

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 209 OF 2019

In the matter of withdrawal of retrospective recovery

Shamrock Hotel Pvt. Ltd. Appellant

V/s.

Maharashtra State Electricity Distribution Co. Ltd. Panvel (Urban)
(MSEDCL)..... Respondent

Appearances

For Appellant : Raj Shekhar Gondi, Representative


For Respondent : Vivek Nagayya Swami, Addl. Executive Engineer

Coram: Deepak Lad

Date of Order: - 21st January 2020

ORDER

This Representation is filed on 25th November 2019 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the order dated 30th April 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).


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2. The Forum by its order dated 30.04.2019 has dismissed the Grievance Application No.172/2018 on the grounds of limitation.

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

- (i) Appellant is a LT commercial consumer (No.030130051070) from 04.04.2013 having sanctioned load of 55 KW at Plot No. P-16, Taloja, MIDC, Taloja, Tal-Panvel, Dist-Raigad.
- (ii) The Respondent issued supplementary bill of Rs.1637740/- towards retrospective recovery due to change in Multiplying Factor (MF) on 08.01.2016 for the period from May 2013 to December 2015 (32 months).
- (iii) The Appellant filed its grievance application before the IGRC in 2016. However, the IGRC did not conduct any hearing and passed any order in the matter.
- (iv) The Respondent, Additional Executive Engineer (Panvel -I Sub-Division), has informed the Appellant vide letter No.1511 dated 09.05.2018 enclosing the IGRC Order dated 17.05.2016. The Appellant was not aware of the IGRC Order.
- (v) The Respondent added a debit bill adjustment of the supplementary bill of retrospective recovery dated 11.02.2016, in the bill of March 2018 and April 2018. The recovery is not added in current bill till March-2018, hence the recovery amount is time barred and not recoverable as per the Section 56(2) of the Electricity Act, 2003 (the Act) which is read as below:-

56(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.”(Emphasis added)



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- (vi) The Appellant referred the Larger Bench Judgement dated 12.03.2019 of Hon'ble Bombay High Court in Writ Petition No. 10764 of 2011 for its support. The supplementary bill was not shown continuously outstanding in the bills and hence the same is not recoverable.
- (vii) The Appellant approached the Forum on 04.09.2018. The Forum, by its order dated 30.04.2019 has dismissed the grievance. The order of the Forum was not received by the Appellant till 19.09.2019. The Appellant, by its letter dated 19.09.2019 applied for certified copy of the order of the Forum. The certified copy was received on 20.09.2019.
- (viii) Due to some problems, the Appellant failed to file this Representation within 60 days from 20.09.2019. There is a delay of 5 days only. Considering the working days principle and diwali vacation, the Appellant request for condonation of delay for filing the Representation.
- (ix) The Appellant prays to grant stay order against disconnection of supply till disposal of this representation and withdraw the supplementary bill for retrospective recovery of Rs.1637740/- along with interest and delayed payment charges (DPC) for the period from May 2013 to December 2015 as the recovery is illegal, baseless, time barred.

4. The Respondent has filed its reply by letter dated 20.12.2019 stating in brief as under:-

- (i) At the very outset, the Respondent denied all and singular statements and contentions made in the Representation to the extent that the same are contrary to and/or inconsistent with what is stated herein.
- (ii) The Appellant is LT Commercial Consumer (No.0301300510701) from 04.04.2013 at Plot No. P-16, MIDC Taloja, Tal. Panvel. The sanctioned load of the Appellant is 55 KW with Contract Demand of 55 KVA.
- (iii) The Respondent carried out the inspection of above said premises of Appellant on 05.01.2016. During inspection, it was observed that the Appellant was being billed as per MF-1 instead of MF-2. Hence, as per the inspection report, the bill recovery due to change in MF has been worked out and the supplementary bill of Rs.1637740/- for 103757 units was issued to the


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Appellant vide letter No. Addl.EE/PNL-1/T/31 dated 11.02.2016 for the period from May 2013 to December 2015.

- (iv) Then being aggrieved with this supplementary bill, the Appellant filed the grievance in the Internal Grievance Redressal Cell (IGRC) at Respondent's Vashi Circle Office on 02.03.2016. The IGRC after hearing the Appellant passed the order on 17.05.2016. The copy of this order of IGRC was issued to the Appellant vide letter No. SE/VC/Tech/IGRC/02501/ dated 18.05.2016.
- (v) The Appellant then approached the Forum on 04.09.2018 which is registered at Case No. 172/2018 against the order of the IGRC dated 17.05.2016 quoting that IGRC decision was received by it on 09.05.2018. The Forum, after hearing both the parties, passed the order on 30.04.2019 and the copy of which was sent to both the parties on the same day i.e. on 30.04.2019 vide its letter dated 30.04.2019.
- (vi) The Respondent has taken a preliminary strong objection that the Appellant has filed this Representation for challenging the order of the Forum dated 30.04.2019 passed in Case No. 172/2018 as per Regulation 17.2 of CGRF Regulations. The Regulation 17.2 is reproduced as under:-

“17.2 Any consumer, who is aggrieved by the non-redressal of his Grievance by the Forum may make a representation for redressal of his Grievance to the Electricity Ombudsman within sixty (60) days from the date of the order of the Forum. Provided that the Electricity Ombudsman may entertain a representation after the expiry of the said period of sixty (60) days if he is satisfied that there was sufficient cause for not filing it within the said period.”

- (vii) Not satisfied with the order of the Forum, the Appellant has to approach the Electricity Ombudsman within 60 days from the date of the order of the Forum i.e. 30.04.2019. But the Representation is filed before the Electricity Ombudsman after 209 days i.e. on 25.11.2019. There is a delay of 149(209-60) days from the lapse of stipulated 60 days. This delay in filing this representation is excessive, which may not be condoned and hence this representation is not maintainable as per the Regulation No.17.2 of CGRF Regulations. Therefore, the instant representation needs to be rejected on this ground only.
- (viii) In the present case the chronology of events is as under:


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- a) 30.04.2019- Order of the Forum
- b) 30.04.2019- Order dispatched by the Forum to the Appellant and Respondent.
- c) 03.05.2019- Order uploaded by the Forum on the webmaster of MSEDCL.
- d) 25.11.2019- Representation filed before the Hon'ble EO by Appellant.

(ix) In this order of the Forum, it is clearly mentioned on the last page that


“The consumer if not satisfied may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

Office of the Electricity Ombudsman Maharashtra Electricity Regulatory Commission, 606, Keshava Building, Bandra Kurla complex, Bandra (E), Mumbai 400051.”

Being fully aware of this 60 days' limitation for filing representation, this Appellant, however, filed this representation after almost a lapse of 149 days from the date of expiry of stipulated 60 days period of limitation. There are so many judgements of Hon'ble High Court & Hon'ble Supreme Court stating that the delay of one day also should have been explained while filing delay condonation application. But in the present case, the Appellant has not explained the reasons for the delay of 149 days. Therefore, the Respondent prayed not to condone delay in this representation.


(x) Without prejudice to the above contention/submission to the condonation of delay in filing representation, the further reply to the point raised in the Representation is as follows:-

(a) The allegation of the Appellant that the IGRC has failed to send its order is not true. As the IGRC order has been sent by the Vashi Circle Office vide letter No.SE/VC/Tech/IGRC/02501 dated 18.05.2016 to the Appellant, the Addl. Executive Engineer of Panvel sub-Division vide its letter No. 1511 dated 09.05.2018 has forwarded once again the copy of IGRC order in response to letter dated 19.04.2018 received from the Appellant.


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- (b) The contention of the Appellant that till March 2018, the recovery is not added in current bill and the amount is not shown as recoverable in the period of 08.01.2016 to 09.03.2018 in bills, hence the amount is time barred and not recoverable as per the provision of Section 56(2) of the Act which is not acceptable. As the Respondent served the supplementary bill to the Appellant on 11.02.2016 and thereafter the Appellant aggrieved with the said supplementary bill by filing the grievance before the IGRC which was registered as Case No. 2/2016-17 in March 2016, the IGRC by its order dated 17.05.2016 has partly allowed the grievance and allowed payment facility. The order copy of the IGRC was sent to the Appellant vide letter No. SE/VC/Tech/IGRC/02501 dated 18.05.2016.
- (c) After the IGRC order the Respondent added the supplementary amount in the bill of March 2018. The Appellant did not ask for the instalment nor filed the grievance in the Forum within two years' period from the IGRC order date 17.05.2016 i.e. within the ambit of Section 56 (2) of the Act. Hence this amount is recoverable and is not time barred. The Forum in its order dated 30.04.2019 has upheld this addition of supplementary bill in March 2018 bill of Appellant as the Respondent has added supplementary bill under intimation of the Appellant within 2 years from the order of the IGRC. It cannot be presumed that the Respondent left right of recovery of that supplementary bill from the Appellant. On the contrary, the pending grievance before the IGRC itself proves that Respondent's claim was continuous for recovery of supplementary bill from the Appellant. Hence this supplementary bill amount is recoverable & is not time barred amount.
- (d) The contention of the Appellant that the Forum has not served the order to the Appellant is totally wrong, baseless and not acceptable. The Forum has also uploaded the Order in Case No.172 on 03.05.2019 on the webmaster of MSEDCL i.e. webmaster@mahadiscom.in and the Appellant is able to download the said order from this webmaster of MSEDCL. But the Appellant applied to the Forum on 20.09.2019 for


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getting the order copy, from this it appears that the Appellant intentionally made this application to indicate that he got the order copy only after the application dated 20.09.2019. These tactics are played by the Appellant to misguide and to show that they have filed this representation within stipulated time period. Hence the Respondent strongly object for the admission of this representation being time barred.

- (e) This Representation is not maintainable being time barred and the Respondent is entitled for recovery of arrears of the supplementary bill from the Appellant for period May 2013 to December 2015, as per the order of the Forum. Therefore, the Respondent can disconnect the supply of Appellant being in default if it does not pay the amount due.
- (f) The Appellant has consumed the electricity. The supplementary bill is raised of consumed energy. This amount of supplementary bill is a public money and non-recovery of this money will cause colossal loss to the Respondent.
- (g) This amount of supplementary bill is legally recoverable as per the Section 56(2) of the Act and it was the duty of Appellant to pay the electricity bills raised by the Respondent within time and if he failed to pay that bill amount within a due period then the consumer will become automatically liable to pay the complete interest and DPC charges as per the rules. This delay in payment of bill is due to the negligence of Appellant consumer hence he is not liable for exemption in payment of interest and DPC charges.
- (xi) The Forum has rightly observed in its order by referring the Regulations 6.2 and 6.4 of the CGRF Regulations.
- (xii) In view of the above the Respondent prays that the Representation of the Appellant be rejected on grounds of delay being time barred and devoid of merit.


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Analysis & Ruling

5. During the hearing on 23.12.2019, the Appellant and the Respondent both argued in line with their written submissions. The Appellant argued that the said supplementary bill for the period May 2013 to December 2014 was raised for the first time in the bill of March 2018. As per Section 56(2) of the Act, the sum has not been shown continuously as recoverable as arrear of charges for electricity supplied. The supplementary bill is time barred. The Appellant did not receive the order of the Forum in time and the period for filing the Representation be waived as reason is genuine. The Appellant prayed that the Respondent be directed to withdraw the supplementary bill of retrospective recovery of Rs.1637740/- along with interest and DPC.

6. The Respondent argued that the supplementary bill of Rs. 1637740/- was issued to the Appellant on 11.01.2016 for the period from May 2013 to December 2015. The Appellant was not satisfied and challenged the bill in IGRC and the IGRC by its order dated 17.05.2016 disposed the grievance allowing the grievance partly. But the Appellant did not approach the Forum within time schedule as described in Regulations 6.2 and 6.4 of the CGRF Regulations approached the Forum on 04.09.2018 after lapse of more than two years indicating IGRC decision received 09.05.2018. This is nothing but an idea occurring later to develop false story. Moreover, the Forum, by its order dated 30.04.2019 has dismissed the grievance. The Appellant made a second story that the order of the Forum was received by it on 20.09.2019. This is also after thought. The order of the Forum was sent by post by the Forum and it is also available on website of the Respondent from 03.05.2019. In view of the above the Respondent prays that the Representation of the Appellant be rejected on delay ground being time barred and devoid of merit.

7. Heard the parties. I perused documents on record. It is a classic case of gross negligence on the part of the Appellant who appears to be dormant despite the stakes being high. The cause of action has started when the supplementary bill of Rs.1637740/- was issued on 11.01.2016. The Appellant approached the IGRC on 02.03.2016 i.e. within a reasonable period. The IGRC issued order on 17.05.2016 which the Appellant claimed that it has received the same as late as May 2018. Without prejudice to the contention of the Respondent, if it is


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assumed that it really received the order in May 2018, the moot question that remained unanswered by the Appellant as to why it did not enquire with IGRC about the issue of order.


8. Secondly, the Appellant ought to have known that the Regulations provide that if order is not issued by the IGRC within 60 days from the date of filing the grievance, it can approach the Forum, however, not later than two years from the date of cause of action. The Appellant filed the grievance with the Forum on 04.09.2018. The Forum issued the order on 30.04.2019. The Appellant, in its representation has said that it has also not received the order of the Forum in time which it claimed to have been received on 20.09.2019 after submission of due application.

9. The Respondent when asked to submit the exact date of receipt of the Forum's order by the Appellant, it submitted some documents through its email dated 18.01.2020. One of the documents dated 17.01.2020 from the Member Secretary of the Forum shows that the Forum's order is uploaded on the webmaster of the Respondent, MSEDCL on 03.05.2019. It means the order was in public domain from 03.05.2019. Not only this, when the Forum's office was contacted, it was informed that the copy of the order was collected and duly acknowledged by Mr. Pravin Thakkar on 13.05.2019 who was the authorised representative of the Appellant at the Forum.

10. It is hard to believe that the Appellant did not receive the IGRC order as well as the Forum's order in time. The Appellant approached IGRC on 02.03.2016. It could have filed the application with the Forum within 60 days irrespective whether the IGRC passes order or otherwise. It means by 02.05.2016 it should have approached the Forum however, it approached the Forum approximately after 2 years 4 months. Then it approached this Authority after a lapse of 149 (209 – 60) days. The entire story of delay is therefore totally unbelievable.

11. In view of the above, I am of the opinion that the argument of the Appellant that it received both the orders very late does not inspire confidence. It is a case of dormant Appellant trying to seek justice. This fits into the maxim "*Vigilantibus Et Non Dormientibus Jura Subveniunt*". Further, various judicial pronouncements have upheld limitation as envisaged in the CGRF Regulations. The judgment of the Bombay High Court, Nagpur Bench in W.P. No. 1650 of 2012 dated 10th July 2013, and Bombay High Court, Bench at Aurangabad judgment


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




in W.P. No. 6859, 6860, 6861 and 6862 of 2017 dated 21.08.2018 has explicitly upheld the provision under Regulation 6.2, 6.4 and 6.6 of the CGRF Regulations. In view of these judgments, these Regulation with respect to limitations in redressing the grievance of the consumers at large remains valid and untouched. In a recent judgment, the Hon. Supreme Court in Civil Appeal No. 2960 of 2019 dated 13.03.2019 laid down that the plaint can be rejected if suit is clearly barred by limitation. If these Regulations providing limitations is ignored, then the entire pyramid of grievance redressal mechanism will collapse, and the field will be open to all to contest the claim irrespective of the period elapsed from the cause of action. The provision of these Regulations will be frustrated and there will be complete chaos.

12. In view of the above, the representation stands dismissed as being time barred.

13. The Secretariat of this office is directed to refund an amount of Rs.25000/- deposited by the Appellant immediately.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

