

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 154 OF 2022

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

Ashwini Arun Brahme.Appellant

V/s.

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

Appearances:

Appellant : Arun Bramhe

Respondent : 1. V. P. Idate, Executive Engineer, Vita Dn.
2. Y.G. Patil, Addl. Executive Engineer


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

Date of hearing: 22nd December 2022

Date of Order: 3rd January 2023

ORDER

This Representation was filed on 19th September 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 20th July 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL Kolhapur Zone (the Forum).



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2. The Forum, by its Order dated 20.07.2022 rejected the grievance application in Case No. 14 of 2021. The Forum directed the Respondent that the consumer may be granted 12 equal monthly instalments.

3. The Appellant has filed this representation against the order of the Forum. The e-hearing was held on 21.12.2022 by Audio conferencing. Both the parties have attended the hearing through Audio conferencing. The Appellant's written submission and arguments during the hearing in brief is as below:

- (i) The Appellant is a LT Industrial Consumer (No. 281730043804) from 29.05.2016 having Sanctioned Load (SL) of 70 HP and Contract Demand (CD) of 65 KVA, at Gat No.52/2, Sandgewadi, Tal. Palus Dist. Sangli.
- (ii) The Appellant is a manufacturer for high précised engineering parts on special machines. The Appellant does job works for other engineering companies.
- (iii) The Respondent inspected the premises of the Appellant on 02.12.2017. It was found during inspection that R phase voltage of the meter was missing. The Spot Inspection Report does not clarify on which day the R Phase Voltage started missing. The electric connection was released on 16.01.2016. The seals of the metering unit were found intact. There is no record to identify from when this voltage was missing. This might have happened just some days before the inspection due to vibration of engineering machines.
- (iv) The Respondent issued a supplementary bill of Rs. 3,59,400/- for 40887 units on 11.01.2018. The supplementary bill is not correct and is based on the hypothetical assumption that the R phase voltage was missing right from installation, and hence needs to be set aside.
- (v) The Appellant filed her grievance in Internal Grievance Redressal Cell (IGRC) on 04.01.2019. The IGRC by its order dated 16.03.2020 rejected the grievance application. Thereafter, the Covid-19 pandemic started from 23.03.2020. The Appellant could not approach the Forum. The Appellant filed her grievance before


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the Forum on 03.08.2021. The Forum, by its Order dated 20.07.2022 rejected the grievance application in Case No. 14 of 2021. The Forum allowed to pay the supplementary bill in 12 equal monthly instalments. The IGRC and the Forum failed to understand the basic issue that the seals of the meter were found intact, and how the R phase voltage was missing from the date of connection. The Appellant did not understand the MRI Report.

- (vi) The Appellant prays that the supplementary bill for Rs. 3,59,400/- be cancelled and the interest and delayed payment charges (DPC) be waived off.

4. The Respondent by its letter dated 15.11.2022 has submitted its written reply. The hearing was held on 22.12.2022. The written submission along with its arguments is stated in brief as below: -

- (i) The Appellant is a LT Industrial Consumer (No. 281730043804) having SL of 70 HP and CD of 65 KVA, at Gat No.52/2, Sandgewadi, Tal. Palus Dist. Sangli.
- (ii) The Respondent released a new connection on 16.01.2016 by installing Genus Make Meter (Sr. No.05809497) of 40-200 Amp capacity at the Appellant's premises. There was a delay in feeding the entries of the new connection into the Billing System, so the bill record shows the date of connection as 29.05.2016; however the connection was actually released on 16.01.2016. The voltages to the meter were extended by screwing the cable which passes through the meter box.
- (iii) The Assistant Engineer (quality control) of the Respondent inspected the premises of the Appellant on 02.12.2017. During inspection it was found that R phase voltage on meter display was missing. The voltage and current parameters of the installation found during spot inspection on site is tabulated as below:



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Phase	Voltage in actual (V)	Voltage on meter display (V)	Current in actual (A)	Current on meter display (A)
R	231	0	15.43	16.00
Y	242	245	17.31	17.27
B	248	247	13.51	13.80

- (iv) **The MRI data of the meter was downloaded. As per MRI data report, the R Phase Voltage to the meter was found missing for the period from 16.01.2016 (14.33.18 hrs.) to 02.12.2017 i.e., from the date of connection in the metering unit due, to loose connection.** It was noticed that the consumption recorded was only two thirds of actual consumption done by the Appellant.
- (v) Hence, the Respondent issued a supplementary bill of plain recovery for Rs. 3,59,400/-of 40887 units based on the data retrieved from MRI for the above period.
- (vi) The meter as such is working satisfactory in the premises of the Appellant. As soon as the screw of the connection was tightened where the voltage was tapped from the cable on 02.12.2017, the meter display started showing R Phase voltage in addition to Y & B phase voltage. The meter was tested and found in order.
- (vii) The Appellant filed grievance application before the Forum on 03.08.2021. The Forum, by its Order dated 20.07.2022 rejected the grievance application in Case No. 14 of 2021. **The Forum directed the Respondent that the Appellant may be granted 12 equal monthly instalments. The Appellant has not paid any instalment till date.**
- (viii) The Respondent cited the Judgment dated 18.12.2018 of Hon'ble Bombay High court, Bench at Aurangabad in W.P. No. 8613 of 2017. The Judgment is squarely applicable in the instant case. The relevant part of the Judgment is quoted below:

“33 it is therefore, obvious in the present case that there was nothing intrinsically wrong with the meter. As under-recording of electricity consumed was associated with the act of the electrician in wrongly attaching the wires to the R,Y & B phases.


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I am, therefore, of the view that such a wrong attachment of wiring by the electrician would not amount to a defect in the meter. Consequentially, due to the under-recording of the meter, the Appellant has consumed such energy as was normally required to be consumed and the Petitioner has lost the revenue for such under-recording.

34. Clause 3.4.4 of the Regulations, 2005 enables the Petitioner to recover the charges for the electricity actually supplied, which would include a fixed charge as per the prescribed rates. The Appellant, therefore, has to pay full charges for the electricity actually consumed.


35. In the Municipal Corporation case (supra), this court has sustained the supplementary bill raised by the Electricity Company and this Court has upheld the recovery of the amount mentioned in the supplementary bill.”

- (ix) The Respondent referred the orders of Hon. Ombudsman (M) in Representation No. 97 of 2022 and Representation No.48 of 2022 in support of this representation. The issue of the present representation and these orders is the same. In both the cases, the Hon. Ombudsman rejected the representations and allowed recovery for 24 months.
- (x) In view of the above, the Respondent requested to reject the Representation of the Appellant.

5. During the hearing, the Respondent was directed to issue instalments to the Appellant, and the Appellant has to pay the first instalment on priority basis. Accordingly, the Respondent has issued instalments and the Appellant has paid the first instalment of Rs.29,950/- on 28.12.2022.

Analysis and Ruling:

6. Heard the parties and perused the documents on record. The Appellant is a LT Industrial Consumer having SL of 70 HP and CD of 65 KVA, at Gat No.52/2, Sandgewadi, Tal. Palus Dist. Sangli. The Respondent released a new connection on 16.01.2016 by installing Genus Make Meter of 40-200 Amp capacity at the Appellant's premises. The Assistant Engineer (quality control) of the Respondent inspected the premises of the Appellant on 02.12.2017.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



7. The PT Voltage of R Phase was not extended to the meter for the period from 16.1.2016 (14.33.18 hrs.) to 02.12.2017. This period is calculated from the MRI data of the meter which was downloaded by the Respondent.

8. The Appellant contended that missing of R phase Voltage was not possible, as the seals of the meter unit were found in order. It might have happened a few days ago due to vibration of engineering machines, as the activity of the Appellant is engineering in nature.


9. The Respondent contended that the Appellant has been charged properly, considering that the meter was under-recording by 33% as per MRI data. The meter was showing voltages of Y and B Phase on meter display. As soon as the screw of the PT Tapping point of R phase was tightened, the meter display started showing R phase Voltage, in addition to Y and B Voltage. When the Voltage of the R Phase was not available to the meter, the meter recorded only 66% of its actual consumption.

10. The Appellant's contention is that the missing of R phase voltage was not possible from the date of installation, as the meter unit was sealed. This contention does not stand on merit as sealing of the unit has nothing to do with the missing of one phase. The Appellant seems to have misunderstood the technical aspects of the metering system. The evidence of the MRI data is reliable.

11. The Judgment dated 18.12.2018 of Hon'ble Bombay High Court, Bench at Aurangabad in W.P. No. 8613 of 2017 is squarely applicable in the instant case. The relevant part of the Judgment is already quoted in Para 4(viii). This Judgment is applicable in the instant case. As such meter is not defective, and the same meter is still functioning on site.

12. The assessment period towards under recording of consumption is 23 months. This assessment period fulfils the statutory requirement of the Section 56(2) of the Act. 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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”

13. 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. The Court has allowed 24 months’ recovery in cases of mistake or oversight. In view of the above discussions and the Judgments of the Larger Bench of Bombay High Court, the Respondent can recover under billing for 24 months retrospectively.

14. The Appellant has filed the case before the Forum on 03.08.2021. The cause of action arose on 11.01.2018 when the supplementary bill was issued. Thus the case was filed after a lapse of two years. The case is time barred as per Regulation 7.8 of CGRF & EO Regulation 2020 where the time for filing the grievance before the Forum is prescribed as two years from the date of cause of action. The case is not maintainable and does not stand on merit also.

15. However, considering the above aspects and the period of pandemic of Covid-19, the Respondent is directed as under: -


- a) to waive off the interest and DPC levied on this supplementary bill of Rs. 3,59,400/-.
- b) Other prayers of the Appellant are rejected.

16. Compliance to be submitted within two months from the date of issue of this order.

17. The order of the Forum is modified to the extent above.

18. The Representation is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (M)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

