

(A Govt. of Maharashtra Undertaking)
CIN : U40109MH2005SGC153645

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

REF.NO. Member Secretary/CGRF/MSEDCL/BNDUZ/

Date

Case No. 598

Hearing Dt. 15/10/2015

In the matter resolve supplementary bill issued by utility recovery of payment to arrears beyond permissible period.

M/s. Lotus Imaging Clinics Pvt. Ltd.,

- **Applicant**

Vs.

M.S.E.D.C.L. Vashi Circle

- **Respondent**

Present during the hearing

A - On behalf of CGRF, Bhandup

- 1) Shri. Anil P. Bhavthankar, Chairperson, CGRF, Bhandup.
- 2) Shri.RavindraS.Avhad, Member Secretary, CGRF, Bhandup.
- 3) Dr. Smt. Sabnis, Member, CGRF, Bhandup.

B - On behalf of Appellant

- 1) Shri. B.R.Mantri – Consumer Representative

C - On behalf of Respondent

- 1) Shri.S.S. Patil, Nodal Officer, Executive Engineer, Vashi Circle Office.
- 2) Shri. J.S.Boduhe,Addl.Executive Engineer, Panvel City sub division.

ORDER (07/10/2015)

1. Above named consumer has filed this compliant against respondent utility through its Executive Engineer, Vashi Circle; Panvel Urban Division.
2. Above said consumer is having low tension supply (consumer No. 028510392673/2) for the establishment named 'Lotus Imaging Clinics', having

connecting load 80 KW, sanction load of 79.50 KW, 3 phase LT commercial connection, having CL 79.50 KW since 11.08.2011.

3. The consumer received bill as “provisional supplementary bill” for Rs. 36,18,050/- due to change of MF:1 to MF:2 for the period from 2011 October to November 2014. Total calculated units are 249727. Being aggrieved by this bill, he consumer has preferred this complaint.
4. According to consumer, Assistant Executive Engineer, Panvel Bhaji Market visited premises and did spot inspection on 11.12.2014, after which the consumer received supplementary bill on 15.12.2014 amounting Rs. 36,18,050/- for the period from October 2011 to November 2014 (249727 units).

The consumer has submitted that

- he was regularly paying previous bills.
 - there is no provision in the Statute/ Regulation for issuing supplementary bill.
 - section 56(2) of E.A. 2003 reads 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 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”.
5. As per order passed in Appeal No. 131/2013 dated 07.08.2013 in the matter of Vianney Enterprises, Palakkad Vs Kerala State Electricity Board, Regulatory Commission held that the bill will be issued by KSEB for date of detection copy of the order is enclosed.

It submitted that consumer is ready and willing to pay the bill issued by utility from the date of detection of change of MF. He is also willing to pay the supplementary bill for 2 years as per Section 56 (2) of E.A. 2003.

6. Consumer has prayed for waiver of interest and DPC charges before this Forum. Consumer has filed compliant in Schedule 'A' Form and prayed for
 - withdrawal of supplementary bill issued by utility
 - correction of period up to 24 months
 - installments for the payment of the bill
 - withdrawal of DPC and interest
 - interim stay order against disconnection of the supply till pendency of this compliant.
7. Consumer appeared through representative Shri. B.R. Mantri.

Notice was issued to the respondent utility. After service of notice respondent utility appeared and submitted that Assistant Engineer, Panvel Bhaji Market, Panvel visited premises on 11/12/2014. The spot inspection was performed when it was noticed that the billing was done wrongly with MF: 1 instead of MF:2 (Meter Ratio 50/5 CT Ratio 100/5) from the date of connection.

8. It is submitted by utility that the supplementary bill was issued to the consumer is correct as it was issued after calculating the units actually used by consumer with MF:2, where the difference only for the period from October 2011 to November 2014 for 249727 units.
9. The utility submitted that NSC Report and calculations are as per Regulation and Rules, thus the consumer is liable to pay the said difference of units as mentioned in Regulation supply code 2005 in view of Regulation 14.4.1. It is further submitted that it is duty of the utility to calculate for testing and

maintenance of all consumers. Accordingly the inspection was done and the tariff was calculated as MF:2.

10. Consumer filed details of the compliant and attached disputed bill issued on 16.06.2015, and copy of Appellate Court order.
11. Utility filed the reply along with NSC report which was not issued to consumer by Addl. Executive Engineer 06.01.2015. The demand of payment of calculated difference units along with interest and penalty is claimed. Utility also submitted details of calculations for aggrieved difference of units with interest and DPC and other charges.
12. We have gone through consumer compliant and reply filed by utility. We gave opportunity for hearing to the Representative of both the parties.

It appeared that the date of supply to the unit 11.08.2011 is not disputed.

13. According to utility as per Regulation 14.4.1, it is authorized to visit the premises for testing and maintenance of all meters. It is noticed by the officer authorized when visited that the premises has connected and sanctioned load 79.5KW and Sanction load demand is 63.60. Tariff was applied 89 LT-X-C. The pattern of consumption noted during the inspection showed that earlier tariff and pattern was wrongly applied to the consumer by calculation with MF:1. During the inspection it is found meter ratio was 50/5 and CT ratio 100/5.
14. Accordingly NSC meter submitted and utility calculated MF 2 from the date of connection and Supplementary bill was issued for Rs. 36,18,050/-. The period calculated is from October 2011 to November 2014. The total units were 249727 for the period which is paid by the consumer.

15. After hearing the consumer it appears that permissible period for recovery of MF: 2 Arrears as per APTEL judgment (as attached by consumer) can be recovered for two years from the date of detection. It is submitted that in case in MERC order in Case No. 24 of 2001 on 11 February 2003 no retrospective recovery of arrears can be allowed. As it is pointed out by some auditor any classification or reclassification of tariff order. It is responsibility and duty of licensee suddenly the changed cannot be made for the purpose of calming arrears.
16. According to utility actual calculation of unit was done for the period and unit was calculated as per SOP guidelines and Regulation. As consumer actually used the said units and paid amount wrongly calculated as per MF:1, the bill which was issued for calculation of 38 month from the date of connection is proper.
17. After hearing the argument of both the parties and after going through reported judgments and cases earlier decided by MERC and Hon'ble High Court in similar issues
18. As per section 56(2) disconnection notice was issued by utility on 16.07.2015 to the consumer indicates that demand of 2460783/- was done for the outstanding arrears for October 2011 to November 2014. It is also submitted that the consumer is liable to pay DPC and interest on outstanding arrears. Also threat of disconnection was given.
19. To our view, the arrears claimed in the notice issued by utility under section 56(2). Attracts the provisions of Electricity Act where period of permissible recovery is restricted to 24 months earlier from the date of detection.

Thus consumer is justified in raising this objection.

20. Therefore supplementary bill issued by utility beyond period of 24 months is liable to be withdrawn.
21. The cited judgments on the similar issue also confirm our view of calculating arrears only of the period of 24 months.
22. It also appears that respondent utility have not made periodical visits to this unit for maintenance and regulation of supply as contemplated in Regulation 14.4.1 and there is violation. Admittedly the visit is made by Assistant Engineer, Bhaji Market, and Panvel.
23. Therefore due to lack of supervision and control over the consumer by utility consumer should not be made to pay any interest and DPC charges.

Therefore to our view the interest and DPC should be waived off.

24. We have also seen the actual consumption used for the difference of unit for sufficient longer period and consumer remain silent and way any request or communication to the utility for showing issuing wrong tariff bill be continue to pay less calculation unit as per MF:1 and paid the bill for sufficiently long period it is repaired to recovery of revenue by the utility remedy is by there before appropriate court of law of judgment in view (Godbole Judgment) issue of supplementary bill beyond period of 24 month and permissible period all issued referred for longer bench to my view for avoiding multiplicity of dispute the consumer shall execute Indemnity bond for remaining recovery of arrears month period in favor of utility and recovery is subject to decision of referred issue will be sufficient.
25. During the hearing instructions were given to the utility for calculation of 38 month arrears into 2 parts-

Period of 24 month recovery should be calculated separately.

For recovery calculated for remaining months, indemnity bond subject to decision of larger bench on the same issue should be taken.

26. Accordingly the utility submitted the calculation sheet for the period from December 2012 to November 2014. Units calculated are 215015 on which other charges were calculated without any interest and DPC. In schedule No. 2 utility calculated difference of unit October 2011 to November 2012. Total units calculated are 34712 in the amount be shown in schedule to separately.

27. **I have verified the said calculation of unit upon considering fact and circumstance.** I come across to decide the consumer compliant finally and I proceed to pass following order.

Member Secretary, (Ravindra S. Avhad)

I the undersigned shri. R.S.Avhad in my capacity as member /Secretary of this Forum do not agree with the finding of this order. As per the documents on record, I do agree with the fact that there is some manual mistake while issuing the bills and hence the consumer was billed as per MF 1 instead of MF 2 On the same finding this Forum has passed the above order. It is seen from the observations made by the Forum that mahavitaran is entitled to recover the difference of bill only for the period of past 24 months from the date of detection.. To record following observation, In Case of M/s. Rototex Polyester & another V/s. Administrator Department of Dadra & Nagar Haveli (UT) Electricity Department of Silvassa & Others, reported in 2010 (4) BCR 456, Hon'ble High Court Bombay held that

“ A consumer is under billed due to a clerical mistake, bar of limitation cannot be raised. Hence challenge of petition is

not tenable & Sec.56 (2) of E.A. is not a bar or recovery of due amount by Respondents. Hence the propose recovery is correct & recoverable from consumers, as this is only clerical mistake, installments for payment as per MSEDCL circular should be granted without interest & DPC.”

It is seen that the Hon High Court allowed the recovery for the period from July 2003 to July 2007 in case of escaped billing due to wrong MF. Hence by honestly following the ratio laid by Hon. High Court, I am of the opinion that Mahavitaran's action to issue the additional recovery bill with MF 2 for the period from October 2011 to November 2014 i.e. for past 38 months is right and proper.

ORDER

1. Consumer Compliant No. 598 is allowed.
2. The utility shall calculate the difference of MF:2 for the period of 24 months from the date of detection, which is from December 2012 to November 2014 no interest and DPC should be charged.
3. The consumer shall execute Indemnity bond for the amount calculated separately for the period from October 2011 to November 2012 and undertake that liability to pay on Indemnity subject to decision on this issue referred to larger bench of Hon'ble High Court.
4. The consumer is permitted to pay the bill in equal 6 month installments each of the installment shall be payable and shown separately in current bill.

5. The utility authority shall take suitable action against learned officer for violation of regulation by consider official with accordance with law.
6. The Respondent Utility is hereby directed to calculate refund amount as per rules shall reply the same to consumer by request or demand draft with 9% interest from the date of deposit amount till refund.

No order as to cost.

Both the parties should be informed accordingly.

Proceedings disposed off.

Compliance should be reported within 30 days.

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

Note:

- 1) If Consumer is not satisfied with the decision, it may proceed within 60 days from date of receipt of this order to the Electricity Ombudsman in attached "Form B".

Address of the Ombudsman

The Electricity Ombudsman,
Maharashtra Electricity Regulatory Commission,
606, Keshav Building,
Bandra - Kurla Complex, Bandra (E),
Mumbai - 400 051

2) If utility is not satisfied with order, it may file representation before the Hon. High Court within 60 days from receipt of the order.

I Agree/Disagree

I Agree/Disagree

**DR. ARCHANA SABNIS
MEMBER
CGRF, BHANDUP**

**ANIL P. BHAVTHANKAR
CHAIRPERSON
CGRF, BHANDUP**

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