

**MAHARASTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.**  
**KONKAN ZONE RATNAGIRI**  
**Consumer Grievances Redressal Forum Ratnagiri**

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**Consumer case No. – 13/2015**

**Date :- 02.07.2015**

**Shri. Jayesh Natvarlal Barot  
Siddhivinayak Residency,  
Gala 17 to 25, Majgaon Raod,  
Ratnagiri**

**Complainant**

**V/S**

**Executive Engineer  
Maharashtra State Elec.Dist.Co.Ltd.  
Ratnagiri**

**Opposite Party**

**Quorum of the Forum**

- 1) Mr. V.R. Kamble  
Secretary Member**
- 2) Mr. J.P. Biwalkar  
Member**

**On behalf of consumer**

- 1) Mr. Sanjay Sahebrao Bagav  
(Representative)**

**On behalf of opposite party  
Ratnagiri**

- 1) Mr. V.V.Mamilwad  
Executive Engineer,**
- 2) Mr.G.B.Ghodke,  
Additional Executive  
Engineer, Ratnagiri**

**Maharashtra State Electricity Regulatory Commission Consumer Grievance Redressal Forum and Ombudsman Regulation 2006 Vide Clause No.8.2**

- 1) a) Mr. Jayesh Natwarlal Barot is a Commercial consumer having 3 phase LT supply through C.T. operated meter under connection no. 210010347241 at Siddhivinayak Residency Gala No.17 to 25, Majgaon Road, Ratnagiri. The supply was used by his tenant ICICI Prudential Life Insurance co. for their office. The sanctioned load is 58 Kw with demand of 54 KVA
- The electricity supply was released on 22.06.2008 under Commercial category LT-II (c)
- b) The consumer was wrongly billed with multiplying factor (M.F.) as 1 from 22.06.2008 till Nov.2013 instead of M.F. as 2. The mistake was noticed by the officials of MSEDCL at the time of inspection on 10.12.2013. As a consequence of the mistake, the consumer was under billed to the extent of 50% of the consumption. MSEDCL, the opposite party, (O.P.) issued supplementary bill for Rs.11,91,580/- for escaped consumption for a period from 2008 to November 2013 i.e. for 65 months. The revised calculation sheet submitted by Opposite party to the Forum reveals that amount of arrears are 12,01,607.94/-
- c) The complainant however did not pay the supplementary bill but he requested for reduction in the bill amount on several occasions. The O.P served notices of disconnection for nonpayment u/s 56(1). Since no payment was made the supply of electricity was temporarily disconnected to start with followed by permanent disconnection.
- d) Subsequently complainant's representative called at the office of O.P.to have the supply restarted and ultimately paid the entire amount of Rs. 11,91,580/- which was included as arrears in the bill for April 2014.
- e) The complainant, thereafter, filed a grievance with Internal Grievance Redressal Cell of O.P. The IGRC rejected the application relying on the Forum's order in case no. 25/2013. of Ultratech Cement co. & the judgment of Hon'ble High Court of Bombay in the Writ Petition No.7015/2008. It is against this order of the IGRC that the consumer has approached this Forum on 02.07.2015
- 2) a) After the complaint in Form 'A' was received, the Executive Engineer, Ratnagiri Division was provided with a copy of the complaint & his say relating to the complaint was called for. The reply of O.P. was received vide letter no.4605 dt.06.08.2015.
- b) After serving due to notice to both the parties hearing was scheduled and held on 19.08.2015. At the time of hearing the O.P. was represented by Shri. Mamilwad, The Executive Engineer Ratnagiri Divison and Shri. Gopichand Ghodke, The Additional Executive Engineer, Ratnagiri Urban Sub Division. The consumer was represented by Shri. Sanjay S.Bagav.

- c) On behalf the consumer Shri. Bagav stated that the inspection of the premises was carried out on 10.12.2013 by Additional Executive Engineer. The Inspection report was signed by representative present at the time of inspection. Thereafter supplementary bill for Rs.11,91,580/- raised for under billing due to wrong multiplying factor(M.F.) 1 applied instead of correct M.F. 2. while billing since beginning, was sent to him for payment. The bill for 65 months from June 2008 to November 2013 was protested by him orally as mistake in applying correct M.F. was entirely that of O.P. and consumer was not at fault. He prayed for refund of part amount paid. On a query why the dispute was raised belatedly and whether the amount was paid under protest he conceded that no protest was registered as he was not aware of the remedy available. The amount was paid as, due to disconnection, it was difficult to run an office in the premises, he added. On getting information about redressal machinery immediately grievance was filed with IGRC.
- d) On behalf of O.P. Shri.Ghodke argued that during spot verification at the consumer premises it was noticed that the M.F. applied in billing was wrong. This fact was brought to the notice of the consumer. Because M.F.1 instead of M.F.2 was applied, consumption to the extent of 50% escaped assessment and hence supplementary bill, which is under dispute, was sent to the consumer asking for payment. But interest and DPC have not been charged.
- e) Shri. Ghodke reiterated that the supplementary bill was correctly and lawfully raised and the consumer has paid it. The electricity supply was restored upon payment. He also relied on the decision of this Forum in case no.25/2013 upholding that the past arrears can be recovered without any limitations.He prayed that the complaint of the consumer be rejected.
- 3) a) Heard both the sides and perused the documents on record. It is observed that there is no dispute about inspection and application of wrong M.F. upto the date of inspection. It is also undisputed that the bill was honoured by the complainant. It is undisputed that the mistake was attributable to employees of O.P. and the consumer was not at fault. Therefore the only issue that emerges for consideration of this Forum is whether O.P. is, now, entitled to raise the demand for 65 months preceding the date of detection of the error.
- b) The complaint relates to billing for past 65 months for escaped consumption due to wrong M.F. applied. It is therefore, worthwhile, to see what is correct M.F. in this case. The inspection report reveals that

- 1) Consumer's CT Ratio is 200 /5A and meter's C.T. Ratio is 100/5
- 2) The P.T. Ratio of consumer's power supply and meter is same i.e. 3X240
- 3) Scale factor is uniform which is 1. In case of cramped scale it is in the ratio of 1/10/100 etc.

The M.F. is arrived at with the help of following formulae

$$\text{M.F.} = \frac{\text{connected C.T. ratio} \times \text{connected PT ratio}}{\text{Meter CT ratio} \times \text{Meter P.T. ratio}} \times \text{Scale Factor}$$

In the case on hand the M.F., thus, is as under

$$\text{M.F.} = \frac{200/5 \times 3 \times 240}{100/5 \times 3 \times 240} \times 1 = 2$$

It is established that correct M.F. should have been 2 .

c) The section 56(2) of Electricity Act 2003 provides for recovery of arrears. It reads as under **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 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 the electricity'.**

Plain reading of this section shows that a sum is recoverable upto the maximum period of 2 years from the date when become first due unless it has been shown continuously as recoverable as arrears of charges of electricity supplied.

The date of the arrears becoming 'first due' is ,thus, a deciding factor. Various Division benches of High court have considered this issue to decide the Writ Petitions.

In W.P. in case of M/s. Rototex Polyester v/s Dadra Nagar Haveli Administrator (Electrical Department) decided on 20 August 2009 it was held that the section 56 (2) of Electricity Act 2003 does not limit the recovery of arrears upto 2 years of the demand while in W.P. No. 2221/2006 in case of Awadesh Pande (of M/s Nand A-15) and Tata Power Company Ltd. decided on 05.10.2006 it was held that u/s 56(2) licensee can recover arrears upto 2 years preceding the date of

demand. In W.P. numbers 6783 of 2009, decided on 05/03/2010, in case of MSEDCL v/s Venco Breeding Farms Pvt, ltd. The Division Bench affirmed the decision in case of Awadesh Pande and Tata Power Company Pvt .Ltd. referred to above. In another W.P. No.10764/2011 in case of MSEDCL v/s BSNL Deogad the Hon'ble Judge of the Division Bench disagreed with the decisions in the W.P. in case of Rototex Polyester and in case of Yatish Sharma. However, because of the conflicting decision of different Division Benches of Bombay High Court he decided to refer the case to larger Bench the judgment of which is awaited.

The Electricity Ombudsman has allowed recovery of arrears u/s 56(2) upto to 2 years preceding the date of demand.( ref. representation No. 57 of 2013)

Considering the various aforesaid decisions this Forum is of the view that to meet the ends of justice it is proper to allow MSEDCL to recover arrears for 24 months preceding the date of demand i.e. 10/12/2013 and to show, **subject to final decision of larger Bench**, in case of W.P. 10764/2011, the remaining arrears for 41 months as outstanding in the future bills. Without interest and DPC. The Excess of Rs. 11,91,580/- over arrears for 24 months preceding 10<sup>th</sup> December 2013 without interest and DPC should be refunded to consumer who should be given an option either for crediting this amount against future bills or for refund to him in one lump sum.

In view of above position the Forum proceeds to pass the following order.

## Order

- 1) Consumer's complaint is allowed.
- 2) The bill dated Nil for Rs. 11,91,580/- is set aside .
- 3) MSEDCL should issue, as under, 2 separate bills due to change in M.F.
  - a) Supplementary bill for 24 months preceding the date of inspection i.e.from 10/12/2011 to 09/12/2013
  - b) Supplementary bill for remaining 41 months i.e. from 22/06/2008 to 09/12/2011
- 4) The bill at 3 (a) should be recovered from the amount of Rs. 11,91,580/- deposited by the consumer and remaining amount should be refunded either by giving credit in the next bill or by repayment in one lump sum depending upon the option exercised by the consumer.
- 5) The bill at 3 (b) should be shown as outstanding in future bills **subject to the decision of larger Bench of High Court**. Interest and DPC will not be charged on the outstanding amount of this bill and no notice of disconnection be served for non payment of this bill till then.

- 6) A Suitable declaration to the effect that consumer has expressly understood that the decision the Forum is subject to final judgment of larger Bench of High Court in W.P. No.10764/2011 and undertaking to the effect that he would redeposit the amount of refund, if required, on the basis of judgment of High Court, may be obtained from the consumer.
- 7) MSEDCL to comply with this order on or before 30/09/2015 and to send compliance report to the Forum on or before 15/10/2015.
- 8) No order to cost.
- 9) In case consumer desires to appeal against this order he should file his appeal at the following address.

Secretary,  
Electricity OMBUDSMAN,  
Maharashtra State Electricity Regulatory Commission,  
606/608, Keshava Building,  
Bandra Kurla Complex,  
Mumbai – 400 051.  
Phone No.022 – 2659 2965.

- 10) In case of non compliance with this order by MSEDCL the consumer can approach to the MERC u/s 142 of Electricity Act 2003 at the following address.

Secretary,  
Maharashtra Electricity Regulatory Commission  
World Trade Centre,  
Centre No.1, 13th Floor, Cuffe Parade,  
Mumbai - 400005

**Shri. V.R. Kamble**  
**Ex.Engineer,C.G.R.F.**  
**Konkan Zone**

**Shri. J.P.Biwalkar**  
**Member,C.G.R.F.**  
**Konkan Zone**

**Date : 01.09.2015**  
**Place : Ratnagiri**