

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 88 OF 2022

Direction of Hon'ble High Court, Bombay in W.P. No. 12693 of 2016
against Representation No. 70 of 2016

In the matter of defective meter and billing

M/s. Om Shree Agro-Tech Ltd..... Appellant

V/s

Maharashtra State Electricity Distribution Co. Ltd. Dhule (MSEDCL)..... Respondent

For Appellant : 1. Sachin Agarwal, Director
2. Satish S. Shah, Representative

For Respondent : V. M. Shinde, Executive Engineer (Adm.), Dhule Circle

Coram: Vandana Krishna (Retd. IAS)

Date of hearing: 22nd August 2022

Date of Order : 1st September 2022

ORDER

This Representation is filed on 2nd June 2022 as per directions given in the Judgement dated 21st March 2022 in Writ Petition (W.P.) No. 12693 of 2016 by the Hon'ble Bombay High Court, Bench at Aurangabad. The said direction reads as under:

"11. While deciding the representation of the respondent, the Ombudsman has observed that "it is however not necessary to go into the merits of the same.....". It is thus clear that, the order is not passed on merits and it is passed only by considering the offer of the respondent to pay principal amount together with interest and 50% of DPC levied by the petitioner till the date of filing grievance before IGRC on 22.02.2016. No reason whatsoever is assigned for not deciding


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



the matter on merits. The Ombudsman ought to have decided the matter on merits. Since the same is not done, I am inclined to accept the submission of learned advocate for the petitioners that the impugned order is not passed on merits and it needs to be quashed and set aside and on that ground alone the matter is required to be remitted back to the Ombudsman for decision on merits.

12. In the result, the impugned order is hereby quashed and set aside. The matter is remanded back to the Electricity Ombudsman, who shall decide the matter in accordance with law on its own merits after hearing the parties, within a period of three months from the date of receipt of this order.

13. Needless to mention that respective contentions of the parties are kept open and this Court has not expressed any opinion on the merits of the matter.

14. Rule is made absolute in above terms. No costs.”

2. **Preamble:**

- (i) The Appellant is 11 KV High Tension (HT) Industrial Consumer from 15th April 2005 having Contract Demand (CD) of 900 KVA at G-32, M.I.D.C. Avdhan, Dhule.
- (ii) The Appellant contended that additional units were illegally billed for 4 months from September 2006 to December 2006 towards alleged defective meter. Out of this, the Appellant paid the assessment amount of two months of September 2006 and October 2006 towards additional units billed under protest. However, he did not pay the assessment of November 2006 and December 2006 of Rs.8,79,226/-. As the assessment was added in the respective bills, the billing system continued to charge “Interest and Delayed Payment Charges (DPC)” on the principal amount of Rs. 8,79,226/-. The total DPC amount for the period from December 2006 to February 2016 was raised to Rs.32,86,418/-.
- (iii) The Appellant approached the grievance mechanism before the Internal Grievance Redressal Cell (IGRC) on 22.2.2016, thereafter the Forum on 22.03.2016 and then the Representation was filed before the Electricity Ombudsman (Mumbai) on 18.07.2016 against the order of the Forum dated 27.05.2016.
- (iv) The Electricity Ombudsman (Mumbai), by its order dated 14.10.2016 disposed of the grievance with the following observations.

“11.It is however not necessary to go into the merits of the same as the Appellant has now stated in their letter dated 23.9.2016 that the Appellant is willing to pay the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



principal amount together with interest. The Appellant is also agreeable to bear 50% of the DPC levied by the Respondent MSEDCL till the date of filing the grievance before the IGRC on 22.2.2016. The Respondent has stated that the amount of DPC from December 2006 to December 2015 is Rs.32,86,418/-. The principal amount of arrears was however only Rs. 8,79,226/- and the Appellant has disputed the arrears. In earlier part of claim which is pending before the District Court, no interest and DPC was charged. The Civil Court has also quashed the entire claim of the Respondent. Considering these aspects, the offer made by the Appellant in their letter dated 23rd September, 2016 is reasonable and proper keeping in mind that the Appellant stopped making payment from November 2006 as the Respondent failed to replace the meter immediately. The proposal made by the Appellant for charging only 50% of DPC therefore deserves to be accepted in the facts and circumstances of this case.

12. In the result, representation is partly allowed. The Respondent MSEDCL is directed to recover only 50% of DPC payable till February 2016. The Respondent is accordingly directed to issue a revise bill as above within the period of 15 days from the date of receipt of this order and accordingly refund or adjust the payment, if any.”

- (v) The Respondent filed a W.P. before the Hon’ble Bombay High Court, Bench at Aurangabad challenging the order passed by the Electricity Ombudsman (Mumbai) in Representation No. 70 of 2016. The W.P. was registered as No. 12693 of 2016. The Hon’ble Bombay High Court, Bench at Aurangabad, by its order dated 21.03.2022 has quashed the order passed in Representation 70 of 2016 and has given direction to decide the matter in accordance with law on its own merits after hearing the parties, within a period of three months from the date of receipt of this order.

3. As per the direction of the Hon’ble Bombay High Court, Bench at Aurangabad, the Appellant has filed this Representation on 02.06.2022 which is now registered as Rep. No. 88 of 2022. A physical hearing was held on 22.07.2022 where both the parties attended and were heard. The Appellant’s written submission and arguments in brief is stated as below: -

- (i) The Appellant is a 11 KV HT Industrial Consumer from 15th April 2005 having CD of 750 KVA at G-32, M.I.D.C. Avdhan, Dhule. The CD is enhanced to 900 KVA, at present. The Appellant is a manufacturer of food products, mainly soya bean meal and soya bean oil.
- (ii) The Appellant noted the arrears of Rs.22,96,000/- and interest of Rs.4,51,649/- shown in the bill of December 2015. Arrears were also shown in the bills prior to


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



December 2015. The amount appearing as arrears in this bill and also in the previous bills prior to December 2015 is incorrect and illegal; as the Appellant had paid all monthly bills in time for regular consumption of energy charges.

- (iii) The Appellant examined all the previous bills and correspondence made with MSEDCL from September 2006 onwards and found that during the joint inspection and testing on 19.09.2006, the meter was detected as faulty. The Respondent has charged 119138 additional units at the rate 66.67% for the period from September 2006 to December 2006.
- (iv) Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations 2005) cast the responsibility of immediate replacement of a faulty meter with the licensee. The Respondent, however, replaced the faulty meter after three months.
- (v) The Appellant protested against the illegal additional units billed for 4 months, and paid the extra units charged during the month of September 2006 and October 2006.
- (vi) The Appellant followed up for replacement of the meter; however, when the Respondent failed to replace the defective meter, it discontinued to pay additional unit charges from the third month. Thereafter, the Respondent ultimately replaced the meter on 13th December 2006. Had the Appellant continued to pay the additional units without any protest, probably MSEDCL would not have replaced the meter even after 4 months. Thereafter, the Appellant paid all the regular monthly bills for regular consumption, keeping aside the disputed amount of Rs.8,79,226/- + DPC + Interest. The Respondent has also accepted these monthly payments. However, the disputed amount was kept pending.
- (vii) The MSEDCL continued to charge Interest and DPC on the principal amount of Rs.8,79,226/-. The Respondent has shown arrears of Rs.24.96 lakh + Rs.4.51 lakh as interest in the bill for December 2015.
- (viii) The Appellant filed a grievance with IGRC on 22.02.2016 and then approached the Forum on 22.03.2016, and both rejected the grievance. There is another case of a supplementary bill of Rs. 21,22,110/- for the period prior to August 2006, which was challenged by the Appellant in Civil Court, Dhule. The said supplementary bill


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



was declared void and illegal by the Civil Court, and it was never reflected in the regular monthly bills issued by MSEDCL. Recovery of Rs.8,79,226/- is a separate and distinct issue, but the Forum mixed up these two separate issues and refused to entertain the grievance as per Regulation 6.7 (d) of CGRF Regulations 2006.

- (ix) The Respondent has already recovered Rs.36,04,059/- from other refunds which were due to the Appellant on account of Government Subsidy, Security Deposit (SD), Interest and Additional Supply Charge (ASC) Refund. The details are tabulated as below:

Sr. No.	Particulars	Amount Recovered(Rs.)
1	ASC adj. receivable in Nov-2007	598178
2	Concessional tariff diff. as per GoM of Dec-2014	603332
3	Int. adj. on SD held by MSEDCL	896720
4	Int. adj. on SD held by MSEDCL in April-2016	214935
5	ASC adj. receivable in July-2016	1290894
	Total recovered	3604059

- (x) In addition to the above, the Appellant paid balance of DPC / interest of Rs.17,34,553/- on 11.11.2016 vide receipt No.2167354. The Appellant had paid this outstanding amount under protest to avail Prompt Payment Discount (PPD) of 1% on the monthly regular bills which is offered only if no arrears are pending and bills are paid within 7 days from the date of issue of bill.
- (xi) It is clear from the above figures that the Appellant had paid amount on account of DPC/interest totalling up to Rs.53,38,612 (36,04,059+ 17,34,553)/- against the original illegal demand of Rs.8,79,229/-. Therefore, the claim at this stage is for refund of the total amount Rs.53,38,612/- along with accrued interest @12% under Section 62(6) of the Electricity Act, 2003 (the Act).

Cause of Grievance:

- (xii) The MSEDCL team of 12 officials visited the site on 19.09.2006 to check the metering installation in the plant and prepared inspection report signed by nine


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



officials of MSEDCL and one representative from the Appellant. The report clearly shows that the meter seals were intact. Y phase PT was found defective with zero voltage and the meter was also found faulty due to surge, and it was also mentioned in the report to send the meter for further investigation to the manufacturer of L&T Company. The same Y-phase PT failure was also observed by the MSEDCL representative during earlier inspections on 31.08.2006, 07.09.2006 and the same defect was again noted on 19.09.2006.

- (xiii) Y phase PT of the meter was defective, and the error was 49%. The MSEDCL, however, charged 66.67%. As per Regulation 15.4.1 of Supply Code Regulations 2005, the responsibility of replacing a defective meter is with the MSEDCL. Rule 15 (b) of CERC Notification dated 17.03.2006 and Respondent's Circular No. 39 dated 21st July, 2006 provides that in case the meter is abnormal / slow, the same shall be replaced immediately.
- (xiv) The Respondent levied DPC from Feb-2016 onwards which should be waived off completely as the grievance was under consideration with "Grievance Redressal Mechanism". The DPC charged after Feb-2016 from the monthly energy bills is tabulated below:-

Sr. No.	Month	DPC Charged(Rs.)
1	Mar-16	64,679
2	Apr-16	68,745
3	May-16	76,103
4	Jun-16	66,897
5	Jul-16	69,165
6	Aug-16	72,452
7	Sep-16	27,092
	Total	445,133

- (xv) The Appellant also cited the Judgment dated 08.06.2021 of Hon'ble Bombay High Court, Bench at Nagpur in W.P. No. 7900 of 2017 in the case of MSEDCL V/s. M/s. RSR Mohota Spinning & Weaving Mills Ltd.
- (xvi) The Appellant has, therefore, prayed that the Respondent be directed


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



- (a) to quash the illegal demand raised by the Respondent for the outstanding dues including DPC & interest of **Rs.53,38,612/-** which was paid under protest.
- (b) to waive of DPC and interest billed till Nov-2016 on the illegal additional units charged at 66.7% for the period from Sept-2006 to Dec-2006.
- (c) to pay interest on the excess amount Rs.53,38,612/- collected illegally by the Respondent as per Section 62(6) of the Act at bank rate of 12%.
- (d) to compensate Rs.1,00,000/-for mental agony, expenditure at High Court, man hours for follow up, travelling expenditure etc.

4. The Respondent filed a reply by its letter dated 02.08.2022. The hearing was held on 22.08.2022 where both the parties were heard. The Respondent's submission and arguments in brief is as below: -

- (i) The Appellant is 11 KV HT Consumer from 15th April, 2005 having CD of 900 KVA at G-32, M.I.D.C. Avdhan, Dhule. The Appellant is a manufacturer of food products, mainly soya bean meal and soya bean oil. The Appellant is billed under industrial tariff category.
- (ii) During a routine meter testing of HT consumer on 31.08.2006, it was observed that Y Phase voltage of L & T Make meter was missing on meter display counter. R & B phase voltage was showing correctly. This resulted in less recording in the meter. Hence, a joint inspection and testing of meter was done on 19.09.2006 in the presence of the then Superintending Engineer (SE), Executive Engineer (EE) (Testing), Jalgaon, EE (O&M Division, Dhule), Consumer Representative and Representative of L&T Company (Manufacturer of Meter). During the joint inspection it was confirmed that there is an error in the recording of meter due to Y phase Voltage which was missing to the meter display.
- (iii) The Meter Reading Instrument (MRI) data of the said meter was downloaded on 19.09.2006. The data was sent to the Manufacturer for further analysis. It was observed that Y phase voltage was missing to the meter from 17.05.2005 and the meter was working only on R and B phase.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



A. Supplementary Bill of Rs. 21,22,110/- towards less recording for the earlier period from 17.05.2005 to 31.08.2006: -

- (iv) A supplementary bill of Rs. 21,22,110/- was issued on 3rd November 2006 to the Appellant towards 40% less recording of the meter due to missing of Y Phase voltage in the meter for the period from **17.05.2005 to 31.08.2006**. The Appellant challenged the said supplementary bill by filing Civil Suit (RCS No. 256/2006) before Jt. Civil Judge (Jr. Dn.) Dhule, and the Civil Court passed the order of status quo initially. Hence, the supplementary bill of Rs.21,22,110/- was not shown in the regular monthly bills, and no interest and DPC were charged. Finally, the Civil Court held the supplementary bill of Rs.21,22,110/- as void and illegal. The MSEDCL has filed an appeal which is pending in the District Court. The meter was replaced on 13.12.2006 after availability of meter.
- (v) The Hon'ble Court passed an order in the RCS No. 256/2006 on 11.12.2012 with respect to Hon'ble Principal District Judge, Dhule to transfer this Suit to the Court of C.J.S.D. Dhule having Suit No. Spl. Civil Suit 152/2012.
- (vi) The Hon'ble Civil Judge S.D. Dhule passed an order on 12.02.2013 in the suit No. 152/2012, and the supplementary bill dated 03.11.2006 of Rs.21,22,110/-issued by MSEDCL was declared void and illegal, and it also restrained MSEDCL from disconnection of power supply of the consumer. After obtaining Legal opinion, an appeal was filed by MSEDCL before Hon'ble High Court Mumbai, Aurangabad Bench on 10.06.2013 (FA 1988/2013 dated.10.06.2013). The case of High Court was transferred to District Court, Dhule on 29.10.2015, due to revision of powers of various courts, and is renumbered as 138/2015. The same Case is pending for a final hearing.

B. Assessment towards less recording of the Meter for the period from 01.09.2006 to 13.12.2006: -

- (vii) The Appellant was further assessed in monthly bills from September 2006 to December 2006 towards 40 % less recording of the meter due to missing of Y


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Phase voltage in the meter from 01.09.2006. The faulty meter was replaced on 13.12.2006. It is clarified that the meter found slow by 49% during testing. However, the Respondent recovered at the rate of 40% only, and hence the Respondent claims that there is a further additional recovery of 1,06,931 (3,49,351-2,42,420) units which is not on record.

- (viii) The Appellant filed a grievance before IGRC on 22.02.2016. The IGRC by its order dated 02.03.2016 rejected the grievance, holding that the consumer has failed to approach the IGRC within two years from the date on which the cause of action arose in the year 2006. The Appellant therefore approached the Forum on 27.05.2016. The Forum, by its order dated 27.05.2016 disposed of the grievance as per Regulation 6.7 (d) of CGRF Regulations 2006, observing that the First Appeal No. 138/2015 regarding supplementary bill of Rs.21,22,110/- is pending before the Hon'ble District Court, Dhule, and hence, the Forum cannot go into the merit of the said issue.
- (ix) The Appellant approached the Hon'ble Electricity Ombudsman (Mumbai) on 17.07.2016 by filing Representation No. 70 of 2016.
- (x) The Respondent has taken a stand that the grievance is registered after a lapse of ten years from the time when the cause of action arose. The grievance is therefore time barred as per Regulation 6.6 of CGRF Regulations 2006.
- (xi) The Hon'ble Electricity Ombudsman by its order dated 14.10.2016, has partly allowed the representation in view of the willingness shown by the Appellant to pay the principal amount together with interest along with 50% DPC. Accordingly, the Respondent was directed to issue a revised bill of 50% of DPC till February 2016.
- (xii) The Respondent filed a Writ Petition (No. 12693 of 2016) before Hon'ble Bombay High Court, Aurangabad Branch challenging the order of the Electricity Ombudsman (Mumbai) in 2016/17. The Bombay High Court, Aurangabad Branch vide its Judgement dated 21.03.2022 in Writ Petition (W.P.) No. 12693 of 2016 has directed the Electricity Ombudsman (Mumbai) to decide the case on merit. The relevant portion is captured in first para of this order.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Points wise reply to the issues raised by the Appellant

- (xiii) During routine testing, the TOD meter (No.01983476, 5/5 A, 11 KV/110V) of the Appellant was found defective as the Y Phase voltage was missing on the display of the meter. Further, the meter was tested on 19.09.2006 in the presence of the representative of L&T Company, the manufacturer, and the Appellant where the meter was found slow by 49%. Hence the assessment of defective meter was levied in the monthly bills from Sep-2006 to Dec-2006 and the Appellant was taken in confidence. However, the Appellant discontinued to pay the full amount of the bill unilaterally. The claim of the Appellant that the Respondent replaced the meter only after stopping the payment is not true at all. The TOD meter was replaced immediately on the availability of a new meter.
- (xiv) The Meter was replaced on 13.12.2006. The Appellant's contention that MSEDCL has charged 66.67% additional units without any base and justification is baseless. The Respondent has charged consumption considering the meter as 40% slow (e.g. 80710 units recorded $\times 40 / 60 = 53807$ Units assessed, i.e., total consumption was actually $80710 + 53807 = 1,34,517$ units, which has been consumed by the Appellant). Later, it was noted by the assessing officer that the assessment was charged considering the meter was slow by 40%; however, in testing, the meter was actually found 49% slow.

The recorded units, additional 49% units and units levied in the bill are tabulated in the table shown below: -

Month	Consumption recorded in meter(Units)	Consumption assessed considering 40% slowness (Units)	Total Consumption (Units)	Consumption to be assessed considering 49% slowness (Units)	Diff. of less assessment done	Remarks
<i>1</i>	<i>2</i>	<i>3[2*(40/60)]</i>	<i>4 =(2+3)</i>	<i>5 [2*(49/51)]</i>	<i>6=5-3</i>	
Sep-06	80,710	53,807	1,34,517	77,545	23,738	
Oct-06	90,420	60,286	1,50,706	86,874	26,588	
Nov-06	1,19,650	79,773	1,99,423	1,14,958	35,185	
Dec-06	72,830	48,554	1,21,384	69,974	21,420	Meter replaced on 13.12.2021
Total	3,63,610	2,42,420	6,06,030	3,49,351	1,06,931	


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



The above table clearly indicates that the assessed units for the period Sep 2006 to Dec 2006 (mentioned in column 4) was only 2,42,420 units, whereas the actual recovery should have been for 3,49,351 units. Thus, $3,49,351 - 2,42,420 = 1,06,931$ less assessed units were recovered.

This meter of the HT Consumer was of a special type of TOD meter which was not available with the local Testing Unit, and there is no power to purchase it at local level. As soon as the meter was received in the Store, the said meter was replaced on 13.12.2006 immediately.

Although the proper assessment bill was issued on a month to month basis, the Appellant unilaterally started to pay only the current bill, which does not stand on merit.

- (xv) The Respondent billed the Appellant as per actual consumption from the date of meter replacement i.e. 13.12.2006. The adjustment of SD, ASC, etc., was already given in the bill. However, the Appellant failed to pay the total bill.
- (xvi) The Respondent prays that it be allowed:
- (a) to levy additional assessment units of 1,06,931 for the period Sept-2006 to Dec-2006 as per testing report of 49% slowness.
 - (b) Any other relief may kindly be passed in favor of the Respondent & cost to be incurred on the Appellant.

Analysis and Ruling

5. Heard both the parties and perused the documents on record. The Appellant is a 11 KV HT Consumer from 15th April 2005 having CD of 900 KVA at G-32, M.I.D.C. Avdhan, Dhule. The Appellant is billed under industrial tariff category.

6. The Respondent observed during a routine meter testing of the HT consumer on 31.08.2006 that Y Phase voltage of L & T Make meter was missing on the meter display counter, and R & B phase Voltage was displayed correctly. This resulted in less recording in the meter. Hence a joint inspection and testing of meter was done on 19.09.2006 in the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



presence of the Appellant and Representative of L&T Company, the Manufacturer of meter. During testing, the meter was found to be 49% slow and the Y Phase voltage was missing on the meter's display.

7. The MRI data of the said meter was downloaded on 19.09.2006 which was sent to the Manufacturer for further analysis. The Respondent contended that Y phase Voltage was missing to the meter right from 17.05.2005. Hence, the Respondent made the first assessment of Rs.21,22,110/- for the period from 17.05.2005 to 31.08.2006 which was issued to the Appellant on 03.11.2006. This assessment was challenged by the Appellant in the Civil Court, which is pending.

8. The Appellant was billed additional units considering the meter as 40% slow from September 2006 to December 2006 on month-to-month basis. There are two issues related to this. Firstly, the assessment was done based on 40% slowness instead of 49% slowness. The second issue is about the period of assessment.

9. In the instant case, the SOP Regulations 2005 and Supply Code Regulations 2005 were applicable. There are no specific guidelines for defective meter replacement in these Regulations. However, a defective meter needs to be replaced in the next billing cycle as per the Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014. So, this provision emphasises that the defective meters are to be replaced within a reasonable period, at least in the second billing cycle.

10. Similarly, the Appellant cannot be billed more than three months on average basis as per Regulation 15.4.1 of the Supply Code Regulation 2005. The said Regulation is reproduced below: -

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Provided that, in case of broken or damaged meter seal, the meter shall be tested for defectiveness or tampering. In case of defective meter, the assessment shall be carried out as per clause 15.4.1 above and, in case of tampering as per Section 126 or Section 135 of the Act, depending on the circumstances of each case.

***Provided further that, in case the meter has stopped recording, the consumer will be billed for the period for which the meter has stopped recording, up to a maximum period of three months, based on the average metered consumption for twelve months immediately preceding the three months prior to the month in which the billing is contemplated.”
(Emphasis added)***

11. The Y Phase voltage of the meter was found missing on 31.08.2006. The meter was tested on 17.09.2006 where the meter was found 49% slow. As only one phase voltage, out of three phases was found missing, the decision taken by the Respondent at that time for 40% underbilling is found in order. Hence, at this juncture, the Respondent cannot claim assessment with 49% slowness of the meter.

12. The Regulation prescribes that in this situation; the assessment has to be done only for 3 months. The period of assessment was 01.09.2006 to 13.12.2006; thus, the Appellant got the benefit of 40% assessment (instead of 49%) and at the same time, it got the disadvantage of 3 months & 13 days' assessment instead of 3 months' assessment. Looking into both these aspects which can be considered to balance out each other, hence it is not necessary to revise the assessment on that count at this stage.

13. The Appellant itself stopped paying the assessment bill of Rs.8,79,226/- (due to the slowness of the meter) from November 2006 onwards. It cannot be denied that this assessment bill was valid because of the slowness of the meter, hence, the Appellant was bound to pay this amount. At the same time, the Respondent allowed this act of the Appellant, and permitted it to pay only the current bill till the year 2016. This indicates that the Respondent has admitted the grievance and not taken appropriate action for issuing notice of disconnection as per Section 56(1) of the Act which is quoted as below:

“Section 56. (Disconnection of supply in default of payment): -- (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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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.”

14. The current bill of the Appellant is a huge amount, the DPC charged of 2% was also a considerable amount. As per the tariff orders of the Commission, the DPC is to be levied at the rate of 2% on the current bills if the consumer defaults in payment of bills. The relevant portion of the tariff order dated 20.06.2008 in Case No. 72 of 2007 is reproduced below:

“Delayed Payment Charges (DPC) In case the electricity bills are not paid within the due date mentioned on the bill, delayed payment charges of **2 percent** on the total electricity bill (including Taxes and Duties) shall be levied on the bill amount. For the purpose of computation of time limit for payment of bills, “the day of presentation of bill” or “the date of the bill” or “the date of issue of the bill”, etc. as the case may be, will not be excluded.”

(Emphasis added)

Rate of Interest on Arrears as per the tariff orders of the Commission is tabulated below:

Sr. No.	Delay in Payment (months)	Interest Rate p.a. (%)
1	Payment after due date up to 3 months (0 - 3)	12%
2	Payment made after 3 months and before 6 months (3 - 6)	15%
3	Payment made after 6 months (> 6)	18%

In the instant case, the 2% DPC would be directly proportionate to the current bill. The consumption of the Appellant was extremely high which has resulted in substantial amount of DPC penalty of Rs.32,86,418/- for the period from Nov. 2006 to Feb. 2016, as compared to the interest on arrears amount of Rs.8,79,226/-. The Appellant was in regular in payment of current bills. The disputed amount of **Rs.** 8,79,226/-was already added in the respective bills from Aug 2006 to Dec. 2006 and was outstanding in the bills which has resulted in huge amount of DPC.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



15. Since in the instant case, the Appellant was allowed to pay only the current bill from November 2006 till February 2016, this means that the Respondent indirectly accepted the alleged grievance of the Appellant. The provision of Section 56 (1) of the Act was not implemented and hence, the Respondent is equally responsible for creating Delayed Payment Charges. Hence, we hold that both the parties should share the burden of DPC equally. The Appellant has paid the total DPC amount of Rs.32,86,418/- on 11.11.2016. We hold that 50% of this amount, should be refunded to the Appellant.

16. So far as the issue of interest is concerned, it is necessary to examine the claim of the Appellant for refund of the amount with interest paid by it as per Section 62(6) of the Act. The said Section is reproduced below:

“Section 62. (Determination of tariff):

(1) *The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

- (a) *supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*
- (b) *transmission of electricity;*
- (c) *wheeling of electricity;*
- (d) *retail sale of electricity:*

Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) *The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.*

(3) *The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.*


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (4) *No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*
- (5) *The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.*
- (6) *If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”*
.....emphasis added

As per Sub Section 6 of Section 62, interest at bank rate becomes payable if the Distribution Licensee or a generating company recovers a price or charge exceeding the tariff. In the present case, no such thing happened. Section 62 (6) specifically provides that interest is payable only if excess tariff than the prescribed one is charged.

17. Similarly, the Hon'ble Bombay High Court, Bench at Nagpur, in its Judgment dated 10.09.2014 in Writ Petition No. 5437 of 2013, held in Para No. 7 as below:-

“7] In so far as grant of interest at the rate of 9% p. a. is concerned, the same has been granted by relying upon the provisions of Section 62(6) of the said Act. Under sub Section (6) of Section 62 it is only if any licensee or a generating company recovers a price or charge exceeding the tariff determined under said section, then the excess amount can be recovered by the person who has paid such price or charge alongwith interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee. It is not in dispute that in present case no such price or charge exceeding the tariff determined under Section 62 was sought to be recovered. Hence, award of interest at the rate of 9% is therefore not in accordance with law. Said part of the order will therefore have to be set aside. In so far as the award of compensation and costs are concerned said part of the order does not deserve to be interfered.

It may however, be stated that learned counsel for the petitioner tried to urge that in view of tariff order dated 16.08.2012 and the order dated 12.09.2008 passed by the MERC, the exercise of choice between continuous and non continuous supply was required to be made within one month of issue of tariff order and not thereafter. He further sought to urge that Circular No. 175 dated 05.09.2012 didnot permit exercise of choice within one month from its issuance. However, considering the reply filed by the petitioner before the Grievance Forum and its own letter dated 06.11.2012, I am not inclined to go into said question. In the facts of the present case, adjudication of said issue is not called for considering the specific stand taken by the petitioner before the Forum. It is however clarified that it would be open for the petitioner to urge such question if so advised in an appropriate case and this judgment would not operate as precedent for said purpose.


 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai



Hence for the reasons aforesaid, the Writ Petition is partly allowed. The direction to pay interest at the rate of 9% p. a. on the difference amount as contained in order dated 26.06.2013 is set aside. However, rest of the order stands confirmed. Writ Petition is partly allowed with no order as to costs.” emphasis added

18. In view of the above Judgment, the prayer of the Appellant for interest on payment of DPC amount under Section 62 (6) of the Act, is rejected.

19. In view of the above, the Respondent is directed

- (a) to refund Rs.16,43,209/- to the Appellant (towards 50% of the DPC amount Rs.32,86,418/-) without any interest. The amount be adjusted in the ensuing bills of the Appellant.
- (b) Other prayers of the Appellant are rejected.
- (c) Compliance to be reported by the Respondent within two months from the date of this order.

20. The Representation is disposed of accordingly on merit as per the directions given by the Hon'ble Bombay High Court, Aurangabad Bench.

Sd/-
Vandana Krishna
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

