

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REVIEW APPLICATION NO.12 OF 2021

IN

REPRESENTATION NO. 7 OF 2021

In the matter of billing

Vishal Singh – UserReview Applicant
(Shivbacchan V. Yadav – Original Consumer)

V/s

Maharashtra State Electricity Distribution Co. Ltd. Vasai (MSEDCL).....Respondent

Appearances: -

Review Applicant : Vasant K. Vaze, Representative

Respondent : 1. G. K. Gadekar, Executive Engineer
2. A.S. Mirza, Addl. Executive Engineer, Vasai Road (E) Sub. Dn
3. R. B. Vaman, Asst. Law Officer

Coram: Deepak Lad

Date of hearing: 12th August 2021

Date of Order : 18th August 2021

ORDER

This Review Application is filed on 11th June 2021 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) for review of the Order dated 15th April 2021 passed in Representation No. 7 of 2021. During scrutiny, it was observed that the Review Application was signed by Shri Vasant K. Vaze, the Applicant's


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Representative and not by the Applicant. This was accordingly informed to the Applicant by letter dated 01.07.2021. Thereafter, duly signed Application by the Review Applicant is received on 23.07.2021. Hence, the Review Application is registered on 23.07. 2021.

2. The Electricity Ombudsman, Mumbai, by its order dated 15.04.2021 has rejected Representation No. 7 of 2021.

3. Aggrieved by the impugned order dated 15.04.2021, the Applicant has filed this Review Application. The Applicant has submitted this Review Application quite late in view of lockdown due to Covid-19 epidemic, therefore, he humbly requests the Hon'ble Electricity Ombudsman to condone the delay.

4. The Applicant has submitted following points in his Review Application as under: -

- (i) The Respondent has not submitted the required information till 15.04.2021 as per direction given by the Hon'ble Electricity Ombudsman (Mumbai) during hearing with respect to the procedure for scrapping and the relevant record of all previous scrapped meters sent to the store and necessary entries therein. Meanwhile, the Applicant has also pointed out additional important comments regarding testing of the meter on 26.04.2021. The date of submission of additional information was 16.04.2021, however, the order was issued on 15.04.2021 which is premature in nature, hence, it deserved to be reviewed.
- (ii) While going through the Para 10(b) of the said order, it is indicated that Maximum Demand (MD) recorded in meter as 9.46 KVA against the sanctioned load of 5 HP. This is not witnessed by the Appellant. In addition, it is not reflected in Consumer's Personal Ledger. Hence cannot be taken on record.
- (iii) While going through Para 10(d) of the said order, the consumption for various periods is taken into consideration for conclusion which is hypothetical and does not mention any legal provisions such as sections, clause, etc. Hence, it is bad in law and the order cannot be passed on such assumption.
- (iv) While going through Para 11 of the said order, the Respondent did not take the meter readings for 10 months which resulted into alleged accumulation of readings however the Authority did not demand the Meter Reading Instrument (MRI)


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Report of the said meter for verification of its readings. As such interpretation of such situation be taken in the interest of the Appellant. Hence, the conclusion of the order is not supported by any regulations and need to be revised.

- (v) While going through Para 12, 13 and 16 of the said order, the reasoning given in the order is based on assumption only, and not on factual position. The order did not specify any Section of the Electricity Act, 2003 and / or the Regulations of the Maharashtra Electricity Regulatory Commission (the Commission) for the assumption. Hence the order is without proper reasoning and not a speaking order as indicated in Regulation 20.5 of the CGRF Regulations 2006 and needs to be reviewed.
- (vi) The Applicant referred a press cutting dated 05.06.2021 of Loksatta Newspaper for heavy compensation awarded by the Motor Vehicle Accident Tribunal to the lady who suffered injury in an accident to her right arm while travelling by bus of Maharashtra State Road Transport Corporation in support of its augment.
- (vii) There are errors on the face of record in the said order. This impugned order is contrary to well-settled legal principles.
- (viii) Hence, it is prayed that the present Review Application be allowed and to revise the bill to 3 months as per Regulation 15.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).

5. The Respondent filed its reply vide its email dated 11.08.2021 (which is nothing but repetition of its reply to original representation) which is stated in brief as under: -

- (i) This review is filed after expiry of period of limitation as per the CGRF Regulations, 2006., therefore, it is not maintainable.
- (ii) The Respondent has billed the Appellant with zero consumption for the period from February 2019 to November 2019, i.e. for 10 months. The Appellant did not inform that it was underbilled wrongly.
- (iii) The premises has been given on rent to Vishal Singh (the Applicant) by Shivbacchan Yadav who is the original consumer. It was never intimated to the Respondent.


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- (iv) The terminal of the meter was found to be burnt. The demand notice of the burnt meter was issued to the Appellant. The Appellant paid the same on 12.10.2019. The meter was replaced by new meter on 05.11.2019. The final reading of the meter was available as 56600 KWh. Appellant's demand was also observed on meter as 9.46 KVA while taking check reading. It clearly indicates that the Appellant is using excess load to the tune of twice of sanctioned load of 5 HP.
- (v) The meter was replaced due to burning of contacts on the meter terminal. The consumption pattern before and after replacement coincide with 10 months accumulated consumption. The meter could not be tested due to burning of meter terminals on the meter. The Regulation 15.4.1 is not applicable in this case as meter was working till its replacement.
- (vi) The meter of the Applicant was found faulty and hence replaced by new meter on 24.05.2021. The MD recorded was found 12.656 KVA as per Report generated on 01.06.2021 under MDAS Scheme of the Respondent. The average use of the Applicant found 2625 units per month for the period from 24.05.2021 to 10.08.2021.
- (vii) The Applicant is using load of about 12.6 KVA against the sanctioned load of 5 HP. There is unauthorized load of 8 KVA.
- (viii) In view of the above, the Respondent prays that the instant Review Application be rejected.

6. Office of the Consumer Grievance Redressal Forum at Vasai is newly opened. It was inaugurated on the day of the hearing and physical hearing was held at Vasai on 12.08.2021 by observing Covid-19 epidemic appropriate behaviour.

7. The Applicant stated that a copy of the order was not received from the office of the Electricity Ombudsman (Mumbai). The Applicant is not conversant with digital media and hence he was not able to visit the website of the Electricity Ombudsman (Mumbai). However, the order was handed over by the Respondent in the month of May 2021. The Applicant requested to condone the delay in filing Review Application as the order was not received in time and also considering Covid-19 situation. The Applicant argued that it is an undisputed fact that the Respondent did not take readings for 10 months and final reading of 56600 units, and maximum demand of 9.46 KVA recorded by the meter is all figment of imagination of the


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Respondent and nothing else. All these incidents are fabricated as opportunity was not given to the Applicant to witness the same hence cannot be considered as documentary evidence. The Applicant further argued that the Respondent did not test the meter even though the Applicant has requested twice to test the meter. The scrapping of meter by the Respondent is nothing but to destroy/tear down the evidence. The said order is based mainly on assumption and not on evidence and hence cannot be considered as speaking order. The Applicant prays that there are errors on the face of record in the said order. Hence, it is prayed that the present Review Application be allowed and to revise the bill to three months as per Supply Code Regulations.

8. The Respondent stated that it was to submit additional information up to 12.04.2021 as per direction of Hon`ble Electricity Ombudsman (Mumbai) in hearing held on 07.04.2021. There was follow up call from the office of Secretariat of the Electricity Ombudsman on 12.04.2021, however, it was not possible to give the information. Accordingly, the Respondent vide its email dated 15.04.2021 has informed that the concerned engineer was suffering from Covid, and it was not possible to give information till 30.04.2021. The Respondent reiterated further in line with its written reply dated 11.08.2021. The points raised for review by the Applicant were already on record for perusal while deciding the original Representation. This is not the fit case for Review as the Applicant has not pointed out any new discovery in the matter. The Respondent stated that the list of scrapped meters (including the said meter) credited to Vasai Store on 07.09.2020 was already sent by email to the office of the Electricity Ombudsman (Mumbai) as well as to the Applicant on 30.04.2021 as per the direction of Hon`ble Electricity Ombudsman (Mumbai) and also for the purpose of record.

9. The Applicant has failed to show any error on the face of record. As such the present review is not maintainable considering the provision of Regulation 19 of the CGRF Regulations 2006. The Hon`ble Electricity Ombudsman (Mumbai) has already passed a reasoned order, therefore, the Respondent prays that the Review Application be rejected.

Analysis and Ruling

10. Heard both the parties and perused the documents on record. Provision with respect to review of order is given in Regulation 19 of the CGRF Regulations 2006. The relevant provision is quoted below: -


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“19.1 Any person aggrieved by an order of the Electricity Ombudsman, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of some mistake or error apparent from the face of the record, may apply for a review of such order, within thirty (30) days of the date of the order, as the case may be, to the Electricity Ombudsman.

19.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record. The application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.

19.3 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application.

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

19.4 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

11. The Review Application (signed by the Applicant) was received and registered on 23.07.2021 against the order dated 15.04.2021 passed in Representation No. 7 of 2021. The Review was filed after 99 days from the date of the order. There is a delay in filing the Review Application by 69 days. Considering Covid -19 situation, I condone the delay in filing the Review Application in exercise of the powers as per Regulation 17.2 of the CGRF Regulations 2006 which allows the Electricity Ombudsman to condone the delay in filing the appeal against the order of the Forum. The same powers are exercisable by the Electricity Ombudsman in condoning the delay in filing the Review Application.

12. The Applicant has argued that the Hon'ble Electricity Ombudsman issued the order prior to receipt of information subsequent to his own directives issued during the hearing. Therefore, to that extent the order is bad in law. This argument of the Review Applicant is misleading on facts as could be seen from para 8 of the original order which is quoted below:

“8. During the hearing, when the undersigned asked the Respondent as to whether the meter could be tested, it informed that the meter has been sent to store as scrap. On this, the


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undersigned directed the Respondent to submit the record on or before 12.04.2021 with respect to the procedure for scrapping and the relevant record as to when it has sent all previous scrapped meters to store and necessary entries thereto.” (Emphasis added)

Accordingly, the secretariat of this office followed up with the Respondent telephonically on 12.04.2021, however, the Respondent expressed its inability to provide the same as the concerned official/s were suffering from Covid. Subsequently, the Respondent confirmed the same by email dated 15.04.2021. Hence, there was no propriety in keeping the order pending as the circumstantial evidence was strong enough to take the order to its logical end and the order was therefore issued on 15.04.2021 itself. Therefore, the argument of the Review Applicant that the order has been issued prior to 15.04.2021 is highly misleading.

13. Moreover, the argument of the Review Applicant that the order is based on assumption and is hypothetical one as far as MD of 9.46 KVA, is totally baseless because when the meter was further replaced, it did record MD of 12.656 KVA on 01.06.2021 as per data acquisition in MDAS system of the Respondent. This has not been reflected in the bill for the simple reason that the Review Applicant falls between zero to 20 KW tariff category and is not therefore billed on KVA. Therefore, naming this hypothetical on the flimsy ground is probably an alibi for avoiding any action that could be taken by the Respondent for exceeding the load sanctioned. It is worth mentioning that even this meter which recorded 12.656 KVA on 01.06.2021 has also been declared faulty. The Respondent needs to take appropriate call in this regard.

14. The original order of which the review has been sought is highly speaking and reasoned one and all issues have been appropriately appreciated in the Analysis and Ruling part of the said order.

15. On perusal of this Review Application, the Applicant has not brought anything new which he was not aware of during the original proceeding, nor did he point out any error on the face of the record in the impugned order except saying that there is an error on the face of it and the entire order is based on assumptions and surmises. The press cutting of Loksatta Newspaper dated 05.06.2021 referred by the Applicant has no relevance whatever with the instant case. The Applicant has raised same grounds and pleas which he had already taken during hearing of Representation No.7 of 2021. The Review Application is nothing short of


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repetition of the original representation. The Applicant is trying to seek rehearing of the case under guise of Review which is not permitted.

16. The scope of the Review is limited. The mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

- a. KamleshVarma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”

- b. In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

17. Every case is a unique case and justice needs to be given considering the circumstances of the case also. It is not the case of one size fits all. In view of the above, I am of the opinion, that the Review Applicant has not brought out any new issue which has not been dealt in the impugned order which is the primary requirement for review of the order under Regulation 19 of the CGRF Regulations 2006. Therefore, the Review Application is rejected.

Sd/
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Electricity Ombudsman (Mumbai)


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