. This is in addition to the activities already allowed and permitted.


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- MBA Phase 1 started from 03.06.2020
 - Outdoor physical activities with respect to individual exercises were permitted with certain restrictions.
 - All Govt. offices (excluding emergency, health & medical, treasuries, disaster management, police, NIC, food & civil supplies, FCI, N.Y.K., municipal services who can operate at the levels as per the needs) will function at 15% strength or minimum 15 employees whichever is more.
- MBA Phase 2 started from 05.06.2020
 - All markets, market areas and shops except malls and market complexes are allowed to function on P1-P2 basis (opening of shops on one side of the road on odd and even dates with certain time restrictions).
 - Long distance travel for non-essential items will not be permitted.
 - Use of motorized vehicles for shopping will be strictly discouraged.
 - Movement of people is allowed in following manner (1+2 for taxi rickshaw, four-wheeler, and only essential one rider for two-wheeler).
- MBA Phase 3 started from 08.06.2020
 - All private offices can operate with up to 10% strength.
 - In rest of State except the areas covered in Clause 6, all activities, which are not in the clause 8 of this order and which are not explicitly prohibited or banned, shall continue to be permitted with following conditions.
 - ✓ No permission is needed from any Govt. authorities for permitted activities.
 - ✓ All public and private transport will follow passenger management.
Movement of people was allowed in following manner:-
(i) Two Wheeler – 1 rider, (ii) Three & Four Wheeler – (1+2).
 - ✓ All markets / shops will remain open from 9 a.m. to 5 p.m.


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From the above, it is clear that for all practical purposes, lockdown was literally eased out from 30.06.2020. It is important to note that Govt. offices including this office were not closed from day one barring few restrictions.

9. The Hon'ble Supreme Court of India passed its Judgment on 23.03.2020 in *Suo Moto Writ (Civil) No. 3 of 2020* with reference to Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted below:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings. We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities. This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction. Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

In furtherance to above Judgment, the Hon'ble Supreme Court of India passed Judgment on 06.05.2020 in *Suo Moto Writ (Civil) No. 3 of 2020* with reference to Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted as below: -

*“In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings. **In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.**”*

(Emphasis added)



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The Hon'ble Supreme Court of India passed Judgment on 10.07.2020 in Suo Moto Writ (Civil) No. 3 of 2020 in Re: Cognizance for Extension of Limitation with IA No.48411/2020. Operative part of the said Judgment is quoted as below:-

“Service of notices, summons and exchange of pleadings/documents, is a requirement of virtually every legal proceeding. Service of notices, summons and pleadings etc. have not been possible during the period of lockdown because this involves visits to post offices, courier companies or physical delivery of notices, summons and pleadings. We, therefore, consider it appropriate to direct that such services of all the above may be effected by e-mail, FAX, commonly used instant messaging services, such as WhatsApp, Telegram, Signal etc. However, if a party intends to effect service by means of said instant messaging services, we direct that in addition thereto, the party must also effect service of the same document/documents by e-mail, simultaneously on the same date.”

From all these three Judgments of the Hon'ble Supreme Court, it is observed that in the first place, the Hon'ble Supreme Court passed Judgment on 23.03.2020 for extension of limitation from 15.03.2020 till issue of further orders by the Hon'ble Supreme Court. Then the limitation period was further extended by it through another Judgment dated 06.05.2020 in which, it ruled that the limitation period which expired on 15.03.2020 was extended till lifting of lockdown with additional 15 days of moratorium period.

10. In sum and substance, any litigant who wish to file a case before the appropriate Court of Law / Adjudicating Authority, etc. limitation of which has already ended, can file it after expiry of the lockdown with 15 days of additional moratorium.

11. In the instant representation, the Forum has issued order on 18.03.2020. The same was forwarded to the Appellant by the office of the Forum vide its letter No. Member Secretary / CGRF /MSEDCL /BNDUZ/102 of 2020/780 dated 18.03.2020. The order of the Forum was also uploaded on the website of the Respondent immediately. The copy of the order was also received by the Appellant. The Respondent (TPL) also served him a letter on 12.05.2020 for compliance of the Forum's order dated 18.03.2020 followed by reminder.

12. In view of the Hon'ble Supreme Court Judgments quoted above, and the fact that Government of Maharashtra issued various orders with respect to imposition of lockdown and


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subsequent easing out the same (Mission Begin Again), the limitation period flows as tabulated below: -

Date of Forum's order	18.03.2020
Date of receipt of order by Appellant	Well before 12.05.2020
Limitation period as per Regulations	60 days from the date of Forum's order
Limitation expires	18.05.2020
Lockdown starts	24.03.2020
Lockdown practically ends	30.06.2020
Limitation period in filing petitions/ applications/ suits/ appeals/ extended by Hon'ble Supreme Court	30.06.2020 + 15 days i.e. 15.07.2020
Hon'ble Supreme Court, by its Judgment allows use of digital mode for submission / filing petitions / applications / suits / appeals.	10.07.2020 (Date of Judgment)
Website notification of this office for submission of Representation through digital mode.	16.07.2020
Appellant filed the Representation	19.02.2021

13. From the above table, it is seen that had there not been lockdown, the Appellant was supposed to have filed its representation by 18.05.2020 as per the Regulation 17.2 of the CGRF Regulations 2006. However, due to unforeseen circumstances of Covid-19 epidemic, the Government of Maharashtra clamped lockdown on 24.03.2020 which practically ended on 30.06.2020. However, the Hon'ble Supreme Court passed the Judgment on 06.05.2020 extending limitation till lifting of the lockdown with additional 15 days moratorium period to file the papers. Eventually, the Appellant ought to have filed its representation on or before 15.07.2020. However, it is filed on 19.02.2021 which is much after 15.07.2020.

14. The office of the undersigned also hosted notice on its website on dated 16.07.2020 for filing of representations by email followed by submission in hard copies. Then afterwards, various litigants started filing representations through email and the respective Respondents also submitted their replies / statement of defense by email. Hearing through video


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conferencing on e-platform were being conducted from the initial stages of lockdown which is still being implemented by this office. The notice which was hosted on the website of this office on 16.07.2020 is quoted below: -

“Submission of Representation on E-mail in light of the current ongoing Covid-19 pandemic, and in order to avoid potential risk of Corona infection, it is to notify to all those who wish to file Representation against the order of the Forum that they can now file it along with all necessary documents by email on Email ID electricityombudsmanmumbai@gmail.com to be followed by submission in hard copy in triplicate. The formats are same as here to before. After the representation is registered, hearing though e-platform will be scheduled. This will continue till current situation persists.”

15. The delay, considering the Hon’ble Supreme Court Judgment dated 06.05.2020, in filing the representation is more than seven months and therefore, I do not find it appropriate to condone the same.

16. The Hon’ble Supreme Court in its Judgment dated 13.03.2019 in Civil Appeal No.2960 of 2019 has laid down that there is no necessity to go on merits and the plaint can be rejected if it is clearly barred by limitation.

17. In view of the above discussions, the Representation is dismissed not being admissible.

18. The original Demand Draft No.044520 dated 18.02.2021 drawn on Bank of Baroda of Rs.25000/- is returned herewith.

Sd/-
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
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