

**BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)**

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

REPRESENTATION NO. 29 OF 2020

In the matter of billing

Mr. Rajiv Thadani.....Appellant

V/s.

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

Appearances

For Appellant : Prakash Narayan Gadkar, Representative


For Respondent : 1. Sinhajirao Dinkarrao Gaikwad, Executive Engineer  
2. Annasaheb Nagnath Kale, Adl. Executive Engineer

**Coram: Deepak Lad**

Date of Order: - 30<sup>th</sup> April 2020

ORDER

This Representation is filed on 17<sup>th</sup> February 2020 under Regulation 17.2 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (CGRF Regulations) against the Order dated 23<sup>rd</sup> December 2019 passed by the Consumer Grievance Redressal Forum, MSEDCL Bhandup Zone (the Forum).

  
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2. The Forum, by its order dated 23.12.2019 has partly allowed the grievance application in Case No.09 of 2019. The operative part of the order is as below: -

*“2. The Respondent utility hereby directed to recover the charges of arrears for the Applicant for a period of 24 months prior to October 2018 and it is to be adjusted or paid six equal installment in future bill.”*

3. Aggrieved by the order of the Forum, the Appellant filed this representation stating in brief as below: -

- (i) The Appellant is a LT Commercial Consumer (No.000488901087) from 02.11.2013 at Office No. 1201, Plot No 4/6, Sector 30A, Vashi, Navi Mumbai. The activity of the Appellant is a Call centre and is billed as per commercial tariff category.
- (ii) The Appellant has paid all the bills raised by the Respondent from time to time.
- (iii) The Respondent has issued a supplementary bill of Rs.12,63,770/- by its letter dated 29.11.2018 of retrospective recovery from 29.03.2015 towards slowness of the meter due to technical error.
- (iv) It clearly shows that the meter (No. 065-06262923) is defective. The assessment therefore should be made as per the provisions of Regulation 15.4 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Other Conditions of Supply) Regulations, 2005 (Supply Code Regulations).
- (v) The Appellant filed its grievance application in Internal Grievance Redressal Cell (IGRC) on 11.12.2018 for withdrawal of illegal recovery and assessment be revised for three months only as per Regulation 15.4 of the Supply Code Regulations. The IGRC, by its order dated 28.12.2018 has rejected the grievance.
- (vi) Then, the Appellant approached the Forum on 04.05.2019. The Forum, by its order dated 23.12.2019 has partly allowed the grievance and directed the Respondent to recover the charges of arrears for a period of 24 months prior to October 2018

  
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which is to be paid in six monthly instalments in future bills. The Forum did not understand the basic issue that the meter is defective and as per Regulation 15.4 of the Supply Code Regulations, the Respondent can recover three months assessment only. There is no considerable difference in consumption pattern for the period from November 2013 to December 2018.

- (vii) The Appellant therefore, prays that the Respondent be directed
- a. to quash the supplementary bill of Rs. 12,63,770/- for 145675 units for the period from March 2015 to October 2018 along with interest and delayed payment charges
  - b. to issue bill only for a period of 3 months considering the meter is defective as per Regulation 15.4 of the Supply Code Regulations.

4. The Respondent filed its reply by letter dated 04.02.2020 stating in brief as under: -

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- (i) The Appellant is a LT Consumer (No.000488901087) from 02.11.2013 having sanctioned load of 49.5 KW and Contract Demand of 46 KW at Office No. 1201, Plot No 4/6, Sector 30A, Vashi, Navi Mumbai. The activity of the Appellant is a Call Centre in the name of In Net India Pvt. Ltd. It is billed as per commercial tariff category.
- (ii) The Respondent inspected the installation of the Appellant on 10.10.2018 in presence of the Appellant. During inspection it was observed that B Phase Current to Genus Make meter (No. 6262923) was missing and meter was recording 1/3<sup>rd</sup> less consumption.
- (iii) The Meter Reading Instrument (MRI) data of the Meter was downloaded and same is analysed by the Respondent as well as the MRI data was shared with Meter Manufacturer M/s. Genus Power. During data analysis, it was found that 'B' phase CT seems to be open circuited since 29.03.2015 at 11.13.04 hrs. Hence, provisional bill of 145675 units of Rs.12,63,770/- was issued to the Appellant on

  
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17.10.2018 towards under recording of 1/3<sup>rd</sup> consumption for the period of March 2015 to October 2018.

- (iv) The Appellant filed its grievance application in IGRC on 11.12.2018. The IGRC, by its order dated 28.12.2018 has rejected the grievance. The Appellant approached the Forum on 04.05.2019. The Forum, by its order dated 23.12.2019 has rejected the grievance pertain to applicability of Regulation 15.4, however restricted the recovery for a period of 24 months prior to October 2018, which is to be paid in six monthly instalment in future bills. The Forum has rightly decided the recovery for 24 months prior to October 2018 as per provision of Section 56(2) of the Electricity Act, 2003(the Act).
- (v) The Respondent has implemented the order of the Forum dated 23.12.2019, and revised the bill for Rs.10,35,602/-considering the period for 24 months prior to October 2018, and was issued to the Appellant on 26.02.2020.Meantime,the Appellant filed the representation on 17.02.2020.
- (vi) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

5. During the hearing on 19.03.2020, both the parties argued at length and reiterated its submission. The Appellant argued that the B phase CT was defective. CTs are the part and parcel of CT operated meter. This clearly means that CT meter was defective. As per Regulation 15.4.1 of Supply Code Regulations, in case if the meter is defective, the consumer is to be billed for maximum period of three months based on the average of previous twelve months. The Respondent has also charged interest and DPC. There is no considerable difference in consumption pattern for the period from November 2013 to December 2018.The Appellant therefore prayed to quash the supplementary bill and to issue bill only for a period of 3 months without any interest and DPC.

6. The Respondent argued that the said meter was installed along with plugging type CT. As per MRI data of the meter, the B phase CT secondary was missing for the period from

  
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March 2015 to October 2018 during which the meter was under recording. The meter is found in order. Since MRI data is available, there is no question of applicability of Regulation 15.4.1 of Supply Code Regulations. The energy was consumed during the disputed period by the Appellant. The IGRC and the Forum have therefore rightly rejected the grievance as far as the applicability of Regulation 15.4.1. There is considerable increase in consumption pattern after the error was rectified. The Respondent has implemented the Forum's order for revision of supplementary bill towards under recording of 1/3<sup>rd</sup> consumption for the period of 24 months in line with the provision of Section 56(2) of the Act and the settled position of law in this regard in view of Larger Bench Judgment of Bombay High Court in Writ Petition No.10764 of 2011 dated 12.03.2019. Therefore, nothing remains in the case and be decided accordingly.

### **Analysis and Ruling**


7. Heard both the parties and perused the documents on record. It is the case of the Appellant that B phase of the plug in type CT of the meter was not recording the current and hence the meter is defective and the consumer should be charged only for three months as per the provisions of Regulation 15.4.1 of the Supply Code Regulations. Regulation 15.4.1 provides as under: -

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

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

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

The Appellant has been charged considering that the meter was under recording by 1/3<sup>rd</sup> consumption for the period of March 2015 to October 2018. The MRI data produced by the

  
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Respondent, shows that the period of B phase current missing was from 29.03.2015 at 11.13.04 hrs to till October 2018. The Forum, in its order dated 23.12.2019 has observed that meter was not defective and only B phase was not recording the consumption, hence, the provision of Regulation 15.4.1 is not applicable. It is not necessary to differ with the observation of the Forum as regard non applicability of Regulation 15.4.1 of the Supply Code Regulations.

8. The Respondent has handed over a supplementary bill of Rs.12,63,770/- dated 17.10.2018, and it has informed the Appellant by its letter dated 29.11.2018 regarding retrospective recovery of under recording of the meter for the period from March 2015 to October 2018. The Forum, by its order dated 23.12.2019 has directed to recover for a period of 24 months prior to October 2018, which is to be paid in six monthly instalment in future bills. The Forum has rightly decided the recovery for 24 months prior to October 2018 as per provision of Section 56(2) of the Act.

9. Accordingly, the Respondent has revised the bill for Rs.10,35,602/- considering the period for 24 months prior to October 2018, and was issued to the Appellant on 26.02.2020.

10. 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. In this case, the Respondent has raised the bill towards tariff difference for the first time on 17.10.2018. The relevant portion of the Larger Bench Judgment dated 12.03.2019 interpreting Section 56 (2) of the Act is quoted below: -


*“76. In our opinion, in the latter Division Bench Judgment the issue was somewhat different. There the question arose as to what meaning has to be given to the expression “when such sum became first due” appearing in subsection (2) of Section 56.*

  
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77. *There, the Division Bench held and agreed with the Learned Single Judge of this Court that the sum became due and payable after a valid bill has been sent to the consumer. It does not become due otherwise. Once again and with great respect, the understanding of the Division Bench and the Learned Single Judge with whose Judgment the Division Bench concurred in Rototex Polyester (supra) is that the electricity supply is continued. The recording of the supply is on an apparatus or a machine known in other words as an electricity meter. After that recording is noted that the electricity supply company/distribution company raises a bill. That bill seeks to recover the charges for the month to month supply based on the meter reading. For example, for the month of December, 2018, on the basis of the meter reading, a bill would be raised in the month of January, 2019. That bill would be served on the consumer giving him some time to pay the sum claimed as charges for electricity supplied for the month of December, 2018. Thus, when the bill is raised and it is served, it is from the date of the service that the period for payment stipulated in the bill would commence. Thus, within the outer limit the amount under the bill has to be paid else this amount can be carried forward in the bill for the subsequent month as arrears and included in the sum due or recoverable under the bill for the subsequent month. Naturally, the bill would also include the amount for that particular month and payable towards the charges for the electricity supplied or continued to be supplied in that month. It is when the bill is received that the amount becomes first due. We do not see how, therefore, there was any conflict for Awadesh Pandey's case (supra) was a simple case of threat of disconnection of electricity supply for default in payment of the electricity charges. That was a notice of disconnection under which the payment of arrears was raised. It was that notice of disconnection setting out the demand which was under challenge in Awadesh Pandey's case. That demand was raised on the basis of the order of the Electricity Ombudsman. Once the Division Bench found that the challenge to the Electricity Ombudsman's order is not raised, by taking into account the subsequent relief granted by it to Awadesh Pandey, there was no other course left before the Division Bench but to dismiss Awadesh Pandey's writ petition. The reason for that was obvious because the demand was reworked on the basis of the order of the Electricity Ombudsman. That partially allowed the appeal of Awadesh Pandey. Once the facts in Awadesh Pandey's case were clear and there the demand was within the period of two years, that the writ petition came to be dismissed. In fact, when such amount became first due, was never the controversy. In Awadesh Pandey's case, on facts, it was found that after re-working of the demand and curtailing it to the period of two years preceding the supplementary bill raised in 2006, that the bar carved out by subsection (2) of Section 56 was held to be inapplicable. Hence there, with greatest respect, there is no conflict found between the two Division Bench Judgments.*

78. *Assuming that it was and as noted by the Learned Single Judge in the referring order, still, as we have clarified above, eventually this is an issue which has to be determined on the facts and circumstances of each case. The legal provision is clear and its applicability would depend upon the facts and circumstances of a given case. With respect, therefore, there was no*

  
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*need for a reference. The para 7 of the Division Bench's order in Awadesh Pandey's case and paras 14 and 17 of the latter Judgment in Rototex Polyester's case should not be read in isolation. Both the Judgments would have to be read as a whole. Ultimately, Judgments are not be read like statutes. The Judgments only interpret statutes, for statutes are already in place. Judges do not make law but interpret the law as it stands and enacted by the Parliament. Hence, if the Judgments of the two Division Benches are read in their entirety as a whole and in the backdrop of the factual position, then, there is no difficulty in the sense that the legal provision would be applied and the action justified or struck down only with reference to the facts unfolded before the Court of law. In the circumstances, what we have clarified in the foregoing paragraphs would apply and assuming that from the Judgment in Rototex Polyester's case an inference is possible that a supplementary bill can be raised after any number of years, without specifying the period of arrears and the details of the amount claimed and no bar or period of limitation can be read, though provided by subsection (2) of Section 56, our view as unfolded in the foregoing paragraphs would be the applicable interpretation of the legal provision in question. Unless and until the preconditions set out in subsection (2) of Section 56 are satisfied, there is no question of the electricity supply being cutoff. Further, the recovery proceedings may be initiated seeking to recover amounts beyond a period of two years, but the section itself imposing a condition that the amount sought to be recovered as arrears must, in fact, be reflected and shown in the bill continuously as recoverable as arrears, the claim cannot succeed. Even if supplementary bills are raised to correct the amounts by applying accurate multiplying factor, still no recovery beyond two years is permissible unless that sum has been shown continuously as recoverable as arrears of charges for the electricity supplied from the date when such sum became first due and payable.”*

*As a result of the above discussion, the issues referred for our opinion are answered as under:*

- (A) The issue No. (i) is answered in the negative. 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.*
- (B) As regards issue No. (ii), in the light of the answer to issue No.(i) above, this issue will also have to be answered accordingly. In other words, the Distribution Licensee will have to raise a demand by issuing a bill and the bill may include the amount for the period preceding more than two years provided the condition set out in subsection (2) of Section 56 is satisfied. In the sense, the amount is carried and shown as arrears in terms of that provision.*
- (C) The issue No.(iii) is answered in terms of our discussion in paras 77 & 78 of this Judgment.*

11. It is a matter of grave concern as to why the problem in B phase CT went unnoticed by any of the officers of the Respondent from March 2015 to October 2018 which is almost a period

  
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of three years and eight months. At the end of the day the Respondent can recover only for 24 months with a loss of revenue for 20 months. It seems that no one analyses the MRI data being taken every month. It has therefore become incumbent upon the higher authorities of the Respondent to look into this aspect and take appropriate action as deem fit.

12. In view of the above discussions and Larger Bench Judgment, the Respondent can make retrospective recovery for 24 months prior to October 2018.

13. In view of above I, therefore, pass the following order: -

The Respondent is directed

(a) to revise the bill towards under recording to the extent of 1/3<sup>rd</sup> consumption for the period from October 2016 to September 2018 without any DPC and interest if charged.


(b) to allow the Appellant to pay this amount in 10monthly equal instalments along with the current bill. In the event of default on payment of instalment along with the current bill, DPC and interest shall be levied.

14. Compliance to be submitted within two months from the date of issue of this order.

15. The Forum's order is therefore revised to the extent above. The Representation is disposed of accordingly.

16. The Secretariat of this office is directed to refund the amount of Rs.25000/- to the Appellant immediately. It is further directed to send a copy of this order to the Chief Engineer, Bhandup Zone of the Respondent.

Sd/  
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Electricity Ombudsman (Mumbai)

  
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