

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

**REVIEW APPLICATION NO. 2 OF 2021**

**IN**

**REVIEW OF ORDER IN REPRESENTATION NO.9 OF 2021**

In the matter of past electricity dues and transfer thereof

Mussaddik Ab. K. Bubere .....Appellant

V/s.

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

Appearances:

For Appellant : 1. Adil Punjabi, Representative  
2. Nadeem Punjabi, Representative

For Respondent : 1. Ajay Bhasakhetre, Addl. Ex. Engineer MSEDCL Bhiwandi  
2. Rajesh Shanbhag, AGM, Torrent Power Ltd. (TPL)  
3. Hemangi Mayekar, Asst Manager, TPL

**Coram: Deepak Lad**


Date of hearing: 6<sup>th</sup> May 2021

Date of Order :31<sup>st</sup> May 2021

**ORDER**

**PREAMBLE**

The Appellant filed Representation No. 9 of 2021 on 19<sup>th</sup> February 2021 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006) against the Order dated 18<sup>th</sup> March 2020 passed by the Consumer Grievance Redressal Forum,

  
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MSEDCL, Bhandup Zone (the Forum). Since there was inordinate delay in filing the Representation, the hearing was scheduled for admissibility of the same. Pursuant to hearing on 26.02.2021, the Representation was dismissed not being admissible.


The Appellant therefore filed this Review Application by email dated 22.03.2021 under Regulation 19 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (CGRF Regulations 2006).

The Appellant in support of this Review Application has cited the Hon'ble Supreme Court's order dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.3 Of 2020 regarding cognizance for extension of limitation due to Covid-19 epidemic wherein the Hon'ble Supreme Court has extended limitation up to 15.03.2021.

2. Aggrieved by the order of the Forum dated 18.03.2020, the Appellant in its original Representation has submitted that he has two electricity connections in his name at two different premises at Bhiwandi which are rented out in the year 1988 and 1989. The details of both these connections are as below: -

**(A) Consumer No. 13010729593 (Now PD)**

- (i) The Appellant has 3 phase Power loom connection having Consumer No. 13010729593 at H. No. 435, 4<sup>th</sup> Nizampura, Bhiwandi. This premises has been let out to Sufiyan Nasir Bubere on 01.12. 1989. It was mutually agreed that the payment of electricity dues is the sole responsibility of the tenant.
- (ii) Everything went on smoothly till October 2012 when Sufiyan Bubere, (the tenant) started defaulting in payment of electricity bills which he has used. In October 2012, he had outstanding dues of Rs. 0.64 only of Torrent Power Limited (TPL), distribution franchisee of the Respondent MSEDCL, and Rs.6,80,672.94 of MSEDCL. The amount outstanding in January 2015 increased to 11,94,781.06 of TPL and Rs.7,95,581.03 of MSEDCL. A meeting was arranged by TPL with Mr. Sufiyan Bubere, Appellant's tenant. One time settlement was decided and accordingly, Mr. Sufiyan Bubere has given an undertaking that he would clear the same if some part of the interest was waived of. TPL has accepted the request. Out of total amount of Rs.11,94,781.06, TPL has waived Rs.4,48,050.42 and Rs. 8,04,688.00 has to be paid by Mr. Sufiyan Bubere in six monthly instalments. A

  
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down payment cheque of Rs.1,58,589/- dated 15.01.2015 of Syndicate Bank was given by Mr. Sufiyan Bubere along with cash payment of Rs.100/- towards reconnection charges. Following five post-dated cheques of Syndicate Bank were also given as below:

- Rs.79,295/- dated 24.02.2015.
- Rs. 79,295/- dated 24.03.2015.
- Rs. 79,295/- dated 24.04.2015.
- Rs. 2,87,504/- dated 27.05.2015.
- Rs. 1,20,710/- dated 27.06.2015.
- Rs. 1,20,710/- the last payment status

Total payment is Rs. 8,04, 688/-.

Nothing was discussed about the dues of MSEDCL which now stands to Rs.7,95,581.03. In Undertaking, it was stated that the consumer had consumed the electricity and the outstanding dues is pertaining to his usage and he is responsible to clear the same. In Undertaking, it was also mentioned that he will not default in clearing any of the post-dated cheques and in addition, he will clear the current bill. If at any point of time, he defaults in the payment of current bill along with the post-dated cheque, TPL is at full liberty to disconnect the supply with giving any notice whatsoever.

- (iii) The Undertaking was submitted along with Pan Card and Aadhar Card with Mobile Number of the tenant and the same was signed on 15.01.2015. Thereafter, the PD consumer was reconnected without No Objection Certificate (NOC) of MSEDCL. The tenant has paid the amount as per the post-dated cheques mentioned above. However, the tenant did not pay any amount for current bill from 15.01.2015 to 15.01.2018 i.e. for three years.
- (iv) The arrears against electricity dues were again increased to Rs.9,29,115/- (TPL) and Rs.9,53,309.97 (MSEDCL). Hence, TPL is responsible for creating the arrears as the supply was not disconnected within time as per the Undertaking given by the tenant.
- (v) TPL totally relied on the guidelines of recovery of arrears of PD consumer contained in MSEDCL internal letter No. Com/Accts/19021 dated 06.07.2013.


  
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- (vi) The Appellant referred Point No. 7 of the above said circular dated 06.07.2013 that “Before transfer of such arrears, the SD amount should be adjusted in arrears and fictitious arrears amount should be withdrawn. **The identity and legality of the consumer must be checked before transfer of arrears. The bill amount along with the arrears amount should be recovered as per provision of Sec.56 of EA, if not paid.**” (Emphasis added)
- (vii) The Appellant sent notice dated 28.09.2019 to his tenant for clarification of the outstanding dues as well as his rent. However, he did not pay the outstanding dues.

**(B) Consumer No. 13010435018 (Live)**

- (i) This connection is also in the name of the Appellant and is released for the purpose of Power loom at H. No. 387, New 4<sup>th</sup> Nizampura, Bubere Compound, Opp. Haji Motors, Bhiwandi, Dist. Thane.
- (ii) This premises was let out to Mohammed Hashim Hajiali Vaid on 24.09.1988 on monthly rental basis with one of the conditions that the payment of monthly electricity bill shall be the sole responsibility of the tenant.
- (iii) The TPL vide its letter dated 23.02.2019 has transferred the arrears of Consumer No. 13010729593 (PD) to live Consumer No. 13010435018 as the owner of both the premises is one and the same, and further both the connections are in the name of the owner while the locations of the connections are different. This transfer of arrears by the Respondent is without any support of law.
- (iv) A disconnection notice for the outstanding dues of Consumer No. 13010729593 under the Electricity Act 2003 (the Act) was sent on 11.10.2019. There was various exchange of correspondence with TPL, however, the TPL did not revert the outstanding dues of Consumer No. 13010729593 from the live consumer.
- (v) The Appellant approached the Forum on 14.01.2020 for setting aside the transfer of dues from one connection to the other. The Forum, by its order dated 18.03.2020 has rejected the prayer of the Appellant and ordered payment of electricity dues of both the connections. The Forum failed to understand that there is no provision in the Act and Regulations of the Maharashtra Electricity Regulatory Commission (the Commission).

  
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In view of above, the Appellant prays that:

- (i) The review of order in Representation 9 of 2020 be admitted.
- (ii) Transfer of arrears from one connection to other be reverted.
- (iii) The current bill is to be accepted.
- (iv) The franchisee, TPL be directed to recover the arrears from the person who has used this electricity.

3. The Respondent TPL filed its reply by email dated 28.04.2021 stating in brief as under:


(i) The Appellant filed Representation (9 of 2021) on 19.02.2021 with Electricity Ombudsman, Mumbai. The Electricity Ombudsman, Mumbai heard the admissibility hearing on 26.02.2021 which was dismissed on the ground of limitation vide order dated 10.03.2021. The Appellant then filed the Review Application No. 2 of 2021 without any sufficient cause and is devoid of merits. In addition, the Appellant had not mentioned any irregularity in the Order passed by Forum neither had pressed on which ground the said appeal is being preferred. Hence, the complaint is liable to be dismissed straight away on following grounds:

- A) As per the orders passed by the Forum, the Applicant has approached this Authority without any merits.
- B) According to the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF Regulations 2020):

(1)As per Regulation 7.8. *"The Forum shall not admit any grievance unless it is filed within 2 years from date on which the cause of action has arisen."*

(2)As per Regulation 7.9, *"The Forum shall reject the Grievance at any stage under the following circumstances"*.

- a) Sub Regulation (c): *"In cases where the Grievance has been submitted two (2) years after the date on which the cause of action has arisen."*
- b) Sub Regulation (d): *"in cases of recovery of arrears where the bill amount is not disputed"*.

  
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c) Sub Regulation (e): "In the cases of Grievances, which are 1) frivolous, vexatious, malafide 2) without any sufficient cause".

(3) Without any merits as per Order passed by the Forum, the grievance was raised by Mr. Mussadik Ab K Bubere registered vide Case No.102/2019 and again filed by his Tenant Mr. Mohammad Hashim Hajiali Vaid vide Case No 54/2021 in the Forum of the same matter. TPL completely relies on the said Orders.

(4) The contentions mentioned above are totally baseless, false and not acceptable and hence be denied.

(ii) Brief History of the case as under:


I. Details of services & dues.

Sr.No.	Service	Name	Address	Arrears (Rs.)		Service Status
				TPL	MSEDCL	
1	13010435018	Mussaddik Ab K Bubere	H. No. 387, New 4 <sup>th</sup> Nizampura, Bubere Compound, Opp. Haji Motors, Bhiwandi.	41920	283930	Live
2	13010729593	Mussaddik K Bubere	H. No. 435, 4 <sup>th</sup> Nizampura, Bhiwandi.	1103550	1008798	PD

Hence as per Section 2 (15) of the Act, the definition of the 'Consumer' states that

"consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

Further, as per Regulation 10.5 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code & Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations) and subsequent MSEDCL guidelines for recovery vide P. Com/Accts/ No 19021 dated 06.07.2013, TPL had issued notice for dues transfer to the consumer on the basis of same name vide this letter No. BHW/CNPB/SC/DT/35 dated 26.11.2018 through RPAD.


  
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- II. Then, second notice was issued to the consumer vide this office Letter No BHW/CNPB/DT/SC/263 dated 23.02.2019 through hand delivery. Here it is specifically to bring to the notice of the Forum that even before transfer of dues, there are pending outstanding MSEDCL dues on live service which is unpaid till date. Thereafter, Appellant has raised various written complaints against dues transferred during January 2019 to November 2019 which were replied appropriately.
- III. Finally, the Appellant Mr. Mussadik Ab K Bubere approached the Forum vide Case No 102/2019 in which the Forum passed order on 18.03.2020 directing the Appellant to pay all arrears of both the electricity connections to prevent their disconnection. Accordingly, Appellant was asked by the Respondent to comply the Forum's order vide letters dated 12.05.2020 and 05.08.2020, however, the Appellant did not comply till date. Thereafter, the tenant Mr. Mohammad Hashim Hajiali Vaid had applied to TPL on 14.10.2020 regarding negligence of the Commission Rules and Regulations. The Respondent replied on 10.12.2020 and suggested to coordinate with the Owner so as to comply the order of the Forum. Thereafter, the tenant registered the grievance vide Case No 54/2021 in the same matter with the Forum which passed the order on 24.02.2021 dismissing the said application with cost of Rs.1000/- and directed Respondent utility to recover the said amount of Rs.1000/-.
- IV. Thereafter, the Appellant filed the Representation No. 09/2021 which was dismissed on the grounds of delay in filing the representation.

(iii) Reply in detail to the grievance as under:

- (1)The Appellant has two connections having Consumer No. 13010729593 and 13010435018. Both these connections are in his name and in the premises owned by him. Both these premises are at two different locations of Nizampura in Bhiwandi. Both the premises are let out on rental basis, intimation of which through submission of documents was not given to the

  
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Respondent. The owner cannot deny his liability towards the dues. Thus, the Appellant is misleading the Authority to divert the issue.

(2) Since the Appellant did not pay arrears of Consumer No. 13010729593, the supply was permanently disconnected, and the Appellant was served a notice about transfer of these dues on his other live connection having Consumer No. 13010435018. This transfer of dues is initiated as per MSEDCL guidelines dated 06.07.2013 which is reproduced as under: -

*"Point No 4: In premises of any PD Appellant in arrears, if there' is other live connection of same PD Appellant or of his legal successor found, then entire PD arrears with interest & DPC should be diverted on such live connection.*

*Point No 6: If any PD Appellant in arrears is having any live electricity connection in same or other subdivision, division, circle 'or zone, then the entire PD arrears with interest and DPC should be diverted on said live connection of same."*

As per provisions of the Section 48 of the Act as under:

*"Additional terms of supply: - A distribution licensee may require any person who requires a supply of electricity in pursuance of section 43 to accept—*

*(a) Any restrictions which may be imposed for the purpose of enabling the distribution licensee to comply with the regulations made under section 53;*


*(b) Any terms restricting any liability of the distribution licensee for economic loss resulting from negligence of the person to whom the electricity is supplied".*

The distribution licensee is at liability to incorporate additional terms to restrict the economic loss resulting from negligence of the Appellant.

As per Regulations 10.5 of the Supply code Regulations, 2005,

*"Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased Appellant or the erstwhile owner / occupier of any premises, as a case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be:*

*Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises."*

  
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Regulation 17.8 of MSEDCL Conditions of Supply (based on Supply Code Regulations, 2005) is reproduced below:


*" A consumer whose power supply has been disconnected by the MSEDCL for breach of any of the conditions of the MSEDCL's Conditions of supply or breach of the any of the conditions of the Conditions of supply or breach of the any of the conditions of the agreement of power supply or for neglecting to pay to the MSEDCL any charges for the electricity supplied by the MSEDCL or on any charges for the electricity supplied by the MSEDCL or on account of failure to deposit with the MSEDCL amount of security deposit in accordance with the provisions of the Act and the Clause No. 10.5. of MERC Supply Code Regulation, dies or transfers, assigns, or otherwise dispenses with the undertaking or the premises to which electricity was being supplied by the MSEDCL, any person claiming to be heir, legal representative, transferee, assignee or successor of the defaulting consumer, with or without the consideration in any manner, shall be deemed to be liable to pay the entire up to date arrears of charges for the electricity supplied by the MSEDCL, including the arrears of security deposit or compensation, if any, and it shall be lawful for the MSEDCL to refuse to release the power supply or to restore the power supply or to give new electric connection to such person claiming to be the heir, legal representative, transferee, assignee or successor of the defaulting consumer, unless the amount of all such charges due & payable by the erstwhile defaulting consumer are duly paid or deposited with the MSEDCL".*

Section 56 (1) of the Electricity Act, 2003, which reads as follows:

*"(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

*Provided that the supply of electricity shall not be cut off if such person deposits, under protest,*

- (a) an amount equal to the sum claimed from him, or*
  - (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,*
- whichever is less, pending disposal of any dispute between him and the licensee."*

  
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This very wording demonstrates that the Distribution Licensee is entitled to transfer the unpaid arrear amount in respect of the applicant's disconnected meter to his other live connection and also that he is entitled to cut of the electricity supply of his second live connection if he does not pay the unpaid arrears amount provided that he serves the applicant with a fifteen clear days' notice before actual disconnection.


This provision lays down the procedure for disconnection of supply for non-payment of charges of electricity. On non-payment of charges for electricity or any other sum due from a person, the licensee or the generating company may disconnect supply to such person. The licensee or the generating company is required to give not less than 15 clear days' notice in writing to the person before disconnection. Supply may be discontinued until the charge/sum due together with any expenses incurred by the generating company or licensee in cutting off and reconnecting the supply are paid. However, supply shall not be disconnected if such person deposits, under protest<sup>1)</sup>the sum claimed from him, the charges due from him for each month calculated on the basis of average of the electricity charges paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(3)Also, in similar matter, TPL completely relies on the Order passed by Hon'ble Electricity Ombudsman in Case No 78 of 2008 which clearly interprets Section 56(1), and 56(2) of the Act and Regulation 10.5 of the Supply Code Regulations, 2005, thereby empowering for transfer of dues.

(4)In addition to above, some of the references on which TPL relies upon are as under:

a. The Hon'ble Madras High Court in Vijaya Laxmi Vs. Assistant Engineer in W.P. No. 6194 and 7950 of 2003 decided on 25<sup>th</sup> September 2003. The Hon'ble High Court held as under:

*"Where any consumer having more than one service connection, defaults in payment of dues relating to any one of the service connections, the Board may cause other service connections in the name of the Appellant to be*

  
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*disconnected till all the arrears due for all the service connections are paid, notwithstanding the fact that the service connections are covered by separate agreements".*

b. The Hon'ble Madhya Pradesh State Consumer Disputes Redressal Commission in M.P.Electricity Board Vs. Akhtar Bi in Appeal No. 188 of 2003 decided on 04th October, 2004. The Hon'ble State Commission held as under:

*"It will be thus seen that the licensee-Board is entitled to disconnect any electric supply line or other works, through which energy may be supplied and may discontinue the supply of the defaulter consumer until the amount due from him is paid off. Section 24 does not restrict power of the appellant-Board to invoke this provision only in respect of the electric connection for which the consumer has fallen into arrears. The words "any electric supply line" used in Section 24 makes it abundantly clear that a person having more than one supply lines may suffer disconnection of any or all those lines, if he falls into arrears in payment of dues in respect of any one or more such lines".*

- (5) TPL is not aware of the agreement between the Appellant and his tenant nor TPL is party to the said agreement. It seems that the Appellant is misleading the Authority by creating a story of dispute with the tenant. Being owner of the premise, it is duty and moral responsibility of the owner to accept the liabilities hence the owner cannot escape from his liabilities towards the dues. If such was the case, then the Appellant during the hearing with the Forum, must have made the tenant as a party as per Regulation 8.10 of CGRF Regulations 2020 for further clarification. Also, if there is any default on the part of the tenant, the Appellant was free to approach appropriate Court of law. The same is also not availed by the Appellant which itself is under question. Here it specifically brought to the notice of the Forum that even before transfer of dues, there are pending outstanding MSEDCL dues on live service which is unpaid till date which clearly proves the intention of the Appellant. Hence, the same cannot be considered.
- (6) The Appellant has not mentioned any facts of the grievance and has only filled the contentions against the utility.

  
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(7)The above facts clearly show the intention of the Appellant is misleading this Authority. It is therefore prayed that the Representation of the Appellant be rejected and further he be directed to pay the dues.

4. The Respondent MSEDCL vide its email dated 05.05.2021 has submitted its reply which is almost same as that of TPL and therefore not repeated.

5. The hearing was held on 06.05.2021 on e-platform through video conferencing due to Covid-19 epidemic and the conditions arising out of it.

6. The Appellant argued that though it has two separate electricity connections in his own name at two different locations of Nizampura in Bhiwandi, these two premises were let out to third parties. The responsibility of payment of the electricity charges at these two premises were solely of the respective tenants. Therefore, in the event of one connection out of it being permanently disconnected due to non-payment of electricity charges, the Respondent cannot transfer electricity dues of this PD connection to the other Live connection of the Appellant. The Respondent ought to have timely recovered the dues from the occupier of the premises. Therefore, the action of the Respondent in transferring the dues of one connection to the other being illegal, the Respondent be estopped from such illegal transfer.

7. The Respondent argued that the rental agreement between the Appellant and the respective tenants is their internal issue. The Respondent has nothing to do with the same. Notwithstanding such rental agreements, the owner (Appellant) cannot escape from the liability of payment of electricity dues on that respective premises. He is duty bound to see as to whether his tenant is fulfilling various obligations such as payment of electricity charges amongst others, by the tenant under the agreement. Moreover, MSEDCL Internal Guidelines circulated vide letter No.19021 dated 06.07.2013 has expressly authorised to transfer dues from one connection to the other if the connections are in the same name. In the instant case, this condition is completely fulfilled. Besides, there is a Case Law in case of L. Vijayalakshmi Vs. Asstt. Engineer, Maintenance & Operation, T.N. Electricity Board ATR 2004 NOC 276 (Madras), it is held that,

  
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*“Electricity Board has power to disconnect electric service connection when there is a default in payment of consumption charges relating to any one of the service connections by the Consumer. The disconnection of the electric supply, therefore, held not illegal.”*

The same view is taken by Hon’ble Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal in case of M.P. Electricity Board Vs. Akhtyar Bi reported in II (2005) CPJ 221. Therefore, the action of the Respondent is within the legal framework and needs to be upheld.

8. The Appellant submitted its additional submission by email dated 17.04.2021 which is almost repetition of the submission in the Representation except for few issues such as lockdown was declared on 23.03.2020. TPL sent a letter dated 05.08.2020 for compliance of the Forum’s order. TPL started harassing by stopping the current bill and forcing to pay outstanding dues of Rs.1368106/- towards MSEDCL and Rs.1270540/- towards TPL. The Appellant approached the Secretary of the Forum on 08.09.2020 and informed him the current situation. He directed to file a fresh grievance in the name of tenant, Hashim Vaid at the IGRC. Numerous attempts to register grievance before the IGRC failed. Hence, finally the grievance was sent by post on 25.11.2020. There was no ill intention to file two grievances.

9. During the hearing, on being suggested by the undersigned, both the parties agreed to sit together to come to an amicable settlement in the issue and draw minutes of the meeting (MoM). It was also suggested that the settlement being financial in nature, the persons attending the said meeting from either side should have proper authorization. Accordingly, 15 days’ time frame was given. The Respondent submitted MoM for the meeting held on 17.05.2021. On plain reading of this MoM, it is observed that there was no proper authorization from the Appellant in favour of his representative. It turned out to be an exercise in futility. Therefore, the Secretary of this office again directed the Respondent to make a second attempt to resolve the issue by arranging the second meeting. This second meeting was held on 24.05.2021 which was attended by the son of the Appellant (the Appellant being Senior Citizen) and two Representatives of the Appellant. However, all those present from the Appellant side did not produce any proper authorization, but they all jointly said that the dues shall be paid by the tenant and not by the Appellant (owner).

  
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## Analysis and Ruling

10. Heard the parties and perused the documents on record. In view of the order of the Hon'ble Supreme Court dated 08.03.2021 in Suo Motu Writ Petition (Civil) No.3 Of 2020 regarding cognizance for extension of limitation wherein the Hon'ble Supreme Court has extended limitation up to 15.03.2021 due to lockdown situation due to Covid 19 epidemic, the Review Application is allowed to that extent and decided to adjudicate the case.

11. The main issue that is to be decided is whether action of the Respondent in transferring dues of one permanently disconnected electricity connection to the other, particularly when both the connections are in the name of the same person notwithstanding that their locations are different, is correct.

12. Since there are two premises owned by the Appellant which are let out by him as per his submission to two different tenants, it is obvious that there should have been two distinct rental agreements between the Appellant and the respective tenants. Factual position is as below:-

- (i) Consumer No.13010729593 (Now PD): There is no rental agreement on record for H. No. 435, 4<sup>th</sup> Nizampura, Bhiwandi. This premises has been let out to Sufiyan Nasir Bubere by the Appellant.
- (ii) Consumer No. 13010435018 (Live): There are five separate rental agreements on record for H. No. 387, New 4<sup>th</sup> Nizampura, Bubere Compound, Opp. Haji Motors, Bhiwandi, Dist. Thane. It is surprising to note that all these five agreements are on stamp paper of Rs.10/- duly executed on 24.09.1988. In all these five agreements, Party No. 1 is the Appellant (owner) however Party No. 2 are five different persons (tenants) though the premises is same. In addition, these agreements are not registered. I am unable to comprehend the logic and reason behind such arrangements. Body of all these five agreements is exactly same, even start of tenancy is also same. I am, therefore, of the considered view that the veracity and legality of these agreements for one premises is questionable. This anomaly has neither been pointed out by the Respondent nor there is any explanation for such weird arrangement from the Appellant side.

  
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13. I noted that Electricity Ombudsman, Mumbai in its order dated 16.12.2008 in Representation No. 78 of 2008 has examined similar issue and discussed in it the various provisions of the Act and Regulations. In this order, Electricity Ombudsman has referred the Judgment in Case of L. Vijayalakshmi Vs. Asstt. Engineer, Maintenance & Operation, T.N. Electricity Board ATR 2004 NOC 276 (Madras) in which it has been held that:

*“Electricity Board has power to disconnect electric service connection when there is a default in payment of consumption charges relating to any one of the service connections by the Consumer. The disconnection of the electric supply, therefore, held not illegal.”*


In the same order, it has been noted that the same view is taken by Hon’ble Madhya Pradesh State Consumer Disputes Redressal Commission, Bhopal in case of M.P. Electricity Board Vs. Akhtyar Bi reported in II (2005) CPJ 221.

14. Based on this, Respondent MSEDCL has issued guidelines dated 06.07.2013 to its officers in which it is clearly stated that: -

*"Point No 4: In premises of any PD consumer in arrears, if there' is other live connection of same PD consumer or of his legal successor found, then entire PD arrears with interest & DPC should be diverted on such live connection.*

*Point No 6: If any PD consumer in arrears is having any live electricity connection in same or other subdivision, division, circle 'or zone, then the entire PD arrears with interest and DPC should be diverted on said live connection of same PD consumer."*

15. Moreover, the electricity dues where they are statutory in character under the Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of Section 56 of the Electricity Act, 2003 and cannot partake the character of dues of purely contractual nature. In addition, it is the primary responsibility of the owner of the premises to see that his tenants fulfil all obligations under the mutual agreement, oral or otherwise, during currency of the tenancy agreement. This is more so relevant in this case as the tenant was allowed to use electricity connection which stands in the name of the owner. These obligations include payment of electricity bills which the Appellant has expressly said that it was the duty of the tenant to have paid the electricity bills.

  
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In absence of such diligence on the part of the owner, an unscrupulous consumer / user / tenant may commit defaults with impunity, and when the electricity supply is disconnected for non-payment, may sell away the property and move on to another property or let out the property to someone else, thereby making it difficult, if not impossible, for the distribution licensee to recover the dues. Having regard to large number of consumers of electricity and the frequent moving or translocating of industrial, commercial, and residential establishments, it is necessary to safeguard the interests of the distribution licensee. However, it goes without saying that this does not absolve the distribution licensee to keep tab on timely payment of electricity charges by consumers. I, therefore, do not find anything unreasonable in a provision enabling the distribution licensee, to disconnect electricity supply if dues are not paid, or where the electricity supply has already been disconnected for non-payment, insist upon clearance of arrears from the other connection of the Appellant. It is obviously the duty of the Appellant (owner) of the premises to satisfy himself that there are no electricity dues which remained unpaid by the occupier/ tenant of his premises particularly when the connection which is being used by the tenant is in the name of the owner. Therefore, the Appellant (owner) is supposed to clear the dues if the tenant fails to pay to safeguard his own interest. If this goes unchecked, then there will be no end in sight to resolve such issues and it will be used as a tool to defraud the exchequer from collecting its legitimate dues and it will be a standard modus operandi of the fraudsters. These checks and balances are necessary as electricity is a public property. Law in its majesty, benignly protects public property and behoves everyone to respect public property. Dishonest consumers cannot be allowed to play truant with public property.

It is important to note that the Appellant is not only in arrears of MSEDCL dues, but it has not paid dues of its distribution franchisee (TPL). The Appellant has never agitated at any Forum with respect to dues of MSEDCL which were shown in the bills issued by the distribution franchisee. Therefore, the intention of the Appellant tantamount to deliberate negligence in payment of arrears.

I, therefore, have no doubt in declaring that the Appellant (owner) is under legal obligation to pay the electricity dues of one of his permanently disconnected connection if the same are transferred to his other live electricity connection. In this case, it is important to note that the connection which was permanently disconnected for non-payment of electricity dues, was a power loom connection and the connection to which the arrears of PD connection are transferred is also a power loom connection. Possibility of manipulation of the entire issue

  
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cannot be ruled out by way of some documentation and thrusting the entire responsibility on the tenant could be a ploy to avoid payment of arrears and defraud the exchequer.


It is seen that in this case, the distribution licensee or its franchisee has been very careless in performing its duties mandated under the Act and the Regulations. Had these Authorities been diligent, there would not have been any question of piling of arrears. It will be in the fitness of things, if they are directed to take hit on this account. Therefore, Delayed Payment Charges (DPC) and Interest levied, needs to be waived of. Not only this, if there is some scheme in operation for One Time Settlement for payment of arrears, the benefit of the same may be extended to the Appellant.

I am at pains to note down that efforts to settle the issue through mutual discussion between the parties did not yield anything despite offering an opportunity for the same.

16. In view of the circumstances of the case, I pass the following order: -

- (a) Action of the Respondent in transferring the electricity dues of the Appellant's PD Connection No. 13010729593 to his own other live Connection No. 13010435018 is upheld.
- (b) The Respondent to recover the total arrears including that of the PD connection from the other live connection of the Appellant without DPC and interest.
- (c) The Respondent may grant suitable instalments if the Appellant so desires. These shall be without interest and along with the current bill.
- (d) Respondent not to release fresh connection at the PD connection site until the arrears are paid.
- (e) Respondent is specifically directed not to allow the use of power from the adjacent premises of the PD connection site by way of submerging the premises which is a practice normally seen at many places.
- (f) The Respondent is directed to submit action taken report in this matter at the end of six months from the date of issue of this order.

Sd/-  
(Deepak Lad)  
Electricity Ombudsman (Mumbai)

  
(Dilip Dumbre)  
Secretary  
Electricity Ombudsman Mumbai

