

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATIONS NO. 173 OF 2022

(REVIEW OF THE ORDER IN
REPRESENTATION NO. 116 OF 2022)

In the matter of high billing

Jayantilal Mavji Thakkar..... Review Applicant

V/s.

Brihanmumbai Electric Supply & Transport Undertaking (F/N Ward) ... Respondent
(BEST Undertaking)

Appearances:

Review Applicant : Harsha Jayantilal Thakkar

Respondent : A. J. Karbhari, AAM

Coram: Vandana Krishna [IAS (Retd.)]

Date of hearing: 29th December 2022

Date of Order: 5th January 2023


ORDER

This Review Application was filed on 21.11.2022 under Regulation No. 22.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2020 (CGRF & EO Regulations 2020) for review of the Order dated 30th September 2022 passed in Representation No. 116 of 2022 (the impugned order).

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2. The Representation No. 116 of 2022 dated 30.09.2022 was rejected on merit.
3. Being aggrieved by the impugned order, the Applicant has filed this review application. The physical hearing was held on 29.12.2022. Both the parties were heard at length. The Applicant's written submission and arguments in brief are as below:
- (i) The Applicant is a three-phase residential consumer (No. 653-093-027*2) having sanctioned load of 6.3 KW at Block 1, Ground Floor, Plot-256, Mrudula Mansion, Wadala (West), Mumbai.
 - (ii) In the impugned order, the Applicant is referred as "Smt. Harsha Jayantilal Thakkar", however, the Applicant's title should be "Ms. Harsha Jayantilal Thakkar". The address is also wrongly mentioned as No.16, however, it should be Flat No 1.
 - (iii) The Respondent replaced Meter (No. L981247) of the Applicant by a new Meter No. M200960 on 03.08.2020 without any intimation to the Applicant. The change of meter indicates that there was a defect in the Meter No. L981247 from March 2020 to the date of replacement i.e., 03.08.2020. The meter has recorded a sudden random high consumption during lockdown period of Covid-19 pandemic. The excess bill of high consumption due to faulty readings of this meter needs to be withdrawn. However, it is not done so in the impugned order.
 - (iv) The amount of Rs.2000/- collected by the Respondent's staff Mr. Brijesh Upadhay for lab meter test also needs to be refunded. However, no official receipt was provided even though Brijesh Upadhay is a BEST employee.
 - (v) There were huge fluctuations in the meter readings of the Applicant which were not true consumption. There is possibility of meter being faulty. It is also pointed out that in the meter cabin of the building, there is a possibility of electricity theft by specific tenants and a flat owner who kept changing the wiring in the building of passage and other building lights without knowledge of the landlord several times with excessive wastage of electricity at other people's expense.



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- (vi) The meter M200960 which was detected faulty in the BEST laboratory, was sent to Larsen and Toubro Company for further analysis. It took further 4 plus long months to get an email report of Meter No. M200960 being okay which is quite strange.
- (vii) The Respondent and Larsen & Toubro company are such huge public platforms. Why are they not in a position to produce official receipts and official lab reports? This illusion was created with a fabricated email response of Larsen and Toubro Company report stating that the meter was okay. The Applicant stated that no such report was sent by Larsen and Toubro Company as enquired by her with this Company.
- (viii) The Applicant prays that the present Review Application be allowed as per Regulation 22 of CGRF & EO Regulations 2020 and be accepted in the interest of justice. The impugned order be set aside.
- (ix) The Applicant further prays that the Respondent be directed to refund Rs.30,000/- which has been dishonestly collected by it along with reimbursement of Rs. 2400/- for stationery expenses.

4. The Respondent filed its written reply on 16.12.2022. Its written submission along with its arguments on 29.12.2022 is stated in brief as below: -

- (a) The Applicant is a three-phase residential consumer (No.653-093-027*2) having sanctioned load of 6.3 KW at Block 1, Ground Floor, Plot-256, Mrudula Mansion, Sewree Wadala Road No. 19, Wadala Post Office, Wadala, Mumbai.
- (b) The Respondent requested to take on record the reply sent in original Representation No.116 of 2022 as the Applicant has repeated the main issue in review application.
- (c) The Respondent reiterated that BEST Undertaking is a reputed Public Undertaking Company. The working of BEST Undertaking is totally transparent. The Respondent denies all allegations made by the Applicant.
- (d) It is a regular practice that all the field officers of the Respondent, deposit the meters showing tamper indications, etc. in its metering department, especially


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those meters which are within the warranty period of five years. After collecting these meters, the metering department sends these meters to the manufacturer. The manufacturer, after testing the meters, send the analysis report of these meters together by email. This is a routine procedure followed by the Respondent.

- (e) As per this routine procedure, Meter No.M200960 was forwarded to L&T Electrical & Automation (metering unit looked after by Schneider Electric India Pvt. Ltd.) for analysis, and then their Analysis Report was forwarded to the Meters Department of the Respondent vide email ID akshay.nandkumarrane@non.Intebg.com dt.11.08.2022 which is an official email Id of L&T, always in correspondence with the Meters Department regarding meter analysis reports. L&T is a reputed multinational company and hence the allegation of the Applicant regarding collusion is strongly objectionable and the Applicant be warned accordingly to avoid baseless allegations and wasting the time of the system.
- (f) The points raised for review by the Applicant were already on record for perusal during the original Representation. This is not a fit case for Review as the Applicant has not pointed out any new discovery in the matter. The Applicant has failed to show any error on the face of record. As such the present review is not maintainable considering the provision of Regulation 22 of the CGRF & EO Regulations 2020.

Analysis and Ruling

5. Heard both the parties and perused the documents on record. The delay in filing the Review Application (beyond 30 days) is condoned by giving her an opportunity to be heard again due to her various correspondence with this office. After careful reading of the Review Application, it is seen that the Review Applicant has repeated what it has already brought on record in the original Representation No.116 of 2022, the order of which is under review. The Review Applicant has not brought out any new issue which she did not know at the time of filing the original Representation.


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6. The consumption pattern of meter No. L981247 during the Covid -19 Pandemic, for April 2020 to July 2020 was already highlighted in the original order which is reproduced as below:

Month	Estimated bill (Units)	Status of billing	Month	Revision as per Cons.(Units)	Remarks	Last year,s month	Last yearCons.(Units)
Apr-20	438	Esimated	Apr-20	732	3032,=73962 (reading of 02.07.2020) - 70930 (reading of 04.03.2020)	Apr-19	477
May-20	438	Esimated	May-20	859		May-19	760
Jun-20	438	Esimated	Jun-20	732		Jun-19	737
Jul-20	3032	Actual cons. for 4 months	Jul-20	709		Jul-19	621
			Total	3032		total	2595

The consumption of 3032 units was recorded in April, May, June and July 2020, and consumption of 2595 units was recorded in the corresponding months of April, May, June and July, 2019. The consumption pattern is similar and comparable. This clearly indicates that the meter No. L981247 was not defective.

7. The Meter No. M200960 was replaced by Meter No. N201717 on 26.03.2021. The meter was in service from 03.08.2020 to 26.03.2021 with initial reading of 000005 and final reading of 002632 kWh. The monthly consumption comes to about 339 units per month. The Respondent tested the Meter No. M200960 on 22.04.2021. The Test Result of this meter was already on record in the original order dated 30.09.2022 which is reproduced here:-

“Accuracy Test: Active Energy (kWh Part) the meter was found slow by 29.67 to 30.56% at various load of 10%, 50 % and 100 % at 0.5 lag, 0.866 lag, and unity Power Factor.

Dial Test: Dial Test Accuracy found (-) 29.56 %.

Voltage: The voltage of 240 Volt applied for three phases; however, display shows R phase 240.10 V, Y phase 0 Volt and B phase 240.30 V. respectively.”



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This indicates that, during testing, Y phase voltage was missing, so the meter was recording 1/3rd lesser consumption; this means the billing could not have been excessive. The said meter was in the warranty period. Hence, the Respondent sent the said Meter No.M200960 to the manufacturer L & T for further analysis. L& T (Metering unit - Schneider Electric India Pvt. Ltd.) by its email dated 11.08.2021 sent a common Analysis Report for 12 Meters, including the said Meter No. M200960. The analysis details of this meter indicated “Accuracy tested and found ok.”

The Review Applicant has doubted the genuineness of this e-mail of the L & T Company. So, she, herself, had called up this company for checking the genuineness of the above meter testing report. There was some misunderstanding between her and the company in understanding the procedure of sending the test report. In this case, the Respondent had sent the meter for testing due to the meter being in the warranty period along with many other meters. Therefore, a common report showing the analysis of all these meters was sent back to the Respondent. Going out of the way to accommodate the arguments of the Applicant, the office of the Electricity Ombudsman (Mumbai) itself has also twice verified the genuineness of the e-mail with the Meter Testing Team of the Powai office of the company on 03.01.2023. It was confirmed that the said report sent by e-mail is genuine and is sent by L & T Company.

8. All these issues have been recorded in the original order dated 30.09.2022 in Representation No. 116 of 2022, hence, no new evidence is seen to be discovered at this stage.

9. The scope of Review under the Regulation 22 of the CGRF & EO Regulations 2020 is very limited. The said Regulation is quoted below: -

“22 Review of Order of Electricity Ombudsman

22.1 Any person aggrieved by an order of the Electricity Ombudsman, including the Distribution Licensee, may apply for a review of such order within thirty (30) days of the date of the order to the Electricity Ombudsman, under the following circumstances:

(a) Where no appeal has been preferred;

(b) on account of some mistake or error apparent from the face of the record;



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(c) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed.

- 22.2 An application for such review shall clearly state the matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or the mistake or error apparent from the face of the record.
- 22.3 The review application shall be accompanied by such documents, supporting data and statements as the Electricity Ombudsman may determine.
- 22.4 When it appears to the Electricity Ombudsman that there is no sufficient ground for review, the Electricity Ombudsman shall reject such review application: Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.
- 22.5 When the Electricity Ombudsman is of the opinion that the review application should be granted, it shall grant the same provided that no such application will be granted without previous notice to the opposite side or party to enable him to appear and to be heard in support of the order, the review of which is applied for.”

10. I am of the opinion, that all important issues in sum and substance have been covered in the original order. The review application is nothing but a repetition of the original representation. The Applicant is trying to seek an appeal under the guise of review which is not permitted. The scope of review is very limited. The alleged mistake on the face of record in the order need not necessarily be searched through a microscope, it should be clearly visible at the first glance. The undersigned has power to review its ruling to correct a patent error and not a minor mistake of inconsequential import. This principle has been stipulated in many judicial pronouncements of the Constitutional Courts which are quoted below: -

- (a) *Kamlesh Varma v/s Mayawati and Ors reported in 2013 AIR (SC) 3301, the Supreme Court has held as under: -*

“8) This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient.”



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(b) *In the matter of Jain Studios Ltd v/s Shine Satellite Public Co. Ltd. reported in (2006) 5 SCC 501, the Supreme Court held as under: -*

“11. So far as the grievance of the Applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the Applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.”

11. In view of the above, I am of the considered view that there is no substance in this Review Application, and it is, therefore, rejected and disposed of accordingly.

12. During the course of the hearing, the Respondent was instructed to check the meter cabin and confirm whether any irregularities are going in the meter cabin or not, and to take appropriate action at Respondent's end. It is further advised to streamline the procedure for sending meters to the manufacturer for testing within the warranty period, with a view to promote transparency in obtaining the test reports.

13. The Applicant's behaviour during the course of her filing the original Representation and further up to the Review Representation has been noted to be extremely rude and indecorous, aimed at humiliating concerned parties. She is in the habit of interrupting the flow of hearings despite repeated warnings. She has not only sent various emails and correspondence to this office which is outside the purview of the Judicial process, but she has constantly cast aspersions on the character and motives of even the officers of the Electricity Ombudsman's office, not to mention the employees of the Respondent. This shows that her nature is intrinsically untrusting and argumentative, nor has she shown any trust towards this Judicial Authority. The Electricity Ombudsman personally expressed her displeasure regarding the Applicant's behaviour during the hearings. Despite this, the delay in filing the Review Application was condoned, in the interest of speedy finalization of the grievance.



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14. The Review Application is disposed of accordingly.

Sd/
(Vandana Krishna)
Electricity Ombudsman (Mumbai)



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Secretary
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