

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 92 OF 2022

In the matter of excess billing

Gazi Munir Abdul LatifAppellant

V/s.

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

Appearances:

Appellant : Ramchandra Pandey, Representative

Respondent : Mahesh Nagul, Dy. Ex. Engineer, Vikramgad Sub-Dn.


Coram: Vandana Krishna (Retd. IAS)

Date of hearing : 22nd July 2022

Date of Order : 10th August 2022

ORDER

This Representation was filed on 6th June 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 March 2022 and its Review Order dated 06.05.2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Vasai (the Forum).



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2. The Forum, by its order dated 11.03.2022 has dismissed the grievance application in Case No. 95 of 2021. The Appellant filed review application on 21.03.2022. The Forum, by its order dated 06.05.2022 has also dismissed the review application in Case No. 27 of 2022.

3. The Appellant has filed this Representation against the orders of the Forum. The e-hearing was held on 22.07.2022 through Video Conference. Both parties were heard. For the sake of clarity of understanding, the Respondent's written reply dated 22.06.2022 along with its arguments are presented here first, which is stated in brief is as below:


- (i) The Appellant is a three phase Residential Consumer (No.008470001764) from 15.03.2016, having sanctioned load of 1 KW at 101/2, Shelpada 401605, Tal-Vikramgad, Dist. Palghar.
- (ii) The Meter (No.6490419) of Genus Make was installed at the time of connection on 15.03.2016. The supply of the Appellant was temporarily disconnected in March 2017 for outstanding dues, but was wrongly entered as 'Permanent Disconnection' (PD) in the system in the same month of March 2017. The Appellant cleared the outstanding dues and hence the supply of the Appellant was reconnected in April 2017 with the same Meter (No.6490419) of Genus Make. However, there was an error code in the system, and so the system failed to accept the same old meter number. Therefore, the reconnection report in the system was fed with a Dummy Meter No. 6491630. Thus, the situation was that the Meter No.6490419 was physically installed in the premises of the Appellant, however, Meter No. 6491630 was in System on record. Therefore, the reading on the actual installed meter was not accepted in the billing system. So the Appellant was being billed with wrong status of billing, like faulty, Reading Not Available (RNA), Reading Not Taken (RNT), etc. by the Reading Agency for the period from April 2017 till September 2021.
- (iii) The Respondent inspected the premises of the Appellant on 17.02.2021. During inspection, it was observed that the Meter No.6490419 of Genus Make was found installed at the site with a Meter Reading of 95843 kWh. The meter was working properly, and the Appellant was found to have converted his purpose from


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Residential to Commercial for “Krushi Paryatan Kendra” without any intimation. The connected load was found 24 KW against the sanctioned of 1 KW. Maximum demand in the meter was recorded as 26.520 KVA. The photograph of meter was taken.


- (iv) On verification of CPL and other records, it was revealed that it is a case of escaped billing. Due to the dummy meter number, the Appellant was not being properly billed as per actual meter readings on site from March 2017. The meter reading was 1012 in February 2017, and accumulated reading of 95843 kWh was found on 17.02.2021. The Appellant did not point out the same. Therefore, a supplementary bill of Rs.13,12,680.23 (95843 units) was issued immediately for the period from April 2016 to February 2021 (59 months) to get slab benefit from the date of supply. Thus, the average monthly consumption during this period comes to 95843 units / 59 months = 1624 units per month. This supplementary bill was added to the energy bill of May 2021. This was the first revision.
- (v) The electrical installation of Appellant was again inspected on 04.09.2021. In this inspection, the same Meter No.6490419 Make-Genus was found installed at the Appellant’s site with Meter Reading of 1,33,381 kWh. The Appellant had converted the residential use for purpose of Krushi Paryatan Kendra. The meter display was Opaque / Blurred. The photograph of meter was then taken, and a detailed spot inspection report was prepared. A copy of spot Inspection Report dated 04.09.2021 and a copy of meter Photograph is kept on record.
- (vi) The Appellant was billed up to Meter Reading of 95843 kWh in Feb 2021, but thereafter the Appellant was billed as per average meter reading up to September 2021. Therefore, to correct this situation, the Appellant was billed for 37538 units [133381(Current Reading) – 95843 (Previous Reading)] and was levied energy bill for 8 months i. e. March 2021 to October 2021 for Rs.5,69,527.24. The display of Meter No.6490419 Make-Genus, installed at premises of Appellant was found to be Opaque / Blur, therefore the said meter was replaced on 05.09.2021 with a new meter No. 08774893 which was Avon make. However, the dummy meter No.


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6491630 was in the database, therefore it appeared by default on Meter Replacement Report as the old meter, but in actual it was not at site.

- (vii) The old meter no. Meter No.6490419 Genus make was tested in testing unit of MSEDCL on 20.12.2021 wherein the meter display was found to be totally invisible, therefore the meter was not tested. The MRI data of meter was retrieved for the last six months which shows no abnormality in parameters of voltage, current and MD etc. The readings of the last six months were clearly visible from MRI data. On perusal of MRI data, consumption of 28290 units was recorded during the period of 5 months from May 2021 to September 2021, as such average consumption comes to 5658 units per month.
- (viii) It is kindly brought to the notice of this Forum that; the Appellant was billed with a minimum bill of only 60 units during the period from March 2016 to February 2021, whereas his average monthly consumption in the said period was 1624 units. Moreover, the supply was initially sanctioned for Residential purpose, but the Appellant converted the residential to commercial use for Krushi Paryatan Kendra without intimation to the Respondent. The Appellant has already accepted this liability and has paid the outstanding bills. Therefore, now the Appellant should not be allowed to take undue benefit to avoid the energy charges of consumption of electricity which he had already consumed.
- (ix) The Respondent also stated that the Appellant did not allow the reading agency of the Respondent to enter the premises, hence, readings were not taken on a regular basis.
- (x) The Appellant never pointed out that he was being billed for only 60 units per month consumption. The Appellant has illegally extended load with change of purpose. The Appellant did not approach the grievance redressal mechanism with clean hands.
- (xi) This is a clear case of escaped billing of accumulated consumption of 95843 units for the period from March 2016 to February 2021. Therefore, it can be recoverable within the provision of Section 56 (2) of the Electricity Act, 2003 (the Act). The


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bill for accumulated consumption for the period March 2016 to March 2021 was raised for the first time in May 2021.

- (xii) The Appellant filed his grievance before the Forum on 27.09.2021. The Forum, by its order dated 11.03.2022 has rightly dismissed the grievance application. The Appellant filed a review application on 21.03.2022. The Forum, by its review order dated 06.05.2022 has also dismissed the review application.
- (xiii) The Respondent cited the Judgment of the Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. in support for recovery of escaped billing.
- (xiv) In view of above, the Respondent requested to reject the Representation of the Appellant.

4. The Appellant's written submission and arguments are stated in brief as below:

- (i) The Appellant is a Residential Consumer (No.008470001764) from 15.03.2016, at 101/2, Shelpada 401605, Tal-Vikramgad, Dist. Palghar. The Meter No.6490419 of Genus Make was installed at the time of connection. The Appellant developed a tourist place in the name of Ibadat Krushi Paryatan Kendra / Ibadat farmhouse, and the Maharashtra Tourism Development Corporation has given sanction for the period from 25.01.2021 to 25.01.2026.
- (ii) The Appellant is regular and prompt in payment of electricity bills till the month of March 2021. The Respondent did not take proper readings from Mar-2016 to Mar.2021 (61 Months). Suddenly the Respondent raised a huge supplementary bill of Rs.13,12,138.95 with the bill of Apr.2021 for Rs.13,16,870/-. The Appellant has strongly objected to the same, being illegal and arbitrary on the part of MSEDCL for raising huge time barred bills in a single month.
- (iii) The Appellant lodged a complaint of excess billing on 24.06.2021 and 20.09.2021. However, the Respondent did not revise the same. This was deficiency in service of the Respondent from November 2016 to March 2021. The Respondent frequently threatened to disconnect supply for alleged outstanding dues. The Appellant paid Rs.9 lakhs under protest in various instalments up to 02.09.2021.



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- (iv) However, the Respondent coercively disconnected supply on 26.09.2021 for the balance amount. The Appellant was in dark without essential services like water, fan, cooling and other facilities from 26.09.2021 to 11.10.2021. The Appellant had no option but to make part payment of Rs.4,61,770/- including reconnection charges of Rs.590/- on 11.10.2021 to restore supply. The supply was restored.
- (v) The Respondent further issued a supplementary bill of Rs.7,23,690/- on 23.11.2021 which was not as per regulations. Hence, the Appellant filed objection to the Respondent on 03.01.2022 with demand of documents as below:
- (a) CPL from Feb 2017 to Dec 2021 or latest period as available in IT.
- (b) Meter replacement report of Meter No. 6490419 and Meter No. 6491630.
- (c) All documents pertaining to the bill of October 2021.

The Respondent did not give complete documents as sought above and hence the bill raised by the Respondent is not correct.

- (vi) The Appellant alleges that the Respondent tried to cover its errors by fabrication in CPL and creating a story that Meter No. 6490419 was physically on site, and Meter No. 6491630 was in system.
- (vii) The Respondent claimed that the old meter (No.6490419) was on Appellant site on the basis of documents as below:
- (a) Spot inspection report dated 17.02.2021. – No signature of consumer or its representative.
- (b) Meter photo reading 95843. – Does not identify whether the photo was taken on Appellant's site.
- (c) Bill revision report dated 09.03.2021. -bill revision of 95843 units is in question that whether it is used and is time barred under Section 56(2) and its recovery restricted by coercive action.
- (d) Spot Inspection report dated 04.09.2021.- Not signed by the consumer.
- (e) Bill revision report dated 17.11.2021.- Bill revision of 37538 units are in question whether it is used.


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(f) Meter replacement report dated 05.09.2021. – This indicates that something is wrong and hidden by the Respondent.


The Appellant has quoted Regulation 7 of Supply Code Regulations 2005 as below:

“Provided that such Authorised Representative shall not perform any of the acts under this Regulation 7 except in the presence of the consumer or his representative:

Provided further that the Distribution Licensee shall provide prior intimation to the consumer of the visit of the Authorised Representative to the consumer’s premises, except where the Distribution Licensee has reason to believe that any person is indulging in unauthorized use of electricity and / or is committing an offence of the nature provided for in Part XIV of the Act on such premises.”

The Respondent did not follow the provision as per Regulation 7. Hence, any inspection without signature of the Appellant is not maintainable.

- (viii) The demand of accumulated consumption of 61 months in March 2021 bill is a violation of Section 56 (2) of the Act. The supplementary bill is not recoverable from Appellant by using the tool of disconnection of supply. The Appellant has been frequently threatened for disconnection of supply without serving 15 days disconnection notice as stipulated under Section 56 (1) of the Act. Therefore, the Appellant was forced to pay illegal arrears to the tune of Rs.9 Lakh under protest.
- (ix) As per MSEDCL Circular No.PR-3/Tariff 24156 dated 18.07.2009, instalments should be granted for payment of supplementary bill where Appellant was not at fault, the number of such instalments should be equal to the number of months in respect of which recovery is claimed.
- (x) Neglecting to maintain CPL is hiding of meter history and shows some fabrication done by someone, and that Appellant’s old meter was misused on some other site, and bills of Rs.13,12,138.95 for units 95843 recovered from Appellant and onwards billed Rs.5,69,572.24 for units 37538 are pending for recovery.


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- (xi) Further, even if meter was used on the Appellant's site, a series of errors and deficiencies of service were found so bill recovery is restricted under Section 56 (2) of the Act.
- (xii) The Appellant filed a grievance application with Forum on 27.09.2021. The Forum did not give any interim relief and by its order dated 11.03.2022 dismissed the grievance application. Thereafter, the Appellant filed a review application on 21.03.2022 which was also dismissed by order dated 06.05.2022. The Forum failed to understand the basic issue of the case.
- (xiii) The nature of relief sought from the Hon'ble Electricity Ombudsman is as below:
- (a) Justification of old meter No. 6490419 whether used since April 2017 to 05.09.2021.
 - (b) Quashing the bill of 61 months' past recovery.
 - (c) Direct the Respondent for bill revision of 24 months as per Section 56 (2) of the Act.
 - (d) Also direct the Respondent to grant 24 instalments of revised bill without levy of interest and DPC.
 - (e) Quash next supplementary bill of Rs.4,69,527.24.
 - (f) Refund unlawful forcefully recovered amount of Rs.13,12,138.95 which is illegal.
 - (g) Compensation amount of Rs.5000/- towards mental, physical and financial harassment for keeping the Appellant in the dark by the threat of disconnection.

5. The Appellant filed a rejoinder by email dated 26.07.2022. The information, by & large is same and which is taken on record.

Analysis and Ruling

6. The Appellant was a residential consumer from 15.03.2016 with sanctioned Load of 1 KW and with Meter No.6490419 of Genus Make at 101/2, Shelpada 401605, Tal-Vikramgad,


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Dist. Palghar. The supply of the Appellant was temporarily disconnected in March 2017 for outstanding dues. The Respondent fed PD report of this meter into the system in March 2017. After payment of the outstanding dues, the supply was reconnected in April 2017 with the same Meter No.6490419 of Genus Make physically on site.

7. The Respondent contended that the Meter No.6490419 of Genus Make was made PD on record, hence due to 'error' code, this meter was not accepted for billing in the system. A dummy Meter No. 6491630 was fed in place of the PD meter for the time being in the system. However, the readings of the physical meter was not accepted in the billing system, hence the Appellant was billed with wrong status like faulty, Reading Not Available, Reading Not Taken, etc. by the Reading Agency for the period from April 2017 till February 2021. During this period, he was billed for on average of only 60 units per month.

First Bill Revision (Period from March 2019 to February 2021)

8. The Respondent during inspection on 17.02.2021 observed that the original Meter No.6490419 of Genus Make was found installed at site with Meter Reading of 95843 kWh. It is a case of escaped billing. The Appellant was wrongly underbilled with various status from March 2017 to February 2021. The Appellant enjoyed the power supply and did not point out the underbilling. The Appellant was billed with minimum of 2 units to 120 units per month during the period of March 2016 to February 2021, whereas his actual average monthly consumption in the aforesaid period was about 1624 units per month. The supplementary bill of Rs.13,12,680.23 for 95843 units was issued for the period from April 2016 to February 2021 (59 months).

9. However, the reading of February 2017 was 1012 kWh when the meter was temporarily disconnected, and the status was fed into the system wrongly as PD. The reading on the said meter was 95843 kWh on 17.02.2021. In fact, the consumption from March 2017 to February 2021 comes to 94821(95843-1012) Units for 4 years i.e., 48 months. The average consumption comes to 1976 units per month; however, the bill was revised considering 95843 units with average of 1624 units per month for the period April 2016 to February 2021 from the date of supply.


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10. This is a bonafide mistake of the Respondent. 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)**

In view of the above Judgment of the Hon'ble Supreme Court, we hold that the Respondent can recover the escaped billing only for 24 months retrospectively from March 2019 to February 2021 with average consumption of 1976 units per month.

The Section 56(2) of the Act does not preclude the licensee company from raising an additional or supplementary demand after the expiry of the limitation period under it in case of a mistake or bona-fide error. However, it does not empower the licensee company to take recourse to the coercive measure of disconnection of electricity supply, for recovery of the additional demand.

The Appellant stated that it has developed a tourist place in the name of Ibadat Krushi Paryatan Kendra / Ibadat farmhouse, under the sanction given by MTDC for the period from 25.01.2021 to 25.01.2026. Hence, the Appellant should be billed under Residential tariff category from March 2019 to December 2020 and under Commercial tariff category only for January 2021 and February 2021.


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Second Bill Revision (Period from March 2021 to October 2021)


11. The electrical installation of the Appellant was again inspected by the Respondent on 04.09.2021. In the spot inspection, the same Meter No.6490419 Make-Genus was found installed at site with Meter Reading of 133381 kWh. It was seen that the Appellant had converted his purpose from Residential to Commercial for “Krushni Paryatan Kendra” from January 2021 onwards. The meter display was Opaque / Blur. Thereafter, the Appellant was billed as per average meter reading up to September 2021. The MRI data of the meter was retrieved of the last six months which shows no abnormality in parameters of voltage, current and MD etc. The reading of the last six months was clearly visible from MRI data. The connected load was found 24 KW against the sanctioned of 1 KW and Maximum Demand was recorded as 26.520 KVA as per MRI data. The said meter was replaced on 05.09.2021 by a new meter (No. 08774893 -AVON Make). The Appellant was further billed for Rs.5,69,527.24 of 38748 units (1211 units of new meter and 37538 units of old meter [133381(Current Reading) – 95843 (Previous Reading)] for 8 months i. e. March 2021 to October 2021 under Residential instead of Commercial tariff category. This needs to be revised to Commercial tariff category. The monthly average comes to 38748 / 8 months = 4844 units per month

12. The Appellant has changed tariff category from Residential to Commercial from January 2021. The period of second bill revision is correct as per Section 56(2) of the Act.

13. Considering the depth of the grievance, the ratio of the Judgement of Hon’ble Supreme Court in Civil Appeal No. 7235 of 2009 in case of M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. is not applicable in this case.

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

- (a) To revise the bill for average consumption of 1976 units per month for the period March 2019 to December 2020 under Residential tariff category, and January


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2021 & February 2021 under Commercial tariff category, without any interest and DPC, levied if any, as a part of first bill revision.

- (b) To revise the bill for the period from March 2021 to October 2021 with an average of 4844 units per month under Commercial tariff category as a part of second bill revision.
- (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 Forum's order is modified to the extent above.

16. The Representation is disposed of accordingly.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

