

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO.176 OF 2022

In the matter of wrong application of Multiplying Factor

Ansuk Polymers Pvt. Ltd.Appellant

V/s.

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

Appearances:

Appellant : Davinder Singh Sudan, Representative

Respondent : 1. Shyamkant P. Borse, Executive Engineer, Vashi
2. Deepak Jadhav, Addl. Executive Engineer, Vashi Sub. Dn.


Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 9th January 2023

Date of Order : 12th January 2023

ORDER

This Representation was filed on 21st November 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 11th November 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Bhandup (the Forum).


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2. The Forum, by its order dated 11.11.2022 partly allowed the Grievance Application No. 227/ 2021-22. The operative part of the order is as below:

- “2. The Respondent is entitled to recover the supplementary bill in arrears amounting to Rs. 38,25,590/-.
3. The Applicant consumer is granted ten 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 Applicant consumer fails to deposit the monthly installment along with the current bill amount, then the Respondent has authority to disconnect the electrical supply as per MSEDCL rules & Regulations.
5. The Respondent utility 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 e-hearing was held on 09.01.2023 through Video Conference. Both the parties were heard at length. The Appellant’s written submission and arguments in brief are stated as below: -

- (i) The Appellant is a LT Industrial Consumer (No.000149028340) from 17.02.2005 having Sanctioned Load (SL) of 150 HP and Contract Demand (CD) of 110 KVA at Plot No. A-340, TTC MIDC, Mahape, Navi Mumbai. It is a manufacturing unit of products of rubber, metals & chemicals etc., running for the last 28 years.
- (ii) The Respondent inspected the premises of the Appellant on 18.10.2021. The Respondent found that the Appellant was billed with Multiplying Factor 1(one) instead of 2(two). The Respondent issued a supplementary bill of Rs.38,25,590/- on 01.01.2022 towards recovery of Multiplying Factor (MF) from 1(one) to 2(two) for the period of June 2017 to Jan.2022 i.e., 56 months. The Appellant was shocked to see such a huge amount of supplementary bill. The Appellant met the Respondent for an amicable solution at the Sub Divisional Office at Koparkhairane and discussed in detail. However, no solution was given by the Respondent. On the contrary, the Appellant received 15 days disconnection notice on 04.03.2022 from the Respondent as per provision of Section 56(1) of the Electricity Act, 2003.



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- (iii) The Appellant filed its grievance application before the Forum on 11.03.2022. The Forum by its order dated 11.11.2022 rejected the grievance and ordered to pay the said supplementary bill for Rs. 38,25,590 in ten equal monthly instalments without interest and DPC. The Forum failed to understand the basic issue that the claim was time barred and recovery was not done as per Section 56(2) of the Act.
- (iv) 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 claim.
- (v) In the instant case, the Appellant is ready to accept the liability to the extent of assessment for a period of the preceding 24 months only, with suitable instalments, in addition to regular monthly bills.
- (vi) During the hearing, the Appellant referred the orders dated 16th September 2022 passed in Rep. No. 111 & 112 of 2022 in Case of Sankalp Developers V/s MSEDCL, Thane of the Electricity Ombudsman (Mumbai) where the facts and circumstances are similar regarding MF recovery and hence, squarely applicable in this case. Hon'ble Electricity Ombudsman (Mumbai) in its order has allowed recovery for 36 months as per provision of Limitation Act.
- (vii) In view of the above, the Appellant prays that
- (a) the Respondent be directed to set aside the supplementary bill of Rs. 38,25,590/- dated 01.01.2022 and to issue a fresh bill for 24 months with MF 2 on the basis of actual monthly readings recorded in CPL with waiver of interest and delayed payment charges.
- (b) to allow to pay the amount of the revised supplementary bill in ten equal monthly instalments without interest and DPC.

4. The Respondent, by its letter dated 30.12.2022 has submitted its written reply. The written submission along with its arguments is stated in brief as below: -


- (i) The Appellant is a LT Industrial Consumer (No. 00149028340) from 17.02.2005 having SL of 150 HP and CD of 110 KVA at Plot No. A-340, TTC MIDC, Mahape, Navi Mumbai.


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The Appellant is carrying out manufacturing activity of products of rubber, metals & chemicals etc.

- (ii) **The Appellant requested for enhancement of load in CD from 50 KVA to 110 KVA in April 2017. Accordingly, load extension was sanctioned and CTs of 100/5 A were replaced by 200/5 A in May 2017. The effective MF should have been 2(Two). The meter of Secure make having capacity of 100/ 5 A remained the same in the system. The required data was updated in the billing system on 27.06.2017. However, it was not reflected in the billing properly due to some technical reason. It is seen from the CPL of the consumer that CD was changed from 50 KVA to 110 KVA in the month of July 2017 but MF was not changed from 1(One) to 2 (Two). This is the basic root cause of under billing.**
- (iii) The Assistant Engineer (Quality Control) of the Respondent inspected the electric installations of the Appellant on 18.10.2021 in the presence of the Appellant. During inspection, it was found that the meter was installed of Secure make (Sr. No. MSE 81160) of three phase having 100/5 A capacity, whereas the external CTs are connected having ratio of 200/5 A. The Appellant was billed with MF -1(One) instead of 2 (Two) as indicated below:-
- $$\text{MF} = \text{External CT Ratio} / \text{Meter CT Ratio} = (200/5) / (100/5) = 2$$
- (iv) Accordingly, the Appellant is liable and under obligation to pay the difference amount of electricity consumed by them, which was under billed by 50% due to wrong applicability of MF 1(one) instead of MF 2 (two). This is “escaped billing” from June 2017 to Jan.2022. The mistake of MF was rectified, and the new MF 2 was fed in the Billing System from February 2022.
- (v) A supplementary bill of plain difference of Rs 38,25,590/- for the period of June 2017 to Jan. 2022 was issued to the Appellant immediately.
- (vi) The Appellant has requested to revise the supplementary bill for two years considering the provision of Section 56(2) of the Act. The Section 56 (2) does not preclude the Respondent


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from raising an additional or supplementary demand after the expiry of the limitation period in the case of escaped billing.


- (vii) The Appellant approached the Forum on 11.03.2022. The Forum by its order dated 11.11.2022 rejected the grievance and permitted to recover supplementary bill of Rs.38,25,590/-.
- (viii) The Respondent cited the Judgment of the Supreme Court dated 05.10.2021 in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support of recovery of escaped billing. The relevant part of the Judgment is reproduced below:-

*“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 the recourse taken by the licensee for recovery of the amount can be put to test in terms of Section 56. If the case on hand is tested on this parameter, 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.

23. Coming to the second aspect, namely, the impact of Sub-section (1) on Sub-section (2) of Section 56, it is seen that the bottom line of Sub section (1) is the negligence of any person to pay any charge for electricity. Sub-section (1) starts with the words "where any person neglects to pay any charge for electricity or any some other than a charge for electricity due from him".

24. Sub-section (2) uses the words "no sum due from any consumer under this Section". Therefore, the bar under Sub-section (2) is relatable to the sum due under Section 56. This naturally takes us to Sub-section (1) which deals specifically with the negligence on the part of a person to pay any charge for electricity or any sum other than a charge for


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electricity. What is covered by section 56, under sub-section (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the licensee.


25. In other words, the negligence on the part of the licensee which led to short billing in the first instance and the rectification of the same after the mistake is detected, is not covered by Sub-section (1) of Section 56. Consequently, any claim so made by a licensee after the detection of their mistake, may not fall within the mischief, namely, "no sum due from any consumer under this Section", appearing in Sub-section (2).

26. The matter can be examined from another angle as well. Sub section (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)

The present case is a case of short billing and not deficiency in service. Hence the Respondent should be allowed for retrospective recovery from date of cause of action i.e., June 2017 to Jan.2022.

- (ix) In view of above, the Respondent requested to reject the Representation of the Appellant and to allow MSEDCL to recover the supplementary bill of Rs. 38,25,590/-.


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Analysis and Ruling

5. The Appellant is a LT Industrial Consumer (No. 000149028340) from 17.02.2005 having SL of 150 HP and CD of 110 KVA at Plot No. A-340, TTC MIDC, Mahape, Navi Mumbai. The Appellant is carrying out manufacturing activity of products of rubber, metals & chemicals etc.


6. The Respondent inspected the electric installations of the Appellant on 18.10.2021 in the presence of the Appellant. During inspection, it was found that the meter installed was of Secure make (Sr. No. MSE 81160) of three phase having 100/5 A capacity, whereas the external CTs are connected having ratio of 200/5 A. Hence, the Multiplying Factor by all means should be 2 $[(200/5) / (100/5)]$ for billing purpose. However, the Appellant was billed with MF 1(one) instead of 2(two) due to human error.

7. Considering the consumption pattern of the Appellant and various records submitted by the Respondent, I am convinced that the Appellant was billed only 50% of the actual due amount from June 2017 to January 2022. The Respondent issued a supplementary bill of Rs.38,25,590/- on 01.01.2022 towards retrospective recovery of MF 1(one) to 2(two) for the period of June 2017 to January 2022 i.e., for 56 months.

8. The Appellant is an important industrial consumer with sanctioned load of 150 HP and CD of 110 KVA. Normally the Licensee checks the electric installations of all High-Tension consumers annually as per a scheduled programme. The next priority for checking connections is given to consumers having load more than 20 KW. It is surprising that the Respondent has taken such a long period of nearly five years for pointing out the MF irregularities. Hence, the Respondent is also equally responsible for failure in its own duty, leading to under billing.

9. 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


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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 Hon’ble 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.

10. 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.

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)

11. 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


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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 Pradesh.***

.....
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”.*


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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 is applied for about three years. In the instant case, the Respondent has issued supplementary bill towards application of wrong multiplying factor for the period from June 2017 to Jan.2022, which is about five years.

12. The Judgment of the Hon’ble Supreme Court dated 05.10.2021 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: -


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“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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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 under billing when the premises were inspected on 18.10.2021 in the presence of the Appellant. Hence, the cause of action arose on 18.10.2021. Subsequently, the Respondent issued the supplementary bill 01.01.2022 to the Appellant. The Limitation Act, 1963 describes that the suit can be filed within 3 years from the date of cause of action. In the instant case, a suit has not been filed; however, it


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applies similarly that action has to be taken atleast within the prescribed period of limitation of three years.

13. In the instant case, the Respondent also failed to inspect the meter periodically. Ideally, it should have inspected the premises of its high-end consumers once every 1 to 2 years. Had it done so, the mistake would have come to notice much earlier, and the high amount of retrospective bill could have been avoided. Hence, retrospective recovery due to application of wrong multiplying factor as one (1) instead of two (2) should be effected for three years counting 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 date of checking on 18.10.2021 i.e., from Nov.2018 to October 2021.


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

- (a) To revise the supplementary bill considering the period from November 2018 to October 2021 by applying multiplying factor as 2 (two) instead of 1 (one), withdrawing interest and DPC, levied if any.
- (b) To allow the Appellant to pay the revised bill in 8 equal monthly instalments. If the Appellant fails to pay any instalment, proportionate interest will be accrued, and the Respondent has liberty to take action as per 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.

15. The Representation is disposed of accordingly.

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

Sd/-
(Vandana Krishna)
Electricity Ombudsman (Mumbai)


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

