

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 41 OF 2022

In the matter of In the matter of theft of energy and billing

Ramesh Ratan Patil (Consumer) Appellant
[Kalyan Eknath Gajaghat (User)]

V/s.

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

Appearances:

Appellant : Kalyan Eknath Gajaghat

Respondent : 1. Narendra V. Dhavad, Executive Engineer, Kalyan(East), Dn
2. Padmakar T. Hatkar, Dy. Executive Engineer, Kalyan(East) S/Dn
3. S.A.Darade, UDC, Kalyan(East) S/Dn


Coram: Vandana Krishna (Retd I.A.S.)

Date of hearing : 20th May 2022

Date of Order : 6th June 2022

ORDER

The Representation is filed on 29th March 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 January 2022 in Grievance Application No. 2100 passed by the Consumer Grievance Redressal Forum, MSEDCL Kalyan (the Forum).



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2. The Forum, by its Order dated 31.01.2022 has rejected the grievance application in Grievance Application No. 2100 of 2020-21.


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

- (i) The Appellant, Ramesh Ratan Patil is a LT Industrial Consumer (No.020430005937) of the Respondent from 12.03.2011 with Sanctioned Load (SL) of 19 HP at S.No. 66, Near Vaibhavnagar, Katai Village, Dombivali (East).
- (ii) The said premises was given on rent to Kalyan Eknath Gajaghat (the User) who was running the business of Water Purifier Plant in the name of R.R. Mineral Water Industries.
- (iii) The Flying Squad, Vashi Unit of the Respondent inspected the premises of the Appellant on 28.01.2021. During inspection it was observed that there was suspected tempering in the meter. Hence, the meter was removed and taken away. The next day, The User was called at the Vashi office of the Respondent for joint inspection of the opening of the meter and internal inspection of the said meter. However, due to family programme, the Tenant nominated some other person to visit the Respondent to attend the joint inspection, who allegedly was not conversant with the technologies of the meter.
- (iv) During joint inspection, it was allegedly found that the said meter was tampered, as one phase of the meter was found cut from the main circuit of the meter. The Respondent issued assessment bill of Rs.5,31,560/- on 02.03.2021 under Section 135 of the Electricity Act, 2003. The assessment bill was wrongly calculated for the period of 18 months without any proper justification, as the Water Purifier Plant was not working during Covid -19 Pandemic.


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- (v) The Appellant was running behind the Respondent from pillar to post for revision of bill as per actual use of the factory. However, the Respondent failed to do so, and the bill was not revised till date. Apart from the alleged assessment bill, the meter of the Appellant was removed in July 2021. The Respondent started billing with average bill since then till date. The grievance of the Appellant for reduction of assessment bill regarding theft of Energy, and issue of normal bill as per actual reading till disconnecting the meter was not solved till date.
- (vi) The Appellant filed its grievance in the Forum on 12.03.2021. The Forum, by its Interim Order dated 16.03.2021 has directed the Respondent as below:
- “1) Recover 50% of disputed bill in 3 equal instalments along with the current bill. Send the meter to manufacturer for MRI retrieval and detail laboratory test report on the request of consumer.
2) Utility is at liberty to proceed court case independently.
3) No coercive action until further order.
4) Old arrears be recovered as per law.”
- (vii) As per the above order, the Appellant visited the Respondent and requested to issue Demand Slip for paying the amount as per interim order of the Forum dated 16.03.2021, but the Dy. Ex. Engineer of the Respondent declined to take the payment and was told to come next day. However, the next day, he got to know that a FIR was registered in Police Station in the name of the Appellant / Tenant. It was calculated excuse from the Respondent for non-acceptance of payment.
- (viii) This is astounding since the theft was detected on 28.01.2021 at 5 PM and the FIR was registered on 15.03.2021 after a lapse of 46 days. If the theft of power supply is genuine, it is supposed to be registered within 48 hours from the date of cause of action as per Section 135 of the Act, but such thing did not happen,


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the officials of the Respondent waited till 13.03.2021 for the Appellant / tenant to approach them. When the complaint was filed with the Forum, the FIR was registered after two days.

- (ix) The Appellant was under threat of arrest from the Police Authority, the Tenant was forced to pay the amount of Rs.5,31,560/- and compounding charges of Rs.2,90,000/- on 17.03.2021 by selling belongings.
- (x) The Forum, by its Order dated 31.01.2022 has rejected the grievance application. The Forum has not appreciated the provisions of Electricity Act and the relevant regulations of the Commission. The Forum has not directed to withdraw fictitious bill after disconnection and removal of the meter.
- (xi) The Appellant prays that the Respondent be directed
- (a) to revise the assessment bill issued under Section 135 of the Act as per facts and circumstances of the Rules and Regulations.
- (b) to revise the fictitious bill from the date of disconnection from July 2021.
- (c) to compensate by Rs.2,00,000/- against mental and financial agony.
4. The Respondent filed a reply vide its letter dated 02.05.2014 stating in brief as below:
- (i) The Appellant is a LT Industrial Consumer (No.020430005937) from 12.03.2011 with SL of 19 HP at S.No. 66, Near Vaibhavnagar, Katai Village, Dombivali (East). Shri Kalyan Eknath Gajaghat is the User who was running 'Mineral Water Industries' as Water Purifier Plant.
- (ii) The Respondent's Flying Squad, Vashi inspected the premises of the Appellant on 28.01.2021. During checking, it was observed that there was tampering in the meter for the purpose of theft of energy. A Punchnama was made. The meter was removed and taken away. A written notice was issued on 28.01.2021 for joint inspection of the opening of the meter and internal inspection of the meter.


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- (iii) During joint inspection, it was observed that the said meter was tampered by cutting blue colour wire of B phase of the meter which was connected to PCB of the main circuit of the meter. This clearly shows that the Appellant was involved in pilferage of the energy. The meter was checked and found slow by 29.2 % .The Respondent therefore issued assessment bill for 27439 units (for 17 months) of Rs.5, 31,560/- on 02.03.2021 under Section 135 of the Act. The legal procedure of filing FIR as per Section 135 of the Act was done on 15.03.2021.In the meantime, the Appellant approached the Forum on 12.03.2021.
- (iv) The Respondent further stated that the theft case at the premises of the Appellant is under Section 135 of the Act, and as per the provisions of Regulations No. 7.9 of CGRF & EO Regulations and Section 145 of the Act. Forum or any other authority has no jurisdiction to decide the grievance of the Appellant. The Respondent stated that Section.135 of the Act provides for immediate disconnection of the premises where theft of electricity is detected, and supply can be restored only on depositing the assessed amount. As such, even if the accused is acquitted of theft of electricity, the Appellant is still liable to pay the assessment bill towards theft before reconnection or new connection at that premises.
- (v) The Appellant paid the assessment amount of Rs. 5,31,560/- and compound charges of Rs. 2,90,000/- on 17.03.2021.
- (vi) The Forum, by its Order dated 31.01.2022 has rejected the grievance application as per Regulation 7.9 as it has no jurisdiction.
- (vii) The Appellant has filed review application in Forum on 07.03.2022 which is not decided by the Forum. During the pendency of the review application and without waiting for the order of the Forum, the Appellant filed the captioned Representation which is in violation of the CGRF & EO Regulations 2020.


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- (viii) As per Regulation 19.22(g) of CGRF & EO Regulations 2020, the Electricity Ombudsman has no jurisdiction, in this matter.
- (ix) In view of the above, the Respondent prays that the representation of the Appellant be rejected.

5. The e-hearing was held on 20.05.2022 through Video Conference. The Appellant and the Respondent argued in line with their written submissions. The Appellant argued that the alleged theft was detected on 28.01.2021, however, the FIR was registered on 15.03.2021 after a lapse of 46 days. It is supposed to register within 48 hours from the date of cause of action. The factory was totally closed during the Lock down Due to Covid-19 pandemic, even then the assessment was issued of lock down period.

6. The Appellant argued that the Appellant has been threatened for jail by the police authorities. The Appellant was forced to pay the amount of Rs.5,31,560/- and compounding charges of Rs.2,90,000/- on 17.03.2021 by selling belongings. The Respondent has not explained the calculation or justification of 17 month's period. The Forum, by its Order dated 31.01.2022 has rejected the grievance. The Forum failed to appreciate the provision of relevant regulations of the Commission. The Forum should have directed to withdraw fictitious bill after disconnection and removal of the meter in July 21. The security Deposit was wrongfully not updated in the bill till date. The Appellant prays that the Respondent be directed to revise the assessment bill issued under Section 135 of the Act considering lockdown period and to revise the fictitious bill from the date of disconnection from July 2021.

7. The Respondent argued that it was observed during inspection of Flying Squad on 28.01.2021 that the Appellant has tampered with the meter, which was checked and found slow by 29.2 % .The Respondent issued assessment bill for 27,439 units of Rs.5, 31,560/- on 02.03.2021 under Section 135 of the Act. The legal procedure of filing FIR as per Section 135 of the Act was done on 15.03.2021. The Appellant paid the same along with compounding charges on 17.03.2021 after filing the FIR.in Police Station. The supply of the


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Appellant was disconnected in July 2021 against the outstanding dues of the bill. The bills are issued under “Temporary Disconnected” status at present. The Respondent further argued that the Representation is not maintainable in view of provisions of Regulation 7.9 read with Regulation 19.22(g) of the CGRF & EO Regulations 2020, the Electricity Ombudsman cannot entertain the grievance of the Appellant as barred by jurisdiction. The Respondent, thus, submitted that there is no justification or substance in the contention of the Appellant and the representation be rejected. The Respondent stated that the relevant papers of calculation sheet, panchanama etc. are already handed over to the representative of the Appellant. The same will be also sent by post to the Appellant.

Analysis and Ruling

8. Heard the parties and perused the documents on record. The Appellant is a LT Industrial Consumer (No.020430005937) from 12.03.2011 with SL of 19 HP, and Kalyan Eknath Gajaghat is the User who was running ‘Mineral Water Industries’ as Water Purifier Plant. The Respondent’s Flying Squad carried out inspection on 28.01.2021 of the Premises. During this inspection, it was found that undisputedly, the Appellant had tampered with the meter which was checked and found slow by 29.2 % .The Respondent issued with assessment bill for 27439 units of Rs.5, 31,560/- on 02.03.2021 under Section 135 of the Act. The Appellant paid the same along with compounding charges on 17.03.2021 after filing the FIR in Police Station.

9. The Regulation 7.9(C) of the CGRF & EO Regulations 2020 provides as under:


“7 ***Procedure for Submission and Acceptance of Grievance***

The Forum shall reject the Grievance at any stage under the following circumstances:

- (a)
- (b) ***In cases, which fall under Sections 126, 127, 135 to 139, 152, and 161 of the Act;***
- (c)
- (d)
- (e)

Provided that no Grievance shall be rejected unless the Complainant has been given an opportunity of being heard. The Representation is disposed of accordingly.

(Emphasis added)


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10. The Supreme Court, in the U.P. Power Corporation versus Anis Ahmad [2013 (9) SCALE 334] has held that a complaint against the assessment made by the assessing officer under Section 126 or against the offence committed under Section 135 or 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum. It is also held in the said case of U.P. Power Corporation that the act of indulging in unauthorized use of electricity by a person neither has any relationship with the unfair trade practices or restrictive trade practices. The Representation No. 37 of 2015 involving identical issue was also rejected by order of Electricity Ombudsman dated 17th June 2015 on the ground of jurisdiction.


11. The supply of the Appellant was temporarily disconnected in the month of July 2021 as per Consumer's Personal ledger put on record. Generally, a 'temporary disconnection' where the meter is removed is deemed to become 'permanent disconnection' after 1 month. However, the Appellant is still being billed under fixed charges till date, and this needs to be rectified.

12. In view of the above,

- a) The prayer of the revision of assessment bill issued towards theft of energy under Section 135 of the Act is rejected, being outside the jurisdiction of the Electricity Ombudsman (M) as per Regulation 7(9) of the CGRF & EO Regulations 2020.
- b) The Respondent is directed to revise the regular bill, considering that the consumer is deemed to be permanently disconnected from August 2021, by withdrawing interest and Delayed payment charges levied on the bills from August 2021, if any.
- c) The Respondent to submit Compliance Report within two months from date of issue of the order.

13. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

