

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 131 OF 2022

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

Kokan Beverages and Food Industry .....Appellant

V/s.

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

Appearances:

Appellant : 1. Nasim S. Chogale, Partner  
2. Saif A. Chogule, Representative

Respondent : 1. Ganesh Panchpohe, Executive Engineer, Goregaon Dn.  
2. Prakash Khandekar, Executive Engineer, Pen Circle

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

Date of hearing: 20<sup>th</sup> October 2022

Date of Order: 4<sup>th</sup> November 2022

**ORDER**

This Representation was filed on 24<sup>th</sup> August 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 20<sup>th</sup> July 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup Urban Zone (the Forum).

(Dilip Dumbre)  
Secretary

Electricity Ombudsman Mumbai



2. The Forum, by its Order dated 20.07.2022 has rejected the grievance application in Case No. 13 of 2022.

3. The Appellant has filed this representation against the order of the Forum. The hearing was held on 20.10.2022 where the Appellant was physically present, and the Respondent attended the hearing through video conference. The Appellant's written submission and arguments in brief is stated as below: -

- (i) The Appellant is a LT Industrial Consumer (Consumer No. 044510003052) from 31.05.2011 having Sanctioned Load (SL) of 40 KW and Contract Demand (CD) of 30 KVA, at Mhasla, Dist. Raigad. The Appellant is a Manufacturer of Packaged Drinking Water.
- (ii) The Flying Squad of the Respondent inspected the premises of the Appellant on 02.02.2022 and pointed out that B phase voltage to the meter was found missing from 18.03.2020 to 02.02.2022. The Appellant received a supplementary bill of Rs. 1,87,974/- as debit adjustment in the bill of April 2022.
- (iii) As B phase of the meter was not working, it indicates that the meter is defective. Hence the Appellant should be billed retrospectively for three months considering average of one year as per Regulation 15.4.1 of the Supply Code Regulations 2005.
- (iv) The Appellant approached the Forum on 27.04.2022. The Forum, by its Order dated 20.07.2022 rejected the grievance. 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.
- (v) It is to be noted that as per Regulation 14.4.1 of Supply Code Regulations 2005, the Respondent is duty bound to inspect the premises of consumers periodically and test the meter. The said Regulation is reproduced as below:  
*“14.4 Testing and Maintenance of Meter  
14.4.1 The Distribution Licensee shall be responsible for the periodic testing and maintenance of all consumer meters.”*
- (vi) Section 163 of the Act specifies that it is duty of the Licensee for inspecting, testing, repairing, or altering the electric supply-lines, meters, fittings, works and

apparatus for the supply of electricity belonging to the licensee. The Respondent failed to perform its duty for not maintaining the meter. Hence, the Respondent has no authority to recover retrospectively for failure of its duty.

- (vii) The Appellant referred the order passed in representation no.140/2014 of the Electricity Ombudsman Nagpur dated 16.03.2015 in Case of Dev Kanoriya, Sudarshan Motors V/s Superintending Engineer, Nagpur Urban Circle, MSEDCL, Nagpur, wherein at Para 11, it is stated that: -

*"It is specific provision regarding billing in the event of a defective meter and it is fully applicable to the present case. "*

- (viii) The Appellant further referred the following orders in support of its arguments of defective meter: -

(a) Prema Plastic Allied Industries V/s. The MSEDCL (Pune), Case No. 06/2016.

(b) Kailash Prabhat Hotel V/s. The MSEDCL Pune, Case No. 07/2017.

(c) The Principal, Lad College for Women V/S MSEDCL (Nagpur), Case No. 65/2017.

(d) Bharat Sanchar Gigam Ltd. V/s MSEDCL (Nagpur), Case No. 106/2017.

(e) The Sub-Divisional Engineer Telecom V/s MSEDCL (Chandrapur), Case No. 04/2019.

(f) Sudarshan Motors V/s MSEDCL (Nagpur), Case Number - 140/2014.

- (ix) The Respondent cited the Judgment dated 05.10.2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in Case of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. The Respondent claimed that it is a case of escaped billing and they have the right to collect it. The Appellant pointed out that the ratio of this judgment is not applicable in this case as it is totally different from this case. Prem Cottex is a case regarding recovery of multiplying factor for three years. In this case, the Respondent utterly failed to test the meter periodically. The bad workmanship shows that the PT voltage of the meter was missing.

- (x) The Appellant has relied upon the order of the Commission dated 11<sup>th</sup> February 2003 in Case No. 24 of 2001, and argued that the recovery of tariff difference

could not be retrospective; and it can only be from the date of detection of the error.

- (xi) The Appellant argued that Potential Terminals are part and parcel of the metering arrangements, and if there is any problem with the arrangement of the meter then the meter is considered defective.

Meter is defined as per Regulation No. 2.1(q) of the Supply Code Regulations 2005 which is as below:-

*“2.1 (q) “Meter” means a set of integrating instruments used to measure, and / or record and store the amount of electricity energy supplied or the quantity of electrical energy contained in the supply, in a given time, which include whole current meter and metering equipment such as **current transformer, capacitor voltage transformer or potential or voltage transformer with necessary wiring and accessories and also includes prepayment meters;**” ..... (Emphasis added)*

As stated hereinabove and as per the definition, the meter includes the Potential Transformer. In this case, the meter was not getting ‘B’ Phase Voltage, hence the meter becomes defective. Hence, as per Regulation No.15.4.1, the Respondent cannot charge the assessment for more than 3 months.

- (xii) The Appellant argued that the cost price of his product (packaged water) is derived as per income and expenditure of the factory. The electricity charges play a major role for deciding the prices of finished items. At this moment, it is not possible to recover cost from the Customers where the product was sold. The Appellant is forced to close the factory due to the sudden heavy burden imposed by the Respondent.
- (xiii) In addition, the Appellant put on record various orders, references for supporting its claim against illegal retrospective recovery and defective meter.
- (xiv) The recovery is totally baseless and contradictory to the Regulation No.15.4.1 of the Supply Code Regulations. As per Section 55(1) of the Electricity Act, 2003, the Respondent shall install a correct and accurate meter. However, in this case, the Respondent failed to check and test the meter.
- (xv) The Appellant prays that the Respondent be directed
- a) to withdraw the supplementary bill of Rs. 1,87,974/-, and be billed for three months only as per Regulation 15.4.1.
  - b) to waive of the interest and Delayed Payment Charges (DPC) till date

c) to grant suitable installments without any interest and DPC.

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 Industrial Consumer (Consumer No. 044510003052) from 31.05.2011 having Sanctioned Load (SL) of 40 KW and Contract Demand (CD) of 30 KVA, at Mhasla, Dist. Raigad. The Appellant is a manufacturer of Packaged Drinking Water.
- (ii) The Flying Squad of the Respondent inspected the premises of the Appellant on 02.02.2022. During inspection, it was observed that the B phase Voltage was missing in the metering unit due to a loose connection. It was noticed that the consumption recorded was only two third of actual consumption. The Respondent tightened the loose connection of B phase Voltage where it was tapped externally. The Metering unit was found under recording by 34.9 % when tested by accuchek. It was necessary to assess the under billing which had happened due to missing of B Phase Voltage. As per the meter configuration, the missing voltage parameter of B-phase makes the consumption less by 33.33 %.
- (iii) The MRI of the meter was downloaded. The current on R, Y and B phase was found 53.7, 46.4. and 49.0 Amp, respectively. The voltage on R, Y, & B phase was found 232.87, 230.11 and 0 Voltage, respectively. As per the MRI report, the B Phase Voltage to the meter was found missing from 18.03.2020 to 02.02.2022
- (iv) Hence, the Respondent issued a supplementary bill of plain recovery for 32480 units for Rs. 1,87,974 immediately, based on data retrieved from MRI for the above period, and added debit adjustment in the bill of April 2022.
- (v) The Respondent cited the Judgment dated 05.10 2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in Case of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. The Judgment clearly differentiates between applications of Section 56 of the Act for "escaped assessment" V/s "deficiency in service". The Hon'ble Supreme

Court of India has allowed past recovery which was escaped assessment due to a bona-fide error of the licensee. The Court further held that limitation provided under Section 56(2) will not be applicable for “escaped billing” as the mistake was bona-fide. The relevant part of the Judgment is reproduced as below:

*“23. Coming to the second aspect, namely, the impact of Sub-Section (1) on Subsection (2) of Section 56, it is seen that the bottom line of Subsection (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him.*

*24. Sub-section (2) uses the words “no sum due from any consumer under this Section”. Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for electricity. What is covered by section 56, under subsection (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.*

*25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is Page 7 of 12 113 of 2022 Raju Surajmal Solanki detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, “no sum due from any consumer under this Section,” appearing in Sub-section (2).”*

The present case is nothing but “escaped billing” due to a bona fide error. It is not a case of recovery due to “deficiency in Service.”

- (vi) Further, it was confirmed by Secure Ltd. (the manufacturer) that the said meter (Sr. No. MHD05731, 3\*240V, 40-200 A, Secure Make), does not have Smart PT Function (where internally Voltage is auto generated in case of PT failure) as per report received from the manufacturer. Therefore, if one phase is missing, the meter under bills accordingly.
- (vii) The Appellant approached the Forum on 27.04.2022. The Forum in its order dated 25.05.2022 has rightly addressed all these issues and rejected the grievances of the Appellant.
- (viii) In view of the 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 Industrial Consumer (Consumer No. 044510003052) from 31.05.2011 having Sanctioned Load (SL) of 40 KW and Contract Demand (CD) of 30 KVA, at Mhasla, Dist. Raigad. The Appellant is a manufacturer of Packaged Drinking Water.

6. It is the case of the Appellant that the PT Voltage of B Phase was not extended to the meter from 18.03.2020 to 02.02.2022. However, Y and B phase Voltage was found in order. This period is calculated from the MRI data of the meter downloaded by the Respondent. The Data recorded of voltage and current as per event of MRI on 02.02.2022 (13:40: 15 Hrs.) is tabulated below:

Voltage(V)			Current(A)		
R-N	Y-N	B-N	Line Current L1	Line Current L2	Line Current L3
232.87	230.11	0	53.70	46.40	49.00

It is clearly seen from the statement that B phase voltage was missing; however, current of 49 Amp was recorded in B phase.

7. The Respondent contended that since only B Phase PT Voltage was not extended to the meter, the meter as such cannot be termed as faulty, and therefore Regulation 15.4.1 of the Supply Code Regulations 2005 is not attracted. The Appellant was under-charged, considering that the meter was under recording by 33% as per retrieved MRI data of the meter. As soon as the screw of the PT Tapping external point of B phase was tightened, the meter display started showing B phase Voltage in addition to R and Y phase Voltage. When the Voltage of the B Phase was not available to the meter, the meter was recording only 66% of its actual consumption. Thus, the under-billing needed to be corrected. The same meter is correctly recording on site at present.

8. There are many Judgments and orders of the Electricity Ombudsman, Mumbai in similar cases. The Appellant, however, contended that it is the responsibility of the Respondent to take care of these technical aspects. Why should the consumer have to pay for their fault? The meter should be treated as faulty, and 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 of the Supply Code Regulations. Regulation 15.4.1 provides as under: -

*“15.4.1 Subject to the provisions of Part XII and Part XIV of the Act, in case of a defective meter, the amount of the consumer’s bill shall be adjusted, for a maximum period of three months prior to the month in which the dispute has arisen, in accordance with the results of the test taken subject to furnishing the test report of the meter along with the assessed bill.”*

9. When the Consumer’s Personal Ledger was perused, it was seen that the consumption was recorded by about 1/3<sup>rd</sup> less for the period from March 2018 to Jan.2022 as compared with the present trend of the appellant tabulated below:

Consumption of meter when not recording 1/3rd Consumption				Current Consumption	
Month	Cons. (units)	Month	Cons. (units)	Month	Cons. (units)
Mar-20	3192	Mar-21	3372	Feb-22	3828
Apr-20	2972	Apr-21	3482	Mar-22	5850
May-20	1469	May-21	2591	Apr-22	6390
Jun-20	2118	Jun-21	2199	May-22	5712
Jul-20	1674	Jul-21	2231	Jun-22	10866
Aug-20	2297	Aug-21	3665	Jul-22	6093
Sep-20	2112	Sep-21	2524	Aug-22	4157
Oct-20	2816	Oct-21	2449	Sep-22	4340
Nov-20	2736	Nov-21	3047		
Dec-20	2774	Dec-21	4047		
Jan-21	3895	Jan-22	4340		
Feb-21	3808				
Average Consumption			2861	Avg. Cons.	5905

10. When the voltage was extended by tightening the loose screw where the voltage of B phase was tapped, the Meter started showing all parameters of voltage on display of the meter. In the present case there was nothing intrinsically wrong with the meter as such, but the under-



recording of electricity consumed was associated with the act of poor workmanship or disturbance of supply cable.

11. The Judgment 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 quoted below:

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

The period of assessment is 23 months in the present case which is less than the maximum period of 24 months mentioned in Section 56(2) of the Act.

12. This is a bona fide mistake of the Respondent. 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.”*

This Judgment is squarely applicable in the present case.

13. The Respondent cited the Judgment dated 05.10 2021 of the Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in Case of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. The ratio of this Judgment is not applicable in the instant case considering the depth of the grievance

14. In view of the above, I pass the following order:
- a) The Respondent to waive off the interest and DPC of the supplementary bill of Rs.1,87,974/- from the date of supplementary bill added in the system (April 2018) till the date of this order.
  - b) The Appellant may be granted suitable equal instalments, not more than six, without DPC and interest on the component of instalments.
  - c) The Respondent to submit compliance report within two months from the date of this order.
  - d) Other prayers of the Appellant are rejected.
15. The order of the Forum stands modified to the extent above.
16. The representation is disposed of accordingly.

Sd/-  
(Vandana Krishna)  
Electricity Ombudsman (Mumbai)