

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.112 OF 2022

In the matter of retrospective recovery towards Multiplying Factor for
common facilities connection

Sankalp Developers Appellant
(Consumer No. 000020628006)

V/s.

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

Appearances:

Appellant : 1. Vinay Apte, Secretary
2. Jayant Bivalkar, Representative

Respondent: 1. Nitin Thite, Executive Engineer, Thane(U) Dn.2
2. Umesh Lele, Addl. Executive Engineer, Vikas Sub. Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 16th September 2022

Date of Order 3rd October 2022

ORDER

This Representation was filed on 22nd July 2022 under Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) against the Order dated 29th June 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


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Electricity Ombudsman Mumbai



2. The Forum, by its order dated 29.06.2022 partly allowed the Grievance Application No.122. The operative part of the order is as below:

“2. The Respondent is entitled to recover the supplementary bill in the arrears amounting to Rs.10,44,320/-


3. The Appellant consumer is granted six equal monthly installments for payment of supplementary bill arrears. The monthly installments granted for the payment of supplementary bill are to be paid along with the current bills being issued by the Respondent from time to time till entire supplementary bill is fully paid by the consumer.

4. If the appellant consumer fails to deposit the monthly installments along with the current bill amount, then the Respondent has authority to disconnect the electrical supply as per MSEDCL rules & regulations.

5. The Respondent is directed that, not to recover any interest, DPC & Penalty from the consumer for the disputed bill amount.”

3. The Appellant filed this representation against the order of the Forum. The hearing was held on 16.09.2022 through Video Conference. Both the parties were heard. The Appellant’s written submission and arguments in brief is stated as below: -


- (i) The Appellant (Sankalp Siddhi Co-op. Housing Society) is a registered Society of flat owners. The residential complex was developed by 'Sankalp Developer'. The electricity connection (Consumer No.000020628006) is taken for common facilities (water pump, lift, common lighting etc.) by the developer and change of name is yet to be done. The society is the user of electricity. The monthly bills of electricity are paid regularly by the Society. The society is, thus, a consumer within the meaning of Section 2 (15) of the Electricity Act, 2003 (the Act) besides being a legal entity.
- (ii) The Respondent carried out a spot inspection of the premises on 03.11.2020. The Respondent issued a supplementary bill of Rs.10,44,320/- on 23.11.2020 towards retrospective recovery of Multiplying Factor from 1(one) to 2(two) for the period of 91 months from April 2013 to October 2020.
- (iii) The Appellant filed its grievance application in Internal Grievance Redressal Cell (IGRC) on 22.01.2021. The hearing was held on 03.03.2021 when the Appellant raised some objections about the assessment and requested for actual testing of CT Meter in


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Secretary
Electricity Ombudsman Mumbai



the presence of the Appellant, and the Respondent should prove that MF was 2 instead of 1 from the date of connection and submit the necessary documents. The IGRC, by its order dated 12.03.2021 directed the Addl. Ex. Engineer to test the meter as demanded; however, rejected the grievance. The IGRC has also allowed to pay the bill by instalments as per mutual consent.

- (iv) Not satisfied with Order of the IGRC, the Appellant approached the Forum on 18.03.2021. The Forum by its order dated 29.06.2022 rejected the grievance and ordered to pay the said supplementary bill for Rs.10,44,320/-within six equal monthly instalments without interest and DPC. The Forum failed to understand the basic issue that the claim was time barred.
- (v) The Appellant challenged the assessment in the light of Section 56 (2) of the Act. The Appellant cited the Judgment dated 12.03.2019 passed by Larger Bench of High Court of Bombay in Writ Petition No. 10764 of 2011 and other WPs. The Respondent has raised a demand for the past 91 months, and the amount claimed was not continuously shown as outstanding in the regular monthly bills. The Section 56 (2) of the Act is squarely applicable in this case which also bars the recovery for a period more than two years prior to the date of demand.
- (vi) The Respondent's demand is not supported by the actual testing of CT Meter in presence of the Appellant to prove actual MF as 2 instead of 1. Mere statement that MF is 2 and not 1 cannot be accepted.
- (vii) The additional information such as Consumer Personal Ledger (CPL), CT Testing Report before installation, CT replacement report etc., was not provided despite specific written request.
- (viii) The Appellant is eligible for grant of 24 monthly instalments in view of decision of Competent Authority at MSEDCL, Head Office. **In the instant case, the Appellant is ready to accept the liability to the extent of assessment for the period of the preceding 24 months only, with 24 equal monthly instalments in addition to regular monthly bills.**



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (ix) The Respondent has served a disconnection notice on 10.01.2021 under Section 56 (1) of the Act. However, since this dispute was pending before the IGRC, there was no 'neglect to pay' and hence the Respondent has no power to disconnect the supply. In support of this contention, the Appellant relied on Judgment of High Court of Patna in Writ Petition No. 17308 of 2009 which states that the dispute was in litigation before the Consumer Forum with regards to liability to pay. Under these circumstances, the Respondent cannot disconnect the supply unilaterally.
- (x) The Respondent referred to the order dated 26.09.2017 of the Electricity Ombudsman (Mumbai) where the facts and circumstances of that case are totally different and hence, the order is not applicable in this case.
- (xi) The MF was 2 (two) on 15.11.2021. This does not necessarily mean that MF was 2(Two) throughout the period commencing from April 2013. Hence, the Appellant demands proof of MF 2 since the date of installation. The CPL provided by the Respondent shows that the MF was 3 (three) in the month of April 2013 & May 2013, and MF appears as 1 (one) from June 2013 onwards.
- (xii) The Respondent, initially, relied on Judgment dated 18.02.2020 of Hon'ble Supreme Court of India in Civil Appeal No. 1672 of 2020 in Case of Assistant Engineer, Ajmer Vidyut Vitran Nigam V/s. Rahamatulla Khan. The interpretation of the Judgment by the Respondent is incorrect. The Supreme Court has not permitted to recover the entire dues with recourse to Section 56 (2) of the Act. The Appellant reproduced relevant para-No. 7.1 as

“.....The standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act.

The standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years, from consumers unless the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that it has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings.”



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



In para 8 of Supreme Court Judgment, it is stated that

“..... it only restricts the right of the licensee to disconnect electricity supply due to nonpayment of dues after the period of limitation of 2 years has expired nor does it restrict other modes of recovery demand.”


- (xiii) In the present case, the Respondent has demanded retrospective recovery in the year 2020, for the so-called escaped billing from April 2013 to October 2020. This is not permissible under provision of Section 56 (2) of the Act, the above-mentioned Judgment of the Hon’ble Supreme Court and the Order dated 15.09.2021 of the Electricity Ombudsman (Mumbai) in Representation No. 57 of 2021 in case of Balaji International V/S MSEDCL, Kalyan.
- (xiv) The Respondent, subsequently, relied on the Hon’ble Supreme Court Judgment dated 05.10.2021 in Civil Appeal No. 7235 of 2009 of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitaram Nigam Ltd. The Hon’ble Supreme Court has given interpretation of Section 56 (2) stating that supplementary bill can be issued after expiry of limitation period, but the Respondent cannot resort to Section 56 (2) for recovery. Other remedies are available in law for recovery.
- (xv) The Judgment of Prem Cottex is not applicable in this case as that was about Deficiency in Service when the ‘short assessment Notice’ was issued. The National Consumer Disputes Redressal Commission rejected the appeal stating that there was no Deficiency in service. It was also observed that the consumer had not disputed correctness of the claim of Licensee. The Hon’ble Supreme Court has specifically recorded in its Judgment that 'decision in Rahamatulla Khan Case and Section 56 (2) of the Act and will not go to the rescue of the Appellant.
- (xvi) Grounds for Representation:
- a) It is an admitted fact that the Appellant’s connection was first released with MF 3 (Three) and two bills were raised with MF as 3 in April 2013 and May 2013. This fact was well within the knowledge of the Respondent. After 2 bills, the Respondent raised bills with MF1 (one). This change in MF from 3 to 1 must


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



have been done with some reason as the Respondent would not have lowered the bill without valid reason and facts. The Forum has totally ignored this factual position.

- b) Billing with MF1 continued smoothly for 7 years, till one day thereafter, the Respondent claimed that correct MF was 2, and claimed a huge amount from the present Appellant. The Respondent was under obligation to establish since when the MF became 2 but they did not do so. In the absence of the foundation for raising the bill, the order of the Forum has no sanctity to be operative.
 - c) Burden of proof lies on the Respondent to establish how and when MF changed from 1 to 2 which is not fulfilled. Raising additional bill from April 2013 is an arbitrary act and the Forum has erred in not striking it down.
- (xvii) The Appellant argued that the meter accuracy was found (+)4.48%, hence, it is necessary to test the meter properly in Testing Laboratory. This was done on 21.09.2022 on the directions of the Electricity Ombudsman (M) and the meter was found in order.
- (xviii) The Appellant submitted an additional say in detail on 16.09.2022 clarifying points raised on the reply of the Respondent dated 18.08.2022. This is kept on record.
- (xix) The Appellant prays that the Respondent be directed
- a) to set aside the supplementary bill of Rs.10,44,320/-dated 23.11.2020.
 - b) to issue a fresh bill for 24 months next preceding November 2020 based on actual monthly reading recorded in CPL (if MF is proved to be two (2) from April 2013) without any interest and delayed payment charges.
 - c) to allow to pay the amount of the revised supplementary bill in 24 equal monthly instalments without interest and DPC.
 - d) to pay compensation of Rs.10000/- for mental agony and expenses which were compelled to incur due to threat of disconnection.


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4. The Respondent, by its letter dated 18.08.2022 has submitted its written reply. The hearing was held on 16.09.2022. The written submission along with its arguments is stated in brief as below: -

- (i) The Appellant is a LT residential Consumer (No. 000020628006) from 09.03.2013 having sanctioned load of 21.75 KW at Sankalp Siddhi Survey No. 91, Gokuldas Wadi, Khopat, Thane. The electric connection is used for common facilities (water pump, lift, common lighting etc.) of the Society.
- (ii) The Respondent inspected the electric installations of the Appellant on 03.11.2020. During the inspection, it was found that the meter was installed of HPL make of three phase 50/5 A capacity on 09.03.2013, whereas the external CTs are connected having ratio of 100/5 A. The details are as below.

Consumer No.	Sanctioned Load (KW)	Meter Details	External CT Ratio connected	MF billed	MF to be billed	Purpose	Date of Connection
000020628006	21.75	HPL Sr. No.362061 of 3 phase 50/5 A capacity	3 phase 100/5 A	One	Two	Common facilities (Water Pump, Lift, lighting Etc.)	09.03.2013

The Multiplying Factor (MF) = External CT Ratio / Meter CT Ratio = (100/5) / (50/5) = 2


- (iii) However, the Appellant was being billed as per MF 1 instead of MF 2 since the date of connection i.e., 09.03. 2013. This mistake first came to light only on 03.11.2020 during the site inspection. The meter along with CT was tested by Accucheck and found in order.
- (iv) Accordingly, Appellant is liable to pay the difference amount of electricity consumed by them from the date of meter installed. As per CPL of the Appellant, the said meter was installed on 09.03.2013. Therefore, the Respondent issued supplementary bill of Rs.10,44,320/- to the Appellant by its letter dated 23.11.2020 for the period from April 2013 to October 2020 towards under billing from MF 1(one) to MF 2 (two) for


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai




escaped billing of 50%. The mistake of MF was rectified, and the new MF 2 were fed in the Billing System from November 2020.

- (v) The Appellant requested to issue the bill as per MF 1 (One) vide its letter dated 08.12.2020. However, the request of the Appellant was not valid. On 10.01.2021, again the Respondent issued a letter to the Appellant-Society requesting them to pay the outstanding bill. Then the Society submitted a letter to the Respondent on 15.01.2021 requesting to bill the Appellant on prospective basis as per MF 2.
- (vi) The Respondent revisited the premises of the Appellant on 01.03.2021 for giving an explanation regarding the MF. Accordingly, an inspection report was prepared and signed by the Appellant. The existing meter with CT was tested by Accucheck and the test result of the meter was found (+) 4.48%. The external CT having Ratio 100/5 A of V.M. Electrical Dombivli make (Sr.No.13/1/4618) was found connected which was manufactured in the year 2013 and tested on 04.03.2013.
- (vii) The MF appeared to be '3' in the month of April 13 and May 13. At that time the billing was done manually and there is a possibility that the consumer would have been billed as per scale factor of 3 on New Connection Report. The billing department would have rectified the error by verifying New Connection Report which had wrong entry of MF 1 instead of MF 2.
- (viii) The society issued a letter requesting for extra documents on 22.02.2021 which was replied on 10.03.2021 vide letter no. 226 enclosing available documents.
- (ix) Meanwhile society through its members had met all higher authorities of the Respondent up to the Chief. Engineer, Bhandup Zone regarding additional bills raised for MF.
- (x) The IGRC, by its order dated 12.03.2021 rejected the grievance application. The Appellant approached the Forum on 18.03.2021. **The meter with plugging CT was tested again on 15.11.2021 in front of the Appellant for MF 2, and the Appellant agreed to the same.** The Forum, by its Order dated 29.06.2022 has partly allowed the grievance application. The detail in the order is captured in para 2 of the Order.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xi) As per the photos of the name plate of the meter and CT sent by the Respondent, it is seen that the CT of the meter was tested on 04.03.2013 and installed with the meter.
- (xii) The Appellant alleged that there was a change in the meter from May 2018 to September 2018. But actually, the meter was the same which can be seen from the CPL as the Appellant is billed with the progressive readings. The Appellant argued that the meter no. was different in the CPL from May 2018 to September 2018, which shows that the original meter might have been replaced. This fact was checked. During this period, the Respondent's billing system migrated from local to centralized billing. If the same meter number of two different companies colluded or coincided at different locations of the Respondent, then automatically the meter number appeared to be starting from 7 digits, starting with 777. In the instant case, the meter number is shown as 7772600717 from May 2018 to September 2018, which is different from the regular meter number. However, the meter readings before May 2018 and after September 2018 are seen to be continuous and progressive. This clearly indicates that the same meter continued from the date of installation till the meter was replaced in 2021. The different meter number shown for 5 months is merely due to a technical limitation in the migration of billing system from local to centralized. This mistake was rectified in the month of October 2018.
- (xiii) The meter was changed in the month of November 2021. Now the meter is of capacity 40-200 A with embedded CT having MF 1. The previous meter of consumer was CT meter with MF 2. The comparative statement of consumption recorded from March 2021 to July 2021 on the old meter with MF 2, and March 2022 to July 2022 with the new meter is as below: -


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Secretary
Electricity Ombudsman Mumbai



Consumer No.000020628006			
Month	Old meter consumption with MF 2 (units)	Month	New meter consumption with MF 1 (Units)
Mar-21	1486	Mar-22	1216
Apr-21	1684	Apr-22	1360
May-21	1396	May-22	1306
Jun-21	1772	Jun-22	1595
Jul-21	1300	Jul-22	1731
Average	1527.6	Average	1441.6

This indicates that the consumption pattern of the Appellant is almost the same. The then installed meter HPL (Sr. No.362061) of 3 phase, having capacity of 50/5 Ampere and plugging type CT Ratio of 100/5 Ampere, altogether indicate that the MF was 2 (two) as per the following formula:

$$\text{MF} = \text{External CT Ratio} / \text{Meter CT Ratio} = (100/5) / (50/5) = 2$$


Reply on Merits: -

- (xiv) Regulation 4.4.1 of Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations, 2021 states that the Respondent is authorized to recover charges for electricity supplied. The said Regulation is reproduced as below:

“4.4. Charges for Electricity Supplied

4.4.1 The Distribution Licensee is authorized to recover charges for electricity supplied in accordance with such tariffs as may be fixed from time to time by the Commission: ... ”

- (xv) Appellant’s actual MF is 2, however, the Appellant was billed erroneously as per MF 1 with 50 % under billing. The Appellant is liable and under obligation to pay difference for the actual electricity used by him since the date of connection, as the Appellant has consumed the electricity but was short billed by mistake or human error. The Appellant was short billed due to a mistake in applying proper multiplying factor. It is a case of escaped assessment.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



- (xvi) The Respondent cited the Judgment dated 05.10.2021 of Hon'ble Supreme Court of India in Civil Appeal No. 7235 of 2009 in the matter of Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. and Others. The ratio of this Judgment is squarely applicable in this case, being escaped assessment. The relevant portion of the Judgment of Para 21, 22,23, 24, 25 and 26 is kept on record.
- (xvii) In the instant case, the Appellant was under billed due to MF difference from the date of connection. The above mistake was detected on 03.11.2020 and therefore the provisional bill was issued for unbilled/escaped units during the said period which is correct. Therefore, the bar of limitation is not applicable in the present case. The recovery of escaped assessment is valid and correct.


Prayers: -

- (xviii) It is therefore prayed that the Representation be rejected, and the Appellant be directed to pay the supplementary bill.

5. During the hearing, the Respondent was directed to test the meter in its Testing laboratory in the presence of the Appellant and to convey the Test Report. The Respondent tested the meter on 21.09.2022 in the presence of the Appellant, and the test report of the meter, which is taken on record, was found in order.

Analysis and Ruling

6. The Appellant is a LT residential Consumer (No.000020628006) from 09.03.2013 having sanctioned load of 21.75 KW at Sankalp Siddhi Survey No. 91, Gokuldas Wadi, Khopat, Thane. The electric connection is used for common facilities of the Society. The Respondent inspected the electric installation of the Appellant on 03.11.2020. During inspection, it was observed that the meter was installed of HPL make (Sr. No. 362061) three phase 50/5 A capacity on 09.03.2013, whereas the external plugging type CT is connected having ratio of 100/5 A. Hence, the


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



Multiplying Factor by all means should be 2 [(100/5)/ (50/5)] for billing purpose. However, the Appellant was billed with MF 1(one) instead of 2(two) due to human error.

7. The meter with plugging type CT was tested by Accucheck and was found in order. The Respondent sent photographs of the meter and plugging type CT which was installed on the premises. The 3-phase “Plugging Type Current Transformer” designed especially for HPL make Meter was installed at the date of release of connection. The name plate of CT is as below:


Consumer No.000020628006							
3 Ph Current Trnasformer							
Ratio	100/5 A	VA	5	Class	5	IS	2705
I.L.	3KV	FREQ.	50 Hz	STR	1 Sec	SV	660 V
ISF	< 5	Meter	HPL	Sr. No.	13/01/4618		
Tested	04.03.2013 & found ok.						
MFG.	V.M. ELECTRICALS, DOMBIVALI						

Considering the consumption pattern of the Appellant and various records submitted by the Respondent, I am convinced that the Current Transformer of 100/5 A of V.M. Electricals, and Meter of 50/5 A Capacity of HPL make meter was installed from the date of installation i.e., 09.3.2013. The Appellant was billed 50% less from April 2013 to Oct. 2020. The Respondent issued a supplementary bill of Rs.72,270/- on 23.11.2020 towards retrospective recovery of Multiplying Factor from 1(one) to 2(two) for the period of 91 months from April 2013 to October 2020.

8. It is to be noted here that as per Regulation 14.4.1 of Supply Code Regulations 2005, the Respondent is duty bound to inspect the premises of consumers periodically. The said Regulation is reproduced as below:

“14.4 Testing and Maintenance of Meter

14.4.1 The Distribution Licensee shall be responsible for the periodic testing and maintenance of all consumer meters.”


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



9. The Appellant is an important residential consumer with sanctioned load of 21.75 KW. Normally the Licensee checks the electric installations of all High-Tension consumers annually as per a scheduled programme. The next priority for checking of connections is given for consumers having load more than 20 KW. It is surprising that the Respondent has taken such a long period of nearly seven years for pointing out the MF irregularities. Hence, the Respondent is also equally responsible for failure of its own duty. As per Section 18(2) of the Central Electricity Authority (CEA) Regulations 2006, electricity distribution companies should test the meter once every five years.

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


“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

This Section 56 (2) of the Act has been interpreted by the Larger Bench Judgment dated 12.03.2019 of the Bombay High Court in W.P. No. 10764 of 2011 with Other Writ Petitions. In accordance with this Judgment, the Distribution Licensee cannot demand charges for consumption of electricity for a period of more than two years preceding the date of the first demand of such charges.

11. The Hon’ble Supreme Court of India in its Judgment dated 18.02.2020 in Civil Appeal No.1672 of 2020 in case of Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. V/s. Rahamatullah Khan alias Rahamjulla has held that:

“9. Applying the aforesaid ratio to the facts of the present case, the licensee company raised an additional demand on 18.03.2014 for the period July, 2009 to September 2011.

The licensee company discovered the mistake of billing under the wrong Tariff Code on 18.03.2014. The limitation period of two years under Section 56(2) had by then already expired.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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

12. The Respondent cited the Judgment of the Hon’ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. for recovery of escaped billing. The important paras of this Judgement are reproduced below:


“3. The appellant is carrying on the business of manufacturing cotton yarn in Panipat, Haryana. The appellant is having a L.S. connection, which got extended from 404.517 KW to 765 KW with C.D 449 KVA to 850 KVA, on 3.08.2006.

4. After 3 years of the grant of extension, the appellant was served with a memo dated 11.09.2009 by the third respondent herein, under the caption “short assessment notice”, claiming that though the multiply factor (MF) is 10, it was wrongly recorded in the bills for the period from 3.08.2006 to 8/09 as 5 and that as a consequence there was short billing to the tune of Rs.1,35,06,585/-. The notice called upon the appellant to pay the amount as demanded, failing which certain consequences would follow.

6. By an Order dated 1.10.2009, the National Commission dismissed the complaint on the ground that it is a case of “escaped assessment “and not a case of “deficiency in service”. Aggrieved by the said Order, the appellant is before us.

11. In Rahamatullah Khan (supra), three issues arose for the consideration of this Court. They were (i) what is the meaning to be ascribed to the term “first due” in Section 56(2) of the Act; (ii) in the case of a wrong billing tariff having been applied on account of a mistake, when would the amount become first due; and (iii) whether recourse to disconnection may be taken by the licensee after the lapse of two years in the case of a mistake.

12. On the first two issues, this Court held that though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that, therefore, electricity charges would become “first due” only after the bill is issued, even though the liability would have arisen on consumption. On the third issue, this Court held in Rahamatullah Khan (supra), that “the period of limitation of two years would commence from the date on which the electricity charges became first due under Section 56(2)”. This Court also held that Section 56(2) does not preclude the licensee from raising an additional or supplementary demand after the expiry of the period of limitation in the case of a mistake or bonafide error. To come to such a conclusion, this Court also referred to Section 17(1)(c) of the Limitation Act, 1963 and the decision of this Court in Mahabir Kishore & Ors. vs. State of Madhya Pradesh2.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



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21. The raising of an additional demand in the form of “short assessment notice”, on the ground that in the bills raised during a particular period of time, the multiply factor was wrongly mentioned, cannot tantamount to deficiency in service. If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency. This is why, the National Commission, in the impugned order correctly points out that it is a case of “escaped assessment” and not “deficiency in service”.


22. In fact, even before going into the question of section 56(2), the consumer forum is obliged to find out at the threshold whether there was any deficiency in service. It is only then that recourse taken by the licensee for recovery of the amount can be put to test in terms of the section 56. If the case on hand tested on these parameters, it will be clear that the respondents cannot be held guilty of any deficiency in service and hence dismissal of the complaint by the National Commission is perfectly in order.

.....

26. The matter can be examined from another angle as well. Subsection (1) of Section 56 as discussed above, deals with the disconnection of electric supply if any person “neglects to pay any charge for electricity”. The question of neglect to pay would arise only after a demand is raised by the licensee. If the demand is not raised, there is no occasion for a consumer to neglect to pay any charge for electricity. Sub-section (2) of Section 56 has a non-obstante clause with respect to what is contained in any other law, regarding the right to recover including the right to disconnect. Therefore, if the licensee has not raised any bill, there can be no negligence on the part of the consumer to pay the bill and consequently the period of limitation prescribed under Sub-section (2) will not start running. So long as limitation has not started running, the bar for recovery and disconnection will not come into effect. Hence the decision in Rahamatullah Khan and Section 56(2) will not go to the rescue of the appellant.

27. Therefore, we are of the view that the National Commission was justified in rejecting the complaint and we find no reason to interfere with the Order of the National Commission. Accordingly, the appeal is dismissed.” (**Emphasis added**)

It is important to note that in the above Judgment, the assessment period for escaped billing towards recovery of multiplying factor from 5 to 10 is about three years. In the instant case, the Respondent has issued supplementary bill towards application of wrong multiplying factor as one (1) instead of two (2) for the period from April 2013 to October 2020, which is more than 7 years.


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



13. The Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex V/s. Uttar Haryana Bijli Vitran Nigam Ltd. refers the Section 17(1) (c) of the Limitation Act, 1963. The said Section of the Limitation Act, 1963 is reproduced as under: -

“17. Effect of fraud or mistake. — (1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act, —

.....
 (c) *the suit or application is for relief from the consequences of a mistake; or*

the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production:

Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or


(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.”

THE SCHEDULE
PERIODS OF LIMITATION
 [See sections 2(j) and 3]

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

<i>113. Any suit for which no period of limitation is provided elsewhere in this Schedule</i>	<i>Three years</i>	<i>When the right to sue accrues</i>
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 (Dilip Dumbre)
 Secretary
 Electricity Ombudsman Mumbai




There is no doubt whatsoever that Section 17(1)(c) of the Limitation Act, 1963 covers both the mistake of fact as well as law. The Respondent discovered the mistake of having applied the wrong MF when the premises were inspected on 03.11.2020 in the presence of the Appellant. Hence, the cause of action arose on 03.11.2020. Subsequently, the Respondent issued the supplementary bill immediately to the Appellant. The Limitation Act, 1963 describes that the suit can be filed within 3 years from the date of cause of action. Hence the Respondent can not be faulted for delay once the mistake was identified.

14. However, the Respondent failed to inspect the meter periodically prior to identifying the mistake. Ideally, it should have inspected the premises of its high-end consumers once every 3 years. Had it done so, the mistake might have come to notice much earlier, and the high amount of retrospective bill could have been avoided. Hence, retrospective recovery towards under billing due to application of wrong multiplying factor as one (1) instead of two (2) should be effected only for three years from the date of detection of mistake / cause of action. We hold that in the instant case, the valid recovery period will be three years period retrospectively from 03.11.2020 i.e., from November 2017 to October 2020.

15. In view of the above, the Respondent is directed as under: -

- a. to revise the supplementary bill for the period from November 2017 to October 2020 considering multiplying factor as 2 (two) instead of 1 (one) without any interest and DPC, levied if any.
- b. to allow the Appellant to pay the revised bill in 15 equal monthly instalments along with the current bills. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and Respondent has liberty to take action as per statute of regulations and law.
- c. compliance to be submitted within two months from the date of issue of this order.
- d. Other prayers of the Appellant are rejected.



(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai



16. The Representation is disposed of accordingly.

17. The secretariat of this office is directed to refund Rs.25000/- taken as deposit, to the Respondent for adjusting in the Appellant's ensuing bill.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

