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Consumer Grievance Redressal Forum  
"Vidyut Bhavan", Gr. Floor,  
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Mumbai – 400078.

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REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/1059 dt.26.02.19

**Hearing Date: 05.06.2018**

**CASE NO.149/2018**

M/S RLT( B.R.Gupta)  
Plot No111 Rd No 18  
Wagale Estate , Thane -604  
(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:- Shri. Prakash Sardar, Consumer Representative

**For Respondent:** - Gouri Bramahane Additional Executive Engineer, MSEDCL Kisan Nagar S/dn ,Thane

[**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 subsection 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] Here in after referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply & Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience.

2. Under threat of disconnection the applicant submit grievance in schedule 'A' to the forum directly . The applicant is low tension consumer (No 000011182143) of Kisan Nagar sub division Thane. The representative of the Respondent Company visited the premises on dtd 23/04/2018 and spot inspection of meter no 46490 secure and CT's was done and found that wrong MF bills issued The respondent raised supplementary bill amounting to Rs 13,80,004/- for the period July 2010 to April 2018 and Issued 15 days disconnection notice under section 56(2) of IE Act-2003 illegal as the claim itself is illegal. The consumer prayed for not to disconnect supply and recovery be limited up to 2 years period as per clause 56(2) Electricity Act 2003. The consumer prayed that illegal bill claim should be withdrawn.
3. The notice was issued to the Respondent to submit para wise reply and to present before Forum. The Respondent, MSEDCL has filed a reply dated 04/08/2018 stating that the power supply connection for Shri. B.R.Gupta was released on 20/01/2001 with secure company meter no 46490 with MF 2. The consumer was getting MF 2 till June 2010.
4. The Respondent further submits that On date 24/04/2018 , flying squad ,Thane of the Respondent company visited site and found that consumer was billed with MF1 instead of MF2 from July 2010 and had proposed the recovery of balance 1,25,467 units of Rs 13,80,004/- ( Rs Thirteen Lacks Eighty Thousand and Four rupees only) because of under billing .

5. The Respondent referred Hon'ble High court order in case of Rototex Polyester and submits that in order it is held that plain recovery can be workout for unlimited /exact period of short billing ( even more than 24 months period) due to mistake/error on the part of Distribution Licensee and also Municipal Corporation of Delhi ,AIR 1987 Delhi 219, where the Dehli High court was considering the Expression 'due' appearing in section 24 of the Electricity Act 2003. The Delhi High Court Observed that if the word "due' is to mean consumption of electricity, it would means that electricity charges would become due and payable the moment electricity consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to issued under section 24, which could not have been intention of the legislature. The Dehli High Court observed that the word 'due' in the context would mean due and payable after a valid bill has been sent to consumer .Learned Single Judge followed the view in matter Rototex Polyester Vs Administrator ,Administration of Dadra & Nagar Havli(U.T)Electricity.The Respondent prayed that present representation filed by the applicant may reject and allow MSEDCL to recover amount of balance units which remain unbilled due to wrong MF.
6. Heard both the parties at length and gone through documentary evidence on record .I have gone through the notice of disconnection wherein the Respondent has demanded arrears of 94 months from June 2010 to March 2018. I gone through the legal provision of 56(2) on which applicant relied 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.*

7. The demand raised after a period of more two years is barred under Section-56(2) of the Electricity Act, 2003. With respect to this issue, we shall rely upon the detailed interpretation of Section 56 of the Electricity Act 2003, contained in the order of APTEL in Appeal No. 74 of 2007 Ajmer Vidyut Vitaran Nigam Ltd. vsRajasthan Electricity Regulatory Commission & others. The Learned Judicial Member of APTEL has opined as under “ Section 56 has the caption “Disconnection of supply in default of payment”. Section 56 is not prescribing the period of limitation. It is prescribing a procedure of disconnection of supply in default of payment. It is a tool of recovery of dues. 56(1) says that the dues towards electricity supply can be recovered by a licensee or a generating company by disconnecting electric supply line. This procedure is without prejudice to the right of licensee or the generating company to recover such charge by the legal process of filing a suit. The consumer can save himself such consequences of default by making the payment as prescribed in (a) and (b) to the proviso to 56(1). if the electricity company intends to file a suit it will have to file a suit within the time prescribed by the Limitation Act. However, even without resorting to a suit, the company is allowed to use the coercive method of disconnection of electricity to force the consumer or purchaser of electricity to make the payment. The sub section (2) then proceeds to say that this coercive method shall not be available if after the sum has become due the same has not been shown for two years continuously in the bills. For this purpose it will be proper to dissect section (2) as under: 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 a period of two years from the date when such sum became first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and licensee shall not cut off the supply of electricity. The second sub section has to be necessarily read with the first sub section. This is the general rule of interpretation. However, in this case it is all the more important because the second sub section has the words “under this section”. 56(1) is not creating any dues. It is creating a method of recovery. This method of

recovery is disconnection of supply albeit after 15 days notice. 56(2) says that this process of recovery is subject to certain restrictions. So we can find the first important part of section 56(2) namely no sum due from any consumer, under this section shall be recoverable after the period of two years.

8. It is important to notice the comma after the word consumer and absence of the comma after the word section. So “under this section” has to relate to the subsequent words “shall be recoverable” and not to “no sum due”. Therefore, it follows that sub section (2) says that no sum shall be recoverable under this section after two years under this section. The two years period starts when such sum became ‘first due’ which is another important term to notice here. Now the protection given to a consumer (not to others purchasing electricity) is that the electricity shall not be disconnected for recovery of dues which are more than two years old or after the lapse of two years from the time the sum became first due. Now this has to be read with the interest of the consumer in view. Vis-à-vis a consumer a sum becomes due towards his electricity consumption when a bill is raised by the distributing company. In that sense, the words “first due” may be read to mean when the sum was first billed.) However, there is another exception which is for the protection of the distribution company which comes from the following words “unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied”. In another words, if the sum has been shown continuously as arrears of charges for electricity supplied then the method of recovery given in 56(1) can be used even after the lapse of two years. The last words “and the licensee shall not cut off the supply of electricity” has to be read with the first clause of the sentence i.e. “no such .... shall be recoverable”. The sub section, thus, says that the licensee shall not cut off electricity after a lapse of two years from the date the sum became due unless the dues have been continuously shown for two years.”. In Appeal Nos. 202 & 203 of 2006 Ajmer Vidyut Vitran Nigam Limited, versus Sisodia Marble & Granites Pvt. Ltd. &Ors, the APTEL had held that Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is

consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running."

9. Further in case Rototex Polyester & Anr vs. Administrator, Administration of Dadra & Nagar Haveli 2011(1) CIVIL COURT CASES 546 (Bombay) (DB) the Division Bench has observed: "18. While dealing with this submission, learned Single Judge referred to Delhi High Court's judgment in H.D. Shourie v. Municipal Corporation of Delhi, AIR 1987 Delhi 219, where the Delhi High Court was considering the expression "due" appearing in Section 24 of the Electricity Act, 2003. The Delhi High Court observed that if the word "due" is to mean consumption of electricity, it would mean that electricity charges would become due and payable the moment electricity is consumed and if charges in respect thereof are not paid then even without a bill being issued, a notice of disconnection would be liable to be issued under Section 24, which could not have been the intention of the legislature. The Delhi High Court observed that the word "due" in this context would mean due and payable after a valid bill has been sent to the consumer. Learned Single Judge followed this view and set aside the Ombudsman's order which had taken a contrary view. Therefore, while dealing with the question of applicability of Section 56(2) of the Electricity Act 2003, we are guided by the findings of APTEL and Bombay High Court cited above
10. In this case in which a bill for long period July 2010 to March 2018 was raised against the applicant without there being any fault on his part. It is duty of the Respondent to issue correct billing to the applicant/Consumer. Every consumer has no time to litigate against the Opponent who has a monopoly in the business of supply of electricity. In this case as the time limit has been provided for the recovery of the arrears up to two

years the consumer could survive, otherwise he had no other option but to close his business which is the only source for him to earn his bread. Every employee of the Company, therefore, is expected to be diligent in performing his duty of issuing electricity bill so that neither Company should be put to any loss nor the consumer be put to any inconvenience or suffer an agony.

11. There is also conflict of Judgments of two division benches of Hon'ble High court of Bombay in the matter Rototex Polyester 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 Judgments 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.

12. 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) Indian Electricity Act 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 March 2018 for 24 months i.e from April 2017 to March 2018 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 April 2016 to March 2018.



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 & Found that multiplying should be 2 for billing purpose but it was noticed that the applicant billed with MF Factor one from July 2010. That means bill of half units issued to the applicant every month from July 2010 and consumer paid it regularly but remaining units remain unbilled .The Supplementary bill of Rs Rs.13,80,004/- for remaining units which used by the applicant but not paid by the applicant.

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 July 2010 to March 2018 is correct & Hence the propose recovery is correct mounting to Rs.13,80,004/- & it shall be recoverable from the above mentioned consumers. The necessary installments for

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, 13<sup>th</sup> 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.