

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)
(Appointed by the Maharashtra Electricity Regulatory Commission
under Section 42(6) of the Electricity Act, 2003)

REPRESENTATION NO. 26 OF 2020

In the matter of billing

Niharika Co-Op. Housing Society Ltd.....Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd.Respondent
Wagle Estate, Thane (MSEDCL)

Appearances

For Appellant : 1. Pravin Agrawal
2. T. Sambamoorthy


For Respondent : Vijay R. Sonawale, Addl. Ex. Engineer, Kolshet

Coram: Deepak Lad

Date of Order: - 30th April 2020

ORDER

This Representation is filed on 13th February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 17th December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).


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2. The Forum, by its order dated 17.12.2019 has partly allowed the Grievance Application No. 301/2019 and directed as below: -

“2. The respondent utility is hereby directed to recover the arrears only for the period of 2 years that is 24 months from the date of demand. The amount which is paid be adjusted in the bill.”

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

- (i) The Appellant is a registered Co-operative Housing Society from 30.08.2011 at Niharika, Opp. Lokpuram, Near Vasant Vihar, Thane (West).
- (ii) The Appellant has separate electric connections for common use of the Society since 25.04.2009 in the name of the Developer. The Appellant is paying all their electricity bills regularly before due date, to avail the early payment rebate offered by MSEDCL.
- (iii) The Respondent Asst. Engineer (AE) visited Appellant's premises in December 2018 for inspection, and had discussion with the Society Manager and Secretary for clubbing of common meters. It was instructed to change the wiring of meter connections of common use meters group wise so that it would club to one Common Meter of each group. It was also informed that this is required to be done as per an old internal commercial circular of the Respondent dated 16.02.2010.
- (iv) The Appellant has no objection to merging the various electricity connections into one meter as per group. The Appellant has clarified that there should not be any liability on the Society for the past recovery. It was assured accordingly.
- (v) The Respondent has removed eight electricity meters and merged the supply with other meters installed in the Society.
- (vi) After clubbing the common use meters, the Appellant received an electricity bill of January 2019 dated 26.01.2019 with debit bill adjustment of Rs.3,12,381.98/- even though the Appellant had paid all the bills till December, 2018.



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- (vii) Upon enquiry with the Respondent, AE, the Appellant was informed that the Respondent has charged slab tariff difference for previous years i.e. from Nov.2016 to Dec, 2018 on account of merging of the electricity connections.
- (viii) During discussion with the Respondent, AEE and AE, it was informed that the Respondent has already made out retrospective recovery towards tariff difference slab of residential tariff category for past 24 months which are tabulated as below:-

Sr. No.	Particular	Amount
Part I	Club House [(Consumer Nos. 000012353995 (Boundary Lighting), 000012353987 (Swimming Pool), 000012354002(Club House)] in bill of January 2019.	3,12,381.98
Part II	In bill of March 2019	
A.	A Wing (Consumer Nos. 000012389962, 000012329997, 000012329971 and 00012329989)	1,49,622.15
B	B wing (Consumer Nos. 00123230766,000012330791,000012330774 and 000012330782)	2,65,914.30
C	C Wing (Consumer Nos. 000012442564, 000012442599,000012442572 and 000012442581)	2,44,869.30
	Total(A+B+C)	6,60,405.75

- (ix) The Appellant received an email on 20.03.2019, from Respondent giving the detailed working of the difference amount to be charged for A, B & C wing to Appellant society.
- (x) The Appellant deposited the arrears under protest, although the Appellant have paid all the electricity bills received from the Respondent up to April 2019.
- (xi) The Appellant filed the grievance application by its letter dated 26.03.2019 before the Internal Grievances Redressal Cell (IGRC).The IGRC, by its order dated


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24.05.2019 directed to recover slab difference from the date of connection. The order was painful to the Appellant.

- (xii) The Appellant approached the Forum on 27.06.2019. The Forum, by its order dated 17.12.2019 has partly allowed the grievance by restricting retrospective recovery for 24 months
- (xiii) The Appellant is entitled to receive compensation as per the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014(SOP Regulations).
- (xiv) Therefore, the Appellant prays that the Respondent be directed
 - a. to refund the entire amount of Rs.9,72,787.73 towards supplementary bills along with the interest.
 - b. to refund the interest and delayed payment charges (DPC) levied in the bills from December 2018 to June/July, 2019 due to non-payment of arrears under dispute.
 - c. to grant compensation as per SOP Regulations.

4. The Respondent filed its reply by letter dated 05.03.2020 stating in brief as below: -

- (i) The Appellant, Niharika CHS Ltd. is residential complex. Separate electric connections were released to the Appellant in the name of Kanakiya Spaces Pvt. Ltd. in the year 2009/2010 for separate common purposes like common lighting, lift, water pumps, stair case lighting, club house, swimming pool, etc.
- (ii) The Respondent, Corporate Office, Mumbai issued Commercial Circular No. 110 on 16.02.2010 for clubbing of common meters of Residential Housing Societies and Commercial Complexes. It is clearly mentioned in the circular that it will reduce expenses of manpower and materials, reduce cost of maintenance, increase revenue as the units used and registered in single meter will attract higher slab of tariff. Prompt payment by such consumers is expected as default would result in disconnection, leading to stoppage of lift, common area lighting and water pump service simultaneously. This is in line with the order dated 08.09.2006 of the


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Maharashtra Electricity Regulatory Commission (the Commission) for approving Schedule of Charges which is effective from 08.09.2006. Accordingly, in the said circular, it is directed to club common meter in one meter in phased manner within period of six months.

- (iii) The Respondent, Assistant engineer, Vasant Vihar Section Office, has carried out spot inspection of the Appellant on 15.12.2018. During inspection, it was observed that Consumer No. 000012354002 of Club House was billed with zero units from Mar 2017 in spite of usage till date of inspection. It was found that another two different consumers (No. 000012353995 and No. 000012353987) were used for same club house for boundary lighting and swimming pool respectively. As per spot inspection, and as per Commercial Circular 110 dated 16.02.2010, the detail of clubbing of the meters of the Appellant were as below:-

i. Club House:-


Consumer No. 000012353995 (Boundary Lighting) and No. 000012353987 (Swimming Pool) were permanently disconnected and load of the same were clubbed with Club House (Consumer No. 000012354002). The Club House (consumer No. 000012354002) is assessed for recovery of Rs. 3,01,328/- towards stop meter and difference of tariff slab of residential tariff category for 24 months.

ii. A Wing :-

Consumer No. 000012329997 (Staircase A Wing), Consumer No. 000012329989 (Lift No.2 A wing) were permanently disconnected and loads of the same were clubbed with the Consumer No. 000012329962 (Water pump A wing). The Consumer No. 000012329962 (Water pump A wing) is assessed for recovery of Rs. 1,49,622.15/- towards difference of tariff slab of residential tariff category for 24 months.

iii. B Wing :-

Consumer No. 000012330791 (staircase B wing), Consumer No. 000012330774 (Lift No. 1 B wing) were permanently disconnected and loads of the same were clubbed with the consumer No. 000012330766 (Water Pump B wing). The Consumer No. 000012330766 (Water Pump B wing) is assessed for recovery of Rs. 2,65,914.30/- towards difference of tariff slab of residential tariff category for 24 months.


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iv. C Wing :-
Consumer No. 000012442599 (Staircase C wing), Consumer No. 000012442581 (Lift No. 2 C wing) were permanently disconnected and loads of the same were clubbed with the consumer No. 000012442564 (Water Pump C Wing). The consumer No. 000012442564 (Water Pump C Wing) is assessed for recovery of Rs. 2,44,869.30 toward difference of tariff slab of residential tariff category for 24 months.
All recovery were issued and informed the Appellant vide e-mail dated 20.03.2019.

(iv) The Appellant filed the grievance by its letter dated 26.03.2019 before the IGRC. The IGRC, by its order dated 31.01.2019 directed to charge slab difference recovery from 14.10.2010 however, which is more than two years and not as per Section 56 (2) of the Electricity Act 2003(the Act).


No assessment was carried out as per IGRC order,

(v) Meanwhile, the Appellant approached the Forum on 27.06.2019. The Forum, by its order dated 17.12.2019 has partly allowed the grievance by restricting retrospective recovery for 24 months.

(vi) As the Respondent has already clubbed all above meters and charged recovery for two years only, which matches with direction of the Forum. Hence, the grievance is resolved, there is no further grievance pending at its level.

(vii) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

5. During the hearing on 21.01.2020, all the parties argued in line with their written submissions. The Appellant has submitted written rejoinder during hearing. The Appellant denied that Consumer No. 000012354002 of Club House was billed with zero units from March 2017 despite its use till the date of inspection. The club house meter outgoing cable was short-circuited, and it was isolated from MCCB. It is specifically denied that the club house was not required any usages immediately, the new outgoing cable was laid in June 2018. The Appellant argued that the Respondent Circular No.110 dated 16.02.2010 has not mentioned anywhere that the MSEDCL can recover the difference amount for the past period,


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hence, the demand raised is in contrary to the Commercial Circular. The order of the Forum is also in contrary to the said Circular. Therefore, the Appellant prays that the Respondent be directed to refund the entire amount of Rs.9,72,787.73/-of supplementary bills along with interest and DPC levied in the bills from December 2018 to June/July, 2019.

6. The Respondent argued during the hearing that the Respondent has clubbed common use meters as per policy which is consistent with approved Schedule of Charges by the Commission which is effective from 08.09.2006 and charged retrospective recovery for past two years as per Section 56(2) of the Act. Hence, the grievance of the Appellant is already resolved.


Analysis and Ruling


7. Heard the parties. I perused the documents on record. It is the case of clubbing of common meters of Residential Housing Societies as per Commercial Circular No. 110 on 16.02.2010 of the Respondent. The common use meters of the Appellant were clubbed in the period of December 2018 to February 2019 as per said Circular. The retrospective recovery towards slab tariff difference of residential tariff category for past 24 months of Club House was debited in the bill of January 2019 along with assessment of stop meter. The retrospective recoveries of past 24 months towards slab difference of residential tariff category, of A Wing, B Wing and C Wing were debited in the bill of March 2019 considering total consumption of clubbing of meters.

8. The relevant portion of the Commercial Circular No. 110 on 16.02.2010 of the Respondent is produced as below:-

“In the Urban areas, fast development, is taking place and large construction activities are in progress. These construction activities mainly are for Residential and Commercial complexes.....

In many Residential Housing Societies & Commercial complexes it is observed that separate connections for separate purposes i.e. common lighting, lift, water pump, stair case etc. are released.


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MERC has determined the "Schedule of Charges" w.e.f. 8th September 2006 wherein Commission has not permitted to recover service line charges from prospective consumers and only Service Connection Charges based on load applied for are recoverable.....
.....


In view of above, if only one common connection is provided for such type of Residential Housing Societies & Commercial complexes, instead of giving separate three or four connections, it will reduce expenses of manpower and materials, reduce cost of maintenance, increase revenue as the units used and registered in single meter will attract higher slab of tariff. Prompt payment by such consumers is expected as default would result in disconnection, leading to stoppage of lift, common area lighting and water pump service simultaneously. Also this will be in line with the MERC regulations and MSEDCL's Commercial Circulars.

It is therefore decided that,

- 1) Common connection is to be given to Residential Housing Societies & Commercial Complexes for common lighting, lift, water pump, stair case etc. (This common connection should be 1 phase or 3 phase supply depending on the load applied.)
- 2) Residential/Commercial Tariff as per main purpose of usage of electricity is to be made applicable to such common connection.
- 3) Existing separate connections in Residential Housing Societies & Commercial Complexes are to be clubbed into one common connections in a phased manner within period of 6 months.
- 4) IT System data to be updated immediately after amalgamation of the connections & proper bills are to be issued by field offices.

All field offices are requested to take due note of the decision and take necessary action accordingly."

It is clear that there is no direction of the Respondent Corporate Office to recover the slab tariff difference by totaling all consumptions together after clubbing of the meters. Moreover, plain reading of the circular does not by any stretch of imagination expressly or impliedly point out coercive action against all such consumers. Notwithstanding this, clubbing of meters facilitated more to the Respondent in terms of meter reading, billing and issue of bills and further recovery and maintenance of ledger followed by increase in revenue.


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This is not something which falls under Section 56(2) of the Electricity Act 2003 (the Act) as the Respondent itself had issued separate meters for common purpose/use of the Society. All bills were paid regularly by the Society. There was no dispute as such from both sides till the debit bill towards clubbing was raised. The Respondent grossly erred in interpreting the statutory provision of the Act and the Circular.

9. The Respondent has done retrospective recovery for 24 months as per Section 56(2) of the Act which is quoted as 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 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.”

The Larger Bench Judgment dated 12.03.2019 of the Bombay High Court has interpreted Section 56(2) of the Act in detail. The legal provision of the Section 56(2) of the Act is very clear and its applicability would depend upon the facts and circumstances of the cases. In this case, the separate connections for common use were sanctioned and released by the Respondent. The clubbing of common use meters drive are taken by the Respondent for the reason referred in its Commercial Circular No. 110 on 16.02.2010 in phased manner. Hence, the retrospective recovery cannot be considered as per provision of Section 56(2) of the Act. The interpretation of Section 56(2) of the Act does not permit such recovery and hence the same is not applicable in this case.

10. In view of the above discussions, the Respondent is directed as follows: -
- (a) to withdraw retrospective recovery of tariff difference towards slab wise tariff which is calculated for 24 months along, with interest and DPC levied if any.
 - (b) the amount of refund shall be adjusted in the ensuing bill/s.
 - (c) the Assessment recovery of stop meter shall once again be examined in light of the submission of the Appellant and factual position on sight and shall be done as per provision of Regulation 15.4.1 of the Supply Code Regulations.


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(d) Other prayers of the Appellant are rejected.

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

12. The Forum's order is therefore revised to the above extent. The Representation is disposed of accordingly.

13. The secretariat of this office is directed to refund the amount of Rs.25000/- to the Appellant immediately.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

