



Consumer Grievance Redressal Forum, Kalyan Zone  
Behind "Tejashree", Jahangir Meherwanji Road, Kalyan (West) 421301  
Ph: – 2210707 & 2328283 Ext: - 122

---

IN THE MATTER OF GRIEVANCE NO. K/ E/187/211 OF 2009 -2010  
OF M/S. S. S. INDUSTRIES, AMBERNATH REGISTERED WITH  
CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE,  
KALYAN ABOUT EXCESSIVE BILLING.

M/s. S. S. Industries  
Plot No. E-4, Addl. MIDC.,  
Anand Nagar,  
Ambarnath (East) : 421 501

} (Here-in-after  
referred  
as Consumer)

Versus

Maharashtra State Electricity Distribution  
Company Limited through its  
Dy. Executive Engineer  
Ambarnath Sub-Division

} (Here-in-after  
referred  
as licensee)

The consumer has filed the present application for redressal of it's grievances under Regulation 6.4 of the MERC (CGRF & Electricity Ombudsman) Regulations 2006.

- 2) The admitted facts are that the applicant is a L. T. consumer with consumer No. 021527002009 with sanction load of 66.5 HP of the respondent / licensee since Oct./Dec. 2004. Meter No. 60000007787 was installed at the industrial premises of consumer at the time of giving such supply in Oct./Dec. 04. The applicant/consumer was paying the bills of electric charges regularly since the time when such supply was given to it.
- 3) The applicant/consumer claims that, Junior Engineer of Ambernath Sub-Division visited the establishment of consumer for surprise checking & after checking the said above referred meter, it was concluded that the said meter was wrongly fixed by the concerned Officer/Technician of licensee & therefore, the same was replaced with another meter No. 055-00048322. Thereafter the said Junior Engineer handed over a provisional bill for Rs. 07,43,340=00 dt. 23/10/08. The said bill was disclosing that it was issued as per letter No. EE/ULH/Tech/3676, dt. 16/10/08 & the said bill is for the recovery against difference of multiplying factor. The said bill was of the period from 2004 to Oct. 2008 & was payable by 06/11/08. The applicant/consumer represented to the concerned Jr. Engineer that the said bill was illegal since it was issued for the arrears of four years for it's no fault & infact the fault was of the concerned Officer in installing wrong meter or applying incorrect multiplying factor (MF). It also did not pay the amount of the said bill for the same reason. Therefore, the Dy. Executive Engineer, Ambernath issued a 15 days notice to it, asking it to pay the amount of the said bill & on failure to face the disconnection. The consumer replied the said notice through Advocate Shri Vivek Khare informing the licensee that the concerned provisional bill is illegal as the same is not according to the provisions of Electricity Act 2003. In the meanwhile the consumer was

served with regular bill dt. 06/11/08 & it paid the same on 19/11/08. There was no mention about non payment of provisional bill dt. 23/10/08, in the said bill & the MF was also written as "One" in the said bill. Thereafter the consumer discussed about it's grievance with Executive Engineer & the Executive Engineer assured him to look into it. However, the Executive Engineer (EE) did not take the grievance of consumer in a proper perfective & directed the Dy.EE to disconnect the electric supply to the applicant/consumer & accordingly it's supply was disconnected on 01/12/08.

- 4) The applicant/consumer, claims that the Dy.EE Ambarnath & EE Ulhasnagar of licensee did not consider it's grievances made in the reply dt. 24/11/08 to the notice dt. 07/11/08, properly & rejected it & disconnected the electric supply to the applicant/consumer on 01/12/08 & therefore, the applicant/consumer has registered the present application/grievances with this Forum on 25/02/2009. The applicant/consumer has prayed for directions to the licensee to reconnect the electric supply & to withdraw the concerned provisional bill for Rs. 07,43,340/- dt. 23/10/08.
- 5) The licensee vide reply dt. 02/04/09 claims that the name of applicant/consumer has appeared in the "D" list of Oct. 08 of EE Ulhasnagar - II Division & during his checking of the list, the installation of applicant/consumer was found to be with MF of Two, however, in the consumer's energy bills, the MF taken for calculation was One. So the consumer's 50/5A(Secure/07787) meter was replaced with 100/5 A (Secure/48322) & as per the EE's letter No. 3676, dt. 16/08/08, provisional bill of Rs. 07,43,740/- was issued to the applicant/consumer on 23/10/08. The said provisional bill was given of four years i.e. from the date of

installation since as per CPL record, wrong MF was applied to the applicant/consumer since beginning & as per record available in NSC report. Due to wrong MF, the applicant/consumer was billed 50% of the actual consumption recorded by the meter from the date of installation & the same was explained to the applicant/consumer. The last date of provisional bill dt. 23/10/08 was 06/11/08. However, the applicant/consumer did not pay the amount of the said provisional bill & therefore notice with outward No. 1494, dt. 07/11/08 was issued to it. The amount of the said provisional bill, was not included in the regular bill subsequently issued since the matter was pending with higher authorities for approval of debit B-80. No sooner the higher Officers gave their approval, the amount of provisional bill was debited in the consumer's next bill. There after the electric supply of the applicant/consumer was disconnected on 01/12/08 as per SE's letter dt. 01/12/08. It further claims that the consumer earlier paid the electric bills regularly and within time earlier but the same were issued for 50% of actual consumption due to application of wrong MF. The provisional bill has been issued to the consumer due to such difference of MF and not due to the fault in the meter. The amount of provisional bill was being added to the consumer's regular bill in the month of Jan. 09 after due approval. The concerned letter dt. 16/10/08 mentioned in the provisional bill was official correspondence and therefore, it's copy was not given to the consumer. It further claims that on 03/12/08, the consumer approached S.E. and agreed to make part payment and also made application to that effect on 05/12/08. The S.E. accepted the consumer's such request and therefore, on part payment of some amount and post dated cheques, the electricity supply was reconnected/resumed to the consumer on 05/12/2008.

- 6) Heard Shri Arumugham Seran, the consumer's representative (CR), Shri V. Y. Kamble, Incharge Nodal Officer & Shri K. S. Mohite, both licensee's representatives (LR) & submissions made by them are recorded in the minutes of the hearing on 02/04/2009 & the same are placed on record of the case.
- 7) Considering the grievances made & reliefs claimed by the applicant/consumer, the following points arise for determination and consideration the submission made by both the parties & documents on record, the findings thereon are given against each of it, for the following reasons.

<u>Points</u>	<u>Findings</u>
(1)Whether the provisional bill for Rs. 7,43,740/- Dt. 23/10/08 issued by the licensee/non applicant to the applicant/consumer is barred by limitation under Section 56 (2) of the Electricity Act 2003 ?	NO (As per majority view)
(2)Whether the applicant/consumer is entitle for Restoration of electric supply ?	Does not survive
(3)What reliefs ?	As per final order

Reasons

- 8) As to Point No. (1) : (View of Chairperson & Member Secretary) - It is submitted by CR that the officers of the licensee use to take meter readings & accordingly the licensee use to issue bills & the applicant/consumer has been paying such bills within time. If the licensee has issued wrong bills, the applicant/consumer is not responsible for such mistake of licensee. He further submits that under Section 56 (2) of the Electricity Act 2003 (hereinafter referred as "Act" only), the licensee can issue the bills of the

electricity consumed upto the period of two years only. Therefore, the provisional bill dated 23/10/2008 issued by the licensee for the electricity supplied during the period of about four years i.e. from Dec. 2004 to Oct. 2008 is barred by limitation & hence illegal.

- 9) On the other hand, the LR submits that the multiplying factor ("MF" for short) for the earlier meter fitted at the establishment of the applicant/consumer was Two (2) & hence at the time of preparing bills, the meter reading should have been doubled to find out the actual consumption in units & accordingly the electric charges should have been charged. However, due to mistake, the applicant/consumer was charged with the units as per meter reading (without doubling it) taking the MF of the said meter as One (1), as a result of which the applicant/consumer has been charged with 50% of consumption only. The said mistake was detected at the time of inspection of the meter in Sept. 2008 & therefore, the said meter was replaced by new meter having MF of One (1), & provisional bill dated 23/10/2008 for Rs. 07,43,740/-, by which the earlier bills issued from Dec. 2004 to Oct. 2008 were under valued, was issued to the applicant/consumer. He further submits that the amount of the said bill became due on the date on which the said bill about it was issued to the applicant/consumer i.e. on 23/10/08, and therefore, the amount of the said bill cannot be said to have been barred by limitation under Section 56 (2) of the Act. He relies on the Judgment dated 18/01/2007 of Hon. Bombay High Court in write petition No. 264 of 2006, Brihan Mumbai Municipal Corporation through it's General Manager BEST undertaking V/s. Yatish Sharma and others in support of it's such contentions.

- 10) It is clear from the meter replacement report dated 15/10/08 of which copy is placed on record by the licensee, that the earlier meter at the establishment of applicant/consumer was bearing Sr. No. 07787 with MF Two (2), and the same was replaced on 15/10/08 with meter Sr. No. 48322 with MF One (1). It is not disputed by the applicant/consumer that the said earlier meter at it's establishment was from the beginning and therefore, the contention of the licensee that the earlier bills issued to the applicant/consumer from beginning till the replacement of the meter, were issued as per meter reading i.e. without doubling it, wrongly taking the MF of the said meter as One (1), and therefore, due to such mistake, the applicant/consumer has been charged with 50% of consumption only, is correct and will have to be accepted.
- 11) This brings us to the main point under contest as to whether the non applicant/licensee can raise (issue) such provisional bill on 23/10./08 of the Electricity supplied during the period from Dec. 04 to 15/10/08 on the ground that the earlier bills issued for the said period were under valued due to wrong application of MF as One (1) instead of Two (2).
- 12) Sub Section (1) of Section 56 of the Act empowers the licensee, or as the case may be, a generating company to cut off the supply of electricity when any person neglects to pay any charges for electricity or any sum other than a charge for electricity due from him to a licensee or generating company in respect of the supply, transmission or distribution or wheeling of electricity to him. Sub Section 2 of Section 56 of the Act, on which the applicant/consumer relies in support of it's contention, provides as follows :
- “(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 became first due unless such sum has been shown continuously as recoverable as arrears of charges for electric supplied and the licensee shall not cut off the supply of electricity”.

- 13) The answer to the above point depends upon the interpretation of the words “When such sum became first due”, used and underline in the above referred sub section 2 of Section 56 of the Act. The contention of the applicant/consumer is based on the assertion that the arrears for consumption becomes due immediately on the usage of energy & are billed on the dates prescribed according to the billing cycle, whereas according to the licensee, while the liability to pay electricity consumed is occasion by the consumption of the electricity, the sum payable becomes due from the consumer only upon the presentation of the bill, and that unless a bill is presented by the licensee to the consumer, there is no occasion for the sum payable becoming due. If such contention of licensee is accepted, it would follow that the amount (sum) for which the provisional bill dated 23/10/08 has been issued, became first due on the date on which the said provisional bill was issued to the applicant/consumer i.e. on 23/10./08, and therefore, the non applicant/licensee can recover the amount of the said bill from the applicant/consumer within two years from the said date.
- 14) In a case “Writ petition No. 264 of 2006 BMC through it’s GM BEST undertaking V/s. Yatish Sharma and others” decided by the Hon. Bombay High Court vide Judgment dated 18/01/2007, relied upon by the licensee/non applicant, supplementary bill for the period 19/01/2000 to 27/05/2000 on the basis of average taken as 3621 units per month was raised (issued) in Aug. 2004 by revising the earlier bills issued for the said



period taking average consumption as 325, 350, 330, 330, 330 and 330 units, on the ground that the average consumption charged the earlier bills were under valued, was under challenge. The Hon. High Court after referring to various provisions of the Act and Maharashtra Electricity Regulatory Commission (Electricity Supply Code and other conditions of supply) Regulations 2005, and the decision of Delhi High Court in H.D. Shourie's case holding that the expression "due" in section 24 of the Electricity Act 1910 could not refer to the consumption of electricity but to a sum or amount being payable after a valid bill has been sent to the consumer, disapproved the above contention of applicant/consumer in this case which was accepted by the Hon. Ombudsman in the said case, by observing about it as under :

"Para 11..... The Ombudsman was therefore, clearly in error in postulating that the claim was barred on the ground that the arrears for consumption became due immediately on the usage of energy. This finding is ex facie contrary to the provisions of sub section 2 of Section 56. The provisions contained into the Regulation 45 this conclusion which independently emerges on a plain & grammatical interpretation of the provisions of section 56".

- 15) The Hon. Bombay High Court in the above referred case, ultimately accepted the contention raised by the licensee in this case and upheld the right of licensee to raise (issue) supplementary bill against the consumer in case of under valuation at the time of earlier bills even after a period of two years from the period of concerned consumption of electricity, and since in the said case the concerned meter was found defective, directed the

licensee to issue fresh supplementary bill as per the provisions of Regulation 15.4.1 of 2005.

- 16) The facts in this case are similar to the facts in the above referred case before the Hon. High Court and therefore, in our opinion, the above referred ratio or principal laid down by the Hon. High Court in the said case, is applicable to this case.
- 17) The Hon. Bombay High Court has also in a case “U.A. Thandani and another V/s,. BEST Undertaking and another” (AIR 2000 Bombay 264), while interpreting section 26 of the Electricity Act 1910, held that the limitation of six months prescribed by the said section would not apply for raising supplementary bill on the ground that the consumer was earlier underbilled due to clerical mistake or human error as reading on meter was not multiplied by multiplying factor which was essential to arrive at actual electricity consumption.
- 18) The Hon. National Consumer Disputes Redressal Commission, New Delhi also in a case “BSES Rajdhani Power Ltd. V/s. P.C. Kapoor {2008(3)CPR 252(NC)} also relying on the decision of Hon. Apex Court in a case of M/s. Swastik Industries V/s. MSEB, held that time limitation is not applicable in raising supplementary demands.
- 19) Moreover, if the interpretation of the words “when such sum became first due”, as is being canvassed by CR, is accepted, it would give opportunities to the unscrupulous consumers in getting under valued bills with the help of some of the officials of the licensee, and then avoid to pay the arrears by claiming benefit under section 56 (2) of the Act. As against this, if the interpretation of the above referred words as is being canvas by the LR is accepted, it would not cause any prejudice or illegal loss to the consumer

as it would be paying the appropriate charges of the electricity which it has already consumed, and would not cause any illegal gain to the licensee as it will only be allowed to recover the actual cost of the electricity supplied, by allowing to issue such bills for arrears. It is true that allowing the licensee to raise such bill for additional charges of longer period, would cause some hardships to the consumer as it would require to pay large sum of such arrears at one stroke, but it's remedy lies in grating installments by the licensee, as the licensee has already done in this case, and not by disallowing the licensee to recover such arrears.

20) In view of the above discussion and particularly relying on the above referred decision of Hon. Bombay High Court in writ petition No. 264 of 2006 decided on 18/01/2007, we come to the conclusion that in the instant case, the licensee could legally issue provisional bill (which is in fact supplementary bill) dated 23/10/2008 even for the entire period from Dec. 2004 to Oct. 2008 as the applicant/consumer was under billed during the said period due to application of wrong MF earlier, after the said mistake was noticed at the time of inspection on or about 15/10/2008, and can legally recover the charges as per said provisional bill and the said bill is not barred by limitation under Section 56 (2) of the Act, as contended by the applicant/consumer. Hence the findings in negative on this point as above.

21) View of Member : (i)Supply was released to the consumer in Oct. 04. At the time of release of supply the meter installed Sr. No. 07787 was a CT operated meter with a meter ratio 3 X 50/5 Amps., the meter was replaced on 15/10/08 having a CT ratio of 3X100/5 Amps. Sr. No. 48322. However, CTs. connected in the installation were of ratio 100/5 Amps. Keeping in

view the above facts the MF should have been taken as Two (2) but it was taken as One (1). It is a error on the part of licensee. The error was detected on 16/10/08 by Executive Engineer, Ulhasnagar-II Division. Licensee issued a provisional bill on 23/10/08 an amount of Rs. 07,43,340/- .(ii)During the period from release of supply and inspection of Junior Engineer, Ulhasnagar-II Division, till the error was detected, licensee issued regular bills for the consumption of electricity and the same were paid by consumer regularly. During this period licensee has not shown any arrears in the bill issued and to be paid by consumer.

(iii)It is licensee's duty that at the time of releasing the power supply and installation of the meter, care should have been taken to install the meter and C.Ts. of the same ratio, so as to avoid some errors. In case of C.Ts. ratio was not matching proper, MF should have been calculated by taking into account the different C.Ts. ratio and meter ratio to calculate correct consumption as per meter reading.

(iv)The licensee has failed to take a notice of the above mentioned points resulting in taking a wrong MF for issuing of the bills.

(v)The provisional bill issued to the consumer for a period from the date of installation of meter i.e. Dec. 2004 till the replacement of meter i.e. Oct. 2008 for the period of 47 months (as per provisional bill issued by licensee dt. 23/10/08). As per Section 56 (2) of Electricity Act 2003 as follows :

“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 became first due unless such sum has been shown continuously as

recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”.

The provisional bill licensee can be raised for a period of two years (24 months) only from the date of issue of the bills for collecting the arrears due to wrong billing. As there is no mention of arrears to be paid by consumer in period under dispute.

(vi)From the study of above record, it is very clear that it is a case of wrong billing by the licensee and the period of wrong billing continued for a period date of installation to date of detection of error (about four years).

(vii)The licensee should revise the provisional bill and the revised bill should be with a correct MF and for a period in line with Section 56 (2) of Electricity Act 2003 i.e. for a period of two years only.

(viii)The licensee should verify the amount paid by the consumer against the provisional bill and should give the credit to the consumer if the amount paid against the provisional bill is more than the revised bill for two years.

- 22) As to point No. 2 : It is clear from various contentions raised by the parties and documents on record that after the non applicant of the licensee issued the provisional bill dated 23/10/2008, the applicant/consumer did not pay the amount of the said bill by due date i.e. 06/11/2008, and alleges that he has complained about the said bill to the concerned engineer of the licensee. Therefore, the licensee through it's Dy. Executive Engineer, Ambarnath (East) issued notice dated 07/11/2008 to the applicant/consumer calling upon it to pay outstanding amount of Rs. 07,34,340/- of the said provisional bill within 15 days from the receipt of the said notice, failing which the electric supply to the applicant/consumer shall be disconnected. The applicant/consumer claims that it has replied the said

notice but has not filed its copy on the record. Whatever it may be, the applicant/consumer did not pay the amount of the said provisional bill within the time given by the notice dated 07/11/08. Therefore, as per S.E.'s letter dt. 01/12/08 to the Dy. EE. , the electric supply to the applicant/consumer was disconnected on 01/12/2008.

- 23) It further appears that thereafter the applicant/consumer, through Shri V.V. Khare, Advocate, sent a letter dated 02/12/08 to the Superintending Engineer, Kalyan containing its grievances regarding the said provision bill dt. 23/10/08 and disconnections of electric supply to it and request for reconnection and withdrawal of the said provisional bill. It further appears that on the same day i.e. on 02/12/08, the applicant/consumer got its details of grievances prepared and ultimately annexed the same with its grievance in prescribed proforma registered with the Forum on 25/02/09 and therefore, the relief of reconnection is made in it.
- 24) It is, however, admitted fact and clear from the record that after sending the above referred letter dt. 02/12/08 to the Superintending Engineer, the applicant/consumer on 03/12/08 made an application to the S.E. Kalyan with a request to direct the concerned Officer to reconnect the supply to the applicant/consumer and it was ready to pay Rs. 70,000/- under protest as part payment, and on such application, the electric supply was reconnected/resumed to the applicant/consumer on 05/12/08 on deposit of Rs. 74,640/- as first installment and nine post dated cheques for Rs. 74,300/- each.
- 25) Thus the electric supply is already reconnected or resumed to the applicant/consumer on 05/12/08 and therefore, its such prayer does not now survive. Hence this points stands answered accordingly as above.

- 26) There has been number of holidays and consequently less working days during last month. There has also been sudden increase in registration of grievances by the consumers before this forum since last two months, as result of which this forum is forced to hear arguments in two cases on every day and also to decide such a cases at the same rate. Therefore, there has been some delay in deciding this case.
- 27) In view of the negative finding as per the majority view on point No. 1 and the finding on point No. 2 as above, the non applicant/licensee cannot be asked to withdraw the concerned provisional bill dt. 23/10/08 and it is not necessary to direct reconnection at this stage, and hence the Forum passes the following order :

ORDER

- 1) The claim of applicant/consumer for issuing directions to the non applicant/licensee to withdraw the provisional bill dt. 23/10/08 is rejected.
- 2) Consumer can file representation against this decision with the Ombudsman at the following address.

*“Maharashtra Electricity Regulatory Commission,  
606/608, Keshav Building, Bandra Kurla Complex, Mumbai 51”*

Representation can be filed within 60 days from the date of this order.

Date : 04/05/2009

(Sau V. V. Kelkar)  
Member  
CGRF Kalyan

(R.V.Shivdas)  
Member Secretary  
CGRF Kalyan

(M.N.Patale)  
Chairman  
CGRF Kalyan