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Consumer Grievance Redressal Forum
"Vidyut Bhavan", Gr. Floor,
L.B.S.Marg,Bhandup (W),
Mumbai – 400078.

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/118/126/686 Date:26.11.2018

Hearing Date: 05.06.2018

CASE NO.118/2018

M/S Ashmene Products
(CONSUMER NO.000011680879)
..... (Hereinafter referred as Applicant)

Versus

Maharashtra State Electricity Distribution Company Limited
through its Nodal Officer,
Thane Circle,Thane
..... (Hereinafter referred as Respondent)

Appearance

For Consumer:- G.S.Iyer, Consumer Representative

For Respondent: - Sonwale Additional Executive Engineer,MSEDCL Kolset S/dn ,

[**Coram-** Dr. Satishkumar Jaiswal - Chairperson, Shri. R.S.Avhad -Member Secretary and Sharmila Rande - Member (CPO)].

1. Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as 'MERC'. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e. "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2006" to redress the grievances of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred

as 'Regulation'. Further the regulation has been made by MERC i.e. Maharashtra Electricity Regulatory Commission. [Electricity Supply Code and other conditions of supply Regulations 2005] Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity.

Aggrieved by the order of the Internal Grievance redressal cell, the applicant consumer filed this Representation raising following points.

2. The applicant is low tension commercial consumer (No 000011680879) of Kolshet sub division s/dn code 541 Patilpada section Tal- Thane Dist Thane .The representative of the respondent visited the premises on dtd 13.09.2017 and spot inspection of meter and CT's was done and meter no MSP 02640 secure make was replaced on the ground that is found 50.51% slow as per accucheck machine testing and not showing 'B' phase current . The meter was tested in testing laboratory Thane on date 09.01.2018 and allegedly said to be 33.41% slow as per dial test.
3. The respondent raised supplementary bill amounting to Rs 41,88,640/- on 21st February 2018 for the period April 2012 to August 2017. The meter is faulty and hence the claim amount made for the period by the Respondent is wrong. The disconnection notice issued vides KOI/S/dn /Disc Notice/437 dtd 26.02.2018 on them under section 56 of IE Act-2003 illegal as the claim itself is illegal.
4. The consumer prayed that illegal bill claim should be withdrawn and the applicant has demand responsibility should be fixed on those MSEDCL Official responsible for negligence and failing in their duty to keep the meter correct and for not having checked and replace the meter of the consumer within time violating SOP and MERC orders/guidelines and compensation of Rs one Lakh towards harassment caused due to illegal claim and subsequent disconnection of power supply by Respondent. The consumer prayed that illegal bill claim should be withdrawn.

The Respondent, MSEDCL has filed a reply dated 20 July 2018 stating as under:-

5. M/s Ashmene Product is our LTII C consumer bearing consumer number 000011680879 having address Near Ramnath Tabela, Patil Pada, Thane(W) and date of connection 31.12.2011.
6. The assistant Engineer of the Respondent accucheck the meter and found slow by 50.51%. After that the said meter is replaced and sent to Laboratory for further testing. Laboratory testing report showed that a meter is running slow by 33.94%
7. After receiving final confirmation from Laboratory testing report, 33.94% slowness recovery bill was issued to the consumer amounting Rs 41,88,640/- for the period April 2012 to August 2017. Disconnection Notice U/s 56 of electricity act 2003 was given to consumer with 15 days time period for Payment of 33.94 slowness recovery bill and installment paid by the consumer already adjust against outstanding bill. The recovery bill dated 21/02/2018 of Rs 41,88,640 for the period April 2012 to August 2017 issued to consumer is as per rules and on the basis of laboratory testing report. The Respondent Prayed that applicant grievance to withdraw recovery bill for the period from April 2012 to August 2017 may kindly rejected.
8. During Hearing, the applicant stated that our case the meter is defective as its displays different % of errors during check by Accucheck machine and testing bench There is difference of nearly 17.1% in the two tests carried out by MSEDCL by their own testing Machines .The applicant further argued that as per conditions of supply based on MERC (Electricity Supply Code and Other condition of Supply , 2005 under clause 21.7.4 & 21.7.5 & 21.7.6 and regulation 15.4.1. in case of defective meter, the amount of consumer should be adjusted for a maximum period of three months prior to the month in which the dispute has arisen . The applicant therefore prayed that appropriate relief in accordance with law be given.
9. The Respondent, MSEDCL Stated that the meter of the applicant was checked by Accu- check machine and further tested in testing Laboratory and found 33.94% slow.

10. Heard both the parties at length and goan through the admitted position of fact on record which clearly show that the meter found 50.51% slow and as per laboratory testing report meter running slow 33.94%. The MRI data shows that the less consumption is from the period 5 years and 5 months i.e 65 months .I goan through the notice of disconnection wherein the Respondent has demanded arrears of 65 months from April 2012 to August 2017.
- 11.I gone through the legal provision of 56(2) which read as ***56(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 become first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.***
12. There is also conflict of Judgements of two division benches of Hon'ble High court of Bombay in the **matter *Rototex Polyster V/s Administration Dadra Nagar Haveli and Awadesh Pandey Vs Tata power Co. Ltd*** regarding interpretation of 56(2) of the electricity Act 2003. The matter is pending before larger bench of High court. In several Judgements by Hon'ble ombudsmen that past arrears for period more than two years preceding the date of demand or supplementary bill are not allowed in terms of section 56(2) of the Act. The period of recovery was restricted for 24 months considering the provision of section 56(2) of EA 2003.
13. Looking to the pendency of Judgment before Hon'ble High court Bombay and provision of 56(2) is pending for further clarification regarding its interpretation , However I am in the opinion to follow provision of 56(2) IE 2003 as its for purpose of recovery for last 24 months .From the record the respondent fails to prove why they cannot check 65 months the meter periodically and why delay is caused in testing the meter after about .There is no explanation to that extent.Hence It is held that the Respondent is entitle to recover the arrears prior to August 2017 for 24 months i.e

from Sept 2015 to August 2017 only as per section 56(2) of Indian Electricity Act 2003 for the purpose of recovery. Looking to the negligence of Respondent and delay caused by them cannot charge interest DPC from consumer Hence, I proceed to pass following order

ORDER

1. The Application is partly allowed
2. The Applicant consumer entitle to pay the recovery claim by the Respondent for 24 months only i.e From Sept 2015 to August 2017.
3. The respondent is hereby directed to prepare the supplementary bill without DPC, interest and recover in the regular bill in 6 installments or consumer will have liberty to pay all the arrears in lump sum within one month from the date of this order
4. In addition, Consumer shall execute Indemnity bond in favour of the Respondent about his liability to pay arrears which may arise in future on the decision of Hon'ble court mention as above.
5. The compliance of this order shall be reported to this Forum within one month from receipt of this order

No order as to be cost.

I Agree/Disagree

**MRS. SHARMILA RANADE,
MEMBER
CGRF, BHANDUP**

**Dr. SANTOSHKUMAR JAISWAL
CHAIRPERSON
CGRF, BHANDUP**

Member Secretary, (R.S Avhad),

I have gone through the above reasoning and my opinion in this matter is differing as below: The Respondent was inspected the site of consumer's premises & it is seen that meter was acuchecked and found slow by 50.51% and meter also tested in laboratory and meter testing report showed that meter is running slow by 33.94% and B Phase current measured 0.02A and found B phase CT opened The MRI data also available with the respondent shows B phase missing hence the meter was not faulty/defective. Regulation 15.4.1 of the Electricity Supply Code Regulations not applicable but when one phase of CT input to the meter is missing, it will pave the way for reduction of 1/3 of the total energy actually consumed in the recordings of the meter. Since in three phase connection two phases shown the current values but one phases not shown any values i.e. zero current, Hence one phase lost , nearly 1/3 rd of the total energy consumed will not be recorded and in such case the assessment of non recorded energy consumption i.e. 1/3 less is technically and mathematically correct. The MRI data of said meter retrieved and report shows 'B' Phase current missing /abnormal from April 2012. The meter itself cannot term as faulty only the electric current input feed to the meter missing, causing a reduction in units recording. Therefore, The Respondent made assessment of less recorded unit for the period April 2012 to August 2017.

In Case of *M/s. Rototex Polyester & V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvassa* 7 ors., 2010 (4) BCR 456, cited supra Hon'ble High Court Bombay held that when consumer is under billed due to clerical mistake or human errors or due to oversight or such like mistakes, bar of limitations cannot be raised Hence,ruled there is no any limitation for retrospective recovery for any error.

Hence, the supplementary bill issued to the above consumer for the period April 2012 to August 2017 is correct & Hence the propose recovery is correct mounting to Rs.41,88,640& it shall be recoverable from the above mentioned consumers. The necessary installments for

the payment of supplementary bill amount to the consumers shall be given as per MSEDCL Rules & Regulations without interest & DPC.”

**RAVINDRA S. AVHAD
MEMBER SECRETARY
CGRF, BHANDUP**

The order is issued under the seal of Consumer Grievance Redresses Forum M.S.E.D.C. Ltd., Bhandup Urban Zone, and Bhandup.

Note:

- a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address. “ Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606, Keshav Building,Bandra - Kurla Complex, Bandra (E),Mumbai - 400 051”
- b) b) consumer, as per section 142 of the Electricity Act, 2003, can approach Hon’ble Maharashtra electricity Regulatory Commission for non-compliance, part compliance or
- c) Delay in compliance of this decision issued under” Maharashtra Electricity Regulatory Commission (consumer Redressed Forum and Ombudsman) Regulation 2003” at the following address:-

“Maharashtra Electricity Regulatory Commission, 13th floor,world Trade Center, Cuffe Parade, Colaba, Mumbai 05”
- d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.