

BEFORE THE ELECTRICITY OMBUDSMAN (MUMBAI)

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

REPRESENTATION NO. 47 OF 2022

In the matter of billing

Dharamkumar K. OchaniAppellant
(M/s. Shri Balaji Homes)

V/s.

Maharashtra State Electricity Distribution Co. Ltd.Respondent
Kalyan Rural (MSEDCL)

Appearances:

Appellant : 1. Dharamkumar Ochani
2. J.S. Rajput, Representative

Respondent : 1. Ganesh Pawar, Addl. Ex. Engineer
2. D.M. Satpute, Addl. Ex. Engineer, Flying Squad

Coram: Vandana Krishna (Retd. IAS)


Date of hearing : 7th July 2022

Date of Order : 22nd July 2022

ORDER

This Representation is filed on 31.03.2022 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 4th March 2022 passed by the Consumer Grievance Redressal Forum, MSEDCL, Kalyan (the Forum).

2. The Forum, by its order dated 04.03.2022 has rejected the case in grievance application no.2285 and directed as below:



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“2. The compensation of Rs.500/- as per MERC (ESC & SOP) Regulation, 2021 to be credited to the consumer’s next month bills.”

3. The Appellant filed this representation against the order of the Forum. The hearing was held on 07.07.2022 through Video Conference. Both the parties were heard. For the sake of clarity and better understanding of the arguments, the Respondent’s say is presented here first. The Respondent filed its reply by its letter dated 30.06.2022. The e-hearing was held on 07.07.2022 through Video Conference where parties were heard. The Respondent’s submission and arguments in brief is as below: -

- (i) The Appellant is a consumer (No. 020090010931) from 24.08.2017 with Sanctioned Load of 5 KW at S.No.38, H.No.3A/1,2,3, Durga Nagar, Tal. Kalyan, Dist Thane.
- (ii) LT connection was sanctioned for construction purpose as per letter dated 30.05.2017. However, the Appellant was billed under the lower Commercial Tariff Category wrongly from 24.08.2017 to 24.08.2018. i.e., for a year period. If a construction activity continues for more than one year, the tariff category of construction activity gets lowered to Commercial Tariff Category.
- (iii) The meter of the Appellant was found partly burnt in January 2020. The Appellant paid Burnt Meter Charges of Rs. 2850/- on 07.01.2020. The meter could not be replaced with a new one at that time as there was a shortage of 3 phase meters and movement was restricted due to Covid -19 Pandemic. The burnt meter (Sr. No. 06497615 of Genus Make) was replaced by a new meter (Sr. No. 03747380 of HPL Make) on 22.12.2020.
- (iv) The Flying Squad, Kalyan of the Respondent inspected the construction site of the Appellant on 24.03.2021. During inspection, it was observed that R phase incoming of the meter was directly connected to R phase outgoing i.e., it bypassed the meter. The R phase supply was found ‘direct’ i.e., manipulated. The meter was tested by Accucheck and it was found that the meter was under recording consumption by 35%. Hence, assessment towards under recording of 15824 units of Rs. 1,91,743/- was billed to the said consumer on 08.09.2021 for the period from


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January 2020 to March 2021 as argued by the Respondent. (Consumer's meter was recording the load on the other two phases only, and the load of one phase was direct.)

- (v) In addition to under recording of the meter, the Appellant was found using supply for construction purpose for one year i.e., temporary connection. Hence, a bill was additionally assessed for Rs. 24,020/- for tariff difference between Commercial and Construction activity, for the period of one year from the date of connection i.e., August 2017 to July 2018 as per Tariff Order which was in force.
- (vi) Direct supply was found for one phase i.e. the meter was bypassed. It was a fit case under Section 135 of the Electricity Act, 2003 (the Act), but considering the circumstances of two phase recording, action was not initiated under Section 135 of the Act. The Appellant assured regarding the payment of assessment bill. However, the Appellant later changed his stand.
- (vii) The Appellant filed his grievance application before the Forum on 03.01.2022. The Forum, by its order dated 04.03.2022 rightly rejected the grievance application and directed to pay compensation of Rs. 500/-. The Forum observed that

"The consumer meter was recorded for the load on other two phases only and the load of one phase was direct hence it was not recorded in the meter. Hence the liability to pay for the consumption of electricity lies with the consumer and meter was not faulty."

- (viii) The Respondent argued that there was no record that one phase was made direct (manipulated) by the staff of the Respondent. The Appellant is in construction activity. There is a possibility of unauthorised extension of load, which resulted in burning of the meter terminal connection. The Appellant made one phase direct. The Appellant was using excess load, however, his sanctioned load was only 5 KW. This was the technical reason for burning of the meter terminal contact.
- (ix) The Respondent argued that the Appellant extended supply illegally for residential purpose to the flat owners of the residential complex. He did not intimate this to the Respondent. This clearly indicates that he has not followed the rules and regulations under the Electricity Act, 2003 (the Act). Action under Section 126


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/135 of the Act was not taken against the Appellant, as he had assured that he would pay the assessment bill of under billing.

- (x) The Respondent argued that the Meter No. 06497615 of Genus Make had the R Phase terminal contact burnt, and its burnt charges was paid by the Appellant. This meter was replaced by Meter No. 03747380 of HPL Make on 22.12.2020. This meter also had the R Phase terminal burnt. The Appellant did not pay any burnt meter charges for the HPL make meter. Apart from this, the R Phase (incoming & outgoing) was made direct. This clearly indicates that the Appellant was using unauthorised load. Hence, it is clear that the Appellant did not come with clean hands.
- (xi) In view of the above, the Respondent prays that the Representation of the Appellant be rejected.

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

- (i) The Appellant is a consumer (No.020090010931) from 24.08.2017 with Sanctioned Load of 5 KW at S.No.38, H.No.3A/1,2,3, Durga Nagar, Pin. 421 301.
- (ii) The Appellant is a developer (M/s. Shree Balaji Homes) and has taken the connection for construction purpose as per letter No. 2496 dated 30.05.2017.
- (iii) The meter got burnt, however, the Appellant has not clearly mentioned when it got burnt. The Appellant paid the burnt Meter (No.06497615) charges of Rs.2950/- on 07.01.2020. However, the Respondent did not replace the meter as required by Circular No.305 of the Respondent and as per mandate given in Regulations of the Maharashtra Electricity Regulatory Commission (the Commission). The meter has to be replaced within a period of three months, however, the Respondent failed to do so.
- (iv) The said meter was replaced on 22.12.2020 by an old Meter No. 03747380 which again had its R Phase burnt, hence, as per Regulation 16.4.1 of the Maharashtra Electricity Regulatory Commission (Electricity Supply Code and Standards of Performance of Distribution Licensees including Power Quality) Regulations,


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2021 (Supply Code & SOP regulations 2021), the Respondent has the right to recover only for 3 months.

- (v) At the time of installation of this old meter, the Respondent, itself, had done the incoming (R Phase) direct to the meter. Hence, it is not the mistake of the Appellant and justice be given.
- (vi) The Appellant stated that he is in the business of construction activity. He constructed building having 80 flats in first phase. When the Flying Squad visited the site on 24.03.2021, the building was totally completed. Some of the flat owners had occupied the flats. The residential electric connections of first phase were in the process of sanction as well as in release. There was no alternative but to extend this supply to the residential consumers as a temporary measure. There was no ill intention behind this extension of power supply as the Appellant was paying the bills with commercial tariff category.
- (vii) In view of the above, the Appellant prays that
- the Respondent be directed to quash the supplementary bill of Rs. 1,91,743/- and to issue a revised bill considering that the meter is defective, as per Regulation 16.4.1 of Supply Code & SOP Regulations 202.
 - to pay Rs. 10,000/- towards compensation for physical and mental harassment.

Analysis and Ruling:

5. Heard the parties and perused the documents on record. The Appellant is a Commercial consumer from 24.08.2017 with Sanctioned Load of 5 KW at S.No.38, H.No.3A/1,2,3, Durga Nagar, Tal. Kalyan, Dist Thane. The connection was given for the activity of construction purpose. However, the Appellant was billed under the lower Commercial Tariff Category wrongly from 24.08.2017 to 24.08.2018. i.e., for one year period.

6. The Commission issued various Tariff Orders from time to time. The abstract of the Tariff Orders in Case No. 48 of 2016 dated 03.11.2016 and in Case No. 195 of 2017 dated 12.09.2018 is reproduced as below: -


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“LT VII (B): LT - Temporary Supply - Others (TSO)

Applicability: This tariff category is applicable for electricity used at Low/Medium voltage for Temporary use for a period not exceeding one year, other than for the religious or commemorative purposes covered under LT VII (A), for


(a) Construction of all types of structures/ infrastructure such as buildings, bridges, fly-overs, dams, Power Stations, roads, Aerodromes, tunnels for laying of pipelines;” **(Emphasis added)**

7. It is seen from the record that both the installed meters got burnt and only two phases were working, which may be because of excess load against the sanctioned load of 5 KW.

8. The Respondent contended that the meter of the Appellant was found burnt. The Appellant paid Burnt Meter Charges of Rs. 2850/- on 07.01.2020. The meter could not be replaced as there was a shortage of 3 phase meters and movement was restricted due to Covid-19 Pandemic. The burnt meter (Sr. No. 06497615 of Genus Make) was replaced by a new meter (Sr. No. 03747380 of HPL Make) on 22.12.2020.

9. The Flying Squad, Kalyan of the Respondent inspected the construction site of the Appellant on 24.03.2021. During inspection, it was observed that R phase supply was found ‘direct’ i.e., manipulated. The meter was tested by Accucheck and it was found that the meter was under recording by 35%. The under-recording assessment of 15824 units of Rs. 1,91,743/- was charged to the consumer for the period from January 2020 to March 2021.

10. Direct supply was found for one phase for meter No. 03747380 of HPL Make. This was a case under Section 135 of the Act as no burnt meter charges were paid by the Appellant for this meter. The Respondent contended that an assurance was given by the Appellant for payment of assessed bill. Therefore, action under Section 135 of the Act was not initiated by the Respondent.


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11. I am of the opinion that the Appellant, with an ulterior motive, wants to take advantage of the provisions of defective meter. The Appellant appears to have wilfully manipulated the meter and made one phase direct of the second HPL make meter. It is also seen that the Appellant has not paid the burnt meter charges for the HPL Meter No.03747380. Moreover, the Appellant did not remind the Respondent by a single letter to replace the meter; on the contrary, he extended the supply for residential consumers. Therefore, I am of the opinion that the Appellant has not come with clean hands. The case fits into the maxim 'He who seeks Equity must do Equity'. He, therefore, does not deserve the benefit of provision under Section 16.4.1 of the Supply Code & SOP Regulations 2021.


12. The assessment done by the Respondent for Rs.1.91 lakh from January 2020 to March 2021 is not as per event occurred. The dispute relates to the second meter of HPL make. This second meter (Sr. No. 03747380 of HPL Make) was in-service from 22.12.2020 to May 2021 where one phase was found direct. (There is no submission from both the parties regarding the billing and payment of burnt charges of the first meter in January 2020. Hence, no assessment is taken on record.)

13. Hence, the Forum's order needs to be modified to the extent as above. This wrong period of assessment is not expected from the Respondent.

14. In view of the above, the Respondent is directed to revise the bill for the period of the second meter from 22.12.2020 to May 2021, considering one phase direct, and that the meter recorded 35 % less consumption. Other prayers of the Appellant are rejected.

15. Compliance to be submitted by the Respondent within two months from the date of issue of this order.

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


(Dilip Dumbre)
Secretary
Electricity Ombudsman Mumbai

