

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 8 OF 2021

In the matter of billing

Mehul M. Dagli (User) Appellant
(Late Smt. Kanchanben Dagli – Original Consumer / Grandmother of the User)

V/s.

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

Appearances: -

Appellant : Mehul Dagli

Respondent : Nitin Sankhe, Addl. Ex. Engineer

Coram: Mr. Deepak Lad

Date of Hearing: 7th April 2021

Date of Order : 19th April 2021

ORDER

The Representation is filed on 11.02.2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 11th December 2020 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan Zone (the Forum).


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2. The Forum, by its Order dated 11.12.2020 has partly allowed the grievance application in Case No. 2055 of 2019-20. The operative part of the order is as below: -

- “ 2) Utility is directed to raise the bill 24 months from the date of detection.
- 3) Raise the revise bill considering 205 units per month. Already paid bill given set off.
- 4) No interest, DPC shall be charged.
- 5) Consumer shall pay the bill along with current bill. On failure of payment to disconnect.
- 6) Consumer shall be paid Rs.500 towards compensation may be adjusted in future bill.
- 7) Correction be made in IT the record in the name of consumer Shri. Dagli.”

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

- (i) The electric connection is still in the name of Smt. Kanchanben Dagli (K. Dagli) at flat No. 102, Vandana Apartment, Achole Road, Nallasopara (East), who is no more, and Mr. Mehul Dagli is her grandson who has filed the present representation.
- (ii) The Respondent handed over a hand delivery letter dated 11.01.2017 on 09.02.2017 of the Respondent, Additional Executive Engineer, Achole Sub-Division (AEE) regarding Consumer No. 001901237367 (12 digits) which was addressed to one Shri. Ratilal B. Mankhedekar (R. Mankhedekar) having address of Room No. 6, Shri Krishna Chawl, Alkapuri, Achole Road, Nallasopara (East). The said letter dated 11.01.2017 contains following details:
 - a) A provisional bill of Consumer No. 001901237367 (12 digits) in the name of R. Mankhedekar of Rs. 4,95,116.43 for 54557 (54673-116) units for 75 months for the period April 2010 to November 2016.
 - b) Consumer No. 001901237367 (12 digits) was permanently disconnected (PD) on January 2011 as per Consumer`s Personal Ledger (CPL) however, there is meter on the site.
- (iii) The Respondent had incorrectly handed over the said letter dated 11.1.2017 alleging that the Appellant was ‘user’ of the said meter of Consumer No. 001901237367 (12 digits). The Appellant has nothing to do with Room No. 6, Krishna Chawl or R. Mankhedekar referred in the said letter/bill.


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- (iv) The Respondent has submitted that the meter was live till January 2011 that is before its disconnection, and payment of the same for the period up to disconnection was paid by R. Mankhedkar.
- (v) The Respondent issued disconnection notice on 28.2.2017 under Section 56 (1) of Electricity Act, 2003 (the Act) to R. Mankhedkar wherein the name of Appellant was mentioned as 'user' and pasted the said notice on the door of the Appellant's premises and also issued notice through RPAD at the Appellant's premises i.e., 102, Vandana Apartment.
- (vi) The Appellant immediately then issued a Legal Notice through their Advocate dated 11.3.2017 informing them that the Appellant had nothing to do with the Consumer No. 001901237367 (12 digits) of Room No. 6 in Krishna Chawl and/or R. Mankhedkar.
- (vii) The Appellant submits that the said Vandana Apartment flat was not in use for a few years, since there was some family dispute that came to be settled amicably in 2017.
- (viii) The Appellant made an application dated 21.03.2017 to the Respondent for new electricity connection at said flat of Vandana Apartment. Sometime around 02.04.2017, the Respondent provided electricity connection to the said flat of Vandana Apartment with Consumer No. 001981464512 (12 digits) in the name of K. Dagli (grandmother of the Appellant) on the basis of an application made dated 6.10.2008.
- (ix) The Appellant visited the Respondent's office and requested them to issue bills in the name of the Appellant's father as the application dated 21.3.2017 was made by the Appellant's father. To the shock and surprise of the Appellant, the Respondent informed the Appellant that the Application dated 6.10.2008 was acted upon and the present connection i.e., Consumer No. 001981464512 (12 digits) was on the basis of the application of 2008 and the application of 2017 was rejected.
- (x) Afterward and afterthought, the Respondent replied to the legal notice dated 11.3.2017 issued by the Appellant, vide reply dated 13.4.2017 for the first time addressed a communication to K. Dagli at the Vandana Apartment address.
- (xi) The Consumer number 001901237367 (12 digits) was installed at Shri Krishna Chawl and R. Mankhedkar was billed for his usage and he was paying regularly till


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2011, when the said chawl was demolished for reconstruction. It is pertinent to mention here that consumer No. 00190123801 (11 digits) allotted to K. Dagli was never installed or activated at Vandana Apartment or at Shri Krishna Chawl. Therefore, the story being made out by the Respondent is unfounded and to cover up of some alleged unrecovered dues generated in their system without thereby any reference to the meters referred here.

- (xii) The falsity of the Respondent is established by their own action, as the application made by K. Dagli in the year 2008 is for the first time acted upon by the Respondent in the year 2017 by their own action.
- (xiii) The first bill towards Consumer No. 001981464512 (12 digits) at the Vandana Apartment of the Appellant was issued on 22.04.2017 for Rs.125.13.
- (xiv) The electric supply was provided to the Appellant at the Vandana Apartment in April 2017, the Respondent did not generate bills or issue bills to the Appellant.
- (xv) The Appellant visited the Respondent regularly requesting them to issue bills to enable the Appellant to make payment towards usage. The Appellant submit that the Respondent informed the Appellant that the software will not permit generation of bill in the name of Appellant in view of the wrong entry reflecting disputed amount at the Vandana Apartment address.
- (xvi) The Appellant thereafter through RTI found that the usage of electricity at the Vandana Apartment under Consumer No. 001981464512 (12 digits) was Rs.2750/- as on September 2017. The Appellant submit that the said Consumer Number was shown as 'progressive' between April 2017 and September 2017. Thereafter, the Respondent, highhandedly did not generate bills for the usage.
- (xvii) The Appellant continued following up with the Respondent for generation of bill towards usage at the Vandana Apartments. The Respondent continued to demand Rs.5,08,167.63 though the amount is not payable by the Appellant. For sake of repetition, the Appellant submit that the amount of Rs.5,08,167.63 is allegedly for usage at the Shri Krishna Chawl by one R. Mankhedkar for period 2008 to 2016. The Appellant has nothing to do with the said person or the address or the usage.
- (xviii) Upon receipt of the reply dated 13.04.2017, the Appellant collected various records through RTI and also from the official website of the Respondent. It is discovered that:


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- (a) The CPL report for Consumer No. 001901237367 (12 digits) belonging to R. Mankhedkar was found. It was seen from the CPL that Consumer No. 001901237367 (12 digits) was active and live at Shri Krishna Chawl till January 2011 and R. Mankhedkar has duly paid dues for the same period.
- (b) The F1 Register shows that R. Mankhedkar applied for connection on 22.10.2008 and Consumer No. 001901237367 (12 digits) was allotted to him and therefore continued to be in the name of R. Mankhedkar.
- (c) The photographs of the Consumer No. 001901237367 (12 digits) shows that the meter was at Shri Krishna Chawl in the month of September 2012, December 2012 and July 2016.
- (xix) It is further pertinent to mention here that it is further revealed that :
- a) The MR 6 for Consumer No. 001981464512(12 digits) which is allotted to K. Dagli in April 2017, reveals that the supply of electricity in the Vandana Apartment flat was commenced from 02.04.2017 on the basis of an Application made in the year 2008.
- b) The CPL report is available for the Consumer No. 001981464512 (12 digits).
- (xx) The Respondent highhandedly without notice and / or following due process of law, disconnected the electrical supply to the Appellant on 26.11.2018. Thereafter the Appellant met the Respondent and it demanded Rs.5,08,167.63 which is not payable by the Appellant.
- (xxi) After disconnection of the electricity, the Appellant moved the Hon`ble High Court, Mumbai Bench and filed Writ Petition (WP) No. 13691 of 2018 on 01.12.2018 which was registered on 03.12.2018. The Hon`ble High Court has passed an order dated 05.12.2018.
- (xxii) After receiving the copy of WP on 04.12.2018 the Respondent lodged a false First Information Report (FIR), against the Appellant stating theft of electricity under Section 135 of the Act.
- (xxiii) As per the Judgment of the Hon`ble High Court, the Appellant has paid 50% of disputed amount i.e. Rs 2,54,100/- without prejudice.
- (xxiv) After filing the said WP, the officer fraudulently generated the disputed amount of R. Mankhedkar on the consumer number which was allotted to the Appellant on 02.04.2017 and also filed a false FIR against the Appellant.


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- (xxv) Being aggrieved by the highhandedness of the Respondent in disconnecting the essential supply of electricity, the Appellant begged to file the present application inter alia on the following grounds.
- a. That action of the Respondent in disconnecting essential supply of electricity to the Appellant is arbitrary and prima facie illegal.
 - b. The impugned action of the Respondent is against the principles of law laid down, no notice or hearing was given to the Appellant.
 - c. The impugned action is without following due process of law.
 - d. No panchnama was drawn up or notice given to the Appellant. The Appellant had paid the amount reflected on its website of the Respondent against Consumer No. 001981464512 (12 digits - New) .
 - e. The Respondent directly converted the usage from active to PD without issuing notice. The requirement of notice is mandatory.
 - f. The Respondent has not considered that Appellant is affected by this arbitrary action on the part of the Respondent.
 - g. The Respondent has failed to consider that the Appellant cannot be penalized for the negligence, carelessness, inattention, and inaction on the part of its past and present employees.
 - h. The Appellant submits that according to the Duplicate Bills and history of the Consumer No. 001901237367 (12 digits) of R. Mankhedkar was using the said meter and therefore R. Mankhedkar is liable to clear the alleged outstanding dues. The Appellant submits that the alleged outstanding dues if any shall be recovered from R. Mankhedkar and the Appellant have nothing to do with the said bill or the outstanding or the said consumer/meter No..
 - i. For purposes of argument alone, without admitting, even it the version of the Respondent has to be taken as correct : it would be pertinent to note that the alleged outstanding is for a period 2008 to 2016. For the 1st time the said alleged outstanding is brought to the notice of the Appellant in January 2017. The Respondent has estopped from collecting dues (if any) for a period prior to 2 years from the date of it falling due as provided under 56 (2) of the Act. Therefore, to claim that the usage was continuous for 2008 to 2016 and the Respondent took no steps is unfounded and unsustainable.


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- j. The CPL of R. Mankhedkar shows that the usage in the Consumer No. 001901237367 (12 digits) is nil throughout from period January 2012 onwards to December 2016.
- k. The Respondent unilaterally and at their own whims appears to have activated the said Consumer No. 001901237367 of R. Mankhedkar on January 2017 and imposed the amount of Rs.4,95,662.79. It is further pertinent to point here that the same consumer No. was PD in 2011. This disconnection appears to be after the building Shri Krishna Chawl was demolished for reconstruction and R. Mankhedkar vacated the premises upon payment of all dues in 2011.
- l. The Respondent was unaware of how and where the said amount of outstanding of Rs. 5,08,167.63 is generated. As can be seen the Consumer No. 001901237367 (12 digits) was disconnected. The premises of the Appellant and that of R. Mankhedkar are distinctly different.
- m. The Respondent's claim of negligence is unfounded, and the Appellant rights cannot be violated.
- n. The Respondent is interested to cover up their own folly and are pressurizing the Appellant for disconnecting the electrical supply.
- o. The Respondent has admitted that entire situation has arisen as an outcome of the negligence and carelessness on the part of the then Additional Executive Engineer.
- p. The Respondent failed to appreciate that the CPL report, F1 Register for new Consumer No. which was allotted to K. Dagli i.e. 001981464512 (12 digits - New) in 2017 and the usage commenced only from April 2017.
- q. The Appellant has filed a complaint in Internal Grievance Redressal Cell (IGRC) on 02.01.2019 as per the direction of Hon'ble High Court which was closed for order but till today order has not been received.
- r. The Appellant thereafter continuously enquired in the divisional office regarding the order, they replied to pay the bill for regular consumption and order copy will be sent on the Appellant's address.
- s. The Appellant thereafter visited many a times regarding not generation of bill for new consumption of consumer No. 001981464512 (12 digits - New) but


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every time they neglected and gave handwritten bill to the Appellant and forced him to pay the same. Therefore, the Appellant paid the same.

- t. Suddenly, Appellant has received notice u/s 56 (1) of the Act regarding disconnection of supply due to default in payment of Rs. 3,58,040/- which was fraudulently transferred to the consumer No. of the Appellant for which dispute has been filled in IGRC.
- u. The disconnection is illegal and arbitrary and without following due process of law.

(xxvi) The Appellant prays that:

- Till the pendency of the said application, the Respondent be directed to generate bill towards the current usage only and the electric supply should not be disconnected.
- The F.I.R. filled against the Appellant be withdrawn.
- The Respondent be directed to pay compensation towards mental harassment of Rs- 5,00,000/- (Rupees five lakhs only).
- The amount which Respondent demanded be waived from the Appellant's records.
- The said connection be transferred in the name of Mr. Mahesh Amulakh Dagli or new connection may be issued.

4. The Respondent, by its letter dated 10.03.2021 has filed its reply stating in brief as below:

- (i) K. Dagli had applied for new electric connection on 06.10.2008 for residential purpose and the said connection (Consumer No. 00190123801) (11 digits) was released on 22.10.2008 with meter having serial No. 2696130 at Flat No. A/102, Vandana Apartment, Opposite Dwarka Hotel. The consumer number was not fed /accepted in the billing system as there was some issue with respect to number of digits of the consumer number. Probably, because it consisted of 11 digits instead of standard 12 digits.
- (ii) On the same day i.e. on 22.10.2008, another electric connection (Consumer No.001901237367) in the name of Shri R. Mankhedkar (R. Mankhedkar) was also released with meter having Sr. No. 2692232 at Room No. 6, Shri Krishna Chawl, Alkapuri, Achole Road, Nallasopara (East).


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- (iii) The Assistant Engineer of the Respondent, after installing the meter (Sr.No. 2696130) of K. Dagli, wrongly pasted / affixed / assigned label showing Consumer No. 001901237367 (12 digits) which in fact was meant / assigned for connection of R. Mankhedkar. Therefore, Consumer No. 00190123801 (11 digits) of K. Dagli remained unbilled from the year 2008 onwards.
- (iv) This anomaly was detected by the Respondent during spot inspection of premises of K. Dagli on 21.12.2016.
- (v) The Respondent, by its letter dated 11.01.2017 has issued provisional bill of Rs. 4,95,116.43 for 54557 units for 75 months (?) from April 2010 (?) to November 2016 to Mehul Dagli for connection in the name of K. Dagli quoting Consumer No. 001901237367 and address of R. Mankhedkar. The Appellant did not pay the same. Hence, the Respondent issued disconnection notice on 28.2.2017 as per Section 56(1) of the Act.
- (vi) The Appellant has issued legal notice on 25.03.2017 signed by his Advocate Anjali Patil dated 10.03.2017 stating that the Appellant is not anyway related to R. Mankhedkar (Consumer No.001901237367) and he is not bound to pay the said electricity bill. The Respondent replied the notice by its letter dated 13.04.2017.
- (vii) The Meter having Serial No. 2696130 (Consumer No. 001901237367 assigned to R. Mankhedkar) was basically installed at the Appellant's premises and power through this meter was being drawn and used by K. Dagli for his electrical load. In order to correct the mistake, a new Consumer No. 001981464512 (12 digits - New) was created and assigned to K. Dagli, the Appellant. An amount of Rs.4,95,116/- was shown as debit against Consumer No. 001981464512 (12 digits - New) in the month of September 2017, after taking necessary approval.
- (viii) Mahesh Dagli, the father of Appellant (Mehul M. Dagli) has applied for new electric connection on 27.03.2017 through online mode but the said application was rejected by the Respondent for obvious reasons.
- (ix) After disconnection of the supply, the consumer was indulging in theft of electricity in the said premises which was detected on 31.07.2018 and First Intimation Report (FIR) was lodged against the said consumer in Tulij Police Station on 05.12.2018 as per Section 135 of the Act. The assessment bill amounting of Rs.24,540/- was issued to the Appellant.


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- (x) Aggrieved by this action from MSEDCL, Mahesh Dagli, has filed WP No.1361/2018 before Hon'ble High Court, Mumbai to challenge the correctness, legality and validity of the bill which was raised in respect of consumption of electrical energy by K. Dagli. The High Court by its Judgment dated 05.12.2018 has disposed the WP and directed him to pay 50% dues of outstanding amount of Rs. 5,08,167.63 within period of four weeks from the date of the judgment without prejudice to the right and contentions of both the sides and let the electric supply to the Petitioner's premises be restored. As per arguments in WP, the Petitioner can approach the grievance mechanism as per Section 42 of the Electricity Act 2003.
- (xi) After paying the amount of Rs.2,54,100/- as per the Judgment of the Bombay High Court, power supply was restored on 11.12.2018 by the Respondent.
- (xii) As per the Judgment dated 05.12.2018 of Hon'ble High Court in WP No. 1361/2018, the Appellant filed the grievance in the Internal Grievance Redressal Cell (IGRC) on 02.02.2019. The IGRC by its order dated 20.02.2019 has partly allowed the grievance by allowing 24 installments to pay outstanding amount along with current bill.
- (xiii) Not satisfied with the order of the IGRC, the Appellant approached the Forum on 06.10.2020. The Forum, by its Order dated 11.12.2020 has partly allowed the grievance application. The Forum directed the Respondent to raise the bill for 24 months from the date of detection by considering 205 units per month without any interest and DPC. The Consumer shall pay the revised bill along with current bill. On failure of payment, the Respondent is liberty to disconnect the supply as per statutory provision. The Forum has also directed to pay Rs.500 towards compensation which be adjusted in future bill and correction be made in IT the record in the name of consumer Shri. Dagli.
- (xiv) As per order of the Forum, the revised bill is under process of the approval.
- (xv) The Respondent prays that the Representation be disposed with merit.

5. The hearing was held on 08.04.2021 on e-platform through video conferencing due to Covid-19 epidemic with consent from both the parties.


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6. The Appellant's submission is highly exhaustive, however, he reiterated important issues in his submission during the hearing. He further argued that his flat is one room kitchen which was constructed in the year 1987. His grandmother Kanchanben Dagli expired in the year 1993, therefore, it is not possible to have released the alleged connection by the Respondent in her name in 2008. Since occupation, they have paid the bills, however, he does not have any record. The said flat was transferred in the name of Mahesh Dagli, father of the Appellant in the year 2012. The flat was however vacant due to internal family dispute. The submission of the Respondent that 11 digits consumer number was assigned to it as against 12 digits is the internal matter of the Respondent and he is not concerned about the same. The Appellant dug out various information through RTI which in sum and substance, culminates into the fact that the connection was never released to him at Vandana Apartment in 2008. It is a plot by the Respondent to fraudulently transfer the arrears of someone else known as R.Mankhedkar whose house is situated at about 1.5 km from Vandana Apartment and to recover it from the Appellant. He is, therefore, not legally entitled to pay the arrears raised by the Respondent. The Respondent has falsely implicated him in FIR as he approached the High Court.

During the hearing, when the Appellant was confronted by the undersigned with a question that after the construction and taking over the possession of the said flat, whether the said flat was provided with power supply. Initially, the Appellant was evasive in parting with the correct information. However, he finally agreed that the bills were paid long back, and he does not have any record. He further added that he was not even born when the flat was taken possession of.

7. The Respondent also made an exhaustive submission and further argued that when the officer of the Respondent inspected the premises of the Appellant (Vandana Apartment) on 21.12.2016 it was observed that the connection through which power supply was being supplied to the flat of the Appellant is not being served electricity bill despite having provided the meter having Sr. No. 2696130. After detailed scrutiny, it became crystal clear that two connections were released on 22.10.2008, one of which was in the name of Ratilal Mankhedkar at Room No. 6, Shri Krishna Chawl, Alkapuri, Achole Road, Nallasopara (East) who was provided with Meter no. 2692232 and assigned Consumer No. 001901237367, and the other in the name of K. Dagli, the grandmother of the Appellant who was provided with Meter No.


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2696130 and assigned Consumer No. 00190123801 (11 digits) on record. However, this meter was physically affixed with Consumer No. 001901237367 (12 digits). Mr. R.Mankhedkar was regularly paying the electricity bills for his connection having Meter No. 2692232 and Consumer No. 001901237367. This meter was subsequently PD in January 2011 due to demolition of the chawl. As K. Dagli was assigned 11 digits Consumer number, it was never accepted by the system and hence the bills were not generated and not served to the user / Appellant. In short, K. Dagli remained unbilled from October 2008 till November 2016. Initially, the bill for 75 months towards unbilled period was issued on 11.01.2017 in the name of R.Mankhedkar though it was served to K. Dagli, being the user. Then the Respondent issued the revised bill of Rs.4,95,196.43 for 101 months towards unbilled period from November 2008 to March 2017 with Consumer No.00190123801 (11 digits). The mistake was subsequently corrected in the system and K. Dagli was assigned new Consumer No. 001981464512 (12 digits - New). The Respondent is therefore legally entitled to recover the bill though it has implemented the Forum's order. The Respondent argued that when the Appellant was disconnected for nonpayment of bill, it was disconnected. During the period of disconnection, the Appellant indulged in theft of energy for which FIR has been lodged against him.

Analysis and Ruling

8. Heard the parties and perused the documents on record. After careful examination of the record and the revelations of the parties during the hearing, I observed that the Appellant / User, in his submission has denied that the electric connection was not issued in 2008 as alleged by the Respondent. The Appellant in his submission has stated that the Respondent informed him that his application dated 06.10.2008 has been acted upon and the electricity connection is released in April 2017 in the name of K. Dagli (grandmother of the Appellant). The reason for late connection being the family dispute. Secondly, he questioned the propriety of releasing the connection in the year 2008 as alleged by the Respondent in the name of K. Dagli who expired in the year 1993.

9. However, during the hearing, when he was confronted as to how one can remain without power from 2008 to 2017, he replied that the bills were paid long back, and the record is not available with him being old. He appeared to be evasive on this account. Here the Appellant has clearly contradicted his own submission. The Appellant in his submission has further stated


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that his father applied for electric connection somewhere in March 2017 because of which, the Respondent issued connection. However, the Respondent in its submission has stated that the Appellant, in the name of Mahesh A. Dagli did apply online on 21.03.2017 for new connection but it was rejected as the premises was already having a meter connection. This fact was not disclosed by the Appellant. On the contrary, I believe that serving the retrospective bill for the unbilled period from 2008 on 11.01.2017 by the Respondent prompted the Appellant to apply online to show that there was no connection released ever till then. I also came across the document which shows that the Respondent issued a demand note of Rs.1025/- in the name of Kanchanben Amulakh Dagli, Flat No. 102, Vandana Apartments, Achole Road, Nallasopara (East) towards single phase connection against application dated 04.10.2008 which is paid, and the receipt has been issued by the Respondent on 07.10.2008, the Receipt No. being 6201946. The demand note dated 06.10.2008 indicates a number 00190123801 (11 digits) which is a Consumer Number assigned to K. Dagli. It is a conclusive proof that the connection was there since 2008. The Respondent in its submission has stated that the connection has been released on 22.10.2008. Therefore, the submission and the initial argument of the Appellant that the connection was first demanded in 2017 is utterly misleading. Probably knowing the fact that there was connection, the Appellant appeared to be evasive in accepting the fact that there was electricity connection in 2008. Thus, it has therefore been clearly established beyond reasonable doubt that there was electricity connection in 2008 at Vandana Apartments for K. Dagli and the submission of the Appellant in denying the connection to have been released in 2008 is nothing short of bunch of lies.

10. Now the question is whether K. Dagli or her successor /occupier paid the bills from 2008 till 2017. The answer to this question lies in the fact that the Respondent has grossly erred in allotting a Consumer No. 00190123801 which consisted of 11 digits whereas the system requires it to be of 12 digits only. This Consumer Number of 11 digits is also incorporated on the Demand Note as mentioned above. This is the sole reason why K. Dagli remained unbilled. It is beyond my imagination as to how any sane officer of the Respondent could assign 11-digit Consumer Number to a particular consumer. When the Appellant was assigned 11-digit Consumer Number, the system did not accept and the bill was not issued. Had the Respondent paid due attention to this, it could have ended up correcting the mistake immediately within two / three months from the date of connection. But the Respondent has miserably failed to


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undertake due diligence on this account. It is for the Respondent to delve in deep in this aspect and come to a suitable conclusion as to why this error crept in and why it was not looked into immediately.

11. It is submitted by the Respondent that incidentally; two connections were released on 22.10.2008. The details are already captured above. While Mr. R. Mankhedkar was assigned a proper 12-digit Consumer Number., the Appellant was assigned 11-digit Consumer Number which could not be fed into the system. Without any application of mind, the Respondent fixed Consumer No. 001901237367 (12 digits) of Mr. R. Mankhedkar on the body of Meter No. 2696130 of K. Dagli.

12. I am, therefore convinced that the Respondent did release the connection of K. Dagli at her flat at Vandana Apartment in the year 2008 itself but because of mistake on the part of the Respondent, it remained unbilled. There is practically no relation between connection of Mr. R. Mankhedkar, and K. Dagli. The Appellant has tried in vain to exploit the mistake of the Respondent and tried to create unnecessary confusion. It has also been established that K. Dagli did apply for connection in 2008 for his Vandana Apartment flat which is a two-storied building having total 15 shops and 14 flats. The connections to these shops and flats have been released pretty long back. The Appellant inadvertently remained unbilled due to gross error on the part of the Respondent. Rest of the issues raised by the Appellant are insignificant and of no importance in view of the glaring revelation such as above. Therefore, it is not necessary to touch upon it. In the entire matter, I am convinced that the Appellant has not come before me with clean hands probably to avoid paying legitimate dues of the Respondent which needs to be examined under the provisions of the Act.

Though the Appellant has not come before me with clean hands, it needs to be clearly spelt out that he is not responsible for not getting billed for a period from 2008 to 2017. However, as a law-abiding citizen, he ought to have enquired with the Respondent as to why he is not being served electricity bills from 2008 to 2017. Any ordinary citizen would not have maintained deliberate silence on this issue. The Respondent in the month of February 2017 initially served bill for 75 months towards unbilled outstanding dues for an amount of Rs.4,95,116/- which was subsequently correctly revised by the Respondent for 101 months for


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the period from November 2008 to March 2017. The revised bill amount of Rs.4,58,267.46 was debited in the bill of September 2017, and was accordingly issued towards consumption of 55866 units which translates to 559 units per month for Consumer No. 00190123801 (11 digits). This 11-digit Consumer Number is subsequently corrected as 001981464512 (12 digits - New) and the debit of the unbilled outstanding dues was transferred to this newly assigned Consumer Number. Therefore, for the purpose of Section 56 (2) of the Act, September 2017 is reckoned for counting the period of 24 months.

13. Now the question remains, what would be the consumption that would be considered for 24 months? The KWh readings on four different dates are noted by the Respondent on the Meter No. 2696130 which is of HPL make. These readings are as follows:

- (a) On 27.09.2016 is 53717 KWh
- (b) On 14.10.2016 is 54115 KWh
- (c) On 21.12.2016 is 55148 KWh
- (d) On 17.03.2017 is 55868 KWh.

From the above date, it is clear that the readings were progressive. Therefore, for the period from 27.09.2016 to 17.03.2017 for 171 days, total consumption is 2151 (55868-53717) units. It translates to 377 units per month. I noted that the Appellant is using AC, fridge, TV and geyser along with usual light and fan load. Therefore, the Respondent is supposed to bill the Appellant for 24 months at the rate of 377 units per month. These 24 months will be prior to March 2017 which translates to the period as March 2015 to February 2017.

Section 56 (2) of the Electricity Act, 2003 is reproduced below:

“ 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 of Bombay High Court by its Judgment dated 12.03.2019 in Writ Petition No. 10764 of 2011 with other Writ Petitions has taken the following views for the Section 56 (2) of the Act which is reproduced as below: -


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“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.

77. There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in *Rototex Polyester (supra)* is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for *Awadesh Pandey's case (supra)* was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in *Awadesh Pandey's case*. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to *Awadesh Pandey*, there was no other course left before the Division Bench but to dismiss *Awadesh Pandey's writ petition*. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of *Awadesh Pandey*. Once the facts in *Awadesh Pandey's case* were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In *Awadesh Pandey's case*, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.

78. Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no need for a reference. The para 7 of the Division Bench's order in *Awadesh Pandey's case* and paras 14 and 17 of the latter Judgment in *Rototex Polyester's case* should not be read in


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isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.

As a result of the above discussion, the issues referred for our opinion are answered as under:

- (A) **The issue No. (i) Is answered in the negative. The Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.**
- (Emphasis added)**
- (B) As regards issue No. (ii), in the light of the answer to issue No. (i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.
- (C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.”

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.


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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.

Section 56(2) did not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in the case of a mistake or bona fide error. It did not however, empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand. (Emphasis added)

.....”

14. In view of facts of the case and the Judgments quoted above, I pass the following order:

- a) The Respondent is directed to issue electricity bill for the period March 2015 to February 2017 with consumption of 377 units per month along with applicable charges.
- b) The amount of the bill for this period shall not attract interest and delayed payment charges.
- c) The Respondent to adjust payment made by the Appellant as per the directives of Hon'ble High Court.
- d) The Respondent is directed to fix the responsibility on the concerned officials and take appropriate action as deemed fit to recover the loss suffered by it within a period of six months from the date of issue of this order, the compliance of which shall be submitted within two months thereafter. Barring this, the Respondent to submit a compliance of the order within two months from the date of issue of this order.
- e) Other prayers of the Appellant are rejected.
- f) The order of the Forum is revised to the extent above.

15. The Respondent stated that it has filed FIR against the Appellant for theft of energy committed by him when he was disconnected. The Appellant, however, has stated that it is a false FIR. Whatever the case, the matter does not come under the scope of the undersigned and therefore, not taken cognizance of in this case.

16. The Representation is disposed of accordingly.

Sd/
(Deepak Lad)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

